

Calendar No. 474

109TH CONGRESS
2D SESSION

S. 3549

[Report No. 109-264]

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.

IN THE SENATE OF THE UNITED STATES

JUNE 21, 2006

Mr. SHELBY, from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

A BILL

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

6 Section 721 of the Defense Production Act of 1950
7 (50 U.S.C. App. 2170) is amended to read as follows:

8 **“SEC. 721. REVIEW AND INVESTIGATION OF TRANSACTIONS**
9 **INVOLVING FOREIGN PERSONS AND GOVERN-**
10 **MENTS.**

11 **“(a) REVIEW OF TRANSACTIONS INVOLVING FOR-**
12 **EIGN PERSONS AND GOVERNMENTS.—**

13 **“(1) REVIEWS REQUIRED.—**

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

23 **“(B) PURPOSES.—**The purpose of such re-
24 view shall be to determine the effect on national
25 security of such transaction, whether an inves-

1 tigation of such transaction is required under
2 subsection (b), or both.

3 “(2) TIMING OF REVIEWS.—

4 “(A) IN GENERAL.—A review of a pro-
5 posed or pending transaction described in para-
6 graph (1) shall be completed not later than 30
7 days after the date of receipt by CFIUS of
8 written notification of the proposed or pending
9 transaction, as prescribed by regulations pro-
10 mulgated under this section.

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

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).

3 “(2) TIMING OF INVESTIGATIONS.—An inves-
4 tigation required to be undertaken under this sub-
5 section—

6 “(A) shall commence at such time as
7 CFIUS determines under subsection (a) that
8 such investigation is required, as prescribed by
9 regulations promulgated pursuant to this sec-
10 tion; and

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

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

22 “(4) COMPLETION OF INVESTIGATIONS RE-
23 QUIRED.—An investigation of a transaction under
24 this subsection shall be completed, even if the notifi-
25 cation or filing of the pending transaction is with-

1 drawn or rescinded, and CFIUS shall continue to
2 monitor such withdrawn or rescinded transaction,
3 except that no completed investigation or continued
4 monitoring shall be required for any pending trans-
5 action that is terminated by agreement of the parties
6 to the transaction.

7 “(5) MANDATORY NOTIFICATION RELATED TO
8 CERTAIN TRANSACTIONS AFFECTING NATIONAL SE-
9 CURITY.—

10 “(A) CHAIRPERSON AND VICE CHAIR-
11 PERSON.—The chairperson and vice chairperson
12 of CFIUS shall jointly agree to issue rules that
13 require each person controlled by or acting on
14 behalf of a foreign government to notify the
15 chairperson of CFIUS in writing of any pro-
16 posed transaction involving such person of
17 United States critical infrastructure relating to
18 United States national security.

19 “(B) REGULATIONS.—The Secretary of the
20 Treasury shall promulgate regulations for the
21 implementation of this paragraph, including the
22 imposition of appropriate penalties for failure to
23 comply with this paragraph.

24 “(c) COMMITTEE ON FOREIGN INVESTMENT IN THE
25 UNITED STATES.—

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

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

7 “(3) VICE CHAIRPERSON.—The Secretary of
8 Defense shall serve as the vice chairperson of
9 CFIUS.

10 “(4) MEMBERSHIP.—The members of CFIUS
11 shall include—

12 “(A) the Secretary of the Treasury;

13 “(B) the Secretary of State;

14 “(C) the Secretary of Defense;

15 “(D) the Secretary of Commerce;

16 “(E) the Secretary of Homeland Security;

17 “(F) the Attorney General of the United
18 States;

19 “(G) the Director of the Office of Manage-
20 ment and Budget;

21 “(H) the Director of National Intelligence;
22 and

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

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

8 “(6) INTELLIGENCE REVIEWS.—The Director
9 of National Intelligence shall—

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

21 “(B) ensure that the intelligence commu-
22 nity remains engaged in the collection, analysis,
23 and dissemination to CFIUS of any additional
24 relevant information that may become available
25 during the course of any investigation con-

1 ducted under subsection (b) with respect to a
2 transaction.

3 “(7) ASSESSMENTS AND CLASSIFICATIONS OF
4 FOREIGN COUNTRIES FOR USE IN REVIEWS AND IN-
5 VESTIGATIONS.—

6 “(A) IN GENERAL.—Not later than 120
7 days after the date of enactment of the Foreign
8 Investment and National Security Act of 2006,
9 the chairperson and vice chairperson of CFIUS,
10 in consultation with the Secretary of State, the
11 Secretary of Commerce, the Secretary of En-
12 ergy, the Chairman of the Nuclear Regulatory
13 Commission, and the Director of National Intel-
14 ligence, shall develop and implement a system
15 for assessing and classifying individual coun-
16 tries, including—

17 “(i) an assessment of the adherence of
18 the country to nonproliferation control re-
19 gimes, including treaties and multilateral
20 supply guidelines, which shall draw on, but
21 not be limited to, the annual report on Ad-
22 herence to and Compliance with Arms
23 Control, Nonproliferation and Disar-
24 mament Agreements and Commitments re-

1 quired by section 403 of the Arms Control
2 and Disarmament Act;

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

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

16 “(B) CONFIDENTIALITY.—The assessment
17 and classification system required by subpara-
18 graph (A) and any information or documentary
19 material maintained or developed thereunder—

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

24 “(ii) may not be made available to the
25 public; and

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

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

9 “(d) ACTION BY THE PRESIDENT.—

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

20 “(2) ANNOUNCEMENT BY THE PRESIDENT.—

21 The President shall announce the decision on wheth-
22 er or not to take action pursuant to this subsection
23 not later than 15 days after an investigation de-
24 scribed in subsection (b) is completed.

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

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

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

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

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

23 “(g) FACTORS TO BE CONSIDERED.—For purposes
24 of determining whether to take action under subsection
25 (d) and for purposes of reviews and investigations under

1 this section, the President and CFIUS, respectively, shall
2 consider, among other factors—

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

5 “(2) potential effects on United States critical
6 technologies;

7 “(3) domestic production needed for projected
8 national defense requirements;

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

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

18 “(6) the potential effects of the proposed or
19 pending transaction on sales of military goods,
20 equipment, or technology to any country—

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

22 “(i) under section 6(j) of the Export
23 Administration Act of 1979, as a country
24 that supports terrorism;

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

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

9 “(B) identified by the Secretary of Defense
10 as posing a potential regional military threat to
11 the interests of the United States; or

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

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

21 “(8) the long term projection of United States
22 requirements for sources of energy and other critical
23 resources and materials; and

1 “(9) the ranking developed under subsection
2 (c)(7) of the country in which the foreign persons
3 acquiring United States entities are based.

4 “(h) CONFIDENTIALITY OF INFORMATION.—

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

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

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

5 “(i) ADDITIONAL ASSURANCES.—

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

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

19 “(3) CONTRACT WITH THE UNITED STATES.—
20 Such assurances shall be embodied in an agreement
21 executed by the foreign person or foreign govern-
22 ment on whose behalf a review of a transaction is
23 sought under this section and the chairperson or vice
24 chairperson of CFIUS, on behalf of the United
25 States.

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

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

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

17 “(1) NOTICE REGARDING REVIEWS.—

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

19 CFIUS shall transmit written notice of a pro-
20 posed or pending transaction subject to this
21 section to the members of Congress specified in
22 paragraph (3)(C), not later than 10 days after
23 the date of receipt of a notice of such proposed
24 or pending transaction, including the identities

1 of all parties involved and any foreign govern-
2 ment ownership or control of any such party.

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

10 “(2) NOTICE REGARDING INVESTIGATIONS.—

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

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

1 matter under investigation has been sent to the
2 President for decision.

3 “(3) CERTIFICATIONS.—

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

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

11 “(ii) a description of the actions taken
12 by CFIUS with respect to the transaction,
13 including the details of any legally binding
14 assurances provided by the foreign entity
15 that were negotiated as a condition for ap-
16 proval; and

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

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

1 person that, in the determination of CFIUS,
2 the transaction that is the subject of the notice
3 does not impair the national security.

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

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

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

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

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

“(D) TRANSMITTAL TO OTHER MEMBERS OF CONGRESS.—The Majority Leader or the Minority Leader, in the case of the Senate, and the Speaker or the Minority Leader, in the case of the House of Representatives, may provide the notices and reports required by this paragraph regarding a proposed or pending transaction involving critical infrastructure—

“(i) in the case of the Senate, to members of the Senate from the State in which such critical infrastructure is located; and

“(ii) in the case of the House of Representatives, to a member from a Congressional District in which such critical infrastructure is located.

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

“(4) ANNUAL REPORTS.—

“(A) REPORT REQUIRED.—The Secretary of the Treasury, on behalf of and after con-

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

12 “(B) CONTENTS OF REPORT.—Each report
13 submitted under subparagraph (A) shall con-
14 tain—

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

24 “(ii) a similar updated analysis for
25 any transaction that occurred during the 4

1 years immediately preceding the year dealt
2 with in the report in clause (i), including
3 a separate section discussing the impact of
4 transactions involving foreign governments
5 or persons acting on behalf of or in concert
6 with foreign governments;

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

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

21 “(v) a summary of any cases before
22 CFIUS, during the year to which the re-
23 port relates, in which there were disagree-
24 ments among the members of CFIUS;

1 “(vi) an evaluation of whether there is
2 credible evidence of a coordinated strategy
3 by 1 or more countries or companies to ac-
4 quire critical infrastructure of or within
5 the United States or United States compa-
6 nies involved in research, development, or
7 production of critical technologies for
8 which the United States is a leading pro-
9 ducer;

10 “(vii) an evaluation of whether there
11 are industrial espionage activities directed
12 or directly assisted by foreign governments
13 against private United States companies
14 aimed at obtaining commercial secrets re-
15 lated to critical technologies or critical in-
16 frastructure; and

17 “(viii) such other matters as are nec-
18 essary to give a complete disclosure and
19 analysis of the work of CFIUS during the
20 year to which the report relates.

21 “(C) CLASSIFIED REPORTS.—The evalua-
22 tions required by clauses (v) and (vi) of sub-
23 paragraph (B) may be classified. If they are
24 submitted in classified form, an unclassified

1 version of such evaluations shall be made avail-
2 able to the public.

3 “(D) OTHER INFORMATION WITHHELD
4 FROM PUBLIC REPORTS.—

5 “(i) PROPRIETARY INFORMATION.—
6 The chairperson of CFIUS, in consultation
7 with the vice chairperson of CFIUS, may
8 withhold from public release other such in-
9 formation as the chairperson determines is
10 proprietary information.

11 “(ii) RULE OF CONSTRUCTION.—
12 Nothing in this subparagraph shall pro-
13 hibit such information from being provided
14 to relevant Committees of Congress.

15 “(5) APPEARANCES BEFORE CONGRESS.—The
16 chairperson and vice chairperson of CFIUS, and the
17 heads of such additional CFIUS member agencies
18 specified in a written request by the Chairman of
19 the Committee on Banking, Housing, and Urban Af-
20 fairs of the Senate shall annually appear before the
21 Committee on Banking, Housing, and Urban Affairs
22 and the Committee on Financial Services of the
23 House of Representatives to provide testimony on
24 the activities of CFIUS.

25 “(k) REGULATIONS.—

1 “(1) IN GENERAL.—The Secretary shall issue
2 regulations to carry out this section. Such regula-
3 tions shall, to the extent possible, minimize paper-
4 work burdens and shall, to the extent possible, co-
5 ordinate reporting requirements under this section
6 with reporting requirements under any other provi-
7 sion of Federal law.

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

22 “(l) EFFECT ON OTHER LAW.—Nothing in this sec-
23 tion shall be construed to alter or affect any existing
24 power, process, regulation, investigation, enforcement
25 measure, or review provided by any other provision of law,

1 including the International Emergency Economic Powers
2 Act, or of the President or Congress.

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

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

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

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

22 “(4) the term ‘foreign government’ means any
23 government or body exercising governmental func-
24 tions, other than the Government of the United
25 States or of a State or political subdivision thereof.

1 The term includes national, State, provincial, and
2 municipal governments, including their respective
3 departments, agencies, government-owned enter-
4 prises, and other agencies and instrumentalities;

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

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

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

Calendar No. 474

109TH CONGRESS
2^D Session

S. 3549

[Report No. 109–264]

A BILL

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.

JUNE 21, 2006

Read twice and placed on the calendar