

109TH CONGRESS
2D SESSION

S. 3549

AN ACT

To amend the Defense Production Act of 1950, to strengthen Government review and oversight of foreign investment in the United States, to provide for enhanced Congressional oversight with respect thereto, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Foreign Investment
5 and National Security Act of 2006”.

1 **SEC. 2. AMENDMENTS TO THE DEFENSE PRODUCTION ACT**
 2 **OF 1950.**

3 Section 721 of the Defense Production Act of 1950
 4 (50 U.S.C. App. 2170) is amended to read as follows:

5 **“SEC. 721. REVIEW AND INVESTIGATION OF TRANSACTIONS**
 6 **INVOLVING FOREIGN PERSONS AND GOVERN-**
 7 **MENTS.**

8 “(a) REVIEW OF TRANSACTIONS INVOLVING FOR-
 9 EIGN PERSONS AND GOVERNMENTS.—

10 “(1) REVIEWS REQUIRED.—

11 “(A) IN GENERAL.—CFIUS shall review
 12 any transaction proposed or pending on or after
 13 the date of enactment of this section by, with,
 14 or on behalf of a foreign person or foreign gov-
 15 ernment which could result in foreign control of
 16 a person engaged in interstate commerce in the
 17 United States, for which a review is requested,
 18 in the manner prescribed by regulations pro-
 19 mulgated under this section.

20 “(B) PURPOSES.—The purpose of such re-
 21 view shall be to determine the effect on national
 22 security of such transaction, whether an inves-
 23 tigation of such transaction is required under
 24 subsection (b), or both.

25 “(2) TIMING OF REVIEWS.—

1 “(A) IN GENERAL.—A review of a pro-
2 posed or pending transaction described in para-
3 graph (1) shall be completed not later than 30
4 days after the date of receipt by CFIUS of a
5 written request for review by a person involved
6 in the transaction, or by one or more members
7 of CFIUS, of the proposed or pending trans-
8 action, as prescribed by regulations promul-
9 gated in accordance with paragraph (1)(A).

10 “(B) EXTENSIONS UPON REQUEST.—Upon
11 written request by the Secretary, Deputy Sec-
12 retary, or Under Secretary, or the equivalent
13 thereof, of one or more of the agencies that
14 make up CFIUS (including any agency de-
15 scribed in subsection (c)(4)(I)) for additional
16 time to review a case, the 30-day period de-
17 scribed in subparagraph (A) shall be extended
18 by not longer than an additional 30 days, if the
19 Secretary, Deputy Secretary, or Under Sec-
20 retary, or the equivalent thereof, concludes that
21 there is credible evidence to believe that if per-
22 mitted to proceed with the transaction, the for-
23 eign acquiring person may take action that
24 threatens to impair the national security.

1 “(b) INVESTIGATIONS OF CERTAIN TRANS-
2 ACTIONS.—

3 “(1) IN GENERAL.—CFIUS shall undertake an
4 investigation to determine the effects on national se-
5 curity of any transaction described in subsection
6 (a)(1) proposed or pending on or after the date of
7 enactment of this section—

8 “(A) which would—

9 “(i) result in control of any person en-
10 gaged in interstate commerce in the United
11 States by a foreign government, or a per-
12 son acting by, with, or on behalf of a for-
13 eign government; or

14 “(ii) result in control of any critical
15 infrastructure of or within the United
16 States by, with, or on behalf of any foreign
17 person, if CFIUS determines that any pos-
18 sible impairment to national security has
19 not been mitigated by assurances provided
20 or renewed with the approval of CFIUS, as
21 described in subsection (i), during the re-
22 view period under subsection (a); or

23 “(B) if the review by CFIUS under sub-
24 section (a) produces sufficient information to
25 indicate the possibility of an impairment to na-

1 tional security, after consideration of the fac-
2 tors listed in subsection (g), and the issues that
3 could result in an impairment to national secu-
4 rity are not resolved through negotiation of as-
5 surances between one or more members of
6 CFIUS and the entities involved in the trans-
7 action.

8 “(2) TIMING OF INVESTIGATIONS.—An inves-
9 tigation required to be undertaken under this
10 subsection—

11 “(A) shall commence at such time as
12 CFIUS determines under subsection (a) that
13 such investigation is required, as prescribed by
14 regulations promulgated pursuant to this sec-
15 tion; and

16 “(B) shall be completed not later than 45
17 days after the date of its commencement.

18 “(3) RESUBMITTED FILINGS.—An investigation
19 of a transaction under this subsection which is inter-
20 rupted because the notification or filing is withdrawn
21 by the applicant, and which is subsequently resub-
22 mitted, shall require up to a 45-day investigation
23 from the date on which CFIUS receives the new
24 submission. The investigation shall include a review

1 of the rationale for the withdrawal and resubmission
2 of the proposed transaction to CFIUS.

3 “(4) MONITORING OF WITHDRAWN TRANS-
4 ACTIONS.—If the notification or filing with respect
5 to a proposed transaction is withdrawn or rescinded,
6 CFIUS shall continue to monitor such transaction,
7 unless the transaction is terminated by agreement of
8 the parties to the transaction. If CFIUS has reason
9 to believe that the proposed transaction has not been
10 so terminated, CFIUS shall initiate a review or in-
11 vestigation under this section if the parties do not
12 resubmit the notification or filing within an appro-
13 priate period of time.”

14 “(5) MANDATORY NOTIFICATION RELATED TO
15 CERTAIN TRANSACTIONS AFFECTING NATIONAL SE-
16 CURITY.—The chairperson and vice chairperson of
17 CFIUS shall, not later than 90 days after the date
18 of enactment of the Foreign Investment and Na-
19 tional Security Act of 2006, issue rules, including
20 the imposition of appropriate penalties for failure to
21 comply with this paragraph, that require each per-
22 son controlled by or acting on behalf of a foreign
23 government to notify the chairperson of CFIUS in
24 writing of any proposed transaction involving such

1 person and United States critical infrastructure re-
 2 lating to United States national security.”

3 “(c) COMMITTEE ON FOREIGN INVESTMENT IN THE
 4 UNITED STATES.—

5 “(1) ESTABLISHMENT.—There is established
 6 the Committee on Foreign Investment in the United
 7 States, which shall serve as the President’s designee
 8 for all purposes under this section.

9 “(2) CHAIRPERSON.—The Secretary of the
 10 Treasury shall serve as the chairperson of CFIUS.

11 “(3) VICE CHAIRPERSON.—The Secretary of
 12 Defense shall serve as the vice chairperson of
 13 CFIUS.

14 “(4) MEMBERSHIP.—The members of CFIUS
 15 shall include—

16 “(A) the Secretary of the Treasury;

17 “(B) the Secretary of State;

18 “(C) the Secretary of Defense;

19 “(D) the Secretary of Commerce;

20 “(E) the Secretary of Homeland Security;

21 “(F) the Attorney General of the United
 22 States;

23 “(G) the Director of the Office of Manage-
 24 ment and Budget;

1 “(H) the Director of National Intelligence;
2 and

3 “(I) the heads of those other executive de-
4 partments or agencies as the President deter-
5 mines appropriate, on a case-by-case basis.

6 “(5) REFERRAL TO APPROPRIATE MEMBERS OF
7 CFIUS.—Upon receipt of notification of a proposed
8 or pending transaction under this section, the chair-
9 person of CFIUS shall assign the appropriate mem-
10 ber of CFIUS to lead the review and investigation
11 of such proposed or pending transaction under this
12 section.

13 “(6) INTELLIGENCE REVIEWS.—The Director
14 of National Intelligence shall—

15 “(A) direct the intelligence community, to
16 collect and analyze information related to any
17 proposed or pending transaction pursuant to
18 this section, and to prepare a report of its find-
19 ings, which the Director shall make available to
20 members of CFIUS not later than 15 days
21 after the date of the commencement by CFIUS
22 of a 30-day review of any such transaction
23 under subsection (a), and before the commence-
24 ment of any investigation under subsection (b);
25 and

“(B) ensure that the intelligence community remains engaged in the collection, analysis, and dissemination to CFIUS of any additional relevant information that may become available during the course of any investigation conducted under subsection (b) with respect to a transaction.

“(7) ASSESSMENTS OF FOREIGN COUNTRIES
FOR USE IN REVIEWS AND INVESTIGATIONS.—

“(A) IN GENERAL.—Not later than 120 days after the date of enactment of the Foreign Investment and National Security Act of 2006, the chairperson and vice chairperson of CFIUS, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, and the Director of National Intelligence, shall develop and implement a system for assessing individual countries, including—

“(i) an assessment of the adherence of the country to nonproliferation control regimes, including treaties and multilateral supply guidelines, which shall draw on, but not be limited to, the annual report on Adherence to and Compliance with Arms

1 Control, Nonproliferation and Disar-
2 mament Agreements and Commitments re-
3 quired by section 403 of the Arms Control
4 and Disarmament Act;

5 “(ii) an assessment of the relationship
6 of such country with the United States,
7 specifically on its record on cooperating in
8 counter-terrorism efforts, which shall draw
9 on, but not be limited to, the report of the
10 President to Congress under section 7120
11 of the Intelligence Reform and Terrorism
12 Prevention Act of 2004; and

13 “(iii) an assessment of the potential
14 for transshipment or diversion of tech-
15 nologies with military applications, includ-
16 ing an analysis of national export control
17 laws and regulations.

18 “(B) CONFIDENTIALITY.—The assessment
19 system required by subparagraph (A) and any
20 information or documentary material main-
21 tained or developed thereunder—

22 “(i) shall be used solely by those
23 agencies involved in reviewing and inves-
24 tigating acquisitions, mergers, and take-
25 overs pursuant to this section;

1 “(ii) may not be made available to the
2 public; and

3 “(iii) shall be exempt from disclosure
4 under section 552 of title 5, United States
5 Code.

6 “(8) STAFF OF CFIUS.—Employees of the De-
7 partment of the Treasury who serve as staff for
8 CFIUS shall report directly to the Deputy Secretary
9 of the Treasury, and shall perform no official func-
10 tions other than as CFIUS staff.

11 “(d) ACTION BY THE PRESIDENT.—

12 “(1) IN GENERAL.—Subject to subsection (e),
13 the President may take such action for such time as
14 the President considers appropriate to suspend or
15 prohibit any transaction which would result in con-
16 trol of any critical infrastructure or person engaged
17 in interstate commerce in the United States, pro-
18 posed or pending on or after the date of enactment
19 of this section, by or with a foreign person or gov-
20 ernment, so that such control will not threaten to
21 impair the national security.

22 “(2) ANNOUNCEMENT BY THE PRESIDENT.—
23 The President shall announce the decision on wheth-
24 er or not to take action pursuant to this subsection

1 not later than 15 days after an investigation de-
2 scribed in subsection (b) is completed.

3 “(3) ENFORCEMENT.—The President may di-
4 rect the Attorney General to seek appropriate relief,
5 including divestment relief, in the district courts of
6 the United States in order to implement and enforce
7 this subsection.

8 “(e) FINDINGS OF THE PRESIDENT.—The President
9 may exercise the authority conferred by subsection (d)
10 only if the President finds that—

11 “(1) there is credible evidence that leads the
12 President to believe that the foreign interest exer-
13 cising control might take action that threatens to
14 impair the national security; and

15 “(2) provisions of law, other than this section
16 and the International Emergency Economic Powers
17 Act, do not, in the judgment of the President, pro-
18 vide adequate and appropriate authority for the
19 President to protect the national security in the
20 matter before the President.

21 “(f) ACTIONS AND FINDINGS NONREVIEWABLE.—
22 The actions of the President under subsection (d) and the
23 findings of the President under subsection (e) shall not
24 be subject to judicial review.

1 “(g) FACTORS TO BE CONSIDERED.—For purposes
2 of determining whether to take action under subsection
3 (d) and for purposes of reviews and investigations under
4 this section, the President and CFIUS, respectively, shall
5 consider, among other factors—

6 “(1) potential effects on United States critical
7 infrastructure, including major energy assets;

8 “(2) potential effects on United States critical
9 technologies;

10 “(3) domestic production needed for projected
11 national defense requirements;

12 “(4) the capability and capacity of domestic in-
13 dustries to meet national defense requirements, in-
14 cluding the availability of human resources, prod-
15 ucts, technology, materials, and other supplies and
16 services;

17 “(5) the control of domestic industries and
18 commercial activity by foreign citizens as it affects
19 the capability and capacity of the United States to
20 meet the requirements of national security;

21 “(6) the potential effects of the proposed or
22 pending transaction on sales of military goods,
23 equipment, or technology to any country—

24 “(A) identified by the Secretary of State—

1 “(i) under section 6(j) of the Export
2 Administration Act of 1979, as a country
3 that supports terrorism;

4 “(ii) under section 6(l) of the Export
5 Administration Act of 1979, as a country
6 of concern regarding missile proliferation;
7 or

8 “(iii) under section 6(m) of the Ex-
9 port Administration Act of 1979, as a
10 country of concern regarding the prolifera-
11 tion of chemical and biological weapons;

12 “(B) identified by the Secretary of Defense
13 as posing a potential regional military threat to
14 the interests of the United States; or

15 “(C) listed under section 309(c) of the Nu-
16 clear Non-Proliferation Act of 1978, on the
17 ‘Nuclear Non-Proliferation-Special Country
18 List’ (15 C.F.R. Part 778, Supplement No. 4)
19 or any successor list;

20 “(7) the potential effects of the proposed or
21 pending transaction on United States international
22 technological leadership in areas affecting United
23 States national security;

1 “(8) the long term projection of United States
2 requirements for sources of energy and other critical
3 resources and materials; and

4 “(9) the assessments developed under sub-
5 section (c)(7) of the country in which the foreign
6 persons acquiring United States entities are based.

7 “(h) CONFIDENTIALITY OF INFORMATION.—

8 “(1) IN GENERAL.—Any information or docu-
9 mentary material filed with CFIUS pursuant to this
10 section shall be exempt from disclosure under section
11 552 of title 5, United States Code, and no such in-
12 formation or documentary material may be made
13 public, except as may be relevant to any administra-
14 tive or judicial action or proceeding.

15 “(2) NOTIFICATION TO GOVERNOR.—Notwith-
16 standing paragraph (1), CFIUS shall notify the
17 Governor of any State regarding a transaction in-
18 volving critical infrastructure in that State for the
19 purpose of discussing any security concerns that
20 arise or may arise from that transaction. Informa-
21 tion or documentary material made available to a
22 Governor under this paragraph may not be made
23 public, including under any law of a State pertaining
24 to freedom of information or otherwise, but the ex-
25 ception in paragraph (3) for disclosures to either

1 House of Congress or Congressional Committees
2 shall not apply to Governors who receive information
3 under this paragraph.

4 “(3) DISCLOSURE.—Nothing in this subsection
5 shall be construed to prevent disclosure to either
6 House of Congress or to any duly authorized com-
7 mittee or subcommittee of Congress.

8 “(i) ASSURANCES.—

9 “(1) IN GENERAL.—This subsection shall gov-
10 ern the provision of any assurances to one or more
11 agencies of the United States in connection with the
12 review or investigation of, or any Presidential deci-
13 sion concerning, any transaction under this section.

14 “(2) CONDITION TO DETERMINATION.—Any
15 such assurances shall be deemed to be a continuing
16 covenant of the persons on whose behalf such review
17 is sought (and of all persons controlling such per-
18 son), the observance of which shall be a condition of
19 the determination of CFIUS, the President, or both,
20 on whether to take any action with respect to such
21 transaction.

22 “(3) CONTRACT WITH THE UNITED STATES.—
23 Such assurances shall be embodied in an agreement
24 executed by the foreign person or foreign govern-
25 ment on whose behalf a review of a transaction is

1 sought under this section and the chairperson or vice
2 chairperson of CFIUS, on behalf of the United
3 States.

4 “(4) MONITORING OF AGREEMENT.—Compli-
5 ance with assurances provided under this subsection
6 shall be monitored, and may be investigated, in the
7 same manner as a violation of a civil statute, by the
8 agency designated by the chairperson of CFIUS, in
9 consultation with the vice chairperson of CFIUS and
10 the Attorney General of the United States.

11 “(5) GRANT OF JURISDICTION; REMEDIES.—
12 The United States District Court for the District of
13 Columbia shall have jurisdiction to enforce an agree-
14 ment referred to in this subsection upon application
15 by the Attorney General. Available remedies shall in-
16 clude divestiture, injunctive relief, enforcing the
17 terms of such agreement, and monetary damages, as
18 appropriate.

19 “(j) NOTICE AND REPORTS TO CONGRESS.—

20 “(1) NOTICE REGARDING REVIEWS.—

21 “(A) NOTICE AT INITIATION OF REVIEW.—

22 CFIUS shall transmit written notice of a pro-
23 posed or pending transaction subject to this
24 section to the members of Congress specified in
25 paragraph (3)(C), not later than 10 days after

1 the date of receipt of a notice of such proposed
2 or pending transaction, including the identities
3 of all parties involved and any foreign govern-
4 ment ownership or control of any such party.

5 “(B) CERTIFICATION AT COMPLETION OF
6 REVIEW.—Upon completion of a review under
7 subsection (a), the chairperson and vice chair-
8 person of CFIUS and the head of the lead
9 agency assigned under subsection (c)(5), shall
10 transmit a certified notice to the members of
11 Congress specified in paragraph (3)(C).

12 “(2) NOTICE REGARDING INVESTIGATIONS.—

13 “(A) NOTICE AT INITIATION OF INVES-
14 TIGATIONS.—Upon commencement of an inves-
15 tigation under subsection (b), CFIUS shall no-
16 tify in writing the members of Congress speci-
17 fied in paragraph (3)(C).

18 “(B) CERTIFICATION AT COMPLETION OF
19 INVESTIGATIONS.—As soon as practicable after
20 completion of an investigation under subsection
21 (b), the chairperson and vice chairperson of
22 CFIUS and the head of the lead agency as-
23 signed under subsection (c)(5), shall transmit
24 to the members of Congress specified in para-
25 graph (3)(C) a certified written report (con-

1 sistent with the requirements of subsection (h))
 2 on the results of the investigation, unless the
 3 matter under investigation has been sent to the
 4 President for decision.

5 “(3) CERTIFICATIONS.—

6 “(A) IN GENERAL.—Each certified notice
 7 and report required by this subsection shall be
 8 submitted to the members of Congress specified
 9 in subparagraph (C), and shall include—

10 “(i) information on whether or not an
 11 investigation occurred under subsection (b)
 12 and has been completed;

13 “(ii) a description of the actions taken
 14 by CFIUS with respect to the transaction;
 15 and

16 “(iii) identification of the determina-
 17 tive factors considered under subsection
 18 (g).

19 “(B) CONTENT OF CERTIFICATION.—Each
 20 notice required to be certified by this subsection
 21 shall be signed by the chairperson and vice
 22 chairperson of CFIUS and the head of the lead
 23 agency assigned under subsection (c)(5), and
 24 shall contain a specific attestation of each such
 25 person that, in the determination of CFIUS,

1 the transaction that is the subject of the notice
 2 does or does not impair the national security.

3 “(C) MEMBERS OF CONGRESS.—The no-
 4 tices and reports required by this subsection
 5 shall be transmitted to—

6 “(i) the Majority Leader and the Mi-
 7 nority Leader of the Senate;

8 “(ii) the chair and ranking member of
 9 the Committee on Banking, Housing, and
 10 Urban Affairs of the Senate and of any
 11 committee of the Senate having oversight
 12 over the agency assigned to lead a review
 13 or investigation under subsection (c)(5);

14 “(iii) the Speaker and the Minority
 15 Leader of the House of Representatives;
 16 and

17 “(iv) the chair and ranking member of
 18 the Committee on Financial Services of the
 19 House of Representatives and of any com-
 20 mittee of the House of Representatives
 21 having oversight over the agency assigned
 22 to lead a review or investigation under sub-
 23 section (c)(5).

24 “(D) TRANSMITTAL TO OTHER MEMBERS
 25 OF CONGRESS.—The Majority Leader or the

1 Minority Leader, in the case of the Senate, and
 2 the Speaker or the Minority Leader, in the case
 3 of the House of Representatives, may provide
 4 the notices and reports required by this para-
 5 graph regarding a proposed or pending trans-
 6 action involving critical infrastructure—

7 “(i) in the case of the Senate, to
 8 members of the Senate from the State in
 9 which such critical infrastructure is lo-
 10 cated; and

11 “(ii) in the case of the House of Rep-
 12 resentatives, to a member from a Congres-
 13 sional District in which such critical infra-
 14 structure is located.

15 “(E) LIMITATION ON DELEGATION OF
 16 CERTIFICATIONS.—Notices and reports required
 17 to be certified under this subsection shall be
 18 signed by the chairperson and vice chairperson
 19 of CFIUS, and such certification requirement
 20 may not be delegated.

21 “(4) ANNUAL REPORTS.—

22 “(A) REPORT REQUIRED.—The Secretary
 23 of the Treasury, on behalf of and after con-
 24 sultation with the members of CFIUS, shall
 25 submit to the Committee on Banking, Housing,

1 and Urban Affairs of the Senate and the Com-
2 mittee on Financial Services of the House of
3 Representatives, on or before March 15 of each
4 year, a written report on the policy of the
5 United States with respect to the preservation
6 of the Nation's defense production and critical
7 infrastructure. The Secretary shall appear be-
8 fore both committees to provide testimony on
9 such reports.

10 “(B) CONTENTS OF REPORT.—Each report
11 submitted under subparagraph (A) shall
12 contain—

13 “(i) an analysis of each transaction
14 involving a foreign person or foreign gov-
15 ernment affecting national security that
16 has occurred during the preceding year to
17 which the report relates, including the na-
18 ture of the acquisitions and the effect or
19 potential impact of such acquisitions on
20 the United States defense industrial base
21 and critical infrastructure;

22 “(ii) a similar updated analysis for
23 any transaction that occurred during the 4
24 years immediately preceding the year dealt
25 with in the report in clause (i), including

1 a separate section discussing the impact of
2 transactions involving foreign governments
3 or persons acting on behalf of or in concert
4 with foreign governments;

5 “(iii) a detailed discussion of all per-
6 ceived risks to national security or United
7 States critical infrastructure that CFIUS
8 will take into account in its deliberations
9 during the year in which the report is de-
10 livered to the committees;

11 “(iv) a table showing on a cumulative
12 basis, by sector, product, and country of
13 foreign ownership, the number of acquisi-
14 tions reviewed, investigated, or both, by
15 CFIUS, to provide a census of production
16 potentially relevant to the Nation’s defense
17 industrial base owned or controlled by for-
18 eign persons or foreign governments;

19 “(v) an evaluation of whether there is
20 credible evidence of a coordinated strategy
21 by 1 or more countries or companies to ac-
22 quire critical infrastructure of or within
23 the United States or United States compa-
24 nies involved in research, development, or
25 production of critical technologies for

1 which the United States is a leading pro-
 2 ducer;

3 “(vi) an evaluation of whether there
 4 are industrial espionage activities directed
 5 or directly assisted by foreign governments
 6 against private United States companies
 7 aimed at obtaining commercial secrets re-
 8 lated to critical technologies or critical in-
 9 frastructure; and

10 “(vii) such other matters as are nec-
 11 essary to give a complete disclosure and
 12 analysis of the work of CFIUS during the
 13 year to which the report relates.

14 “(C) CLASSIFIED REPORTS.—The evalua-
 15 tions required by clauses (v) and (vi) of sub-
 16 paragraph (B) may be classified. If they are
 17 submitted in classified form, an unclassified
 18 version of such evaluations shall be made avail-
 19 able to the public.

20 “(D) OTHER INFORMATION WITHHELD
 21 FROM PUBLIC REPORTS.—

22 “(i) PROPRIETARY INFORMATION.—
 23 The chairperson of CFIUS, in consultation
 24 with the vice chairperson of CFIUS, may
 25 withhold from public release other such in-

1 formation as the chairperson determines is
2 proprietary information.

3 “(ii) RULE OF CONSTRUCTION.—
4 Nothing in this subparagraph shall pro-
5 hibit such information from being provided
6 to relevant Committees of Congress.

7 “(5) APPEARANCES BEFORE CONGRESS.—The
8 chairperson and vice chairperson of CFIUS, and the
9 heads of such additional CFIUS member agencies
10 specified in a written request by the Chairman of
11 the Committee on Banking, Housing, and Urban Af-
12 fairs of the Senate shall annually appear before the
13 Committee on Banking, Housing, and Urban Affairs
14 and the Committee on Financial Services of the
15 House of Representatives to provide testimony on
16 the activities of CFIUS.

17 “(k) REGULATIONS.—

18 “(1) IN GENERAL.—The Secretary shall issue
19 regulations to carry out this section. Such regula-
20 tions shall, to the extent possible, minimize paper-
21 work burdens and shall, to the extent possible, co-
22 ordinate reporting requirements under this section
23 with reporting requirements under any other provi-
24 sion of Federal law.

1 “(2) REGULATIONS RELATING TO DEFINI-
 2 TIONS.—Not later than 30 days after the date of en-
 3 actment of the Foreign Investment and National Se-
 4 curity Act of 2006, the Secretary of the Treasury
 5 and the Secretary of Defense shall jointly agree to
 6 and issue rules concerning the manner in which the
 7 definition of the term ‘critical infrastructure’ in sub-
 8 section (m)(2) shall be applied to particular acquisi-
 9 tions, mergers, and takeovers, for purposes of the
 10 mandatory investigation requirement of subsection
 11 (b)(1)(A), except that, until such rules are issued in
 12 final form and become effective, such definition shall
 13 be applied without regard to any such rules (whether
 14 proposed or otherwise).

15 “(l) EFFECT ON OTHER LAW.—Nothing in this sec-
 16 tion shall be construed to alter or affect any existing
 17 power, process, regulation, investigation, enforcement
 18 measure, or review provided by any other provision of law,
 19 including the International Emergency Economic Powers
 20 Act, or of the President or Congress.

21 “(m) DEFINITIONS.—As used in this section—

22 “(1) the term ‘assurances’ means any term, un-
 23 derstanding, commitment, agreement, or limitation,
 24 however described, that relates to ameliorating in

1 any way the potential effect of a transaction on the
2 national security;

3 “(2) the term ‘critical infrastructure’ means,
4 subject to rules issued under subsection (k)(2), any
5 systems and assets, whether physical or cyber-based,
6 so vital to the United States that the degradation or
7 destruction of such systems or assets would have a
8 debilitating impact on national security, including
9 national economic security and national public
10 health or safety;

11 “(3) the term ‘critical technologies’ means tech-
12 nologies identified under title VI of the National
13 Science and Technology Policy, Organization, and
14 Priorities Act of 1976, or other critical technology,
15 critical components, or critical technology items es-
16 sential to national defense identified pursuant to this
17 section;

18 “(4) the terms ‘Committee on Foreign Invest-
19 ment in the United States’ and ‘CFIUS’ mean the
20 committee established under subsection (c);

21 “(5) the term ‘foreign government’ means any
22 government or body exercising governmental func-
23 tions, other than the Government of the United
24 States or of a State or political subdivision thereof,
25 and includes national, State, provincial, and munic-

1 ipal governments, including their respective depart-
 2 ments, agencies, government-owned enterprises, and
 3 other agencies and instrumentalities;

4 “(6) the term ‘foreign person’ means any non-
 5 United States national, any organization owned or
 6 controlled by such a person, and any entity orga-
 7 nized under the laws of a country other than the
 8 United States, and any entity owned or controlled by
 9 such entity;

10 “(7) the term ‘intelligence community’ has the
 11 same meaning as in section 3 of the National Secu-
 12 rity Act of 1947 (50 U.S.C. 401a); and

13 “(8) the term ‘transaction’ means a proposed or
 14 pending merger, acquisition, or takeover”.

Passed the Senate July 26, 2006.

Attest:

Secretary.

109TH CONGRESS
2D SESSION

S. 3549

AN ACT

To amend the Defense Production Act of 1950, to strengthen Government review and oversight of foreign investment in the United States, to provide for enhanced Congressional oversight with respect thereto, and for other purposes.