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2^D 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 *italie*]

A BILL

To modernize and strengthen the Committee on Foreign Investment in the United States to more effectively guard against the risk to the national security of the United States posed by certain types of foreign investment, and for other purposes.

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

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

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Sense of Congress.
- Sec. 3. Definitions.
- Sec. 4. Inclusion of partnership and side agreements in notice.
- Sec. 5. Declarations relating to certain covered transactions.
- Sec. 6. Stipulations regarding transactions.
- Sec. 7. Authority for unilateral initiation of reviews.
- Sec. 8. Timing for reviews and investigations.
- Sec. 9. Monitoring of non-notified and non-declared transactions.
- Sec. 10. Submission of certifications to Congress.
- Sec. 11. Analysis by Director of National Intelligence.
- Sec. 12. Information sharing.
- Sec. 13. Action by the President.
- Sec. 14. Judicial review procedures.
- Sec. 15. Factors to be considered.
- Sec. 16. Actions by the Committee to address national security risks.
- Sec. 17. Modification of annual report.
- Sec. 18. Certification of notices and information.
- Sec. 19. Funding.
- Sec. 20. Centralization of certain Committee functions.
- Sec. 21. Unified budget request.
- Sec. 22. Special hiring authority.
- Sec. 23. Conforming amendments.
- Sec. 24. Assessment of need for additional resources for Committee.
- Sec. 25. Authorization for Defense Advanced Research Projects Agency to limit
 foreign access to technology through contracts and grant agree-
 ments.
- Sec. 26. Effective date.
- Sec. 27. Severability.

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

8 It is the sense of Congress that—

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

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

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

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

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

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

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

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

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

19 **SEC. 3. DEFINITIONS.**

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

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

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

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

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

9 “(4) COUNTRY OF SPECIAL CONCERN.—

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

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

18 “(5) COVERED TRANSACTION.—

19 “(A) IN GENERAL.—Except as otherwise
20 provided, the term ‘covered transaction’ means
21 any transaction described in subparagraph (B)
22 that is proposed, pending, or completed on or
23 after the date of the enactment of the Foreign
24 Investment Risk Review Modernization Act of
25 2017.

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

4 “(i) Any merger, acquisition, or take-
5 over that is proposed or pending after Au-
6 gust 23, 1988, by or with any foreign per-
7 son that could result in foreign control of
8 any United States business.

9 “(ii) The purchase or lease by a for-
10 eign person of private or public real estate
11 that—

12 “(I) is located in the United
13 States and is in close proximity to a
14 United States military installation or
15 to another facility or property of the
16 United States Government that is
17 sensitive for reasons relating to na-
18 tional security; and

19 “(II) meets such other criteria as
20 the Committee prescribes by regula-
21 tion.

22 “(iii) Any other investment (other
23 than passive investment) by a foreign per-
24 son in any United States critical tech-
25 nology company or United States critical

1 infrastructure company, subject to regula-
2 tions prescribed under subparagraph (C).

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

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

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

12 “(v) The contribution (other than
13 through an ordinary customer relationship)
14 by a United States critical technology com-
15 pany of both intellectual property and as-
16 sociated support to a foreign person
17 through any type of arrangement, such as
18 a joint venture, subject to regulations pre-
19 scribed under subparagraph (C).

20 “(vi) Any other transaction, transfer,
21 agreement, or arrangement the structure
22 of which is designed or intended to evade
23 or circumvent the application of this sec-
24 tion, subject to regulations prescribed by
25 the Committee.

1 “(C) FURTHER DEFINITION THROUGH
2 REGULATIONS.—

3 “(i) CERTAIN INVESTMENTS AND
4 CONTRIBUTIONS.—The Committee shall
5 prescribe regulations further defining cov-
6 ered transactions described in clauses (iii)
7 and (v) of subparagraph (B) by reference
8 to the technology, sector, subsector, trans-
9 action type, or other characteristics of such
10 transactions.

11 “(ii) EXEMPTION FOR TRANSACTIONS
12 FROM IDENTIFIED COUNTRIES.—The Com-
13 mittee may, by regulation, define cir-
14 cumstances in which a transaction other-
15 wise described in clause (ii), (iii), or (v) of
16 subparagraph (B) is excluded from the def-
17 inition of ‘covered transaction’ if each for-
18 eign person that is a party to the trans-
19 action is organized under the laws of, or
20 otherwise subject to the jurisdiction of, a
21 country identified by the Committee for
22 purposes of this clause based on criteria
23 such as—

1 “(I) whether the United States
2 has in effect with that country a mu-
3 tual defense treaty;

4 “(II) whether the United States
5 has in effect with that country a mu-
6 tual arrangement to safeguard na-
7 tional security as it pertains to foreign
8 investment;

9 “(III) the national security re-
10 view process for foreign investment of
11 that country; and

12 “(IV) any other criteria that the
13 Committee determines to be appro-
14 priate.

15 “(iii) EXEMPTION OF CERTAIN CON-
16 TRIBUTIONS.—The Committee may, by
17 regulation, define circumstances in which
18 contributions otherwise described in sub-
19 paragraph (B)(v) are excluded from the
20 term ‘covered transaction’ on the basis of
21 a determination that other provisions of
22 law are adequate to identify and address
23 any potential national security risks posed
24 by such contributions.

1 “(iv) TRANSFERS OF CERTAIN ASSETS
 2 PURSUANT TO BANKRUPTCY PROCEEDINGS
 3 OR OTHER DEFAULTS.—The Committee
 4 shall prescribe regulations to clarify that
 5 the term ‘covered transaction’ includes any
 6 transaction described in subparagraph (B)
 7 that arises pursuant to a bankruptcy pro-
 8 ceeding or other form of default on debt.

9 “(D) PASSIVE INVESTMENT DEFINED.—

10 “(i) IN GENERAL.—For purposes of
 11 subparagraph (B)(iii), the term ‘passive in-
 12 vestment’ means an investment by a for-
 13 eign person in a United States business—

14 “(I) that is not described in sub-
 15 paragraph (B)(i);

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

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

22 “(bb) access to any nontech-
 23 nical information in the posses-
 24 sion of the United States busi-

1 ness that is not available to all
2 investors;

3 “(cc) membership or ob-
4 server rights on the board of di-
5 rectors or equivalent governing
6 body of the United States busi-
7 ness or the right to nominate an
8 individual to such a position; or

9 “(dd) any involvement, other
10 than through voting of shares, in
11 substantive decisionmaking per-
12 taining to any matter involving
13 the United States business;

14 “(III) under which the foreign
15 person and the United States business
16 do not have a parallel strategic part-
17 nership or other material financial re-
18 lationship, as described in regulations
19 prescribed by the Committee; and

20 “(IV) that meets such other cri-
21 teria as the Committee may prescribe
22 by regulation.

23 “(ii) NONPUBLIC TECHNICAL INFOR-
24 MATION DEFINED.—For purposes of clause

1 (i)(II)(aa), the term ‘nonpublic technical
2 information’—

3 “(I) has the meaning given that
4 term in regulations prescribed by the
5 Committee; and

6 “(II) includes information (either
7 by itself or in conjunction with other
8 information to which a foreign person
9 may have access)—

10 “(aa) without which critical
11 technologies cannot be designed,
12 developed, tested, produced, or
13 manufactured; and

14 “(bb) in a quantity suffi-
15 cient to permit the design, devel-
16 opment, testing, production, or
17 manufacturing of such tech-
18 nologies.

19 “(iii) NONTECHNICAL INFORMATION
20 DEFINED.—For purposes of clause
21 (i)(II)(bb), the term ‘nontechnical informa-
22 tion’ has the meaning given that term in
23 regulations prescribed by the Committee.

24 “(iv) EFFECT OF LEVEL OF OWNER-
25 SHIP INTEREST.—A determination of

1 whether an investment is a passive invest-
2 ment under clause (i) shall be made with-
3 out regard to how low the level of owner-
4 ship interest a foreign person would hold
5 or acquire in a United States business
6 would be as a result of the investment. The
7 Committee may prescribe regulations speci-
8 fying that any investment greater than a
9 certain level or amount would not be con-
10 sidered a passive investment.

11 “(v) REGULATIONS.—The Committee
12 shall prescribe regulations providing guid-
13 ance on the types of transactions that the
14 Committee considers to be passive invest-
15 ment.

16 “(E) ASSOCIATED SUPPORT DEFINED.—
17 For purposes of subparagraph (B)(v), the term
18 ‘associated support’ has the meaning given that
19 term in regulations prescribed by the Com-
20 mittee.

21 “(F) UNITED STATES CRITICAL INFRA-
22 STRUCTURE COMPANY DEFINED.—For purposes
23 of subparagraph (B), the term ‘United States
24 critical infrastructure company’ means a United
25 States business that is, owns, operates, or pri-

1 marily provides services to, an entity or entities
2 that operate within a critical infrastructure sec-
3 tor or subsector, as defined by regulations pre-
4 scribed by the Committee.

5 “(G) UNITED STATES CRITICAL TECH-
6 NOLOGY COMPANY.—For purposes of subpara-
7 graph (B), the term ‘United States critical
8 technology company’ means a United States
9 business that produces, trades in, designs, tests,
10 manufactures, services, or develops one or more
11 critical technologies, or a subset of such tech-
12 nologies, as defined by regulations prescribed by
13 the Committee.

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

21 “(7) CRITICAL MATERIALS.—The term ‘critical
22 materials’ means physical materials essential to na-
23 tional security, subject to regulations prescribed by
24 the Committee.

25 “(8) CRITICAL TECHNOLOGIES.—

1 “(A) IN GENERAL.—The term ‘critical
2 technologies’ means technology, components, or
3 technology items that are essential or could be
4 essential to national security, identified for pur-
5 poses of this section pursuant to regulations
6 prescribed by the Committee.

7 “(B) INCLUSION OF CERTAIN ITEMS.—The
8 term ‘critical technologies’ includes the fol-
9 lowing:

10 “(i) Defense articles or defense serv-
11 ices included on the United States Muni-
12 tions List set forth in the International
13 Traffic in Arms Regulations under sub-
14 chapter M of chapter I of title 22, Code of
15 Federal Regulations.

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

22 “(I) pursuant to multilateral re-
23 gimes, including for reasons relating
24 to national security, chemical and bio-
25 logical weapons proliferation, nuclear

1 nonproliferation, or missile tech-
2 nology, or

3 “(II) for reasons relating to re-
4 gional stability or surreptitious listen-
5 ing.

6 “(iii) Specially designed and prepared
7 nuclear equipment, parts and components,
8 materials, software, and technology covered
9 by part 810 of title 10, Code of Federal
10 Regulations (relating to assistance to for-
11 eign atomic energy activities).

12 “(iv) Nuclear facilities, equipment,
13 and material covered by part 110 of title
14 10, Code of Federal Regulations (relating
15 to export and import of nuclear equipment
16 and material).

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

21 “(vi) Other emerging technologies
22 that could be essential for maintaining or
23 increasing the technological advantage of
24 the United States over countries of special
25 concern with respect to national defense,

1 intelligence, or other areas of national se-
2 curity, or gaining such an advantage over
3 such countries in areas where such an ad-
4 vantage may not currently exist.

5 “(9) FOREIGN GOVERNMENT-CONTROLLED
6 TRANSACTION.—The term ‘foreign government-con-
7 trolled transaction’ means any covered transaction
8 that could result in the control of any United States
9 business by a foreign government or an entity con-
10 trolled by or acting on behalf of a foreign govern-
11 ment.

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

15 “(11) INTELLIGENCE COMMUNITY.—The term
16 ‘intelligence community’ has the meaning given that
17 term in section 3(4) of the National Security Act of
18 1947 (50 U.S.C. 3003(4)).

19 “(12) INVESTMENT.—The term ‘investment’
20 means the acquisition of equity interest, including
21 contingent equity interest, as further defined in reg-
22 ulations prescribed by the Committee.

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

1 “(14) MALICIOUS CYBER-ENABLED ACTIVI-
2 TIES.—The term ‘malicious cyber-enabled activities’
3 means any acts—

4 “(A) primarily accomplished through or fa-
5 cilitated by computers or other electronic de-
6 vices;

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

11 “(C) that have the purpose or effect of—

12 “(i) significantly compromising the
13 provision of services by one or more enti-
14 ties in a critical infrastructure sector;

15 “(ii) harming, or otherwise signifi-
16 cantly compromising the provision of serv-
17 ices by, a computer or network of com-
18 puters that support one or more such enti-
19 ties;

20 “(iii) causing a significant disruption
21 to the availability of a computer or net-
22 work of computers; or

23 “(iv) causing a significant misappro-
24 priation of funds or economic resources;

1 trade secrets, personally identifiable infor-
 2 mation, or financial information.

3 “(15) NATIONAL SECURITY.—The term ‘na-
 4 tional security’ shall be construed so as to include
 5 those issues relating to ‘homeland security’, includ-
 6 ing its application to critical infrastructure.

7 “(16) PARTY.—The term ‘party’ has the mean-
 8 ing given that term in regulations prescribed by the
 9 Committee.

10 “(17) UNITED STATES.—The term ‘United
 11 States’ means the several States, the District of Co-
 12 lumbia, and any territory or possession of the
 13 United States.

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

17 **SEC. 4. INCLUSION OF PARTNERSHIP AND SIDE AGREE-**
 18 **MENTS IN NOTICE.**

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

22 “(iv) INCLUSION OF PARTNERSHIP
 23 AND SIDE AGREEMENTS.—A written notice
 24 submitted under clause (i) by a party to a
 25 covered transaction shall include a copy of

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

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

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

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

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

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

23 “(aa) CERTAIN COVERED
 24 TRANSACTIONS WITH FOREIGN
 25 GOVERNMENT INTERESTS.—The

1 parties to a covered transaction
2 shall submit a declaration de-
3 scribed in subclause (I) with re-
4 spect to the transaction if the
5 transaction involves the acquisi-
6 tion of a voting interest of at
7 least 25 percent in a United
8 States business by a foreign per-
9 son in which a foreign govern-
10 ment owns, directly or indirectly,
11 at least a 25-percent voting inter-
12 est.

13 “(bb) OTHER DECLARA-
14 TIONS REQUIRED BY COM-
15 MITTEE.—The Committee shall
16 require the submission of a dec-
17 laration described in subclause
18 (I) with respect to any covered
19 transaction identified under regu-
20 lations prescribed by the Com-
21 mittee for purposes of this item,
22 at the discretion of the Com-
23 mittee and based on appropriate
24 factors, such as—

1 “(AA) the technology,
2 industry, economic sector, or
3 economic subsector in which
4 the United States business
5 that is a party to the trans-
6 action trades or of which it
7 is a part;

8 “(BB) the difficulty of
9 remedying the harm to na-
10 tional security that may re-
11 sult from completion of the
12 transaction; and

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

17 “(cc) SUBMISSION OF WRIT-
18 TEN NOTICE AS AN ALTER-
19 NATIVE.—Parties to a covered
20 transaction for which a declara-
21 tion is required under this sub-
22 clause may instead elect to sub-
23 mit a written notice under clause
24 (i).

1 “(dd) TIMING OF SUBMIS-
2 SION.—

3 “(AA) IN GENERAL.—A
4 declaration required to be
5 submitted with respect to a
6 covered transaction by item
7 (aa) or (bb) shall be sub-
8 mitted not later than 45
9 days before the completion
10 of the transaction.

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

22 “(HH) PENALTIES.—The Com-
23 mittee may impose a penalty pursuant
24 to subsection (h)(3) with respect to a

1 party that fails to comply with this
2 clause.

3 “(IV) COMMITTEE RESPONSE TO
4 DECLARATION.—

5 “(aa) IN GENERAL.—Upon
6 receiving a declaration under this
7 clause with respect to a trans-
8 action, the Committee may, at its
9 discretion—

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

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

1 action under this section
2 with respect to the trans-
3 action;

4 “(CC) initiate a unilat-
5 eral review of the trans-
6 action under subparagraph
7 (D); or

8 “(DD) notify the par-
9 ties in writing that the Com-
10 mittee has completed all ac-
11 tion under this section with
12 respect to the transaction.

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

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

1 “(V) REGULATIONS.—The Com-
 2 mittee shall prescribe regulations es-
 3 tablishing requirements for declara-
 4 tions submitted under this clause. In
 5 prescribing such regulations, the Com-
 6 mittee shall ensure that such declara-
 7 tions are submitted as abbreviated no-
 8 tifications that would not generally ex-
 9 ceed 5 pages in length.”.

10 **SEC. 6. STIPULATIONS REGARDING TRANSACTIONS.**

11 Section 721(b)(1)(C) of the Defense Production Act
 12 of 1950 (50 U.S.C. 4565(b)(1)(C)), as amended by section
 13 5, is further amended by adding at the end the following:

14 “(vi) STIPULATIONS REGARDING
 15 TRANSACTIONS.—

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

21 “(aa) stipulate that the
 22 transaction is a covered trans-
 23 action; and

24 “(bb) if the party stipulates
 25 that the transaction is a covered

1 transaction under item (aa), stip-
 2 ulate that the transaction is a
 3 foreign government-controlled
 4 transaction.

5 “(II) BASIS FOR STIPULATION.—
 6 A written notice submitted under
 7 clause (i) or a declaration submitted
 8 under clause (v) that includes a stipu-
 9 lation under subclause (I) shall in-
 10 clude a description of the basis for the
 11 stipulation.”.

12 **SEC. 7. AUTHORITY FOR UNILATERAL INITIATION OF RE-**
 13 **VIEWS.**

14 Section 721(b)(1) of the Defense Production Act of
 15 1950 (50 U.S.C. 4565(b)(1)) is amended—

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

18 (2) in subparagraph (D)—

19 (A) in clause (i), by inserting “(other than
 20 a covered transaction described in subpara-
 21 graph (E))” after “any covered transaction”;

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

24 “(ii) any covered transaction described
 25 in subparagraph (E), if any party to the

1 transaction submitted false or misleading
2 material information to the Committee in
3 connection with the Committee's consider-
4 ation of the transaction or omitted mate-
5 rial information, including material docu-
6 ments, from information submitted to the
7 Committee; or"; and

8 (C) in clause (iii)—

9 (i) in the matter preceding subclause
10 (I), by striking "any covered transaction
11 that has previously been reviewed or inves-
12 tigated under this section," and inserting
13 "any covered transaction described in sub-
14 paragraph (E),";

15 (ii) in subclause (I), by striking "in-
16 tentionally";

17 (iii) in subclause (II), by striking "an
18 intentional" and inserting "a"; and

19 (iv) in subclause (III), by inserting
20 "adequate and appropriate" before "rem-
21 edies or enforcement tools"; and

22 (3) by inserting after subparagraph (D) the fol-
23 lowing:

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

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

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

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

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

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

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

21 “(C) TIMING.—

22 “(i) IN GENERAL.—Except as pro-
23 vided in clause (ii), any investigation under
24 subparagraph (A) shall be completed be-
25 fore the end of the 45-day period begin-

1 ning on the date on which the investigation
2 commenced.

3 “(ii) EXTENSION FOR EXTRAOR-
4 DINARY CIRCUMSTANCES.—

5 “(I) IN GENERAL.—In extraor-
6 dinary circumstances (as defined by
7 the Committee in regulations), the
8 chairperson may, at the request of the
9 head of the lead agency, extend an in-
10 vestigation under subparagraph (A)
11 for one 30-day period.

12 “(II) NONDELEGATION.—The
13 authority of the chairperson and the
14 head of the lead agency referred to in
15 subclause (I) may not be delegated to
16 any person other than the Deputy
17 Secretary of the Treasury or the dep-
18 uty head (or equivalent thereof) of the
19 lead agency, as the case may be.

20 “(III) NOTIFICATION TO PAR-
21 TIES.—If the Committee extends the
22 deadline under subclause (I) with re-
23 spect to a covered transaction, the
24 Committee shall notify the parties to
25 the transaction of the extension.”; and

1 (3) by adding at the end the following:

2 “~~(8) TOLLING OF DEADLINES DURING LAPSE IN~~
3 ~~APPROPRIATIONS.—Any deadline or time limitation~~
4 ~~under this subsection shall be tolled during a lapse~~
5 ~~in appropriations.”.~~

6 **SEC. 9. MONITORING OF NON-NOTIFIED AND NON-DE-**
7 **CLARED TRANSACTIONS.**

8 Section 721(b)(1) of the Defense Production Act of
9 1950 (50 U.S.C. 4565(b)(1)), as amended by section 7,
10 is further amended by adding at the end the following:

11 “~~(H) MONITORING OF NON-NOTIFIED AND~~
12 ~~NON-DECLARED TRANSACTIONS.—The Com-~~
13 ~~mittee shall establish a mechanism to identify~~
14 ~~covered transactions for which—~~

15 “~~(i) a notice under clause (i) of sub-~~
16 ~~paragraph (C) or a declaration under~~
17 ~~clause (v) of that subparagraph is not sub-~~
18 ~~mitted to the Committee; and~~

19 “~~(ii) information is reasonably avail-~~
20 ~~able.”.~~

21 **SEC. 10. SUBMISSION OF CERTIFICATIONS TO CONGRESS.**

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

24 (1) in clause (iii)—

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

4 (B) in subclause (IV), by inserting “and
5 the Permanent Select Committee on Intel-
6 ligence” after “Financial Services”;

7 (2) in clause (iv), by striking subclause (H) and
8 inserting the following:

9 “(H) DELEGATION OF CERTIFI-
10 CATIONS.—

11 “(aa) IN GENERAL.—Sub-
12 ject to item (bb), the chairperson,
13 in consultation with the Com-
14 mittee, may determine the level
15 of official to whom the signature
16 requirement under subclause (H)
17 for the chairperson and the head
18 of the lead agency may be dele-
19 gated. The level of official to
20 whom the signature requirement
21 may be delegated may differ
22 based on any factor relating to a
23 transaction that the chairperson,
24 in consultation with the Com-
25 mittee, deems appropriate, in-

1 eluding the type or value of the
2 transaction.

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

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

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

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

3 (3) by adding at the following:

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

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

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

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

19 “(A) ANALYSIS REQUIRED.—

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

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

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

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

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

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

1 (3) by inserting after subparagraph (A) the fol-
2 lowing:

3 “(B) BASIC THREAT INFORMATION.—

4 “(i) IN GENERAL.—The Director of
5 National Intelligence may provide the
6 Committee with basic information regard-
7 ing any threat to the national security of
8 the United States posed by a covered
9 transaction described in clause (ii) instead
10 of conducting the analysis required by sub-
11 paragraph (A):

12 “(ii) COVERED TRANSACTION DE-
13 SCRIBED.—A covered transaction is de-
14 scribed in this clause if—

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

17 “(II) the Director of National In-
18 telligence has completed an analysis
19 pursuant to subparagraph (A) involv-
20 ing each foreign person that is a party
21 to the transaction during the 12
22 months preceding the review or inves-
23 tigation of the transaction under this
24 section; or

1 “(III) the transaction otherwise
2 meets criteria agreed upon by the
3 Committee and the Director of Na-
4 tional Intelligence for purposes of this
5 subparagraph.”;

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

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

10 “(F) ASSESSMENT OF OPERATIONAL IM-
11 PACT.—The Director may provide to the Com-
12 mittee an assessment, separate from the anal-
13 yses under subparagraphs (A) and (B), of any
14 operational impact of a covered transaction on
15 the intelligence community and a description of
16 any actions that have been or will be taken to
17 mitigate any such impact.

18 “(G) SUBMISSION TO CONGRESS.—The
19 Committee shall submit the analysis required by
20 subparagraph (A) with respect to a covered
21 transaction to the Select Committee on Intel-
22 ligence of the Senate and the Permanent Select
23 Committee on Intelligence of the House of Rep-
24 resentatives upon the conclusion of action under
25 this section (other than compliance reviews

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

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

4 Section 721(e) of the Defense Production Act of 1950
5 (50 U.S.C. 4565(e)) is amended—

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

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

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

12 (3) by adding at the end the following:

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

15 “(A) Information relevant to any adminis-
16 trative or judicial action or proceeding.

17 “(B) Information to either House of Con-
18 gress or to any duly authorized committee or
19 subcommittee of Congress.

20 “(C) Information to any domestic or for-
21 eign governmental entity, under the direction of
22 the chairperson, to the extent necessary for na-
23 tional security purposes and pursuant to appro-
24 priate confidentiality and classification arrange-
25 ments.

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

3 **SEC. 13. ACTION BY THE PRESIDENT.**

4 (a) ~~IN GENERAL.~~—Section 721(d) of the Defense
5 Production Act of 1950 (50 U.S.C. 4565(d)) is amend-
6 ed—

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

9 “(1) ~~IN GENERAL.~~—Subject to paragraph (4),
10 the President may, with respect to a covered trans-
11 action that threatens to impair the national security
12 of the United States—

13 “(A) take such action for such time as the
14 President considers appropriate to suspend or
15 prohibit the transaction or to require divest-
16 ment; and

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

23 (2) in paragraph (2), by striking “not later
24 than 15 days” and all that follows and inserting the

1 following: “with respect to a covered transaction not
2 later than 15 days after the earlier of—

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

6 “(B) the date on which the Committee oth-
7 erwise refers the transaction to the President
8 under subsection (1)(2).”.

9 (b) CIVIL PENALTIES.—Section 721(h)(3)(A) of the
10 Defense Production Act of 1950 (50 U.S.C.
11 4565(h)(3)(A)) is amended by striking “including any
12 mitigation” and all that follows through “subsection (1)”
13 and inserting “including any mitigation agreement entered
14 into, conditions imposed, or order issued pursuant to this
15 section”.

16 **SEC. 14. JUDICIAL REVIEW PROCEDURES.**

17 Section 721(e) of the Defense Production Act of 1950
18 (50 U.S.C. 4565) is amended to read as follows:

19 “(e) ACTIONS AND FINDINGS NONREVIEWABLE.—

20 “(1) ACTIONS AND FINDINGS OF THE PRESI-
21 DENT.—The actions and findings of the President or
22 the President’s designee under this section shall not
23 be subject to judicial review, including claims under
24 chapter 7 of title 5, United States Code.

1 “(2) ACTIONS AND FINDINGS OF THE COM-
2 MITTEE.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), the actions and findings of
5 the Committee under subsection (b) or (l), and
6 any assessment of penalties or use of enforce-
7 ment authorities under this section, shall not be
8 subject to judicial review, including claims
9 under chapter 7 of title 5, United States Code.

10 “(B) PETITIONS.—

11 “(i) DEFINITION.—In this subpara-
12 graph, the term ‘classified information’
13 means any information or material that
14 has been determined by the United States
15 Government pursuant to an Executive
16 order, statute, or regulation to require pro-
17 tection against unauthorized disclosure for
18 reasons of national security and any re-
19 stricted data, as defined in section 11 of
20 the Atomic Energy Act of 1954 (42 U.S.C.
21 2014).

22 “(ii) PETITION.—

23 “(I) IN GENERAL.—Except as
24 provided in subclause (II), not later
25 than 60 days after the date on which

1 the President or the Committee takes
2 an action with respect to the covered
3 transaction, any party to the covered
4 transaction may file a petition under
5 this subparagraph alleging that the
6 action of the Committee is a violation
7 of a constitutional right, power, privi-
8 lege, or immunity.

9 “(II) NOTIFICATION.—No party
10 to a covered transaction shall be per-
11 mitted to file a petition or any claim
12 related to a petition under subclause
13 (I) unless—

14 “(aa) the party initiated the
15 review of the transaction pursu-
16 ant to a written notice filed
17 under clause (i) of subsection
18 (b)(1)(C) or a declaration filed
19 under clause (v) of that sub-
20 section or the Committee deter-
21 mines that such a notice or dec-
22 laration was not required; and

23 “(bb) the Committee has
24 completed all action under this

1 section with respect to the trans-
2 action.

3 ~~“(III) RELATED CLAIMS.—~~Any
4 claims related to a petition filed under
5 this clause shall be filed before the
6 date described in subclause (I).

7 ~~“(iii) EXCLUSIVE JURISDICTION.—~~

8 ~~“(I) IN GENERAL.—~~The United
9 States Court of Appeals for the Dis-
10 trict of Columbia Circuit shall have
11 exclusive jurisdiction over claims aris-
12 ing under this subparagraph, subject
13 to review by the Supreme Court of the
14 United States under section 1254 of
15 title 28, United States Code, only—

16 ~~“(aa) to affirm the action of~~
17 ~~the Committee; or~~

18 ~~“(bb) to remand the case to~~
19 ~~the Committee for further consid-~~
20 ~~eration.~~

21 ~~“(II) STANDARD OF REVIEW.—~~

22 The court shall uphold an action chal-
23 lenged under this subparagraph unless
24 the court finds that the action was

1 contrary to a constitutional right,
2 power, privilege, or immunity.

3 “(iv) SCOPE OF REVIEW.—In a claim
4 under this subparagraph, the court shall
5 decide all relevant questions based solely
6 on any administrative record submitted by
7 the United States under clause (v).

8 “(v) ADMINISTRATIVE RECORD AND
9 PROCEDURES.—

10 “(I) IN GENERAL.—Notwith-
11 standing any other provision of law,
12 the procedures described in this clause
13 shall apply to the review of a petition
14 under this subparagraph.

15 “(II) ADMINISTRATIVE
16 RECORD.—

17 “(aa) FILING OF RECORD.—
18 The United States shall file with
19 the court an administrative
20 record, which shall consist of the
21 information that the parties sub-
22 mitted to the Committee and
23 that the Committee relied upon
24 in support of the action of the
25 Committee under review.

1 “(bb) UNCLASSIFIED, NON-
2 PRIVILEGED INFORMATION.—All
3 unclassified information con-
4 tained in the administrative
5 record that is not otherwise privi-
6 leged or subject to statutory pro-
7 tections shall be provided to the
8 petitioner with appropriate pro-
9 tections for any privileged or con-
10 fidential trade secrets and com-
11 mercial or financial information.

12 “(cc) DISCOVERY BAR.—
13 Other than the provision of infor-
14 mation in the administrative
15 record described in subparagraph
16 (H)(bb), no discovery shall be
17 permitted.

18 “(dd) IN CAMERA AND EX
19 PARTE.—The following informa-
20 tion may be included in the ad-
21 ministrative record and shall be
22 submitted only to the court ex
23 parte and in camera:

1 “(AA) Unclassified in-
2 formation subject to privi-
3 lege or statutory protections.

4 “(BB) Classified infor-
5 mation.

6 “(CC) Sensitive secu-
7 rity information.

8 “(DD) Sensitive law en-
9 forcement information.

10 “(EE) Information ob-
11 tained or derived from any
12 activity authorized under the
13 Foreign Intelligence Surveil-
14 lance Act of 1978 (50
15 U.S.C. 1801 et seq.); except
16 that, with respect to such in-
17 formation, subsections (e),
18 (e), (f), (g), and (h) of sec-
19 tion 106 (50 U.S.C. 1806),
20 subsections (d), (f), (g), (h),
21 and (i) of section 305 (50
22 U.S.C. 1825), subsections
23 (e), (e), (f), (g), and (h) of
24 section 405 (50 U.S.C.
25 1845), and section 706 (50

1 U.S.C. 1881e) of that Act
2 shall not apply.

3 “(cc) UNDER SEAL.—Any
4 classified information, sensitive
5 security information, law enforce-
6 ment sensitive information, or in-
7 formation that is otherwise privi-
8 leged or subject to statutory pro-
9 tectations, that is part of the ad-
10 ministrative record filed ex parte
11 and in camera, or cited by the
12 court in any decision, shall be
13 treated by the court consistent
14 with the provisions of this sub-
15 paragraph, and shall remain
16 under seal and preserved in the
17 records of the court to be made
18 available in the event of further
19 proceedings. In no event shall
20 such information be released to
21 the claimant or as part of the
22 public record.

23 “(ff) RETURN.—After the
24 expiration of the time to seek
25 further review, or the conclusion

1 of further proceedings, the court
2 shall return the administrative
3 record, including any and all cop-
4 ies, to the United States.

5 “(gg) CONSIDERATION OF
6 CLAIM WITHOUT INFORMATION
7 IN ADMINISTRATIVE RECORD.—
8 If, on motion or sua sponte, the
9 court determines that the claim
10 may be considered without any of
11 the information in the adminis-
12 trative record, the court shall re-
13 quire that only the necessary in-
14 formation, if any, from the
15 record be provided to the parties.

16 “(vi) EXCLUSIVE REMEDY.—A deter-
17 mination by the court under this subpara-
18 graph shall be the exclusive judicial remedy
19 for any claim described in this subpara-
20 graph against the United States, any
21 United States department or agency, or
22 any component or official of any such de-
23 partment or agency.

24 “(vii) RULE OF CONSTRUCTION.—
25 Nothing in this subparagraph shall be con-

1 strued as limiting, superseding, or pre-
2 venting the invocation of, any privileges or
3 defenses that are otherwise available at law
4 or in equity to protect against the disclo-
5 sure of information.”.

6 **SEC. 15. FACTORS TO BE CONSIDERED.**

7 Section 721(f) of the Defense Production Act of 1950
8 (50 U.S.C. 4565(f)) is amended—

9 (1) in paragraph (1), by inserting “including
10 whether the covered transaction is likely to result in
11 the increased reliance by the United States on for-
12 eign suppliers to meet national defense require-
13 ments;” after “defense requirements;”;

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

16 (3) by striking paragraph (5) and insert the fol-
17 lowing:

18 “(5) the potential effects of the covered trans-
19 action on United States international technological
20 and industrial leadership in areas affecting United
21 States national security, including whether the
22 transaction is likely to reduce the technological and
23 industrial advantage of the United States relative to
24 any country of special concern;”;

1 (4) in paragraph (6), by inserting “and trans-
2 portation assets, as defined in Presidential Policy
3 Directive 21 (February 12, 2013; relating to critical
4 infrastructure security and resilience) or any suc-
5 cessor directive” after “energy assets”;

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

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

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

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

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

24 “(12) the potential national security-related ef-
25 fects of the cumulative market share of any one type

1 of infrastructure, energy asset, critical material, or
2 critical technology by foreign persons;

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

7 “(A) complying with United States laws
8 and regulations, including laws and regulations
9 pertaining to exports, the protection of intellec-
10 tual property, and immigration; and

11 “(B) adhering to contracts or other agree-
12 ments with entities of the United States Gov-
13 ernment;

14 “(14) the extent to which the covered trans-
15 action is likely to expose, either directly or indirectly,
16 personally identifiable information, genetic informa-
17 tion, or other sensitive data of United States citizens
18 to access by a foreign government or foreign person
19 that may exploit that information in a manner that
20 threatens national security;

21 “(15) whether the covered transaction is likely
22 to have the effect of creating any new cybersecurity
23 vulnerabilities in the United States or exacerbating
24 existing cybersecurity vulnerabilities;

1 “(16) whether the covered transaction is likely
2 to result in a foreign government gaining a signifi-
3 cant new capability to engage in malicious cyber-en-
4 abled activities against the United States, including
5 such activities designed to affect the outcome of any
6 election for Federal office;

7 “(17) whether the covered transaction involves
8 a country of special concern that has a demonstrated
9 or declared strategic goal of acquiring a type of crit-
10 ical technology that a United States business that is
11 a party to the transaction possesses;

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

15 “(19) whether the covered transaction is likely
16 to expose any information regarding sensitive na-
17 tional security matters or sensitive procedures or op-
18 erations of a Federal law enforcement agency with
19 national security responsibilities to a foreign person
20 not authorized to receive that information; and”.

21 **SEC. 16. ACTIONS BY THE COMMITTEE TO ADDRESS NA-**
22 **TIONAL SECURITY RISKS.**

23 Section 721(l) of the Defense Production Act of 1950
24 (50 U.S.C. 4565(l)) is amended—

1 (1) in the subsection heading, by striking
2 “MITIGATION, TRACKING, AND POSTCONSUMMATION
3 MONITORING AND ENFORCEMENT” and inserting
4 “ACTIONS BY THE COMMITTEE TO ADDRESS NA-
5 TIONAL SECURITY RISKS”;

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

8 (3) by inserting before paragraph (3), as redesi-
9 gnated by paragraph (2), the following:

10 “(1) SUSPENSION OF TRANSACTIONS.—The
11 Committee, acting through the chairperson, may
12 suspend a proposed or pending covered transaction
13 that may pose a risk to the national security of the
14 United States for such time as the covered trans-
15 action is under review or investigation under sub-
16 section (b).

17 “(2) REFERRAL TO PRESIDENT.—The Com-
18 mittee may, at any time during the review or inves-
19 tigation of a covered transaction under subsection
20 (b), complete the action of the Committee with re-
21 spect to the transaction and refer the transaction to
22 the President for action pursuant to subsection
23 (d).”;

24 (4) in paragraph (3), as redesignated by para-
25 graph (2)—

1 (A) in subparagraph (A)—

2 (i) in the subparagraph heading, by
3 striking “IN GENERAL” and inserting
4 “AGREEMENTS AND CONDITIONS”;

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

7 “(i) IN GENERAL.—The Committee”;

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

10 (iv) by adding at the end the fol-
11 lowing:

12 “(ii) ABANDONMENT OF TRANS-
13 ACTIONS.—If a party to a covered trans-
14 action has voluntarily chosen to abandon
15 the transaction, the Committee or lead
16 agency, as the case may be, may negotiate,
17 enter into or impose, and enforce any
18 agreement or condition with any party to
19 the covered transaction for purposes of ef-
20 fectuating such abandonment and miti-
21 gating any risk to the national security of
22 the United States that arises as a result of
23 the covered transaction.

24 “(iii) AGREEMENTS AND CONDITIONS
25 RELATING TO COMPLETED TRANS-

1 ACTIONS.—The Committee or lead agency,
2 as the case may be, may negotiate, enter
3 into or impose, and enforce any agreement
4 or condition with any party to a completed
5 covered transaction in order to mitigate
6 any interim risk to the national security of
7 the United States that may arise as a re-
8 sult of the covered transaction until such
9 time that the Committee has completed ac-
10 tion pursuant to subsection (b) or the
11 President has taken action pursuant to
12 subsection (d) with respect to the trans-
13 action.”; and

14 (B) by striking subparagraph (B) and in-
15 serting the following:

16 “(B) LIMITATIONS.—An agreement may
17 not be entered into or condition imposed under
18 subparagraph (A) with respect to a covered
19 transaction unless the Committee determines
20 that the agreement or condition resolves the na-
21 tional security concerns posed by the trans-
22 action, taking into consideration whether the
23 agreement or condition is reasonably calculated
24 to—

25 “(i) be effective;

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

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

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

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

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

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

25 “(i) an assessment of—

1 “(I) the national security threat
2 posed by the transaction, taking into
3 account the analysis conducted by the
4 Director of National Intelligence
5 under subsection (b)(4);

6 “(II) any national security
7 vulnerabilities related to the trans-
8 action; and

9 “(III) the potential national secu-
10 rity consequences of the transaction;
11 and

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

15 “(B) ACTIONS OF MEMBERS OF THE COM-
16 MITTEE.—

17 “(i) IN GENERAL.—Any member of
18 the Committee who concludes that a cov-
19 ered transaction poses an unresolved na-
20 tional security concern shall recommend to
21 the Committee that the Committee sus-
22 pend the transaction under paragraph (1);
23 refer the transaction to the President
24 under paragraph (2); or negotiate, enter
25 into or impose, or enforce any agreement

1 or condition under paragraph (3)(A) with
2 respect to the transaction. In making that
3 recommendation, the member shall propose
4 the risk-based analysis required by sub-
5 paragraph (A).

6 “(ii) FAILURE TO REACH CON-
7 SENSUS.—If the Committee fails to reach
8 consensus with respect to a recommenda-
9 tion under clause (i) regarding a covered
10 transaction, the members of the Committee
11 who support an alternative recommenda-
12 tion shall produce—

13 “(I) a written statement justi-
14 fying the alternative recommendation;
15 and

16 “(II) as appropriate, a risk-based
17 analysis that supports the alternative
18 recommendation.”;

19 (6) in paragraph (5), as redesignated by para-
20 graph (2), by striking “(as defined in the National
21 Security Act of 1947)”; and

22 (7) in paragraph (6), as redesignated by para-
23 graph (2)—

24 (A) in subparagraph (A)—

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

3 (ii) by striking the second sentence
 4 and inserting the following: “The lead
 5 agency may, at its discretion, seek and re-
 6 ceive the assistance of other departments
 7 or agencies in carrying out the purposes of
 8 this paragraph.”;

9 (B) in subparagraph (B)—

10 (i) by striking “DESIGNATED AGEN-
 11 CY” and all that follows through “The lead
 12 agency in connection” and inserting “DES-
 13 IGNATED AGENCY.—The lead agency in
 14 connection”;

15 (ii) by striking clause (ii); and

16 (iii) by redesignating subclauses (I)
 17 and (II) as clauses (i) and (ii), respec-
 18 tively, and by moving such clauses, as so
 19 redesignated, 2 ems to the left; and

20 (C) by adding at the end the following:

21 “(C) COMPLIANCE PLANS.—

22 “(i) IN GENERAL.—In the case of a
 23 covered transaction with respect to which
 24 an agreement is entered into under para-
 25 graph (3)(A), the Committee or lead agen-

1 cy, as the case may be, shall formulate, ad-
2 here to, and keep updated a plan for moni-
3 toring compliance with the agreement.

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

8 “(I) which member of the Com-
9 mittee will have primary responsibility
10 for monitoring compliance with the
11 agreement;

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

14 “(III) how frequently compliance
15 reviews will be conducted;

16 “(IV) whether an independent
17 entity will be utilized under subpara-
18 graph (E) to conduct compliance re-
19 views; and

20 “(V) what actions will be taken if
21 the parties fail to cooperate regarding
22 monitoring compliance with the agree-
23 ment.

24 “(D) EFFECT OF LACK OF COMPLIANCE.—

25 If, at any time after a mitigation agreement or

1 condition is entered into or imposed under
2 paragraph (3)(A), the Committee or lead agen-
3 cy, as the case may be, determines that a party
4 or parties to the agreement or condition are not
5 in compliance with the terms of the agreement
6 or condition, the Committee or lead agency
7 may, in addition to the authority of the Com-
8 mittee to impose penalties pursuant to sub-
9 section (h)(3) and to unilaterally initiate a re-
10 view of any covered transaction under sub-
11 section (b)(1)(D)(iii)(I)—

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

19 “(ii) require that the party or parties
20 submit any covered transaction initiated
21 after the date of the determination of non-
22 compliance and before the date that is 5
23 years after the date of the determination
24 to the Committee for review under sub-
25 section (b); or

1 “(iii) seek injunctive relief.

2 “(E) USE OF INDEPENDENT ENTITIES TO
3 MONITOR COMPLIANCE.—If the parties to an
4 agreement entered into under paragraph (3)(A)
5 enter into a contract with an independent entity
6 from outside the United States Government for
7 the purpose of monitoring compliance with the
8 agreement, the Committee shall take such ac-
9 tion as is necessary to prevent a conflict of in-
10 terest from arising by ensuring that the inde-
11 pendent entity owes no fiduciary duty to the
12 parties.

13 “(F) ADDITIONAL COMPLIANCE MEAS-
14 URES.—Subject to subparagraphs (A) through
15 (E), the Committee shall develop and agree
16 upon methods for evaluating compliance with
17 any agreement entered into or condition im-
18 posed with respect to a covered transaction that
19 will allow the Committee to adequately ensure
20 compliance without unnecessarily diverting
21 Committee resources from assessing any new
22 covered transaction for which a written notice
23 under clause (i) of subsection (b)(1)(C) or dec-
24 laration under clause (v) of that subsection has
25 been filed, and if necessary, reaching a mitiga-

1 tion agreement with or imposing a condition on
2 a party to such covered transaction or any cov-
3 ered transaction for which a review has been re-
4 opened for any reason.”.

5 **SEC. 17. MODIFICATION OF ANNUAL REPORT.**

6 Section 721(m) of the Defense Production Act of
7 1950 (50 U.S.C. 4565(m)) is amended—

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

11 (2) in paragraph (2)—

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

14 “(A) A list of all notices filed and all re-
15 views or investigations of covered transactions
16 completed during the period, with—

17 “(i) a description of the outcome of
18 each review or investigation, including
19 whether an agreement was entered into or
20 condition was imposed under subsection
21 (1)(3)(A) with respect to the transaction
22 being reviewed or investigated, and wheth-
23 er the President took any action under this
24 section with respect to that transaction;

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

3 “(iii) the nature of the business activi-
4 ties or products of the United States busi-
5 ness with which the transaction was en-
6 tered into or intended to be entered into;
7 and

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

10 (B) by adding at the end the following:

11 “(G) Statistics on compliance reviews con-
12 ducted and actions taken by the Committee
13 under subsection (1)(6), including subparagraph
14 (D) of that subsection, during that period and
15 a description of any actions taken by the Com-
16 mittee to impose penalties or initiate a unilat-
17 eral review pursuant to subsection
18 (b)(1)(D)(iii)(I).”;

19 (3) in paragraph (3)—

20 (A) by striking “CRITICAL TECHNOLOGIES”
21 and all that follows through “In order to as-
22 sist” and inserting “CRITICAL TECH-
23 NOLOGIES.—In order to assist”;

24 (B) by striking subparagraph (B); and

1 (C) by redesignating clauses (i) and (ii) as
2 subparagraphs (A) and (B), respectively, and
3 by moving such subparagraphs, as so redesign-
4 dated, 2 ems to the left; and
5 (4) by adding at the end the following:

6 “(4) BIENNIAL INTELLIGENCE COMMUNITY RE-
7 PORT.—

8 “(A) IN GENERAL.—The Director of Na-
9 tional Intelligence shall transmit to the chair-
10 person, for inclusion in a classified portion of
11 each report required to be submitted under
12 paragraph (1) during calendar year 2018 and
13 every even-numbered year thereafter, the report
14 of the interagency group established under sub-
15 paragraph (C).

16 “(B) ELEMENTS.—The report referred to
17 in subparagraph (A) shall include an identifica-
18 tion, analysis, and explanation of the following:

19 “(i) Any current or projected major
20 threats to the national security of the
21 United States with respect to foreign in-
22 vestment.

23 “(ii) Any strategies used by countries
24 of special concern to utilize foreign invest-
25 ment to target the acquisition of critical

1 technologies, critical materials, or critical
2 infrastructure.

3 “(iii) Any economic espionage efforts
4 directed at the United States by a foreign
5 country, particularly a country of special
6 concern.

7 “(C) INTELLIGENCE COMMUNITY INTER-
8 AGENCY WORKING GROUP.—The Director of
9 National Intelligence—

10 “(i) shall establish an interagency
11 working group, composed of representa-
12 tives of elements of the intelligence com-
13 munity, to prepare the report required
14 under this paragraph;

15 “(ii) shall serve as the chairperson of
16 the interagency working group; and

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

20 “(5) CLASSIFICATION; AVAILABILITY OF RE-
21 PORT.—

22 “(A) CLASSIFICATION.—All appropriate
23 portions of the annual report required by para-
24 graph (1) may be classified.

1 “(B) PUBLIC AVAILABILITY OF UNCLASSI-
2 FIED VERSION.—An unclassified version of the
3 report required by paragraph (1), as appro-
4 priate and consistent with safeguarding na-
5 tional security and privacy, shall be made avail-
6 able to the public. Information regarding trade
7 secrets or business confidential information may
8 be included in the classified version and may
9 not be made available to the public in the un-
10 classified version.

11 “(C) EXCEPTIONS TO FREEDOM OF INFOR-
12 MATION ACT.—The exceptions to subsection (a)
13 of section 552 of title 5, United States Code,
14 provided for under subsection (b) of that sec-
15 tion shall apply with respect to the report re-
16 quired by paragraph (1).

17 “(6) APPROPRIATE CONGRESSIONAL COMMIT-
18 TEES DEFINED.—In this subsection, the term ‘ap-
19 propriate congressional committees’ means—

20 “(A) the Committee on Banking, Housing,
21 and Urban Affairs; the Select Committee on In-
22 telligence; the Committee on Armed Services;
23 the Committee on the Judiciary; and the Com-
24 mittee on Homeland Security and Govern-
25 mental Affairs of the Senate; and

1 “(B) the Committee on Financial Services,
 2 the Permanent Select Committee on Intel-
 3 ligence, the Committee on Armed Services, the
 4 Committee on the Judiciary, and the Com-
 5 mittee on Homeland Security of the House of
 6 Representatives.”.

7 **SEC. 18. CERTIFICATION OF NOTICES AND INFORMATION.**

8 Section 721(n) of the Defense Production Act of
 9 1950 (50 U.S.C. 4565(n)) is amended—

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

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

16 “(1) IN GENERAL.—Each notice”; and

17 (3) by adding at the end the following:

18 “(2) EFFECT OF FAILURE TO SUBMIT.—The
 19 Committee may not complete a review under this
 20 section of a covered transaction and may recommend
 21 to the President that the President suspend or pro-
 22 hibit the transaction or require divestment under
 23 subsection (d) if the Committee determines that a
 24 party to the transaction has—

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

3 “(B) included false or misleading informa-
4 tion in a notice or information described in
5 paragraph (1) or omitted material information
6 from such notice or information.

7 “(3) APPLICABILITY OF LAW ON FRAUD AND
8 FALSE STATEMENTS.—The Committee shall pre-
9 scribe regulations expressly providing for the appli-
10 cation of section 1001 of title 18, United States
11 Code, to all information provided to the Committee
12 under this section by any party to a covered trans-
13 action.”.

14 **SEC. 19. FUNDING.**

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

18 “(o) FUNDING.—

19 “(1) ESTABLISHMENT OF FUND.—There is es-
20 tablished in the Treasury of the United States a
21 fund, to be known as the ‘Committee on Foreign In-
22 vestment in the United States Fund’ (in this sub-
23 section referred to as the ‘Fund’).

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

1 to the Fund such sums as may be necessary to per-
2 form the functions of the Committee.

3 “(3) FILING FEES.—

4 “(A) IN GENERAL.—The Committee may
5 assess and collect a fee in an amount deter-
6 mined by the Committee in regulations, to the
7 extent provided in advance in appropriations
8 Acts, without regard to section 9701 of title 31,
9 United States Code, and subject to subpara-
10 graph (B), with respect to each covered trans-
11 action for which a written notice is submitted to
12 the Committee under subsection (b)(1)(C)(i).

13 “(B) LIMITATION ON AMOUNT OF FEE.—

14 The amount of the fee determined under sub-
15 paragraph (A) with respect to a covered trans-
16 action described in that subparagraph may not
17 exceed an amount equal to the lesser of—

18 “(i) 1 percent of the value of the
19 transaction; or

20 “(ii) \$300,000, adjusted annually for
21 inflation pursuant to regulations prescribed
22 by the Committee.

23 “(C) DEPOSIT AND AVAILABILITY OF
24 FEES.—Notwithstanding section 3302 of title

1 ~~31~~, United States Code, fees collected under
2 subparagraph (A) shall—

3 “(i) be deposited as offsetting collec-
4 tions into the Fund for use in carrying out
5 activities under this section;

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

9 “(iii) remain available until expended;
10 and

11 “(iv) be in addition to any appropria-
12 tions made available to the members of the
13 Committee.

14 ~~“(4) TRANSFER OF FUNDS.—~~The chairperson
15 may transfer any amounts in the Fund to any other
16 department or agency represented on the Committee
17 for the purpose of addressing emerging needs in ear-
18 rying out activities under this section. Amounts so
19 transferred shall be in addition to any other
20 amounts available to that department or agency for
21 that purpose.”.

1 **SEC. 20. CENTRALIZATION OF CERTAIN COMMITTEE FUNC-**
2 **TIONS.**

3 Section 721 of the Defense Production Act of 1950
4 (50 U.S.C. 4565), as amended by section 19, is further
5 amended by adding at the end the following:

6 **“(p) CENTRALIZATION OF CERTAIN COMMITTEE**
7 **FUNCTIONS.—**

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

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

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

1 **SEC. 21. UNIFIED BUDGET REQUEST.**

2 Section 721 of the Defense Production Act of 1950
3 (50 U.S.C. 4565), as amended by sections 19 and 20, is
4 further amended by adding at the end the following:

5 “(q) UNIFIED BUDGET REQUEST.—

6 “(1) IN GENERAL.—The President may include,
7 in the budget of the Department of the Treasury for
8 a fiscal year (as submitted to Congress with the
9 budget of the President under section 1105(a) of
10 title 31, United States Code), a unified request for
11 funding of all operations under this section con-
12 ducted by some or all of the departments and agen-
13 cies represented on the Committee.

14 “(2) FORM OF BUDGET REQUEST.—A unified
15 request under paragraph (1) should be detailed and
16 include the amounts requested for each department
17 or agency represented on the Committee to carry out
18 the functions of that department or agency under
19 this section.”.

20 **SEC. 22. SPECIAL HIRING AUTHORITY.**

21 Section 721 of the Defense Production Act of 1950
22 (50 U.S.C. 4565), as amended by sections 19, 20, and
23 21, is further amended by adding at the end the following:

24 “(r) SPECIAL HIRING AUTHORITY.—The heads of
25 the departments and agencies represented on the Com-
26 mittee may appoint, without regard to the provisions of

1 sections 3309 through 3318 of title 5, United States Code,
2 candidates directly to positions in the competitive service
3 (as defined in section 2102 of that title) in their respective
4 departments and agencies to administer this section.”.

5 **SEC. 23. CONFORMING AMENDMENTS.**

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

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

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

16 **SEC. 24. ASSESSMENT OF NEED FOR ADDITIONAL RE-**
17 **SOURCES FOR COMMITTEE.**

18 The President shall—

19 (1) determine whether and to what extent the
20 expansion of the responsibilities of the Committee on
21 Foreign Investment in the United States pursuant
22 to the amendments made by this Act necessitates
23 additional resources for the Committee and members
24 of the Committee to perform their functions under

1 section 721 of the Defense Production Act of 1950,
2 as amended by this Act; and

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

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

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

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

22 (2) in a case in which the person violates the
23 prohibition described in paragraph (1), requires the
24 person to return all amounts that the person re-

1 received from the Agency under the contract or grant
2 agreement.

3 (b) TREATMENT OF RETURNED FUNDS.—Any
4 amounts returned to the Defense Advanced Research
5 Projects Agency under subsection (a)(2) shall be credited
6 to the same appropriations account from which payment
7 of such amounts was originally made under the contract
8 or grant agreement described in subsection (a).

9 (c) EXERCISE OF AUTHORITY.—The Director, or the
10 designee of the Director, may exercise the authority pro-
11 vided by this section without the need for further approval
12 by, or regulatory implementation within, the Department
13 of Defense.

14 **SEC. 26. EFFECTIVE DATE.**

15 (a) IMMEDIATE APPLICABILITY OF CERTAIN PROVI-
16 SIONS.—The following shall take effect on the date of the
17 enactment of this Act and apply with respect to any cov-
18 ered transaction the review or investigation of which is ini-
19 tiated under section 721 of the Defense Production Act
20 of 1950 on or after such date of enactment:

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

24 (2) Section 11 and the amendments made by
25 that section (except for clause (iii) of section

1 ~~721(b)(4)(A)~~ of the Defense Production Act of
2 1950, as added by section 11).

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

6 ~~(4) Section 721(m)(4) of the Defense Produ-~~
7 ~~tion Act of 1950, as amended by section 17.~~

8 ~~(b) DELAYED APPLICABILITY OF CERTAIN PROVI-~~
9 ~~SIONS.—~~

10 ~~(1) IN GENERAL.—~~Any provision of or amend-
11 ~~ment made by this Act not specified in subsection~~
12 ~~(a) shall—~~

13 ~~(A) take effect on the date that is 30 days~~
14 ~~after publication in the Federal Register of a~~
15 ~~determination by the chairperson of the Com-~~
16 ~~mittee on Foreign Investment in the United~~
17 ~~States that the regulations, organizational~~
18 ~~structure, personnel, and other resources nec-~~
19 ~~essary to administer the new provisions are in~~
20 ~~place; and~~

21 ~~(B) apply with respect to any covered~~
22 ~~transaction the review or investigation of which~~
23 ~~is initiated under section 721 of the Defense~~
24 ~~Production Act of 1950 on or after the date de-~~
25 ~~scribed in subparagraph (A).~~

1 (2) NONDELEGATION OF DETERMINATION.—

2 The determination of the chairperson of the Com-
3 mittee on Foreign Investment in the United States
4 under paragraph (1)(A) may not be delegated.

5 (e) AUTHORIZATION FOR PILOT PROGRAMS.—

6 (1) IN GENERAL.—Beginning on the date of the
7 enactment of this Act and ending on the date de-
8 scribed in subsection (b)(1)(A), the Committee on
9 Foreign Investment in the United States may, at its
10 discretion, conduct one or more pilot programs to
11 implement any authority provided pursuant to any
12 provision of or amendment made by this Act not
13 specified in subsection (a).

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

20 **SEC. 27. SEVERABILITY.**

21 If any provision of this Act or an amendment made
22 by this Act, or the application of such a provision or
23 amendment to any person or circumstance, is held to be
24 invalid, the application of that provision or amendment to
25 other persons or circumstances and the remainder of the

1 provisions of this Act and the amendments made by this
 2 Act, shall not be affected thereby.

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Sense of Congress.

Sec. 3. Definitions.

Sec. 4. Acceptance of written notices.

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

Sec. 6. Declarations for certain covered transactions.

Sec. 7. Stipulations regarding transactions.

Sec. 8. Authority for unilateral initiation of reviews.

Sec. 9. Timing for reviews and investigations.

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

Sec. 11. Submission of certifications to Congress.

Sec. 12. Analysis by Director of National Intelligence.

Sec. 13. Information sharing.

Sec. 14. Action by the President.

Sec. 15. Judicial review.

Sec. 16. Membership and staff of Committee.

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

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

Sec. 19. Certification of notices and information.

Sec. 20. Implementation plans.

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

Sec. 22. Funding.

Sec. 23. Centralization of certain Committee functions.

Sec. 24. Conforming amendments.

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

Sec. 26. Export control enforcement authority.

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

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

*Sec. 29. Limitation on cancellation of designation of Secretary of the Air Force
 as Department of Defense Executive Agent for a certain Defense
 Production Act program.*

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

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

Sec. 32. Effective date.

Sec. 33. Severability.

1 **SEC. 2. SENSE OF CONGRESS.**

2 (a) *IN GENERAL.*—*It is the sense of Congress that—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **SEC. 3. DEFINITIONS.**

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

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

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

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

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

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

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

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

21 “(5) *COVERED TRANSACTION*.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *United States critical technology company*
2 *that meets the following criteria:*

3 “(I) *The investment is not de-*
4 *scribed in subparagraph (B)(i).*

5 “(II) *The investment does not af-*
6 *ford the foreign person—*

7 “(aa) *access to any material*
8 *nonpublic technical information*
9 *in the possession of the United*
10 *States critical infrastructure com-*
11 *pany or United States critical*
12 *technology company;*

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

23 “(cc) *any involvement, other*
24 *than through voting of shares, in*
25 *substantive decisionmaking relat-*

1 ing to the management, govern-
2 ance, or operation of the United
3 States critical infrastructure com-
4 pany or United States critical
5 technology company.

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

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

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

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

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

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

16 “(II) *REGULATIONS.—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(8) *CRITICAL TECHNOLOGIES.*—

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(10) *FOREIGN PERSON.—*

19 “(A) *IN GENERAL.—The term ‘foreign per-*
20 *son’ means—*

21 “(i) *any foreign national, foreign gov-*
22 *ernment, or foreign entity; or*

23 “(ii) *any entity over which control is*
24 *exercised or exercisable by a foreign na-*

1 *tional, foreign government, or foreign enti-*
2 *ty.*

3 “(B) *FOREIGN ENTITY DEFINED.*—

4 “(i) *IN GENERAL.*—*For purposes of*
5 *subparagraph (A) and except as provided in*
6 *clause (ii), the term ‘foreign entity’ means*
7 *any branch, partnership, group or sub-*
8 *group, association, estate, trust, corporation*
9 *or division of a corporation, or organiza-*
10 *tion organized under the laws of a foreign*
11 *country if—*

12 “(I) *the principal place of busi-*
13 *ness of the entity is outside the United*
14 *States; or*

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

18 “(ii) *EXCEPTION.*—*For purposes of*
19 *subparagraph (A), the term ‘foreign entity’*
20 *does not include an entity that demonstrates*
21 *to the Committee that a majority of the eq-*
22 *uity interest in the entity is ultimately*
23 *owned by United States nationals.*

24 “(11) *INTELLIGENCE COMMUNITY.*—*The term*
25 *‘intelligence community’ has the meaning given that*

1 *term in section 3(4) of the National Security Act of*
2 *1947 (50 U.S.C. 3003(4)).*

3 “(12) *INVESTMENT.*—*The term ‘investment’*
4 *means the acquisition of equity interest, including*
5 *contingent equity interest, as further defined in regu-*
6 *lations prescribed by the Committee.*

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

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

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

17 “(16) *UNITED STATES.*—*The term ‘United*
18 *States’ means the several States, the District of Co-*
19 *lumbia, and any territory or possession of the United*
20 *States.*

21 “(17) *UNITED STATES BUSINESS.*—*The term*
22 *‘United States business’ means a person engaged in*
23 *interstate commerce in the United States.’’.*

1 **SEC. 4. ACCEPTANCE OF WRITTEN NOTICES.**

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

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

6 *“(I) IN GENERAL.—Any party”;*

7 *and*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(AA) *the technology,*
2 *industry, economic sector, or*
3 *economic subsector in which*
4 *the United States business*
5 *that is a party to the trans-*
6 *action trades or of which it*
7 *is a part;*

8 “(BB) *the difficulty of*
9 *remedying the harm to na-*
10 *tional security that may re-*
11 *sult from completion of the*
12 *transaction;*

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

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

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

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

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

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

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

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

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

3 “(ff) *TIMING OF SUBMIS-*
4 *SION.—*

5 “(AA) *IN GENERAL.—A*
6 *declaration required to be*
7 *submitted with respect to a*
8 *covered transaction by this*
9 *subclause shall be submitted*
10 *not later than 45 days before*
11 *the completion of the trans-*
12 *action.*

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

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

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

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

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

8 “(vi) STIPULATIONS REGARDING
 9 TRANSACTIONS.—

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

15 “(aa) stipulate that the
 16 transaction is a covered trans-
 17 action; and

18 “(bb) if the party stipulates
 19 that the transaction is a covered
 20 transaction under item (aa), stip-
 21 ulate that the transaction is a for-
 22 eign government-controlled trans-
 23 action.

24 “(II) BASIS FOR STIPULATION.—
 25 A written notice submitted under

1 *clause (i) or a declaration submitted*
2 *under clause (v) that includes a stipu-*
3 *lation under subclause (I) shall include*
4 *a description of the basis for the stipu-*
5 *lation.”.*

6 **SEC. 8. AUTHORITY FOR UNILATERAL INITIATION OF RE-**
7 **VIEWS.**

8 *Section 721(b)(1) of the Defense Production Act of*
9 *1950 (50 U.S.C. 4565(b)(1)) is amended—*

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

12 *(2) in subparagraph (D)—*

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

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

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

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

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

5 *(D) in clause (iii)—*

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(C) *TIMING.*—

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

22 “(ii) *EXTENSION FOR EXTRAORDINARY*
23 *CIRCUMSTANCES.*—

24 “(I) *IN GENERAL.*—In extraor-
25 dinary circumstances (as defined by

1 the Committee in regulations), the
2 chairperson may, at the request of the
3 head of the lead agency, extend an in-
4 vestigation under subparagraph (A) for
5 one 30-day period.

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

14 “(III) NOTIFICATION TO PAR-
15 TIES.—If the Committee extends the
16 deadline under subclause (I) with re-
17 spect to a covered transaction, the
18 Committee shall notify the parties to
19 the transaction of the extension.”; and

20 (3) by adding at the end the following:

21 “(8) TOLLING OF DEADLINES DURING LAPSE IN
22 APPROPRIATIONS.—Any deadline or time limitation
23 under this subsection shall be tolled during a lapse in
24 appropriations.”.

1 **SEC. 10. MONITORING OF NON-NOTIFIED AND NON-DE-**
 2 **CLARED TRANSACTIONS.**

3 *Section 721(b)(1) of the Defense Production Act of*
 4 *1950 (50 U.S.C. 4565(b)(1)), as amended by sections 8 and*
 5 *9, is further amended by adding at the end the following:*

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

10 *“(i) a notice under clause (i) of sub-*
 11 *paragraph (C) or a declaration under*
 12 *clause (v) of that subparagraph is not sub-*
 13 *mitted to the Committee; and*

14 *“(ii) information is reasonably avail-*
 15 *able.”.*

16 **SEC. 11. SUBMISSION OF CERTIFICATIONS TO CONGRESS.**

17 *Section 721(b)(3)(C) of the Defense Production Act of*
 18 *1950 (50 U.S.C. 4565(b)(3)(C)) is amended—*

19 *(1) in clause (iii)—*

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

23 *(B) in subclause (IV), by inserting “and the*
 24 *Permanent Select Committee on Intelligence”*
 25 *after “Financial Services”;*

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

3 “(II) *DELEGATION OF CERTIFI-*
4 *CATIONS.—*

5 “(aa) *IN GENERAL.—Subject*
6 *to item (bb), the chairperson, in*
7 *consultation with the Committee,*
8 *may determine the level of official*
9 *to whom the signature require-*
10 *ment under subclause (I) for the*
11 *chairperson and the head of the*
12 *lead agency may be delegated. The*
13 *level of official to whom the signa-*
14 *ture requirement may be delegated*
15 *may differ based on any factor re-*
16 *lating to a transaction that the*
17 *chairperson, in consultation with*
18 *the Committee, deems appro-*
19 *priate, including the type or value*
20 *of the transaction.*

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

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

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

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

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

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

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

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

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

1 **SEC. 12. ANALYSIS BY DIRECTOR OF NATIONAL INTEL-**
2 **LIGENCE.**

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

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

7 *“(A) ANALYSIS REQUIRED.—*

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

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

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

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

3 “(iv) *INDEPENDENCE AND OBJEC-*
4 *TIVITY.—The Committee shall ensure that*
5 *its processes under this section preserve the*
6 *ability of the Director to conduct analysis*
7 *under clause (i) that is independent, objec-*
8 *tive, and consistent with all applicable di-*
9 *rectives, policies, and analytic tradecraft*
10 *standards of the intelligence community.”;*

11 (2) *by redesignating subparagraphs (B), (C),*
12 *and (D) as subparagraphs (C), (D), and (E), respec-*
13 *tively;*

14 (3) *by inserting after subparagraph (A) the fol-*
15 *lowing:*

16 “(B) *BASIC THREAT INFORMATION.—*

17 “(i) *IN GENERAL.—The Director of Na-*
18 *tional Intelligence may provide the Com-*
19 *mittee with basic information regarding*
20 *any threat to the national security of the*
21 *United States posed by a covered trans-*
22 *action described in clause (ii) instead of*
23 *conducting the analysis required by sub-*
24 *paragraph (A).*

1 “(i) COVERED TRANSACTION DE-
2 SCRIBED.—A covered transaction is de-
3 scribed in this clause if—

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

6 “(II) the Director of National In-
7 telligence has completed an analysis
8 pursuant to subparagraph (A) involv-
9 ing each foreign person that is a party
10 to the transaction during the 12
11 months preceding the review or inves-
12 tigation of the transaction under this
13 section; or

14 “(III) the transaction otherwise
15 meets criteria agreed upon by the Com-
16 mittee and the Director for purposes of
17 this subparagraph.”;

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

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

22 “(F) ASSESSMENT OF OPERATIONAL IM-
23 PACT.—The Director may provide to the Com-
24 mittee an assessment, separate from the analyses
25 under subparagraphs (A) and (B), of any oper-

1 *ational impact of a covered transaction on the*
 2 *intelligence community and a description of any*
 3 *actions that have been or will be taken to miti-*
 4 *gate any such impact.*

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

15 **SEC. 13. INFORMATION SHARING.**

16 *Section 721(c) of the Defense Production Act of 1950*
 17 *(50 U.S.C. 4565(c)) is amended—*

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

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

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

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

1 “(2) *EXCEPTIONS.*—*Paragraph (1) shall not pro-*
2 *hibit the disclosure of the following:*

3 “(A) *Information relevant to any adminis-*
4 *trative or judicial action or proceeding.*

5 “(B) *Information to Congress or any duly*
6 *authorized committee or subcommittee of Con-*
7 *gress.*

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

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

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

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

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

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

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

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

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

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

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

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

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

4 *(2) in paragraph (2), by striking “not later than*
5 *15 days” and all that follows and inserting the fol-*
6 *lowing: “with respect to a covered transaction not*
7 *later than 15 days after the earlier of—*

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

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

14 *(b) CIVIL PENALTIES.—Section 721(h)(3)(A) of the*
15 *Defense Production Act of 1950 (50 U.S.C. 4565(h)(3)(A))*
16 *is amended by striking “including any mitigation” and all*
17 *that follows through “subsection (l)” and inserting “includ-*
18 *ing any mitigation agreement entered into, conditions im-*
19 *posed, or order issued pursuant to this section”.*

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

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

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

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

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

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

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

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

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

2 (a) *HIRING AUTHORITY.*—Section 721(k) of the De-
3 *fense Production Act of 1950 (50 U.S.C. 4565(k)) is amend-*
4 *ed by striking paragraph (4) and inserting the following:*

5 “(4) *HIRING AUTHORITY.*—

6 “(A) *SENIOR OFFICIALS.*—

7 “(i) *IN GENERAL.*—Each member of
8 *the Committee shall designate an Assistant*
9 *Secretary, or an equivalent official, who is*
10 *appointed by the President, by and with the*
11 *advice and consent of the Senate, to carry*
12 *out such duties related to the Committee as*
13 *the member of the Committee may delegate.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 *“(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).*

13 *“(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).”;*

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

21 *(A) in subparagraph (A)—*

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

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

3 “(i) *IN GENERAL.—The Committee*”;

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

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

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

19 “(ii) *AGREEMENTS AND CONDITIONS*
20 *RELATING TO COMPLETED TRANSACTIONS.—*

21 *The Committee or lead agency, as the case*
22 *may be, may negotiate, enter into or im-*
23 *pose, and enforce any agreement or condi-*
24 *tion with any party to a completed covered*
25 *transaction in order to mitigate any in-*

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

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

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

18 *“(i) be effective;*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (A) in subparagraph (A)—

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

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

20 (B) in subparagraph (B)—

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

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

7 “(C) COMPLIANCE PLANS.—

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

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

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

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

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

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

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

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

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

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

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

16 “(iii) seek injunctive relief.

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

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

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

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

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

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

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

8 *(1) in paragraph (2)—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (i) *Businesses established.*

6 (ii) *Businesses acquired.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 “(1) IN GENERAL.—Each notice”;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 *The President shall—*

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

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

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

14 **SEC. 22. FUNDING.**

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

17 *“(o) FUNDING.—*

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

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

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

3 “(3) *FILING FEES.*—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 *(1) in subsection (b)—*

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

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

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

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

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

20 *(a) IDENTIFICATION OF TECHNOLOGIES.—*

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

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

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

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

9 *(2) PROCESS.—The interagency process estab-*
10 *lished under subsection (a) shall—*

11 *(A) be informed by multiple sources of in-*
12 *formation, including—*

13 *(i) publicly available information;*

14 *(ii) classified information, including*
15 *relevant information provided by the Direc-*
16 *tor of National Intelligence;*

17 *(iii) information relating to reviews*
18 *and investigations of transactions by the*
19 *Committee on Foreign Investment in the*
20 *United States under section 721 of the De-*
21 *fense Production Act of 1950 (50 U.S.C.*
22 *4565); and*

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

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

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

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

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

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

19 ***(b) COMMERCE CONTROLS.—***

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

1 (2) *LEVELS OF CONTROL.*—

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

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

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

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

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

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

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

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

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

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

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

12 *(4) EXCEPTIONS.—*

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

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

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

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

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

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

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

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

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

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

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

23 *(c) MULTILATERAL CONTROLS.—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (2) *DUTIES.—The Secretary—*

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

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

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

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

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

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

13 (3) *MEETINGS.—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) *CONFIDENTIALITY OF INFORMATION.*—

2 (1) *EXEMPTIONS FROM DISCLOSURE.*—

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

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

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

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

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

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

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

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

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

18 (B) *AVAILABILITY TO CONGRESS.—*

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

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

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

14 *(C) AVAILABILITY TO GAO.—*

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

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

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

3 (3) *INFORMATION SHARING.*—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (C) scaling of emerging technologies; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **SEC. 32. EFFECTIVE DATE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **SEC. 33. SEVERABILITY.**

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

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

system to more effectively guard against the risk to the national security of the United States posed by certain types of foreign investment, and for other purposes.”.

Calendar No. 426

115TH CONGRESS
2^D SESSION
S. 2098

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.

MAY 22, 2018

Reported with an amendment and an amendment to the
title