

**Supporting Statement for Paperwork Reduction Act Submission**  
**OMB Control Number 1505-0121**  
**“CFIUS Pilot Program Regulations and FIRRMA Update Regulations”**

**Section A. Justification**

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

*Summary*

This supporting statement is submitted in connection with two separate but related temporary rules regarding the operations of the Committee on Foreign Investment in the United States (“CFIUS” or the “Committee”). The first temporary rule (the “First Rule”) implements a pilot program the Committee will conduct pursuant to the Foreign Investment Risk Review Modernization Act of 2018, Subtitle A of Title XVII, Public Law 115-232 (Aug. 13, 2018) (“FIRRMA”). The second temporary rule (the “Second Rule”) implements certain provisions of FIRRMA that became effective upon enactment of the statute on August 13, 2018, and makes technical changes and other updates to the existing regulations of CFIUS to provide clarity in light of FIRRMA.

The collection of information under these two temporary rules is required to fulfill an important and statutorily directed national security purpose. Further, a key purpose of the collection of information under these regulations is to reduce the existing burden on parties that submit transactions to CFIUS by providing an alternative, abbreviated method of filing.

*The First Rule - CFIUS Pilot Program*

Section 721 of the Defense Production Act of 1950, as amended (“Section 721”), provides the President, acting through CFIUS, authority to review certain foreign investments in the United States in order to determine the effects of those transactions on the national security of the United States.

The existing regulations governing the Committee’s processes, found at 31 C.F.R. Part 800, provide that parties may voluntarily inform the Committee of a transaction, and provide the Committee information necessary to conduct a national security review of the transaction, by submitting to the chairperson of the Committee a written notice of the transaction pursuant to Section 721(b)(1)(C)(i)(I). The required contents of a notice are set forth in Section 800.402 of the Committee’s regulations (31 C.F.R. 800.402). Alternatively, any agency that is a member of the Committee may notify the Committee of a transaction. The collection of information through the submission of a written notice to the chairperson of the Committee has been approved by OMB (OMB Control Number 1505-0121).

FIRRMA amended Section 721 by, among other things, introducing a second method through which parties to a transaction may inform the Committee of a transaction, namely,

an abbreviated notification called a “declaration” that sets forth basic information regarding a transaction and does not generally exceed five pages in length.

FIRRMA provides for both voluntary and mandatory declarations. The voluntary declarations provision of FIRRMA, which is not part of the pilot program being implemented pursuant to the First Rule, permits a party to any transaction within the purview of CFIUS to submit a declaration instead of a full notice. The mandatory declarations provision, which is part of the pilot program, provides, among other things, that the Committee may require the submission of a declaration with respect to any transaction within the purview of CFIUS that involves a United States business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies.

Pursuant to Section 1727(b) of FIRRMA, the provision of FIRRMA that authorizes mandatory declarations did not become effective immediately upon FIRRMA’s enactment. Rather, pursuant to Section 1727(b), the mandatory declarations provision will take effect on the earlier of: (1) the date that is 18 months after the enactment of FIRRMA (i.e., February 13, 2020); and (2) the date that is 30 days after publication in the Federal Register of a determination by the chairperson of the Committee that the regulations, organizational structure, personnel, and other resources necessary to administer FIRRMA’s new provisions are in place.

Section 1727(c) of FIRRMA, however, authorizes the Committee to conduct one or more pilot programs to implement any authority provided in any provision of, or amendment made by, FIRRMA that did not take effect immediately upon FIRRMA’s enactment. The First Rule will implement such a pilot program.

Under the pilot program, parties to certain transactions within CFIUS’s purview will be required to submit a declaration regarding those transactions to the Committee or, if the parties so choose, to file a notice.<sup>1</sup> The required contents of a declaration are set forth in Section 801.403 of the pilot program regulations. Once a declaration has been accepted, parties are generally required to respond within two business days to requests from the Committee for additional information.

Section 721 mandates that the Committee take one of four actions within 30 days of receiving a declaration: (1) request that the parties to the transaction file a notice with respect to the transaction; (2) inform the parties to the transaction that the Committee is not able to clear the transaction on the basis of the declaration, and further inform them that, if they wish to seek CFIUS clearance, they may file a notice with respect to the transaction; (3) initiate a unilateral review of the transaction; or (4) clear the transaction.

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<sup>1</sup> In addition to making effective certain portions of the FIRRMA’s mandatory declaration provision, the pilot program also expands CFIUS’s jurisdiction to cover non-controlling investments in certain U.S. businesses (“Pilot Program Covered Investments”). Parties to a Pilot Program Covered Investment will be required to submit information as to why the transaction meets the definition of a Pilot Program Covered Investment, irrespective of whether the parties choose to inform the Committee of the transaction through a declaration or a notice.

## *The Second Rule – Technical Changes and Other Updates to Existing CFIUS Regulations*

As described above, certain provisions of FIRRMA became effective immediately upon the enactment of the statute. In some cases, these immediately effective changes resulted in inconsistencies between the statute governing CFIUS and CFIUS's existing regulations. For example, FIRRMA extended the length of a CFIUS review from 30 days to 45 days, but the regulations at 31 C.F.R. Part 800 still refer to a 30-day review period. The Second Rule makes changes to 31 C.F.R. Part 800 necessary to eliminate inconsistencies between Section 721, as amended by FIRRMA, and the regulations governing the operations of CFIUS.

The Second Rule also makes technical changes and other updates to the existing regulations of CFIUS to provide clarity in light of FIRRMA. For example, the Second Rule updates the required contents of a notice to CFIUS to reflect sections 1705 and 1707 of FIRRMA. Section 1705 provides that the Committee may require a notice submitted to CFIUS to include a copy of any partnership agreements or other side agreements relating to the notified transaction, and section 1707 provides that parties submitting a notice may stipulate that the notified transaction is within the purview of CFIUS and that it is a foreign-government controlled transaction. These stipulations are intended to streamline the analysis that the Committee undertakes upon receiving a notification, thereby reducing the burden on the U.S. government and potentially leading to a faster resolution for the submitting parties.

### 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 both the First Rule and the Second Rule will be used by CFIUS, an inter-agency committee that comprises the Secretaries of the Treasury (chair), Commerce, Defense, State, Homeland Security, and Energy, the Attorney General, the United States Trade Representative, and the Director of the White House Office of Science and Technology Policy. In addition, Section 721 designates the Director of National Intelligence and the Secretary of Labor as *ex officio*, non-voting members of CFIUS. The heads of five White House Offices observe and, as appropriate, participate in the work of the Committee: 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 to be collected under these regulations will be sent by parties to the Treasury Department, which will disseminate the information to CFIUS member agencies for consideration in assessing the effects of the transaction in question on the national security of the United States. 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 will involve the use of electronic submission of responses. Parties will be required by regulation to submit notices and declarations electronically to the Treasury Department, which will disseminate the information electronically to the other CFIUS member agencies. Each Committee member agency that receives an electronic copy of a notice or declaration will print as many copies as it needs, thereby saving the submitting parties from having to supply multiple paper copies.

In order to ensure that declarations are submitted as abbreviated filings that generally do not exceed five pages in length, parties will be required to submit declarations through a Web form located on Treasury's website. A copy of the Web form template is attached to this supporting statement.

#### 4. Describe efforts to identify duplication.

The information collected pursuant to the First Rule and the Second Rule will not be duplicative. Consistent with CFIUS's current practice, the Treasury Department will receive all information on behalf of the CFIUS member agencies and disseminate it to other members of the Committee. The Committee also minimizes duplication by accepting documents that parties have already prepared for other purposes, such as corporate annual reports, as well as copies of filings made to other agencies, whenever relevant, to respond to specific concerns.

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

For transactions within the scope of the pilot program, parties may choose whether to inform CFIUS of the transaction by submitting a declaration or filing a notice. To reduce duplication, parties that file a notice regarding a transaction will not be permitted to submit a declaration regarding the same transaction or a substantially similar transaction without the approval of the CFIUS Staff Chairperson. Further, if after having submitted a declaration regarding a transaction the parties wish, or are requested by CFIUS, to file a notice regarding the transaction, the information included in the previously submitted declaration may be incorporated by reference into the notice, as appropriate.

#### 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 accordingly contain questions that are asked of all parties seeking to file a notice or submit a declaration under Section 721 in order to gather the information necessary for assessing the effects of the transaction on the national security of the United States. In light of the statute's focus on the national security of the United States, the Committee must attempt to collect all relevant information regarding a transaction, regardless of the size of the transaction or the parties to the transaction.

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 set forth in the First Rule and the Second Rule would impair CFIUS's ability to efficiently consider and address the national security effects of transactions within the Committee's expanded scope under FIRRMA.

Without declarations, the only method for parties to notify CFIUS of a transaction and initiate a review is by filing a notice, which can total hundreds of pages when all exhibits and annexes are included. Declarations, by contrast, generally will not exceed five pages. Therefore, the declaration provisions of the pilot program regulations will assist the Committee in efficiently assessing the expected increase in CFIUS cases that will result from FIRRMA's expansion of CFIUS's jurisdiction.

Similarly, updating CFIUS's existing regulations to reflect FIRRMA's stipulation provision will assist the Committee in making threshold determinations regarding notified transactions—i.e., whether the transaction is within CFIUS's purview and whether the transaction is a foreign-government controlled transaction—which will increase the Committee's efficiency and potentially lead to faster resolution for the parties.

Collection cannot be conducted less frequently; 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 regarding a transaction within the scope of the pilot program is generally required to be submitted at least 45 days prior to the expected completion date of the transaction. Once parties file a notice or submit a declaration under Section 721, the Committee may request that follow-up materials be provided. Parties are required to respond to inquiries within three business days for notices, and two business days for declarations, in each case 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 upon which to make judgments to protect national security.

The Committee receives a good deal of confidential business information from parties, and is statutorily prohibited under Section 721 from making this information public, except as authorized by statute.

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.

Due to the exigent circumstances described below, the Committee will not consider and respond to public comments prior to the effectiveness of either the First Rule or the Second Rule. There will, however, be a 30-day comment period following publication of the rules, and the Committee will consider and address comments in the process of promulgating any final rule. This approach appropriately balances the urgency of the temporary rules with the need for public participation in the formulation of any final rule. Any comments received will inform future information collection requests.

Notwithstanding that the Committee will not consider and respond to public comments prior to the effectiveness of the temporary rules, the regulations benefit from the Committee's nearly ten-year experience of collecting information similar to that requested by these regulations. Public comments have been solicited numerous times on the information required to be included in notices under CFIUS's existing regulations. For example, a 60-day notice soliciting public comment on the information required, under CFIUS's existing regulations (31 C.F.R. 800.402), to be included in a notice appeared in the Federal Register on Friday, October 23, 2015 at 80 FR 64507. No comments were received pertaining to the collection of information.

The First Rule implements a pilot program as authorized by FIRRMA, while the Second Rule, among other things, implements certain immediately effective provisions of FIRRMA. In Section 1702 of FIRRMA, Congress noted that "the national security

landscape has shifted in recent years, and so has the nature of the investments that pose the greatest potential risk to national security, which warrants an appropriate modernization of the processes and authorities of the Committee on Foreign Investment in the United States....”

In delaying the effectiveness of many of FIRRMA’s provisions, Congress recognized the importance of developing the regulations, organizational structure, personnel, and other resources necessary to properly administer FIRRMA. In including a pilot program provision, however, Congress also recognized that national security may require certain authorities to be implemented more quickly. In this manner, FIRRMA achieved an appropriate balance between ensuring long-term sustainability and addressing near-term national security needs.

The regulations that are the subject of this supporting statement implement authorities under FIRRMA that are necessary to modernize immediately certain processes and authorities of CFIUS to address a pressing national security interest. By expanding CFIUS’s purview to include non-controlling investments in U.S. businesses in certain industries, the pilot program addresses an urgent and compelling risk that some foreign investment threatens to undermine the technological superiority and national security innovation base that are critical to U.S. national security. By introducing the concept of declarations and stipulations, the pilot program modernizes CFIUS’s intake process to allow the Committee to more efficiently handle the expanded scope of transactions subject to its review.

On June 27, 2018, the President stated that “upon enactment of [FIRRMA], I will direct my Administration to implement it promptly and enforce it rigorously....” The President also noted the need for the new tools provided by FIRRMA “to combat the predatory investment practices that threaten our critical technology leadership, national security, and future economic prosperity.”

The regulations that are the subject of this supporting statement are a temporary, interim step consistent with the President’s direction to promptly implement FIRRMA. The collection of information pursuant to these regulations will allow CFIUS to better protect the nation’s critical technologies while the government develops the regulations, organizational structure, personnel, and other resources necessary to administer fully FIRRMA’s new authorities. Publication of these regulations is essential to the mission of CFIUS, and public harm is reasonably likely to result if such publication is delayed.

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

No payment or gifts will be made to any respondents.

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

Confidentiality is assured by Section 721; the statute prohibits public disclosure of any information filed with the Committee except as authorized by law. Consistent with this stricture, the Committee does not publicly confirm or deny that a transaction has been notified to CFIUS. If the parties themselves have made this information available to the public, such information may subsequently be reflected in the public statements 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 parties to the transaction being notified to CFIUS, such as business confidential information and criminal history, which is needed to assess the effect of the transaction on the national security of the United States.

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

*The First Rule*

The pilot program that will be implemented by the First Rule includes a requirement that parties to certain transactions submit a declaration—or, if the so elect, file a notice—with CFIUS. If the parties elect to file a notice, they will be required to provide the information required by CFIUS’s existing regulations, as well as certain additional information related to the pilot program (see section 801.503 of the First Rule). 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 and complexity of the transaction at issue. We expect that the same will be true with respect to declarations.

The mandatory declaration process is new, and it is difficult to estimate how many additional transactions will be notified to CFIUS as a result of the pilot program. One purpose of the pilot program is to gain experience with declarations prior to issuance of final regulations, so that CFIUS can make any needed adjustments to items such as information requirements prior to full implementation of FIRRMA.

In addition, as discussed above, if CFIUS does not clear a transaction pursuant to a declaration, the transaction may be filed as a notice in certain cases. While the information in the declaration can be incorporated into the notice by reference as appropriate, additional person hours would be required to complete the notice. It is difficult to estimate at this point how many transactions may be first submitted as declarations and subsequently filed as notices. This is information that we will gather during the pilot program.

With the foregoing caveats regarding the substantial uncertainty associated with the hour burden of the new declarations program, we estimate that submitting a declaration will require approximately 20 hours. This estimate is based on Treasury’s consultations with several private attorneys familiar with filing notices with CFIUS. Specifically, based on



these consultations, we estimate that complex notices require, on average, 186 person hours per notification, while less complex notices require, on average, 78 person hours per notification. We do not yet have experience with declarations, but estimate that, on average, the person hours per declaration may be about one-quarter of the number of hours spent on less complex notices, or approximately 20 hours.

For purposes of this supporting statement, we are assuming that CFIUS will receive approximately 250 declarations per year. Again, because CFIUS does not have experience with a mandatory declarations program, there is substantial uncertainty as to how many transactions will be notified to CFIUS as a result of the pilot program, and whether those transactions will be notified to CFIUS through declarations or full notices. There is also substantial uncertainty, as noted above, as to the number of transactions that may be first submitted as declarations and subsequently filed as notices.

No. Respondents	No. Responses Per Respondent	No. Annual Responses	Hours Per Response	Total Burden
250	1	250	20	5,000

The estimated annual cost would be \$1,150,000. This estimate assumes 5,000 person hours per year, based on an average cost of \$230 per hour (combination of legal fees and company employee time).

### *The Second Rule*

The Second Rule adds two provisions to CFIUS’s existing regulations setting forth the required contents of a notice (31 C.F.R. 800.402). First, the Second Rule requires that parties notifying CFIUS of a transaction by filing a notice include in the notice a copy of any partnership agreements, integration agreements, or other side agreements relating to the transaction. Second, the Second Rule provides that a party filing a notice may stipulate that the transaction is a covered transaction (i.e., within the jurisdictional purview of CFIUS) and, if the parties so stipulate, that the transaction is a foreign government-controlled transaction.

We do not expect that the changes to 31 C.F.R. 800.402 will result in any increased burden to CFIUS filers. Parties may simply attach any relevant side agreements electronically when filing a notice, and the stipulations are voluntary. Further, CFIUS’s existing regulations require that the parties provide their opinion as to whether the transaction is a covered transaction or a foreign government-controlled transaction (31 C.F.R. 800.402(j) (2)), so little additional analysis should be required for the stipulations, should parties choose to include them.

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

It is not anticipated that respondents or record-keepers will bear any non-labor costs.

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 unknown given the uncertainty regarding the number of additional transactions that will be notified to CFIUS as a result of the pilot program. Therefore, this estimate is based on the number of full-time employees (“FTEs”) assigned to existing CFIUS activities across the government. Assuming a total of 91 FTEs per year across all CFIUS member agencies, at an average annual salary (including benefits) of \$145,000, and \$30,000 in annual equipment costs, the annualized estimate of costs to the government is \$15.9 million.<sup>2</sup>

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

The new regulations will add 5,000 hours to the previously approved CFIUS burden of 15,080 hours, for a total of 20,080 hours. This increase is due to the pilot program, which is being implemented in accordance with the new FIRRMA legislation.

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.

There are no exceptions.

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<sup>2</sup> According to the United States Government Accountability Office, in 2016 91 staff were assigned to CFIUS activities across CFIUS member agencies. See GAO Report 18-249, February 2018, *available at* <https://www.gao.gov/assets/700/690066.pdf>.