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## DEPARTMENT OF THE TREASURY

### Office of International Investment

#### 31 CFR Part 800

#### Regulations Pertaining to Mergers, Acquisitions and Takeovers

**AGENCY:** Department of the Treasury.

**ACTION:** Notice of inquiry; Notice of public meeting.

**SUMMARY:** On July 26, 2007, President Bush signed into law the Foreign Investment and National Security Act of 2007 ("FINSA"), which amends section 721 of the Defense Production Act of 1950. Section 721 creates a process by which the President and his delegate, the Committee on Foreign Investment in the United States ("CFIUS"), conduct national security reviews of foreign acquisitions of control of U.S. businesses. As chair of CFIUS, Treasury has begun preparatory work on regulations that implement these new legislative provisions. Treasury is interested in private sector views on issues relating to the existing national security review process, as well as issues raised by FINSA, and is inviting both written and oral comments.

**DATES:** Written comments are due on or before December 7, 2007. The public meeting will be held from two to four o'clock (2-4 p.m.) on October 23, 2007.

**ADDRESSES:** Written comments may be submitted electronically to [CFIUS@do.treas.gov](mailto:CFIUS@do.treas.gov). Electronic filings that exceed 5 megabytes (MB) must be divided into smaller transmissions of no more than 5MB each. All comments will be posted to CFIUS's Web site at <http://www.ustreas.gov/offices/international-affairs/exon-florio/>.

**FOR FURTHER INFORMATION CONTACT:** For questions about this Notice of Inquiry or the Notice of Public Meeting, contact: Nova Daly, Deputy Assistant Secretary, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220; telephone: (202) 622-2752; or e-mail: [Nova.Daly@do.treas.gov](mailto:Nova.Daly@do.treas.gov).

#### SUPPLEMENTARY INFORMATION:

*Background:* On May 10, 2007, President Bush issued an Open Economies statement reaffirming the

United States' longstanding policy of welcoming international investment. He noted that, while continuing "to take every necessary step to protect national security, my Administration recognizes that our prosperity and security are founded on our country's openness." In that context, on July 26, 2007, President Bush signed into law the Foreign Investment and National Security Act of 2007 ("FINSA") (Pub. L. 110-49), which amends section 721 of the Defense Production Act of 1950 (50 U.S.C. 2170 *et seq.*) ("section 721"), to codify the structure, role, process, and responsibilities of CFIUS. The principal provisions of the new legislation are described below.

*CFIUS Membership:* FINSA establishes CFIUS in statute and specifies its membership to include the Secretaries of the Departments of the Treasury, State, Defense, Commerce, Energy, and Homeland Security, and the Attorney General. Additionally, the Secretary of Labor and the Director of National Intelligence are *ex officio*, non-voting members of CFIUS, with the latter serving as an independent advisor to CFIUS on intelligence matters. In addition to certain officials in the Executive Office of the President, the President may also appoint the head of any other executive department, agency, or office whom he deems appropriate to serve as a CFIUS member. Current executive orders specify twelve CFIUS members, including certain officials in the Executive Office of the President.

FINSA specifies that the Secretary of the Treasury shall serve as Chairperson of CFIUS and, as appropriate, shall designate a CFIUS member or members to be the "lead" agency or agencies for each covered transaction reviewed by CFIUS and for the monitoring of completed transactions.

*Review and Investigation Process:* FINSA requires that, upon receipt by Treasury of written notification of a "covered transaction" (*i.e.*, a merger, acquisition, or takeover by or with any foreign person that could result in foreign control of any person engaged in interstate commerce in the United States), the President, acting through CFIUS, shall review the transaction within 30 days to determine its effects on national security, based on any relevant factors, including several new factors FINSA added to an illustrative list contained in section 721. The term "national security" is clarified to include those issues relating to "homeland security," including its application to "critical infrastructure," which is also defined in the new legislation.

If, during its review, CFIUS determines that (1) the transaction threatens to impair U.S. national security and the threat has not yet been mitigated, (2) the lead agency recommends an investigation and CFIUS concurs, (3) the transaction would result in foreign government control, or (4) the transaction would result in the control of any U.S. critical infrastructure that could impair U.S. national security and the threat has not yet been mitigated, then CFIUS must conduct and complete within 45 days an investigation of the transaction. The latter two grounds for an investigation do not mandate an investigation if the Secretary or Deputy Secretary of the Treasury and the equivalent lead agency counterparts jointly determine that the transaction will not impair U.S. national security.

FINSA also authorizes the President or CFIUS, if approved at the Under Secretary level or above, to review unilaterally any covered transaction that is proposed or pending after August 23, 1988, and that has not previously been reviewed, or a previously reviewed transaction if false or inaccurate information was submitted to CFIUS during the review or investigation of the transaction or a mitigation agreement resulting from the review or investigation was intentionally and materially breached.

*Risk Mitigation and Tracking of Withdrawn Cases:* FINSA provides that CFIUS or a lead agency designated by the Secretary of the Treasury may, on behalf of CFIUS, enter into, modify, monitor, and enforce agreements with any party to a covered transaction to mitigate national security risk posed by the transaction. Any mitigation agreement must be based on transaction-specific, risk-based analysis. FINSA also requires that CFIUS establish a method of tracking transactions withdrawn from the review or investigation process, as well as a process for establishing interim protections to address any national security concerns raised by withdrawn transactions that have not yet been refilled.

*Actions by the President:* FINSA authorizes the President to suspend or prohibit any covered transaction when (1) there is credible evidence that the foreign interest might take action that threatens to impair national security, and (2) provisions of law other than section 721 and the International Emergency Economic Powers Act do not provide adequate and appropriate authority to protect national security in the matter before the President. The President must decide whether to take such action within 15 days of the

completion of an investigation, based on all relevant factors, including, as appropriate, an illustrative list of factors contained in section 721, which has been expanded by FINSA.

**Regulations:** FINSA requires the President to direct the issuance of implementing regulations. These regulations shall impose civil penalties for violations of section 721, including those relating to mitigation agreements. Proposed regulations will be published in the **Federal Register** and be subject to notice and comment before final regulations are published. Treasury must also publish in the **Federal Register** guidance on the types of transactions that CFIUS has reviewed and that have presented national security considerations. Treasury plans to do so separately from the regulations that will be published under section 721.

**Request for Comment:** The purpose of issuing this notice of inquiry and convening a public meeting is to obtain a wide array of views of businesses active in international mergers and acquisitions on several broad topics, in order to inform regulatory development. Topics of particular interest to Treasury include, but are not limited to:

- (i) Procedural issues relating to the review process, including pre-filing, filing of voluntary notice, unilateral initiation of review by CFIUS, withdrawal of notice, refiling of notice, and notice to filers of the results of a review or investigation;
- (ii) Definitional issues, including the definitions of "control," "foreign person," "person engaged in interstate commerce in the United States," "critical infrastructure," and "critical technologies";
- (iii) Mitigation agreements, including determinations of the need for risk mitigation, scope of provisions, compliance monitoring, modification, and enforcement, including civil penalties and other remedies for breach;
- (iv) Confidentiality issues;
- (v) Collection of information from filers, including personal identifier information and information to aid CFIUS in determining jurisdiction and whether the transaction raises national security considerations; and
- (vi) Emerging trends in international investment and their relevance to the CFIUS process, including legal structures for effecting acquisitions of U.S. businesses.

Treasury would also be interested in hearing views on other topics of interest to the private sector that relate to the CFIUS review process or FINSA.

**Public Meeting:** Treasury announces a public meeting to be held from two to

four o'clock (2–4 p.m.) on October 23, 2007, in Room 4121 of the Treasury Building, at 1500 Pennsylvania Avenue, NW., Washington, DC 20220, to discuss issues associated with this legislation. The meeting will be open to the public on a first-come, first-served basis. Space is limited. Due to security requirements and to facilitate entry to the meeting site, anyone wishing to attend must contact Mr. Michael Kimack at [Michael.Kimack@do.treas.gov](mailto:Michael.Kimack@do.treas.gov) or (202) 622-0414 no later than October 16, 2007, in order to provide the necessary clearance information: Full name, business affiliation, date of birth, and Social Security number. For foreign nationals: Full name, business affiliation, date of birth, passport number, and the country where the passport was issued. When arriving for the meeting, attendees must present photo or passport identification and/or a U.S. Government building pass, if applicable, and should arrive at least one-half hour prior to the start time of the meeting. The public meeting is physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation, are asked to indicate this to Mr. Kimack.

Dated: October 4, 2007.

**Gay Hartwell Sills,**

*Staff Chair, Committee on Foreign Investment in the United States (CFIUS).*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 110

[CGD11-04-002]

RIN 1625-AA01

#### Anchorage Regulation; San Francisco Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is submitting for public consideration this supplemental notice of proposed rulemaking. We propose to create in San Francisco Bay a temporary anchorage area, designated Anchorage 8A, adjacent to existing anchorage 8 that can be activated by Coast Guard Vessel Traffic Services (VTS) when the number of vessels requesting to anchor in Anchorages 8 and 9 exceeds the capacity of these two anchorages.

Promulgating a permanent rule to establish the temporary anchorage area allows the Coast Guard to define its use and location, and to establish procedures for activating the anchorage area and notifying the maritime public.

**DATES:** Comments and related material must reach the Coast Guard on or before December 10, 2007.

**ADDRESSES:** You may mail comments and related material to Waterways Safety Branch, Sector San Francisco, 1 Yerba Buena Island, San Francisco, California 94130. Waterways Safety Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Safety Branch, Sector San Francisco, 1 Yerba Buena Island, San Francisco, California 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant Eric Ramos, U.S. Coast Guard Sector San Francisco, Waterways Safety Branch at telephone (415) 399-7443.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD11 04-002), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Safety Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.