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115TH CONGRESS 2D 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.

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 italic]

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,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ‘‘Foreign Investment Risk Review Modernization Act of 2017’’.

(b) TABLE OF CONTENTS.—The table of contents for 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. 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 agreements.
Sec. 26. Effective date.
Sec. 27. Severability.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that—

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

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

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

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

(5) the Committee on Foreign Investment in
the United States plays a critical role in protecting
the national security of the United States; and,
therefore, it is essential that the member agencies of
the Committee are adequately resourced and able to
hire appropriately qualified individuals in a timely manner, and that those individuals' security clearances are processed as a high priority;

(6) the President should conduct a more robust international outreach effort to urge and help allies and partners of the United States to establish processes that parallel the Committee on Foreign Investment in the United States to screen foreign investments for national security risks and to facilitate coordination; and

(7) the President should lead a collaborative effort with allies and partners of the United States to develop a new, stronger multilateral export control regime, aimed to address the unprecedented industrial policies of certain countries of special concern, including aggressive efforts to acquire United States technology, and the blending of civil and military programs.

SEC. 3. DEFINITIONS.

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

"(a) DEFINITIONS.—In this section:

""(1) Access.—The term ‘access’ means the ability and opportunity to obtain information, subject to regulations prescribed by the Committee."
"(2) Committee; chairperson.—The terms ‘Committee’ and ‘chairperson’ mean the Committee on Foreign Investment in the United States and the chairperson thereof, respectively.

"(3) Control.—The term ‘control’ means the power to determine, direct, or decide important matters affecting an entity, subject to regulations prescribed by the Committee.

"(4) Country of special concern.—

"(A) In general.—The term ‘country of special concern’ means a country that poses a significant threat to the national security interests of the United States.

"(B) Rule of construction.—This paragraph shall not be construed to require the Committee to maintain a list of countries of special concern.

"(5) Covered transaction.—

"(A) In general.—Except as otherwise provided, the term ‘covered transaction’ means any transaction described in subparagraph (B) that is proposed, pending, or completed on or after the date of the enactment of the Foreign Investment Risk Review Modernization Act of 2017.
(B) Transactions described.—A transaction described in this subparagraph is any of the following:

(i) Any merger, acquisition, or takeover that is proposed or pending after August 23, 1988, by or with any foreign person that could result in foreign control of any United States business.

(ii) The purchase or lease by a foreign person of private or public real estate that—

(I) is located in the United States and is in close proximity to a United States military installation or to another facility or property of the United States Government that is sensitive for reasons relating to national security; and

(II) meets such other criteria as the Committee prescribes by regulation.

(iii) Any other investment (other than passive investment) by a foreign person in any United States critical technology company or United States critical
infrastructure company, subject to regulations prescribed under subparagraph (C).

"(iv) Any change in the rights that a foreign person has with respect to a United States business in which the foreign person has an investment, if that change could result in—

"(I) foreign control of the United States business; or

"(II) an investment described in clause (iii):

"(v) The contribution (other than through an ordinary customer relationship) by a United States critical technology company of both intellectual property and associated support to a foreign person through any type of arrangement, such as a joint venture, subject to regulations prescribed under subparagraph (C).

"(vi) Any other transaction, transfer, agreement, or arrangement the structure of which is designed or intended to evade or circumvent the application of this section, subject to regulations prescribed by the Committee.
“(C) Further definition through regulations.—

“(i) Certain investments and contributions.—The Committee shall prescribe regulations further defining covered transactions described in clauses (iii) and (v) of subparagraph (B) by reference to the technology, sector, subsector, transaction type, or other characteristics of such transactions.

“(ii) Exemption for transactions from identified countries.—The Committee may, by regulation, define circumstances in which a transaction otherwise described in clause (ii), (iii), or (v) of subparagraph (B) is excluded from the definition of 'covered transaction' if each foreign person that is a party to the transaction is organized under the laws of, or otherwise subject to the jurisdiction of, a country identified by the Committee for purposes of this clause based on criteria such as—
''(I) whether the United States has in effect with that country a mutual defense treaty;

''(II) whether the United States has in effect with that country a mutual arrangement to safeguard national security as it pertains to foreign investment;

''(III) the national security review process for foreign investment of that country; and

''(IV) any other criteria that the Committee determines to be appropriate.

''(iii) Exemption of certain contributions.—The Committee may, by regulation, define circumstances in which contributions otherwise described in subparagraph (B)(v) are excluded from the term ‘covered transaction’ on the basis of a determination that other provisions of law are adequate to identify and address any potential national security risks posed by such contributions.
“(iv) Transfers of certain assets pursuant to bankruptcy proceedings or other defaults.—The Committee shall prescribe regulations to clarify that the term ‘covered transaction’ includes any transaction described in subparagraph (B) that arises pursuant to a bankruptcy proceeding or other form of default on debt.

“(D) Passive investment defined.—

“(i) In general.—For purposes of subparagraph (B)(iii), the term ‘passive investment’ means an investment by a foreign person in a United States business—

“(I) that is not described in subparagraph (B)(i);

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

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

“(bb) access to any nontechnical information in the possession of the United States busi-
ness that is not available to all investors;

"(cc) membership or observer rights on the board of directors or equivalent governing body of the United States business or the right to nominate an individual to such a position; or

"(dd) any involvement, other than through voting of shares, in substantive decisionmaking pertaining to any matter involving the United States business;

"(III) under which the foreign person and the United States business do not have a parallel strategic partnership or other material financial relationship, as described in regulations prescribed by the Committee; and

"(IV) that meets such other criteria as the Committee may prescribe by regulation.

"(ii) NONPUBLIC TECHNICAL INFORMATION DEFINED.—For purposes of clause
(i)(II)(aa), the term ‘nonpublic technical information’—

"(I) has the meaning given that term in regulations prescribed by the Committee; and

"(II) includes information (either by itself or in conjunction with other information to which a foreign person may have access)—

"(aa) without which critical technologies cannot be designed, developed, tested, produced, or manufactured; and

"(bb) in a quantity sufficient to permit the design, development, testing, production, or manufacturing of such technologies.

"(iii) NONTECHNICAL INFORMATION DEFINED.—For purposes of clause (i)(II)(bb), the term ‘nontechnical information’ has the meaning given that term in regulations prescribed by the Committee.

"(iv) EFFECT OF LEVEL OF OWNERSHIP INTEREST.—A determination of
whether an investment is a passive investment under clause (i) shall be made without regard to how low the level of ownership interest a foreign person would hold or acquire in a United States business would be as a result of the investment. The Committee may prescribe regulations specifying that any investment greater than a certain level or amount would not be considered a passive investment.

“(v) Regulations.—The Committee shall prescribe regulations providing guidance on the types of transactions that the Committee considers to be passive investment.

“(E) Associated Support Defined.—For purposes of subparagraph (B)(v), the term ‘associated support’ has the meaning given that term in regulations prescribed by the Committee.

“(F) United States Critical Infrastructure Company Defined.—For purposes of subparagraph (B), the term ‘United States critical infrastructure company’ means a United States business that is, owns, operates, or pri-
marily provides services to, an entity or entities that operate within a critical infrastructure sector or subsector, as defined by regulations prescribed by the Committee.

“(G) UNITED STATES CRITICAL TECHNOLOGY COMPANY.—For purposes of subparagraph (B), the term ‘United States critical technology company’ means a United States business that produces, trades in, designs, tests, manufactures, services, or develops one or more critical technologies, or a subset of such technologies, as defined by regulations prescribed by the Committee.

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

“(7) CRITICAL MATERIALS.—The term ‘critical materials’ means physical materials essential to national security, subject to regulations prescribed by the Committee.

“(8) CRITICAL TECHNOLOGIES.—
(A) In general.—The term 'critical technologies' means technology, components, or technology items that are essential or could be essential to national security, identified for purposes of this section pursuant to regulations prescribed by the Committee.

(B) Inclusion of certain items.—The term 'critical technologies' includes the following:


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

(I) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear
nonproliferation, or missile technology; or

(ii) for reasons relating to regional stability or surreptitious listening.

(iii) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities):

(iv) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material):

(v) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 124 of title 9 of such Code, or part 73 of title 42 of such Code.

(vi) Other emerging technologies that could be essential for maintaining or increasing the technological advantage of the United States over countries of special concern with respect to national defense,
intelligence, or other areas of national security, or gaining such an advantage over such countries in areas where such an advantage may not currently exist.

"(9) FOREIGN GOVERNMENT-CONTROLLED TRANSACTION.—The term ‘foreign government-controlled transaction’ means any covered transaction that could result in the control of any United States business by a foreign government or an entity controlled by or acting on behalf of a foreign government.

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

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

"(12) INVESTMENT.—The term ‘investment’ means the acquisition of equity interest, including contingent equity interest, as further defined in regulations prescribed by the Committee.

"(13) LEAD AGENCY.—The term ‘lead agency’ means the agency or agencies designated as the lead agency or agencies pursuant to subsection (k)(5).
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"(14) Malicious cyber-enabled activities.—The term ‘malicious cyber-enabled activities’ means any acts—

"(A) primarily accomplished through or facilitated by computers or other electronic devices;

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

"(C) that have the purpose or effect of—

"(i) significantly compromising the provision of services by one or more entities in a critical infrastructure sector;

"(ii) harming, or otherwise significantly compromising the provision of services by, a computer or network of computers that support one or more such entities;

"(iii) causing a significant disruption to the availability of a computer or network of computers; or

"(iv) causing a significant misappropriation of funds or economic resources;
trade secrets, personally identifiable information, or financial information.

"(15) NATIONAL SECURITY.—The term ‘national security’ shall be construed so as to include those issues relating to ‘homeland security’, including its application to critical infrastructure.

"(16) PARTY.—The term ‘party’ has the meaning given that term in regulations prescribed by the Committee.

"(17) UNITED STATES.—The term ‘United States’ means the several States, the District of Columbia, and any territory or possession of the United States.

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

SEC. 4. INCLUSION OF PARTNERSHIP AND SIDE AGREEMENTS IN NOTICE.

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

"(iv) INCLUSION OF PARTNERSHIP AND SIDE AGREEMENTS.—A written notice submitted under clause (i) by a party to a covered transaction shall include a copy of
any partnership agreements, integration agreements, or other side agreements relating to the transaction, including any such agreements relating to the transfer of intellectual property, as specified in regulations prescribed by the Committee."

SEC. 5. DECLARATIONS RELATING TO CERTAIN COVERED TRANSACTIONS.

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

"(v) Declarations relating to certain covered transactions.—

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

"(II) Mandatory declarations.—

"(aa) Certain covered transactions with foreign government interests.—The
parties to a covered transaction shall submit a declaration described in subclause (I) with respect to the transaction if the transaction involves the acquisition of a voting interest of at least 25 percent in a United States business by a foreign person in which a foreign government owns, directly or indirectly, at least a 25-percent voting interest.

"(bb) Other declarations required by Committee.—The Committee shall require the submission of a declaration described in subclause (I) with respect to any covered transaction identified under regulations prescribed by the Committee for purposes of this item, at the discretion of the Committee and based on appropriate factors, such as—
**(AA) the technology, industry, economic sector, or economic subsector in which the United States business that is a party to the transaction trades or of which it is a part;

**(BB) the difficulty of remedying the harm to national security that may result from completion of the transaction; and

**(CC) the difficulty of obtaining information on the type of covered transaction through other means.

**(ee) Submission of written notice as an alternative.—Parties to a covered transaction for which a declaration is required under this subclause may instead elect to submit a written notice under clause (i).
(dd) Timing of submission.—

(AA) In general.—A declaration required to be submitted with respect to a covered transaction by item (aa) or (bb) shall be submitted not later than 45 days before the completion of the transaction.

(BB) Written notice.—If, pursuant to item (cc), the parties to a covered transaction elect to submit a written notice under clause (i) instead of a declaration under this subclause, the written notice shall be filed not later than 90 days before the completion of the transaction.

(III) Penalties.—The Committee may impose a penalty pursuant to subsection (h)(3) with respect to a
party that fails to comply with this clause.

"(IV) COMMITTEE RESPONSE TO DECLARATION.—

"(aa) IN GENERAL.—Upon receiving a declaration under this clause with respect to a transaction, the Committee may, at its discretion—

"(AA) request that the parties to the transaction file a written notice under clause (i);

"(BB) inform the parties to the transaction that the Committee is not able to complete action under this section with respect to the transaction on the basis of the declaration and that the parties may file a written notice under clause (i) to seek written notification from the Committee that the Committee has completed all
action under this section
with respect to the trans-
action;

"(CC) initiate a unilat-
eral review of the trans-
action under subparagraph
(D); or

"(DD) notify the par-
ties in writing that the Com-
mittee has completed all ac-
tion under this section with
respect to the transaction.

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

"(cc) RULE OF CONSTRU-
CTION.—Nothing in this subclause
(other than item (aa)(CC)) shall
be construed to affect the author-
ity of the President or the Com-
mittee to take any action author-
ized by this section with respect
to a covered transaction.
"(V) REGULATIONS.—The Committee shall prescribe regulations establishing requirements for declarations submitted under this clause. In prescribing such regulations, the Committee shall ensure that such declarations are submitted as abbreviated notifications that would not generally exceed 5 pages in length.".

SEC. 6. STIPULATIONS REGARDING TRANSACTIONS.

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

"(vi) STIPULATIONS REGARDING TRANSACTIONS.—

"(I) IN GENERAL.—In a written notice submitted under clause (i) or a declaration submitted under clause (v) with respect to a transaction, a party to the transaction may—

"(aa) stipulate that the transaction is a covered transaction; and

"(bb) if the party stipulates that the transaction is a covered
transaction under item (aa), stipulate that the transaction is a foreign government-controlled transaction.

"(H) BASIS FOR STIPULATION.—

A written notice submitted under clause (i) or a declaration submitted under clause (v) that includes a stipulation under subclause (I) shall include a description of the basis for the stipulation.”.

SEC. 7. AUTHORITY FOR UNILATERAL INITIATION OF REVIEWS.

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

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

(2) in subparagraph (D)—

(A) in clause (i), by inserting “(other than a covered transaction described in subparagraph (E))” after “any covered transaction”;

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

"(ii) any covered transaction described in subparagraph (E), if any party to the
transaction submitted false or misleading material information to the Committee in connection with the Committee's consideration of the transaction or omitted material information, including material documents, from information submitted to the Committee; or’’; and

(C) in clause (iii)—

(i) in the matter preceding subclause (I), by striking “any covered transaction that has previously been reviewed or investigated under this section,” and inserting “any covered transaction described in subparagraph (E),”;

(ii) in subclause (I), by striking “intentionally”;

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

(iv) in subclause (III), by inserting “adequate and appropriate” before “remedies or enforcement tools”; and

(3) by inserting after subparagraph (D) the following:
(E) COVERED TRANSACTIONS DESCRIBED.—A covered transaction is described in this subparagraph if—

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

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

SEC. 8. TIMING FOR REVIEWS AND INVESTIGATIONS.

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

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

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

“(C) Timing.—

“(i) In general.—Except as provided in clause (ii), any investigation under subparagraph (A) shall be completed before the end of the 45-day period begin-
ning on the date on which the investigation commenced.

(ii) Extension for extraordinary circumstances.—

(I) In general.—In extraordinary circumstances (as defined by the Committee in regulations), the chairperson may, at the request of the head of the lead agency, extend an investigation under subparagraph (A) for one 30-day period.

(II) Nondelegation.—The authority of the chairperson and the head of the lead agency referred to in subclause (I) may not be delegated to any person other than the Deputy Secretary of the Treasury or the deputy head (or equivalent thereof) of the lead agency, as the case may be.

(III) Notification to parties.—If the Committee extends the deadline under subclause (I) with respect to a covered transaction, the Committee shall notify the parties to the transaction of the extension.”; and
(3) by adding at the end the following:

"(8) Tolling of deadlines during lapse in appropriations.—Any deadline or time limitation under this subsection shall be tolled during a lapse in appropriations."

SEC. 9. MONITORING OF NON-NOTIFIED AND NON-DECLARED TRANSACTIONS.

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

"(H) Monitoring of non-notified and non-declared transactions.—The Committee shall establish a mechanism to identify covered transactions for which—

"(i) a notice under clause (i) of subparagraph (C) or a declaration under clause (v) of that subparagraph is not submitted to the Committee; and

"(ii) information is reasonably available."

SEC. 10. SUBMISSION OF CERTIFICATIONS TO CONGRESS.

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

(1) in clause (iii)—
(A) in subclause (II), by inserting "and the Select Committee on Intelligence" after "Urban Affairs"; and

(B) in subclause (IV), by inserting "and the Permanent Select Committee on Intelligence" after "Financial Services";

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

"(II) DELEGATION OF CERTIFICATIONS.

"(aa) IN GENERAL.—Subject to item (bb), the chairperson, in consultation with the Committee, may determine the level of official to whom the signature requirement under subclause (I) for the chairperson and the head of the lead agency may be delegated. The level of official to whom the signature requirement may be delegated may differ based on any factor relating to a transaction that the chairperson, in consultation with the Committee, deems appropriate, in
excluding the type or value of the transaction.

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

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

(B) in the case of any other covered transaction, not below the level of a Deputy Assistant Secretary of the Treasury or an equivalent official of another agency or department rep-
resented on the Committee.”; and

(3) by adding at the following:

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

SEC. 11. ANALYSIS BY DIRECTOR OF NATIONAL INTELLIGENCE.

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

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

“(A) Analysis required.—

“(i) In general.—The Director of National Intelligence shall expeditiously carry out a thorough analysis of any threat to the national security of the United States posed by any covered transaction, which shall include the identification of
any recognized gaps in the collection of intelligence relevant to the analysis.

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

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

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

(2) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively;
(3) by inserting after subparagraph (A) the following:

"(B) BASIC THREAT INFORMATION.—

"(i) IN GENERAL.—The Director of National Intelligence may provide the Committee with basic information regarding any threat to the national security of the United States posed by a covered transaction described in clause (ii) instead of conducting the analysis required by subparagraph (A):

"(ii) COVERED TRANSACTION DESCRIBED.—A covered transaction is described in this clause if—

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

"(II) the Director of National Intelligence has completed an analysis pursuant to subparagraph (A) involving each foreign person that is a party to the transaction during the 12 months preceding the review or investigation of the transaction under this section; or
"(III) the transaction otherwise meets criteria agreed upon by the Committee and the Director of National Intelligence for purposes of this subparagraph;"

(4) in subparagraph (C), as redesignated by paragraph (2), by striking "20" and inserting "30";

and

(5) by adding at the end the following:

"(F) Assessment of operational impact.—The Director may provide to the Committee an assessment, separate from the analyses under subparagraphs (A) and (B), of any operational impact of a covered transaction on the intelligence community and a description of any actions that have been or will be taken to mitigate any such impact.

"(G) Submission to Congress.—The Committee shall submit the analysis required by subparagraph (A) with respect to a covered transaction to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives upon the conclusion of action under this section (other than compliance reviews
under subsection (1)(6)) with respect to the transaction.”

SEC. 12. INFORMATION SHARING.

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

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

“(1) IN GENERAL.—Except as provided in paragraph (2), any information”;

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

(3) by adding at the end the following:

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

“(A) Information relevant to any administrative or judicial action or proceeding.

“(B) Information to either House of Congress or to any duly authorized committee or subcommittee of Congress.

“(C) Information to any domestic or foreign governmental entity, under the direction of the chairperson, to the extent necessary for national security purposes and pursuant to appropriate confidentiality and classification arrangements.
“(D) Information that the parties have consented to be disclosed to third parties.”.

SEC. 13. ACTION BY THE PRESIDENT.

(a) In general.—Section 721(d) of the Defense Production Act of 1950 (50 U.S.C. 4565(d)) is amended—

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

“(1) In general.—Subject to paragraph (4), the President may, with respect to a covered transaction that threatens to impair the national security of the United States—

“(A) take such action for such time as the President considers appropriate to suspend or prohibit the transaction or to require divestment; and

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

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

(A) the date on which the investigation of the transaction under subsection (b) is completed; or

(B) the date on which the Committee otherwise refers the transaction to the President under subsection (l)(2)."

(b) Civil Penalties.—Section 721(h)(3)(A) of the Defense Production Act of 1950 (50 U.S.C. 4565(h)(3)(A)) is amended by striking "including any mitigation" and all that follows through "subsection (l)" and inserting "including any mitigation agreement entered into, conditions imposed, or order issued pursuant to this section."

SEC. 14. JUDICIAL REVIEW PROCEDURES.

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

"(e) Actions and Findings Nonreviewable.—

(1) Actions and Findings of the President.—The actions and findings of the President or the President’s designee under this section shall not be subject to judicial review, including claims under chapter 7 of title 5, United States Code.
''(2) Actions and findings of the committee.—

''(A) In general.—Except as provided in subparagraph (B), the actions and findings of the Committee under subsection (b) or (I), and any assessment of penalties or use of enforcement authorities under this section, shall not be subject to judicial review, including claims under chapter 7 of title 5, United States Code.

''(B) Petitions.—

''(i) Definition.—In this subparagraph, the term ‘classified information’ means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

''(ii) Petition.—

''(I) In general.—Except as provided in subclause (II), not later than 60 days after the date on which
the President or the Committee takes
an action with respect to the covered
transaction; any party to the covered
transaction may file a petition under
this subparagraph alleging that the
action of the Committee is a violation
of a constitutional right, power, privi-
lege, or immunity.

"(II) Notification.—No party
to a covered transaction shall be per-
mitted to file a petition or any claim
related to a petition under subclause
(I) unless—

"(aa) the party initiated the
review of the transaction pursu-
ant to a written notice filed
under clause (i) of subsection
(b)(1)(C) or a declaration filed
under clause (v) of that sub-
section or the Committee deter-
mines that such a notice or dec-
laration was not required; and

"(bb) the Committee has
completed all action under this
section with respect to the transaction.

"(iii) RELATED CLAIMS.—Any claims related to a petition filed under this clause shall be filed before the date described in subclause (I).

"(iii) EXCLUSIVE JURISDICTION.—

"(I) IN GENERAL.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over claims arising under this subparagraph, subject to review by the Supreme Court of the United States under section 1254 of title 28, United States Code, only—

"(aa) to affirm the action of the Committee; or

"(bb) to remand the case to the Committee for further consideration.

"(II) STANDARD OF REVIEW.—The court shall uphold an action challenged under this subparagraph unless the court finds that the action was
contrary to a constitutional right, power, privilege, or immunity.

"(iv) Scope of review.—In a claim under this subparagraph, the court shall decide all relevant questions based solely on any administrative record submitted by the United States under clause (v).

"(v) Administrative record and procedures.—

"(I) In general.—Notwithstanding any other provision of law, the procedures described in this clause shall apply to the review of a petition under this subparagraph.

"(II) Administrative record.—

"(aa) Filing of record.—

The United States shall file with the court an administrative record, which shall consist of the information that the parties submitted to the Committee and that the Committee relied upon in support of the action of the Committee under review.
“(bb) UNCLASSIFIED, NON-PRIVILEGED INFORMATION.—All unclassified information contained in the administrative record that is not otherwise privileged or subject to statutory protections shall be provided to the petitioner with appropriate protections for any privileged or confidential trade secrets and commercial or financial information.

“(cc) DISCOVERY BAR.—Other than the provision of information in the administrative record described in subparagraph (II)(bb), no discovery shall be permitted.

“(dd) IN CAMERA AND EX PARTE.—The following information may be included in the administrative record and shall be submitted only to the court ex parte and in camera:
(AA) Unclassified information subject to privilege or statutory protections.

(BB) Classified information.

(CC) Sensitive security information.

(DD) Sensitive law enforcement information.

(EE) Information obtained or derived from any activity authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), except that, with respect to such information, subsections (c), (e), (f), (g), and (h) of section 106 (50 U.S.C. 1806), subsections (d), (f), (g), (h), and (i) of section 305 (50 U.S.C. 1825), subsections (e), (e), (f), (g), and (h) of section 405 (50 U.S.C. 1845), and section 706 (50 U.S.C. 1881).
(ee) Under Seal.—Any classified information, sensitive security information, law enforcement sensitive information, or information that is otherwise privileged or subject to statutory protections, that is part of the administrative record filed ex parte and in camera, or cited by the court in any decision, shall be treated by the court consistent with the provisions of this subparagraph, and shall remain under seal and preserved in the records of the court to be made available in the event of further proceedings. In no event shall such information be released to the claimant or as part of the public record.

(ff) Return.—After the expiration of the time to seek further review, or the conclusion
of further proceedings, the court shall return the administrative record, including any and all copies, to the United States.

"(gg) Consideration of Claim Without Information in Administrative Record.—If, on motion or sua sponte, the court determines that the claim may be considered without any of the information in the administrative record, the court shall require that only the necessary information, if any, from the record be provided to the parties.

"(vi) Exclusive Remedy.—A determination by the court under this subparagraph shall be the exclusive judicial remedy for any claim described in this subparagraph against the United States, any United States department or agency, or any component or official of any such department or agency.

"(vii) Rule of Construction.—Nothing in this subparagraph shall be con-
strued as limiting, superseding, or preventing the invocation of, any privileges or defenses that are otherwise available at law or in equity to protect against the disclosure of information.''.

SEC. 15. FACTORS TO BE CONSIDERED.

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

(1) in paragraph (1), by inserting “including whether the covered transaction is likely to result in the increased reliance by the United States on foreign suppliers to meet national defense requirements,” after “defense requirements,”;

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

(3) by striking paragraph (5) and insert the following:

“(5) the potential effects of the covered transaction on United States international technological and industrial leadership in areas affecting United States national security, including whether the transaction is likely to reduce the technological and industrial advantage of the United States relative to any country of special concern;”;
(4) in paragraph (6), by inserting “and trans-
portation assets, as defined in Presidential Policy
Directive 21 (February 12, 2013; relating to critical
infrastructure security and resilience) or any suc-
cessor directive” after “energy assets;

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

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

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

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

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

“(12) the potential national security-related ef-
fects of the cumulative market share of any one type
of infrastructure, energy asset, critical material, or critical technology by foreign persons;

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

"(A) complying with United States laws and regulations, including laws and regulations pertaining to exports, the protection of intellectual property, and immigration; and

"(B) adhering to contracts or other agreements with entities of the United States Government;

"(14) the extent to which the covered transaction is likely to expose, either directly or indirectly, personally identifiable information, genetic information, or other sensitive data of United States citizens to access by a foreign government or foreign person that may exploit that information in a manner that threatens national security;

"(15) whether the covered transaction is likely to have the effect of creating any new cybersecurity vulnerabilities in the United States or exacerbating existing cybersecurity vulnerabilities;
(16) whether the covered transaction is likely to result in a foreign government gaining a significant new capability to engage in malicious cyber-enabled activities against the United States, including such activities designed to affect the outcome of any election for Federal office;

(17) whether the covered transaction involves a country of special concern that has a demonstrated or declared strategic goal of acquiring a type of critical technology that a United States business that is a party to the transaction possesses;

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

(19) whether the covered transaction is likely to expose any information regarding sensitive national security matters or sensitive procedures or operations of a Federal law enforcement agency with national security responsibilities to a foreign person not authorized to receive that information; and”.

SEC. 16. ACTIONS BY THE COMMITTEE TO ADDRESS NATIONAL SECURITY RISKS.

Section 721(l) of the Defense Production Act of 1950 (50 U.S.C. 4565(l)) is amended—
(1) in the subsection heading, by striking “MITIGATION, TRACKING, AND POSTCONSUMMATION MONITORING AND ENFORCEMENT” and inserting “ACTIONS BY THE COMMITTEE TO ADDRESS NATIONAL SECURITY RISKS”;

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

(3) by inserting before paragraph (3), as redesignated by paragraph (2), the following:

“(1) SUSPENSION OF TRANSACTIONS.—The Committee, acting through the chairperson, may suspend a proposed or pending covered transaction that may pose a risk to the national security of the United States for such time as the covered transaction is under review or investigation under subsection (b).

“(2) REFERRAL TO PRESIDENT.—The Committee may, at any time during the review or investigation of a covered transaction under subsection (b), complete the action of the Committee with respect to the transaction and refer the transaction to the President for action pursuant to subsection (d).”;

(4) in paragraph (3), as redesignated by paragraph (2)—
(A) in subparagraph (A)—

(i) in the subparagraph heading, by striking "IN GENERAL" and inserting "AGREEMENTS AND CONDITIONS";

(ii) by striking "The Committee" and inserting the following:

"(i) IN GENERAL.—The Committee";

(iii) by striking "threat" and inserting "risk"; and

(iv) by adding at the end the following:

"(ii) ABANDONMENT OF TRANSACTIONS.—If a party to a covered transaction has voluntarily chosen to abandon the transaction, the Committee or lead agency, as the case may be, may negotiate, enter into or impose, and enforce any agreement or condition with any party to the covered transaction for purposes of effectuating such abandonment and mitigating any risk to the national security of the United States that arises as a result of the covered transaction.

"(iii) AGREEMENTS AND CONDITIONS RELATING TO COMPLETED TRANSACTIONS.
ACTIONS.—The Committee or lead agency, as the case may be, may negotiate, enter into or impose, and enforce any agreement or condition with any party to a completed covered transaction in order to mitigate any interim risk to the national security of the United States that may arise as a result of the covered transaction until such time that the Committee has completed action pursuant to subsection (b) or the President has taken action pursuant to subsection (d) with respect to the transaction.''; and

(B) by striking subparagraph (B) and inserting the following:

"(B) LIMITATIONS.—An agreement may not be entered into or condition imposed under subparagraph (A) with respect to a covered transaction unless the Committee determines that the agreement or condition resolves the national security concerns posed by the transaction, taking into consideration whether the agreement or condition is reasonably calculated to—

"(i) be effective;"
“(ii) allow for compliance with the terms of the agreement or condition in an appropriately verifiable way; and

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

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

(5) by inserting after paragraph (3), as redesignated by paragraph (2), the following:

“(4) Risk-based analysis required.—

“(A) In general.—Any determination of the Committee to suspend a covered transaction under paragraph (1), to refer a covered transaction to the President under paragraph (2), or to negotiate, enter into or impose, or enforce any agreement or condition under paragraph (3)(A) with respect to a covered transaction, shall be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered transaction, which shall include—

“(i) an assessment of—
(I) the national security threat posed by the transaction, taking into account the analysis conducted by the Director of National Intelligence under subsection (b)(4);

(II) any national security vulnerabilities related to the transaction; and

(III) the potential national security consequences of the transaction; and

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

(B) ACTIONS OF MEMBERS OF THE COMMITTEE.—

(i) In general.—Any member of the Committee who concludes that a covered transaction poses an unresolved national security concern shall recommend to the Committee that the Committee suspend the transaction under paragraph (1), refer the transaction to the President under paragraph (2), or negotiate, enter into or impose, or enforce any agreement
or condition under paragraph (3)(A) with respect to the transaction. In making that recommendation, the member shall propose the risk-based analysis required by subparagraph (A).

"(ii) Failure to reach consensus.—If the Committee fails to reach consensus with respect to a recommendation under clause (i) regarding a covered transaction, the members of the Committee who support an alternative recommendation shall produce—

"(I) a written statement justifying the alternative recommendation; and

"(II) as appropriate, a risk-based analysis that supports the alternative recommendation.";

(6) in paragraph (5), as redesignated by paragraph (2), by striking "(as defined in the National Security Act of 1947)"; and

(7) in paragraph (6), as redesignated by paragraph (2)—

(A) in subparagraph (A)—
(i) by striking "paragraph (1)" and inserting "paragraph (3)"; and

(ii) by striking the second sentence and inserting the following: "The lead agency may, at its discretion, seek and receive the assistance of other departments or agencies in carrying out the purposes of this paragraph;"

(B) in subparagraph (B)—

(i) by striking "DESIGNATED AGENCY" and all that follows through "The lead agency in connection" and inserting "DESIGNATED AGENCY.—The lead agency in connection;"

(ii) by striking clause (ii); and

(iii) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively, and by moving such clauses, as so redesignated, 2 ems to the left; and

(C) by adding at the end the following:

"(C) COMPLIANCE PLANS.—"

"(i) IN GENERAL.—In the case of a covered transaction with respect to which an agreement is entered into under paragraph (3)(A), the Committee or lead agen-
ey, as the case may be, shall formulate, adhere to, and keep updated a plan for monitoring compliance with the agreement.

(ii) Elements.—Each plan required by clause (i) with respect to an agreement entered into under paragraph (3)(A) shall include an explanation of—

(I) which member of the Committee will have primary responsibility for monitoring compliance with the agreement;

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

(III) how frequently compliance reviews will be conducted;

(IV) whether an independent entity will be utilized under subparagraph (E) to conduct compliance reviews; and

(V) what actions will be taken if the parties fail to cooperate regarding monitoring compliance with the agreement.

(D) Effect of Lack of Compliance.—If, at any time after a mitigation agreement of
condition is entered into or imposed under paragraph (3)(A), the Committee or lead agen-
cy, as the case may be, determines that a party
or parties to the agreement or condition are not
in compliance with the terms of the agreement
or condition, the Committee or lead agency
may, in addition to the authority of the Com-
mittee to impose penalties pursuant to sub-
section (h)(3) and to unilaterally initiate a re-
view of any covered transaction under sub-
section (b)(1)(D)(iii)(I)—

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

“(ii) require that the party or parties
submit any covered transaction initiated
after the date of the determination of non-
compliance and before the date that is 5
years after the date of the determination
to the Committee for review under sub-
section (b); or
(iii) seek injunctive relief.

(E) USE OF INDEPENDENT ENTITIES TO MONITOR COMPLIANCE.—If the parties to an agreement entered into under paragraph (3)(A) enter into a contract with an independent entity from outside the United States Government for the purpose of monitoring compliance with the agreement, the Committee shall take such action as is necessary to prevent a conflict of interest from arising by ensuring that the independent entity owes no fiduciary duty to the parties.

(F) ADDITIONAL COMPLIANCE MEASURES.—Subject to subparagraphs (A) through (E), the Committee shall develop and agree upon methods for evaluating compliance with any agreement entered into or condition imposed with respect to a covered transaction that will allow the Committee to adequately ensure compliance without unnecessarily diverting Committee resources from assessing any new covered transaction for which a written notice under clause (i) of subsection (b)(1)(C) or declaration under clause (v) of that subsection has been filed, and if necessary, reaching a mitiga-
tion agreement with or imposing a condition on a party to such covered transaction or any covered transaction for which a review has been reopened for any reason.”.

SEC. 17. MODIFICATION OF ANNUAL REPORT.

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

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

(2) in paragraph (2)—

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

“(A) A list of all notices filed and all reviews or investigations of covered transactions completed during the period, with—

“(i) a description of the outcome of each review or investigation, including whether an agreement was entered into or condition was imposed under subsection (I)(3)(A) with respect to the transaction being reviewed or investigated, and whether the President took any action under this section with respect to that transaction;
“(ii) basic information on each party to each such transaction;

“(iii) the nature of the business activities or products of the United States business with which the transaction was entered into or intended to be entered into;

and

“(iv) information about any withdrawal from the process.”;

(B) by adding at the end the following:

“(G) Statistics on compliance reviews conducted and actions taken by the Committee under subsection (l)(6), including subparagraph (D) of that subsection, during that period and a description of any actions taken by the Committee to impose penalties or initiate a unilateral review pursuant to subsection (b)(1)(D)(iii)(I).”;

(3) in paragraph (3)—

(A) by striking “CRITICAL TECHNOLOGIES” and all that follows through “In order to assist” and inserting “CRITICAL TECHNOLOGIES.—In order to assist”;

(B) by striking subparagraph (D); and
(C) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and by moving such subparagraphs, as so redesignated, 2 ems to the left; and

(4) by adding at the end the following:

"(4) BIENNIAL INTELLIGENCE COMMUNITY REPORT.—

"(A) IN GENERAL.—The Director of National Intelligence shall transmit to the chairperson, for inclusion in a classified portion of each report required to be submitted under paragraph (1) during calendar year 2018 and every even-numbered year thereafter, the report of the interagency group established under subparagraph (C).

"(B) ELEMENTS.—The report referred to in subparagraph (A) shall include an identification; analysis; and explanation of the following:

"(i) Any current or projected major threats to the national security of the United States with respect to foreign investment.

"(ii) Any strategies used by countries of special concern to utilize foreign investment to target the acquisition of critical
technologies, critical materials, or critical infrastructure.

"(iii) Any economic espionage efforts directed at the United States by a foreign country, particularly a country of special concern.

"(C) INTELLIGENCE COMMUNITY INTERAGENCY WORKING GROUP.—The Director of National Intelligence—

"(i) shall establish an interagency working group, composed of representatives of elements of the intelligence community, to prepare the report required under this paragraph;

"(ii) shall serve as the chairperson of the interagency working group; and

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

"(5) CLASSIFICATION; AVAILABILITY OF REPORT.—

"(A) CLASSIFICATION.—All appropriate portions of the annual report required by paragraph (1) may be classified.
(B) Public availability of unclassified version.—An unclassified version of the report required by paragraph (1), as appropriate and consistent with safeguarding national security and privacy, shall be made available to the public. Information regarding trade secrets or business confidential information may be included in the classified version and may not be made available to the public in the unclassified version.

(C) Exceptions to Freedom of Information Act.—The exceptions to subsection (a) of section 552 of title 5, United States Code, provided for under subsection (b) of that section shall apply with respect to the report required by paragraph (1).

(6) Appropriate congressional committees defined.—In this subsection, the term ‘appropriate congressional committees’ means—

(A) the Committee on Banking, Housing, and Urban Affairs, the Select Committee on Intelligence, the Committee on Armed Services, the Committee on the Judiciary, and the Committee on Homeland Security and Governmental Affairs of the Senate; and
“(B) the Committee on Financial Services, the Permanent Select Committee on Intelligence, the Committee on Armed Services; the Committee on the Judiciary, and the Committee on Homeland Security of the House of Representatives.”

SEC. 18. CERTIFICATION OF NOTICES AND INFORMATION.

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

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

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

“(1) IN GENERAL.—Each notice”; and

(3) by adding at the end the following:

“(2) EFFECT OF FAILURE TO SUBMIT.—The Committee may not complete a review under this section of a covered transaction and may recommend to the President that the President suspend or prohibit the transaction or require divestment under subsection (d) if the Committee determines that a party to the transaction has—

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

''(B) included false or misleading information in a notice or information described in paragraph (1) or omitted material information from such notice or information.

''(3) APPLICABILITY OF LAW ON FRAUD AND FALSE STATEMENTS.—The Committee shall prescribe regulations expressly providing for the application of section 1001 of title 18, United States Code, to all information provided to the Committee under this section by any party to a covered transaction.''.

SEC. 19. FUNDING.

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

''(o) FUNDING.—

''(1) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a fund, to be known as the 'Committee on Foreign Investment in the United States Fund' (in this subsection referred to as the 'Fund'):

''(2) APPROPRIATION OF FUNDS FOR THE COMMITTEE.—There are authorized to be appropriated
to the Fund such sums as may be necessary to perform the functions of the Committee.

"(2) FILING FEES.—

"(A) IN GENERAL.—The Committee may assess and collect a fee in an amount determined by the Committee in regulations, to the extent provided in advance in appropriations Acts, without regard to section 9701 of title 31, United States Code, and subject to subparagraph (B), with respect to each covered transaction for which a written notice is submitted to the Committee under subsection (b)(1)(C)(i).

"(B) LIMITATION ON AMOUNT OF FEE.—

The amount of the fee determined under subparagraph (A) with respect to a covered transaction described in that subparagraph may not exceed an amount equal to the lesser of—

"(i) 1 percent of the value of the transaction; or

"(ii) $300,000, adjusted annually for inflation pursuant to regulations prescribed by the Committee.

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

"(i) be deposited as offsetting collections into the Fund for use in carrying out activities under this section;

"(ii) to the extent and in the amounts provided in advance in appropriations Acts, be available to the chairperson;

"(iii) remain available until expended; and

"(iv) be in addition to any appropriations made available to the members of the Committee.

"(4) TRANSFER OF FUNDS.—The chairperson may transfer any amounts in the Fund to any other department or agency represented on the Committee for the purpose of addressing emerging needs in carrying out activities under this section. Amounts so transferred shall be in addition to any other amounts available to that department or agency for that purpose."
SEC. 20. CENTRALIZATION OF CERTAIN COMMITTEE FUNCTIONS.

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

"(p) CENTRALIZATION OF CERTAIN COMMITTEE FUNCTIONS.—

"(1) IN GENERAL.—The chairperson, in consultation with the Committee, may centralize certain functions of the Committee within the Department of the Treasury for the purpose of enhancing inter-agency coordination and collaboration in carrying out the functions of the Committee under this section.

"(2) FUNCTIONS.—Functions that may be centralized under paragraph (1) include monitoring non-notified and non-declared transactions pursuant to subsection (b)(1)(H), and other functions as determined by the chairperson and the Committee.

"(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of any department or agency represented on the Committee to represent its own interests before the Committee."
SEC. 21. UNIFIED BUDGET REQUEST.

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

"(q) Unified Budget Request.—

"(1) In general.—The President may include, in the budget of the Department of the Treasury for a fiscal year (as submitted to Congress with the budget of the President under section 1105(a) of title 31, United States Code), a unified request for funding of all operations under this section conducted by some or all of the departments and agencies represented on the Committee:

"(2) Form of budget request.—A unified request under paragraph (1) should be detailed and include the amounts requested for each department or agency represented on the Committee to carry out the functions of that department or agency under this section."

SEC. 22. SPECIAL HIRING AUTHORITY.

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

"(r) Special Hiring Authority.—The heads of the departments and agencies represented on the Committee may appoint, without regard to the provisions of
sections 3309 through 3318 of title 5, United States Code,
candidates directly to positions in the competitive service
(as defined in section 2102 of that title) in their respective
departments and agencies to administer this section.”.

SEC. 23. CONFORMING AMENDMENTS.

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

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

(2) in subsection (d)(4)(A), by striking "the
foreign interest exercising control" and inserting "a
foreign person that would acquire an interest in a
United States business or its assets as a result of
the covered transaction".

SEC. 24. ASSESSMENT OF NEED FOR ADDITIONAL RESOURCES FOR COMMITTEE.

The President shall—

(1) determine whether and to what extent the
expansion of the responsibilities of the Committee on
Foreign Investment in the United States pursuant
to the amendments made by this Act necessitates
additional resources for the Committee and members
of the Committee to perform their functions under
section 721 of the Defense Production Act of 1950,
as amended by this Act; and

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

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

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

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

(2) in a case in which the person violates the
prohibition described in paragraph (1), requires the
person to return all amounts that the person re-
ecived from the Agency under the contract or grant agreement.

(b) Treatment of Returned Funds.—Any amounts returned to the Defense Advanced Research Projects Agency under subsection (a)(2) shall be credited to the same appropriations account from which payment of such amounts was originally made under the contract or grant agreement described in subsection (a).

(c) Exercise of Authority.—The Director, or the designee of the Director, may exercise the authority provided by this section without the need for further approval by, or regulatory implementation within, the Department of Defense.

SEC. 26. EFFECTIVE DATE.

(a) Immediate Applicability of Certain Provisions.—The following shall take effect on the date of the enactment of this Act and apply with respect to any covered transaction the review or investigation of which is initiated under section 721 of the Defense Production Act of 1950 on or after such date of enactment:

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

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

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

(4) Section 721(m)(4) of the Defense Production Act of 1950, as amended by section 17.

(b) DELAYED APPLICABILITY OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—Any provision of or amendment made by this Act not specified in subsection (a) shall—

(A) take effect on the date that is 30 days after publication in the Federal Register of a determination by the chairperson of the Committee on Foreign Investment in the United States that the regulations, organizational structure, personnel, and other resources necessary to administer the new provisions are in place; and

(B) apply with respect to any covered transaction the review or investigation of which is initiated under section 721 of the Defense Production Act of 1950 on or after the date described in subparagraph (A).
(2) Nondelegation of determination.—

The determination of the chairperson of the Committee on Foreign Investment in the United States under paragraph (1)(A) may not be delegated.

(c) Authorization for Pilot Programs.—

(1) In general.—Beginning on the date of the enactment of this Act and ending on the date described in subsection (b)(1)(A), the Committee on Foreign Investment in the United States may, at its discretion, conduct one or more pilot programs to implement any authority provided pursuant to any provision of or amendment made by this Act not specified in subsection (a).

(2) Publication in Federal Register.—A pilot program may not commence until the date that is 30 days after publication in the Federal Register of a determination by the chairperson of the Committee of the scope of and procedures for the pilot program. That determination may not be delegated.

SEC. 27. SEVERABILITY.

If any provision of this Act or an amendment made by this Act, or the application of such a provision or amendment to any person or circumstance, is held to be invalid, the application of that provision or amendment to other persons or circumstances and the remainder of the
provisions of this Act and the amendments made by this 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 “Foreign Investment Risk Review Modernization Act of 2018”.

5 (b) TABLE OF CONTENTS.—The table of contents for 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 efforts to influence democratic institutions and processes.
Sec. 32. Effective date.
Sec. 33. Severability.
SEC. 2. SENSE OF CONGRESS.

(a) In General.—It is the sense of Congress that—

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

(2) maintaining the commitment of the United States to open and fair investment policy also encourages other countries to reciprocate and helps open new foreign markets for United States businesses and their products;

(3) it should continue to be the policy of the United States to enthusiastically welcome and support foreign investment, consistent with the protection of national security;

(4) at the same time, the national security landscape has shifted in recent years, and so has the nature of the investments that pose the greatest potential risk to national security, which warrants a modernization of the processes and authorities of the Committee on Foreign Investment in the United States and of the United States export control system;
(5) the Committee on Foreign Investment in the United States plays a critical role in protecting the national security of the United States, and, therefore, it is essential that the member agencies of the Committee are adequately resourced and able to hire appropriately qualified individuals in a timely manner, and that those individuals’ security clearances are processed as a high priority;

(6) the President should conduct a more robust international outreach effort to urge and help allies and partners of the United States to establish processes that parallel the Committee on Foreign Investment in the United States to screen foreign investments for national security risks and to facilitate coordination;

(7) the President should lead a collaborative effort with allies and partners of the United States to strengthen the multilateral export control regime to more effectively address the unprecedented industrial policies of certain countries of special concern, including aggressive efforts to acquire United States technology, and the blending of civil and military programs;

(8) any penalties imposed by the United States Government with respect to an individual or entity
pursuant to a determination that the individual or entity has violated sanctions imposed by the United States or the export control laws of the United States should not be reversed for reasons unrelated to the national security of the United States; and

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

(b) SENSE OF CONGRESS ON CONSIDERATION OF COVERED TRANSACTIONS.—It is the sense of Congress that, when considering national security risks, the Committee on Foreign Investment in the United States may consider—

(1) whether a transaction involves a country of special concern that has a demonstrated or declared strategic goal of acquiring a type of critical technology or critical infrastructure that would affect United States technological and industrial leadership in areas related to national security;

(2) the potential national security-related effects of the cumulative market share of or a pattern of recent transactions in any one type of infrastructure, energy asset, critical material, or critical technology by foreign persons;
(3) whether any foreign person that would acquire an interest in a United States business or its assets as a result of a transaction has a history of complying with United States laws and regulations;

(4) the extent to which a transaction is likely to expose, either directly or indirectly, personally identifiable information, genetic information, or other sensitive data of United States citizens to access by a foreign government or foreign person that may exploit that information in a manner that threatens national security; and

(5) whether a transaction is likely to have the effect of exacerbating or creating new cybersecurity vulnerabilities in the United States or is likely to result in a foreign government gaining a significant new capability to engage in malicious cyber-enabled activities against the United States, including such activities designed to affect the outcome of any election for Federal office.

SEC. 3. DEFINITIONS.

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

“(a) DEFINITIONS.—In this section:
“(1) ACCESS.—The term ‘access’ means the ability and opportunity to obtain information, subject to regulations prescribed by the Committee.

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

“(3) CONTROL.—The term ‘control’ means the power to determine, direct, or decide important matters affecting an entity, subject to regulations prescribed by the Committee.

“(4) COUNTRY OF SPECIAL CONCERN.—

“(A) IN GENERAL.—The term ‘country of special concern’ means a country that poses a significant threat to the national security interests of the United States.

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

“(5) COVERED TRANSACTION.—

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

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

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

“(i) Any merger, acquisition, or takeover that is proposed or pending after August 23, 1988, by or with any foreign person that could result in foreign control of any United States business.

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

“(I) is located in the United States;

“(II)(aa) is, is located at, or will function as part of, a land, air, or maritime port; or
“(bb)(AA) is in close proximity to a United States military installation or another facility or property of the United States Government that is sensitive for reasons relating to national security;

“(BB) could reasonably provide the foreign person the ability to collect information on activities being conducted at such an installation, facility, or property; or

“(CC) could otherwise expose national security activities at such an installation, facility, or property to the risk of foreign surveillance; and

“(III) meets such other criteria as the Committee prescribes by regulation, as long as such criteria do not expand the categories of real estate to which this clause applies beyond the categories described in subclause (II).

“(iii) Any other investment (other than a passive investment) by a foreign person in any United States critical technology company or United States critical infrastruc-
ture company that is unaffiliated with the foreign person, subject to regulations prescribed under subparagraph (C).

“(iv) Any change in the rights that a foreign person has with respect to a United States business in which the foreign person has an investment, if that change could result in—

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

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

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

“(C) Further definition through regulations.—

“(i) Exception for certain real estate transactions.—A real estate purchase or lease described in subparagraph (B)(ii) does not include a lease or purchase of—
“(I) a single ‘housing unit’, as defined by the Census Bureau; or

“(II) real estate in ‘urbanized areas’, as defined by the Census Bureau in the most recent census, except as otherwise prescribed by the Committee in regulations in consultation with the Secretary of Defense.

“(ii) CERTAIN OTHER INVESTMENT.—

The Committee shall prescribe regulations further defining covered transactions described in subparagraph (B)(iii) by reference to the technology, sector, subsector, transaction type, or other characteristics of such transactions.

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

“(I) IN GENERAL.—The Committee shall, by regulation, define circumstances and procedures under which a transaction otherwise described in clause (ii) or (iii) of subparagraph (B) is excluded from the definition of ‘covered transaction’ if each foreign person that is a party to
the transaction, and each foreign person with ownership or control over a party to the transaction, is from (as determined by the Committee pursuant to regulations prescribed by the Committee), a country or part of a country identified by the Committee for purposes of this clause based on factors established by the Committee, such as—

“(aa) whether, in the sole judgment of the Committee, the process of the country for reviewing the national security effects of foreign investment and associated international cooperation effectively safeguards national security interests the country shares with the United States;

“(bb) whether the country is a member country of the North Atlantic Treaty Organization or is designated as a major non-NATO ally pursuant to section 517 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321k);
“(cc) whether the country adheres to nonproliferation control regimes, including treaties and multilateral supply guidelines, which shall be informed by sources such as the annual report on ‘Adherence to and Compliance with Arms Control, Nonproliferation and Disarmament Agreements and Commitments’ required by section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a);

“(dd) whether excluding transactions by foreign persons from the country advances the national security objectives of the United States; and

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

“(II) RECURRING ASSESSMENT OF IDENTIFIED COUNTRIES.—The Committee shall reconsider on a regular basis the identification of countries
and parts of countries under subclause (I).

“(iv) Exception for Air Carriers.—For purposes of subparagraph (B)(iii), the term ‘other investment’ does not include an investment involving an air carrier, as defined in section 40102(a)(2) of title 49, United States Code, that holds a certificate issued under section 41102 of that title.

“(v) Transfers of Certain Assets Pursuant to Bankruptcy Proceedings or Other Defaults.—The Committee shall prescribe regulations to clarify that the term ‘covered transaction’ includes any transaction described in subparagraph (B) that arises pursuant to a bankruptcy proceeding or other form of default on debt.

“(D) Passive Investment Defined.—

“(i) In General.—For purposes of subparagraph (B)(iii), the term ‘passive investment’ means an investment, direct or indirect, by a foreign person in a United States critical infrastructure company or
United States critical technology company that meets the following criteria:

“(I) The investment is not described in subparagraph (B)(i).

“(II) The investment does not afford the foreign person——

“(aa) access to any material nonpublic technical information in the possession of the United States critical infrastructure company or United States critical technology company;

“(bb) membership or observer rights on the board of directors or equivalent governing body of the United States critical infrastructure company or United States critical technology company or the right to nominate an individual to a position on the board of directors or equivalent governing body; or

“(cc) any involvement, other than through voting of shares, in substantive decisionmaking relat-
ing to the management, governance, or operation of the United States critical infrastructure company or United States critical technology company.

“(III) The foreign person does not have a material parallel strategic partnership or other material financial relationship, as described in regulations prescribed by the Committee, with the United States critical infrastructure company or United States critical technology company.

“(IV) Such other criteria as the Committee may prescribe by regulation, which shall be consistent with the criteria specified in subclauses (I), (II), and (III).

“(ii) MATERIAL NONPUBLIC TECHNICAL INFORMATION DEFINED.—For purposes of clause (i)(II)(aa), the term ‘material nonpublic technical information’ has the meaning given that term in regulations prescribed by the Committee, except that the term does not include financial information
regarding the performance of a United States critical infrastructure company or United States critical technology company.

“(iii) Effect of level of ownership interest.—

“(I) In general.—A determination of whether an investment is a passive investment under clause (i) shall be made without regard to how low the level of ownership interest a foreign person would hold or acquire in a United States critical infrastructure company or United States critical technology company would be as a result of the investment.

“(II) Regulations.—

“(aa) In general.—The Committee may prescribe regulations specifying that any investment (other than an investment described in item (bb)) greater than a certain level or amount shall not be considered a passive investment under clause (i).
“(bb) INVESTMENT DESCRIBED.—An investment described in this item is an investment—

“(AA) by a foreign person in a United States critical infrastructure company or United States critical technology company through an investment fund;

“(BB) that does not result in the foreign person’s control of the United States critical technology or United States critical infrastructure company; and

“(CC) that otherwise meets the requirements of clauses (i) and (iv), as applicable.

“(iv) SPECIFIC CLARIFICATION FOR INVESTMENT FUNDS.—

“(I) TREATMENT OF CERTAIN INVESTMENTS AS PASSIVE INVESTMENTS.—Notwithstanding clause
(i)(II)(bb) and subject to regulations prescribed by the Committee, an indirect investment by a foreign person in a United States critical infrastructure company or United States critical technology company through an investment fund that affords the foreign person (or a designee of the foreign person) membership as a limited partner on an advisory board or a committee of the fund shall be considered a passive investment if—

“(aa) the fund is managed exclusively by a general partner, a managing member, or an equivalent;

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

“(cc) the advisory board or committee does not have the ability to approve, disapprove, or otherwise control—

“(AA) investment decisions of the fund; or

“(BB) the general partner, managing member, or equivalent is not a foreign person;
“(BB) decisions made by the general partner, managing member, or equivalent related to entities in which the fund is invested;

“(dd) the foreign person does not otherwise have the ability to control the fund, including the authority—

“(AA) to approve, disapprove, or otherwise control investment decisions of the fund;

“(BB) to approve, disapprove, or otherwise control decisions made by the general partner, managing member, or equivalent related to entities in which the fund is invested; or

“(CC) to unilaterally dismiss, prevent the dismissal of, select, or determine the compensation of the gen-
eral partner, managing member, or equivalent; and

“(ee) the investment otherwise meets the requirements of this subparagraph.

“(II) TREATMENT OF CERTAIN WAIVERS.—

“(aa) IN GENERAL.—For the purposes of items (cc) and (dd) of subclause (I) and except as provided in item (bb), a waiver of a potential conflict of interest, a waiver of an allocation limitation, or a similar activity, applicable to a transaction pursuant to the terms of an agreement governing an investment fund shall not be considered to constitute control of investment decisions of the fund or decisions relating to entities in which the fund is invested.

“(bb) EXCEPTION.—The Committee may prescribe regulations providing for exceptions to
item (aa) for extraordinary circumstances.

“(v) REGULATIONS.—The Committee shall prescribe regulations providing guidance on the types of transactions that the Committee considers to be passive investment.

“(E) UNITED STATES CRITICAL INFRASTRUCTURE COMPANY DEFINED.—For purposes of this paragraph, the term ‘United States critical infrastructure company’ means a United States business that is, owns, operates, or primarily provides services to, an entity or entities that operate within a critical infrastructure sector or subsector, as defined by regulations prescribed by the Committee.

“(F) UNITED STATES CRITICAL TECHNOLOGY COMPANY DEFINED.—For purposes of this paragraph, the term ‘United States critical technology company’ means a United States business that produces, designs, tests, manufactures, or develops one or more critical technologies, or a subset of such technologies, as defined by regulations prescribed by the Committee.
“(6) CRITICAL INFRASTRUCTURE.—The term ‘critical infrastructure’ means, subject to regulations prescribed by the Committee, systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security.

“(7) CRITICAL MATERIALS.—The term ‘critical materials’ means physical materials essential to national security, subject to regulations prescribed by the Committee.

“(8) CRITICAL TECHNOLOGIES.—

“(A) IN GENERAL.—The term ‘critical technologies’ means technology, components, or technology items that are essential or could be essential to national security, identified for purposes of this section pursuant to regulations prescribed by the Committee.

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

“(i) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of
chapter I of title 22, Code of Federal Regulations.

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

“(I) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

“(II) for reasons relating to regional stability or surreptitious listening.

“(iii) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities).

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

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

“(vi) Emerging and foundational technologies identified pursuant to section 25(a) of the Foreign Investment Risk Review Modernization Act of 2018.

“(9) FOREIGN GOVERNMENT-CONTROLLED TRANSACTION.—The term ‘foreign government-controlled transaction’ means any covered transaction that could result in the control of any United States business by a foreign government or an entity controlled by or acting on behalf of a foreign government.

“(10) FOREIGN PERSON.—

“(A) IN GENERAL.—The term ‘foreign person’ means—

“(i) any foreign national, foreign government, or foreign entity; or

“(ii) any entity over which control is exercised or exercisable by a foreign na-
tional, foreign government, or foreign entity.

“(B) FOREIGN ENTITY DEFINED.—

“(i) IN GENERAL.—For purposes of subparagraph (A) and except as provided in clause (ii), the term ‘foreign entity’ means any branch, partnership, group or subgroup, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign country if—

“(I) the principal place of business of the entity is outside the United States; or

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

“(ii) EXCEPTION.—For purposes of subparagraph (A), the term ‘foreign entity’ does not include an entity that demonstrates to the Committee that a majority of the equity interest in the entity is ultimately owned by United States nationals.

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

“(12) INVESTMENT.—The term ‘investment’ means the acquisition of equity interest, including contingent equity interest, as further defined in regulations prescribed by the Committee.

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

“(14) NATIONAL SECURITY.—The term ‘national security’ shall be construed so as to include those issues relating to ‘homeland security’, including its application to critical infrastructure.

“(15) PARTY.—The term ‘party’ has the meaning given that term in regulations prescribed by the Committee.

“(16) UNITED STATES.—The term ‘United States’ means the several States, the District of Columbia, and any territory or possession of the United States.

“(17) UNITED STATES BUSINESS.—The term ‘United States business’ means a person engaged in interstate commerce in the United States.”.
SEC. 4. ACCEPTANCE OF WRITTEN NOTICES.


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

“(I) IN GENERAL.—Any party”;

and

(2) by adding at the end the following:

“(II) COMMENTS AND ACCEPTANCE.—

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

“(bb) COMPLETENESS.—If the Committee determines that a draft or final written notice described in item (aa) is not complete, the Committee shall notify the party or parties to the trans-
action in writing that the notice
is not complete and provide an
explanation of all material re-
spects in which the notice is in-
complete.

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

SEC. 5. INCLUSION OF PARTNERSHIP AND SIDE AGRE-
EMENTS IN NOTICE.

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

“(iv) INCLUSION OF PARTNERSHIP AND
SIDE AGREEMENTS.—A written notice sub-
mitted under clause (i) by a party to a cov-
ered transaction shall include a copy of any
partnership agreements, integration agree-
ments, or other side agreements relating to
the transaction, including any such agree-
ments relating to the transfer of intellectual
property, as specified in regulations prescribed by the Committee.”.

SEC. 6. DECLARATIONS FOR CERTAIN COVERED TRANSACTIONS.

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

“(v) DECLARATIONS FOR CERTAIN COVERED TRANSACTIONS.—

“(I) In general.—A party to any covered transaction may submit to the Committee a declaration with basic information regarding the transaction instead of a written notice under clause (i).

“(II) Regulations.—The Committee shall prescribe regulations establishing requirements for declarations submitted under this clause. In prescribing such regulations, the Committee shall ensure that such declarations are submitted as abbreviated notifications that would not generally exceed 5 pages in length.
“(III) Committee response to declaration.—

“(aa) In general.—Upon receiving a declaration under this clause with respect to a covered transaction, the Committee may, at the discretion of the Committee—

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

“(BB) inform the parties to the transaction that the Committee is not able to complete action under this section with respect to the transaction on the basis of the declaration and that the parties may file a written notice under clause (i) to seek written notification from the Committee that the Committee has completed all ac-
tion under this section with
respect to the transaction;

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

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

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

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

“(IV) MANDATORY DECLARA-
TIONS.—
“(aa) Regulations.—The Committee shall prescribe regulations specifying the types of covered transactions for which the Committee requires a declaration under this subclause.

“(bb) Certain covered transactions with foreign government interests.—

“(AA) In general.—Except as provided in subitem (BB), the parties to a covered transaction shall submit a declaration described in subclause (I) with respect to the transaction if the transaction involves an investment that results in the acquisition, directly or indirectly, of a substantial interest in a United States critical infrastructure company or United States critical technology company by a foreign person in which a for-
eign government has, directly
or indirectly, a substantial
interest.

“(BB) EXCEPTION.—
The submission of a declara-
tion described in subclause
(I) shall not be required with
respect to a transaction de-
scribed in subitem (AA) if
each foreign person that is a
party to the transaction, and
each foreign person with
ownership or control over a
party to the transaction, is
from a country or part of a
country identified by the
Committee under subsection
(a)(5)(C)(iii).

“(CC) SUBSTANTIAL IN-
TEREST DEFINED.—In this
item, the term ‘substantial
interest’ has the meaning
given that term in regula-
tions which the Committee
shall prescribe. In developing
those regulations, the Committee shall consider the means by which a foreign government could influence the actions of a foreign person, including through board membership, ownership interest, or shareholder rights.

An interest that is a passive investment (as defined in subsection (a)(5)(D)) or that is less than a 10 percent voting interest shall not be considered a substantial interest.

“(cc) OTHER DECLARATIONS REQUIRED BY COMMITTEE.—The Committee shall require the submission of a declaration described in subclause (I) with respect to any covered transaction identified under regulations prescribed by the Committee for purposes of this item, at the discretion of the Committee and based on appropriate factors, such as—
“(AA) the technology, industry, economic sector, or economic subsector in which the United States business that is a party to the transaction trades or of which it is a part;

“(BB) the difficulty of remedying the harm to national security that may result from completion of the transaction;

“(CC) the difficulty of obtaining information on the type of covered transaction through other means; and

“(DD) the difficulty of obtaining information on the ultimate ownership of the foreign person that is a party to the transaction.

“(dd) EXCEPTION.—The submission of a declaration described in subclause (I) shall not be required pursuant to this subclause
with respect to an investment by an investment fund if—

“(AA) the fund is managed exclusively by a general partner, a managing member, or an equivalent;

“(BB) the general partner, managing member, or equivalent is not a foreign person; and

“(CC) the investment fund satisfies, with respect to any foreign person with membership as a limited partner on an advisory board or a committee of the fund, the criteria specified in items (cc) and (dd) of subsection (a)(5)(D)(iv).

“(ee) Submission of Written Notice as an Alternative.—Parties to a covered transaction for which a declaration is required under this sub-
clause may instead elect to submit a written notice under clause (i).

“(ff) TIMING OF SUBMISSION.—

“(AA) In general.—A declaration required to be submitted with respect to a covered transaction by this subclause shall be submitted not later than 45 days before the completion of the transaction.

“(BB) Written notice.—If, pursuant to item (ee), the parties to a covered transaction elect to submit a written notice under clause (i) instead of a declaration under this subclause, the written notice shall be filed not later than 90 days before the completion of the transaction.

“(gg) Penalties.—The Committee may impose a penalty
pursuant to subsection (h)(3) with respect to a party that fails to comply with this subclause.”.

SEC. 7. STIPULATIONS REGARDING TRANSACTIONS.

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

“(vi) STIPULATIONS REGARDING TRANSACTIONS.—

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

“(aa) stipulate that the transaction is a covered transaction; and

“(bb) if the party stipulates that the transaction is a covered transaction under item (aa), stipulate that the transaction is a foreign government-controlled transaction.

“(II) BASIS FOR STIPULATION.—

A written notice submitted under
clause (i) or a declaration submitted under clause (v) that includes a stipulation under subclause (I) shall include a description of the basis for the stipulation.”.

SEC. 8. AUTHORITY FOR UNILATERAL INITIATION OF REVIEWS.

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

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

(2) in subparagraph (D)—

(A) in the matter preceding clause (i), by striking “subparagraph (F)” and inserting “subparagraph (G)”;

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

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

“(ii) any covered transaction described in subparagraph (E), if any party to the transaction submitted false or misleading material information to the Committee in connection with the Committee’s consider-
ation of the transaction or omitted material information, including material documents, from information submitted to the Committee; or”; and

(D) in clause (iii)—

(i) in the matter preceding subclause (I), by striking “any covered transaction that has previously been reviewed or investigated under this section,” and inserting “any covered transaction described in subparagraph (E),”;

(ii) in subclause (I), by striking “intentionally”;

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

(iv) in subclause (III), by inserting “adequate and appropriate” before “remedies or enforcement tools”; and

(3) by inserting after subparagraph (D) the following:

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

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

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

SEC. 9. TIMING FOR REVIEWS AND INVESTIGATIONS.

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

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

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

“(C) TIMING.—

“(i) In general.—Except as provided in clause (ii), any investigation under subparagraph (A) shall be completed before the end of the 45-day period beginning on the date on which the investigation commenced.

“(ii) Extension for extraordinary circumstances.—

“(I) In general.—In extraordinary circumstances (as defined by
the Committee in regulations), the chairperson may, at the request of the head of the lead agency, extend an investigation under subparagraph (A) for one 30-day period.

“(II) NONDELEGATION.—The authority of the chairperson and the head of the lead agency referred to in subclause (I) may not be delegated to any person other than the Deputy Secretary of the Treasury or the deputy head (or equivalent thereof) of the lead agency, as the case may be.

“(III) NOTIFICATION TO PARTIES.—If the Committee extends the deadline under subclause (I) with respect to a covered transaction, the Committee shall notify the parties to the transaction of the extension.”; and

(3) by adding at the end the following:

“(8) TOLLING OF DEADLINES DURING LAPSE IN APPROPRIATIONS.—Any deadline or time limitation under this subsection shall be tolled during a lapse in appropriations.”.
SEC. 10. MONITORING OF NON-NOTIFIED AND NON-DECLARED TRANSACTIONS.

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

“(H) MONITORING OF NON-NOTIFIED AND NON-DECLARED TRANSACTIONS.—The Committee shall establish a mechanism to identify covered transactions for which—

“(i) a notice under clause (i) of subparagraph (C) or a declaration under clause (v) of that subparagraph is not submitted to the Committee; and

“(ii) information is reasonably available.”.

SEC. 11. SUBMISSION OF CERTIFICATIONS TO CONGRESS.

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

(1) in clause (iii)—

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

(B) in subclause (IV), by inserting “and the Permanent Select Committee on Intelligence” after “Financial Services”;
(2) in clause (iv), by striking subclause (II) and inserting the following:

“(II) Delegation of Certifications.—

“(aa) In General.—Subject to item (bb), the chairperson, in consultation with the Committee, may determine the level of official to whom the signature requirement under subclause (I) for the chairperson and the head of the lead agency may be delegated. The level of official to whom the signature requirement may be delegated may differ based on any factor relating to a transaction that the chairperson, in consultation with the Committee, deems appropriate, including the type or value of the transaction.

“(bb) Limitation on Delegation with Respect to Certain Transactions.—The signature requirement under subclause (I) may be delegated not below the
level of the Assistant Secretary of the Treasury or an equivalent official of the lead agency in the case of a covered transaction—

“(AA) assessed by the Director of National Intelligence under paragraph (4) as more likely than not to threaten the national security of the United States;

“(BB) with respect to which the Committee conducts an investigation under paragraph (2); or

“(CC) with respect to which a request is made by an official at the Deputy Assistant Secretary or Assistant Secretary level of an agency or department represented on the Committee, or an equivalent thereof, that the transaction be reviewed by the Assistant Secretary of the
Treasury and an equivalent official of the lead agency.

“(cc) LIMITATION ON DELEGATION WITH RESPECT TO OTHER TRANSACTIONS.—In the case of any covered transaction not described in item (bb), the signature requirement under subclause (I) may be delegated not below the level of a Deputy Assistant Secretary of the Treasury or an equivalent official of the lead agency.”; and

(3) by adding at the end the following:

“(v) AUTHORITY TO CONSOLIDATE DOCUMENTS.—Instead of transmitting a separate certified notice or certified report under subparagraph (A) or (B) with respect to each covered transaction, the Committee may, on a monthly basis, transmit such notices and reports in a consolidated document to the Members of Congress specified in clause (iii).”.
SEC. 12. ANALYSIS BY DIRECTOR OF NATIONAL INTELLIGENCE.

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

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

“(A) ANALYSIS REQUIRED.—

“(i) IN GENERAL.—Except as provided in subparagraph (B), the Director of National Intelligence shall expeditiously carry out a thorough analysis of any threat to the national security of the United States posed by any covered transaction, which shall include the identification of any recognized gaps in the collection of intelligence relevant to the analysis.

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

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

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

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

(3) by inserting after subparagraph (A) the following:

“(B) BASIC THREAT INFORMATION.—

“(i) IN GENERAL.—The Director of National Intelligence may provide the Committee with basic information regarding any threat to the national security of the United States posed by a covered transaction described in clause (ii) instead of conducting the analysis required by subparagraph (A).
“(ii) Covered Transaction Described.—A covered transaction is described in this clause if—

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

“(II) the Director of National Intelligence has completed an analysis pursuant to subparagraph (A) involving each foreign person that is a party to the transaction during the 12 months preceding the review or investigation of the transaction under this section; or

“(III) the transaction otherwise meets criteria agreed upon by the Committee and the Director for purposes of this subparagraph.”;

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

and

(5) by adding at the end the following:

“(F) Assessment of Operational Impact.—The Director may provide to the Committee an assessment, separate from the analyses under subparagraphs (A) and (B), of any oper-
ational impact of a covered transaction on the
intelligence community and a description of any
actions that have been or will be taken to miti-
gate any such impact.

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

SEC. 13. INFORMATION SHARING.

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

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

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

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

(3) by adding at the end the following:
“(2) EXCEPTIONS.—Paragraph (1) shall not prohibit the disclosure of the following:

“(A) Information relevant to any administrative or judicial action or proceeding.

“(B) Information to Congress or any duly authorized committee or subcommittee of Congress.

“(C) Information to any domestic or foreign governmental entity, under the direction of the chairperson, to the extent necessary for national security purposes and pursuant to appropriate confidentiality and classification arrangements.

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

“(3) COOPERATION WITH ALLIES AND PARTNERS.—

“(A) IN GENERAL.—The chairperson, in consultation with other members of the Committee, should establish a formal process for the exchange of information under paragraph (2)(C) with governments of countries that are allies or partners of the United States, in the discretion of the chairperson, to protect the national security of the United States and those countries.
“(B) REQUIREMENTS.—The process established under subparagraph (A) should, in the discretion of the chairperson—

“(i) be designed to facilitate the harmonization of action with respect to trends in investment and technology that could pose risks to the national security of the United States and countries that are allies or partners of the United States;

“(ii) provide for the sharing of information with respect to specific technologies and entities acquiring such technologies as appropriate to ensure national security; and

“(iii) include consultations and meetings with representatives of the governments of such countries on a recurring basis.”.

SEC. 14. ACTION BY THE PRESIDENT.

(a) IN GENERAL.—Section 721(d) of the Defense Production Act of 1950 (50 U.S.C. 4565(d)) is amended—

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

“(1) IN GENERAL.—Subject to paragraph (4), the President may, with respect to a covered transaction that threatens to impair the national security of the
United States, take such action for such time as the
President considers appropriate to suspend or pro-
hibit the transaction or to require divestment.”; and

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

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

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

(b) CIVIL PENALTIES.—Section 721(h)(3)(A) of the
is amended by striking “including any mitigation” and all
that follows through “subsection (l)” and inserting “includ-
ing any mitigation agreement entered into, conditions im-
posed, or order issued pursuant to this section”.

SEC. 15. JUDICIAL REVIEW.

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

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

“(1) IN GENERAL.—The actions”; and
(2) by adding at the end the following:

“(2) CIVIL ACTIONS.—A civil action challenging an action or finding of the Committee under this section may be brought only in the United States Court of Appeals for the District of Columbia Circuit.

“(3) PROCEDURES FOR REVIEW OF PRIVILEGED INFORMATION.—If a civil action challenging an action or finding of the Committee under this section is brought, and the court determines that protected information in the administrative record, including classified, sensitive law enforcement, sensitive security, or other information subject to privilege or protections under any provision of law, is necessary to resolve the challenge, that information shall be submitted ex parte and in camera to the court and the court shall maintain that information under seal.

“(4) APPLICABILITY OF USE OF INFORMATION PROVISIONS.—The use of information provisions of sections 106, 305, 405, and 706 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806, 1825, 1845, and 1881e) shall not apply in a civil action brought under this subsection.”.
SEC. 16. MEMBERSHIP AND STAFF OF COMMITTEE.

(a) Hiring Authority.—Section 721(k) of the Defense Production Act of 1950 (50 U.S.C. 4565(k)) is amended by striking paragraph (4) and inserting the following:

“(4) Hiring Authority.—

“(A) Senior Officials.—

“(i) In general.—Each member of the Committee shall designate an Assistant Secretary, or an equivalent official, who is appointed by the President, by and with the advice and consent of the Senate, to carry out such duties related to the Committee as the member of the Committee may delegate.

“(ii) Department of the Treasury.—In addition to officials of the Department of the Treasury authorized under section 301 of title 31, United States Code, or any other provision of law, there are authorized at the Department of the Treasury, to carry out such duties related to the Committee as the Secretary of the Treasury may delegate, consistent with this section and reflecting the expanded authorities of the Committee and the role of the Department of the Treasury in implementing those authorities under the amendments made by
the Foreign Investment Risk Review Modernization Act of 2018, the following:

“(I) One official, who is appointed by the President, by and with the advice and consent of the Senate, who shall be compensated at a rate not to exceed the rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

“(II) One official, who is appointed by the President, by and with the advice and consent of the Senate, who shall be compensated at a rate not to exceed the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

“(B) SPECIAL HIRING AUTHORITY.—The heads of the departments and agencies represented on the Committee may appoint, without regard to the provisions of sections 3309 through 3318 of title 5, United States Code, candidates directly to positions in the competitive service (as defined in section 2102 of that title) in their
respective departments and agencies to administer this section.”.

(b) PROCEDURES FOR RECUSAL OF MEMBERS OF COMMITTEE FOR CONFLICTS OF INTEREST.—Not later than 90 days after the date of the enactment of this Act, the Committee on Foreign Investment in the United States shall—

(1) establish procedures for the recusal of any member of the Committee that has a conflict of interest with respect to a covered transaction (as defined in section 721 of the Defense Production Act of 1950, as amended by section 3);

(2) submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report describing those procedures; and

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

SEC. 17. ACTIONS BY THE COMMITTEE TO ADDRESS NATIONAL SECURITY RISKS.

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

(1) in the subsection heading, by striking “MITIGATION, TRACKING, AND POSTCONSUMMATION MONITORING AND ENFORCEMENT” and inserting “ACTIONS
by the Committee to Address National Security Risks’’;

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

(3) by inserting before paragraph (3), as redesignated by paragraph (2), the following:

“(1) Suspension of Transactions.—The Committee, acting through the chairperson, may suspend a proposed or pending covered transaction that may pose a risk to the national security of the United States for such time as the covered transaction is under review or investigation under subsection (b).

“(2) Referral to President.—The Committee may, at any time during the review or investigation of a covered transaction under subsection (b), complete the action of the Committee with respect to the transaction and refer the transaction to the President for action pursuant to subsection (d).”;

(4) in paragraph (3), as redesignated by paragraph (2)—

(A) in subparagraph (A)—

(i) in the subparagraph heading, by striking “In General” and inserting “Agreements and Conditions”;

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

“(i) IN GENERAL.—The Committee;”;

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

(iv) by adding at the end the following:

“(ii) ABANDONMENT OF TRANSACTIONS.—If a party to a covered transaction has voluntarily chosen to abandon the transaction, the Committee or lead agency, as the case may be, may negotiate, enter into or impose, and enforce any agreement or condition with any party to the covered transaction for purposes of effectuating such abandonment and mitigating any risk to the national security of the United States that arises as a result of the covered transaction.

“(iii) AGREEMENTS AND CONDITIONS RELATING TO COMPLETED TRANSACTIONS.—The Committee or lead agency, as the case may be, may negotiate, enter into or impose, and enforce any agreement or condition with any party to a completed covered transaction in order to mitigate any in-
terim risk to the national security of the United States that may arise as a result of the covered transaction until such time that the Committee has completed action pursuant to subsection (b) or the President has taken action pursuant to subsection (d) with respect to the transaction.”; and

(B) by striking subparagraph (B) and inserting the following:

“(B) LIMITATIONS.—An agreement may not be entered into or condition imposed under subparagraph (A) with respect to a covered transaction unless the Committee determines that the agreement or condition resolves the national security concerns posed by the transaction, taking into consideration whether the agreement or condition is reasonably calculated to—

“(i) be effective;

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

“(iii) enable effective monitoring of compliance with and enforcement of the terms of the agreement or condition.
“(C) JURISDICTION.—The provisions of section 706(b) shall apply to any mitigation agreement entered into or condition imposed under subparagraph (A).”;

(5) by inserting after paragraph (3), as redesignated by paragraph (2), the following:

“(4) RISK-BASED ANALYSIS REQUIRED.—

“(A) IN GENERAL.—Any determination of the Committee to suspend a covered transaction under paragraph (1), to refer a covered transaction to the President under paragraph (2), or to negotiate, enter into or impose, or enforce any agreement or condition under paragraph (3)(A) with respect to a covered transaction, shall be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered transaction, which shall include an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction.

“(B) ACTIONS OF MEMBERS OF THE COMMITTEE.—

“(i) IN GENERAL.—Any member of the Committee who concludes that a covered transaction poses an unresolved national se-
curity concern shall recommend to the Committee that the Committee suspend the transaction under paragraph (1), refer the transaction to the President under paragraph (2), or negotiate, enter into or impose, or enforce any agreement or condition under paragraph (3)(A) with respect to the transaction. In making that recommendation, the member shall propose or contribute to the risk-based analysis required by sub-paragraph (A).

“(ii) FAILURE TO REACH CONSENSUS.—If the Committee fails to reach consensus with respect to a recommendation under clause (i) regarding a covered transaction, the members of the Committee who support an alternative recommendation shall produce—

“(I) a written statement justifying the alternative recommendation; and

“(II) as appropriate, a risk-based analysis that supports the alternative recommendation.
“(C) DEFINITIONS.—For purposes of subparagraph (A), the terms ‘threat’, ‘vulnerabilities’, and ‘consequences to national security’ shall have the meanings given those terms by the Committee by regulation.”;

(6) in paragraph (5)(B), as redesignated by paragraph (2), by striking “(as defined in the National Security Act of 1947)”; and

(7) in paragraph (6), as redesignated by paragraph (2)—

(A) in subparagraph (A)—

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

(ii) by striking the second sentence and inserting the following: “The lead agency may, at its discretion, seek and receive the assistance of other departments or agencies in carrying out the purposes of this paragraph.”;

(B) in subparagraph (B)—

(i) by striking “DESIGNATED AGENCY” and all that follows through “The lead agency in connection” and inserting “DESIGNATED AGENCY.”;
(ii) by striking clause (ii); and

(iii) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively, and by moving such clauses, as so redesignated, 2 ems to the left; and

(C) by adding at the end the following:

“(C) COMPLIANCE PLANS.—

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

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

“(I) which member of the Committee will have primary responsibility for monitoring compliance with the agreement;

“(II) how compliance with the agreement will be monitored;
“(III) how frequently compliance reviews will be conducted;

“(IV) whether an independent entity will be utilized under subparagraph (E) to conduct compliance reviews; and

“(V) what actions will be taken if the parties fail to cooperate regarding monitoring compliance with the agreement.

“(D) Effect of Lack of Compliance.—

If, at any time after a mitigation agreement or condition is entered into or imposed under paragraph (3)(A), the Committee or lead agency, as the case may be, determines that a party or parties to the agreement or condition are not in compliance with the terms of the agreement or condition, the Committee or lead agency may, in addition to the authority of the Committee to impose penalties pursuant to subsection (h)(3) and to unilaterally initiate a review of any covered transaction under subsection (b)(1)(D)(iii)—

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

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

“(iii) seek injunctive relief.

“(E) Use of independent entities to monitor compliance.—If the parties to an agreement entered into under paragraph (3)(A) enter into a contract with an independent entity from outside the United States Government for the purpose of monitoring compliance with the agreement, the Committee shall take such action as is necessary to prevent a conflict of interest.
from arising by ensuring that the independent entity owes no fiduciary duty to the parties.

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

“(G) ADDITIONAL COMPLIANCE MEASURES.—Subject to subparagraphs (A) through (F), the Committee shall develop and agree upon methods for evaluating compliance with any agreement entered into or condition imposed with respect to a covered transaction that will allow the Committee to adequately ensure compliance without unnecessarily diverting Committee resources from assessing any new covered transaction for which a written notice under clause (i) of subsection (b)(1)(C) or declaration under clause (v) of that subsection has been filed, and if necessary, reaching a mitigation agreement with or imposing a condition on a party to such covered transaction or any covered trans-
action for which a review has been reopened for any reason.”.

SEC. 18. MODIFICATION OF ANNUAL REPORT AND OTHER REPORTING REQUIREMENTS.

(a) Modification of Annual Report.—Section 721(m) of the Defense Production Act of 1950 (50 U.S.C. 4565(m)) is amended—

(1) in paragraph (2)—

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

“(A) A list of all notices filed and all reviews or investigations of covered transactions completed during the period, with—

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

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

“(iii) the nature of the business activities or products of the United States busi-
ness with which the transaction was entered
into or intended to be entered into; and

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

(B) by adding at the end the following:

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

“(H) Cumulative and, as appropriate,
trend information on the number of declarations
filed under subsection (b)(1)(C)(v), the actions
taken by the Committee in response to those dec-
larations, the business sectors involved in those
declarations, and the countries involved in those
declarations.
“(I) A description of—

“(i) the methods used by the Committee to monitor non-notified and non-declared transactions under subsection (b)(1)(H);

“(ii) potential methods to improve such monitoring and the resources required to do so; and

“(iii) the number of transactions identified through the mechanism established under that subsection during the reporting period and the number of such transactions flagged for further review.”;

(2) in paragraph (3)—

(A) by striking “CRITICAL TECHNOLOGIES” and all that follows through “In order to assist” and inserting “CRITICAL TECHNOLOGIES.—In order to assist”;

(B) by striking subparagraph (B); and

(C) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and by moving such subparagraphs, as so redesignated, 2 ems to the left; and

(3) by adding at the end the following:

“(4) FORM OF REPORT.—
“(A) IN GENERAL.—All appropriate portions of the annual report under paragraph (1) may be classified. An unclassified version of the report, as appropriate, consistent with safeguarding national security and privacy, shall be made available to the public.

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

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

“(ii) the number of declarations submitted under subsection (b)(1)(C)(v) and the number of such declarations that were required under subclause (IV) of that subsection;

“(iii) the number of declarations submitted under subsection (b)(1)(C)(v) for which the Committee required resubmission as notices under subsection (b)(1)(C)(i);

“(iv) the average number of days that elapsed between submission of a declaration under subsection (b)(1)(C)(v) and the ac-
ceptance of the declaration by the Committee;

“(v) information on the time it took the Committee to provide comments on, or to accept, notices submitted under subsection (b)(1)(C)(i), including—

“(I) the average number of business days that elapsed between the date of submission of a draft notice and the date on which the Committee provided written comments on the draft notice;

“(II) the average number of business days that elapsed between the date of submission of a final notice and the date on which the Committee accepted or provided written comments on the final notice; and

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

“(aa) an explanation of the causes of such delays, including whether such delays are caused by resource shortages, unusual fluc-
tuations in the volume of notices, transaction characteristics, or other factors; and

“(bb) an explanation of the steps that the Committee anticipates taking to mitigate the causes of such delays and otherwise to improve the ability of the Committee to provide comments on, or to accept, notices within 10 business days;

“(vi) the number of reviews or investigations conducted under subsection (b);

“(vii) the number of investigations that were subject to an extension under subsection (b)(2)(C)(ii);

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

“(ix) the number of notices submitted under subsection (b)(1)(C)(i) and declarations submitted under subsection (b)(1)(C)(v) that were rejected by the Committee;
“(x) the number of such notices and declarations that were withdrawn by a party to the covered transaction;

“(xi) the number of such withdrawals that were followed by the submission of a subsequent such notice or declaration relating to a substantially similar covered transaction; and

“(xii) such other specific, cumulative, or trend information that the Committee determines is advisable to provide for an assessment of the time required for reviews and investigations of covered transactions under this section.”.

(b) Report on Chinese Investment.—

(1) In general.—Not later than 2 years after the date of the enactment of this Act, and every 2 years thereafter through 2026, the Secretary of Commerce shall submit to Congress and the Committee on Foreign Investment in the United States a report on foreign direct investment transactions made by entities of the People’s Republic of China in the United States.

(2) Elements.—Each report required by paragraph (1) shall include the following:
(A) Total foreign direct investment from the People’s Republic of China in the United States, including total foreign direct investment disaggregated by ultimate beneficial owner.

(B) A breakdown of investments from the People’s Republic of China in the United States by value using the following categories:

(i) Less than $50,000,000.

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

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

(iv) Greater than or equal to $1,000,000,000 and less than $2,000,000,000.

(v) Greater than or equal to $2,000,000,000 and less than $5,000,000,000.

(vi) Greater than or equal to $5,000,000,000.

(C) A breakdown of investments from the People’s Republic of China in the United States by 2-digit North American Industry Classification System code.
(D) A breakdown of investments from the People’s Republic of China in the United States by investment type, using the following categories:

(i) Businesses established.

(ii) Businesses acquired.

(E) A breakdown of investments from the People’s Republic of China in the United States by government and non-government investments, including volume, sector, and type of investment within each category.

(F) A list of companies incorporated in the United States purchased through government investment by the People’s Republic of China.

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

(H) An analysis of patterns in the investments described in subparagraphs (A) through (F), including in volume, type, and sector, and the extent to which those patterns of investments align with the objectives outlined by the Government of the People’s Republic of China in its
Made in China 2025 plan, including a comparative analysis of investments from the People’s Republic of China in the United States and all foreign direct investment in the United States.

(I) An identification of any limitations on the ability of the Secretary of Commerce to collect comprehensive information that is reasonably and lawfully available about foreign investment in the United States from the People’s Republic of China on a timeline necessary to complete reports every 2 years as required by paragraph (1), including—

(i) an identification of any discrepancies between government and private sector estimates of investments from the People’s Republic of China in the United States;

(ii) a description of the different methodologies or data collection methods, including by private sector entities, used to measure foreign investment that may result in different estimates; and

(iii) recommendations for enhancing the ability of the Secretary of Commerce to improve data collection of information
about foreign investment in the United States from the People’s Republic of China.

(3) EXTENSION OF DEADLINE.—If, as a result of a limitation identified under paragraph (2)(I), the Secretary of Commerce determines that the Secretary will be unable to submit a report at the time required by paragraph (1), the Secretary may request additional time to complete the report.

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

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, an appropriate member or members of the Committee on Foreign Investment in the United States shall, in coordination with the chairperson of the Committee, submit to Congress a report assessing—

(A) national security threats related to investments in the United States by state-owned or state-controlled entities in the manufacture or assembly of rolling stock or other assets for use in freight rail, public transportation, or inter-city passenger rail systems, including the construction of new facilities;

(B) how the number and types of such investments could affect any such threats; and
(C) the authority and ability of the Committee to respond to such threats.

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

SEC. 19. CERTIFICATION OF NOTICES AND INFORMATION.

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

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

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

“(1) IN GENERAL.—Each notice”;

(3) by striking “paragraph (3)(B)” and inserting “paragraph (6)(B)”;

(4) by striking “paragraph (1)(A)” and inserting “paragraph (3)(A)”;

(5) by adding at the end the following:
“(2) Effect of failure to submit.—The Committee may not complete a review under this section of a covered transaction and may recommend to the President that the President suspend or prohibit the transaction or require divestment under subsection (d) if the Committee determines that a party to the transaction has—

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

“(B) included false or misleading information in a notice or information described in paragraph (1) or omitted material information from such notice or information.

“(3) Applicability of law on fraud and false statements.—The Committee shall prescribe regulations expressly providing for the application of section 1001 of title 18, United States Code, to all information provided to the Committee under this section by any party to a covered transaction.”.

SEC. 20. IMPLEMENTATION PLANS.

(a) In general.—Not later than 180 days after the date of the enactment of this Act, the chairperson of the Committee on Foreign Investment in the United States and the Secretary of Commerce shall, in consultation with the appropriate members of the Committee—
(1) develop plans to implement this Act; and

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

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

(B) any additional staff necessary to implement the plans; and

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

(b) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

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

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

SEC. 21. ASSESSMENT OF NEED FOR ADDITIONAL RESOURCES FOR COMMITTEE.

The President shall—

(1) determine whether and to what extent the expansion of the responsibilities of the Committee on
Foreign Investment in the United States pursuant to the amendments made by this Act necessitates additional resources for the Committee and the departments and agencies represented on the Committee to perform their functions under section 721 of the Defense Production Act of 1950, as amended by this Act; and

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

SEC. 22. FUNDING.

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

“(o) FUNDING.—

“(1) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a fund, to be known as the ‘Committee on Foreign Investment in the United States Fund’ (in this subsection referred to as the ‘Fund’), to be administered by the chairperson.

“(2) APPROPRIATION OF FUNDS FOR THE COMMITTEE.—There are authorized to be appropriated to
the Fund such sums as may be necessary to perform
the functions of the Committee.

“(3) FILING FEES.—

“(A) IN GENERAL.—The Committee may as-

sus and collect a fee in an amount determined
by the Committee in regulations, to the extent
provided in advance in appropriations Acts,
without regard to section 9701 of title 31, United
States Code, and subject to subparagraph (B),
with respect to each covered transaction for
which a written notice is submitted to the Com-
mittee under subsection (b)(1)(C)(i). The total
amount of fees collected under this paragraph
may not exceed the costs of administering this
section.

“(B) DETERMINATION OF AMOUNT OF

FEE.—

“(i) IN GENERAL.—In determining the

amount of the fee to be assessed under sub-
paragraph (A) with respect to a covered
transaction, the Committee shall base the
amount of the fee on the value of the trans-
action, taking into consideration—

“(I) the effect of the fee on small

business concerns (as defined in section
3 of the Small Business Act (15 U.S.C. 632));

“(II) the expenses of the Committee associated with conducting activities under this section;

“(III) the effect of the fee on foreign investment; and

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

“(ii) PRIORITIZATION FEE.—The Committee may establish a fee or fee scale to prioritize the timing of the response of the Committee to a draft or final written notice during the period before the Committee accepts the final written notice under subsection (b)(1)(C)(i), in the event that the Committee is unable to respond during the time required by subclause (II) of that subsection because of an unusually large influx of notices, or for other reasons.

“(iii) UPDATES.—The Committee shall periodically reconsider and adjust the amount of the fee to be assessed under subparagraph (A) with respect to a covered transaction to ensure that the amount of the
fee does not exceed the costs of administering this section and otherwise remains appropriate.

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

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

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

“(iii) remain available until expended;

and

“(iv) be in addition to any appropriations made available to the members of the Committee.

“(4) **TRANSFER OF FUNDS.**—To the extent provided in advance in appropriations Acts, the chairperson may transfer any amounts in the Fund to any other department or agency represented on the Committee for the purpose of addressing emerging needs in carrying out activities under this section. Amounts so transferred shall be in addition to any other
amounts available to that department or agency for that purpose.”.

**SEC. 23. CENTRALIZATION OF CERTAIN COMMITTEE FUNCTIONS.**

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

“(p) CENTRALIZATION OF CERTAIN COMMITTEE FUNCTIONS.—

“(1) IN GENERAL.—The chairperson, in consultation with the Committee, may centralize certain functions of the Committee within the Department of the Treasury for the purpose of enhancing interagency coordination and collaboration in carrying out the functions of the Committee under this section.

“(2) FUNCTIONS.—Functions that may be centralized under paragraph (1) include monitoring non-notified and non-declared transactions pursuant to subsection (b)(1)(H), and other functions as determined by the chairperson and the Committee.

“(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of any department or agency represented on the Committee to represent its own interests before the Committee.”.
SEC. 24. CONFORMING AMENDMENTS.

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

(1) in subsection (b)—

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

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

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

(3) in subsection (j), by striking “merger, acquisition, or takeover” and inserting “transaction”.

SEC. 25. REQUIREMENTS TO IDENTIFY AND CONTROL THE EXPORT OF EMERGING AND FOUNDATIONAL TECHNOLOGIES.

(a) IDENTIFICATION OF TECHNOLOGIES.—

(1) IN GENERAL.—The President shall establish and, in coordination with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the heads of other Federal agencies as appropriate, lead, a regular, ongoing
interagency process to identify emerging and foundational technologies that—

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

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

(2) PROCESS.—The interagency process established under subsection (a) shall—

(A) be informed by multiple sources of information, including—

(i) publicly available information;

(ii) classified information, including relevant information provided by the Director of National Intelligence;

(iii) information relating to reviews and investigations of transactions by the Committee on Foreign Investment in the United States under section 721 of the Defense Production Act of 1950 (50 U.S.C. 4565); and

(iv) information provided by the advisory committees established by the Secretary of Commerce to advise the Under Secretary
of Commerce for Industry and Security on
controls under the Export Administration
Regulations, including the Emerging Tech-
nology and Research Advisory Committee;
(B) take into account—
(i) the development of emerging and
foundational technologies in foreign coun-
tries;
(ii) the effect export controls imposed
pursuant to this section may have on the
development of such technologies in the
United States; and
(iii) the effectiveness of export controls
imposed pursuant to this section on limit-
ing the proliferation of emerging and
foundational technologies to foreign coun-
tries; and
(C) include a notice and comment period.
(b) COMMERCE CONTROLS.—
(1) IN GENERAL.—The Secretary of Commerce
shall establish appropriate controls under the Export
Administration Regulations on the export, reexport,
or in-country transfer of technology identified pursu-
ant to subsection (a), including by prescribing addi-
tional regulations.
(2) **Levels of Control.**—

(A) **In General.**—The Secretary of Commerce may, in coordination with the Secretary of Defense, the Secretary of State, and the heads of other Federal agencies, as appropriate, specify the level of control to apply under paragraph (1) with respect to the export of technology described in that paragraph, including a requirement for a license or other authorization for the export, reexport, or in-country transfer of that technology.

(B) **Considerations.**—In determining under subparagraph (A) the level of control appropriate for technology described in paragraph (1), the Secretary of Commerce shall take into account—

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

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

(C) **Minimum Requirements.**—At a minimum, except as provided by paragraph (4), the Secretary of Commerce shall require a license for the export, reexport, or in-country transfer of technology described in paragraph (1) to or in a
country subject to an embargo, including an
arms embargo, imposed by the United States.

(3) REVIEW OF LICENSE APPLICATIONS.—

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

(B) CONSIDERATION OF INFORMATION RELATING TO NATIONAL SECURITY.—In reviewing
an application for a license or other authorization
for the export, reexport, or in-country transfer of technology described in paragraph (1), the
Secretary of Commerce shall take into account
information provided by the Director of National
Intelligence regarding any threat to the national
security of the United States posed by the proposed export, reexport, or transfer. The Director
of National Intelligence shall provide such inform-
ation on the request of the Secretary of Com-
merce.

(C) DISCLOSURES RELATING TO COLLABORATIVE ARRANGEMENTS.—In the case of an ap-
plication for a license or other authorization for
the export, reexport, or in-country transfer of
technology described in paragraph (1) submitted
by or on behalf of a joint venture, joint develop-
ment agreement, or similar collaborative ar-
rangement, the Secretary of Commerce may re-
quire the applicant to identify, in addition to
any foreign person participating in the arrange-
ment, any foreign person with significant owner-
ship interest in a foreign person participating in
the arrangement.

(4) Exceptions.—

(A) Mandatory exceptions.—The Sec-
retary of Commerce may not control under this
subsection the export of any technology—

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

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

(B) Regulatory exceptions.—In pre-
scribing regulations under paragraph (1), the
Secretary of Commerce may include regulatory
exceptions to the requirements of that paragraph.
(C) ADDITIONAL EXCEPTIONS.—The Secretary of Commerce shall not be required to impose under paragraph (1) a requirement for a license or other authorization with respect to the export, reexport, or in-country transfer of technology described in paragraph (1) pursuant to any of the following transactions:

(i) The sale or license of a finished item and the provision of associated technology if the United States person that is a party to the transaction generally makes the finished item and associated technology available to its customers, distributors, or resellers.

(ii) The sale or license to a customer of a product and the provision of integration services or similar services if the United States person that is a party to the transaction generally makes such services available to its customers.

(iii) The transfer of equipment and the provision of associated technology to operate the equipment if the transfer could not result in the foreign person using the equipment to produce critical technologies (as de-
fined in section 721(a) of the Defense Pro-
duction Act of 1950, as amended by section
3).

(iv) The procurement by the United States person that is a party to the trans-
action of goods or services, including manu-
facturing services, from a foreign person
that is a party to the transaction, if the for-

gn person has no rights to exploit any
technology contributed by the United States
person other than to supply the procured
goods or services.

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

(c) MULTILATERAL CONTROLS.—

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

(2) Items on Commerce Control List or United States Munitions List.—

(A) In general.—If the Secretary of State proposes to a multilateral export control regime under paragraph (1) to add a technology identified pursuant to subsection (a) to the control list of that regime and that regime does not add that technology to the control list during the 3-year period beginning on the date of the proposal, the applicable agency head may determine whether national security concerns warrant the continuation of unilateral export controls with respect to that technology.

(B) Applicable agency head defined.—In this paragraph, the term “applicable agency head” means—

(i) in the case of technology listed on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations, the Secretary of
Commerce, in consultation with the Secretary of Defense and the Secretary of State;
and

(ii) in the case of technology listed on the United States Munitions List set forth in part 121 of title 22, Code of Federal Regulations, the Secretary of State, in consultation with the Secretary of Defense and the heads of other Federal agencies, as appropriate.

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

(e) REPORT TO CONGRESS.—Not less frequently than every 180 days, the Secretary of Commerce, in coordination with the Secretary of Defense, the Secretary of State, and the heads of other Federal agencies, as appropriate, shall submit a report on the results of actions taken pursuant to this section, including actions taken pursuant to subsections (a), (b), and (c), to—
(1) the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence of the Senate; and

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

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

(1) IN GENERAL.—The Secretary of Commerce shall revise the objectives of the Emerging Technology and Research Advisory Committee, established by the Secretary under the Export Administration Regulations, to include advising the interagency process established under subsection (a) with respect to emerging and foundational technologies.

(2) DUTIES.—The Secretary—

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

(B) may revise the duties of the Advisory Committee to include identifying trends in—
(i) the ownership by foreign persons and foreign governments of such technologies;

(ii) the types of transactions related to such technologies engaged in by foreign persons and foreign governments;

(iii) the blending of private and government investment in such technologies; and

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

(3) MEETINGS.—

(A) FREQUENCY.—The Emerging Technology and Research Advisory Committee should meet not less frequently than every 120 days.

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

(4) CLASSIFIED INFORMATION.—Not fewer than half of the members of the Emerging Technology and Research Advisory Committee should hold sufficient security clearances such that classified information,
including classified information described in clauses (ii) and (iii) of subsection (a)(2)(A), from the inter-agency process established under subsection (a) can be shared with those members to inform the advice provided by the Advisory Committee.

(5) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—Subsections (a)(1), (a)(3), and (b) of section 10 and sections 11, 13, and 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Emerging Technology and Research Advisory Committee.

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

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

(1) the authority of the President or the Secretary of State to designate items as defense articles and defense services for the purposes of the Arms Ex-
port Control Act (22 U.S.C. 2751 et seq.) or to otherwise regulate such items; or


(h) DEFINITIONS.—In this section:


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

(3) REEXPORT.—The term “reexport” has the meaning given to the term in the Export Administration Regulations.
(4) UNITED STATES PERSON.—The term “United States person” means any person subject to the jurisdiction of the United States.

SEC. 26. EXPORT CONTROL ENFORCEMENT AUTHORITY.

(a) AUTHORITIES.—In order to enforce the provisions of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, issued under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (pursuant to which the President has continued in effect authorities granted under the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.)), the President shall delegate to the Secretary of Commerce, in addition to existing authorities, the authority to authorize any law enforcement officer of the Department of Commerce to conduct investigations (including undercover investigations) in the United States and in other countries when permitted under such countries’ laws using all applicable laws of the United States.

(b) BEST PRACTICE GUIDELINES.—The Secretary of Commerce, in consultation with the heads of appropriate Federal agencies, may publish and update best practices guidelines to assist persons in developing and implementing, on a voluntary basis, effective export control programs in compliance with the Export Administration Regulations.
(c) Confidentiality of Information.—

(1) Exemptions from disclosure.—

(A) In general.—Information obtained under the Export Administration Act of 1979 (50 U.S.C. 2601 et seq.) (as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)) may be withheld from disclosure only to the extent permitted by statute, except that information described in subparagraph (B) shall be withheld from public disclosure and shall not be subject to disclosure under section 552(b)(3) of title 5, United States Code, unless the release of such information is determined by the Secretary to be in the national interest.

(B) Information described.—Information described in this subparagraph is information submitted or obtained in connection with an application for a license or other authorization to export, reexport, or transfer items or engage in other activities, a recordkeeping or reporting requirement, enforcement activity, or other operations under the Export Administration Act of 1979, including—
(i) the license application, license, or other authorization itself;

(ii) classification or advisory opinion requests, and any response to such a request;

(iii) license determinations and information pertaining to such determinations;

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

(v) information obtained or furnished in connection with any international agreement, treaty, or other obligation.

(2) INFORMATION TO CONGRESS AND GAO.—

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

(B) AVAILABILITY TO CONGRESS.—

(i) IN GENERAL.—Information obtained at any time under any provision of the Export Administration Act of 1979 or the Export Administration Regulations, including reports or license applications required under any such provision, shall be made available to a committee or sub-
committee of Congress of appropriate jurisdiction, upon the request of the chairman or ranking member of the committee or subcommittee.

(ii) PROHIBITION ON FURTHER DISCLOSURE.—No committee or subcommittee referred to in clause (i), or member thereof, may disclose any information made available under clause (i) that is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest.

(C) AVAILABILITY TO GAO.—

(i) IN GENERAL.—Information described in subparagraph (B)(i) shall be subject to the limitations contained in section 716 of title 31, United States Code.

(ii) PROHIBITION ON FURTHER DISCLOSURE.—An officer or employee of the Government Accountability Office may not disclose, except to Congress in accordance with this paragraph, any information described in subparagraph (B)(i) that is sub-
mitted on a confidential basis or from which any individual can be identified.

(3) INFORMATION SHARING.—

(A) Exchange of Information.—The heads of departments, agencies, and offices with enforcement authorities under the Export Administration Act of 1979, consistent with protection of law enforcement and its sources and methods, shall exchange any licensing and enforcement information with one another that is necessary to facilitate enforcement efforts under this section, and shall consult on a regular basis with one another and with the heads of other departments, agencies, and offices that obtain information subject to this paragraph, in order to facilitate the exchange of such information.

(B) Provision of Information by Federal Officials.—Any Federal official who obtains information that is relevant to the enforcement of the Export Administration Act of 1979, including information pertaining to any investigation, shall furnish such information to each appropriate department, agency, or office with enforcement responsibilities under this section to the extent consistent with the protection of intel-
intelligence, counterintelligence, and law enforcement sources, methods, and activities.

(C) EXCEPTIONS.—The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code. Return information, as defined in section 6103(b) of the Internal Revenue Code of 1986, may be disclosed only as authorized by that section.

(D) INFORMATION SHARING WITH FEDERAL AGENCIES.—Licensing or enforcement information obtained under the Export Administration Act of 1979 may be shared with heads of departments, agencies, and offices that do not have enforcement authorities under that Act on a case-by-case basis, at the discretion of the Secretary of Commerce. Such information may be shared only when the Secretary makes a determination that the sharing of the information is in the national interest.

SEC. 27. PROHIBITION ON MODIFICATION OF CIVIL PENALTIES UNDER EXPORT CONTROL AND SANCTIONS LAWS.

(a) In General.—Notwithstanding any other provision of law, the Executive Office of the President may not
modify any civil penalty, including a denial order, implemented by the Government of the United States with respect to a Chinese telecommunications company pursuant to a determination that the company has violated an export control or sanctions law of the United States until the date that is 30 days after the President certifies to the appropriate congressional committees that the company—

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

(2) is fully cooperating with investigations into the activities of the company conducted by the Government of the United States, if any.

(b) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate; and

(2) the Committee on Financial Services and the Committee on Foreign Affairs of the House of Representatives.
SEC. 28. UNDER SECRETARY OF COMMERCE FOR INDUSTRY
AND SECURITY.

(a) In General.—On and after the date of the enactment of this Act, any reference in the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) or any other law or regulation to the Under Secretary of Commerce for Export Administration shall be deemed to be a reference to the Under Secretary of Commerce for Industry and Security.

(b) Title 5.—Section 5314 of title 5, United States Code, is amended by striking “Under Secretary of Commerce for Export Administration” and inserting “Under Secretary of Commerce for Industry and Security”.

(c) Continuation in Office.—The individual serving as Under Secretary of Commerce for Export Administration on the day before the date of the enactment of this Act may serve as the Under Secretary of Commerce for Industry and Security on and after that date without the need for renomination or reappointment.

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.

(a) Limitation on Cancellation of Designation.—The Secretary of Defense may not implement the de-
cision, issued on July 1, 2017, to cancel the designation, under Department of Defense Directive 4400.01E, entitled “Defense Production Act Programs” and dated October 12, 2001, of the Secretary of the Air Force as the Department of Defense Executive Agent for the program carried out under title III of the Defense Production Act of 1950 (50 U.S.C. 4531 et seq.) until the date specified in subsection (c).

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

(c) Date Specified.—The date specified in this subsection is the date of the enactment of a joint resolution or an Act approving the implementation of the decision described in subsection (a).

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

(a) Review Required.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense and the Director of National Intelligence, in consultation with the Air Force Research Laboratory, the Defense Advanced Projects Research Agency, and such other
appropriate research entities as the Secretary and the Director may identify, shall—

(1) jointly carry out and complete a review of key national security technology capability advantages, competitions, and gaps between the United States and “near peer” nations;

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

(3) submit to the appropriate congressional committees a report on the findings of the Secretary and the Director with respect to the review conducted under paragraph (1).

(b) Elements.—The review conducted under paragraph (1) of subsection (a), and the report required by paragraph (3) of that subsection, shall identify, at a minimum, the following:

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

(A) a United States industrial base shortfall will exist; and
(B) United States industry will be unable to or otherwise will not provide the needed capacity in a timely manner without financial assistance from the United States Government through existing statutory authorities specifically intended for that purpose, including assistance provided under title III of the Defense Production Act of 1950 (50 U.S.C. 4531 et seq.) and other appropriate authorities.

(2) Key areas in which the United States currently enjoys a technological advantage.

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

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

(5) Priority areas for which appropriate statutory industrial base incentives should be applied as the most cost-effective, expedient, and practical alternative for meeting the technology or defense industrial base needs identified under this subsection, including—

(A) sustainment of critical production and supply chain capabilities;
(B) commercialization of research and development investments;

(C) scaling of emerging technologies; and

(D) other areas as determined by the Secretary and the Director.

(6) Priority funding recommendations with respect to key areas that the Secretary, in consultation with the Director, determines are—

(A) critical to the United States maintaining superior military capabilities, especially with respect to potential peer and near peer military or economic competitors, during the 5-year period beginning on the date of the enactment of this Act; and

(B) suitable for long-term investment from funds made available under title III of the Defense Production Act of 1950 and other appropriate statutory authorities.

(c) FORM OF REPORT.—The report required by subsection (a)(3) shall be submitted in unclassified form, but may include a classified annex.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—
(1) the Committee on Banking, Housing and Urban Affairs, the Committee on Armed Services, and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Financial Services, the Committee on Armed Services, and the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 31. BRIEFING ON INFORMATION FROM TRANSACTIONS REVIEWED BY COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES RELATING TO FOREIGN EFFORTS TO INFLUENCE DEMOCRATIC INSTITUTIONS AND PROCESSES.

Not later than 60 days after the date of the enactment of this Act, the Secretary of the Treasury (or a designee of the Secretary) shall provide a briefing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on—

(1) transactions reviewed by the Committee on Foreign Investment in the United States during the 5-year period preceding the briefing that the Committee determined would have allowed foreign persons to inappropriately influence democratic institutions
and processes within the United States and in other
countries; and

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

SEC. 32. EFFECTIVE DATE.

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

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

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

(3) Paragraphs (1), (2), (3), (4), (5)(A)(i),
(8), (9), (10), (11), (12), (13), (14), (15), (16), and
(17) of subsection (a) of section 721 of the Defense
Production Act of 1950, as amended by section 3.
(4) Section 721(m)(4) of the Defense Production Act of 1950, as amended by section 18 (except for clauses (ii), (iii), (iv), and (v) of subparagraph (B) of that section).

(b) Delayed Applicability of Certain Provisions.—

(1) In general.—Any provision of or amendment made by this Act not specified in subsection (a) shall—

(A) take effect on the date that is 30 days after publication in the Federal Register of a determination by the chairperson of the Committee on Foreign Investment in the United States that the regulations, organizational structure, personnel, and other resources necessary to administer the new provisions are in place; and

(B) apply with respect to any covered transaction the review or investigation of which is initiated under section 721 of the Defense Production Act of 1950 on or after the date described in subparagraph (A).

(2) Nondelegation of Determination.—The determination of the chairperson of the Committee on Foreign Investment in the United States under paragraph (1)(A) may not be delegated.
(c) AUTHORIZATION FOR PILOT PROGRAMS.—

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

(2) PUBLICATION IN FEDERAL REGISTER.—A pilot program may not commence until the date that is 30 days after publication in the Federal Register of a determination by the chairperson of the Committee of the scope of and procedures for the pilot program. That determination may not be delegated.

SEC. 33. SEVERABILITY.

If any provision of this Act or an amendment made by this Act, or the application of such a provision or amendment to any person or circumstance, is held to be invalid, the application of that provision or amendment to other persons or circumstances and the remainder of the provisions of this Act and the amendments made by this 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.”.
A BILL

S. 2098

115th CONGRESS

Calendar No. 426

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.

MAY 22, 2018

Reported with an amendment and an amendment to the title