

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

S. 2098

To modernize and strengthen the Committee on Foreign Investment in the United States to more effectively guard against the risk to the national security of the United States posed by certain types of foreign investment, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Foreign Investment Risk Review Modernization Act of
6 2018”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Sense of Congress.
- Sec. 3. Definitions.
- Sec. 4. Inclusion of partnership and side agreements in notice.
- Sec. 5. Declarations for certain covered transactions.

- Sec. 6. Stipulations regarding transactions.
- Sec. 7. Authority for unilateral initiation of reviews.
- Sec. 8. Timing for reviews and investigations.
- Sec. 9. Monitoring of non-notified and non-declared transactions.
- Sec. 10. Submission of certifications to Congress.
- Sec. 11. Analysis by Director of National Intelligence.
- Sec. 12. Information sharing.
- Sec. 13. Action by the President.
- Sec. 14. Judicial review.
- Sec. 15. Hiring authority.
- Sec. 16. Actions by the Committee to address national security risks.
- Sec. 17. Modification of annual report.
- Sec. 18. Certification of notices and information.
- Sec. 19. Implementation plans.
- Sec. 20. Assessment of need for additional resources for Committee.
- Sec. 21. Funding.
- Sec. 22. Centralization of certain Committee functions.
- Sec. 23. Conforming amendments.
- Sec. 24. Requirements to identify and control the export of emerging and foundational technologies.
- Sec. 25. Export control enforcement authority.
- Sec. 26. Under Secretary of Commerce for Industry and Security.
- Sec. 27. Limitation on cancellation of designation of Secretary of the Air Force as Department of Defense Executive Agent for a certain Defense Production Act program.
- Sec. 28. Review of and report on certain defense technologies critical to the United States maintaining superior military capabilities.
- Sec. 29. Effective date.
- Sec. 30. Severability.

1 **SEC. 2. SENSE OF CONGRESS.**

2 (a) IN GENERAL.—It is the sense of Congress that—

3 (1) foreign investment provides substantial eco-
4 nomic benefits to the United States, including the
5 promotion of economic growth, productivity, com-
6 petitiveness, and job creation, and the majority of
7 foreign investment transactions pose little or no risk
8 to the national security of the United States, espe-
9 cially when those investments are truly passive in
10 nature;

11 (2) maintaining the commitment of the United
12 States to open and fair investment policy also en-

1 courages other countries to reciprocate and helps
2 open new foreign markets for United States busi-
3 nesses and their products;

4 (3) it should continue to be the policy of the
5 United States to enthusiastically welcome and sup-
6 port foreign investment, consistent with the protec-
7 tion of national security;

8 (4) at the same time, the national security land-
9 scape has shifted in recent years, and so have the
10 nature of the investments that pose the greatest po-
11 tential risk to national security, which warrants a
12 modernization of the processes and authorities of the
13 Committee on Foreign Investment in the United
14 States;

15 (5) the Committee on Foreign Investment in
16 the United States plays a critical role in protecting
17 the national security of the United States, and,
18 therefore, it is essential that the member agencies of
19 the Committee are adequately resourced and able to
20 hire appropriately qualified individuals in a timely
21 manner, and that those individuals' security clear-
22 ances are processed as a high priority;

23 (6) the President should conduct a more robust
24 international outreach effort to urge and help allies
25 and partners of the United States to establish proc-

1 esses that parallel the Committee on Foreign Invest-
2 ment in the United States to screen foreign invest-
3 ments for national security risks and to facilitate co-
4 ordination; and

5 (7) the President should lead a collaborative ef-
6 fort with allies and partners of the United States to
7 strengthen the multilateral export control regime to
8 more effectively address the unprecedented indus-
9 trial policies of certain countries of special concern,
10 including aggressive efforts to acquire United States
11 technology, and the blending of civil and military
12 programs.

13 (b) SENSE OF CONGRESS ON CONSIDERATION OF
14 COVERED TRANSACTIONS.—It is the sense of Congress
15 that, when considering national security risks, the Com-
16 mittee on Foreign Investment in the United States may
17 consider—

18 (1) whether a transaction involves a country of
19 special concern that has a demonstrated or declared
20 strategic goal of acquiring a type of critical tech-
21 nology or critical infrastructure that would affect
22 United States technological and industrial leadership
23 in areas related to national security;

24 (2) the potential national security-related ef-
25 fects of the cumulative market share of or a pattern

1 of recent transactions in any one type of infrastruc-
2 ture, energy asset, critical material, or critical tech-
3 nology by foreign persons;

4 (3) whether any foreign person that would ac-
5 quire an interest in a United States business or its
6 assets as a result of a transaction has a history of
7 complying with United States laws and regulations;

8 (4) the extent to which a transaction is likely
9 to expose, either directly or indirectly, personally
10 identifiable information, genetic information, or
11 other sensitive data of United States citizens to ac-
12 cess by a foreign government or foreign person that
13 may exploit that information in a manner that
14 threatens national security; and

15 (5) whether a transaction is likely to have the
16 effect of exacerbating or creating new cybersecurity
17 vulnerabilities in the United States or is likely to re-
18 sult in a foreign government gaining a significant
19 new capability to engage in malicious cyber-enabled
20 activities against the United States, including such
21 activities designed to affect the outcome of any elec-
22 tion for Federal office.

23 **SEC. 3. DEFINITIONS.**

24 Section 721(a) of the Defense Production Act of
25 1950 (50 U.S.C. 4565(a)) is amended to read as follows:

1 “(a) DEFINITIONS.—In this section:

2 “(1) ACCESS.—The term ‘access’ means the
3 ability and opportunity to obtain information, sub-
4 ject to regulations prescribed by the Committee.

5 “(2) COMMITTEE; CHAIRPERSON.—The terms
6 ‘Committee’ and ‘chairperson’ mean the Committee
7 on Foreign Investment in the United States and the
8 chairperson thereof, respectively.

9 “(3) CONTROL.—The term ‘control’ means the
10 power to determine, direct, or decide important mat-
11 ters affecting an entity, subject to regulations pre-
12 scribed by the Committee.

13 “(4) COUNTRY OF SPECIAL CONCERN.—

14 “(A) IN GENERAL.—The term ‘country of
15 special concern’ means a country that poses a
16 significant threat to the national security inter-
17 ests of the United States.

18 “(B) RULE OF CONSTRUCTION.—This
19 paragraph shall not be construed to require the
20 Committee to maintain a list of countries of
21 special concern.

22 “(5) COVERED TRANSACTION.—

23 “(A) IN GENERAL.—Except as otherwise
24 provided, the term ‘covered transaction’
25 means—

1 “(i) any transaction described in sub-
2 paragraph (B)(i); and

3 “(ii) any transaction described in
4 clauses (ii) through (v) of subparagraph
5 (B) that is proposed, pending, or com-
6 pleted on or after the effective date speci-
7 fied in section 29(b)(1)(A) of the Foreign
8 Investment Risk Review Modernization Act
9 of 2018.

10 “(B) TRANSACTIONS DESCRIBED.—A
11 transaction described in this subparagraph is
12 any of the following:

13 “(i) Any merger, acquisition, or take-
14 over that is proposed or pending after Au-
15 gust 23, 1988, by or with any foreign per-
16 son that could result in foreign control of
17 any United States business.

18 “(ii) Subject to subparagraph (C), the
19 purchase or lease by a foreign person of, or
20 a concession offered to a foreign person
21 with respect to, private or public real es-
22 tate that—

23 “(I) is located in the United
24 States;

1 “(II)(aa) is, is located at, or will
2 function as part of, a land, air, or sea
3 port; or

4 “(bb) is in close proximity to a
5 United States military installation or
6 another facility or property of the
7 United States Government that is
8 sensitive for reasons relating to na-
9 tional security; and

10 “(III) meets such other criteria
11 as the Committee prescribes by regu-
12 lation.

13 “(iii) Any other investment (other
14 than a passive investment) by a foreign
15 person in any United States critical tech-
16 nology company or United States critical
17 infrastructure company that is unaffiliated
18 with the foreign person, subject to regula-
19 tions prescribed under subparagraph (C).

20 “(iv) Any change in the rights that a
21 foreign person has with respect to a United
22 States business in which the foreign person
23 has an investment, if that change could re-
24 sult in—

1 “(I) foreign control of the United
2 States business; or

3 “(II) an investment described in
4 clause (iii).

5 “(v) Any other transaction, transfer,
6 agreement, or arrangement the structure
7 of which is designed or intended to evade
8 or circumvent the application of this sec-
9 tion, subject to regulations prescribed by
10 the Committee.

11 “(C) FURTHER DEFINITION THROUGH
12 REGULATIONS.—

13 “(i) EXCEPTION FOR CERTAIN REAL
14 ESTATE TRANSACTIONS.—A real estate
15 purchase or lease described in subpara-
16 graph (B)(ii) does not include a lease or
17 purchase of—

18 “(I) a single ‘housing unit’, as
19 defined by the Census Bureau; or

20 “(II) real estate in ‘urbanized
21 areas’, as defined by the Census Bu-
22 reau in the most recent census, except
23 as otherwise prescribed by the Com-
24 mittee in regulations in consultation
25 with the Secretary of Defense.

1 “(ii) CERTAIN OTHER INVESTMENT.—
2 The Committee shall prescribe regulations
3 further defining covered transactions de-
4 scribed in subparagraph (B)(iii) by ref-
5 erence to the technology, sector, subsector,
6 transaction type, or other characteristics of
7 such transactions.

8 “(iii) EXEMPTION FOR TRANSACTIONS
9 FROM IDENTIFIED COUNTRIES.—

10 “(I) IN GENERAL.—The Com-
11 mittee may, by regulation, define cir-
12 cumstances and procedures under
13 which a transaction otherwise de-
14 scribed in clause (ii) or (iii) of sub-
15 paragraph (B) is excluded from the
16 definition of ‘covered transaction’ if
17 each foreign person that is a party to
18 the transaction, and each foreign per-
19 son that owns or controls a party to
20 the transaction, is from (as deter-
21 mined by the Committee pursuant to
22 regulations prescribed by the Com-
23 mittee), a country or part of a coun-
24 try identified by the Committee for

1 purposes of this clause based on cri-
2 teria such as—

3 “(aa) whether, in the sole
4 judgment of the Committee, the
5 process of the country for review-
6 ing the national security effects
7 of foreign investment and associ-
8 ated international cooperation ef-
9 fectively safeguards national se-
10 curity interests the country
11 shares with the United States;

12 “(bb) whether the country is
13 a member country of the North
14 Atlantic Treaty Organization or
15 is designated as a major non-
16 NATO ally pursuant to section
17 517 of the Foreign Assistance
18 Act of 1961 (22 U.S.C. 2321k);
19 and

20 “(cc) any other criteria that
21 the Committee determines to be
22 appropriate.

23 “(II) RECURRING ASSESSMENT
24 OF IDENTIFIED COUNTRIES.—The
25 Committee shall reconsider on a reg-

1 ular basis the identification of coun-
2 tries and parts of countries under
3 subclause (I).

4 “(iv) EXCEPTION FOR AIR CAR-
5 RIERS.—For purposes of subparagraph
6 (B)(iii), the term ‘other investment’ does
7 not include an investment involving an air
8 carrier, as defined in section 40102(a)(2)
9 of title 49, United States Code, that holds
10 a certificate issued under section 41102 of
11 that title.

12 “(v) TRANSFERS OF CERTAIN ASSETS
13 PURSUANT TO BANKRUPTCY PROCEEDINGS
14 OR OTHER DEFAULTS.—The Committee
15 shall prescribe regulations to clarify that
16 the term ‘covered transaction’ includes any
17 transaction described in subparagraph (B)
18 that arises pursuant to a bankruptcy pro-
19 ceeding or other form of default on debt.

20 “(D) PASSIVE INVESTMENT DEFINED.—

21 “(i) IN GENERAL.—For purposes of
22 subparagraph (B)(iii), the term ‘passive in-
23 vestment’ means an investment, direct or
24 indirect, by a foreign person in a United
25 States critical infrastructure company or

1 United States critical technology company
2 that meets the following criteria:

3 “(I) The investment is not de-
4 scribed in subparagraph (B)(i).

5 “(II) The investment does not af-
6 ford the foreign person—

7 “(aa) access to any material
8 nonpublic technical information
9 in the possession of the United
10 States critical infrastructure
11 company or United States critical
12 technology company;

13 “(bb) membership or ob-
14 server rights on the board of di-
15 rectors or equivalent governing
16 body of the United States critical
17 infrastructure company or United
18 States critical technology com-
19 pany or the right to nominate an
20 individual to a position on the
21 board of directors or equivalent
22 governing body; or

23 “(cc) any involvement, other
24 than through voting of shares, in
25 substantive decisionmaking relat-

1 ing to the management, govern-
2 ance, or operation of the United
3 States critical infrastructure
4 company or United States critical
5 technology company.

6 “(III) The foreign person does
7 not have a material parallel strategic
8 partnership or other material financial
9 relationship, as described in regula-
10 tions prescribed by the Committee,
11 with the United States critical infra-
12 structure company or United States
13 critical technology company.

14 “(IV) Such other criteria as the
15 Committee may prescribe by regula-
16 tion.

17 “(ii) MATERIAL NONPUBLIC TECH-
18 NICAL INFORMATION DEFINED.—For pur-
19 poses of clause (i)(II)(aa), the term ‘mate-
20 rial nonpublic technical information’ has
21 the meaning given that term in regulations
22 prescribed by the Committee, except that
23 the term does not include financial infor-
24 mation regarding the performance of a
25 United States critical infrastructure com-

1 pany or United States critical technology
2 company.

3 “(iii) EFFECT OF LEVEL OF OWNER-
4 SHIP INTEREST.—

5 “(I) IN GENERAL.—A determina-
6 tion of whether an investment is a
7 passive investment under clause (i)
8 shall be made without regard to how
9 low the level of ownership interest a
10 foreign person would hold or acquire
11 in a United States critical infrastruc-
12 ture company or United States critical
13 technology company would be as a re-
14 sult of the investment.

15 “(II) REGULATIONS.—

16 “(aa) IN GENERAL.—The
17 Committee may prescribe regula-
18 tions specifying that any invest-
19 ment (other than an investment
20 described in item (bb)) greater
21 than a certain level or amount
22 shall not be considered a passive
23 investment under clause (i).

24 “(bb) INVESTMENT DE-
25 SCRIBED.—An investment de-

16

1 scribed in this item is an invest-
2 ment—

3 “(AA) by a foreign per-
4 son in a United States crit-
5 ical infrastructure company
6 or United States critical
7 technology company through
8 an investment fund;

9 “(BB) that does not re-
10 sult in the foreign person’s
11 control of the United States
12 critical technology or United
13 States critical infrastructure
14 company; and

15 “(CC) that otherwise
16 meets the requirements of
17 clauses (i) and (iv).

18 “(iv) SPECIFIC CLARIFICATION FOR
19 INVESTMENT FUNDS.—

20 “(I) TREATMENT OF CERTAIN
21 INVESTMENTS AS PASSIVE INVEST-
22 MENTS.—Notwithstanding clause
23 (i)(II)(bb) and subject to regulations
24 prescribed by the Committee, an indi-
25 rect investment by a foreign person in

1 a United States critical infrastructure
2 company or United States critical
3 technology company through an in-
4 vestment fund that affords the foreign
5 person (or a designee of the foreign
6 person) membership as a limited part-
7 ner on an advisory board or a com-
8 mittee of the fund shall be considered
9 a passive investment if—

10 “(aa) the fund is managed
11 exclusively by a general partner,
12 a managing member, or an equiv-
13 alent;

14 “(bb) the general partner,
15 managing member, or equivalent
16 is not a foreign person;

17 “(cc) the advisory board or
18 committee does not have the abil-
19 ity to approve, disapprove, or
20 otherwise control—

21 “(AA) investment deci-
22 sions of the fund; or

23 “(BB) decisions made
24 by the general partner, man-
25 aging member, or equivalent

1 related to entities in which
2 the fund is invested;

3 “(dd) the foreign person
4 does not otherwise have the abil-
5 ity to control the fund, including
6 the authority—

7 “(AA) to approve, dis-
8 approve, or otherwise control
9 investment decisions of the
10 fund;

11 “(BB) to approve, dis-
12 approve, or otherwise control
13 decisions made by the gen-
14 eral partner, managing
15 member, or equivalent re-
16 lated to entities in which the
17 fund is invested; or

18 “(CC) to unilaterally
19 dismiss, prevent the dis-
20 missal of, select, or deter-
21minate the compensation of
22 the general partner, man-
23aging member, or equiva-
24lent; and

1 “(ee) the investment other-
2 wise meets the requirements of
3 this subparagraph.

4 “(II) TREATMENT OF CERTAIN
5 WAIVERS.—

6 “(aa) IN GENERAL.—For
7 the purposes of items (cc) and
8 (dd) of subclause (I) and except
9 as provided in item (bb), a waiver
10 of a potential conflict of interest,
11 a waiver of an allocation limita-
12 tion, or a similar activity, appli-
13 cable to a transaction pursuant
14 to the terms of an agreement
15 governing an investment fund
16 shall not be considered to con-
17 stitute control of investment deci-
18 sions of the fund or decisions re-
19 lating to entities in which the
20 fund is invested.

21 “(bb) EXCEPTION.—The
22 Committee may prescribe regula-
23 tions providing for exceptions to
24 item (aa) for extraordinary cir-
25 cumstances.

1 “(v) REGULATIONS.—The Committee
2 shall prescribe regulations providing guid-
3 ance on the types of transactions that the
4 Committee considers to be passive invest-
5 ment.

6 “(E) UNITED STATES CRITICAL INFRA-
7 STRUCTURE COMPANY DEFINED.—For purposes
8 of subparagraph (B), the term ‘United States
9 critical infrastructure company’ means a United
10 States business that is, owns, operates, or pri-
11 marily provides services to, an entity or entities
12 that operate within a critical infrastructure sec-
13 tor or subsector, as defined by regulations pre-
14 scribed by the Committee.

15 “(F) UNITED STATES CRITICAL TECH-
16 NOLOGY COMPANY DEFINED.—For purposes of
17 subparagraph (B), the term ‘United States crit-
18 ical technology company’ means a United
19 States business that produces, designs, tests,
20 manufactures, or develops one or more critical
21 technologies, or a subset of such technologies,
22 as defined by regulations prescribed by the
23 Committee.

24 “(6) CRITICAL INFRASTRUCTURE.—The term
25 ‘critical infrastructure’ means, subject to regulations

1 prescribed by the Committee, systems and assets,
2 whether physical or virtual, so vital to the United
3 States that the incapacity or destruction of such sys-
4 tems or assets would have a debilitating impact on
5 national security.

6 “(7) CRITICAL MATERIALS.—The term ‘critical
7 materials’ means physical materials essential to na-
8 tional security, subject to regulations prescribed by
9 the Committee.

10 “(8) CRITICAL TECHNOLOGIES.—

11 “(A) IN GENERAL.—The term ‘critical
12 technologies’ means technology, components, or
13 technology items that are essential or could be
14 essential to national security, identified for pur-
15 poses of this section pursuant to regulations
16 prescribed by the Committee.

17 “(B) INCLUSION OF CERTAIN ITEMS.—The
18 term ‘critical technologies’ includes the fol-
19 lowing:

20 “(i) Defense articles or defense serv-
21 ices included on the United States Muni-
22 tions List set forth in the International
23 Traffic in Arms Regulations under sub-
24 chapter M of chapter I of title 22, Code of
25 Federal Regulations.

1 “(ii) Items included on the Commerce
2 Control List set forth in Supplement No. 1
3 to part 774 of the Export Administration
4 Regulations under subchapter C of chapter
5 VII of title 15, Code of Federal Regula-
6 tions, and controlled—

7 “(I) pursuant to multilateral re-
8 gimes, including for reasons relating
9 to national security, chemical and bio-
10 logical weapons proliferation, nuclear
11 nonproliferation, or missile tech-
12 nology; or

13 “(II) for reasons relating to re-
14 gional stability or surreptitious listen-
15 ing.

16 “(iii) Specially designed and prepared
17 nuclear equipment, parts and components,
18 materials, software, and technology covered
19 by part 810 of title 10, Code of Federal
20 Regulations (relating to assistance to for-
21 eign atomic energy activities).

22 “(iv) Nuclear facilities, equipment,
23 and material covered by part 110 of title
24 10, Code of Federal Regulations (relating

1 to export and import of nuclear equipment
2 and material).

3 “(v) Select agents and toxins covered
4 by part 331 of title 7, Code of Federal
5 Regulations, part 121 of title 9 of such
6 Code, or part 73 of title 42 of such Code.

7 “(vi) Emerging and foundational tech-
8 nologies identified pursuant to section
9 24(a) of the Foreign Investment Risk Re-
10 view Modernization Act of 2018.

11 “(9) FOREIGN GOVERNMENT-CONTROLLED
12 TRANSACTION.—The term ‘foreign government-con-
13 trolled transaction’ means any covered transaction
14 that could result in the control of any United States
15 business by a foreign government or an entity con-
16 trolled by or acting on behalf of a foreign govern-
17 ment.

18 “(10) FOREIGN PERSON.—

19 “(A) IN GENERAL.—The term ‘foreign per-
20 son’ means—

21 “(i) any foreign national, foreign gov-
22 ernment, or foreign entity; or

23 “(ii) any entity over which control is
24 exercised or exercisable by a foreign na-

1 tional, foreign government, or foreign enti-
2 ty.

3 “(B) FOREIGN ENTITY DEFINED.—

4 “(i) IN GENERAL.—For purposes of
5 subparagraph (A) and except as provided
6 in clause (ii), the term ‘foreign entity’
7 means any branch, partnership, group or
8 subgroup, association, estate, trust, cor-
9 poration or division of a corporation, or or-
10 ganization organized under the laws of a
11 foreign country if—

12 “(I) the principal place of busi-
13 ness of the entity is outside the
14 United States; or

15 “(II) the equity securities of the
16 entity are primarily traded on one or
17 more foreign exchanges.

18 “(ii) EXCEPTION.—For purposes of
19 subparagraph (A), the term ‘foreign entity’
20 does not include an entity that dem-
21 onstrates to the Committee that a majority
22 of the equity interest in the entity is ulti-
23 mately owned by United States nationals.

24 “(11) INTELLIGENCE COMMUNITY.—The term
25 ‘intelligence community’ has the meaning given that

1 term in section 3(4) of the National Security Act of
2 1947 (50 U.S.C. 3003(4)).

3 “(12) INVESTMENT.—The term ‘investment’
4 means the acquisition of equity interest, including
5 contingent equity interest, as further defined in reg-
6 ulations prescribed by the Committee.

7 “(13) LEAD AGENCY.—The term ‘lead agency’
8 means the agency or agencies designated as the lead
9 agency or agencies pursuant to subsection (k)(5).

10 “(14) NATIONAL SECURITY.—The term ‘na-
11 tional security’ shall be construed so as to include
12 those issues relating to ‘homeland security’, includ-
13 ing its application to critical infrastructure.

14 “(15) PARTY.—The term ‘party’ has the mean-
15 ing given that term in regulations prescribed by the
16 Committee.

17 “(16) UNITED STATES.—The term ‘United
18 States’ means the several States, the District of Co-
19 lumbia, and any territory or possession of the
20 United States.

21 “(17) UNITED STATES BUSINESS.—The term
22 ‘United States business’ means a person engaged in
23 interstate commerce in the United States.”.

1 **SEC. 4. INCLUSION OF PARTNERSHIP AND SIDE AGREE-**
2 **MENTS IN NOTICE.**

3 Section 721(b)(1)(C) of the Defense Production Act
4 of 1950 (50 U.S.C. 4565(b)(1)(C)) is amended by adding
5 at the end the following:

6 “(iv) INCLUSION OF PARTNERSHIP
7 AND SIDE AGREEMENTS.—A written notice
8 submitted under clause (i) by a party to a
9 covered transaction shall include a copy of
10 any partnership agreements, integration
11 agreements, or other side agreements relat-
12 ing to the transaction, including any such
13 agreements relating to the transfer of in-
14 tellectual property, as specified in regula-
15 tions prescribed by the Committee.”.

16 **SEC. 5. DECLARATIONS FOR CERTAIN COVERED TRANS-**
17 **ACTIONS.**

18 Section 721(b)(1)(C) of the Defense Production Act
19 of 1950 (50 U.S.C. 4565(b)(1)(C)), as amended by section
20 4, is further amended by adding at the end the following:

21 “(v) DECLARATIONS FOR CERTAIN
22 COVERED TRANSACTIONS.—

23 “(I) IN GENERAL.—A party to
24 any covered transaction may submit
25 to the Committee a declaration with
26 basic information regarding the trans-

1 action instead of a written notice
2 under clause (i).

3 “(II) REGULATIONS.—The Com-
4 mittee shall prescribe regulations es-
5 tablishing requirements for declara-
6 tions submitted under this clause. In
7 prescribing such regulations, the Com-
8 mittee shall ensure that such declara-
9 tions are submitted as abbreviated no-
10 tifications that would not generally ex-
11 ceed 5 pages in length.

12 “(III) COMMITTEE RESPONSE TO
13 DECLARATION.—

14 “(aa) IN GENERAL.—Upon
15 receiving a declaration under this
16 clause with respect to a covered
17 transaction, the Committee may,
18 at the discretion of the Com-
19 mittee—

20 “(AA) request that the
21 parties to the transaction
22 file a written notice under
23 clause (i);

24 “(BB) inform the par-
25 ties to the transaction that

1 the Committee is not able to
2 complete action under this
3 section with respect to the
4 transaction on the basis of
5 the declaration and that the
6 parties may file a written
7 notice under clause (i) to
8 seek written notification
9 from the Committee that the
10 Committee has completed all
11 action under this section
12 with respect to the trans-
13 action;

14 “(CC) initiate a unilat-
15 eral review of the trans-
16 action under subparagraph
17 (D); or

18 “(DD) notify the par-
19 ties in writing that the Com-
20 mittee has completed all ac-
21 tion under this section with
22 respect to the transaction.

23 “(bb) TIMING.—The Com-
24 mittee shall take action under
25 item (aa) not later than 30 days

1 after receiving a declaration
2 under this clause.

3 “(cc) RULE OF CONSTRUC-
4 TION.—Nothing in this subclause
5 (other than item (aa)(CC)) shall
6 be construed to affect the author-
7 ity of the President or the Com-
8 mittee to take any action author-
9 ized by this section with respect
10 to a covered transaction.

11 “(IV) MANDATORY DECLARA-
12 TIONS.—

13 “(aa) REGULATIONS.—The
14 Committee shall prescribe regula-
15 tions specifying the types of cov-
16 ered transactions for which the
17 Committee requires a declaration
18 under this subclause.

19 “(bb) CERTAIN COVERED
20 TRANSACTIONS WITH FOREIGN
21 GOVERNMENT INTERESTS.—

22 “(AA) IN GENERAL.—
23 Except as provided in
24 subitem (BB), the parties to
25 a covered transaction shall

1 submit a declaration de-
2 scribed in subclause (I) with
3 respect to the transaction if
4 the transaction involves an
5 investment that results in
6 the acquisition, directly or
7 indirectly, of a substantial
8 interest in a United States
9 business by a foreign person
10 in which a foreign govern-
11 ment has, directly or indi-
12 rectly, a substantial interest.

13 “(BB) EXCEPTION.—
14 The submission of a declara-
15 tion described in subclause
16 (I) shall not be required
17 with respect to a transaction
18 described in subitem (AA) if
19 each foreign person that is a
20 party to the transaction is
21 organized under the laws of,
22 or otherwise subject to the
23 jurisdiction of, a country
24 identified by the Committee

1 under subsection
2 (a)(5)(C)(iii).

3 “(CC) SUBSTANTIAL
4 INTEREST DEFINED.—In
5 this item, the term ‘substan-
6 tial interest’ has the mean-
7 ing given that term in regu-
8 lations which the Committee
9 shall prescribe. An interest
10 that is a passive investment
11 (as defined in subsection
12 (a)(5)(D)) or that is less
13 than a 10 percent voting in-
14 terest shall not be consid-
15 ered a substantial interest.

16 “(cc) OTHER DECLARATIONS
17 REQUIRED BY COMMITTEE.—The
18 Committee shall require the sub-
19 mission of a declaration described
20 in subclause (I) with respect to
21 any covered transaction identified
22 under regulations prescribed by
23 the Committee for purposes of
24 this item, at the discretion of the

1 Committee and based on appro-
2 priate factors, such as—

3 “(AA) the technology,
4 industry, economic sector, or
5 economic subsector in which
6 the United States business
7 that is a party to the trans-
8 action trades or of which it
9 is a part;

10 “(BB) the difficulty of
11 remedying the harm to na-
12 tional security that may re-
13 sult from completion of the
14 transaction; and

15 “(CC) the difficulty of
16 obtaining information on the
17 type of covered transaction
18 through other means.

19 “(dd) SUBMISSION OF WRIT-
20 TEN NOTICE AS AN ALTER-
21 NATIVE.—Parties to a covered
22 transaction for which a declara-
23 tion is required under this sub-
24 clause may instead elect to sub-

1 mit a written notice under clause
2 (i).

3 “(ee) TIMING OF SUBMIS-
4 SION.—

5 “(AA) IN GENERAL.—A
6 declaration required to be
7 submitted with respect to a
8 covered transaction by this
9 subclause shall be submitted
10 not later than 45 days be-
11 fore the completion of the
12 transaction.

13 “(BB) WRITTEN NO-
14 TICE.—If, pursuant to item
15 (dd), the parties to a cov-
16 ered transaction elect to
17 submit a written notice
18 under clause (i) instead of a
19 declaration under this sub-
20 clause, the written notice
21 shall be filed not later than
22 90 days before the comple-
23 tion of the transaction.

24 “(ff) PENALTIES.—The
25 Committee may impose a penalty

1 pursuant to subsection (h)(3)
2 with respect to a party that fails
3 to comply with this subclause.”.

4 **SEC. 6. STIPULATIONS REGARDING TRANSACTIONS.**

5 Section 721(b)(1)(C) of the Defense Production Act
6 of 1950 (50 U.S.C. 4565(b)(1)(C)), as amended by section
7 5, is further amended by adding at the end the following:

8 “(vi) STIPULATIONS REGARDING
9 TRANSACTIONS.—

10 “(I) IN GENERAL.—In a written
11 notice submitted under clause (i) or a
12 declaration submitted under clause (v)
13 with respect to a transaction, a party
14 to the transaction may—

15 “(aa) stipulate that the
16 transaction is a covered trans-
17 action; and

18 “(bb) if the party stipulates
19 that the transaction is a covered
20 transaction under item (aa), stip-
21 ulate that the transaction is a
22 foreign government-controlled
23 transaction.

24 “(II) BASIS FOR STIPULATION.—

25 A written notice submitted under

1 clause (i) or a declaration submitted
2 under clause (v) that includes a stipu-
3 lation under subclause (I) shall in-
4 clude a description of the basis for the
5 stipulation.”.

6 **SEC. 7. AUTHORITY FOR UNILATERAL INITIATION OF RE-**
7 **VIEWS.**

8 Section 721(b)(1) of the Defense Production Act of
9 1950 (50 U.S.C. 4565(b)(1)) is amended—

10 (1) by redesignating subparagraphs (E) and
11 (F) as subparagraphs (F) and (G), respectively;

12 (2) in subparagraph (D)—

13 (A) in clause (i), by inserting “(other than
14 a covered transaction described in subpara-
15 graph (E))” after “any covered transaction”;

16 (B) by striking clause (ii) and inserting the
17 following:

18 “(ii) any covered transaction described
19 in subparagraph (E), if any party to the
20 transaction submitted false or misleading
21 material information to the Committee in
22 connection with the Committee’s consider-
23 ation of the transaction or omitted mate-
24 rial information, including material docu-

1 under this section with respect to the
2 transaction; or

3 “(ii) the President has announced a
4 decision not to exercise the President’s au-
5 thority under subsection (d) with respect
6 to the transaction.”.

7 **SEC. 8. TIMING FOR REVIEWS AND INVESTIGATIONS.**

8 Section 721(b) of the Defense Production Act of
9 1950 (50 U.S.C. 4565(b)), as amended by section 7, is
10 further amended—

11 (1) in paragraph (1)(F), by striking “30” and
12 inserting “45”;

13 (2) in paragraph (2), by striking subparagraph
14 (C) and inserting the following:

15 “(C) TIMING.—

16 “(i) IN GENERAL.—Except as pro-
17 vided in clause (ii), any investigation under
18 subparagraph (A) shall be completed be-
19 fore the end of the 45-day period begin-
20 ning on the date on which the investigation
21 commenced.

22 “(ii) EXTENSION FOR EXTRAOR-
23 DINARY CIRCUMSTANCES.—

24 “(I) IN GENERAL.—In extraor-
25 dinary circumstances (as defined by

1 the Committee in regulations), the
2 chairperson may, at the request of the
3 head of the lead agency, extend an in-
4 vestigation under subparagraph (A)
5 for one 30-day period.

6 “(II) NONDELEGATION.—The
7 authority of the chairperson and the
8 head of the lead agency referred to in
9 subclause (I) may not be delegated to
10 any person other than the Deputy
11 Secretary of the Treasury or the dep-
12 uty head (or equivalent thereof) of the
13 lead agency, as the case may be.

14 “(III) NOTIFICATION TO PAR-
15 TIES.—If the Committee extends the
16 deadline under subclause (I) with re-
17 spect to a covered transaction, the
18 Committee shall notify the parties to
19 the transaction of the extension.”; and

20 (3) by adding at the end the following:

21 “(8) TOLLING OF DEADLINES DURING LAPSE IN
22 APPROPRIATIONS.—Any deadline or time limitation
23 under this subsection shall be tolled during a lapse
24 in appropriations.”.

1 **SEC. 9. MONITORING OF NON-NOTIFIED AND NON-DE-**
2 **CLARED TRANSACTIONS.**

3 Section 721(b)(1) of the Defense Production Act of
4 1950 (50 U.S.C. 4565(b)(1)), as amended by section 7,
5 is further amended by adding at the end the following:

6 “(H) MONITORING OF NON-NOTIFIED AND
7 NON-DECLARED TRANSACTIONS.—The Com-
8 mittee shall establish a mechanism to identify
9 covered transactions for which—

10 “(i) a notice under clause (i) of sub-
11 paragraph (C) or a declaration under
12 clause (v) of that subparagraph is not sub-
13 mitted to the Committee; and

14 “(ii) information is reasonably avail-
15 able.”.

16 **SEC. 10. SUBMISSION OF CERTIFICATIONS TO CONGRESS.**

17 Section 721(b)(3)(C) of the Defense Production Act
18 of 1950 (50 U.S.C. 4565(b)(3)(C)) is amended—

19 (1) in clause (iii)—

20 (A) in subclause (II), by inserting “and the
21 Select Committee on Intelligence” after “Urban
22 Affairs”; and

23 (B) in subclause (IV), by inserting “and
24 the Permanent Select Committee on Intel-
25 ligence” after “Financial Services”;

1 (2) in clause (iv), by striking subclause (II) and
2 inserting the following:

3 “(II) DELEGATION OF CERTIFI-
4 CATIONS.—

5 “(aa) IN GENERAL.—Sub-
6 ject to item (bb), the chairperson,
7 in consultation with the Com-
8 mittee, may determine the level
9 of official to whom the signature
10 requirement under subclause (I)
11 for the chairperson and the head
12 of the lead agency may be dele-
13 gated. The level of official to
14 whom the signature requirement
15 may be delegated may differ
16 based on any factor relating to a
17 transaction that the chairperson,
18 in consultation with the Com-
19 mittee, deems appropriate, in-
20 cluding the type or value of the
21 transaction.

22 “(bb) LIMITATION ON DELE-
23 GATION WITH RESPECT TO CER-
24 TAIN TRANSACTIONS.—The sig-
25 nature requirement under sub-

41

1 clause (I) may be delegated not
2 below the level of the Assistant
3 Secretary of the Treasury or an
4 equivalent official of the lead
5 agency in the case of a covered
6 transaction—

7 “(AA) assessed by the
8 Director of National Intel-
9 ligence under paragraph (4)
10 as more likely than not to
11 threaten the national secu-
12 rity of the United States;

13 “(BB) with respect to
14 which the Committee con-
15 ducts an investigation under
16 paragraph (2); or

17 “(CC) with respect to
18 which a request is made by
19 an official at the Deputy As-
20 sistant Secretary or Assist-
21 ant Secretary level of an
22 agency or department rep-
23 resented on the Committee,
24 or an equivalent thereof,
25 that the transaction be re-

1 viewed by the Assistant Sec-
2 retary of the Treasury and
3 an equivalent official of the
4 lead agency.

5 “(cc) LIMITATION ON DELE-
6 GATION WITH RESPECT TO
7 OTHER TRANSACTIONS.—In the
8 case of any covered transaction
9 not described in item (bb), the
10 signature requirement under sub-
11 clause (I) may be delegated not
12 below the level of a Deputy As-
13 sistant Secretary of the Treasury
14 or an equivalent official of the
15 lead agency.”; and

16 (3) by adding at the following:

17 “(v) AUTHORITY TO CONSOLIDATE
18 DOCUMENTS.—Instead of transmitting a
19 separate certified notice or certified report
20 under subparagraph (A) or (B) with re-
21 spect to each covered transaction, the
22 Committee may, on a monthly basis, trans-
23 mit such notices and reports in a consoli-
24 dated document to the Members of Con-
25 gress specified in clause (iii).”.

1 **SEC. 11. ANALYSIS BY DIRECTOR OF NATIONAL INTEL-**
2 **LIGENCE.**

3 Section 721(b)(4) of the Defense Production Act of
4 1950 (50 U.S.C. 4565(b)(4)) is amended—

5 (1) by striking subparagraph (A) and inserting
6 the following:

7 “(A) ANALYSIS REQUIRED.—

8 “(i) IN GENERAL.—Except as pro-
9 vided in subparagraph (B), the Director of
10 National Intelligence shall expeditiously
11 carry out a thorough analysis of any threat
12 to the national security of the United
13 States posed by any covered transaction,
14 which shall include the identification of
15 any recognized gaps in the collection of in-
16 telligence relevant to the analysis.

17 “(ii) VIEWS OF INTELLIGENCE COM-
18 MUNITY.—The Director shall seek and in-
19 corporate into the analysis required by
20 clause (i) the views of all affected or ap-
21 propriate agencies of the intelligence com-
22 munity with respect to the transaction.

23 “(iii) UPDATES.—At the request of
24 the lead agency, the Director shall update
25 the analysis conducted under clause (i)
26 with respect to a covered transaction with

1 respect to which an agreement was entered
2 into under subsection (1)(3)(A).

3 “(iv) INDEPENDENCE AND OBJEC-
4 TIVITY.—The Committee shall ensure that
5 its processes under this section preserve
6 the ability of the Director to conduct anal-
7 ysis under clause (i) that is independent,
8 objective, and consistent with all applicable
9 directives, policies, and analytic tradecraft
10 standards of the intelligence community.”;

11 (2) by redesignating subparagraphs (B), (C),
12 and (D) as subparagraphs (C), (D), and (E), respec-
13 tively;

14 (3) by inserting after subparagraph (A) the fol-
15 lowing:

16 “(B) BASIC THREAT INFORMATION.—

17 “(i) IN GENERAL.—The Director of
18 National Intelligence may provide the
19 Committee with basic information regard-
20 ing any threat to the national security of
21 the United States posed by a covered
22 transaction described in clause (ii) instead
23 of conducting the analysis required by sub-
24 paragraph (A).

45

1 “(ii) COVERED TRANSACTION DE-
2 SCRIBED.—A covered transaction is de-
3 scribed in this clause if—

4 “(I) the transaction is described
5 in subsection (a)(5)(B)(ii);

6 “(II) the Director of National In-
7 telligence has completed an analysis
8 pursuant to subparagraph (A) involv-
9 ing each foreign person that is a party
10 to the transaction during the 12
11 months preceding the review or inves-
12 tigation of the transaction under this
13 section; or

14 “(III) the transaction otherwise
15 meets criteria agreed upon by the
16 Committee and the Director for pur-
17 poses of this subparagraph.”;

18 (4) in subparagraph (C), as redesignated by
19 paragraph (2), by striking “20” and inserting “30”;
20 and

21 (5) by adding at the end the following:

22 “(F) ASSESSMENT OF OPERATIONAL IM-
23 PACT.—The Director may provide to the Com-
24 mittee an assessment, separate from the anal-
25 yses under subparagraphs (A) and (B), of any

1 operational impact of a covered transaction on
2 the intelligence community and a description of
3 any actions that have been or will be taken to
4 mitigate any such impact.

5 “(G) SUBMISSION TO CONGRESS.—The
6 Committee shall submit the analysis required by
7 subparagraph (A) with respect to a covered
8 transaction to the Select Committee on Intel-
9 ligence of the Senate and the Permanent Select
10 Committee on Intelligence of the House of Rep-
11 resentatives upon the conclusion of action under
12 this section (other than compliance plans under
13 subsection (l)(6)) with respect to the trans-
14 action.”.

15 **SEC. 12. INFORMATION SHARING.**

16 Section 721(c) of the Defense Production Act of 1950
17 (50 U.S.C. 4565(c)) is amended—

18 (1) by striking “Any information” and inserting
19 the following:

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2), any information”;

22 (2) by striking “, except as may be relevant”
23 and all that follows and inserting a period; and

24 (3) by adding at the end the following:

1 “(2) EXCEPTIONS.—Paragraph (1) shall not
2 prohibit the disclosure of the following:

3 “(A) Information relevant to any adminis-
4 trative or judicial action or proceeding.

5 “(B) Information to Congress or any duly
6 authorized committee or subcommittee of Con-
7 gress.

8 “(C) Information to any domestic or for-
9 eign governmental entity, under the direction of
10 the chairperson, to the extent necessary for na-
11 tional security purposes and pursuant to appro-
12 priate confidentiality and classification arrange-
13 ments.

14 “(D) Information that the parties have
15 consented to be disclosed to third parties.”.

16 **SEC. 13. ACTION BY THE PRESIDENT.**

17 (a) IN GENERAL.—Section 721(d) of the Defense
18 Production Act of 1950 (50 U.S.C. 4565(d)) is amend-
19 ed—

20 (1) by striking paragraph (1) and inserting the
21 following:

22 “(1) IN GENERAL.—Subject to paragraph (4),
23 the President may, with respect to a covered trans-
24 action that threatens to impair the national security
25 of the United States, take such action for such time

1 as the President considers appropriate to suspend or
2 prohibit the transaction or to require divestment.”;
3 and

4 (2) in paragraph (2), by striking “not later
5 than 15 days” and all that follows and inserting the
6 following: “with respect to a covered transaction not
7 later than 15 days after the earlier of—

8 “(A) the date on which the investigation of
9 the transaction under subsection (b) is com-
10 pleted; or

11 “(B) the date on which the Committee oth-
12 erwise refers the transaction to the President
13 under subsection (l)(2).”.

14 (b) CIVIL PENALTIES.—Section 721(h)(3)(A) of the
15 Defense Production Act of 1950 (50 U.S.C.
16 4565(h)(3)(A)) is amended by striking “including any
17 mitigation” and all that follows through “subsection (l)”
18 and inserting “including any mitigation agreement entered
19 into, conditions imposed, or order issued pursuant to this
20 section”.

21 **SEC. 14. JUDICIAL REVIEW.**

22 Section 721(e) of the Defense Production Act of 1950
23 (50 U.S.C. 4565(e)) is amended—

24 (1) by striking “The actions” and inserting the
25 following:

1 “(1) IN GENERAL.—The actions”; and

2 (2) by adding at the end the following:

3 “(2) CIVIL ACTIONS.—A civil action challenging
4 an action or finding of the Committee under this
5 section may be brought only in the United States
6 Court of Appeals for the District of Columbia Cir-
7 cuit.

8 “(3) PROCEDURES FOR REVIEW OF PRIVILEGED
9 INFORMATION.—If a civil action challenging an ac-
10 tion or finding of the Committee under this section
11 is brought, and the court determines that protected
12 information in the administrative record, including
13 classified, sensitive law enforcement, sensitive secu-
14 rity, or other information subject to privilege or pro-
15 tections under any provision of law, is necessary to
16 resolve the challenge, that information shall be sub-
17 mitted ex parte and in camera to the court and the
18 court shall maintain that information under seal.

19 “(4) APPLICABILITY OF USE OF INFORMATION
20 PROVISIONS.—The use of information provisions of
21 sections 106, 305, 405, and 706 of the Foreign In-
22 telligence Surveillance Act of 1978 (50 U.S.C. 1806,
23 1825, 1845, and 1881e) shall not apply in a civil ac-
24 tion brought under this subsection.”.

1 **SEC. 15. HIRING AUTHORITY.**

2 Section 721(k) of the Defense Production Act of
3 1950 (50 U.S.C. 4565(k)) is amended by striking para-
4 graph (4) and inserting the following:

5 “(4) HIRING AUTHORITY.—

6 “(A) SENIOR OFFICIALS.—

7 “(i) IN GENERAL.—Each member of
8 the Committee shall designate an Assistant
9 Secretary, or an equivalent official, who is
10 appointed by the President, by and with
11 the advice and consent of the Senate, to
12 carry out such duties related to the Com-
13 mittee as the member of the Committee
14 may delegate.

15 “(ii) DEPARTMENT OF THE TREAS-
16 URY.—In addition to officials of the De-
17 partment of the Treasury authorized under
18 section 301 of title 31, United States
19 Code, or any other provision of law, there
20 are authorized at the Department of the
21 Treasury, to carry out such duties related
22 to the Committee as the Secretary of the
23 Treasury may delegate, the following:

24 “(I) One official who shall be
25 compensated at a rate not to exceed
26 the rate of basic pay payable for level

1 III of the Executive Schedule under
2 section 5314 of title 5, United States
3 Code.

4 “(II) One official who shall be
5 compensated at a rate not to exceed
6 the rate of basic pay payable for level
7 IV of the Executive Schedule of sec-
8 tion 5315 of title 5, United States
9 Code.

10 “(B) SPECIAL HIRING AUTHORITY.—The
11 heads of the departments and agencies rep-
12 resented on the Committee may appoint, with-
13 out regard to the provisions of sections 3309
14 through 3318 of title 5, United States Code,
15 candidates directly to positions in the competi-
16 tive service (as defined in section 2102 of that
17 title) in their respective departments and agen-
18 cies to administer this section.”.

19 **SEC. 16. ACTIONS BY THE COMMITTEE TO ADDRESS NA-**
20 **TIONAL SECURITY RISKS.**

21 Section 721(l) of the Defense Production Act of 1950
22 (50 U.S.C. 4565(l)) is amended—

23 (1) in the subsection heading, by striking
24 “MITIGATION, TRACKING, AND POSTCONSUMMATION
25 MONITORING AND ENFORCEMENT” and inserting

1 “ACTIONS BY THE COMMITTEE TO ADDRESS NA-
2 TIONAL SECURITY RISKS”;

3 (2) by redesignating paragraphs (1), (2), and
4 (3) as paragraphs (3), (5), and (6), respectively;

5 (3) by inserting before paragraph (3), as reded-
6 icated by paragraph (2), the following:

7 “(1) SUSPENSION OF TRANSACTIONS.—The
8 Committee, acting through the chairperson, may
9 suspend a proposed or pending covered transaction
10 that may pose a risk to the national security of the
11 United States for such time as the covered trans-
12 action is under review or investigation under sub-
13 section (b).

14 “(2) REFERRAL TO PRESIDENT.—The Com-
15 mittee may, at any time during the review or inves-
16 tigation of a covered transaction under subsection
17 (b), complete the action of the Committee with re-
18 spect to the transaction and refer the transaction to
19 the President for action pursuant to subsection
20 (d).”;

21 (4) in paragraph (3), as redesignated by para-
22 graph (2)—

23 (A) in subparagraph (A)—

1 (i) in the subparagraph heading, by
2 striking “IN GENERAL” and inserting
3 “AGREEMENTS AND CONDITIONS”;

4 (ii) by striking “The Committee” and
5 inserting the following:

6 “(i) IN GENERAL.—The Committee”;

7 (iii) by striking “threat” and inserting
8 “risk”; and

9 (iv) by adding at the end the fol-
10 lowing:

11 “(ii) ABANDONMENT OF TRANS-
12 ACTIONS.—If a party to a covered trans-
13 action has voluntarily chosen to abandon
14 the transaction, the Committee or lead
15 agency, as the case may be, may negotiate,
16 enter into or impose, and enforce any
17 agreement or condition with any party to
18 the covered transaction for purposes of ef-
19 fectuating such abandonment and miti-
20 gating any risk to the national security of
21 the United States that arises as a result of
22 the covered transaction.

23 “(iii) AGREEMENTS AND CONDITIONS
24 RELATING TO COMPLETED TRANS-
25 ACTIONS.—The Committee or lead agency,

1 as the case may be, may negotiate, enter
2 into or impose, and enforce any agreement
3 or condition with any party to a completed
4 covered transaction in order to mitigate
5 any interim risk to the national security of
6 the United States that may arise as a re-
7 sult of the covered transaction until such
8 time that the Committee has completed ac-
9 tion pursuant to subsection (b) or the
10 President has taken action pursuant to
11 subsection (d) with respect to the trans-
12 action.”; and

13 (B) by striking subparagraph (B) and in-
14 serting the following:

15 “(B) LIMITATIONS.—An agreement may
16 not be entered into or condition imposed under
17 subparagraph (A) with respect to a covered
18 transaction unless the Committee determines
19 that the agreement or condition resolves the na-
20 tional security concerns posed by the trans-
21 action, taking into consideration whether the
22 agreement or condition is reasonably calculated
23 to—

24 “(i) be effective;

1 “(ii) allow for compliance with the
2 terms of the agreement or condition in an
3 appropriately verifiable way; and

4 “(iii) enable effective monitoring of
5 compliance with and enforcement of the
6 terms of the agreement or condition.

7 “(C) JURISDICTION.—The provisions of
8 section 706(b) shall apply to any mitigation
9 agreement entered into or condition imposed
10 under subparagraph (A).”;

11 (5) by inserting after paragraph (3), as redesign-
12 nated by paragraph (2), the following:

13 “(4) RISK-BASED ANALYSIS REQUIRED.—

14 “(A) IN GENERAL.—Any determination of
15 the Committee to suspend a covered transaction
16 under paragraph (1), to refer a covered trans-
17 action to the President under paragraph (2), or
18 to negotiate, enter into or impose, or enforce
19 any agreement or condition under paragraph
20 (3)(A) with respect to a covered transaction,
21 shall be based on a risk-based analysis, con-
22 ducted by the Committee, of the effects on the
23 national security of the United States of the
24 covered transaction, which shall include an as-
25 sessment of the threat, vulnerabilities, and con-

1 sequences to national security related to the
2 transaction.

3 “(B) ACTIONS OF MEMBERS OF THE COM-
4 MITTEE.—

5 “(i) IN GENERAL.—Any member of
6 the Committee who concludes that a cov-
7 ered transaction poses an unresolved na-
8 tional security concern shall recommend to
9 the Committee that the Committee sus-
10 pend the transaction under paragraph (1),
11 refer the transaction to the President
12 under paragraph (2), or negotiate, enter
13 into or impose, or enforce any agreement
14 or condition under paragraph (3)(A) with
15 respect to the transaction. In making that
16 recommendation, the member shall propose
17 or contribute to the risk-based analysis re-
18 quired by subparagraph (A).

19 “(ii) FAILURE TO REACH CON-
20 SENSUS.—If the Committee fails to reach
21 consensus with respect to a recommenda-
22 tion under clause (i) regarding a covered
23 transaction, the members of the Committee
24 who support an alternative recommenda-
25 tion shall produce—

1 “(I) a written statement justi-
2 fying the alternative recommendation;
3 and

4 “(II) as appropriate, a risk-based
5 analysis that supports the alternative
6 recommendation.

7 “(C) DEFINITIONS.—For purposes of sub-
8 paragraph (A), the terms ‘threat’,
9 ‘vulnerabilities’, and ‘consequences to national
10 security’ shall have the meanings given those
11 terms by the Committee by regulation.”;

12 (6) in paragraph (5)(B), as redesignated by
13 paragraph (2), by striking “(as defined in the Na-
14 tional Security Act of 1947)”; and

15 (7) in paragraph (6), as redesignated by para-
16 graph (2)—

17 (A) in subparagraph (A)—

18 (i) by striking “paragraph (1)” and
19 inserting “paragraph (3)”; and

20 (ii) by striking the second sentence
21 and inserting the following: “The lead
22 agency may, at its discretion, seek and re-
23 ceive the assistance of other departments
24 or agencies in carrying out the purposes of
25 this paragraph.”;

1 (B) in subparagraph (B)—

2 (i) by striking “DESIGNATED AGEN-
3 CY” and all that follows through “The lead
4 agency in connection” and inserting “DES-
5 IGNATED AGENCY.—The lead agency in
6 connection”;

7 (ii) by striking clause (ii); and

8 (iii) by redesignating subclauses (I)
9 and (II) as clauses (i) and (ii), respec-
10 tively, and by moving such clauses, as so
11 redesignated, 2 ems to the left; and

12 (C) by adding at the end the following:

13 “(C) COMPLIANCE PLANS.—

14 “(i) IN GENERAL.—In the case of a
15 covered transaction with respect to which
16 an agreement is entered into under para-
17 graph (3)(A), the Committee or lead agen-
18 cy, as the case may be, shall formulate, ad-
19 here to, and keep updated a plan for moni-
20 toring compliance with the agreement.

21 “(ii) ELEMENTS.—Each plan required
22 by clause (i) with respect to an agreement
23 entered into under paragraph (3)(A) shall
24 include an explanation of—

1 “(I) which member of the Com-
2 mittee will have primary responsibility
3 for monitoring compliance with the
4 agreement;

5 “(II) how compliance with the
6 agreement will be monitored;

7 “(III) how frequently compliance
8 reviews will be conducted;

9 “(IV) whether an independent
10 entity will be utilized under subpara-
11 graph (E) to conduct compliance re-
12 views; and

13 “(V) what actions will be taken if
14 the parties fail to cooperate regarding
15 monitoring compliance with the agree-
16 ment.

17 “(D) EFFECT OF LACK OF COMPLIANCE.—

18 If, at any time after a mitigation agreement or
19 condition is entered into or imposed under
20 paragraph (3)(A), the Committee or lead agen-
21 cy, as the case may be, determines that a party
22 or parties to the agreement or condition are not
23 in compliance with the terms of the agreement
24 or condition, the Committee or lead agency
25 may, in addition to the authority of the Com-

1 mittee to impose penalties pursuant to sub-
2 section (h)(3) and to unilaterally initiate a re-
3 view of any covered transaction under sub-
4 section (b)(1)(D)(iii)(I)—

5 “(i) negotiate a plan of action for the
6 party or parties to remediate the lack of
7 compliance, with failure to abide by the
8 plan or otherwise remediate the lack of
9 compliance serving as the basis for the
10 Committee to find a material breach of the
11 agreement or condition;

12 “(ii) require that the party or parties
13 submit a written notice under clause (i) of
14 subsection (b)(1)(C) or a declaration under
15 clause (v) of that subsection with respect
16 to a covered transaction initiated after the
17 date of the determination of noncompliance
18 and before the date that is 5 years after
19 the date of the determination to the Com-
20 mittee to initiate a review of the trans-
21 action under subsection (b); or

22 “(iii) seek injunctive relief.

23 “(E) USE OF INDEPENDENT ENTITIES TO
24 MONITOR COMPLIANCE.—If the parties to an
25 agreement entered into under paragraph (3)(A)

1 enter into a contract with an independent entity
2 from outside the United States Government for
3 the purpose of monitoring compliance with the
4 agreement, the Committee shall take such ac-
5 tion as is necessary to prevent a conflict of in-
6 terest from arising by ensuring that the inde-
7 pendent entity owes no fiduciary duty to the
8 parties.

9 “(F) SUCCESSORS AND ASSIGNS.—Any
10 agreement or condition entered or imposed
11 under paragraph (3)(A) shall be considered
12 binding on all successors and assigns unless
13 and until the agreement or condition terminates
14 on its own terms or is otherwise terminated by
15 the Committee in its sole discretion.

16 “(G) ADDITIONAL COMPLIANCE MEAS-
17 URES.—Subject to subparagraphs (A) through
18 (E), the Committee shall develop and agree
19 upon methods for evaluating compliance with
20 any agreement entered into or condition im-
21 posed with respect to a covered transaction that
22 will allow the Committee to adequately ensure
23 compliance without unnecessarily diverting
24 Committee resources from assessing any new
25 covered transaction for which a written notice

1 under clause (i) of subsection (b)(1)(C) or dec-
2 laration under clause (v) of that subsection has
3 been filed, and if necessary, reaching a mitiga-
4 tion agreement with or imposing a condition on
5 a party to such covered transaction or any cov-
6 ered transaction for which a review has been re-
7 opened for any reason.”.

8 **SEC. 17. MODIFICATION OF ANNUAL REPORT.**

9 Section 721(m) of the Defense Production Act of
10 1950 (50 U.S.C. 4565(m)) is amended—

11 (1) in paragraph (2)—

12 (A) by amending subparagraph (A) to read
13 as follows:

14 “(A) A list of all notices filed and all re-
15 views or investigations of covered transactions
16 completed during the period, with—

17 “(i) a description of the outcome of
18 each review or investigation, including
19 whether an agreement was entered into or
20 condition was imposed under subsection
21 (l)(3)(A) with respect to the transaction
22 being reviewed or investigated, and wheth-
23 er the President took any action under this
24 section with respect to that transaction;

1 “(ii) basic information on each party
2 to each such transaction;

3 “(iii) the nature of the business activi-
4 ties or products of the United States busi-
5 ness with which the transaction was en-
6 tered into or intended to be entered into;
7 and

8 “(iv) information about any with-
9 drawal from the process.”; and

10 (B) by adding at the end the following:

11 “(G) Statistics on compliance plans con-
12 ducted and actions taken by the Committee
13 under subsection (l)(6), including subparagraph
14 (D) of that subsection, during that period and
15 a description of any actions taken by the Com-
16 mittee to impose penalties or initiate a unilat-
17 eral review pursuant to subsection
18 (b)(1)(D)(iii)(I).

19 “(H) Cumulative and, as appropriate,
20 trend information on the number of declara-
21 tions filed under subsection (b)(1)(C)(v), the
22 actions taken by the Committee in response to
23 those declarations, the business sectors involved
24 in those declarations, and the countries involved
25 in those declarations.”;

1 (2) in paragraph (3)—

2 (A) by striking “CRITICAL TECHNOLOGIES”
3 and all that follows through “In order to as-
4 sist” and inserting “CRITICAL TECH-
5 NOLOGIES.—In order to assist”;

6 (B) by striking subparagraph (B); and

7 (C) by redesignating clauses (i) and (ii) as
8 subparagraphs (A) and (B), respectively, and
9 by moving such subparagraphs, as so redesign-
10 nated, 2 ems to the left; and

11 (3) by adding at the end the following:

12 “(4) FORM OF REPORT.—All appropriate por-
13 tions of the annual report under paragraph (1) may
14 be classified. An unclassified version of the report,
15 as appropriate, consistent with safeguarding national
16 security and privacy, shall be made available to the
17 public.”.

18 **SEC. 18. CERTIFICATION OF NOTICES AND INFORMATION.**

19 Section 721(n) of the Defense Production Act of
20 1950 (50 U.S.C. 4565(n)) is amended—

21 (1) by redesignating paragraphs (1) and (2) as
22 subparagraphs (A) and (B), respectively, and by
23 moving such subparagraphs, as so redesignated, 2
24 ems to the right;

1 (2) by striking “Each notice” and inserting the
2 following:

3 “(1) IN GENERAL.—Each notice”;

4 (3) by striking “paragraph (3)(B)” and insert-
5 ing “paragraph (6)(B)”;

6 (4) by striking “paragraph (1)(A)” and insert-
7 ing “paragraph (3)(A)”;

8 (5) by adding at the end the following:

9 “(2) EFFECT OF FAILURE TO SUBMIT.—The
10 Committee may not complete a review under this
11 section of a covered transaction and may recommend
12 to the President that the President suspend or pro-
13 hibit the transaction or require divestment under
14 subsection (d) if the Committee determines that a
15 party to the transaction has—

16 “(A) failed to submit a statement required
17 by paragraph (1); or

18 “(B) included false or misleading informa-
19 tion in a notice or information described in
20 paragraph (1) or omitted material information
21 from such notice or information.

22 “(3) APPLICABILITY OF LAW ON FRAUD AND
23 FALSE STATEMENTS.—The Committee shall pre-
24 scribe regulations expressly providing for the appli-
25 cation of section 1001 of title 18, United States

1 Code, to all information provided to the Committee
2 under this section by any party to a covered trans-
3 action.”.

4 **SEC. 19. IMPLEMENTATION PLANS.**

5 (a) IN GENERAL.—Not later than 180 days after the
6 date of the enactment of this Act, the chairperson of the
7 Committee on Foreign Investment in the United States
8 and the Secretary of Commerce shall, in consultation with
9 the appropriate members of the Committee—

10 (1) develop plans to implement this Act; and

11 (2) submit to the appropriate congressional
12 committees a report on the plans developed under
13 paragraph (1), which shall include a description of—

14 (A) the timeline and process to implement
15 the provisions of, and amendments made by,
16 this Act;

17 (B) any additional staff necessary to im-
18 plement the plans; and

19 (C) the resources required to effectively
20 implement the plans.

21 (b) APPROPRIATE CONGRESSIONAL COMMITTEES
22 DEFINED.—In this section, the term “appropriate con-
23 gressional committees” means—

1 (1) the Committee on Banking, Housing, and
2 Urban Affairs and the Committee on Appropriations
3 of the Senate; and

4 (2) the Committee on Financial Services and
5 the Committee on Appropriations of the House of
6 Representatives.

7 **SEC. 20. ASSESSMENT OF NEED FOR ADDITIONAL RE-**
8 **SOURCES FOR COMMITTEE.**

9 The President shall—

10 (1) determine whether and to what extent the
11 expansion of the responsibilities of the Committee on
12 Foreign Investment in the United States pursuant
13 to the amendments made by this Act necessitates
14 additional resources for the Committee and the de-
15 partments and agencies represented on the Com-
16 mittee to perform their functions under section 721
17 of the Defense Production Act of 1950, as amended
18 by this Act; and

19 (2) if the President determines that additional
20 resources are necessary, include in the budget of the
21 President for fiscal year 2019 and each fiscal year
22 thereafter submitted to Congress under section
23 1105(a) of title 31, United States Code, a request
24 for such additional resources.

1 **SEC. 21. FUNDING.**

2 Section 721 of the Defense Production Act of 1950
3 (50 U.S.C. 4565) is amended by adding at the end the
4 following:

5 “(o) FUNDING.—

6 “(1) ESTABLISHMENT OF FUND.—There is es-
7 tablished in the Treasury of the United States a
8 fund, to be known as the ‘Committee on Foreign In-
9 vestment in the United States Fund’ (in this sub-
10 section referred to as the ‘Fund’), to be adminis-
11 tered by the chairperson.

12 “(2) APPROPRIATION OF FUNDS FOR THE COM-
13 MITTEE.—There are authorized to be appropriated
14 to the Fund such sums as may be necessary to per-
15 form the functions of the Committee.

16 “(3) FILING FEES.—

17 “(A) IN GENERAL.—The Committee may
18 assess and collect a fee in an amount deter-
19 mined by the Committee in regulations, to the
20 extent provided in advance in appropriations
21 Acts, without regard to section 9701 of title 31,
22 United States Code, and subject to subpara-
23 graph (B), with respect to each covered trans-
24 action for which a written notice is submitted to
25 the Committee under subsection (b)(1)(C)(i).

1 “(B) DETERMINATION OF AMOUNT OF
2 FEE.—

3 “(i) IN GENERAL.—In determining
4 the amount of the fee to be assessed under
5 subparagraph (A) with respect to a covered
6 transaction, the Committee shall base the
7 amount of the fee on the value of the
8 transaction, taking into consideration—

9 “(I) the effect of the fee on small
10 business concerns (as defined in sec-
11 tion 3 of the Small Business Act (15
12 U.S.C. 632));

13 “(II) the expenses of the Com-
14 mittee associated with conducting ac-
15 tivities under this section;

16 “(III) the effect of the fee on for-
17 eign investment; and

18 “(IV) such other matters as the
19 Committee considers appropriate.

20 “(ii) UPDATES.—The Committee shall
21 periodically reconsider and adjust the
22 amount of the fee to be assessed under
23 subparagraph (A) with respect to a covered
24 transaction to ensure that the amount of
25 the fee remains appropriate.

1 “(C) DEPOSIT AND AVAILABILITY OF
2 FEES.—Notwithstanding section 3302 of title
3 31, United States Code, fees collected under
4 subparagraph (A) shall—

5 “(i) be deposited into the Fund for
6 use in carrying out activities under this
7 section;

8 “(ii) to the extent and in the amounts
9 provided in advance in appropriations Acts,
10 be available to the chairperson;

11 “(iii) remain available until expended;
12 and

13 “(iv) be in addition to any appropria-
14 tions made available to the members of the
15 Committee.

16 “(4) TRANSFER OF FUNDS.—To the extent pro-
17 vided in advance in appropriations Acts, the chair-
18 person may transfer any amounts in the Fund to
19 any other department or agency represented on the
20 Committee for the purpose of addressing emerging
21 needs in carrying out activities under this section.
22 Amounts so transferred shall be in addition to any
23 other amounts available to that department or agen-
24 cy for that purpose.”.

1 **SEC. 22. CENTRALIZATION OF CERTAIN COMMITTEE FUNC-**
2 **TIONS.**

3 Section 721 of the Defense Production Act of 1950
4 (50 U.S.C. 4565), as amended by section 21, is further
5 amended by adding at the end the following:

6 “(p) CENTRALIZATION OF CERTAIN COMMITTEE
7 FUNCTIONS.—

8 “(1) IN GENERAL.—The chairperson, in con-
9 sultation with the Committee, may centralize certain
10 functions of the Committee within the Department
11 of the Treasury for the purpose of enhancing inter-
12 agency coordination and collaboration in carrying
13 out the functions of the Committee under this sec-
14 tion.

15 “(2) FUNCTIONS.—Functions that may be cen-
16 tralized under paragraph (1) include monitoring
17 non-notified and non-declared transactions pursuant
18 to subsection (b)(1)(H), and other functions as de-
19 termined by the chairperson and the Committee.

20 “(3) RULE OF CONSTRUCTION.—Nothing in
21 this section shall be construed as limiting the au-
22 thority of any department or agency represented on
23 the Committee to represent its own interests before
24 the Committee.”

1 **SEC. 23. CONFORMING AMENDMENTS.**

2 Section 721 of the Defense Production Act of 1950
3 (50 U.S.C. 4565), as amended by this Act, is further
4 amended—

5 (1) in subsection (b)—

6 (A) in paragraph (1)(D)(iii)(I), by striking
7 “subsection (l)(1)(A)” and inserting “sub-
8 section (l)(3)(A)”; and

9 (B) in paragraph (2)(B)(i)(I), by striking
10 “that threat” and inserting “the risk”;

11 (2) in subsection (d)(4)(A), by striking “the
12 foreign interest exercising control” and inserting “a
13 foreign person that would acquire an interest in a
14 United States business or its assets as a result of
15 the covered transaction”; and

16 (3) in subsection (j), by striking “merger, ac-
17 quisition, or takeover” and inserting “transaction”.

18 **SEC. 24. REQUIREMENTS TO IDENTIFY AND CONTROL THE**
19 **EXPORT OF EMERGING AND FOUNDATIONAL**
20 **TECHNOLOGIES.**

21 (a) IDENTIFICATION OF TECHNOLOGIES.—

22 (1) IN GENERAL.—The President shall establish
23 and, in coordination with the Secretary of Com-
24 merce, the Secretary of Defense, the Secretary of
25 Energy, the Secretary of State, and the heads of
26 other Federal agencies as appropriate, lead, a reg-

1 ular, ongoing interagency process to identify emerg-
2 ing and foundational technologies that—

3 (A) are essential to the national security of
4 the United States; and

5 (B) are not critical technologies described
6 in clauses (i) through (v) of section
7 721(a)(8)(B) of the Defense Production Act of
8 1950, as amended by section 3.

9 (2) PROCESS.—The interagency process estab-
10 lished under subsection (a) shall—

11 (A) be informed by multiple sources of in-
12 formation, including—

13 (i) publicly available information;

14 (ii) classified information, including
15 relevant information provided by the Direc-
16 tor of National Intelligence; and

17 (iii) information relating to reviews
18 and investigations of transactions by the
19 Committee on Foreign Investment in the
20 United States under section 721 of the De-
21 fense Production Act of 1950 (50 U.S.C.
22 4565);

23 (B) take into account—

1 (i) the development of emerging and
2 foundational technologies in foreign coun-
3 tries; and

4 (ii) the effect export controls imposed
5 pursuant to this section may have on the
6 development of such technologies in the
7 United States; and

8 (C) include a notice and comment period.

9 (b) COMMERCE CONTROLS.—

10 (1) IN GENERAL.—The Secretary of Commerce
11 shall establish appropriate controls under the Export
12 Administration Regulations on the export, reexport,
13 or in-country transfer of technology identified pursu-
14 ant to subsection (a), including by prescribing addi-
15 tional regulations.

16 (2) LEVELS OF CONTROL.—

17 (A) IN GENERAL.—The Secretary of Com-
18 merce may, in coordination with the Secretary
19 of Defense, the Secretary of State, and the
20 heads of other Federal agencies, as appropriate,
21 specify the level of control to apply under para-
22 graph (1) with respect to the export of tech-
23 nology described in that paragraph, including a
24 requirement for a license or other authorization

1 for the export, reexport, or in-country transfer
2 of that technology.

3 (B) CONSIDERATIONS.—In determining
4 under subparagraph (A) the level of control ap-
5 propriate for technology described in paragraph
6 (1), the Secretary of Commerce shall take into
7 account—

8 (i) lists of countries to which exports
9 from the United States are restricted; and

10 (ii) the potential end uses and end
11 users of the technology.

12 (C) MINIMUM REQUIREMENTS.—At a min-
13 imum, except as provided by paragraph (4), the
14 Secretary of Commerce shall require a license
15 for the export, reexport, or in-country transfer
16 of technology described in paragraph (1) to or
17 in a country subject to an embargo, including
18 an arms embargo, imposed by the United
19 States.

20 (3) REVIEW OF LICENSE APPLICATIONS.—

21 (A) PROCEDURES.—The procedures set
22 forth in Executive Order 12981 (50 U.S.C.
23 4603 note; relating to administration of export
24 controls) or a successor order shall apply to the
25 review of an application for a license or other

1 authorization for the export, reexport, or in-
2 country transfer of technology described in
3 paragraph (1).

4 (B) CONSIDERATION OF INFORMATION RE-
5 LATING TO NATIONAL SECURITY.—In reviewing
6 an application for a license or other authoriza-
7 tion for the export, reexport, or in-country
8 transfer of technology described in paragraph
9 (1), the Secretary of Commerce shall take into
10 account information provided by the Director of
11 National Intelligence regarding any threat to
12 the national security of the United States posed
13 by the proposed export, reexport, or transfer.
14 The Director of National Intelligence shall pro-
15 vide such information on the request of the Sec-
16 retary of Commerce.

17 (C) DISCLOSURES RELATING TO COLLABO-
18 RATIVE ARRANGEMENTS.—In the case of an ap-
19 plication for a license or other authorization for
20 the export, reexport, or in-country transfer of
21 technology described in paragraph (1) sub-
22 mitted by or on behalf of a joint venture, joint
23 development agreement, or similar collaborative
24 arrangement, the Secretary of Commerce may
25 require the applicant to identify, in addition to

1 any foreign person participating in the arrange-
2 ment, any foreign person with significant own-
3 ership interest in a foreign person participating
4 in the arrangement.

5 (4) EXCEPTIONS.—

6 (A) MANDATORY EXCEPTIONS.—The Sec-
7 retary of Commerce may not control under this
8 subsection the export of any technology—

9 (i) described in section 203(b) of the
10 International Emergency Economic Powers
11 Act (50 U.S.C. 1702(b)); or

12 (ii) if the regulation of the export of
13 that technology is prohibited under any
14 other provision of law.

15 (B) REGULATORY EXCEPTIONS.—In pre-
16 scribing regulations under paragraph (1), the
17 Secretary of Commerce may include regulatory
18 exceptions to the requirements of that para-
19 graph.

20 (C) ADDITIONAL EXCEPTIONS.—The Sec-
21 retary of Commerce shall not be required to im-
22 pose under paragraph (1) a requirement for a
23 license or other authorization with respect to
24 the export, reexport, or in-country transfer of

1 technology described in paragraph (1) pursuant
2 to any of the following transactions:

3 (i) The sale or license of a finished
4 item and the provision of associated tech-
5 nology if the United States person that is
6 a party to the transaction generally makes
7 the finished item and associated technology
8 available to its customers, distributors, or
9 resellers.

10 (ii) The sale or license to a customer
11 of a product and the provision of integra-
12 tion services or similar services if the
13 United States person that is a party to the
14 transaction generally makes such services
15 available to its customers.

16 (iii) The transfer of equipment and
17 the provision of associated technology to
18 operate the equipment if the transfer could
19 not result in the foreign person using the
20 equipment to produce critical technologies
21 (as defined in section 721(a) of the De-
22 fense Production Act of 1950, as amended
23 by section 3).

24 (iv) The procurement by the United
25 States person that is a party to the trans-

1 action of goods or services, including man-
2 ufacturing services, from a foreign person
3 that is a party to the transaction, if the
4 foreign person has no rights to exploit any
5 technology contributed by the United
6 States person other than to supply the pro-
7 cured goods or services.

8 (v) Any contribution and associated
9 support by a United States person that is
10 a party to the transaction to an industry
11 organization related to a standard or speci-
12 fication, whether in development or de-
13 clared, including any license of or commit-
14 ment to license intellectual property in
15 compliance with the rules of any standards
16 organization (as defined by the Secretary
17 by regulation).

18 (c) MULTILATERAL CONTROLS.—

19 (1) IN GENERAL.—The Secretary of State, in
20 consultation with the Secretary of Commerce and
21 the Secretary of Defense, and the heads of other
22 Federal agencies, as appropriate, may propose that
23 any technology identified pursuant to subsection (a)
24 be added to the list of technologies controlled by the
25 relevant multilateral export control regimes.

1 (2) ITEMS ON COMMERCE CONTROL LIST OR
2 UNITED STATES MUNITIONS LIST.—

3 (A) IN GENERAL.—If the Secretary of
4 State proposes to a multilateral export control
5 regime under paragraph (1) to add a technology
6 identified pursuant to subsection (a) to the con-
7 trol list of that regime and that regime does not
8 add that technology to the control list during
9 the 3-year period beginning on the date of the
10 proposal, the applicable agency head may deter-
11 mine whether national security concerns war-
12 rant the continuation of unilateral export con-
13 trols with respect to that technology.

14 (B) APPLICABLE AGENCY HEAD DE-
15 FINED.—In this paragraph, the term “applica-
16 ble agency head” means—

17 (i) in the case of technology listed on
18 the Commerce Control List set forth in
19 Supplement No. 1 to part 774 of the Ex-
20 port Administration Regulations, the Sec-
21 retary of Commerce, in consultation with
22 the Secretary of Defense and the Secretary
23 of State; and

24 (ii) in the case of technology listed on
25 the United States Munitions List set forth

1 in part 121 of title 22, Code of Federal
2 Regulations, the Secretary of State, in con-
3 sultation with the Secretary of Defense
4 and the heads of other Federal agencies,
5 as appropriate.

6 (d) REPORT TO COMMITTEE ON FOREIGN INVEST-
7 MENT IN THE UNITED STATES.—Not less frequently than
8 every 180 days, the Secretary of Commerce, in coordina-
9 tion with the Secretary of Defense, the Secretary of State,
10 and the heads of other Federal agencies, as appropriate,
11 shall submit to the Committee on Foreign Investment in
12 the United States a report on the results of actions taken
13 pursuant to this section.

14 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion shall be construed to alter or limit—

16 (1) the authority of the President or the Sec-
17 retary of State to designate items as defense articles
18 and defense services for the purposes of the Arms
19 Export Control Act (22 U.S.C. 2751 et seq.) or to
20 otherwise regulate such items; or

21 (2) the authority of the President under the
22 Atomic Energy Act of 1954 (42 U.S.C. 2011 et
23 seq.), the Nuclear Non-Proliferation Act of 1978 (22
24 U.S.C. 3201 et seq.), the Energy Reorganization Act
25 of 1974 (42 U.S.C. 5801 et seq.), or the Export Ad-

1 ministration Act of 1979 (50 U.S.C. 4601 et seq.)
2 (as continued in effect pursuant to the International
3 Emergency Economic Powers Act (50 U.S.C. 1701
4 et seq.)) or any other provision of law relating to the
5 control of exports.

6 (f) DEFINITIONS.—In this section:

7 (1) EXPORT ADMINISTRATION REGULATIONS.—
8 The term “Export Administration Regulations”
9 means subchapter C of chapter VII of title 15, Code
10 of Federal Regulations.

11 (2) IN-COUNTRY TRANSFER.—The term “in-
12 country transfer” has the meaning given to the term
13 in the Export Administration Regulations.

14 (3) REEXPORT.—The term “reexport” has the
15 meaning given to the term in the Export Adminis-
16 tration Regulations.

17 (4) UNITED STATES PERSON.—The term
18 “United States person” means any person subject to
19 the jurisdiction of the United States.

20 **SEC. 25. EXPORT CONTROL ENFORCEMENT AUTHORITY.**

21 (a) AUTHORITIES.—In order to enforce the Export
22 Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as
23 in continued in effect pursuant to the International Emer-
24 gency Economic Powers Act (50 U.S.C. 1701 et seq.)) (in
25 this section referred to as the “Export Administration Act

1 of 1979”), the President shall delegate to the Secretary
2 of Commerce the authority to—

3 (1) issue regulations, orders, and guidelines;

4 (2) require, inspect, and obtain books, records,
5 and any other information from any person;

6 (3) administer oaths or affirmations and by
7 subpoena require any person to appear and testify or
8 to appear and produce books, records, and other
9 writings, or both; and

10 (4) authorize any law enforcement officer of the
11 Department of Commerce to—

12 (A) conduct investigations (including un-
13 dercover) in the United States and in other
14 countries using all applicable laws of the United
15 States, including intercepting any wire, oral,
16 and electronic communications, conducting elec-
17 tronic surveillance, using pen registers and trap
18 and trace devices, and carrying out acquisitions,
19 to the extent authorized under chapters 119,
20 121, and 206 of title 18, United States Code;

21 (B) inspect, search, detain, seize, or issue
22 temporary denial orders with respect to items,
23 in any form, that are subject to controls under
24 the Export Administration Act of 1979, or con-
25 veyances on which it is believed that there are

1 items that have been, are being, or are about to
2 be exported, reexported, or transferred in viola-
3 tion of that Act;

4 (C) carry firearms;

5 (D) conduct prelicense inspections and
6 post-shipment verifications; and

7 (E) execute warrants and make arrests.

8 (b) ENFORCEMENT OF SUBPOENAS.—In the case of
9 contumacy by, or refusal to obey a subpoena issued to,
10 any person under subsection (a)(3), an appropriate dis-
11 trict court of the United States, after notice to the person
12 and a hearing, shall have jurisdiction to issue an order
13 requiring the person to appear and give testimony or to
14 appear and produce books, records, and other writings, re-
15 gardless of format, that are the subject of the subpoena.
16 Any failure to obey such an order of the court may be
17 punished by the court as a contempt thereof.

18 (c) BEST PRACTICE GUIDELINES.—The Secretary of
19 Commerce, in consultation with the heads of appropriate
20 Federal agencies, may publish and update best practices
21 guidelines to assist persons in developing and imple-
22 menting, on a voluntary basis, effective export control pro-
23 grams in compliance with regulations issued under the Ex-
24 port Administration Act of 1979.

1 (d) REFERENCE TO ENFORCEMENT.—For purposes
2 of this section, a reference to the enforcement of, or a vio-
3 lation of, the Export Administration Act of 1979 includes
4 a reference to the enforcement or a violation of any regula-
5 tion, order, license, or other authorization issued pursuant
6 to that Act.

7 (e) IMMUNITY.—A person shall not be excused from
8 complying with any requirements under this section be-
9 cause of the person’s privilege against self-incrimination,
10 but the immunity provisions of section 6002 of title 18,
11 United States Code, shall apply with respect to any indi-
12 vidual who specifically claims such privilege.

13 (f) CONFIDENTIALITY OF INFORMATION.—

14 (1) EXEMPTIONS FROM DISCLOSURE.—

15 (A) IN GENERAL.—Information obtained
16 under the Export Administration Act of 1979
17 may be withheld from disclosure only to the ex-
18 tent permitted by statute, except that informa-
19 tion described in subparagraph (B) shall be
20 withheld from public disclosure and shall not be
21 subject to disclosure under section 552(b)(3) of
22 title 5, United States Code, unless the release
23 of such information is determined by the Sec-
24 retary to be in the national interest.

1 (B) INFORMATION DESCRIBED.—Informa-
2 tion described in this subparagraph is informa-
3 tion submitted or obtained in connection with
4 an application for a license or other authoriza-
5 tion to export, reexport, or transfer items or en-
6 gage in other activities, a recordkeeping or re-
7 porting requirement, enforcement activity, or
8 other operations under the Export Administra-
9 tion Act of 1979, including—

10 (i) the license application, license, or
11 other authorization itself;

12 (ii) classification or advisory opinion
13 requests, and any response to such a re-
14 quest;

15 (iii) license determinations and infor-
16 mation pertaining to such determinations;

17 (iv) information or evidence obtained
18 in the course of any investigation; and

19 (v) information obtained or furnished
20 in connection with any international agree-
21 ment, treaty, or other obligation.

22 (2) INFORMATION TO CONGRESS AND GAO.—

23 (A) IN GENERAL.—Nothing in this section
24 shall be construed as authorizing the with-

1 holding of information from Congress or the
2 Comptroller General of the United States.

3 (B) AVAILABILITY TO CONGRESS.—

4 (i) IN GENERAL.—Any information
5 obtained at any time under any provision
6 of the Export Administration Act of 1979
7 or the Export Administration Regulations
8 under subchapter C of chapter VII of title
9 15, Code of Federal Regulations, including
10 any report or license application required
11 under any such provision, shall be made
12 available to a committee or subcommittee
13 of Congress of appropriate jurisdiction,
14 upon the request of the chairman or rank-
15 ing member of the committee or sub-
16 committee.

17 (ii) PROHIBITION ON FURTHER DIS-
18 CLOSURE.—No committee or subcommittee
19 referred to in clause (i), or member there-
20 of, may disclose any information made
21 available under clause (i) that is submitted
22 on a confidential basis unless the full com-
23 mittee determines that the withholding of
24 that information is contrary to the national
25 interest.

1 (C) AVAILABILITY TO GAO.—

2 (i) IN GENERAL.—Information de-
3 scribed in subparagraph (B)(i) shall be
4 subject to the limitations contained in sec-
5 tion 716 of title 31, United States Code.

6 (ii) PROHIBITION ON FURTHER DIS-
7 CLOSURE.—An officer or employee of the
8 Government Accountability Office may not
9 disclose, except to Congress in accordance
10 with this paragraph, any information de-
11 scribed in subparagraph (B)(i) that is sub-
12 mitted on a confidential basis or from
13 which any individual can be identified.

14 (3) INFORMATION SHARING.—

15 (A) IN GENERAL.—Any Federal depart-
16 ment, agency, or office that obtains information
17 that is relevant to the enforcement of the Ex-
18 port Administration Act of 1979, including in-
19 formation pertaining to any investigation, shall
20 furnish such information to each appropriate
21 department, agency, or office with enforcement
22 responsibilities under the Export Administra-
23 tion Act of 1979 to the extent consistent with
24 the protection of intelligence, counterintel-

1 ligence, and law enforcement sources, methods,
2 and activities.

3 (B) EXCEPTIONS.—The provisions of this
4 paragraph shall not apply to information sub-
5 ject to the restrictions set forth in section 9 of
6 title 13, United States Code. Return informa-
7 tion, as defined in section 6103(b) of the Inter-
8 nal Revenue Code of 1986, may be disclosed
9 only as authorized by that section.

10 (C) INFORMATION SHARING WITH FED-
11 ERAL AGENCIES.—Licensing or enforcement in-
12 formation obtained under the Export Adminis-
13 tration Act of 1979 may be shared with heads
14 of departments, agencies, and offices that do
15 not have enforcement authorities under that
16 Act on a case-by-case basis, at the discretion of
17 the Secretary of Commerce. Such information
18 may be shared only when the Secretary makes
19 a determination that the sharing of the infor-
20 mation is in the national interest.

21 (g) REPORTING REQUIREMENTS.—In the administra-
22 tion of this section, reporting requirements shall be de-
23 signed to reduce the cost of reporting, recordkeeping, and
24 documentation to the extent consistent with effective en-
25 forcement and compilation of useful trade statistics. Re-

1 porting, recordkeeping, and documentation requirements
2 shall be periodically reviewed and revised in the light of
3 developments in the field of information technology.

4 (h) CIVIL FORFEITURE.—

5 (1) IN GENERAL.—Any tangible items seized
6 under subsection (a) by a law enforcement officer of
7 the Department of Commerce shall be subject to for-
8 feiture to the United States in accordance with ap-
9 plicable law, except that property seized shall be re-
10 turned if the property owner is not found guilty of
11 a civil or criminal violation under the Export Admin-
12 istration Act of 1979.

13 (2) PROCEDURES.—Any seizure or forfeiture
14 under this subsection shall be carried out in accord-
15 ance with the procedures set forth in section 981 of
16 title 18, United States Code.

17 **SEC. 26. UNDER SECRETARY OF COMMERCE FOR INDUSTRY**
18 **AND SECURITY.**

19 (a) IN GENERAL.—On and after the date of the en-
20 actment of this Act, any reference in the Export Adminis-
21 tration Act of 1979 (50 U.S.C. 4601 et seq.) or any other
22 law or regulation to the Under Secretary of Commerce for
23 Export Administration shall be deemed to be a reference
24 to the Under Secretary of Commerce for Industry and Se-
25 curity.

1 (b) TITLE 5.—Section 5314 of title 5, United States
2 Code, is amended by striking “Under Secretary of Com-
3 merce for Export Administration” and inserting “Under
4 Secretary of Commerce for Industry and Security”.

5 (c) CONTINUATION IN OFFICE.—The individual serv-
6 ing as Under Secretary of Commerce for Export Adminis-
7 tration on the day before the date of the enactment of
8 this Act may serve as the Under Secretary of Commerce
9 for Industry and Security on and after that date without
10 the need for renomination or reappointment.

11 **SEC. 27. LIMITATION ON CANCELLATION OF DESIGNATION**
12 **OF SECRETARY OF THE AIR FORCE AS DE-**
13 **PARTMENT OF DEFENSE EXECUTIVE AGENT**
14 **FOR A CERTAIN DEFENSE PRODUCTION ACT**
15 **PROGRAM.**

16 (a) LIMITATION ON CANCELLATION OF DESIGNA-
17 TION.—The Secretary of Defense may not implement the
18 decision, issued on July 1, 2017, to cancel the designation,
19 under Department of Defense Directive 4400.01E, enti-
20 tled “Defense Production Act Programs” and dated Octo-
21 ber 12, 2001, of the Secretary of the Air Force as the
22 Department of Defense Executive Agent for the program
23 carried out under title III of the Defense Production Act
24 of 1950 (50 U.S.C. 4531 et seq.) until the date specified
25 in subsection (c).

1 (b) DESIGNATION.—The Secretary of the Air Force
2 shall continue to serve as the sole and exclusive Depart-
3 ment of Defense Executive Agent for the program de-
4 scribed in subsection (a) until the date specified in sub-
5 section (c).

6 (c) DATE SPECIFIED.—The date specified in this
7 subsection is the date of the enactment of a joint resolu-
8 tion or an Act approving the implementation of the deci-
9 sion described in subsection (a).

10 **SEC. 28. REVIEW OF AND REPORT ON CERTAIN DEFENSE**
11 **TECHNOLOGIES CRITICAL TO THE UNITED**
12 **STATES MAINTAINING SUPERIOR MILITARY**
13 **CAPABILITIES.**

14 (a) REVIEW REQUIRED.—Not later than 180 days
15 after the date of the enactment of this Act, the Secretary
16 of Defense and the Director of National Intelligence, in
17 consultation with the Air Force Research Laboratory, the
18 Defense Advanced Projects Research Agency, and such
19 other appropriate research entities as the Secretary and
20 the Director may identify, shall—

21 (1) jointly carry out and complete a review of
22 key national security technology capability advan-
23 tages, competitions, and gaps between the United
24 States and “near peer” nations;

1 (2) develop a definition of “near peer nation”
2 for purposes of paragraph (1); and

3 (3) submit to the appropriate congressional
4 committees a report on the findings of the Secretary
5 and the Director with respect to the review con-
6 ducted under paragraph (1).

7 (b) ELEMENTS.—The review conducted under para-
8 graph (1) of subsection (a), and the report required by
9 paragraph (3) of that subsection, shall identify, at a min-
10 imum, the following:

11 (1) Key United States industries and research
12 and development activities expected to be critical to
13 maintaining a national security technology capability
14 if, during the 5-year period beginning on the date of
15 the enactment of this Act, the Secretary and the Di-
16 rector anticipate that—

17 (A) a United States industrial base short-
18 fall will exist; and

19 (B) United States industry will be unable
20 to or otherwise will not provide the needed ca-
21 pacity in a timely manner without financial as-
22 sistance from the United States Government
23 through existing statutory authorities specifi-
24 cally intended for that purpose, including as-
25 sistance provided under title III of the Defense

1 Production Act of 1950 (50 U.S.C. 4531 et
2 seq.) and other appropriate authorities.

3 (2) Key areas in which the United States cur-
4 rently enjoys a technological advantage.

5 (3) Key areas in which the United States no
6 longer enjoys a technological advantage.

7 (4) Sectors of the defense industrial base in
8 which the United States lacks adequate productive
9 capacity to meet critical national defense needs.

10 (5) Priority areas for which appropriate statu-
11 tory industrial base incentives should be applied as
12 the most cost-effective, expedient, and practical al-
13 ternative for meeting the technology or defense in-
14 dustrial base needs identified under this subsection,
15 including—

16 (A) sustainment of critical production and
17 supply chain capabilities;

18 (B) commercialization of research and de-
19 velopment investments;

20 (C) scaling of emerging technologies; and

21 (D) other areas as determined by the Sec-
22 retary and the Director.

23 (6) Priority funding recommendations with re-
24 spect to key areas that the Secretary determines
25 are—

1 (A) critical to the United States maintain-
2 ing superior military capabilities, especially with
3 respect to potential peer and near peer military
4 or economic competitors, during the 5-year pe-
5 riod beginning on the date of the enactment of
6 this Act; and

7 (B) suitable for long-term investment from
8 funds made available under title III of the De-
9 fense Production Act of 1950 and other appro-
10 priate statutory authorities.

11 (c) FORM OF REPORT.—The report required by sub-
12 section (a)(3) shall be submitted in unclassified form, but
13 may include a classified annex.

14 (d) APPROPRIATE CONGRESSIONAL COMMITTEES
15 DEFINED.—In this section, the term “appropriate con-
16 gressional committees” means—

17 (1) the Committee on Banking, Housing and
18 Urban Affairs and the Committee on Armed Serv-
19 ices of the Senate; and

20 (2) the Committee on Financial Services and
21 the Committee on Armed Services of the House of
22 Representatives.

23 **SEC. 29. EFFECTIVE DATE.**

24 (a) IMMEDIATE APPLICABILITY OF CERTAIN PROVI-
25 SIONS.—The following shall take effect on the date of the

1 enactment of this Act and apply with respect to any cov-
2 ered transaction the review or investigation of which is ini-
3 tiated under section 721 of the Defense Production Act
4 of 1950 on or after such date of enactment:

5 (1) Sections 4, 6, 7, 8, 9, 12, 13, 14, 15, 16,
6 18,19, 20, 22, 23, 24, 25, 26, and 27 and the
7 amendments made by those sections.

8 (2) Section 11 and the amendments made by
9 that section (except for clause (iii) of section
10 721(b)(4)(A) of the Defense Production Act of
11 1950, as added by section 11).

12 (3) Paragraphs (1), (2), (3), (4), (5)(A)(i),
13 (5)(B)(i), (5)(C)(v), (6), (7), (8), (9), (10), (11),
14 (12), (13), (14), (15), (16), and (17) of subsection
15 (a) of section 721 of the Defense Production Act of
16 1950, as amended by section 3.

17 (4) Section 721(m)(4) of the Defense Produc-
18 tion Act of 1950, as amended by section 17.

19 (5) Paragraphs (1), (2), and (4) of subsection
20 (o) of section 721 of the Defense Production Act of
21 1950, as amended by section 21.

22 (b) DELAYED APPLICABILITY OF CERTAIN PROVI-
23 SIONS.—

1 (1) IN GENERAL.—Any provision of or amend-
2 ment made by this Act not specified in subsection
3 (a) shall—

4 (A) take effect on the date that is 30 days
5 after publication in the Federal Register of a
6 determination by the chairperson of the Com-
7 mittee on Foreign Investment in the United
8 States that the regulations, organizational
9 structure, personnel, and other resources nec-
10 essary to administer the new provisions are in
11 place; and

12 (B) apply with respect to any covered
13 transaction the review or investigation of which
14 is initiated under section 721 of the Defense
15 Production Act of 1950 on or after the date de-
16 scribed in subparagraph (A).

17 (2) NONDELEGATION OF DETERMINATION.—
18 The determination of the chairperson of the Com-
19 mittee on Foreign Investment in the United States
20 under paragraph (1)(A) may not be delegated.

21 (c) AUTHORIZATION FOR PILOT PROGRAMS.—

22 (1) IN GENERAL.—Beginning on the date of the
23 enactment of this Act and ending on the date de-
24 scribed in subsection (b)(1)(A), the Committee on
25 Foreign Investment in the United States may, at its

1 discretion, conduct one or more pilot programs to
2 implement any authority provided pursuant to any
3 provision of or amendment made by this Act not
4 specified in subsection (a).

5 (2) PUBLICATION IN FEDERAL REGISTER.—A
6 pilot program may not commence until the date that
7 is 30 days after publication in the Federal Register
8 of a determination by the chairperson of the Com-
9 mittee of the scope of and procedures for the pilot
10 program. That determination may not be delegated.

11 **SEC. 30. SEVERABILITY.**

12 If any provision of this Act or an amendment made
13 by this Act, or the application of such a provision or
14 amendment to any person or circumstance, is held to be
15 invalid, the application of that provision or amendment to
16 other persons or circumstances and the remainder of the
17 provisions of this Act and the amendments made by this
18 Act, shall not be affected thereby.