Example 4. Same facts as Example 2, except that Corporation A enters into a contractual arrangement to acquire the entire armored personnel carrier business of Corporation X, including production facilities, customer lists, technology and staff. This acquisition is subject to section 721. See § 800.201.

(f) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business, and in the process of underwriting.

(g) 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.

(h) An acquisition of a security interest, but not control, in the voting securities or assets of a U.S. person at the time a loan or other financing is extended (see § 800.303).

(i) An acquisition of voting securities or assets that does not involve an acquisition of control of a person engaged in interstate commerce in the United States.

Example 1. Corporation A, which is organized under the laws of a foreign state and is controlled by foreign persons, advises the Committee that it intends to acquire seven percent of the voting securities of Corporation X, which is organized under the laws of the United States and engaged in interstate commerce within the United States. In this particular case, Corporation A's purchase of this interest in Corporation X would not be sufficient to permit Corporation A to control Corporation X for purposes of § 800.204. This transaction is not an acquisition for purposes of section 721.

Example 2. Corporation A, which is organized under the laws of a foreign state and controlled by foreign persons, acquires from Corporation B 100 percent of the voting securities of Corporation X, a wholly-owned subsidiary of Corporation B that is organized under the laws of the United States. Corporation X currently has no employees, plants, equipment or subsidiaries in the United States. Corporation B maintains records in the United States on behalf of Corporation X and uses U.S. mail and telecommunications facilities on its behalf. For purposes of section 721, Corporation X is not engaged in interstate commerce in the United States, and the acquisition by Corporation A of securities of Corporation X is not an acquisition for purposes of section 721.

[56 FR 58780, Nov. 21, 1991, as amended at 59 FR 27179, May 25, 1994]

§ 800.303 Lending transactions.

(a) The extension of a loan or similar financing by a foreign person to a U.S. person, accompanied by the creation in the foreign person of a secured interest in securities or other assets of the U.S. person, does not, by itself, subject the transaction to section 721. However, if control is acquired by the foreign person at the time the loan or other financing is extended, then the transaction may be subject to section 721.

(1) The Committee will not, at the time of extension of the loan or other financing, accept notices from parties to a loan or other financing transaction in which control is not acquired by the foreign person at that time.

(2) The Committee will accept notices concerning transactions that involve loans or financing by foreign persons where, because of imminent or actual default or other condition, there is a significant possibility that the foreign person may obtain control of the U.S. person.

(3) For purposes of this section, in determining whether an acquisition of a U.S. person by a foreign person results in foreign control under section 721, the Committee will take into account arrangements which the foreign person might establish to transfer day-to-day control over the U.S. person to U.S. nationals.

(b) Control will not be deemed to be acquired for purposes of section 721 in cases involving an acquisition of voting securities or assets of a U.S. person by a foreign person upon default, or other condition, involving a loan or other financing, provided that the loan was made by a syndicate of banks in a loan participation where the foreign lender (or lenders) in the syndicate:

(1) Needs the majority consent of the U.S. participants in the syndicate to take action, and cannot on its own initiate any action vis-a-vis the debtor; or

(2) Does not have a lead role in the syndicate, and is subject to a provision in the loan or financing documents limiting its influence, ownership or control of the debtor such that control

for purposes of § 800.204 could not be acquired.

Subpart D—Notice

§ 800.401 Procedures for notice.

(a) A party or the parties to an acquisition subject to section 721 may submit a voluntary notice to the Committee of the proposed or completed acquisition by sending thirteen copies of the information set out in § 800.402 to the Staff Chairman of the Committee on Foreign Investment in the United States (hereinafter ''Staff Chairman''), Office of International Investment, room 5100, Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20220.

(b) Any member of the Committee may submit an agency notice of a proposed or completed acquisition to the Committee through its Staff Chairman if that member has reason to believe, based on facts then available, that the acquisition is subject to section 721 and may have adverse impacts on the national security. In the event of agency notice, the Committee will promptly furnish the parties to the acquisition with written advice of such notice.

(c) No agency notice, or review or investigation by the Committee, shall be made with respect to a transaction more than three years after the date of conclusion of the transaction, unless the Chairman of the Committee, in consultation with other members of the Committee, requests an investigation.

(d) No communications other than those described in paragraphs (a) and (b), and (c) of this section shall constitute notice for purposes of section 721.

[56 FR 58780, Nov. 21, 1991, as amended at 59 FR 27179, May 25, 1994]

§ 800.402 Contents of voluntary notice.

(a) If the parties to an acquisition jointly submit a voluntary notice, they shall provide in detail the information set out in this section, which must be accurate and complete with respect to all parties. All parties shall sign a joint notice.

(b) If fewer than all the parties to an acquisition submit a voluntary notice:

(1) 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 each non-notifying party.

(2) The Staff Chairman may delay acceptance of the notice, and the beginning of the thirty-day review period, in order to obtain any information set forth under this section that has not been submitted by the notifying party. Where necessary to obtain such information, the Staff Chairman may inform the non-notifying party or parties that notice has been initiated with respect to a proposed transaction involving the party, and request that certain information set forth in this section, as specified by the Staff Chairman, be forwarded to the Committee within seven days after such request by the Staff Chairman.

(c) A voluntary notice submitted pursuant to § 800.401(a) shall describe:

(1) The transaction in question, including

(i) A summary setting forth the essentials of the transaction;

(ii) The nature of the transaction, *e.g.*, whether the acquisition is by merger, consolidation, the purchase of voting securities, or otherwise;

(iii) The name, United States address (if any), and address of the principal place of business of the foreign person making the acquisition;

(iv) The name and address of the U.S. person being acquired;

(v) The name, address and nationality of the parent, if any, of the foreign person making the acquisition, and of each affiliate of that person;

(vi) The name, address and nationality of the persons or interests that will control the U.S. person being acquired; and

(vii) The expected date for concluding the transaction, or the date it was concluded.

(2) The assets of the U.S. person being acquired (to be described only for an acquisition of an entity structured as an acquisition of assets or a business).

(3) With respect to the U.S. person being acquired, and any entity of which it is a parent that is also being acquired: