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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.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 2017

Mr. CORNYN (for himself, Mrs. FEINSTEIN, Mr. BURR, Mr. PETERS, Mr. RUBIO, Ms. KLOBUCHAR, Mr. SCOTT, Mr. BARRASSO, Mr. MANCHIN, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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 2017”.

- 3 SEC. 2. SENSE OF CONGRESS.

4 It is the sense of Congress that—

(1) foreign investment provides substantial economic benefits to the United States, including the promotion of economic growth, productivity, competitiveness, and job creation, and the majority of foreign investment transactions pose little or no risk to the national security of the United States, especially when those investments are truly passive in nature;

1 (2) maintaining the commitment of the United
2 States to open and fair investment policy also en-
3 courages other countries to reciprocate and helps
4 open new foreign markets for United States busi-
5 nesses and their products;

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

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

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

1 (6) the President should conduct a more robust
 2 international outreach effort to urge and help allies
 3 and partners of the United States to establish proc-
 4 esses that parallel the Committee on Foreign Invest-
 5 ment in the United States to screen foreign invest-
 6 ments for national security risks and to facilitate co-
 7 ordination; and

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

16 **SEC. 3. DEFINITIONS.**

17 Section 721(a) of the Defense Production Act of
 18 1950 (50 U.S.C. 4565(a)) is amended to read as follows:

19 “(a) DEFINITIONS.—In this section:

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

23 “(2) COMMITTEE; CHAIRPERSON.—The terms
 24 ‘Committee’ and ‘chairperson’ mean the Committee

1 on Foreign Investment in the United States and the
2 chairperson thereof, respectively.

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

7 “(4) COUNTRY OF SPECIAL CONCERN.—

8 “(A) IN GENERAL.—The term ‘country of
9 special concern’ means a country that poses a
10 significant threat to the national security inter-
11 ests of the United States.

12 “(B) RULE OF CONSTRUCTION.—This
13 paragraph shall not be construed to require the
14 Committee to maintain a list of countries of
15 special concern.

16 “(5) COVERED TRANSACTION.—

17 “(A) IN GENERAL.—Except as otherwise
18 provided, the term ‘covered transaction’ means
19 any transaction described in subparagraph (B)
20 that is proposed, pending, or completed on or
21 after the date of the enactment of the Foreign
22 Investment Risk Review Modernization Act of
23 2017.

1 “(B) TRANSACTIONS DESCRIBED.—A
2 transaction described in this subparagraph is
3 any of the following:

4 “(i) Any merger, acquisition, or take-
5 over that is proposed or pending after Au-
6 gust 23, 1988, by or with any foreign per-
7 son that could result in foreign control of
8 any United States business.

9 “(ii) The purchase or lease by a for-
10 eign person of private or public real estate
11 that—

12 “(I) is located in the United
13 States and is in close proximity to a
14 United States military installation or
15 to another facility or property of the
16 United States Government that is
17 sensitive for reasons relating to na-
18 tional security; and

19 “(II) meets such other criteria as
20 the Committee prescribes by regula-
21 tion.

22 “(iii) Any other investment (other
23 than passive investment) by a foreign per-
24 son in any United States critical tech-
25 nology company or United States critical

1 infrastructure company, subject to regula-
2 tions prescribed under subparagraph (C).

3 “(iv) Any change in the rights that a
4 foreign person has with respect to a United
5 States business in which the foreign person
6 has an investment, if that change could re-
7 sult in—

8 “(I) foreign control of the United
9 States business; or

10 “(II) an investment described in
11 clause (iii).

12 “(v) The contribution (other than
13 through an ordinary customer relationship)
14 by a United States critical technology com-
15 pany of both intellectual property and as-
16 sociated support to a foreign person
17 through any type of arrangement, such as
18 a joint venture, subject to regulations pre-
19 scribed under subparagraph (C).

20 “(vi) Any other transaction, transfer,
21 agreement, or arrangement the structure
22 of which is designed or intended to evade
23 or circumvent the application of this sec-
24 tion, subject to regulations prescribed by
25 the Committee.

1 “(C) FURTHER DEFINITION THROUGH
2 REGULATIONS.—

3 “(i) CERTAIN INVESTMENTS AND
4 CONTRIBUTIONS.—The Committee shall
5 prescribe regulations further defining cov-
6 ered transactions described in clauses (iii)
7 and (v) of subparagraph (B) by reference
8 to the technology, sector, subsector, trans-
9 action type, or other characteristics of such
10 transactions.

11 “(ii) EXEMPTION FOR TRANSACTIONS
12 FROM IDENTIFIED COUNTRIES.—The Com-
13 mittee may, by regulation, define cir-
14 cumstances in which a transaction other-
15 wise described in clause (ii), (iii), or (v) of
16 subparagraph (B) is excluded from the def-
17 inition of ‘covered transaction’ if each for-
18 eign person that is a party to the trans-
19 action is organized under the laws of, or
20 otherwise subject to the jurisdiction of, a
21 country identified by the Committee for
22 purposes of this clause based on criteria
23 such as—

1 “(I) whether the United States
2 has in effect with that country a mu-
3 tual defense treaty;

4 “(II) whether the United States
5 has in effect with that country a mu-
6 tual arrangement to safeguard na-
7 tional security as it pertains to foreign
8 investment;

9 “(III) the national security re-
10 view process for foreign investment of
11 that country; and

12 “(IV) any other criteria that the
13 Committee determines to be appro-
14 priate.

15 “(iii) EXEMPTION OF CERTAIN CON-
16 TRIBUTIONS.—The Committee may, by
17 regulation, define circumstances in which
18 contributions otherwise described in sub-
19 paragraph (B)(v) are excluded from the
20 term ‘covered transaction’ on the basis of
21 a determination that other provisions of
22 law are adequate to identify and address
23 any potential national security risks posed
24 by such contributions.

1 “(iv) TRANSFERS OF CERTAIN ASSETS
 2 PURSUANT TO BANKRUPTCY PROCEEDINGS
 3 OR OTHER DEFAULTS.—The Committee
 4 shall prescribe regulations to clarify that
 5 the term ‘covered transaction’ includes any
 6 transaction described in subparagraph (B)
 7 that arises pursuant to a bankruptcy pro-
 8 ceeding or other form of default on debt.

9 “(D) PASSIVE INVESTMENT DEFINED.—

10 “(i) IN GENERAL.—For purposes of
 11 subparagraph (B)(iii), the term ‘passive in-
 12 vestment’ means an investment by a for-
 13 eign person in a United States business—

14 “(I) that is not described in sub-
 15 paragraph (B)(i);

16 “(II) that does not afford the
 17 foreign person—

18 “(aa) access to any non-
 19 public technical information in
 20 the possession of the United
 21 States business;

22 “(bb) access to any nontech-
 23 nical information in the posses-
 24 sion of the United States busi-

1 ness that is not available to all
2 investors;

3 “(cc) membership or ob-
4 server rights on the board of di-
5 rectors or equivalent governing
6 body of the United States busi-
7 ness or the right to nominate an
8 individual to such a position; or

9 “(dd) any involvement, other
10 than through voting of shares, in
11 substantive decisionmaking per-
12 taining to any matter involving
13 the United States business;

14 “(III) under which the foreign
15 person and the United States business
16 do not have a parallel strategic part-
17 nership or other material financial re-
18 lationship, as described in regulations
19 prescribed by the Committee; and

20 “(IV) that meets such other cri-
21 teria as the Committee may prescribe
22 by regulation.

23 “(ii) NONPUBLIC TECHNICAL INFOR-
24 MATION DEFINED.—For purposes of clause

1 (i)(II)(aa), the term ‘nonpublic technical
2 information’—

3 “(I) has the meaning given that
4 term in regulations prescribed by the
5 Committee; and

6 “(II) includes information (either
7 by itself or in conjunction with other
8 information to which a foreign person
9 may have access)—

10 “(aa) without which critical
11 technologies cannot be designed,
12 developed, tested, produced, or
13 manufactured; and

14 “(bb) in a quantity suffi-
15 cient to permit the design, devel-
16 opment, testing, production, or
17 manufacturing of such tech-
18 nologies.

19 “(iii) NONTECHNICAL INFORMATION
20 DEFINED.—For purposes of clause
21 (i)(II)(bb), the term ‘nontechnical informa-
22 tion’ has the meaning given that term in
23 regulations prescribed by the Committee.

24 “(iv) EFFECT OF LEVEL OF OWNER-
25 SHIP INTEREST.—A determination of

1 whether an investment is a passive invest-
2 ment under clause (i) shall be made with-
3 out regard to how low the level of owner-
4 ship interest a foreign person would hold
5 or acquire in a United States business
6 would be as a result of the investment. The
7 Committee may prescribe regulations speci-
8 fying that any investment greater than a
9 certain level or amount would not be con-
10 sidered a passive investment.

11 “(v) REGULATIONS.—The Committee
12 shall prescribe regulations providing guid-
13 ance on the types of transactions that the
14 Committee considers to be passive invest-
15 ment.

16 “(E) ASSOCIATED SUPPORT DEFINED.—
17 For purposes of subparagraph (B)(v), the term
18 ‘associated support’ has the meaning given that
19 term in regulations prescribed by the Com-
20 mittee.

21 “(F) UNITED STATES CRITICAL INFRA-
22 STRUCTURE COMPANY DEFINED.—For purposes
23 of subparagraph (B), the term ‘United States
24 critical infrastructure company’ means a United
25 States business that is, owns, operates, or pri-

1 marily provides services to, an entity or entities
2 that operate within a critical infrastructure sec-
3 tor or subsector, as defined by regulations pre-
4 scribed by the Committee.

5 “(G) UNITED STATES CRITICAL TECH-
6 NOLOGY COMPANY.—For purposes of subpara-
7 graph (B), the term ‘United States critical
8 technology company’ means a United States
9 business that produces, trades in, designs, tests,
10 manufactures, services, or develops one or more
11 critical technologies, or a subset of such tech-
12 nologies, as defined by regulations prescribed by
13 the Committee.

14 “(6) CRITICAL INFRASTRUCTURE.—The term
15 ‘critical infrastructure’ means, subject to regulations
16 prescribed by the Committee, systems and assets,
17 whether physical or virtual, so vital to the United
18 States that the incapacity or destruction of such sys-
19 tems or assets would have a debilitating impact on
20 national security.

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

25 “(8) CRITICAL TECHNOLOGIES.—

1 “(A) IN GENERAL.—The term ‘critical
2 technologies’ means technology, components, or
3 technology items that are essential or could be
4 essential to national security, identified for pur-
5 poses of this section pursuant to regulations
6 prescribed by the Committee.

7 “(B) INCLUSION OF CERTAIN ITEMS.—The
8 term ‘critical technologies’ includes the fol-
9 lowing:

10 “(i) Defense articles or defense serv-
11 ices included on the United States Muni-
12 tions List set forth in the International
13 Traffic in Arms Regulations under sub-
14 chapter M of chapter I of title 22, Code of
15 Federal Regulations.

16 “(ii) Items included on the Commerce
17 Control List set forth in Supplement No. 1
18 to part 774 of the Export Administration
19 Regulations under subchapter C of chapter
20 VII of title 15, Code of Federal Regula-
21 tions, and controlled—

22 “(I) pursuant to multilateral re-
23 gimes, including for reasons relating
24 to national security, chemical and bio-
25 logical weapons proliferation, nuclear

1 nonproliferation, or missile tech-
2 nology; or

3 “(II) for reasons relating to re-
4 gional stability or surreptitious listen-
5 ing.

6 “(iii) Specially designed and prepared
7 nuclear equipment, parts and components,
8 materials, software, and technology covered
9 by part 810 of title 10, Code of Federal
10 Regulations (relating to assistance to for-
11 eign atomic energy activities).

12 “(iv) Nuclear facilities, equipment,
13 and material covered by part 110 of title
14 10, Code of Federal Regulations (relating
15 to export and import of nuclear equipment
16 and material).

17 “(v) Select agents and toxins covered
18 by part 331 of title 7, Code of Federal
19 Regulations, part 121 of title 9 of such
20 Code, or part 73 of title 42 of such Code.

21 “(vi) Other emerging technologies
22 that could be essential for maintaining or
23 increasing the technological advantage of
24 the United States over countries of special
25 concern with respect to national defense,

1 intelligence, or other areas of national se-
2 curity, or gaining such an advantage over
3 such countries in areas where such an ad-
4 vantage may not currently exist.

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

12 “(10) INTELLECTUAL PROPERTY.—The term
13 ‘intellectual property’ has the meaning given that
14 term in regulations prescribed by the Committee.

15 “(11) INTELLIGENCE COMMUNITY.—The term
16 ‘intelligence community’ has the meaning given that
17 term in section 3(4) of the National Security Act of
18 1947 (50 U.S.C. 3003(4)).

19 “(12) INVESTMENT.—The term ‘investment’
20 means the acquisition of equity interest, including
21 contingent equity interest, as further defined in reg-
22 ulations prescribed by the Committee.

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

1 “(14) MALICIOUS CYBER-ENABLED ACTIVI-
2 TIES.—The term ‘malicious cyber-enabled activities’
3 means any acts—

4 “(A) primarily accomplished through or fa-
5 cilitated by computers or other electronic de-
6 vices;

7 “(B) that are reasonably likely to result in,
8 or materially contribute to, a significant threat
9 to the national security of the United States;
10 and

11 “(C) that have the purpose or effect of—

12 “(i) significantly compromising the
13 provision of services by one or more enti-
14 ties in a critical infrastructure sector;

15 “(ii) harming, or otherwise signifi-
16 cantly compromising the provision of serv-
17 ices by, a computer or network of com-
18 puters that support one or more such enti-
19 ties;

20 “(iii) causing a significant disruption
21 to the availability of a computer or net-
22 work of computers; or

23 “(iv) causing a significant misappro-
24 priation of funds or economic resources,

1 trade secrets, personally identifiable infor-
 2 mation, or financial information.

3 “(15) NATIONAL SECURITY.—The term ‘na-
 4 tional security’ shall be construed so as to include
 5 those issues relating to ‘homeland security’, includ-
 6 ing its application to critical infrastructure.

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

10 “(17) UNITED STATES.—The term ‘United
 11 States’ means the several States, the District of Co-
 12 lumbia, and any territory or possession of the
 13 United States.

14 “(18) UNITED STATES BUSINESS.—The term
 15 ‘United States business’ means a person engaged in
 16 interstate commerce in the United States.”.

17 **SEC. 4. INCLUSION OF PARTNERSHIP AND SIDE AGREE-**
 18 **MENTS IN NOTICE.**

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

22 “(iv) INCLUSION OF PARTNERSHIP
 23 AND SIDE AGREEMENTS.—A written notice
 24 submitted under clause (i) by a party to a
 25 covered transaction shall include a copy of

any partnership agreements, integration agreements, or other side agreements relating to the transaction, including any such agreements relating to the transfer of intellectual property, as specified in regulations prescribed by the Committee.”.

SEC. 5. DECLARATIONS RELATING TO CERTAIN COVERED TRANSACTIONS.

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

“(v) DECLARATIONS RELATING TO CERTAIN COVERED TRANSACTIONS.—

“(I) VOLUNTARY DECLARATIONS.—Except as provided in this clause, a party to any covered transaction may submit to the Committee a declaration with basic information regarding the transaction instead of a written notice under clause (i).

“(II) MANDATORY DECLARATIONS.—

“(aa) CERTAIN COVERED TRANSACTIONS WITH FOREIGN GOVERNMENT INTERESTS.—The

1 parties to a covered transaction
2 shall submit a declaration de-
3 scribed in subclause (I) with re-
4 spect to the transaction if the
5 transaction involves the acquisi-
6 tion of a voting interest of at
7 least 25 percent in a United
8 States business by a foreign per-
9 son in which a foreign govern-
10 ment owns, directly or indirectly,
11 at least a 25-percent voting inter-
12 est.

13 “(bb) OTHER DECLARA-
14 TIONS REQUIRED BY COM-
15 MITTEE.—The Committee shall
16 require the submission of a dec-
17 laration described in subclause
18 (I) with respect to any covered
19 transaction identified under regu-
20 lations prescribed by the Com-
21 mittee for purposes of this item,
22 at the discretion of the Com-
23 mittee and based on appropriate
24 factors, such as—

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

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

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

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

1 “(dd) TIMING OF SUBMIS-
2 SION.—

3 “(AA) IN GENERAL.—A
4 declaration required to be
5 submitted with respect to a
6 covered transaction by item
7 (aa) or (bb) shall be sub-
8 mitted not later than 45
9 days before the completion
10 of the transaction.

11 “(BB) WRITTEN NO-
12 TICE.—If, pursuant to item
13 (cc), the parties to a covered
14 transaction elect to submit a
15 written notice under clause
16 (i) instead of a declaration
17 under this subclause, the
18 written notice shall be filed
19 not later than 90 days be-
20 fore the completion of the
21 transaction.

22 “(III) PENALTIES.—The Com-
23 mittee may impose a penalty pursuant
24 to subsection (h)(3) with respect to a

1 party that fails to comply with this
2 clause.

3 “(IV) COMMITTEE RESPONSE TO
4 DECLARATION.—

5 “(aa) IN GENERAL.—Upon
6 receiving a declaration under this
7 clause with respect to a trans-
8 action, the Committee may, at its
9 discretion—

10 “(AA) request that the
11 parties to the transaction
12 file a written notice under
13 clause (i);

14 “(BB) inform the par-
15 ties to the transaction that
16 the Committee is not able to
17 complete action under this
18 section with respect to the
19 transaction on the basis of
20 the declaration and that the
21 parties may file a written
22 notice under clause (i) to
23 seek written notification
24 from the Committee that the
25 Committee has completed all

1 action under this section
2 with respect to the trans-
3 action;

4 “(CC) initiate a unilat-
5 eral review of the trans-
6 action under subparagraph
7 (D); or

8 “(DD) notify the par-
9 ties in writing that the Com-
10 mittee has completed all ac-
11 tion under this section with
12 respect to the transaction.

13 “(bb) TIMING.—The Com-
14 mittee shall endeavor to take ac-
15 tion under item (aa) within 30
16 days of receiving a declaration
17 under this clause.

18 “(cc) RULE OF CONSTRUC-
19 TION.—Nothing in this subclause
20 (other than item (aa)(CC)) shall
21 be construed to affect the author-
22 ity of the President or the Com-
23 mittee to take any action author-
24 ized by this section with respect
25 to a covered transaction.

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

10 **SEC. 6. STIPULATIONS REGARDING TRANSACTIONS.**

11 Section 721(b)(1)(C) of the Defense Production Act
 12 of 1950 (50 U.S.C. 4565(b)(1)(C)), as amended by section
 13 5, is further amended by adding at the end the following:

14 “(vi) STIPULATIONS REGARDING
 15 TRANSACTIONS.—

16 “(I) IN GENERAL.—In a written
 17 notice submitted under clause (i) or a
 18 declaration submitted under clause (v)
 19 with respect to a transaction, a party
 20 to the transaction may—

21 “(aa) stipulate that the
 22 transaction is a covered trans-
 23 action; and

24 “(bb) if the party stipulates
 25 that the transaction is a covered

1 transaction under item (aa), stip-
 2 ulate that the transaction is a
 3 foreign government-controlled
 4 transaction.

5 “(II) BASIS FOR STIPULATION.—
 6 A written notice submitted under
 7 clause (i) or a declaration submitted
 8 under clause (v) that includes a stipu-
 9 lation under subclause (I) shall in-
 10 clude a description of the basis for the
 11 stipulation.”.

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

14 Section 721(b)(1) of the Defense Production Act of
 15 1950 (50 U.S.C. 4565(b)(1)) is amended—

16 (1) by redesignating subparagraphs (E) and
 17 (F) as subparagraphs (F) and (G), respectively;

18 (2) in subparagraph (D)—

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

22 (B) by striking clause (ii) and inserting the
 23 following:

24 “(ii) any covered transaction described
 25 in subparagraph (E), if any party to the

1 transaction submitted false or misleading
 2 material information to the Committee in
 3 connection with the Committee’s consider-
 4 ation of the transaction or omitted mate-
 5 rial information, including material docu-
 6 ments, from information submitted to the
 7 Committee; or”; and
 8 (C) in clause (iii)—

9 (i) in the matter preceding subclause
 10 (I), by striking “any covered transaction
 11 that has previously been reviewed or inves-
 12 tigated under this section,” and inserting
 13 “any covered transaction described in sub-
 14 paragraph (E),”;

15 (ii) in subclause (I), by striking “in-
 16 tentionally”;

17 (iii) in subclause (II), by striking “an
 18 intentional” and inserting “a”; and

19 (iv) in subclause (III), by inserting
 20 “adequate and appropriate” before “rem-
 21 edies or enforcement tools”; and

22 (3) by inserting after subparagraph (D) the fol-
 23 lowing:

“(E) COVERED TRANSACTIONS DESCRIBED.—A covered transaction is described in this subparagraph if—

“(i) the Committee has informed the parties to the transaction in writing that the Committee has completed all action under this section with respect to the transaction; or

“(ii) the President has announced a decision not to exercise the President’s authority under subsection (d) with respect to the transaction.”.

SEC. 8. TIMING FOR REVIEWS AND INVESTIGATIONS.

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

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

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

“(C) TIMING.—

“(i) IN GENERAL.—Except as provided in clause (ii), any investigation under subparagraph (A) shall be completed before the end of the 45-day period begin-

1 ning on the date on which the investigation
2 commenced.

3 “(ii) EXTENSION FOR EXTRAOR-
4 DINARY CIRCUMSTANCES.—

5 “(I) IN GENERAL.—In extraor-
6 dinary circumstances (as defined by
7 the Committee in regulations), the
8 chairperson may, at the request of the
9 head of the lead agency, extend an in-
10 vestigation under subparagraph (A)
11 for one 30-day period.

12 “(II) NONDELEGATION.—The
13 authority of the chairperson and the
14 head of the lead agency referred to in
15 subclause (I) may not be delegated to
16 any person other than the Deputy
17 Secretary of the Treasury or the dep-
18 uty head (or equivalent thereof) of the
19 lead agency, as the case may be.

20 “(III) NOTIFICATION TO PAR-
21 TIES.—If the Committee extends the
22 deadline under subclause (I) with re-
23 spect to a covered transaction, the
24 Committee shall notify the parties to
25 the transaction of the extension.”; and

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

2 “(8) TOLLING OF DEADLINES DURING LAPSE IN
3 APPROPRIATIONS.—Any deadline or time limitation
4 under this subsection shall be tolled during a lapse
5 in appropriations.”.

6 **SEC. 9. MONITORING OF NON-NOTIFIED AND NON-DE-**
7 **CLARED TRANSACTIONS.**

8 Section 721(b)(1) of the Defense Production Act of
9 1950 (50 U.S.C. 4565(b)(1)), as amended by section 7,
10 is further amended by adding at the end the following:

11 “(H) MONITORING OF NON-NOTIFIED AND
12 NON-DECLARED TRANSACTIONS.—The Com-
13 mittee shall establish a mechanism to identify
14 covered transactions for which—

15 “(i) a notice under clause (i) of sub-
16 paragraph (C) or a declaration under
17 clause (v) of that subparagraph is not sub-
18 mitted to the Committee; and

19 “(ii) information is reasonably avail-
20 able.”.

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

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

24 (1) in clause (iii)—

1 (A) in subclause (II), by inserting “and the
2 Select Committee on Intelligence” after “Urban
3 Affairs”; and

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

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

9 “(II) DELEGATION OF CERTIFI-
10 CATIONS.—

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

cluding the type or value of the transaction.

“(bb) LIMITATIONS.—The signature requirement under subclause (I) may be delegated—

“(AA) in the case of a covered transaction assessed by the Director of National Intelligence under paragraph (4) as more likely than not to threaten the national security of the United States, not below the level of the Assistant Secretary of the Treasury or an equivalent official of another agency or department represented on the Committee; and

“(BB) in the case of any other covered transaction, not below the level of a Deputy Assistant Secretary of the Treasury or an equivalent official of another agency or department rep-

resented on the Committee.”; and

(3) by adding at the following:

“(v) AUTHORITY TO CONSOLIDATE DOCUMENTS.—Instead of transmitting a separate certified notice or certified report under subparagraph (A) or (B) with respect to each covered transaction, the Committee may, on a monthly basis, transmit such notices and reports in a consolidated document to the Members of Congress specified in clause (iii).”.

SEC. 11. ANALYSIS BY DIRECTOR OF NATIONAL INTELLIGENCE.

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

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

“(A) ANALYSIS REQUIRED.—

“(i) IN GENERAL.—The Director of National Intelligence shall expeditiously carry out a thorough analysis of any threat to the national security of the United States posed by any covered transaction, which shall include the identification of

any recognized gaps in the collection of intelligence relevant to the analysis.

“(ii) VIEWS OF INTELLIGENCE AGENCIES.—The Director shall seek and incorporate into the analysis required by clause (i) the views of all affected or appropriate intelligence agencies with respect to the transaction.

“(iii) UPDATES.—At the request of the lead agency, the Director shall update the analysis conducted under clause (i) with respect to a covered transaction with respect to which an agreement was entered into under subsection (1)(3)(A).

“(iv) INDEPENDENCE AND OBJECTIVITY.—The Committee shall ensure that its processes under this section preserve the ability of the Director to conduct analysis under clause (i) that is independent, objective, and consistent with all applicable directives, policies, and analytic tradecraft standards of the intelligence community.”;

(2) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively;

1 (3) by inserting after subparagraph (A) the fol-
2 lowing:

3 “(B) BASIC THREAT INFORMATION.—

4 “(i) IN GENERAL.—The Director of
5 National Intelligence may provide the
6 Committee with basic information regard-
7 ing any threat to the national security of
8 the United States posed by a covered
9 transaction described in clause (ii) instead
10 of conducting the analysis required by sub-
11 paragraph (A).

12 “(ii) COVERED TRANSACTION DE-
13 SCRIBED.—A covered transaction is de-
14 scribed in this clause if—

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

17 “(II) the Director of National In-
18 telligence has completed an analysis
19 pursuant to subparagraph (A) involv-
20 ing each foreign person that is a party
21 to the transaction during the 12
22 months preceding the review or inves-
23 tigation of the transaction under this
24 section; or

1 “(III) the transaction otherwise
2 meets criteria agreed upon by the
3 Committee and the Director of Na-
4 tional Intelligence for purposes of this
5 subparagraph.”;

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

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

10 “(F) ASSESSMENT OF OPERATIONAL IM-
11 PACT.—The Director may provide to the Com-
12 mittee an assessment, separate from the anal-
13 yses under subparagraphs (A) and (B), of any
14 operational impact of a covered transaction on
15 the intelligence community and a description of
16 any actions that have been or will be taken to
17 mitigate any such impact.

18 “(G) SUBMISSION TO CONGRESS.—The
19 Committee shall submit the analysis required by
20 subparagraph (A) with respect to a covered
21 transaction to the Select Committee on Intel-
22 ligence of the Senate and the Permanent Select
23 Committee on Intelligence of the House of Rep-
24 resentatives upon the conclusion of action under
25 this section (other than compliance reviews

1 under subsection (l)(6)) with respect to the
2 transaction.”.

3 **SEC. 12. INFORMATION SHARING.**

4 Section 721(c) of the Defense Production Act of 1950
5 (50 U.S.C. 4565(c)) is amended—

6 (1) by striking “Any information” and inserting
7 the following:

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

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

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

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

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

17 “(B) Information to either House of Con-
18 gress or to any duly authorized committee or
19 subcommittee of Congress.

20 “(C) Information to any domestic or for-
21 eign governmental entity, under the direction of
22 the chairperson, to the extent necessary for na-
23 tional security purposes and pursuant to appro-
24 priate confidentiality and classification arrange-
25 ments.

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

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

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

7 (1) by striking paragraph (1) and inserting the
8 following:

9 “(1) IN GENERAL.—Subject to paragraph (4),
10 the President may, with respect to a covered trans-
11 action that threatens to impair the national security
12 of the United States—

13 “(A) take such action for such time as the
14 President considers appropriate to suspend or
15 prohibit the transaction or to require divest-
16 ment; and

17 “(B) in conjunction with taking any such
18 action, take any additional action the President
19 considers appropriate to address the risk to the
20 national security of the United States identified
21 during the review and investigation of the
22 transaction under this section.”; and

23 (2) in paragraph (2), by striking “not later
24 than 15 days” and all that follows and inserting the

1 following: “with respect to a covered transaction not
 2 later than 15 days after the earlier of—

3 “(A) the date on which the investigation of
 4 the transaction under subsection (b) is com-
 5 pleted; or

6 “(B) the date on which the Committee oth-
 7 erwise refers the transaction to the President
 8 under subsection (l)(2).”.

9 (b) CIVIL PENALTIES.—Section 721(h)(3)(A) of the
 10 Defense Production Act of 1950 (50 U.S.C.
 11 4565(h)(3)(A)) is amended by striking “including any
 12 mitigation” and all that follows through “subsection (l)”
 13 and inserting “including any mitigation agreement entered
 14 into, conditions imposed, or order issued pursuant to this
 15 section”.

16 **SEC. 14. JUDICIAL REVIEW PROCEDURES.**

17 Section 721(e) of the Defense Production Act of 1950
 18 (50 U.S.C. 4565) is amended to read as follows:

19 “(e) ACTIONS AND FINDINGS NONREVIEWABLE.—

20 “(1) ACTIONS AND FINDINGS OF THE PRESI-
 21 DENT.—The actions and findings of the President or
 22 the President’s designee under this section shall not
 23 be subject to judicial review, including claims under
 24 chapter 7 of title 5, United States Code.

1 “(2) ACTIONS AND FINDINGS OF THE COM-
2 MITTEE.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), the actions and findings of
5 the Committee under subsection (b) or (l), and
6 any assessment of penalties or use of enforce-
7 ment authorities under this section, shall not be
8 subject to judicial review, including claims
9 under chapter 7 of title 5, United States Code.

10 “(B) PETITIONS.—

11 “(i) DEFINITION.—In this subpara-
12 graph, the term ‘classified information’
13 means any information or material that
14 has been determined by the United States
15 Government pursuant to an Executive
16 order, statute, or regulation to require pro-
17 tection against unauthorized disclosure for
18 reasons of national security and any re-
19 stricted data, as defined in section 11 of
20 the Atomic Energy Act of 1954 (42 U.S.C.
21 2014).

22 “(ii) PETITION.—

23 “(I) IN GENERAL.—Except as
24 provided in subclause (II), not later
25 than 60 days after the date on which

1 the President or the Committee takes
2 an action with respect to the covered
3 transaction, any party to the covered
4 transaction may file a petition under
5 this subparagraph alleging that the
6 action of the Committee is a violation
7 of a constitutional right, power, privi-
8 lege, or immunity.

9 “(II) NOTIFICATION.—No party
10 to a covered transaction shall be per-
11 mitted to file a petition or any claim
12 related to a petition under subclause
13 (I) unless—

14 “(aa) the party initiated the
15 review of the transaction pursu-
16 ant to a written notice filed
17 under clause (i) of subsection
18 (b)(1)(C) or a declaration filed
19 under clause (v) of that sub-
20 section or the Committee deter-
21 mines that such a notice or dec-
22 laration was not required; and

23 “(bb) the Committee has
24 completed all action under this

1 section with respect to the trans-
 2 action.

3 “(III) RELATED CLAIMS.—Any
 4 claims related to a petition filed under
 5 this clause shall be filed before the
 6 date described in subclause (I).

7 “(iii) EXCLUSIVE JURISDICTION.—

8 “(I) IN GENERAL.—The United
 9 States Court of Appeals for the Dis-
 10 trict of Columbia Circuit shall have
 11 exclusive jurisdiction over claims aris-
 12 ing under this subparagraph, subject
 13 to review by the Supreme Court of the
 14 United States under section 1254 of
 15 title 28, United States Code, only—

16 “(aa) to affirm the action of
 17 the Committee; or

18 “(bb) to remand the case to
 19 the Committee for further consid-
 20 eration.

21 “(II) STANDARD OF REVIEW.—
 22 The court shall uphold an action chal-
 23 lenged under this subparagraph unless
 24 the court finds that the action was

1 contrary to a constitutional right,
2 power, privilege, or immunity.

3 “(iv) SCOPE OF REVIEW.—In a claim
4 under this subparagraph, the court shall
5 decide all relevant questions based solely
6 on any administrative record submitted by
7 the United States under clause (v).

8 “(v) ADMINISTRATIVE RECORD AND
9 PROCEDURES.—

10 “(I) IN GENERAL.—Notwith-
11 standing any other provision of law,
12 the procedures described in this clause
13 shall apply to the review of a petition
14 under this subparagraph.

15 “(II) ADMINISTRATIVE
16 RECORD.—

17 “(aa) FILING OF RECORD.—
18 The United States shall file with
19 the court an administrative
20 record, which shall consist of the
21 information that the parties sub-
22 mitted to the Committee and
23 that the Committee relied upon
24 in support of the action of the
25 Committee under review.

1 “(bb) UNCLASSIFIED, NON-
2 PRIVILEGED INFORMATION.—All
3 unclassified information con-
4 tained in the administrative
5 record that is not otherwise privi-
6 leged or subject to statutory pro-
7 tections shall be provided to the
8 petitioner with appropriate pro-
9 tections for any privileged or con-
10 fidential trade secrets and com-
11 mercial or financial information.

12 “(cc) DISCOVERY BAR.—
13 Other than the provision of infor-
14 mation in the administrative
15 record described in subparagraph
16 (II)(bb), no discovery shall be
17 permitted.

18 “(dd) IN CAMERA AND EX
19 PARTE.—The following informa-
20 tion may be included in the ad-
21 ministrative record and shall be
22 submitted only to the court ex
23 parte and in camera:

1 “(AA) Unclassified in-
2 formation subject to privi-
3 lege or statutory protections.

4 “(BB) Classified infor-
5 mation.

6 “(CC) Sensitive secu-
7 rity information.

8 “(DD) Sensitive law en-
9 forcement information.

10 “(EE) Information ob-
11 tained or derived from any
12 activity authorized under the
13 Foreign Intelligence Surveil-
14 lance Act of 1978 (50
15 U.S.C. 1801 et seq.), except
16 that, with respect to such in-
17 formation, subsections (c),
18 (e), (f), (g), and (h) of sec-
19 tion 106 (50 U.S.C. 1806),
20 subsections (d), (f), (g), (h),
21 and (i) of section 305 (50
22 U.S.C. 1825), subsections
23 (c), (e), (f), (g), and (h) of
24 section 405 (50 U.S.C.
25 1845), and section 706 (50

1 U.S.C. 1881e) of that Act
2 shall not apply.

3 “(ee) UNDER SEAL.—Any
4 classified information, sensitive
5 security information, law enforce-
6 ment sensitive information, or in-
7 formation that is otherwise privi-
8 leged or subject to statutory pro-
9 tections, that is part of the ad-
10 ministrative record filed ex parte
11 and in camera, or cited by the
12 court in any decision, shall be
13 treated by the court consistent
14 with the provisions of this sub-
15 paragraph, and shall remain
16 under seal and preserved in the
17 records of the court to be made
18 available in the event of further
19 proceedings. In no event shall
20 such information be released to
21 the claimant or as part of the
22 public record.

23 “(ff) RETURN.—After the
24 expiration of the time to seek
25 further review, or the conclusion

1 of further proceedings, the court
2 shall return the administrative
3 record, including any and all cop-
4 ies, to the United States.

5 “(gg) CONSIDERATION OF
6 CLAIM WITHOUT INFORMATION
7 IN ADMINISTRATIVE RECORD.—

8 If, on motion or sua sponte, the
9 court determines that the claim
10 may be considered without any of
11 the information in the adminis-
12 trative record, the court shall re-
13 quire that only the necessary in-
14 formation, if any, from the
15 record be provided to the parties.

16 “(vi) EXCLUSIVE REMEDY.—A deter-
17 mination by the court under this subpara-
18 graph shall be the exclusive judicial remedy
19 for any claim described in this subpara-
20 graph against the United States, any
21 United States department or agency, or
22 any component or official of any such de-
23 partment or agency.

24 “(vii) RULE OF CONSTRUCTION.—
25 Nothing in this subparagraph shall be con-

1 strued as limiting, superseding, or pre-
2 venting the invocation of, any privileges or
3 defenses that are otherwise available at law
4 or in equity to protect against the disclo-
5 sure of information.”.

6 **SEC. 15. FACTORS TO BE CONSIDERED.**

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

9 (1) in paragraph (1), by inserting “including
10 whether the covered transaction is likely to result in
11 the increased reliance by the United States on for-
12 eign suppliers to meet national defense require-
13 ments;” after “defense requirements,”;

14 (2) in paragraph (4), by striking “proposed or
15 pending”;

16 (3) by striking paragraph (5) and insert the fol-
17 lowing:

18 “(5) the potential effects of the covered trans-
19 action on United States international technological
20 and industrial leadership in areas affecting United
21 States national security, including whether the
22 transaction is likely to reduce the technological and
23 industrial advantage of the United States relative to
24 any country of special concern;”;

1 (4) in paragraph (6), by inserting “and trans-
2 portation assets, as defined in Presidential Policy
3 Directive 21 (February 12, 2013; relating to critical
4 infrastructure security and resilience) or any suc-
5 cessor directive” after “energy assets”;

6 (5) in paragraph (7), by inserting “, including
7 whether the covered transaction is likely to con-
8 tribute to the loss of or other adverse effects on
9 technologies that provide a strategic national secu-
10 rity advantage to the United States” after “critical
11 technologies”;

12 (6) in paragraph (10), by striking “; and” and
13 inserting a semicolon;

14 (7) by redesignating paragraph (11) as para-
15 graph (20); and

16 (8) by inserting after paragraph (10) the fol-
17 lowing:

18 “(11) the degree to which the covered trans-
19 action is likely to increase the cost to the United
20 States Government of acquiring or maintaining the
21 equipment and systems that are necessary for de-
22 fense, intelligence, or other national security func-
23 tions;

24 “(12) the potential national security-related ef-
25 fects of the cumulative market share of any one type

1 of infrastructure, energy asset, critical material, or
2 critical technology by foreign persons;

3 “(13) whether any foreign person that would
4 acquire an interest in a United States business or its
5 assets as a result of the covered transaction has a
6 history of—

7 “(A) complying with United States laws
8 and regulations, including laws and regulations
9 pertaining to exports, the protection of intellec-
10 tual property, and immigration; and

11 “(B) adhering to contracts or other agree-
12 ments with entities of the United States Gov-
13 ernment;

14 “(14) the extent to which the covered trans-
15 action is likely to expose, either directly or indirectly,
16 personally identifiable information, genetic informa-
17 tion, or other sensitive data of United States citizens
18 to access by a foreign government or foreign person
19 that may exploit that information in a manner that
20 threatens national security;

21 “(15) whether the covered transaction is likely
22 to have the effect of creating any new cybersecurity
23 vulnerabilities in the United States or exacerbating
24 existing cybersecurity vulnerabilities;

1 “(16) whether the covered transaction is likely
2 to result in a foreign government gaining a signifi-
3 cant new capability to engage in malicious cyber-en-
4 abled activities against the United States, including
5 such activities designed to affect the outcome of any
6 election for Federal office;

7 “(17) whether the covered transaction involves
8 a country of special concern that has a demonstrated
9 or declared strategic goal of acquiring a type of crit-
10 ical technology that a United States business that is
11 a party to the transaction possesses;

12 “(18) whether the covered transaction is likely
13 to facilitate criminal or fraudulent activity affecting
14 the national security of the United States;

15 “(19) whether the covered transaction is likely
16 to expose any information regarding sensitive na-
17 tional security matters or sensitive procedures or op-
18 erations of a Federal law enforcement agency with
19 national security responsibilities to a foreign person
20 not authorized to receive that information; and”.

21 **SEC. 16. ACTIONS BY THE COMMITTEE TO ADDRESS NA-**
22 **TIONAL SECURITY RISKS.**

23 Section 721(l) of the Defense Production Act of 1950
24 (50 U.S.C. 4565(l)) is amended—

1 (1) in the subsection heading, by striking
 2 “MITIGATION, TRACKING, AND POSTCONSUMMATION
 3 MONITORING AND ENFORCEMENT” and inserting
 4 “ACTIONS BY THE COMMITTEE TO ADDRESS NA-
 5 TIONAL SECURITY RISKS”;

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

8 (3) by inserting before paragraph (3), as redes-
 9 ignated by paragraph (2), the following:

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

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

24 (4) in paragraph (3), as redesignated by para-
 25 graph (2)—

1 (A) in subparagraph (A)—

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

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

7 “(i) IN GENERAL.—The Committee”;

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

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

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

24 “(iii) AGREEMENTS AND CONDITIONS
25 RELATING TO COMPLETED TRANS-

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

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

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

25 “(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—

25 “(i) an assessment of—

1 “(I) the national security threat
 2 posed by the transaction, taking into
 3 account the analysis conducted by the
 4 Director of National Intelligence
 5 under subsection (b)(4);

6 “(II) any national security
 7 vulnerabilities related to the trans-
 8 action; and

9 “(III) the potential national secu-
 10 rity consequences of the transaction;
 11 and

12 “(ii) an identification of any of the
 13 factors described in subsection (f) that the
 14 transaction may substantially implicate.

15 “(B) ACTIONS OF MEMBERS OF THE COM-
 16 MITTEE.—

17 “(i) IN GENERAL.—Any member of
 18 the Committee who concludes that a cov-
 19 ered transaction poses an unresolved na-
 20 tional security concern shall recommend to
 21 the Committee that the Committee sus-
 22 pend the transaction under paragraph (1),
 23 refer the transaction to the President
 24 under paragraph (2), or negotiate, enter
 25 into or impose, or enforce any agreement

1 or condition under paragraph (3)(A) with
 2 respect to the transaction. In making that
 3 recommendation, the member shall propose
 4 the risk-based analysis required by sub-
 5 paragraph (A).

6 “(ii) FAILURE TO REACH CON-
 7 SENSUS.—If the Committee fails to reach
 8 consensus with respect to a recommenda-
 9 tion under clause (i) regarding a covered
 10 transaction, the members of the Committee
 11 who support an alternative recommenda-
 12 tion shall produce—

13 “(I) a written statement justi-
 14 fying the alternative recommendation;
 15 and

16 “(II) as appropriate, a risk-based
 17 analysis that supports the alternative
 18 recommendation.”;

19 (6) in paragraph (5), as redesignated by para-
 20 graph (2), by striking “(as defined in the National
 21 Security Act of 1947)”; and

22 (7) in paragraph (6), as redesignated by para-
 23 graph (2)—

24 (A) in subparagraph (A)—

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

3 (ii) by striking the second sentence
 4 and inserting the following: “The lead
 5 agency may, at its discretion, seek and re-
 6 ceive the assistance of other departments
 7 or agencies in carrying out the purposes of
 8 this paragraph.”;

9 (B) in subparagraph (B)—

10 (i) by striking “DESIGNATED AGEN-
 11 CY” and all that follows through “The lead
 12 agency in connection” and inserting “DES-
 13 IGNATED AGENCY.—The lead agency in
 14 connection”;

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

16 (iii) by redesignating subclauses (I)
 17 and (II) as clauses (i) and (ii), respec-
 18 tively, and by moving such clauses, as so
 19 redesignated, 2 ems to the left; and

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

21 “(C) COMPLIANCE PLANS.—

22 “(i) IN GENERAL.—In the case of a
 23 covered transaction with respect to which
 24 an agreement is entered into under para-
 25 graph (3)(A), the Committee or lead agen-

1 cy, as the case may be, shall formulate, ad-
 2 here to, and keep updated a plan for moni-
 3 toring compliance with the agreement.

4 “(ii) ELEMENTS.—Each plan required
 5 by clause (i) with respect to an agreement
 6 entered into under paragraph (3)(A) shall
 7 include an explanation of—

8 “(I) which member of the Com-
 9 mittee will have primary responsibility
 10 for monitoring compliance with the
 11 agreement;

12 “(II) how compliance with the
 13 agreement will be monitored;

14 “(III) how frequently compliance
 15 reviews will be conducted;

16 “(IV) whether an independent
 17 entity will be utilized under subpara-
 18 graph (E) to conduct compliance re-
 19 views; and

20 “(V) what actions will be taken if
 21 the parties fail to cooperate regarding
 22 monitoring compliance with the agree-
 23 ment.

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

25 If, at any time after a mitigation agreement or

1 condition is entered into or imposed under
2 paragraph (3)(A), the Committee or lead agen-
3 cy, as the case may be, determines that a party
4 or parties to the agreement or condition are not
5 in compliance with the terms of the agreement
6 or condition, the Committee or lead agency
7 may, in addition to the authority of the Com-
8 mittee to impose penalties pursuant to sub-
9 section (h)(3) and to unilaterally initiate a re-
10 view of any covered transaction under sub-
11 section (b)(1)(D)(iii)(I)—

12 “(i) negotiate a plan of action for the
13 party or parties to remediate the lack of
14 compliance, with failure to abide by the
15 plan or otherwise remediate the lack of
16 compliance serving as the basis for the
17 Committee to find a material breach of the
18 agreement or condition;

19 “(ii) require that the party or parties
20 submit any covered transaction initiated
21 after the date of the determination of non-
22 compliance and before the date that is 5
23 years after the date of the determination
24 to the Committee for review under sub-
25 section (b); or

1 “(iii) seek injunctive relief.

2 “(E) USE OF INDEPENDENT ENTITIES TO
3 MONITOR COMPLIANCE.—If the parties to an
4 agreement entered into under paragraph (3)(A)
5 enter into a contract with an independent entity
6 from outside the United States Government for
7 the purpose of monitoring compliance with the
8 agreement, the Committee shall take such ac-
9 tion as is necessary to prevent a conflict of in-
10 terest from arising by ensuring that the inde-
11 pendent entity owes no fiduciary duty to the
12 parties.

13 “(F) ADDITIONAL COMPLIANCE MEAS-
14 URES.—Subject to subparagraphs (A) through
15 (E), the Committee shall develop and agree
16 upon methods for evaluating compliance with
17 any agreement entered into or condition im-
18 posed with respect to a covered transaction that
19 will allow the Committee to adequately ensure
20 compliance without unnecessarily diverting
21 Committee resources from assessing any new
22 covered transaction for which a written notice
23 under clause (i) of subsection (b)(1)(C) or dec-
24 laration under clause (v) of that subsection has
25 been filed, and if necessary, reaching a mitiga-

1 tion agreement with or imposing a condition on
 2 a party to such covered transaction or any cov-
 3 ered transaction for which a review has been re-
 4 opened for any reason.”.

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

6 Section 721(m) of the Defense Production Act of
 7 1950 (50 U.S.C. 4565(m)) is amended—

8 (1) in paragraph (1), by striking “committee”
 9 and all that follows through “Representatives,” and
 10 inserting “appropriate congressional committees”;

11 (2) 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.”;

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

11 “(G) Statistics on compliance reviews 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 (3) in paragraph (3)—

20 (A) by striking “CRITICAL TECHNOLOGIES”
21 and all that follows through “In order to as-
22 sist” and inserting “CRITICAL TECH-
23 NOLOGIES.—In order to assist”;

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

1 (C) by redesignating clauses (i) and (ii) as
 2 subparagraphs (A) and (B), respectively, and
 3 by moving such subparagraphs, as so redesign-
 4 nated, 2 ems to the left; and
 5 (4) by adding at the end the following:

6 “(4) BIENNIAL INTELLIGENCE COMMUNITY RE-
 7 PORT.—

8 “(A) IN GENERAL.—The Director of Na-
 9 tional Intelligence shall transmit to the chair-
 10 person, for inclusion in a classified portion of
 11 each report required to be submitted under
 12 paragraph (1) during calendar year 2018 and
 13 every even-numbered year thereafter, the report
 14 of the interagency group established under sub-
 15 paragraph (C).

16 “(B) ELEMENTS.—The report referred to
 17 in subparagraph (A) shall include an identifica-
 18 tion, analysis, and explanation of the following:

19 “(i) Any current or projected major
 20 threats to the national security of the
 21 United States with respect to foreign in-
 22 vestment.

23 “(ii) Any strategies used by countries
 24 of special concern to utilize foreign invest-
 25 ment to target the acquisition of critical

1 technologies, critical materials, or critical
2 infrastructure.

3 “(iii) Any economic espionage efforts
4 directed at the United States by a foreign
5 country, particularly a country of special
6 concern.

7 “(C) INTELLIGENCE COMMUNITY INTER-
8 AGENCY WORKING GROUP.—The Director of
9 National Intelligence—

10 “(i) shall establish an interagency
11 working group, composed of representa-
12 tives of elements of the intelligence com-
13 munity, to prepare the report required
14 under this paragraph;

15 “(ii) shall serve as the chairperson of
16 the interagency working group; and

17 “(iii) may consult with and seek input
18 from any member of the Committee, as the
19 Director considers necessary.

20 “(5) CLASSIFICATION; AVAILABILITY OF RE-
21 PORT.—

22 “(A) CLASSIFICATION.—All appropriate
23 portions of the annual report required by para-
24 graph (1) may be classified.

1 “(B) PUBLIC AVAILABILITY OF UNCLASSI-
2 FIED VERSION.—An unclassified version of the
3 report required by paragraph (1), as appro-
4 priate and consistent with safeguarding na-
5 tional security and privacy, shall be made avail-
6 able to the public. Information regarding trade
7 secrets or business confidential information may
8 be included in the classified version and may
9 not be made available to the public in the un-
10 classified version.

11 “(C) EXCEPTIONS TO FREEDOM OF INFOR-
12 MATION ACT.—The exceptions to subsection (a)
13 of section 552 of title 5, United States Code,
14 provided for under subsection (b) of that sec-
15 tion shall apply with respect to the report re-
16 quired by paragraph (1).

17 “(6) APPROPRIATE CONGRESSIONAL COMMIT-
18 TEES DEFINED.—In this subsection, the term ‘ap-
19 propriate congressional committees’ means—

20 “(A) the Committee on Banking, Housing,
21 and Urban Affairs, the Select Committee on In-
22 telligence, the Committee on Armed Services,
23 the Committee on the Judiciary, and the Com-
24 mittee on Homeland Security and Govern-
25 mental Affairs of the Senate; and

1 “(B) the Committee on Financial Services,
 2 the Permanent Select Committee on Intel-
 3 ligence, the Committee on Armed Services, the
 4 Committee on the Judiciary, and the Com-
 5 mittee on Homeland Security of the House of
 6 Representatives.”.

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

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

10 (1) by redesignating paragraphs (1) and (2) as
 11 subparagraphs (A) and (B), respectively, and by
 12 moving such subparagraphs, as so redesignated, 2
 13 ems to the right;

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

16 “(1) IN GENERAL.—Each notice”; and

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

18 “(2) EFFECT OF FAILURE TO SUBMIT.—The
 19 Committee may not complete a review under this
 20 section of a covered transaction and may recommend
 21 to the President that the President suspend or pro-
 22 hibit the transaction or require divestment under
 23 subsection (d) if the Committee determines that a
 24 party to the transaction has—

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

3 “(B) included false or misleading informa-
4 tion in a notice or information described in
5 paragraph (1) or omitted material information
6 from such notice or information.

7 “(3) APPLICABILITY OF LAW ON FRAUD AND
8 FALSE STATEMENTS.—The Committee shall pre-
9 scribe regulations expressly providing for the appli-
10 cation of section 1001 of title 18, United States
11 Code, to all information provided to the Committee
12 under this section by any party to a covered trans-
13 action.”.

14 **SEC. 19. FUNDING.**

15 Section 721 of the Defense Production Act of 1950
16 (50 U.S.C. 4565) is amended by adding at the end the
17 following:

18 “(o) FUNDING.—

19 “(1) ESTABLISHMENT OF FUND.—There is es-
20 tablished in the Treasury of the United States a
21 fund, to be known as the ‘Committee on Foreign In-
22 vestment in the United States Fund’ (in this sub-
23 section referred to as the ‘Fund’).

24 “(2) APPROPRIATION OF FUNDS FOR THE COM-
25 MITTEE.—There are authorized to be appropriated

1 to the Fund such sums as may be necessary to per-
2 form the functions of the Committee.

3 “(3) FILING FEES.—

4 “(A) IN GENERAL.—The Committee may
5 assess and collect a fee in an amount deter-
6 mined by the Committee in regulations, to the
7 extent provided in advance in appropriations
8 Acts, without regard to section 9701 of title 31,
9 United States Code, and subject to subpara-
10 graph (B), with respect to each covered trans-
11 action for which a written notice is submitted to
12 the Committee under subsection (b)(1)(C)(i).

13 “(B) LIMITATION ON AMOUNT OF FEE.—

14 The amount of the fee determined under sub-
15 paragraph (A) with respect to a covered trans-
16 action described in that subparagraph may not
17 exceed an amount equal to the lesser of—

18 “(i) 1 percent of the value of the
19 transaction; or

20 “(ii) \$300,000, adjusted annually for
21 inflation pursuant to regulations prescribed
22 by the Committee.

23 “(C) DEPOSIT AND AVAILABILITY OF
24 FEES.—Notwithstanding section 3302 of title

1 31, United States Code, fees collected under
2 subparagraph (A) shall—

3 “(i) be deposited as offsetting collec-
4 tions into the Fund for use in carrying out
5 activities under this section;

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

9 “(iii) remain available until expended;
10 and

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

14 “(4) TRANSFER OF FUNDS.—The chairperson
15 may transfer any amounts in the Fund to any other
16 department or agency represented on the Committee
17 for the purpose of addressing emerging needs in car-
18 rying out activities under this section. Amounts so
19 transferred shall be in addition to any other
20 amounts available to that department or agency for
21 that purpose.”.

1 **SEC. 20. 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 19, 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. 21. UNIFIED BUDGET REQUEST.**

2 Section 721 of the Defense Production Act of 1950
3 (50 U.S.C. 4565), as amended by sections 19 and 20, is
4 further amended by adding at the end the following:

5 “(q) UNIFIED BUDGET REQUEST.—

6 “(1) IN GENERAL.—The President may include,
7 in the budget of the Department of the Treasury for
8 a fiscal year (as submitted to Congress with the
9 budget of the President under section 1105(a) of
10 title 31, United States Code), a unified request for
11 funding of all operations under this section con-
12 ducted by some or all of the departments and agen-
13 cies represented on the Committee.

14 “(2) FORM OF BUDGET REQUEST.—A unified
15 request under paragraph (1) should be detailed and
16 include the amounts requested for each department
17 or agency represented on the Committee to carry out
18 the functions of that department or agency under
19 this section.”.

20 **SEC. 22. SPECIAL HIRING AUTHORITY.**

21 Section 721 of the Defense Production Act of 1950
22 (50 U.S.C. 4565), as amended by sections 19, 20, and
23 21, is further amended by adding at the end the following:

24 “(r) SPECIAL HIRING AUTHORITY.—The heads of
25 the departments and agencies represented on the Com-
26 mittee may appoint, without regard to the provisions of

1 sections 3309 through 3318 of title 5, United States Code,
 2 candidates directly to positions in the competitive service
 3 (as defined in section 2102 of that title) in their respective
 4 departments and agencies to administer this section.”.

5 **SEC. 23. CONFORMING AMENDMENTS.**

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

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

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”.

16 **SEC. 24. ASSESSMENT OF NEED FOR ADDITIONAL RE-**
 17 **SOURCES FOR COMMITTEE.**

18 The President shall—

19 (1) determine whether and to what extent the
 20 expansion of the responsibilities of the Committee on
 21 Foreign Investment in the United States pursuant
 22 to the amendments made by this Act necessitates
 23 additional resources for the Committee and members
 24 of the Committee to perform their functions under

1 section 721 of the Defense Production Act of 1950,
2 as amended by this Act; and

3 (2) if the President determines that additional
4 resources are necessary, include in the budget of the
5 President for fiscal year 2019 submitted to Congress
6 under section 1105(a) of title 31, United States
7 Code, a request for such additional resources.

8 **SEC. 25. AUTHORIZATION FOR DEFENSE ADVANCED RE-**
9 **SEARCH PROJECTS AGENCY TO LIMIT FOR-**
10 **EIGN ACCESS TO TECHNOLOGY THROUGH**
11 **CONTRACTS AND GRANT AGREEMENTS.**

12 (a) IN GENERAL.—The Director of the Defense Ad-
13 vanced Research Projects Agency, or a designee of the Di-
14 rector, may include in any contract or grant agreement
15 that the Director enters into with a person, and that is
16 funded by that Agency, a provision that—

17 (1) limits access by any foreign person to tech-
18 nology that is the subject of the contract or grant
19 agreement under terms defined by the Director, in-
20 cluding by limiting such access to specific periods of
21 time; and

22 (2) in a case in which the person violates the
23 prohibition described in paragraph (1), requires the
24 person to return all amounts that the person re-

1 ceived from the Agency under the contract or grant
2 agreement.

3 (b) TREATMENT OF RETURNED FUNDS.—Any
4 amounts returned to the Defense Advanced Research
5 Projects Agency under subsection (a)(2) shall be credited
6 to the same appropriations account from which payment
7 of such amounts was originally made under the contract
8 or grant agreement described in subsection (a).

9 (c) EXERCISE OF AUTHORITY.—The Director, or the
10 designee of the Director, may exercise the authority pro-
11 vided by this section without the need for further approval
12 by, or regulatory implementation within, the Department
13 of Defense.

14 **SEC. 26. EFFECTIVE DATE.**

15 (a) IMMEDIATE APPLICABILITY OF CERTAIN PROVI-
16 SIONS.—The following shall take effect on the date of the
17 enactment of this Act and apply with respect to any cov-
18 ered transaction the review or investigation of which is ini-
19 tiated under section 721 of the Defense Production Act
20 of 1950 on or after such date of enactment:

21 (1) Sections 4, 6, 8, 12, 13, 14, 15, 18, 20, 21,
22 22, 24, and 25 and the amendments made by those
23 sections.

24 (2) Section 11 and the amendments made by
25 that section (except for clause (iii) of section

1 721(b)(4)(A) of the Defense Production Act of
2 1950, as added by section 11).

3 (3) Paragraphs (5)(C)(iv), (7), and (14) of sub-
4 section (a) of section 721 of the Defense Production
5 Act of 1950, as amended by section 3.

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

8 (b) DELAYED APPLICABILITY OF CERTAIN PROVI-
9 SIONS.—

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

13 (A) take effect on the date that is 30 days
14 after publication in the Federal Register of a
15 determination by the chairperson of the Com-
16 mittee on Foreign Investment in the United
17 States that the regulations, organizational
18 structure, personnel, and other resources nec-
19 essary to administer the new provisions are in
20 place; and

21 (B) apply with respect to any covered
22 transaction the review or investigation of which
23 is initiated under section 721 of the Defense
24 Production Act of 1950 on or after the date de-
25 scribed in subparagraph (A).

1 (2) NONDELEGATION OF DETERMINATION.—

2 The determination of the chairperson of the Com-
3 mittee on Foreign Investment in the United States
4 under paragraph (1)(A) may not be delegated.

5 (c) AUTHORIZATION FOR PILOT PROGRAMS.—

6 (1) IN GENERAL.—Beginning on the date of the
7 enactment of this Act and ending on the date de-
8 scribed in subsection (b)(1)(A), the Committee on
9 Foreign Investment in the United States may, at its
10 discretion, conduct one or more pilot programs to
11 implement any authority provided pursuant to any
12 provision of or amendment made by this Act not
13 specified in subsection (a).

14 (2) PUBLICATION IN FEDERAL REGISTER.—A
15 pilot program may not commence until the date that
16 is 30 days after publication in the Federal Register
17 of a determination by the chairperson of the Com-
18 mittee of the scope of and procedures for the pilot
19 program. That determination may not be delegated.

20 **SEC. 27. SEVERABILITY.**

21 If any provision of this Act or an amendment made
22 by this Act, or the application of such a provision or
23 amendment to any person or circumstance, is held to be
24 invalid, the application of that provision or amendment to
25 other persons or circumstances and the remainder of the

- 1 provisions of this Act and the amendments made by this
- 2 Act, shall not be affected thereby.

