

Subpart G—Provision and Handling of Information

§ 800.701 Obligation of parties to provide information.

(a) Parties to a transaction which is notified under subpart D shall provide information to the Staff Chairman of the Committee that will enable the Committee to conduct a full review and/or investigation of the proposed transaction, and shall promptly advise the Staff Chairman of any changes in plans or information pursuant to § 800.402(h). See, generally, 50 U.S.C. app. 2155(a) for authorities available to the Committee for obtaining information.

(b) Documentary materials or information required or requested to be submitted under this part shall be submitted in English. Supplementary materials, such as annual reports, written in a foreign language, shall be submitted in certified English translation, at the request of the Committee.

§ 800.702 Confidentiality.

(a) Section 721(c) provides that any information or documentary material filed with the Committee pursuant to these regulations shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in section 721 shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.

(b) The provisions of 50 U.S.C. app. 2155(e) relating to fines and imprisonment shall apply in respect of disclosure of information or documentary material filed with the Committee under these regulations.

[56 FR 58780, Nov. 21, 1991, as amended at 59 FR 27180, May 25, 1994]

APPENDIX A TO PART 800—PREAMBLE TO REGULATIONS ON MERGERS, ACQUISITIONS, AND TAKEOVERS BY FOREIGN PERSONS (PUBLISHED NOVEMBER 21, 1991)

NOTE: For the convenience of the reader, this appendix contains the text of the pre-

amble to the final regulations on mergers, acquisitions and takeovers by foreign persons beginning at the heading "Discussion of Final Rule" and ending before "List of Subjects in 31 CFR Part 800" (56 FR 58780; November 21, 1991). Certain sections of the regulations were renumbered in a final rule published on May 25, 1994, and those number changes are reflected in the "Section-by-Section Discussion of Changes" in this appendix. (See appendix B of this part for the preamble of the May 25, 1994, final rule.)

DISCUSSION OF FINAL RULE

I. Introduction

On July 14, 1989, the Department of the Treasury published proposed Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons. The purpose of the proposed regulations was to implement section 721 (hereinafter referred to as "section 721") of title VII of the Defense Production Act of 1950, as added section 5021 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), relating to mergers, acquisitions, and takeovers of U.S. persons by or with foreign persons. Section 721, which was subject to the sunset provision of the DPA, lapsed on October 20, 1990, and was reinstated and made permanent law by Public Law 102-99 (signed August 17, 1991).

The period for receiving comments on the proposed regulations closed on September 14, 1989; during that time, over seventy parties—including private and public, as well as domestic and foreign entities—filed in total some 500 pages of comments. The changes that have been incorporated into the final version of the regulations reflect both suggestions made in those comments and the experience of the Committee on Foreign Investment in the United States ("the Committee") in reviewing transactions notified under section 721 since the proposed regulations were published. These changes are of a substantive nature as well as of a technical nature; examples of the latter include clarifications of terms and changes in format. The substantive issues will be discussed in the next section; the most significant technical changes will be discussed in the third section of this preamble.

II. General Discussion: Major Substantive Issues Raised by the Public Comments

Despite the wide range of interests represented by the public comments and the large volume of those comments, the comments generally focused on nine major issues: the meaning of "national security"; the scope of section 721's coverage, focusing largely on the size of a transaction or date of completion; the definition of "foreign control"; the application of section 721 to foreign lenders; the desirability of fast track