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:

(i) The business activities of each of them, as, for example, set forth in annual reports, and the product lines of each;

(ii) The street address (or mailing address, if different) within the United States of the facilities of each of them, which are manufacturing classified or unclassified products or producing services described in subparagraph (v) below, and their respective Commercial and Government Entity Code (CAGE Code), if any, assigned by the Department of Defense;

(iii) Except as may be identified in paragraph (c)(3)(iv) of this section, each contract (identified by agency and number), which is currently in effect, or was in effect within the past three years, with an agency of the Government of the United States with national defense responsibilities, including any component of the Department of Defense, and the name, office, and telephone number of the contracting official;

(iv) Each contract (identified by agency and number), which is currently in effect or was in effect within the past five years, with any agency of the Government of the United States involving any information, technology or data, which is classified under Executive Order 12356 of April 2, 1982, and the name, office, and telephone number of the contracting official;

(v) Any products or services (including research and development) of each of them with respect to which

(A) It is a supplier, for example, a prime contractor, or a first tier subcontractor, or, if known, a subcontractor at any tier, to the Department of Defense or any component of the Department of Defense, or a seller to any such prime contractor or subcontractor, and, to the knowledge of the parties submitting notice, to what extent the U.S. person is a sole-source supplier to the Department of Defense for a particular product or service;

(B) It has technology which has military applications.

(4) Whether the U.S. person being acquired produces:

(i) Products or technical data subject to validated licenses or under General License GTDR pursuant to the U.S. Export Administration Regulations (15 CFR parts 768–799); if applicable, the relevant Commodity Control List number shall be provided and the technical data shall be described; and

(ii) Defense articles and defense services under the International Traffic in Arms Regulations (22 CFR subchapter M).

(5) With respect to the foreign person:

(i) The business or businesses of the foreign person making the acquisition, and of its parent and any affiliates, as described, for example, in annual reports. Provide CAGE codes, if any, for such facilities;

(ii) The plans of the foreign person for the U.S. person with respect to:

(A) Reducing, eliminating or selling research and development facilities,

(B) Changing product quality,

(C) Shutting down or moving offshore facilities which are within the United States,

(D) Consolidating or selling product lines or technology, or

(E) Modifying or terminating contracts referred to in paragraphs (c)(3)(iii) and (iv) of this section for defense-related goods or services or for goods and services otherwise affecting national security;

(iii) Whether the foreign person is acting on behalf of a foreign government, for example, as an agent or a representative, or in some similar capacity; and

(iv) Whether a foreign government or an entity controlled by a foreign government—

(A) Has the power or right to determine, direct, take, reach or cause decisions of the acquirer with respect to any of the matters listed in § 800.204, and, if so, the source of that power or right (*e.g.*, shareholders agreement, contract, statute, regulation) and the mechanics of its operation;

(B) Owns or controls voting or convertible securities of the acquiring foreign person or any affiliate of the acquiring foreign person, and if so, the nature and percentage amount of any such securities;

(C) Has the right or power to appoint any of the principal officers or the members of the board of directors of

the acquiring foreign person or any affiliate of the acquiring foreign person; or

(D) Holds any contingent interest (e.g., such as might arise from a lending transaction) in the foreign acquiring party and, if so, the rights that are covered by this contingent interest, and the manner in which they would be enforced.

(d) The voluntary notice shall list any filings with or reports to agencies of the United States Government which have been or will be made in respect of the acquisition prior to its closing indicating the agencies concerned, the nature of the filing or report, the date by which it was filed or the estimated date by which it will be filed, and a relevant telephone number and/or contact point within the agency, if known.

Example. Corporation A, a foreign person, intends to acquire Corporation X, which is wholly owned and controlled by a U.S. national, and which has a Facility Security Clearance under the Department of Defense Industrial Security Program. See Department of Defense, ''Industrial Security Regulation,'' DOD 5220.22–R, and ''Industrial Security Manual for Safeguarding Classified Information,'' DOD 5220.22–M. Corporation X accordingly files a revised Form DD 441s, and enters into discussions with the Defense Investigative Service about effectively insulating its facilities from the foreign interest.

Paragraph (d) requires that certain specific information about these steps be reported to the Committee in a voluntary notice.

(e) In the case of a joint venture subject to section 721, information for the voluntary notice shall be prepared on the assumption that the foreign person which is party to the joint venture has made an acquisition of the business or businesses that the U.S. person which is a party to the joint venture is contributing or transferring to the joint venture. In addition, the voluntary notice shall describe the name and address of the joint venture or other corporation.

(f) In the case of acquisitions of some but not all of the businesses or assets of a U.S. person, § 800.402(c) only requires submission of the specified information with respect to the business or assets that have been or are proposed to be acquired.

(g) Persons filing a voluntary notice shall, in respect of the foreign person making the acquisition, its parent and affiliates, the U.S. person being acquired, and each entity of which it is a parent, append to the voluntary notice the most recent annual report of each such entity, if available. Separate reports are not required for any entity whose financial results are included within the consolidated financial results stated in the annual report of any direct or indirect parent of any such entity.

(h) Persons filing a voluntary notice shall, during the time that the matter is pending before the Committee or the President, promptly advise the Staff Chairman of any material changes in plans or information provided to the Committee. See also § 800.701(a).

(i) Persons filing a voluntary notice shall include a copy of the most recent asset or stock purchase agreement or other document establishing the terms of the acquisition.

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

§ 800.403 Treatment of certain voluntary notices.

The Committee, acting through the Staff Chairman, may

(a) Reject voluntary notices not complying with § 800.402;

(b) Delay the beginning of the thirty-day review period until information specified in § 800.402 has been furnished to the Committee;

(c) Reject any voluntary notice at any time if, after the notice has been submitted and before action by the Committee or the President has been concluded, there is a material change in the transaction as to which notification has been made; and

(d) Notify the party submitting a voluntary notice that an analysis of national security considerations will not be undertaken in cases where the Committee has found that a transaction presented is not subject to section 721.

Example 1. The Staff Chairman receives a joint filing by Corporation A, a foreign person, and Corporation X, a company that is owned and controlled by U.S. nationals, with respect to Corporation A's intent to purchase all of the shares of Corporation X. The joint filing does not contain any information