113TH CONGRESS
1ST SESSION

H. R. 221

To require reports on the acquisitions by certain foreign persons of companies that have received American taxpayer research and development funding, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2013

Mrs. BLACKBURN (for herself and Mr. HUIZENGA of Michigan) introduced the following bill, which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Science, Space, and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require reports on the acquisitions by certain foreign persons of companies that have received American taxpayer research and development funding, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Stop Mergers, Acquisi-
tions, and Risky Takeovers Supplied by American Labor
and Entrepreneurship Act of 2013” or the “SMART SALE Act of 2013”.

SEC. 2. DEFINITIONS.

In this Act:

(1) COVERED ENTITY.—The term “covered entity” means any person, company, institution, or other entity engaged in interstate commerce in the United States that owns, licenses, or otherwise holds an interest in a federally-funded technology, or to which Federal energy research and development funding has been obligated by a Federal agency.

(2) COVERED TRANSACTION.—

(A) IN GENERAL.—The term “covered transaction” means any proposed or pending merger, acquisition, takeover, or other transfer that could result in control of a covered entity by—

(i) a government of a foreign country described in subparagraph (B); or

(ii)(I) a natural person who is a citizen of a foreign country described in subparagraph (B) or who owes permanent allegiance to such foreign country; or

(II) a corporation or other legal entity which is organized under the laws of such
foreign country or any political subdivision thereof if natural persons described in subclause (I) own, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such legal entity.

(B) FOREIGN COUNTRY DESCRIBED.—

(i) IN GENERAL.—Except as provided in clause (ii), a foreign country referred to in subparagraph (A) means any of the following:

(I) The People’s Republic of China.

(II) The Democratic People’s Republic of Korea.

(III) A country that is a state sponsor of terrorism (as defined in clause (iii)).

(IV) A country that provides sanctuary to a foreign terrorist organization (as defined in clause (iv)).

(V) Any other country with respect to which the President determines the provisions of this paragraph should apply.
(ii) WAIVER.—The President may waive the applicability of this paragraph with respect to a foreign country described in clause (i) on a case-by-case basis if not later than 60 days before doing so the President—

(I) determines that it is in the national interest of the United States to do so; and

(II) submits to Congress a report providing a justification for the waiver.

(iii) STATE SPONSOR OF TERRORISM DEFINED.—In clause (i)(III), the term “state sponsor of terrorism” means any country the government of which the Secretary of State has determined has repeatedly provided support for international terrorism pursuant to—

(I) section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405) (as continued in effect under the International Emergency Economic Powers Act);
(II) section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371);

(III) section 40 of the Arms Export Control Act (22 U.S.C. 2780); or

(IV) any other provision of law.

(iv) FOREIGN TERRORIST ORGANIZATION DEFINED.—In clause (i)(IV), the term “foreign terrorist organization” means any organization so designated by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

(3) FEDERAL ENERGY RESEARCH AND DEVELOPMENT FUNDING.—The term “Federal energy research and development funding” means Federal funding provided for the purpose of researching or developing new energy technologies, products, processes, or systems, or for the application of existing energy technologies, products, processes, or systems in a novel manner. Such funding includes funding for a loan or loan guarantee made by a Federal agency.

(4) FEDERALLY-FUNDED TECHNOLOGY.—
(A) IN GENERAL.—Except as provided in
subparagraph (B), the term “federally-funded
technology” means any technology, product,
process, or system developed as a result of Fed-
eral energy research and development funding.

(B) EXCEPTION.—Such term does not
apply to any technology, product, process, and
system that was not—

(i) specified in the documents and
agreements associated with the provision of
the Federal energy research and develop-
ment funding; or

(ii) a foreseeable result or byproduct
of the Federal energy research and devel-
opment funding at the time the funding
was provided.

SEC. 3. REQUIREMENTS.

(a) NOTIFICATION.—

(1) IN GENERAL.—A covered entity shall notify
the Secretary of Energy in writing not later than 7
days of entering into negotiations for any covered
transaction.

(2) CONTENTS.—A notification submitted pur-
suant to paragraph (1) shall include—

(A) an identification of the covered entity;
(B) an identification of the purchasing, acquiring, or merging entity;

(C) the amounts of all Federal energy research and development funding received by the covered entity, including a description of the form and amount of each transaction providing such funding;

(D) an explanation of how the covered entity or its purchaser will repay any outstanding loans or loan guarantees provided by a Federal agency, including interest accrued;

(E) an appraisal of the value of any federally-funded technology owned, licensed, or otherwise held by the covered entity, including estimates of sales value and licensing fees; and

(F) a description of the technical rights held by the Federal Government in all federally-funded technology owned, licensed, or otherwise held by the covered entity.

(3) Penalties.—Any person who knowingly and intentionally fails to make a notification required by this subsection shall be imprisoned for not more than 5 years and fined according to title 18, United States Code.
(b) Recoupment of Federal Funds.—A Federal agency providing Federal energy research and development funding shall require, as a condition of receipt of such funding, that all amounts provided shall be repaid to the Federal Government if a covered transaction results in control of the recipient by a foreign country described in section 2(2)(B).

(c) Regulations.—Not later than 180 days after the date of enactment of this Act, the Secretary of Energy shall promulgate regulations to carry out this section.

SEC. 4. REPORTS TO CONGRESS.

(a) Report on Notification.—Not later than 30 days after receipt of a notification required by section 3(a), the Secretary of Energy shall submit to Congress a report on the notification. Such a report shall contain, at a minimum, the following:

(1) All of the information provided by the covered entity under section 3(a).

(2) An assessment of any cybersecurity threats to the national interests of the United States with respect to the covered transaction.

(3) Disclosure of any additional Federal energy research and development funding payments scheduled to be made by a Federal entity to the covered entity.
(4) An assessment of what effect the covered transaction will have on the interests of the United States, including the extent to which the covered transaction will cause, or will have a reasonable likelihood of causing, any negative effects to the national and economic security interests of the United States.

(5) An estimate of any amounts of Federal, State, and foreign government funding that any party to the covered transaction, other than the covered entity, has received.

(b) INITIAL REPORT.—Not later than 90 days after the date of enactment of this Act, the Secretary of Energy shall submit to Congress a report that—

(1) identifies each covered entity that is engaged in a covered transaction as of the date of enactment of this Act; and

(2) specifies the total amount of Federal energy research and development funding the covered entity has received and is scheduled to receive.