

# Calendar No. 426

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# 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.

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## 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, Mr. LANKFORD, Ms. COLLINS, Ms. BALDWIN, and Mr. SULLIVAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

MAY 22, 2018

Reported by Mr. CRAPO, with an amendment and an amendment to the title  
[Strike out all after the enacting clause and insert the part printed in *italie*]

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## 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,*

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

2 (a) **SHORT TITLE.**—This Act may be cited as the  
 3 “Foreign Investment Risk Review Modernization Act of  
 4 2017”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for  
 6 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 relating to 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 procedures.
- Sec. 15. Factors to be considered.
- 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. Funding.
- Sec. 20. Centralization of certain Committee functions.
- Sec. 21. Unified budget request.
- Sec. 22. Special hiring authority.
- Sec. 23. Conforming amendments.
- Sec. 24. Assessment of need for additional resources for Committee.
- Sec. 25. Authorization for Defense Advanced Research Projects Agency to limit  
 foreign access to technology through contracts and grant agree-  
 ments.
- Sec. 26. Effective date.
- Sec. 27. Severability.

7 **SEC. 2. SENSE OF CONGRESS.**

8 It is the sense of Congress that—

9 (1) foreign investment provides substantial eco-  
 10 nomic benefits to the United States, including the  
 11 promotion of economic growth, productivity, com-  
 12 petitiveness, and job creation, and the majority of

1 foreign investment transactions pose little or no risk  
2 to the national security of the United States, espe-  
3 cially when those investments are truly passive in  
4 nature;

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

10 (3) it should continue to be the policy of the  
11 United States to enthusiastically welcome and sup-  
12 port foreign investment, consistent with the protec-  
13 tion of national security;

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

21 (5) the Committee on Foreign Investment in  
22 the United States plays a critical role in protecting  
23 the national security of the United States, and,  
24 therefore, it is essential that the member agencies of  
25 the Committee are adequately resourced and able to

1 hire appropriately qualified individuals in a timely  
2 manner, and that those individuals' security clear-  
3 ances are processed as a high priority;

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

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

19 **SEC. 3. DEFINITIONS.**

20 Section 721(a) of the Defense Production Act of  
21 1950 (50 U.S.C. 4565(a)) is amended to read as follows:

22 “(a) **DEFINITIONS.**—In this section:

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

1           “(2) COMMITTEE; CHAIRPERSON.—The terms  
2           ‘Committee’ and ‘chairperson’ mean the Committee  
3           on Foreign Investment in the United States and the  
4           chairperson thereof, respectively.

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

9           “(4) COUNTRY OF SPECIAL CONCERN.—

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

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

18           “(5) COVERED TRANSACTION.—

19           “(A) IN GENERAL.—Except as otherwise  
20           provided, the term ‘covered transaction’ means  
21           any transaction described in subparagraph (B)  
22           that is proposed, pending, or completed on or  
23           after the date of the enactment of the Foreign  
24           Investment Risk Review Modernization Act of  
25           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

1 any partnership agreements, integration  
 2 agreements, or other side agreements relat-  
 3 ing to the transaction, including any such  
 4 agreements relating to the transfer of in-  
 5 tellectual property, as specified in regula-  
 6 tions prescribed by the Committee.”.

7 **SEC. 5. DECLARATIONS RELATING TO CERTAIN COVERED**  
 8 **TRANSACTIONS.**

9 Section 721(b)(1)(C) of the Defense Production Act  
 10 of 1950 (50 U.S.C. 4565(b)(1)(C)), as amended by section  
 11 4, is further amended by adding at the end the following:

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

14 “(I) VOLUNTARY DECLARA-  
 15 TIONS.—Except as provided in this  
 16 clause, a party to any covered trans-  
 17 action may submit to the Committee a  
 18 declaration with basic information re-  
 19 garding the transaction instead of a  
 20 written notice under clause (i).

21 “(II) MANDATORY DECLARA-  
 22 TIONS.—

23 “(aa) CERTAIN COVERED  
 24 TRANSACTIONS WITH FOREIGN  
 25 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                  “(HH) 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 tentional";

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:

1           “(E) COVERED TRANSACTIONS DE-  
2           SCRIBED.—A covered transaction is described  
3           in this subparagraph if—

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

9                   “(ii) the President has announced a  
10                  decision not to exercise the President’s au-  
11                  thority under subsection (d) with respect  
12                  to the transaction.”.

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

14           Section 721(b) of the Defense Production Act of  
15 1950 (50 U.S.C. 4565(b)), as amended by section 7, is  
16 further amended—

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

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

21                           “(C) TIMING.—

22                                   “(i) IN GENERAL.—Except as pro-  
23                                   vided in clause (ii), any investigation under  
24                                   subparagraph (A) shall be completed be-  
25                                   fore 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 (H), 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 (H) and  
8           inserting the following:

9                                 “(H) 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-



1 eluding the type or value of the  
2 transaction.

3 “(bb) LIMITATIONS.—The  
4 signature requirement under sub-  
5 clause (I) may be delegated—

6 “(AA) in the case of a  
7 covered transaction assessed  
8 by the Director of National  
9 Intelligence under paragraph  
10 (4) as more likely than not  
11 to threaten the national se-  
12 curity of the United States,  
13 not below the level of the  
14 Assistant Secretary of the  
15 Treasury or an equivalent  
16 official of another agency or  
17 department represented on  
18 the Committee; and

19 “(BB) in the case of  
20 any other covered trans-  
21 action, not below the level of  
22 a Deputy Assistant Sec-  
23 retary of the Treasury or an  
24 equivalent official of another  
25 agency or department rep-

1                                   resented on the Com-  
2                                   mittee.”; and

3                   (3) by adding at the following:

4                                   “(v) AUTHORITY TO CONSOLIDATE  
5                                   DOCUMENTS.—Instead of transmitting a  
6                                   separate certified notice or certified report  
7                                   under subparagraph (A) or (B) with re-  
8                                   spect to each covered transaction, the  
9                                   Committee may, on a monthly basis, trans-  
10                                  mit such notices and reports in a consoli-  
11                                  dated document to the Members of Con-  
12                                  gress specified in clause (iii).”.

13 **SEC. 11. ANALYSIS BY DIRECTOR OF NATIONAL INTEL-**  
14 **LIGENCE.**

15           Section 721(b)(4) of the Defense Production Act of  
16 1950 (50 U.S.C. 4565(b)(4)) is amended—

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

19                                   “(A) ANALYSIS REQUIRED.—

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

1 any recognized gaps in the collection of in-  
 2 telligence relevant to the analysis.

3 “(ii) VIEWS OF INTELLIGENCE AGEN-  
 4 CIES.—The Director shall seek and incor-  
 5 porate into the analysis required by clause  
 6 (i) the views of all affected or appropriate  
 7 intelligence agencies with respect to the  
 8 transaction.

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

15 “(iv) INDEPENDENCE AND OBJEC-  
 16 TIVITY.—The Committee shall ensure that  
 17 its processes under this section preserve  
 18 the ability of the Director to conduct anal-  
 19 ysis under clause (i) that is independent,  
 20 objective, and consistent with all applicable  
 21 directives, policies, and analytic tradecraft  
 22 standards of the intelligence community.”;

23 (2) by redesignating subparagraphs (B), (C),  
 24 and (D) as subparagraphs (C), (D), and (E), respec-  
 25 tively;

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

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

4           Section 721(e) of the Defense Production Act of 1950  
5 (50 U.S.C. 4565(e)) 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 (1)(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 (1)”  
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 (H)(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 (e),  
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                  (e), (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 “(cc) 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 redesi-  
9           gnated 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 redesignated by paragraph (2), the following:

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

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

24                         “(i) an assessment of—  
25



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                        (1)(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 (1)(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 ated, 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 ear-  
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 received 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 Produ-~~  
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           (e) 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.

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

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

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

*Sec. 1. Short title; table of contents.*

*Sec. 2. Sense of Congress.*

*Sec. 3. Definitions.*

*Sec. 4. Acceptance of written notices.*

*Sec. 5. Inclusion of partnership and side agreements in notice.*

*Sec. 6. Declarations for certain covered transactions.*

*Sec. 7. Stipulations regarding transactions.*

*Sec. 8. Authority for unilateral initiation of reviews.*

*Sec. 9. Timing for reviews and investigations.*

*Sec. 10. Monitoring of non-notified and non-declared transactions.*

*Sec. 11. Submission of certifications to Congress.*

*Sec. 12. Analysis by Director of National Intelligence.*

*Sec. 13. Information sharing.*

*Sec. 14. Action by the President.*

*Sec. 15. Judicial review.*

*Sec. 16. Membership and staff of Committee.*

*Sec. 17. Actions by the Committee to address national security risks.*

*Sec. 18. Modification of annual report and other reporting requirements.*

*Sec. 19. Certification of notices and information.*

*Sec. 20. Implementation plans.*

*Sec. 21. Assessment of need for additional resources for Committee.*

*Sec. 22. Funding.*

*Sec. 23. Centralization of certain Committee functions.*

*Sec. 24. Conforming amendments.*

*Sec. 25. Requirements to identify and control the export of emerging and  
 foundational technologies.*

*Sec. 26. Export control enforcement authority.*

*Sec. 27. Prohibition on modification of civil penalties under export control and  
 sanctions laws.*

*Sec. 28. Under Secretary of Commerce for Industry and Security.*

*Sec. 29. 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. 30. Review of and report on certain defense technologies critical to the  
 United States maintaining superior military capabilities.*

*Sec. 31. Briefing on information from transactions reviewed by Committee on  
 Foreign Investment in the United States relating to foreign ef-  
 forts to influence democratic institutions and processes.*

*Sec. 32. Effective date.*

*Sec. 33. 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 *nommic benefits to the United States, including the*  
5 *promotion of economic growth, productivity, competi-*  
6 *tiveness, and job creation, and the majority of foreign*  
7 *investment transactions pose little or no risk to the*  
8 *national security of the United States, especially*  
9 *when those investments are truly passive in nature;*

10 (2) *maintaining the commitment of the United*  
11 *States to open and fair investment policy also encour-*  
12 *ages other countries to reciprocate and helps open new*  
13 *foreign markets for United States businesses and their*  
14 *products;*

15 (3) *it should continue to be the policy of the*  
16 *United States to enthusiastically welcome and sup-*  
17 *port foreign investment, consistent with the protection*  
18 *of national security;*

19 (4) *at the same time, the national security land-*  
20 *scape has shifted in recent years, and so has the na-*  
21 *ture of the investments that pose the greatest potential*  
22 *risk to national security, which warrants a mod-*  
23 *ernization of the processes and authorities of the Com-*  
24 *mittee on Foreign Investment in the United States*  
25 *and of the United States export control system;*



1           (5) *the Committee on Foreign Investment in the*  
2           *United States plays a critical role in protecting the*  
3           *national security of the United States, and, therefore,*  
4           *it is essential that the member agencies of the Com-*  
5           *mittee are adequately resourced and able to hire ap-*  
6           *propriately qualified individuals in a timely manner,*  
7           *and that those individuals' security clearances are*  
8           *processed as a high priority;*

9           (6) *the President should conduct a more robust*  
10          *international outreach effort to urge and help allies*  
11          *and partners of the United States to establish proc-*  
12          *esses that parallel the Committee on Foreign Invest-*  
13          *ment in the United States to screen foreign invest-*  
14          *ments for national security risks and to facilitate co-*  
15          *ordination;*

16          (7) *the President should lead a collaborative ef-*  
17          *fort with allies and partners of the United States to*  
18          *strengthen the multilateral export control regime to*  
19          *more effectively address the unprecedented industrial*  
20          *policies of certain countries of special concern, includ-*  
21          *ing aggressive efforts to acquire United States tech-*  
22          *nology, and the blending of civil and military pro-*  
23          *grams;*

24          (8) *any penalties imposed by the United States*  
25          *Government with respect to an individual or entity*

1       *pursuant to a determination that the individual or*  
2       *entity has violated sanctions imposed by the United*  
3       *States or the export control laws of the United States*  
4       *should not be reversed for reasons unrelated to the na-*  
5       *tional security of the United States; and*

6               *(9) the Committee on Foreign Investment in the*  
7       *United States should continue to review transactions*  
8       *for the purpose of protecting national security and*  
9       *should not consider issues of national interest absent*  
10       *a national security nexus.*

11       *(b) SENSE OF CONGRESS ON CONSIDERATION OF COV-*  
12       *ERED TRANSACTIONS.—It is the sense of Congress that,*  
13       *when considering national security risks, the Committee on*  
14       *Foreign Investment in the United States may consider—*

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

21               *(2) the potential national security-related effects*  
22       *of the cumulative market share of or a pattern of re-*  
23       *cent transactions in any one type of infrastructure,*  
24       *energy asset, critical material, or critical technology*  
25       *by foreign persons;*

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

5           (4) *the extent to which a transaction is likely to*  
6 *expose, either directly or indirectly, personally identi-*  
7 *fiable information, genetic information, or other sen-*  
8 *sitive data of United States citizens to access by a*  
9 *foreign government or foreign person that may exploit*  
10 *that information in a manner that threatens national*  
11 *security; and*

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

20 **SEC. 3. DEFINITIONS.**

21           *Section 721(a) of the Defense Production Act of 1950*  
22 *(50 U.S.C. 4565(a)) is amended to read as follows:*

23           “(a) **DEFINITIONS.**—*In this section:*

1           “(1) *ACCESS.*—*The term ‘access’ means the abil-*  
2           *ity and opportunity to obtain information, subject to*  
3           *regulations prescribed by the Committee.*

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

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

12           “(4) *COUNTRY OF SPECIAL CONCERN.*—

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

17           “(B) *RULE OF CONSTRUCTION.*—*This para-*  
18           *graph shall not be construed to require the Com-*  
19           *mittee to maintain a list of countries of special*  
20           *concern.*

21           “(5) *COVERED TRANSACTION.*—

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

24                   “(i) *any transaction described in sub-*  
25                   *paragraph (B)(i); and*

1           “(i) any transaction described in  
2           clauses (ii) through (v) of subparagraph (B)  
3           that is proposed, pending, or completed on  
4           or after the effective date specified in section  
5           32(b)(1)(A) of the Foreign Investment Risk  
6           Review Modernization Act of 2018.

7           “(B) *TRANSACTIONS DESCRIBED.*—A trans-  
8           action described in this subparagraph is any of  
9           the following:

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

15           “(ii) Subject to subparagraph (C), the  
16           purchase or lease by a foreign person of, or  
17           a concession offered to a foreign person with  
18           respect to, private or public real estate  
19           that—

20                   “(I) is located in the United  
21                   States;

22                   “(II)(aa) is, is located at, or will  
23                   function as part of, a land, air, or  
24                   maritime port; or

1           “(bb)(AA) is in close proximity to  
2           a United States military installation  
3           or another facility or property of the  
4           United States Government that is sen-  
5           sitive for reasons relating to national  
6           security;

7           “(BB) could reasonably provide  
8           the foreign person the ability to collect  
9           information on activities being con-  
10          ducted at such an installation, facility,  
11          or property; or

12          “(CC) could otherwise expose na-  
13          tional security activities at such an in-  
14          stallation, facility, or property to the  
15          risk of foreign surveillance; and

16          “(III) meets such other criteria as  
17          the Committee prescribes by regulation,  
18          as long as such criteria do not expand  
19          the categories of real estate to which  
20          this clause applies beyond the cat-  
21          egories described in subclause (II).

22          “(iii) Any other investment (other than  
23          a passive investment) by a foreign person in  
24          any United States critical technology com-  
25          pany or United States critical infrastruc-

1            *ture company that is unaffiliated with the*  
2            *foreign person, subject to regulations pre-*  
3            *scribed under subparagraph (C).*

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

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

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

13            *“(v) Any other transaction, transfer,*  
14            *agreement, or arrangement the structure of*  
15            *which is designed or intended to evade or*  
16            *circumvent the application of this section,*  
17            *subject to regulations prescribed by the*  
18            *Committee.*

19            *“(C) FURTHER DEFINITION THROUGH REG-*  
20            *ULATIONS.—*

21                   *“(i) EXCEPTION FOR CERTAIN REAL*  
22                   *ESTATE TRANSACTIONS.—A real estate pur-*  
23                   *chase or lease described in subparagraph*  
24                   *(B)(ii) does not include a lease or purchase*  
25                   *of—*

1                   “(I) a single ‘housing unit’, as de-  
2                   fined by the Census Bureau; or

3                   “(II) real estate in ‘urbanized  
4                   areas’, as defined by the Census Bu-  
5                   reau in the most recent census, except  
6                   as otherwise prescribed by the Com-  
7                   mittee in regulations in consultation  
8                   with the Secretary of Defense.

9                   “(ii) CERTAIN OTHER INVESTMENT.—  
10                  The Committee shall prescribe regulations  
11                  further defining covered transactions de-  
12                  scribed in subparagraph (B)(iii) by ref-  
13                  erence to the technology, sector, subsector,  
14                  transaction type, or other characteristics of  
15                  such transactions.

16                  “(iii) EXEMPTION FOR TRANSACTIONS  
17                  FROM IDENTIFIED COUNTRIES.—

18                  “(I) IN GENERAL.—The Com-  
19                  mittee shall, by regulation, define cir-  
20                  cumstances and procedures under  
21                  which a transaction otherwise de-  
22                  scribed in clause (ii) or (iii) of sub-  
23                  paragraph (B) is excluded from the  
24                  definition of ‘covered transaction’ if  
25                  each foreign person that is a party to



1           *the transaction, and each foreign per-*  
2           *son with ownership or control over a*  
3           *party to the transaction, is from (as*  
4           *determined by the Committee pursuant*  
5           *to regulations prescribed by the Com-*  
6           *mittee), a country or part of a country*  
7           *identified by the Committee for pur-*  
8           *poses of this clause based on factors es-*  
9           *tablished by the Committee, such as—*

10                   *“(aa) whether, in the sole*  
11                   *judgment of the Committee, the*  
12                   *process of the country for review-*  
13                   *ing the national security effects of*  
14                   *foreign investment and associated*  
15                   *international cooperation effec-*  
16                   *tively safeguards national security*  
17                   *interests the country shares with*  
18                   *the United States;*

19                   *“(bb) whether the country is*  
20                   *a member country of the North*  
21                   *Atlantic Treaty Organization or*  
22                   *is designated as a major non-*  
23                   *NATO ally pursuant to section*  
24                   *517 of the Foreign Assistance Act*  
25                   *of 1961 (22 U.S.C. 2321k);*

1           “(cc) whether the country ad-  
2 heres to nonproliferation control  
3 regimes, including treaties and  
4 multilateral supply guidelines,  
5 which shall be informed by sources  
6 such as the annual report on ‘Ad-  
7 herence to and Compliance with  
8 Arms Control, Nonproliferation  
9 and Disarmament Agreements  
10 and Commitments’ required by  
11 section 403 of the Arms Control  
12 and Disarmament Act (22 U.S.C.  
13 2593a);

14           “(dd) whether excluding  
15 transactions by foreign persons  
16 from the country advances the na-  
17 tional security objectives of the  
18 United States; and

19           “(ee) any other factors that  
20 the Committee determines to be  
21 appropriate.

22           “(II) RECURRING ASSESSMENT OF  
23 IDENTIFIED COUNTRIES.—The Com-  
24 mittee shall reconsider on a regular  
25 basis the identification of countries

1                   and parts of countries under subclause  
2                   (I).

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

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

19                   “(D) *PASSIVE INVESTMENT DEFINED.—*

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

13                    “(bb) *membership or observer*  
14                    *rights on the board of directors or*  
15                    *equivalent governing body of the*  
16                    *United States critical infrastruc-*  
17                    *ture company or United States*  
18                    *critical technology company or the*  
19                    *right to nominate an individual*  
20                    *to a position on the board of di-*  
21                    *rectors or equivalent governing*  
22                    *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 com-  
4           pany or United States critical  
5           technology company.

6           “(III) The foreign person does not  
7           have a material parallel strategic part-  
8           nership or other material financial re-  
9           lationship, as described in regulations  
10          prescribed by the Committee, with the  
11          United States critical infrastructure  
12          company or United States critical  
13          technology company.

14          “(IV) Such other criteria as the  
15          Committee may prescribe by regula-  
16          tion, which shall be consistent with the  
17          criteria specified in subclauses (I),  
18          (II), and (III).

19          “(i) *MATERIAL NONPUBLIC TECH-*  
20          *NICAL INFORMATION DEFINED.*—For pur-  
21          poses of clause (i)(II)(aa), the term ‘mate-  
22          rial nonpublic technical information’ has  
23          the meaning given that term in regulations  
24          prescribed by the Committee, except that the  
25          term does not include financial information

1           *regarding the performance of a United*  
2           *States critical infrastructure company or*  
3           *United States critical technology company.*

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

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

16                   “(II) *REGULATIONS.—*

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

1                   “(bb) *INVESTMENT DE-*  
 2                   *SCRIBED.—An investment de-*  
 3                   *scribed in this item is an invest-*  
 4                   *ment—*

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

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

17                   “(CC) *that otherwise*  
 18                   *meets the requirements of*  
 19                   *clauses (i) and (iv), as appli-*  
 20                   *cable.*

21                   “(iv) *SPECIFIC CLARIFICATION FOR IN-*  
 22                   *VESTMENT FUNDS.—*

23                   “(I) *TREATMENT OF CERTAIN IN-*  
 24                   *VESTMENTS AS PASSIVE INVEST-*  
 25                   *MENTS.—Notwithstanding clause*

1           *(i)(II)(bb) and subject to regulations*  
2           *prescribed by the Committee, an indi-*  
3           *rect investment by a foreign person in*  
4           *a United States critical infrastructure*  
5           *company or United States critical*  
6           *technology company through an invest-*  
7           *ment fund that affords the foreign per-*  
8           *son (or a designee of the foreign per-*  
9           *son) membership as a limited partner*  
10           *on an advisory board or a committee*  
11           *of the fund shall be considered a pas-*  
12           *sive investment if—*

13                     *“(aa) the fund is managed*  
14                     *exclusively by a general partner, a*  
15                     *managing member, or an equiva-*  
16                     *lent;*

17                     *“(bb) the general partner,*  
18                     *managing member, or equivalent*  
19                     *is not a foreign person;*

20                     *“(cc) the advisory board or*  
21                     *committee does not have the abil-*  
22                     *ity to approve, disapprove, or oth-*  
23                     *erwise control—*

24                     *“(AA) investment deci-*  
25                     *sions of the fund; or*



1                   “(BB) decisions made  
2                   by the general partner, man-  
3                   aging member, or equivalent  
4                   related to entities in which  
5                   the fund is invested;

6                   “(dd) the foreign person does  
7                   not otherwise have the ability to  
8                   control the fund, including the au-  
9                   thority—

10                   “(AA) to approve, dis-  
11                   approve, or otherwise control  
12                   investment decisions of the  
13                   fund;

14                   “(BB) to approve, dis-  
15                   approve, or otherwise control  
16                   decisions made by the general  
17                   partner, managing member,  
18                   or equivalent related to enti-  
19                   ties in which the fund is in-  
20                   vested; or

21                   “(CC) to unilaterally  
22                   dismiss, prevent the dis-  
23                   missal of, select, or determine  
24                   the compensation of the gen-

1                   eral partner, managing  
 2                   member, or equivalent; and  
 3                   “(ee) the investment other-  
 4                   wise meets the requirements of  
 5                   this subparagraph.

6                   “(II) TREATMENT OF CERTAIN  
 7                   WAIVERS.—

8                   “(aa) IN GENERAL.—For the  
 9                   purposes of items (cc) and (dd) of  
 10                  subclause (I) and except as pro-  
 11                  vided in item (bb), a waiver of a  
 12                  potential conflict of interest, a  
 13                  waiver of an allocation limita-  
 14                  tion, or a similar activity, appli-  
 15                  cable to a transaction pursuant to  
 16                  the terms of an agreement gov-  
 17                  erning an investment fund shall  
 18                  not be considered to constitute  
 19                  control of investment decisions of  
 20                  the fund or decisions relating to  
 21                  entities in which the fund is in-  
 22                  vested.

23                  “(bb) EXCEPTION.—The  
 24                  Committee may prescribe regula-  
 25                  tions providing for exceptions to

1                   item (aa) for extraordinary cir-  
2                   cumstances.

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

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

17                  “(F) *UNITED STATES CRITICAL TECH-*  
18                  *NOLOGY COMPANY DEFINED.*—*For purposes of*  
19                  *this paragraph, the term ‘United States critical*  
20                  *technology company’ means a United States*  
21                  *business that produces, designs, tests, manufac-*  
22                  *tures, or develops one or more critical tech-*  
23                  *nologies, or a subset of such technologies, as de-*  
24                  *finied by regulations prescribed by the Com-*  
25                  *mittee.*

1           “(6) *CRITICAL INFRASTRUCTURE.*—*The term*  
2           *‘critical infrastructure’ means, subject to regulations*  
3           *prescribed by the Committee, systems and assets,*  
4           *whether physical or virtual, so vital to the United*  
5           *States that the incapacity or destruction of such sys-*  
6           *tems or assets would have a debilitating impact on*  
7           *national security.*

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

12           “(8) *CRITICAL TECHNOLOGIES.*—

13           “(A) *IN GENERAL.*—*The term ‘critical tech-*  
14           *nologies’ means technology, components, or tech-*  
15           *nology items that are essential or could be essen-*  
16           *tial to national security, identified for purposes*  
17           *of this section pursuant to regulations prescribed*  
18           *by the Committee.*

19           “(B) *INCLUSION OF CERTAIN ITEMS.*—*The*  
20           *term ‘critical technologies’ includes the following:*

21           “(i) *Defense articles or defense services*  
22           *included on the United States Munitions*  
23           *List set forth in the International Traffic in*  
24           *Arms Regulations under subchapter M of*

1 *chapter I of title 22, Code of Federal Regu-*  
2 *lations.*

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

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

15 “(II) *for reasons relating to re-*  
16 *gional stability or surreptitious listen-*  
17 *ing.*

18 “(iii) *Specially designed and prepared*  
19 *nuclear equipment, parts and components,*  
20 *materials, software, and technology covered*  
21 *by part 810 of title 10, Code of Federal Reg-*  
22 *ulations (relating to assistance to foreign*  
23 *atomic energy activities).*

24 “(iv) *Nuclear facilities, equipment, and*  
25 *material covered by part 110 of title 10,*

1           *Code of Federal Regulations (relating to ex-*  
 2           *port and import of nuclear equipment and*  
 3           *material).*

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

8           “(vi) *Emerging and foundational tech-*  
 9           *nologies identified pursuant to section 25(a)*  
 10           *of the Foreign Investment Risk Review*  
 11           *Modernization Act of 2018.*

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

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 in*  
6                   *clause (ii), the term ‘foreign entity’ means*  
7                   *any branch, partnership, group or sub-*  
8                   *group, association, estate, trust, corporation*  
9                   *or division of a corporation, or organiza-*  
10                   *tion organized under the laws of a foreign*  
11                   *country if—*

12                           “(I) *the principal place of busi-*  
13                           *ness of the entity is outside the United*  
14                           *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 demonstrates*  
21                   *to the Committee that a majority of the eq-*  
22                   *uity interest in the entity is ultimately*  
23                   *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 regu-*  
6 *lations 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 ‘national*  
11 *security’ shall be construed so as to include those*  
12 *issues relating to ‘homeland security’, including its*  
13 *application to critical infrastructure.*

14 “(15) *PARTY.*—*The term ‘party’ has the meaning*  
15 *given that term in regulations prescribed by the Com-*  
16 *mittee.*

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 United*  
20 *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. ACCEPTANCE OF WRITTEN NOTICES.**

2 *Section 721(b)(1)(C)(i) of the Defense Production Act*  
3 *of 1950 (50 U.S.C. 4565(b)(1)(C)(i)) is amended—*

4 *(1) by striking “Any party” and inserting the*  
5 *following:*

6 *“(I) IN GENERAL.—Any party”;*

7 *and*

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

9 *“(II) COMMENTS AND ACCEPT-*  
10 *ANCE.—*

11 *“(aa) IN GENERAL.—Subject*  
12 *to item (cc), the Committee shall*  
13 *provide comments on a draft or*  
14 *final written notice or accept a*  
15 *final written notice submitted*  
16 *under subclause (I) with respect*  
17 *to a covered transaction not later*  
18 *than the date that is 10 business*  
19 *days after the date of submission*  
20 *of the draft or final notice.*

21 *“(bb) COMPLETENESS.—If*  
22 *the Committee determines that a*  
23 *draft or final written notice de-*  
24 *scribed in item (aa) is not com-*  
25 *plete, the Committee shall notify*  
26 *the party or parties to the trans-*

1                    *action in writing that the notice*  
 2                    *is not complete and provide an*  
 3                    *explanation of all material re-*  
 4                    *spects in which the notice is in-*  
 5                    *complete.*

6                    “(cc)    *STIPULATIONS    RE-*  
 7                    *QUIRED.—The timing requirement*  
 8                    *under item (aa) shall apply only*  
 9                    *in a case in which the parties*  
 10                   *stipulate under clause (vi) that*  
 11                   *the transaction is a covered trans-*  
 12                   *action.”.*

13    ***SEC. 5. INCLUSION OF PARTNERSHIP AND SIDE AGREE-***  
 14                    ***MENTS IN NOTICE.***

15                   *Section 721(b)(1)(C) of the Defense Production Act of*  
 16                   *1950 (50 U.S.C. 4565(b)(1)(C)) is amended by adding at*  
 17                   *the end the following:*

18                   “(iv) *INCLUSION OF PARTNERSHIP AND*  
 19                   *SIDE AGREEMENTS.—A written notice sub-*  
 20                   *mitted under clause (i) by a party to a cov-*  
 21                   *ered transaction shall include a copy of any*  
 22                   *partnership agreements, integration agree-*  
 23                   *ments, or other side agreements relating to*  
 24                   *the transaction, including any such agree-*  
 25                   *ments relating to the transfer of intellectual*

1                   *property, as specified in regulations pre-*  
2                   *scribed by the Committee.”.*

3 **SEC. 6. DECLARATIONS FOR CERTAIN COVERED TRANS-**  
4                   **ACTIONS.**

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

8                   “(v) *DECLARATIONS FOR CERTAIN COV-*  
9                   *ERED TRANSACTIONS.—*

10                   “(I) *IN GENERAL.—A party to*  
11                   *any covered transaction may submit to*  
12                   *the Committee a declaration with basic*  
13                   *information regarding the transaction*  
14                   *instead of a written notice under*  
15                   *clause (i).*

16                   “(II) *REGULATIONS.—The Com-*  
17                   *mittee shall prescribe regulations estab-*  
18                   *lishing requirements for declarations*  
19                   *submitted under this clause. In pre-*  
20                   *scribing such regulations, the Com-*  
21                   *mittee shall ensure that such declara-*  
22                   *tions are submitted as abbreviated no-*  
23                   *tifications that would not generally ex-*  
24                   *ceed 5 pages in length.*

1                   “(III) COMMITTEE RESPONSE TO  
2                   DECLARATION.—

3                   “(aa) IN GENERAL.—Upon  
4                   receiving a declaration under this  
5                   clause with respect to a covered  
6                   transaction, the Committee may,  
7                   at the discretion of the Com-  
8                   mittee—

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

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

1                    *tion under this section with*  
2                    *respect to the transaction;*

3                    *“(CC) initiate a unilat-*  
4                    *eral review of the transaction*  
5                    *under subparagraph (D); or*

6                    *“(DD) notify the parties*  
7                    *in writing that the Com-*  
8                    *mittee has completed all ac-*  
9                    *tion under this section with*  
10                   *respect to the transaction.*

11                   *“(bb) TIMING.—The Com-*  
12                   *mittee shall take action under*  
13                   *item (aa) not later than 30 days*  
14                   *after receiving a declaration*  
15                   *under this clause.*

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

24                   *“(IV) MANDATORY DECLARA-*  
25                   *TIONS.—*

1           “(aa) *REGULATIONS.*—*The*  
2 *Committee shall prescribe regula-*  
3 *tions specifying the types of cov-*  
4 *ered transactions for which the*  
5 *Committee requires a declaration*  
6 *under this subclause.*

7           “(bb) *CERTAIN COVERED*  
8 *TRANSACTIONS WITH FOREIGN*  
9 *GOVERNMENT INTERESTS.*—

10           “(AA) *IN GENERAL.*—  
11 *Except as provided in*  
12 *subitem (BB), the parties to*  
13 *a covered transaction shall*  
14 *submit a declaration de-*  
15 *scribed in subclause (I) with*  
16 *respect to the transaction if*  
17 *the transaction involves an*  
18 *investment that results in the*  
19 *acquisition, directly or indi-*  
20 *rectly, of a substantial inter-*  
21 *est in a United States crit-*  
22 *ical infrastructure company*  
23 *or United States critical*  
24 *technology company by a for-*  
25 *foreign person in which a for-*

1                   *foreign government has, directly*  
2                   *or indirectly, a substantial*  
3                   *interest.*

4                   “(BB) *EXCEPTION.—*  
5                   *The submission of a declara-*  
6                   *tion described in subclause*  
7                   *(I) shall not be required with*  
8                   *respect to a transaction de-*  
9                   *scribed in subitem (AA) if*  
10                   *each foreign person that is a*  
11                   *party to the transaction, and*  
12                   *each foreign person with*  
13                   *ownership or control over a*  
14                   *party to the transaction, is*  
15                   *from a country or part of a*  
16                   *country identified by the*  
17                   *Committee under subsection*  
18                   *(a)(5)(C)(iii).*

19                   “(CC) *SUBSTANTIAL IN-*  
20                   *TEREST DEFINED.—In this*  
21                   *item, the term ‘substantial*  
22                   *interest’ has the meaning*  
23                   *given that term in regula-*  
24                   *tions which the Committee*  
25                   *shall prescribe. In developing*

1                    *those regulations, the Com-*  
2                    *mittee shall consider the*  
3                    *means by which a foreign*  
4                    *government could influence*  
5                    *the actions of a foreign per-*  
6                    *son, including through board*  
7                    *membership, ownership in-*  
8                    *terest, or shareholder rights.*  
9                    *An interest that is a passive*  
10                   *investment (as defined in*  
11                   *subsection (a)(5)(D)) or that*  
12                   *is less than a 10 percent vot-*  
13                   *ing interest shall not be con-*  
14                   *sidered a substantial interest.*

15                   *“(cc) OTHER DECLARATIONS*  
16                   *REQUIRED BY COMMITTEE.—The*  
17                   *Committee shall require the sub-*  
18                   *mission of a declaration described*  
19                   *in subclause (I) with respect to*  
20                   *any covered transaction identified*  
21                   *under regulations prescribed by*  
22                   *the Committee for purposes of this*  
23                   *item, at the discretion of the Com-*  
24                   *mittee and based on appropriate*  
25                   *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;*

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

17                  “(DD) *the difficulty of*  
18                  *obtaining information on the*  
19                  *ultimate ownership of the*  
20                  *foreign person that is a*  
21                  *party to the transaction.*

22                  “(dd) *EXCEPTION.—The sub-*  
23                  *mission of a declaration described*  
24                  *in subclause (I) shall not be re-*  
25                  *quired pursuant to this subclause*

1 *with respect to an investment by*  
2 *an investment fund if—*

3 *“(AA) the fund is man-*  
4 *aged exclusively by a general*  
5 *partner, a managing mem-*  
6 *ber, or an equivalent;*

7 *“(BB) the general part-*  
8 *ner, managing member, or*  
9 *equivalent is not a foreign*  
10 *person; and*

11 *“(CC) the investment*  
12 *fund satisfies, with respect to*  
13 *any foreign person with*  
14 *membership as a limited*  
15 *partner on an advisory*  
16 *board or a committee of the*  
17 *fund, the criteria specified in*  
18 *items (cc) and (dd) of sub-*  
19 *section (a)(5)(D)(iv).*

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

1 clause may instead elect to submit  
2 a written notice under clause (i).

3 “(ff) *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 before  
11 the completion of the trans-  
12 action.

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

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

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

4 **SEC. 7. STIPULATIONS REGARDING TRANSACTIONS.**

5           Section 721(b)(1)(C) of the Defense Production Act of  
 6 1950 (50 U.S.C. 4565(b)(1)(C)), as amended by section 6,  
 7 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 for-  
 22                   eign government-controlled trans-  
 23                   action.

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 include*  
4                   *a description of the basis for the stipu-*  
5                   *lation.”.*

6 **SEC. 8. 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 (F)*  
11                   *as subparagraphs (F) and (G), respectively;*

12                   *(2) in subparagraph (D)—*

13                   *(A) in the matter preceding clause (i), by*  
14                   *striking “subparagraph (F)” and inserting “sub-*  
15                   *paragraph (G)”;*

16                   *(B) in clause (i), by inserting “(other than*  
17                   *a covered transaction described in subparagraph*  
18                   *(E))” after “any covered transaction”;*

19                   *(C) by striking clause (ii) and inserting the*  
20                   *following:*

21                   *“(ii) any covered transaction described*  
22                   *in subparagraph (E), if any party to the*  
23                   *transaction submitted false or misleading*  
24                   *material information to the Committee in*  
25                   *connection with the Committee’s consider-*

1            *ation of the transaction or omitted material*  
 2            *information, including material documents,*  
 3            *from information submitted to the Com-*  
 4            *mittee; or”; and*

5            *(D) in clause (iii)—*

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

12           *(ii) in subclause (I), by striking “in-*  
 13           *tentionally”;*

14           *(iii) in subclause (II), by striking “an*  
 15           *intentional” and inserting “a”; and*

16           *(iv) in subclause (III), by inserting*  
 17           *“adequate and appropriate” before “rem-*  
 18           *edies or enforcement tools”; and*

19           *(3) by inserting after subparagraph (D) the fol-*  
 20           *lowing:*

21           *“(E) COVERED TRANSACTIONS DE-*  
 22           *SCRIBED.—A covered transaction is described in*  
 23           *this subparagraph if—*

24           *“(i) the Committee has informed the*  
 25           *parties to the transaction in writing that*

1           the Committee has completed all action  
2           under this section with respect to the trans-  
3           action; or

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

8   **SEC. 9. TIMING FOR REVIEWS AND INVESTIGATIONS.**

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

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

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

16                           “(C) *TIMING.*—

17                                   “(i) *IN GENERAL.*—Except as provided  
18                                   in clause (ii), any investigation under sub-  
19                                   paragraph (A) shall be completed before the  
20                                   end of the 45-day period beginning on the  
21                                   date on which the investigation commenced.

22                                   “(ii) *EXTENSION FOR EXTRAORDINARY*  
23                                   *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) for  
5           one 30-day period.

6                   “(II) NONDELEGATION.—The au-  
7           thority of the chairperson and the head  
8           of the lead agency referred to in sub-  
9           clause (I) may not be delegated to any  
10          person other than the Deputy Secretary  
11          of the Treasury or the deputy head (or  
12          equivalent thereof) of the lead agency,  
13          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 in  
24          appropriations.”.



1 **SEC. 10. 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 sections 8 and*  
5 *9, is further amended by adding at the end the following:*

6 *“(H) MONITORING OF NON-NOTIFIED AND*  
7 *NON-DECLARED TRANSACTIONS.—The Committee*  
8 *shall establish a mechanism to identify covered*  
9 *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. 11. SUBMISSION OF CERTIFICATIONS TO CONGRESS.**

17 *Section 721(b)(3)(C) of the Defense Production Act of*  
18 *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 the*  
24 *Permanent Select Committee on Intelligence”*  
25 *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.—Subject*  
6 *to item (bb), the chairperson, in*  
7 *consultation with the Committee,*  
8 *may determine the level of official*  
9 *to whom the signature require-*  
10 *ment under subclause (I) for the*  
11 *chairperson and the head of the*  
12 *lead agency may be delegated. The*  
13 *level of official to whom the signa-*  
14 *ture requirement may be delegated*  
15 *may differ based on any factor re-*  
16 *lating to a transaction that the*  
17 *chairperson, in consultation with*  
18 *the Committee, deems appro-*  
19 *priate, including the type or value*  
20 *of the transaction.*

21                           “(bb) *LIMITATION ON DELE-*  
22 *GATION WITH RESPECT TO CER-*  
23 *TAIN TRANSACTIONS.—The signa-*  
24 *ture requirement under subclause*  
25 *(I) may be delegated not below the*

1 *level of the Assistant Secretary of*  
2 *the Treasury or an equivalent of-*  
3 *ficial of the lead agency in the*  
4 *case of a covered transaction—*

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

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

15 *“(CC) with respect to*  
16 *which a request is made by*  
17 *an official at the Deputy As-*  
18 *stant Secretary or Assistant*  
19 *Secretary level of an agency*  
20 *or department represented on*  
21 *the Committee, or an equiva-*  
22 *lent thereof, that the trans-*  
23 *action be reviewed by the As-*  
24 *stant Secretary of the*

1                    *Treasury and an equivalent*  
2                    *official of the lead agency.*

3                    “(cc) *LIMITATION ON DELE-*  
4                    *GATION WITH RESPECT TO OTHER*  
5                    *TRANSACTIONS.—In the case of*  
6                    *any covered transaction not de-*  
7                    *scribed in item (bb), the signature*  
8                    *requirement under subclause (I)*  
9                    *may be delegated not below the*  
10                   *level of a Deputy Assistant Sec-*  
11                   *retary of the Treasury or an*  
12                   *equivalent official of the lead*  
13                   *agency.”; and*

14                   (3) *by adding at the end the following:*

15                   “(v) *AUTHORITY TO CONSOLIDATE*  
16                   *DOCUMENTS.—Instead of transmitting a*  
17                   *separate certified notice or certified report*  
18                   *under subparagraph (A) or (B) with respect*  
19                   *to each covered transaction, the Committee*  
20                   *may, on a monthly basis, transmit such no-*  
21                   *tices and reports in a consolidated docu-*  
22                   *ment to the Members of Congress specified*  
23                   *in clause (iii).”.*

1 **SEC. 12. 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 provided*  
9 *in subparagraph (B), the Director of Na-*  
10 *tional Intelligence shall expeditiously carry*  
11 *out a thorough analysis of any threat to the*  
12 *national security of the United States posed*  
13 *by any covered transaction, which shall in-*  
14 *clude the identification of any recognized*  
15 *gaps in the collection of intelligence relevant*  
16 *to the analysis.*

17 *“(ii) VIEWS OF INTELLIGENCE COMMU-*  
18 *NITY.—The Director shall seek and incor-*  
19 *porate into the analysis required by clause*  
20 *(i) the views of all affected or appropriate*  
21 *agencies of the intelligence community with*  
22 *respect to the transaction.*

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

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

3           “(iv) *INDEPENDENCE AND OBJEC-*  
4           *TIVITY.—The Committee shall ensure that*  
5           *its processes under this section preserve the*  
6           *ability of the Director to conduct analysis*  
7           *under clause (i) that is independent, objec-*  
8           *tive, and consistent with all applicable di-*  
9           *rectives, 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 Na-*  
18           *tional Intelligence may provide the Com-*  
19           *mittee with basic information regarding*  
20           *any threat to the national security of the*  
21           *United States posed by a covered trans-*  
22           *action described in clause (ii) instead of*  
23           *conducting the analysis required by sub-*  
24           *paragraph (A).*

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 Com-  
16                  mittee and the Director for purposes of  
17                  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 analyses  
25                  under subparagraphs (A) and (B), of any oper-

1           *ational impact of a covered transaction on the*  
2           *intelligence community and a description of any*  
3           *actions that have been or will be taken to miti-*  
4           *gate 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. 13. 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” and*  
23           *all that follows and inserting a period; and*

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



1           “(2) *EXCEPTIONS.*—*Paragraph (1) shall not pro-*  
2           *hibit 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 foreign*  
9                   *governmental entity, under the direction of the*  
10                   *chairperson, to the extent necessary for national*  
11                   *security purposes and pursuant to appropriate*  
12                   *confidentiality and classification arrangements.*

13                   “(D) *Information that the parties have con-*  
14                   *sented to be disclosed to third parties.*

15           “(3) *COOPERATION WITH ALLIES AND PART-*  
16           *NERS.*—

17                   “(A) *IN GENERAL.*—*The chairperson, in*  
18                   *consultation with other members of the Com-*  
19                   *mittee, should establish a formal process for the*  
20                   *exchange of information under paragraph (2)(C)*  
21                   *with governments of countries that are allies or*  
22                   *partners of the United States, in the discretion*  
23                   *of the chairperson, to protect the national secu-*  
24                   *rity of the United States and those countries.*

1           “(B) *REQUIREMENTS.*—*The process estab-*  
2           *lished under subparagraph (A) should, in the*  
3           *discretion of the chairperson—*

4                   “(i) *be designed to facilitate the har-*  
5                   *monization of action with respect to trends*  
6                   *in investment and technology that could*  
7                   *pose risks to the national security of the*  
8                   *United States and countries that are allies*  
9                   *or partners of the United States;*

10                   “(ii) *provide for the sharing of infor-*  
11                   *mation with respect to specific technologies*  
12                   *and entities acquiring such technologies as*  
13                   *appropriate to ensure national security;*  
14                   *and*

15                   “(iii) *include consultations and meet-*  
16                   *ings with representatives of the governments*  
17                   *of such countries on a recurring basis.”.*

18 **SEC. 14. ACTION BY THE PRESIDENT.**

19           (a) *IN GENERAL.*—*Section 721(d) of the Defense Pro-*  
20           *duction Act of 1950 (50 U.S.C. 4565(d)) is amended—*

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

23                   “(1) *IN GENERAL.*—*Subject to paragraph (4), the*  
24                   *President may, with respect to a covered transaction*  
25                   *that threatens to impair the national security of the*

1 *United States, take such action for such time as the*  
 2 *President considers appropriate to suspend or pro-*  
 3 *hibit the transaction or to require divestment.”; and*

4 *(2) in paragraph (2), by striking “not later than*  
 5 *15 days” and all that follows and inserting the fol-*  
 6 *lowing: “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. 4565(h)(3)(A))*  
 16 *is amended by striking “including any mitigation” and all*  
 17 *that follows through “subsection (l)” and inserting “includ-*  
 18 *ing any mitigation agreement entered into, conditions im-*  
 19 *posed, or order issued pursuant to this section”.*

20 **SEC. 15. JUDICIAL REVIEW.**

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

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

25 *“(1) IN GENERAL.—The actions”; and*

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

2           “(2) *CIVIL ACTIONS.—A civil action challenging*  
3 *an action or finding of the Committee under this sec-*  
4 *tion may be brought only in the United States Court*  
5 *of Appeals for the District of Columbia Circuit.*”

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

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

1 **SEC. 16. MEMBERSHIP AND STAFF OF COMMITTEE.**

2       (a) *HIRING AUTHORITY.*—Section 721(k) of the De-  
3 *fense Production Act of 1950 (50 U.S.C. 4565(k)) is amend-*  
4 *ed by striking paragraph (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 the*  
11 *advice and consent of the Senate, to carry*  
12 *out such duties related to the Committee as*  
13 *the member of the Committee may delegate.*

14                               “(ii) *DEPARTMENT OF THE TREAS-*  
15 *URY.*—In addition to officials of the De-  
16 *partment of the Treasury authorized under*  
17 *section 301 of title 31, United States Code,*  
18 *or any other provision of law, there are au-*  
19 *thorized at the Department of the Treasury,*  
20 *to carry out such duties related to the Com-*  
21 *mittee as the Secretary of the Treasury may*  
22 *delegate, consistent with this section and re-*  
23 *fecting the expanded authorities of the*  
24 *Committee and the role of the Department*  
25 *of the Treasury in implementing those au-*  
26 *thorities under the amendments made by*

1           *the Foreign Investment Risk Review Mod-*  
2           *ernization Act of 2018, the following:*

3                   “(I) *One official, who is ap-*  
4                   *pointed by the President, by and with*  
5                   *the advice and consent of the Senate,*  
6                   *who shall be compensated at a rate not*  
7                   *to exceed the rate of basic pay payable*  
8                   *for level III of the Executive Schedule*  
9                   *under section 5314 of title 5, United*  
10                   *States Code.*

11                   “(II) *One official, who is ap-*  
12                   *pointed by the President, by and with*  
13                   *the advice and consent of the Senate,*  
14                   *who shall be compensated at a rate not*  
15                   *to exceed the rate of basic pay payable*  
16                   *for level IV of the Executive Schedule*  
17                   *under section 5315 of title 5, United*  
18                   *States Code.*

19                   “(B) *SPECIAL HIRING AUTHORITY.—The*  
20                   *heads of the departments and agencies rep-*  
21                   *resented on the Committee may appoint, without*  
22                   *regard to the provisions of sections 3309 through*  
23                   *3318 of title 5, United States Code, candidates*  
24                   *directly to positions in the competitive service*  
25                   *(as defined in section 2102 of that title) in their*

1           *respective departments and agencies to admin-*  
 2           *ister this section.”.*

3           **(b) PROCEDURES FOR RECUSAL OF MEMBERS OF**  
 4 **COMMITTEE FOR CONFLICTS OF INTEREST.**—*Not later than*  
 5 *90 days after the date of the enactment of this Act, the Com-*  
 6 *mittee on Foreign Investment in the United States shall—*

7           (1) *establish procedures for the recusal of any*  
 8 *member of the Committee that has a conflict of inter-*  
 9 *est with respect to a covered transaction (as defined*  
 10 *in section 721 of the Defense Production Act of 1950,*  
 11 *as amended by section 3);*

12           (2) *submit to the Committee on Banking, Hous-*  
 13 *ing, and Urban Affairs of the Senate and the Com-*  
 14 *mittee on Financial Services of the House of Rep-*  
 15 *resentatives a report describing those procedures; and*

16           (3) *brief the committees specified in paragraph*  
 17 *(1) on the report required by paragraph (2).*

18 **SEC. 17. ACTIONS BY THE COMMITTEE TO ADDRESS NA-**  
 19 **TIONAL SECURITY RISKS.**

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

22           (1) *in the subsection heading, by striking “MITI-*  
 23 *GATION, TRACKING, AND POSTCONSUMMATION MONI-*  
 24 *TORING AND ENFORCEMENT” and inserting “ACTIONS*

1 *BY THE COMMITTEE TO ADDRESS NATIONAL SECURITY*  
2 *RISKS”;*

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

5 *(3) by inserting before paragraph (3), as redesign-*  
6 *ated by paragraph (2), the following:*

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

13 *“(2) REFERRAL TO PRESIDENT.—The Committee*  
14 *may, at any time during the review or investigation*  
15 *of a covered transaction under subsection (b), com-*  
16 *plete the action of the Committee with respect to the*  
17 *transaction and refer the transaction to the President*  
18 *for action pursuant to subsection (d).”;*

19 *(4) in paragraph (3), as redesignated by para-*  
20 *graph (2)—*

21 *(A) in subparagraph (A)—*

22 *(i) in the subparagraph heading, by*  
23 *striking “IN GENERAL” and inserting*  
24 *“AGREEMENTS AND CONDITIONS”;*



1           (ii) by striking “The Committee” and  
2 inserting the following:

3           “(i) *IN GENERAL.—The Committee*”;

4           (iii) by striking “threat” and inserting  
5 “risk”; and

6           (iv) by adding at the end the following:

7           “(i) *ABANDONMENT OF TRANS-*  
8 *ACTIONS.—If a party to a covered trans-*  
9 *action has voluntarily chosen to abandon*  
10 *the transaction, the Committee or lead*  
11 *agency, as the case may be, may negotiate,*  
12 *enter into or impose, and enforce any agree-*  
13 *ment or condition with any party to the*  
14 *covered transaction for purposes of effec-*  
15 *tuating such abandonment and mitigating*  
16 *any risk to the national security of the*  
17 *United States that arises as a result of the*  
18 *covered transaction.*

19           “(ii) *AGREEMENTS AND CONDITIONS*  
20 *RELATING TO COMPLETED TRANSACTIONS.—*  
21 *The Committee or lead agency, as the case*  
22 *may be, may negotiate, enter into or im-*  
23 *pose, and enforce any agreement or condi-*  
24 *tion with any party to a completed covered*  
25 *transaction in order to mitigate any in-*

1            *terim risk to the national security of the*  
2            *United States that may arise as a result of*  
3            *the covered transaction until such time that*  
4            *the Committee has completed action pursu-*  
5            *ant to subsection (b) or the President has*  
6            *taken action pursuant to subsection (d)*  
7            *with respect to the transaction.”; and*

8            *(B) by striking subparagraph (B) and in-*  
9            *serting the following:*

10            *“(B) LIMITATIONS.—An agreement may not*  
11            *be entered into or condition imposed under sub-*  
12            *paragraph (A) with respect to a covered trans-*  
13            *action unless the Committee determines that the*  
14            *agreement or condition resolves the national se-*  
15            *curity concerns posed by the transaction, taking*  
16            *into consideration whether the agreement or con-*  
17            *dition is reasonably calculated to—*

18            *“(i) be effective;*

19            *“(ii) allow for compliance with the*  
20            *terms of the agreement or condition in an*  
21            *appropriately verifiable way; and*

22            *“(iii) enable effective monitoring of*  
23            *compliance with and enforcement of the*  
24            *terms of the agreement or condition.*

1           “(C) *JURISDICTION.*—*The provisions of sec-*  
2           *tion 706(b) shall apply to any mitigation agree-*  
3           *ment entered into or condition imposed under*  
4           *subparagraph (A).”;*

5           *(5) by inserting after paragraph (3), as redesign-*  
6           *ated by paragraph (2), the following:*

7           “(4) *RISK-BASED ANALYSIS REQUIRED.*—

8           “(A) *IN GENERAL.*—*Any determination of*  
9           *the Committee to suspend a covered transaction*  
10           *under paragraph (1), to refer a covered trans-*  
11           *action to the President under paragraph (2), or*  
12           *to negotiate, enter into or impose, or enforce any*  
13           *agreement or condition under paragraph (3)(A)*  
14           *with respect to a covered transaction, shall be*  
15           *based on a risk-based analysis, conducted by the*  
16           *Committee, of the effects on the national security*  
17           *of the United States of the covered transaction,*  
18           *which shall include an assessment of the threat,*  
19           *vulnerabilities, and consequences to national se-*  
20           *curity related to the transaction.*

21           “(B) *ACTIONS OF MEMBERS OF THE COM-*  
22           *MITTEE.*—

23           “(i) *IN GENERAL.*—*Any member of the*  
24           *Committee who concludes that a covered*  
25           *transaction poses an unresolved national se-*

1           *curity concern shall recommend to the Com-*  
2           *mittee that the Committee suspend the*  
3           *transaction under paragraph (1), refer the*  
4           *transaction to the President under para-*  
5           *graph (2), or negotiate, enter into or im-*  
6           *pose, or enforce any agreement or condition*  
7           *under paragraph (3)(A) with respect to the*  
8           *transaction. In making that recommenda-*  
9           *tion, the member shall propose or contribute*  
10          *to the risk-based analysis required by sub-*  
11          *paragraph (A).*

12           “(ii) *FAILURE TO REACH CON-*  
13           *SENSUS.—If the Committee fails to reach*  
14           *consensus with respect to a recommendation*  
15           *under clause (i) regarding a covered trans-*  
16           *action, the members of the Committee who*  
17           *support an alternative recommendation*  
18           *shall produce—*

19                   “(I) *a written statement justi-*  
20                   *fying the alternative recommendation;*  
21                   *and*

22                   “(II) *as appropriate, a risk-based*  
23                   *analysis that supports the alternative*  
24                   *recommendation.*

1           “(C) *DEFINITIONS.*—For purposes of sub-  
2           paragraph (A), the terms ‘threat’,  
3           ‘vulnerabilities’, and ‘consequences to national  
4           security’ shall have the meanings given those  
5           terms by the Committee by regulation.”;

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

9           (7) in paragraph (6), as redesignated by para-  
10          graph (2)—

11           (A) in subparagraph (A)—

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

14           (ii) by striking the second sentence and  
15           inserting the following: “The lead agency  
16           may, at its discretion, seek and receive the  
17           assistance of other departments or agencies  
18           in carrying out the purposes of this para-  
19           graph.”;

20           (B) in subparagraph (B)—

21           (i) by striking “DESIGNATED AGENCY”  
22           and all that follows through “The lead agen-  
23           cy in connection” and inserting “DES-  
24           IGNATED AGENCY.—The lead agency in con-  
25           nection”;

1                   (ii) by striking clause (ii); and  
2                   (iii) by redesignating subclauses (I)  
3 and (II) as clauses (i) and (ii), respectively,  
4 and by moving such clauses, as so redesign-  
5 nated, 2 ems to the left; and  
6 (C) by adding at the end the following:

7                   “(C) COMPLIANCE PLANS.—

8                   “(i) IN GENERAL.—In the case of a  
9 covered transaction with respect to which  
10 an agreement is entered into under para-  
11 graph (3)(A), the Committee or lead agency,  
12 as the case may be, shall formulate, adhere  
13 to, and keep updated a plan for monitoring  
14 compliance with the agreement.

15                   “(ii) ELEMENTS.—Each plan required  
16 by clause (i) with respect to an agreement  
17 entered into under paragraph (3)(A) shall  
18 include an explanation of—

19                   “(I) which member of the Com-  
20 mittee will have primary responsibility  
21 for monitoring compliance with the  
22 agreement;

23                   “(II) how compliance with the  
24 agreement will be monitored;

1                   “(III) how frequently compliance  
2                   reviews will be conducted;

3                   “(IV) whether an independent en-  
4                   tity will be utilized under subpara-  
5                   graph (E) to conduct compliance re-  
6                   views; and

7                   “(V) what actions will be taken if  
8                   the parties fail to cooperate regarding  
9                   monitoring compliance with the agree-  
10                  ment.

11                  “(D) EFFECT OF LACK OF COMPLIANCE.—  
12                  If, at any time after a mitigation agreement or  
13                  condition is entered into or imposed under para-  
14                  graph (3)(A), the Committee or lead agency, as  
15                  the case may be, determines that a party or par-  
16                  ties to the agreement or condition are not in  
17                  compliance with the terms of the agreement or  
18                  condition, the Committee or lead agency may, in  
19                  addition to the authority of the Committee to  
20                  impose penalties pursuant to subsection (h)(3)  
21                  and to unilaterally initiate a review of any cov-  
22                  ered transaction under subsection  
23                  (b)(1)(D)(iii)—

24                  “(i) negotiate a plan of action for the  
25                  party or parties to remediate the lack of

1           *compliance, with failure to abide by the*  
2           *plan or otherwise remediate the lack of com-*  
3           *pliance serving as the basis for the Com-*  
4           *mittee to find a material breach of the*  
5           *agreement or condition;*

6           “(ii) require that the party or parties  
7           submit a written notice under clause (i) of  
8           subsection (b)(1)(C) or a declaration under  
9           clause (v) of that subsection with respect to  
10          a covered transaction initiated after the  
11          date of the determination of noncompliance  
12          and before the date that is 5 years after the  
13          date of the determination to the Committee  
14          to initiate a review of the transaction under  
15          subsection (b); or

16          “(iii) seek injunctive relief.

17          “(E) *USE OF INDEPENDENT ENTITIES TO*  
18          *MONITOR COMPLIANCE.—If the parties to an*  
19          *agreement entered into under paragraph (3)(A)*  
20          *enter into a contract with an independent entity*  
21          *from outside the United States Government for*  
22          *the purpose of monitoring compliance with the*  
23          *agreement, the Committee shall take such action*  
24          *as is necessary to prevent a conflict of interest*



1           *from arising by ensuring that the independent*  
2           *entity owes no fiduciary duty to the parties.*

3           “(F) *SUCCESSORS AND ASSIGNS.—Any*  
4           *agreement or condition entered into or imposed*  
5           *under paragraph (3)(A) shall be considered bind-*  
6           *ing on all successors and assigns unless and*  
7           *until the agreement or condition terminates on*  
8           *its own terms or is otherwise terminated by the*  
9           *Committee in its sole discretion.*

10          “(G) *ADDITIONAL COMPLIANCE MEAS-*  
11          *URES.—Subject to subparagraphs (A) through*  
12          *(F), the Committee shall develop and agree upon*  
13          *methods for evaluating compliance with any*  
14          *agreement entered into or condition imposed*  
15          *with respect to a covered transaction that will*  
16          *allow the Committee to adequately ensure com-*  
17          *pliance without unnecessarily diverting Com-*  
18          *mittee resources from assessing any new covered*  
19          *transaction for which a written notice under*  
20          *clause (i) of subsection (b)(1)(C) or declaration*  
21          *under clause (v) of that subsection has been filed,*  
22          *and if necessary, reaching a mitigation agree-*  
23          *ment with or imposing a condition on a party*  
24          *to such covered transaction or any covered trans-*

1           *action for which a review has been reopened for*  
2           *any reason.”.*

3 **SEC. 18. MODIFICATION OF ANNUAL REPORT AND OTHER**  
4           **REPORTING REQUIREMENTS.**

5           *(a) MODIFICATION OF ANNUAL REPORT.—Section*  
6 *721(m) of the Defense Production Act of 1950 (50 U.S.C.*  
7 *4565(m)) is amended—*

8           *(1) in paragraph (2)—*

9                   *(A) by amending subparagraph (A) to read*  
10           *as follows:*

11                           *“(A) A list of all notices filed and all re-*  
12                           *views or investigations of covered transactions*  
13                           *completed during the period, with—*

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

22                                   *“(ii) basic information on each party*  
23                                   *to each such transaction;*

24                                   *“(iii) the nature of the business activi-*  
25                                   *ties or products of the United States busi-*

1                    *ness with which the transaction was entered*  
2                    *into or intended to be entered into; and*

3                    *“(iv) information about any with-*  
4                    *drawal from the process.”; and*

5                    *(B) by adding at the end the following:*

6                    *“(G) Statistics on compliance plans con-*  
7                    *ducted and actions taken by the Committee*  
8                    *under subsection (l)(6), including subparagraph*  
9                    *(D) of that subsection, during that period, a gen-*  
10                    *eral assessment of the compliance of parties with*  
11                    *agreements entered into and conditions imposed*  
12                    *under subsection (l)(3)(A) that are in effect dur-*  
13                    *ing that period, including a description of any*  
14                    *actions taken by the Committee to impose pen-*  
15                    *alties or initiate a unilateral review pursuant to*  
16                    *subsection (b)(1)(D)(iii), and any recommenda-*  
17                    *tions for improving the enforcement of such*  
18                    *agreements and conditions.*

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

- 1           “(I) A description of—
- 2                 “(i) the methods used by the Committee
- 3                 to monitor non-notified and non-declared
- 4                 transactions under subsection (b)(1)(H);
- 5                 “(ii) potential methods to improve such
- 6                 monitoring and the resources required to do
- 7                 so; and
- 8                 “(iii) the number of transactions iden-
- 9                 tified through the mechanism established
- 10                under that subsection during the reporting
- 11                period and the number of such transactions
- 12                flagged for further review.”;
- 13         (2) in paragraph (3)—
- 14                 (A) by striking “CRITICAL TECHNOLOGIES”
- 15                 and all that follows through “In order to assist”
- 16                 and inserting “CRITICAL TECHNOLOGIES.—In
- 17                 order to assist”;
- 18                 (B) by striking subparagraph (B); and
- 19                 (C) by redesignating clauses (i) and (ii) as
- 20                 subparagraphs (A) and (B), respectively, and by
- 21                 moving such subparagraphs, as so redesignated,
- 22                 2 ems to the left; and
- 23         (3) by adding at the end the following:
- 24                 “(4) FORM OF REPORT.—

1           “(A) *IN GENERAL.*—All appropriate por-  
2           tions of the annual report under paragraph (1)  
3           may be classified. An unclassified version of the  
4           report, as appropriate, consistent with safe-  
5           guarding national security and privacy, shall be  
6           made available to the public.

7           “(B) *INCLUSIONS IN UNCLASSIFIED*  
8           *VERSION.*—The unclassified version of the report  
9           required under paragraph (1) shall include, with  
10          respect to covered transactions for the reporting  
11          period—

12                 “(i) the number of notices submitted  
13                 under subsection (b)(1)(C)(i);

14                 “(ii) the number of declarations sub-  
15                 mitted under subsection (b)(1)(C)(v) and  
16                 the number of such declarations that were  
17                 required under subclause (IV) of that sub-  
18                 section;

19                 “(iii) the number of declarations sub-  
20                 mitted under subsection (b)(1)(C)(v) for  
21                 which the Committee required resubmission  
22                 as notices under subsection (b)(1)(C)(i);

23                 “(iv) the average number of days that  
24                 elapsed between submission of a declaration  
25                 under subsection (b)(1)(C)(v) and the ac-

1           *ceptance of the declaration by the Com-*  
2           *mittee;*

3           “(v) *information on the time it took*  
4           *the Committee to provide comments on, or*  
5           *to accept, notices submitted under sub-*  
6           *section (b)(1)(C)(i), including—*

7                   “(I) *the average number of busi-*  
8                   *ness days that elapsed between the date*  
9                   *of submission of a draft notice and the*  
10                   *date on which the Committee provided*  
11                   *written comments on the draft notice;*

12                   “(II) *the average number of busi-*  
13                   *ness days that elapsed between the date*  
14                   *of submission of a final notice and the*  
15                   *date on which the Committee accepted*  
16                   *or provided written comments on the*  
17                   *final notice; and*

18                   “(III) *if the average number of*  
19                   *business days for a response by the*  
20                   *Committee reported under subclause (I)*  
21                   *or (II) exceeded 10 business days—*

22                           “(aa) *an explanation of the*  
23                           *causes of such delays, including*  
24                           *whether such delays are caused by*  
25                           *resource shortages, unusual fluc-*

1            *tuations in the volume of notices,*  
2            *transaction characteristics, or*  
3            *other factors; and*

4            *“(bb) an explanation of the*  
5            *steps that the Committee antici-*  
6            *pates taking to mitigate the*  
7            *causes of such delays and other-*  
8            *wise to improve the ability of the*  
9            *Committee to provide comments*  
10           *on, or to accept, notices within 10*  
11           *business days;*

12           *“(vi) the number of reviews or inves-*  
13           *tigations conducted under subsection (b);*

14           *“(vii) the number of investigations that*  
15           *were subject to an extension under sub-*  
16           *section (b)(2)(C)(ii);*

17           *“(viii) information on the duration of*  
18           *those reviews and investigations, including*  
19           *the average number of days required to*  
20           *complete those reviews and investigations;*

21           *“(ix) the number of notices submitted*  
22           *under subsection (b)(1)(C)(i) and declara-*  
23           *tions submitted under subsection*  
24           *(b)(1)(C)(v) that were rejected by the Com-*  
25           *mittee;*

1           “(x) the number of such notices and  
2           declarations that were withdrawn by a  
3           party to the covered transaction;

4           “(xi) the number of such withdrawals  
5           that were followed by the submission of a  
6           subsequent such notice or declaration relat-  
7           ing to a substantially similar covered trans-  
8           action; and

9           “(xii) such other specific, cumulative,  
10          or trend information that the Committee de-  
11          termines is advisable to provide for an as-  
12          sessment of the time required for reviews  
13          and investigations of covered transactions  
14          under this section.”.

15          **(b) REPORT ON CHINESE INVESTMENT.—**

16                (1) *IN GENERAL.*—Not later than 2 years after  
17                the date of the enactment of this Act, and every 2  
18                years thereafter through 2026, the Secretary of Com-  
19                merce shall submit to Congress and the Committee on  
20                Foreign Investment in the United States a report on  
21                foreign direct investment transactions made by enti-  
22                ties of the People’s Republic of China in the United  
23                States.

24                (2) *ELEMENTS.*—Each report required by para-  
25                graph (1) shall include the following:



1           (A) *Total foreign direct investment from the*  
2 *People's Republic of China in the United States,*  
3 *including total foreign direct investment*  
4 *disaggregated by ultimate beneficial owner.*

5           (B) *A breakdown of investments from the*  
6 *People's Republic of China in the United States*  
7 *by value using the following categories:*

8                   (i) *Less than \$50,000,000.*

9                   (ii) *Greater than or equal to*  
10 *\$50,000,000 and less than \$100,000,000.*

11                   (iii) *Greater than or equal to*  
12 *\$100,000,000 and less than \$1,000,000,000.*

13                   (iv) *Greater than or equal to*  
14 *\$1,000,000,000 and less than*  
15 *\$2,000,000,000.*

16                   (v) *Greater than or equal to*  
17 *\$2,000,000,000 and less than*  
18 *\$5,000,000,000.*

19                   (vi) *Greater than or equal to*  
20 *\$5,000,000,000.*

21           (C) *A breakdown of investments from the*  
22 *People's Republic of China in the United States*  
23 *by 2-digit North American Industry Classifica-*  
24 *tion System code.*

1           (D) *A breakdown of investments from the*  
2 *People's Republic of China in the United States*  
3 *by investment type, using the following cat-*  
4 *egories:*

5                   (i) *Businesses established.*

6                   (ii) *Businesses acquired.*

7           (E) *A breakdown of investments from the*  
8 *People's Republic of China in the United States*  
9 *by government and non-government investments,*  
10 *including volume, sector, and type of investment*  
11 *within each category.*

12           (F) *A list of companies incorporated in the*  
13 *United States purchased through government in-*  
14 *vestment by the People's Republic of China.*

15           (G) *The number of United States affiliates*  
16 *of entities under the jurisdiction of the People's*  
17 *Republic of China, the total employees at those*  
18 *affiliates, and the valuation for any publicly*  
19 *traded United States affiliate of such an entity.*

20           (H) *An analysis of patterns in the invest-*  
21 *ments described in subparagraphs (A) through*  
22 *(F), including in volume, type, and sector, and*  
23 *the extent to which those patterns of investments*  
24 *align with the objectives outlined by the Govern-*  
25 *ment of the People's Republic of China in its*

1           *Made in China 2025 plan, including a compara-*  
2           *tive analysis of investments from the People's*  
3           *Republic of China in the United States and all*  
4           *foreign direct investment in the United States.*

5           *(I) An identification of any limitations on*  
6           *the ability of the Secretary of Commerce to col-*  
7           *lect comprehensive information that is reason-*  
8           *ably and lawfully available about foreign invest-*  
9           *ment in the United States from the People's Re-*  
10          *public of China on a timeline necessary to com-*  
11          *plete reports every 2 years as required by para-*  
12          *graph (1), including—*

13                 *(i) an identification of any discrep-*  
14                 *ancies between government and private sec-*  
15                 *tor estimates of investments from the Peo-*  
16                 *ple's Republic of China in the United*  
17                 *States;*

18                 *(ii) a description of the different meth-*  
19                 *odologies or data collection methods, includ-*  
20                 *ing by private sector entities, used to meas-*  
21                 *ure foreign investment that may result in*  
22                 *different estimates; and*

23                 *(iii) recommendations for enhancing*  
24                 *the ability of the Secretary of Commerce to*  
25                 *improve data collection of information*

1                   *about foreign investment in the United*  
2                   *States from the People’s Republic of China.*

3                   (3) *EXTENSION OF DEADLINE.—If, as a result of*  
4                   *a limitation identified under paragraph (2)(I), the*  
5                   *Secretary of Commerce determines that the Secretary*  
6                   *will be unable to submit a report at the time required*  
7                   *by paragraph (1), the Secretary may request addi-*  
8                   *tional time to complete the report.*

9                   (c) *REPORT ON CERTAIN INVESTMENTS BY STATE-*  
10 *OWNED OR STATE-CONTROLLED ENTITIES.—*

11                   (1) *IN GENERAL.—Not later than one year after*  
12                   *the date of the enactment of this Act, an appropriate*  
13                   *member or members of the Committee on Foreign In-*  
14                   *vestment in the United States shall, in coordination*  
15                   *with the chairperson of the Committee, submit to*  
16                   *Congress a report assessing—*

17                   (A) *national security threats related to in-*  
18                   *vestments in the United States by state-owned or*  
19                   *state-controlled entities in the manufacture or*  
20                   *assembly of rolling stock or other assets for use*  
21                   *in freight rail, public transportation, or inter-*  
22                   *city passenger rail systems, including the con-*  
23                   *struction of new facilities;*

24                   (B) *how the number and types of such in-*  
25                   *vestments could affect any such threats; and*

1           (C) the authority and ability of the Com-  
2           mittee to respond to such threats.

3           (2) CONSULTATION.—The member or members of  
4           the Committee on Foreign Investment in the United  
5           States preparing the report required by paragraph  
6           (1) shall consult with the Secretary of Transportation  
7           and the head of any agency that is not represented on  
8           the Committee that has significant technical expertise  
9           related to the assessments required by paragraph (1).

10 **SEC. 19. CERTIFICATION OF NOTICES AND INFORMATION.**

11           Section 721(n) of the Defense Production Act of 1950  
12           (50 U.S.C. 4565(n)) is amended—

13           (1) by redesignating paragraphs (1) and (2) as  
14           subparagraphs (A) and (B), respectively, and by mov-  
15           ing such subparagraphs, as so redesignated, 2 ems to  
16           the right;

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

19           “(1) IN GENERAL.—Each notice”;

20           (3) by striking “paragraph (3)(B)” and insert-  
21           ing “paragraph (6)(B)”;

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

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

1           “(2) *EFFECT OF FAILURE TO SUBMIT.*—The  
2           *Committee may not complete a review under this sec-*  
3           *tion of a covered transaction and may recommend to*  
4           *the President that the President suspend or prohibit*  
5           *the transaction or require divestment under sub-*  
6           *section (d) if the Committee determines that a party*  
7           *to the transaction has—*

8                   “(A) *failed to submit a statement required*  
9                   *by paragraph (1); or*

10                   “(B) *included false or misleading informa-*  
11                   *tion in a notice or information described in*  
12                   *paragraph (1) or omitted material information*  
13                   *from such notice or information.*

14           “(3) *APPLICABILITY OF LAW ON FRAUD AND*  
15           *FALSE STATEMENTS.*—The Committee shall prescribe  
16           *regulations expressly providing for the application of*  
17           *section 1001 of title 18, United States Code, to all in-*  
18           *formation provided to the Committee under this sec-*  
19           *tion by any party to a covered transaction.”.*

20 **SEC. 20. IMPLEMENTATION PLANS.**

21           (a) *IN GENERAL.*—Not later than 180 days after the  
22           *date of the enactment of this Act, the chairperson of the*  
23           *Committee on Foreign Investment in the United States and*  
24           *the Secretary of Commerce shall, in consultation with the*  
25           *appropriate members of the Committee—*

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

2           (2) *submit to the appropriate congressional com-*  
 3 *mittees a report on the plans developed under para-*  
 4 *graph (1), which shall include a description of—*

5                 (A) *the timeline and process to implement*  
 6 *the provisions of, and amendments made by, this*  
 7 *Act;*

8                 (B) *any additional staff necessary to imple-*  
 9 *ment the plans; and*

10                (C) *the resources required to effectively im-*  
 11 *plement the plans.*

12           (b) *APPROPRIATE CONGRESSIONAL COMMITTEES DE-*  
 13 *FINED.—In this section, the term “appropriate congres-*  
 14 *sional committees” means—*

15                 (1) *the Committee on Banking, Housing, and*  
 16 *Urban Affairs and the Committee on Appropriations*  
 17 *of the Senate; and*

18                 (2) *the Committee on Financial Services and the*  
 19 *Committee on Appropriations of the House of Rep-*  
 20 *resentatives.*

21 **SEC. 21. ASSESSMENT OF NEED FOR ADDITIONAL RE-**  
 22 **SOURCES FOR COMMITTEE.**

23 *The President shall—*

24                 (1) *determine whether and to what extent the ex-*  
 25 *pansion of the responsibilities of the Committee on*

1 *Foreign Investment in the United States pursuant to*  
2 *the amendments made by this Act necessitates addi-*  
3 *tional resources for the Committee and the depart-*  
4 *ments and agencies represented on the Committee to*  
5 *perform their functions under section 721 of the De-*  
6 *fense Production Act of 1950, as amended by this Act;*  
7 *and*

8 (2) *if the President determines that additional*  
9 *resources are necessary, include in the budget of the*  
10 *President for fiscal year 2019 and each fiscal year*  
11 *thereafter submitted to Congress under section*  
12 *1105(a) of title 31, United States Code, a request for*  
13 *such additional resources.*

14 **SEC. 22. FUNDING.**

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

17 *“(o) FUNDING.—*

18 *“(1) ESTABLISHMENT OF FUND.—There is estab-*  
19 *lished in the Treasury of the United States a fund,*  
20 *to be known as the ‘Committee on Foreign Investment*  
21 *in the United States Fund’ (in this subsection re-*  
22 *ferred to as the ‘Fund’), to be administered by the*  
23 *chairperson.*

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



1       *the Fund such sums as may be necessary to perform*  
2       *the functions of the Committee.*

3               “(3) *FILING FEES.*—

4                       “(A) *IN GENERAL.*—*The Committee may as-*  
5                       *sess and collect a fee in an amount determined*  
6                       *by the Committee in regulations, to the extent*  
7                       *provided in advance in appropriations Acts,*  
8                       *without regard to section 9701 of title 31, United*  
9                       *States Code, and subject to subparagraph (B),*  
10                      *with respect to each covered transaction for*  
11                      *which a written notice is submitted to the Com-*  
12                      *mittee under subsection (b)(1)(C)(i). The total*  
13                      *amount of fees collected under this paragraph*  
14                      *may not exceed the costs of administering this*  
15                      *section.*

16                      “(B) *DETERMINATION OF AMOUNT OF*  
17                      *FEE.*—

18                               “(i) *IN GENERAL.*—*In determining the*  
19                               *amount of the fee to be assessed under sub-*  
20                               *paragraph (A) with respect to a covered*  
21                               *transaction, the Committee shall base the*  
22                               *amount of the fee on the value of the trans-*  
23                               *action, taking into consideration—*

24   “(I) *the effect of the fee on small*  
25   *business concerns (as defined in section*

1                    *3 of the Small Business Act (15 U.S.C.*  
2                    *632));*

3                    *“(II) the expenses of the Com-*  
4                    *mittee associated with conducting ac-*  
5                    *tivities under this section;*

6                    *“(III) the effect of the fee on for-*  
7                    *eign investment; and*

8                    *“(IV) such other matters as the*  
9                    *Committee considers appropriate.*

10                    *“(i) PRIORITIZATION FEE.—The Com-*  
11                    *mittee may establish a fee or fee scale to*  
12                    *prioritize the timing of the response of the*  
13                    *Committee to a draft or final written notice*  
14                    *during the period before the Committee ac-*  
15                    *cepts the final written notice under sub-*  
16                    *section (b)(1)(C)(i), in the event that the*  
17                    *Committee is unable to respond during the*  
18                    *time required by subclause (II) of that sub-*  
19                    *section because of an unusually large influx*  
20                    *of notices, or for other reasons.*

21                    *“(iii) UPDATES.—The Committee shall*  
22                    *periodically reconsider and adjust the*  
23                    *amount of the fee to be assessed under sub-*  
24                    *paragraph (A) with respect to a covered*  
25                    *transaction to ensure that the amount of the*

1           *fee does not exceed the costs of admin-*  
2           *istering this section and otherwise remains*  
3           *appropriate.*

4           “(C) *DEPOSIT AND AVAILABILITY OF*  
5           *FEES.—Notwithstanding section 3302 of title 31,*  
6           *United States Code, fees collected under subpara-*  
7           *graph (A) shall—*

8                   “(i) *be deposited into the Fund solely*  
9                   *for use in carrying out activities under this*  
10                  *section;*

11                  “(ii) *to the extent and in the amounts*  
12                  *provided in advance in appropriations*  
13                  *Acts, be available to the chairperson;*

14                  “(iii) *remain available until expended;*  
15                  *and*

16                  “(iv) *be in addition to any appropria-*  
17                  *tions made available to the members of the*  
18                  *Committee.*

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

1       *amounts available to that department or agency for*  
 2       *that purpose.”.*

3   **SEC. 23. CENTRALIZATION OF CERTAIN COMMITTEE FUNC-**  
 4   **TIONS.**

5       *Section 721 of the Defense Production Act of 1950 (50*  
 6   *U.S.C. 4565), as amended by section 22, is further amended*  
 7   *by adding at the end the following:*

8           “(p) *CENTRALIZATION OF CERTAIN COMMITTEE FUNC-*  
 9   *TIONS.—*

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

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

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

1 **SEC. 24. CONFORMING AMENDMENTS.**

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

4 *(1) in subsection (b)—*

5 *(A) in paragraph (1)(D)(iii)(I), by striking*  
 6 *“subsection (l)(1)(A)” and inserting “subsection*  
 7 *(l)(3)(A)”;* and

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

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

15 *(3) in subsection (j), by striking “merger, acqui-*  
 16 *sition, or takeover” and inserting “transaction”.*

17 **SEC. 25. REQUIREMENTS TO IDENTIFY AND CONTROL THE**  
 18 **EXPORT OF EMERGING AND FOUNDATIONAL**  
 19 **TECHNOLOGIES.**

20 *(a) IDENTIFICATION OF TECHNOLOGIES.—*

21 *(1) IN GENERAL.—The President shall establish*  
 22 *and, in coordination with the Secretary of Commerce,*  
 23 *the Secretary of Defense, the Secretary of Energy, the*  
 24 *Secretary of State, and the heads of other Federal*  
 25 *agencies as appropriate, lead, a regular, ongoing*

1 *interagency process to identify emerging and*  
2 *foundational technologies that—*

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

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

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); and*

23 *(iv) information provided by the advi-*  
24 *sory committees established by the Secretary*  
25 *of Commerce to advise the Under Secretary*

1           *of Commerce for Industry and Security on*  
2           *controls under the Export Administration*  
3           *Regulations, including the Emerging Tech-*  
4           *nology and Research Advisory Committee;*  
5           *(B) take into account—*

6                     *(i) the development of emerging and*  
7                     *foundational technologies in foreign coun-*  
8                     *tries;*

9                     *(ii) the effect export controls imposed*  
10                    *pursuant to this section may have on the*  
11                    *development of such technologies in the*  
12                    *United States; and*

13                    *(iii) the effectiveness of export controls*  
14                    *imposed pursuant to this section on lim-*  
15                    *iting the proliferation of emerging and*  
16                    *foundational technologies to foreign coun-*  
17                    *tries; and*

18                    *(C) include a notice and comment period.*

19           *(b) COMMERCE CONTROLS.—*

20                    *(1) IN GENERAL.—The Secretary of Commerce*  
21                    *shall establish appropriate controls under the Export*  
22                    *Administration Regulations on the export, reexport,*  
23                    *or in-country transfer of technology identified pursu-*  
24                    *ant to subsection (a), including by prescribing addi-*  
25                    *tional regulations.*

1           (2) *LEVELS OF CONTROL.*—

2                   (A) *IN GENERAL.*—*The Secretary of Com-*  
3                   *merce may, in coordination with the Secretary*  
4                   *of Defense, the Secretary of State, and the heads*  
5                   *of other Federal agencies, as appropriate, specify*  
6                   *the level of control to apply under paragraph (1)*  
7                   *with respect to the export of technology described*  
8                   *in that paragraph, including a requirement for*  
9                   *a license or other authorization for the export,*  
10                   *reexport, or in-country transfer of that tech-*  
11                   *nology.*

12                   (B) *CONSIDERATIONS.*—*In determining*  
13                   *under subparagraph (A) the level of control ap-*  
14                   *propriate for technology described in paragraph*  
15                   *(1), the Secretary of Commerce shall take into*  
16                   *account—*

17                           (i) *lists of countries to which exports*  
18                           *from the United States are restricted; and*

19                           (ii) *the potential end uses and end*  
20                           *users of the technology.*

21                   (C) *MINIMUM REQUIREMENTS.*—*At a min-*  
22                   *imum, except as provided by paragraph (4), the*  
23                   *Secretary of Commerce shall require a license for*  
24                   *the export, reexport, or in-country transfer of*  
25                   *technology described in paragraph (1) to or in a*



1           *country subject to an embargo, including an*  
2           *arms embargo, imposed by the United States.*

3           (3) *REVIEW OF LICENSE APPLICATIONS.—*

4                 (A) *PROCEDURES.—The procedures set forth*  
5                 *in Executive Order 12981 (50 U.S.C. 4603 note;*  
6                 *relating to administration of export controls) or*  
7                 *a successor order shall apply to the review of an*  
8                 *application for a license or other authorization*  
9                 *for the export, reexport, or in-country transfer of*  
10                *technology described in paragraph (1).*

11               (B) *CONSIDERATION OF INFORMATION RE-*  
12                *LATING TO NATIONAL SECURITY.—In reviewing*  
13                *an application for a license or other authoriza-*  
14                *tion for the export, reexport, or in-country trans-*  
15                *fer of technology described in paragraph (1), the*  
16                *Secretary of Commerce shall take into account*  
17                *information provided by the Director of National*  
18                *Intelligence regarding any threat to the national*  
19                *security of the United States posed by the pro-*  
20                *posed export, reexport, or transfer. The Director*  
21                *of National Intelligence shall provide such infor-*  
22                *mation on the request of the Secretary of Com-*  
23                *merce.*

24               (C) *DISCLOSURES RELATING TO COLLABO-*  
25                *RATIVE ARRANGEMENTS.—In the case of an ap-*

1            *plication for a license or other authorization for*  
2            *the export, reexport, or in-country transfer of*  
3            *technology described in paragraph (1) submitted*  
4            *by or on behalf of a joint venture, joint develop-*  
5            *ment agreement, or similar collaborative ar-*  
6            *rangement, the Secretary of Commerce may re-*  
7            *quire the applicant to identify, in addition to*  
8            *any foreign person participating in the arrange-*  
9            *ment, any foreign person with significant owner-*  
10           *ship interest in a foreign person participating in*  
11           *the arrangement.*

12           *(4) EXCEPTIONS.—*

13                    *(A) MANDATORY EXCEPTIONS.—The Sec-*  
14                    *retary of Commerce may not control under this*  
15                    *subsection the export of any technology—*

16                            *(i) described in section 203(b) of the*  
17                            *International Emergency Economic Powers*  
18                            *Act (50 U.S.C. 1702(b)); or*

19                            *(ii) if the regulation of the export of*  
20                            *that technology is prohibited under any*  
21                            *other provision of law.*

22                    *(B) REGULATORY EXCEPTIONS.—In pre-*  
23                    *scribing regulations under paragraph (1), the*  
24                    *Secretary of Commerce may include regulatory*  
25                    *exceptions to the requirements of that paragraph.*

1           (C) *ADDITIONAL EXCEPTIONS.*—*The Sec-*  
2           *retary of Commerce shall not be required to im-*  
3           *pose under paragraph (1) a requirement for a li-*  
4           *cence or other authorization with respect to the*  
5           *export, reexport, or in-country transfer of tech-*  
6           *nology described in paragraph (1) pursuant to*  
7           *any of the following transactions:*

8                   (i) *The sale or license of a finished*  
9                   *item and the provision of associated tech-*  
10                  *nology if the United States person that is a*  
11                  *party to the transaction generally makes the*  
12                  *finished item and associated technology*  
13                  *available to its customers, distributors, or*  
14                  *resellers.*

15                  (ii) *The sale or license to a customer of*  
16                  *a product and the provision of integration*  
17                  *services or similar services if the United*  
18                  *States person that is a party to the trans-*  
19                  *action generally makes such services avail-*  
20                  *able to its customers.*

21                  (iii) *The transfer of equipment and the*  
22                  *provision of associated technology to operate*  
23                  *the equipment if the transfer could not re-*  
24                  *sult in the foreign person using the equip-*  
25                  *ment to produce critical technologies (as de-*

1 *defined in section 721(a) of the Defense Pro-*  
2 *duction Act of 1950, as amended by section*  
3 *3).*

4 *(iv) The procurement by the United*  
5 *States person that is a party to the trans-*  
6 *action of goods or services, including manu-*  
7 *facturing services, from a foreign person*  
8 *that is a party to the transaction, if the for-*  
9 *foreign person has no rights to exploit any*  
10 *technology contributed by the United States*  
11 *person other than to supply the procured*  
12 *goods or services.*

13 *(v) Any contribution and associated*  
14 *support by a United States person that is*  
15 *a party to the transaction to an industry*  
16 *organization related to a standard or speci-*  
17 *fication, whether in development or de-*  
18 *clared, including any license of or commit-*  
19 *ment to license intellectual property in com-*  
20 *pliance with the rules of any standards or-*  
21 *ganization (as defined by the Secretary by*  
22 *regulation).*

23 *(c) MULTILATERAL CONTROLS.—*

24 *(1) IN GENERAL.—The Secretary of State, in*  
25 *consultation with the Secretary of Commerce and the*

1        *Secretary of Defense, and the heads of other Federal*  
2        *agencies, as appropriate, may propose that any tech-*  
3        *nology identified pursuant to subsection (a) be added*  
4        *to the list of technologies controlled by the relevant*  
5        *multilateral export control regimes.*

6                (2) *ITEMS ON COMMERCE CONTROL LIST OR*  
7        *UNITED STATES MUNITIONS LIST.—*

8                (A) *IN GENERAL.—If the Secretary of State*  
9        *proposes to a multilateral export control regime*  
10        *under paragraph (1) to add a technology identi-*  
11        *fied pursuant to subsection (a) to the control list*  
12        *of that regime and that regime does not add that*  
13        *technology to the control list during the 3-year*  
14        *period beginning on the date of the proposal, the*  
15        *applicable agency head may determine whether*  
16        *national security concerns warrant the continu-*  
17        *ation of unilateral export controls with respect to*  
18        *that technology.*

19                (B) *APPLICABLE AGENCY HEAD DEFINED.—*  
20        *In this paragraph, the term “applicable agency*  
21        *head” means—*

22                (i) *in the case of technology listed on*  
23        *the Commerce Control List set forth in Sup-*  
24        *plement No. 1 to part 774 of the Export Ad-*  
25        *ministration Regulations, the Secretary of*

1 Commerce, in consultation with the Sec-  
2 retary of Defense and the Secretary of State;  
3 and

4 (ii) in the case of technology listed on  
5 the United States Munitions List set forth  
6 in part 121 of title 22, Code of Federal Reg-  
7 ulations, the Secretary of State, in consulta-  
8 tion with the Secretary of Defense and the  
9 heads of other Federal agencies, as appro-  
10 priate.

11 (d) *REPORT TO COMMITTEE ON FOREIGN INVESTMENT*  
12 *IN THE UNITED STATES.*—Not less frequently than every  
13 180 days, the Secretary of Commerce, in coordination with  
14 the Secretary of Defense, the Secretary of State, and the  
15 heads of other Federal agencies, as appropriate, shall sub-  
16 mit to the Committee on Foreign Investment in the United  
17 States a report on the results of actions taken pursuant to  
18 this section.

19 (e) *REPORT TO CONGRESS.*—Not less frequently than  
20 every 180 days, the Secretary of Commerce, in coordination  
21 with the Secretary of Defense, the Secretary of State, and  
22 the heads of other Federal agencies, as appropriate, shall  
23 submit a report on the results of actions taken pursuant  
24 to this section, including actions taken pursuant to sub-  
25 sections (a), (b), and (c), to—

1           (1) *the Committee on Banking, Housing, and*  
2           *Urban Affairs, the Committee on Foreign Relations,*  
3           *the Committee on Armed Services, and the Select*  
4           *Committee on Intelligence of the Senate; and*

5           (2) *the Committee on Financial Services, the*  
6           *Committee on Foreign Affairs, the Committee on*  
7           *Armed Services, and the Permanent Select Committee*  
8           *on Intelligence of the House of Representatives.*

9           (f) *MODIFICATIONS TO EMERGING TECHNOLOGY AND*  
10          *RESEARCH ADVISORY COMMITTEE.—*

11           (1) *IN GENERAL.—The Secretary of Commerce*  
12           *shall revise the objectives of the Emerging Technology*  
13           *and Research Advisory Committee, established by the*  
14           *Secretary under the Export Administration Regula-*  
15           *tions, to include advising the interagency process es-*  
16           *tablished under subsection (a) with respect to emerg-*  
17           *ing and foundational technologies.*

18           (2) *DUTIES.—The Secretary—*

19           (A) *shall revise the duties of the Emerging*  
20           *Technology and Research Advisory Committee to*  
21           *include identifying emerging and foundational*  
22           *technologies that may be developed over a period*  
23           *of 5 years or 10 years; and*

24           (B) *may revise the duties of the Advisory*  
25           *Committee to include identifying trends in—*

1           (i) *the ownership by foreign persons*  
2           *and foreign governments of such tech-*  
3           *nologies;*

4           (ii) *the types of transactions related to*  
5           *such technologies engaged in by foreign per-*  
6           *sons and foreign governments;*

7           (iii) *the blending of private and gov-*  
8           *ernment investment in such technologies;*  
9           *and*

10          (iv) *efforts to obfuscate ownership of*  
11          *such technologies or to otherwise circumvent*  
12          *the controls established under this section.*

13          (3) *MEETINGS.—*

14           (A) *FREQUENCY.—The Emerging Tech-*  
15           *nology and Research Advisory Committee should*  
16           *meet not less frequently than every 120 days.*

17           (B) *ATTENDANCE.—A representative from*  
18           *each agency participating in the interagency*  
19           *process established under subsection (a) should be*  
20           *in attendance at each meeting of the Emerging*  
21           *Technology and Research Advisory Committee.*

22          (4) *CLASSIFIED INFORMATION.—Not fewer than*  
23          *half of the members of the Emerging Technology and*  
24          *Research Advisory Committee should hold sufficient*  
25          *security clearances such that classified information,*



1 *including classified information described in clauses*  
2 *(ii) and (iii) of subsection (a)(2)(A), from the inter-*  
3 *agency process established under subsection (a) can be*  
4 *shared with those members to inform the advice pro-*  
5 *vided by the Advisory Committee.*

6 (5) *APPLICABILITY OF FEDERAL ADVISORY COM-*  
7 *MITTEE ACT.—Subsections (a)(1), (a)(3), and (b) of*  
8 *section 10 and sections 11, 13, and 14 of the Federal*  
9 *Advisory Committee Act (5 U.S.C. App.) shall not*  
10 *apply to the Emerging Technology and Research Ad-*  
11 *visory Committee.*

12 (6) *REPORT.—The Emerging Technology and*  
13 *Research Advisory Committee shall include the find-*  
14 *ings of the Advisory Committee under this subsection*  
15 *in the annual report to Congress required by section*  
16 *14 of the Export Administration Act of 1979 (50*  
17 *U.S.C. 4616) (as continued in effect pursuant to the*  
18 *International Emergency Economic Powers Act (50*  
19 *U.S.C. 1701 et seq.)).*

20 (g) *RULE OF CONSTRUCTION.—Nothing in this section*  
21 *shall be construed to alter or limit—*

22 (1) *the authority of the President or the Sec-*  
23 *retary of State to designate items as defense articles*  
24 *and defense services for the purposes of the Arms Ex-*

1 *port Control Act (22 U.S.C. 2751 et seq.) or to other-*  
2 *wise regulate such items; or*

3 (2) *the authority of the President under the*  
4 *Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.),*  
5 *the Nuclear Non-Proliferation Act of 1978 (22 U.S.C.*  
6 *3201 et seq.), the Energy Reorganization Act of 1974*  
7 *(42 U.S.C. 5801 et seq.), or the Export Administra-*  
8 *tion Act of 1979 (50 U.S.C. 4601 et seq.) (as contin-*  
9 *ued in effect pursuant to the International Emergency*  
10 *Economic Powers Act (50 U.S.C. 1701 et seq.)) or*  
11 *any other provision of law relating to the control of*  
12 *exports.*

13 (h) *DEFINITIONS.—In this section:*

14 (1) *EXPORT ADMINISTRATION REGULATIONS.—*  
15 *The term “Export Administration Regulations”*  
16 *means subchapter C of chapter VII of title 15, Code*  
17 *of Federal Regulations.*

18 (2) *IN-COUNTRY TRANSFER.—The term “in-coun-*  
19 *try transfer” has the meaning given to the term in*  
20 *the Export Administration Regulations.*

21 (3) *REEXPORT.—The term “reexport” has the*  
22 *meaning given to the term in the Export Administra-*  
23 *tion Regulations.*

1           (4) *UNITED STATES PERSON.*—The term “United  
2           States person” means any person subject to the juris-  
3           diction of the United States.

4 **SEC. 26. EXPORT CONTROL ENFORCEMENT AUTHORITY.**

5           (a) *AUTHORITIES.*—In order to enforce the provisions  
6 of the *Export Administration Regulations* under subchapter  
7 C of chapter VII of title 15, Code of Federal Regulations,  
8 issued under the authority of the *International Emergency*  
9 *Economic Powers Act* (50 U.S.C. 1701 et seq.) (pursuant  
10 to which the President has continued in effect authorities  
11 granted under the *Export Administration Act of 1979* (50  
12 U.S.C. 4601 et seq.)), the President shall delegate to the Sec-  
13 retary of Commerce, in addition to existing authorities, the  
14 authority to authorize any law enforcement officer of the  
15 Department of Commerce to conduct investigations (includ-  
16 ing undercover investigations) in the United States and in  
17 other countries when permitted under such countries’ laws  
18 using all applicable laws of the United States.

19           (b) *BEST PRACTICE GUIDELINES.*—The Secretary of  
20 Commerce, in consultation with the heads of appropriate  
21 Federal agencies, may publish and update best practices  
22 guidelines to assist persons in developing and imple-  
23 menting, on a voluntary basis, effective export control pro-  
24 grams in compliance with the *Export Administration Reg-*  
25 *ulations.*

1 (c) *CONFIDENTIALITY OF INFORMATION.*—

2 (1) *EXEMPTIONS FROM DISCLOSURE.*—

3 (A) *IN GENERAL.*—*Information obtained*  
4 *under the Export Administration Act of 1979*  
5 *(50 U.S.C. 2601 et seq.) (as continued in effect*  
6 *pursuant to the International Emergency Eco-*  
7 *nomics Powers Act (50 U.S.C. 1701 et seq.)) may*  
8 *be withheld from disclosure only to the extent*  
9 *permitted by statute, except that information de-*  
10 *scribed in subparagraph (B) shall be withheld*  
11 *from public disclosure and shall not be subject to*  
12 *disclosure under section 552(b)(3) of title 5,*  
13 *United States Code, unless the release of such in-*  
14 *formation is determined by the Secretary to be*  
15 *in the national interest.*

16 (B) *INFORMATION DESCRIBED.*—*Informa-*  
17 *tion described in this subparagraph is informa-*  
18 *tion submitted or obtained in connection with an*  
19 *application for a license or other authorization*  
20 *to export, reexport, or transfer items or engage*  
21 *in other activities, a recordkeeping or reporting*  
22 *requirement, enforcement activity, or other oper-*  
23 *ations under the Export Administration Act of*  
24 *1979, including—*

1           (i) *the license application, license, or*  
2           *other authorization itself;*

3           (ii) *classification or advisory opinion*  
4           *requests, and any response to such a re-*  
5           *quest;*

6           (iii) *license determinations and infor-*  
7           *mation pertaining to such determinations;*

8           (iv) *information or evidence obtained*  
9           *in the course of any investigation; and*

10          (v) *information obtained or furnished*  
11          *in connection with any international agree-*  
12          *ment, treaty, or other obligation.*

13          (2) *INFORMATION TO CONGRESS AND GAO.—*

14           (A) *IN GENERAL.—Nothing in this section*  
15           *shall be construed as authorizing the withholding*  
16           *of information from Congress or the Comptroller*  
17           *General of the United States.*

18           (B) *AVAILABILITY TO CONGRESS.—*

19           (i) *IN GENERAL.—Information ob-*  
20           *tained at any time under any provision of*  
21           *the Export Administration Act of 1979 or*  
22           *the Export Administration Regulations, in-*  
23           *cluding reports or license applications re-*  
24           *quired under any such provision, shall be*  
25           *made available to a committee or sub-*

1           *committee of Congress of appropriate juris-*  
2           *isdiction, upon the request of the chairman or*  
3           *ranking member of the committee or sub-*  
4           *committee.*

5           *(ii) PROHIBITION ON FURTHER DIS-*  
6           *CLOSURE.—No committee or subcommittee*  
7           *referred to in clause (i), or member thereof,*  
8           *may disclose any information made avail-*  
9           *able under clause (i) that is submitted on a*  
10          *confidential basis unless the full committee*  
11          *determines that the withholding of that in-*  
12          *formation is contrary to the national inter-*  
13          *est.*

14          *(C) AVAILABILITY TO GAO.—*

15          *(i) IN GENERAL.—Information de-*  
16          *scribed in subparagraph (B)(i) shall be sub-*  
17          *ject to the limitations contained in section*  
18          *716 of title 31, United States Code.*

19          *(ii) PROHIBITION ON FURTHER DIS-*  
20          *CLOSURE.—An officer or employee of the*  
21          *Government Accountability Office may not*  
22          *disclose, except to Congress in accordance*  
23          *with this paragraph, any information de-*  
24          *scribed in subparagraph (B)(i) that is sub-*

1           mitted on a confidential basis or from  
2           which any individual can be identified.

3           (3) *INFORMATION SHARING.*—

4           (A) *EXCHANGE OF INFORMATION.*—The  
5           heads of departments, agencies, and offices with  
6           enforcement authorities under the Export Ad-  
7           ministration Act of 1979, consistent with protec-  
8           tion of law enforcement and its sources and  
9           methods, shall exchange any licensing and en-  
10          forcement information with one another that is  
11          necessary to facilitate enforcement efforts under  
12          this section, and shall consult on a regular basis  
13          with one another and with the heads of other de-  
14          partments, agencies, and offices that obtain in-  
15          formation subject to this paragraph, in order to  
16          facilitate the exchange of such information.

17          (B) *PROVISION OF INFORMATION BY FED-*  
18          *ERAL OFFICIALS.*—Any Federal official who ob-  
19          tains information that is relevant to the enforce-  
20          ment of the Export Administration Act of 1979,  
21          including information pertaining to any inves-  
22          tigation, shall furnish such information to each  
23          appropriate department, agency, or office with  
24          enforcement responsibilities under this section to  
25          the extent consistent with the protection of intel-

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

3           (C) *EXCEPTIONS.*—*The provisions of this*  
4           *paragraph shall not apply to information subject*  
5           *to the restrictions set forth in section 9 of title*  
6           *13, United States Code. Return information, as*  
7           *defined in section 6103(b) of the Internal Rev-*  
8           *enue Code of 1986, may be disclosed only as au-*  
9           *thorized by that section.*

10           (D) *INFORMATION SHARING WITH FEDERAL*  
11           *AGENCIES.*—*Licensing or enforcement informa-*  
12           *tion obtained under the Export Administration*  
13           *Act of 1979 may be shared with heads of depart-*  
14           *ments, agencies, and offices that do not have en-*  
15           *forcement authorities under that Act on a case-*  
16           *by-case basis, at the discretion of the Secretary*  
17           *of Commerce. Such information may be shared*  
18           *only when the Secretary makes a determination*  
19           *that the sharing of the information is in the na-*  
20           *tional interest.*

21 **SEC. 27. PROHIBITION ON MODIFICATION OF CIVIL PEN-**  
22           **ALTIES UNDER EXPORT CONTROL AND SANC-**  
23           **TIONS LAWS.**

24           (a) *IN GENERAL.*—*Notwithstanding any other provi-*  
25           *sion of law, the Executive Office of the President may not*



1 *modify any civil penalty, including a denial order, imple-*  
2 *mented by the Government of the United States with respect*  
3 *to a Chinese telecommunications company pursuant to a*  
4 *determination that the company has violated an export con-*  
5 *trol or sanctions law of the United States until the date*  
6 *that is 30 days after the President certifies to the appro-*  
7 *priate congressional committees that the company—*

8           (1) *has not, for a period of one year, conducted*  
9           *activities in violation of the laws of the United States;*  
10          *and*

11           (2) *is fully cooperating with investigations into*  
12           *the activities of the company conducted by the Gov-*  
13           *ernment of the United States, if any.*

14          (b) *APPROPRIATE CONGRESSIONAL COMMITTEES DE-*  
15 *FINED.—In this section, the term “appropriate congres-*  
16 *sional committees” means—*

17           (1) *the Committee on Banking, Housing, and*  
18           *Urban Affairs and the Committee on Foreign Rela-*  
19           *tions of the Senate; and*

20           (2) *the Committee on Financial Services and the*  
21           *Committee on Foreign Affairs of the House of Rep-*  
22           *resentatives.*

1 **SEC. 28. UNDER SECRETARY OF COMMERCE FOR INDUSTRY**  
 2 **AND SECURITY.**

3 (a) *IN GENERAL.*—On and after the date of the enact-  
 4 ment of this Act, any reference in the Export Administra-  
 5 tion Act of 1979 (50 U.S.C. 4601 et seq.) or any other law  
 6 or regulation to the Under Secretary of Commerce for Ex-  
 7 port Administration shall be deemed to be a reference to  
 8 the Under Secretary of Commerce for Industry and Secu-  
 9 rity.

10 (b) *TITLE 5.*—Section 5314 of title 5, United States  
 11 Code, is amended by striking “Under Secretary of Com-  
 12 merce for Export Administration” and inserting “Under  
 13 Secretary of Commerce for Industry and Security”.

14 (c) *CONTINUATION IN OFFICE.*—The individual serv-  
 15 ing as Under Secretary of Commerce for Export Adminis-  
 16 tration on the day before the date of the enactment of this  
 17 Act may serve as the Under Secretary of Commerce for In-  
 18 dustry and Security on and after that date without the need  
 19 for renomination or reappointment.

20 **SEC. 29. LIMITATION ON CANCELLATION OF DESIGNATION**  
 21 **OF SECRETARY OF THE AIR FORCE AS DE-**  
 22 **PARTMENT OF DEFENSE EXECUTIVE AGENT**  
 23 **FOR A CERTAIN DEFENSE PRODUCTION ACT**  
 24 **PROGRAM.**

25 (a) *LIMITATION ON CANCELLATION OF DESIGNA-*  
 26 *TION.*—The Secretary of Defense may not implement the de-

1 *cision, issued on July 1, 2017, to cancel the designation,*  
2 *under Department of Defense Directive 4400.01E, entitled*  
3 *“Defense Production Act Programs” and dated October 12,*  
4 *2001, of the Secretary of the Air Force as the Department*  
5 *of Defense Executive Agent for the program carried out*  
6 *under title III of the Defense Production Act of 1950 (50*  
7 *U.S.C. 4531 et seq.) until the date specified in subsection*  
8 *(c).*

9       **(b) DESIGNATION.**—*The Secretary of the Air Force*  
10 *shall continue to serve as the sole and exclusive Department*  
11 *of Defense Executive Agent for the program described in*  
12 *subsection (a) until the date specified in subsection (c).*

13       **(c) DATE SPECIFIED.**—*The date specified in this sub-*  
14 *section is the date of the enactment of a joint resolution*  
15 *or an Act approving the implementation of the decision de-*  
16 *scribed in subsection (a).*

17 **SEC. 30. REVIEW OF AND REPORT ON CERTAIN DEFENSE**  
18 **TECHNOLOGIES CRITICAL TO THE UNITED**  
19 **STATES MAINTAINING SUPERIOR MILITARY**  
20 **CAPABILITIES.**

21       **(a) REVIEW REQUIRED.**—*Not later than 180 days*  
22 *after the date of the enactment of this Act, the Secretary*  
23 *of Defense and the Director of National Intelligence, in con-*  
24 *sultation with the Air Force Research Laboratory, the De-*  
25 *fense Advanced Projects Research Agency, and such other*

1 *appropriate research entities as the Secretary and the Di-*  
2 *rector may identify, shall—*

3 *(1) jointly carry out and complete a review of*  
4 *key national security technology capability advan-*  
5 *tages, competitions, and gaps between the United*  
6 *States and “near peer” nations;*

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

9 *(3) submit to the appropriate congressional com-*  
10 *mittees a report on the findings of the Secretary and*  
11 *the Director with respect to the review conducted*  
12 *under paragraph (1).*

13 *(b) ELEMENTS.—The review conducted under para-*  
14 *graph (1) of subsection (a), and the report required by*  
15 *paragraph (3) of that subsection, shall identify, at a min-*  
16 *imum, the following:*

17 *(1) Key United States industries and research*  
18 *and development activities expected to be critical to*  
19 *maintaining a national security technology capa-*  
20 *bility if, during the 5-year period beginning on the*  
21 *date of the enactment of this Act, the Secretary and*  
22 *the Director anticipate that—*

23 *(A) a United States industrial base shortfall*  
24 *will exist; and*

1           (B) *United States industry will be unable*  
2           *to or otherwise will not provide the needed ca-*  
3           *capacity in a timely manner without financial as-*  
4           *istance from the United States Government*  
5           *through existing statutory authorities specifically*  
6           *intended for that purpose, including assistance*  
7           *provided under title III of the Defense Produc-*  
8           *tion Act of 1950 (50 U.S.C. 4531 et seq.) and*  
9           *other appropriate authorities.*

10           (2) *Key areas in which the United States cur-*  
11           *rently enjoys a technological advantage.*

12           (3) *Key areas in which the United States no*  
13           *longer enjoys a technological advantage.*

14           (4) *Sectors of the defense industrial base in*  
15           *which the United States lacks adequate productive ca-*  
16           *capacity to meet critical national defense needs.*

17           (5) *Priority areas for which appropriate statu-*  
18           *tory industrial base incentives should be applied as*  
19           *the most cost-effective, expedient, and practical alter-*  
20           *native for meeting the technology or defense industrial*  
21           *base needs identified under this subsection, includ-*  
22           *ing—*

23                   (A) *sustainment of critical production and*  
24                   *supply chain capabilities;*

1           (B) commercialization of research and de-  
2           velopment investments;

3           (C) scaling of emerging technologies; and

4           (D) other areas as determined by the Sec-  
5           retary and the Director.

6           (6) Priority funding recommendations with re-  
7           spect to key areas that the Secretary, in consultation  
8           with the Director, determines are—

9           (A) critical to the United States maintain-  
10          ing superior military capabilities, especially  
11          with respect to potential peer and near peer  
12          military or economic competitors, during the 5-  
13          year period beginning on the date of the enact-  
14          ment of this Act; and

15          (B) suitable for long-term investment from  
16          funds made available under title III of the De-  
17          fense Production Act of 1950 and other appro-  
18          priate statutory authorities.

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

22          (d) *APPROPRIATE CONGRESSIONAL COMMITTEES DE-*  
23          *FINED.*—In this section, the term “appropriate congres-  
24          sional committees” means—

1           (1) *the Committee on Banking, Housing and*  
2           *Urban Affairs, the Committee on Armed Services, and*  
3           *the Select Committee on Intelligence of the Senate;*  
4           *and*

5           (2) *the Committee on Financial Services, the*  
6           *Committee on Armed Services, and the Permanent*  
7           *Select Committee on Intelligence of the House of Rep-*  
8           *resentatives.*

9   **SEC. 31. BRIEFING ON INFORMATION FROM TRANSACTIONS**

10                   **REVIEWED BY COMMITTEE ON FOREIGN IN-**  
11                   **VESTMENT IN THE UNITED STATES RELATING**  
12                   **TO FOREIGN EFFORTS TO INFLUENCE DEMO-**  
13                   **CRATIC INSTITUTIONS AND PROCESSES.**

14           *Not later than 60 days after the date of the enactment*  
15           *of this Act, the Secretary of the Treasury (or a designee*  
16           *of the Secretary) shall provide a briefing to the Committee*  
17           *on Banking, Housing, and Urban Affairs of the Senate and*  
18           *the Committee on Financial Services of the House of Rep-*  
19           *resentatives on—*

20           (1) *transactions reviewed by the Committee on*  
21           *Foreign Investment in the United States during the*  
22           *5-year period preceding the briefing that the Com-*  
23           *mittee determined would have allowed foreign persons*  
24           *to inappropriately influence democratic institutions*

1        *and processes within the United States and in other*  
2        *countries; and*

3                *(2) the disposition of such reviews, including*  
4        *any steps taken by the Committee to address the risk*  
5        *of allowing foreign persons to influence such institu-*  
6        *tions and processes.*

7        **SEC. 32. EFFECTIVE DATE.**

8                *(a) IMMEDIATE APPLICABILITY OF CERTAIN PROVI-*  
9        *SIONS.—The following shall take effect on the date of the*  
10        *enactment of this Act and apply with respect to any covered*  
11        *transaction the review or investigation of which is initiated*  
12        *under section 721 of the Defense Production Act of 1950*  
13        *on or after such date of enactment:*

14                *(1) Sections 5, 7, 8, 9, 10, 13, 14, 15, 16, 17,*  
15        *19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 and the*  
16        *amendments made by those sections.*

17                *(2) Section 12 and the amendments made by*  
18        *that section (except for clause (iii) of section*  
19        *721(b)(4)(A) of the Defense Production Act of 1950,*  
20        *as added by section 12).*

21                *(3) Paragraphs (1), (2), (3), (4), (5)(A)(i),*  
22        *(5)(B)(i), (5)(B)(iv)(I), (5)(B)(v), (5)(C)(v), (6), (7),*  
23        *(8), (9), (10), (11), (12), (13), (14), (15), (16), and*  
24        *(17) of subsection (a) of section 721 of the Defense*  
25        *Production Act of 1950, as amended by section 3.*



1           (4) *Section 721(m)(4) of the Defense Production*  
2 *Act of 1950, as amended by section 18 (except for*  
3 *clauses (ii), (iii), (iv), and (v) of subparagraph (B)*  
4 *of that section).*

5           (b) *DELAYED APPLICABILITY OF CERTAIN PROVI-*  
6 *SIONS.—*

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

10                   (A) *take effect on the date that is 30 days*  
11 *after publication in the Federal Register of a de-*  
12 *termination by the chairperson of the Committee*  
13 *on Foreign Investment in the United States that*  
14 *the regulations, organizational structure, per-*  
15 *sonnel, and other resources necessary to admin-*  
16 *ister the new provisions are in place; and*

17                   (B) *apply with respect to any covered*  
18 *transaction the review or investigation of which*  
19 *is initiated under section 721 of the Defense Pro-*  
20 *duction Act of 1950 on or after the date de-*  
21 *scribed in subparagraph (A).*

22           (2) *NONDELEGATION OF DETERMINATION.—The*  
23 *determination of the chairperson of the Committee on*  
24 *Foreign Investment in the United States under para-*  
25 *graph (1)(A) may not be delegated.*

1       (c) *AUTHORIZATION FOR PILOT PROGRAMS.*—

2           (1) *IN GENERAL.*—Beginning on the date of the  
3       enactment of this Act and ending on the date de-  
4       scribed in subsection (b)(1)(A), the Committee on For-  
5       eign Investment in the United States may, at its dis-  
6       cretion, conduct one or more pilot programs to imple-  
7       ment any authority provided pursuant to any provi-  
8       sion of or amendment made by this Act not specified  
9       in subsection (a).

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

16 **SEC. 33. SEVERABILITY.**

17       If any provision of this Act or an amendment made  
18       by this Act, or the application of such a provision or  
19       amendment to any person or circumstance, is held to be  
20       invalid, the application of that provision or amendment to  
21       other persons or circumstances and the remainder of the  
22       provisions of this Act and the amendments made by this  
23       Act, shall not be affected thereby.

Amend the title so as to read: “A bill to modernize  
and strengthen the Committee on Foreign Investment in  
the United States and the United States export control

system 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.”.

**Calendar No. 426**

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 2098**

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**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.

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MAY 22, 2018

Reported with an amendment and an amendment to the  
title