

FOREIGN INVESTMENT RISK REVIEW MODERNIZATION
ACT OF 2018

—————
JUNE 26, 2018.—Ordered to be printed
—————

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 5841]

The Committee on Financial Services, to whom was referred the bill (H.R. 5841) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Foreign Investment Risk Review Modernization Act of 2018”.

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

Sec. 1. Short title; table of contents.

TITLE I—FINDINGS AND SENSE OF CONGRESS

Sec. 101. Findings and sense of Congress.

TITLE II—DEFINITIONS

Sec. 201. Definitions.

**TITLE III—IMPROVEMENTS TO THE OPERATIONS OF THE COMMITTEE ON FOREIGN INVESTMENT
IN THE UNITED STATES**

Sec. 301. Inclusion of partnership and side agreements in notice.
Sec. 302. Declarations relating to certain covered transactions.
Sec. 303. Timing for reviews and investigations.
Sec. 304. Submission of certifications to Congress.
Sec. 305. Analysis by Director of National Intelligence.
Sec. 306. Information sharing.
Sec. 307. Action by the President.
Sec. 308. Factors to be considered.
Sec. 309. Mitigation and other actions by the Committee to address national security risks.
Sec. 310. Certification of notices and information.
Sec. 311. Additional regulations.

TITLE IV—MODIFICATION OF ANNUAL REPORT

- Sec. 401. Modification of annual report.
 Sec. 402. Report on transactions with censorship implications.

TITLE V—RESOURCES, SPECIAL HIRING AUTHORITY, AND OUTREACH

- Sec. 501. Centralization of certain Committee functions.
 Sec. 502. CFIUS resource needs.
 Sec. 503. Funding.
 Sec. 504. CFIUS outreach.

TITLE VI—MISCELLANEOUS FIRRM PROVISIONS

- Sec. 601. Conforming amendment.
 Sec. 602. Regulatory certainty for United States businesses.

TITLE VII—COMMON SENSE CREDIT UNION CAPITAL RELIEF

- Sec. 701. Delay in effective date.

TITLE VIII—EXPORT CONTROL REFORM

- Sec. 801. Short title.
 Sec. 802. Definitions.

Subtitle A—Authority and Administration of Controls

- Sec. 811. Short title.
 Sec. 812. Statement of policy.
 Sec. 813. Authority of the President.
 Sec. 814. Additional authorities.
 Sec. 815. Administration of export controls.
 Sec. 816. Control lists.
 Sec. 817. Licensing.
 Sec. 818. Compliance assistance.
 Sec. 819. Requirements to identify and control emerging, foundational, and other critical technologies in export control regulations.
 Sec. 820. Review relating to countries subject to comprehensive United States arms embargo.
 Sec. 821. Penalties.
 Sec. 822. Enforcement.
 Sec. 823. Administrative procedure.
 Sec. 824. Annual report to Congress.
 Sec. 825. Repeal.
 Sec. 826. Effect on other Acts.
 Sec. 827. Transition provisions.

Subtitle B—Anti-Boycott Act of 2018

- Sec. 831. Short title.
 Sec. 832. Statement of policy.
 Sec. 833. Foreign boycotts.
 Sec. 834. Enforcement.

Subtitle C—Sanctions Regarding Missile Proliferation and Chemical and Biological Weapons Proliferation

- Sec. 841. Missile proliferation control violations.
 Sec. 842. Chemical and biological weapons proliferation sanctions.

Subtitle D—Administrative Authorities

- Sec. 851. Under Secretary of Commerce for Industry and Security.

TITLE I—FINDINGS AND SENSE OF CONGRESS**SEC. 101. FINDINGS AND SENSE OF CONGRESS.**

(a) FINDINGS.—The Congress finds the following:

(1) According to a February 2016 report by the Department of Commerce's International Trade Administration, 12 million United States workers, equivalent to 8.5 percent of the labor force, have jobs resulting from foreign investment, including 3.5 million jobs in the manufacturing sector alone.

(2) In 2016, new foreign direct investment in U.S. manufacturing totaled \$129.4 billion.

(3) The Department of Commerce's Bureau of Economic Analysis concluded that in 2015, foreign-owned affiliates in the United States—

(A) Contributed \$894.5 billion in value added to the U.S. economy;
 (B) exported goods valued at \$352.8 billion, accounting for nearly a quarter of total U.S. goods exports;

(C) undertook \$56.7 billion in research and development; and

(D) the seven largest investing countries, all of which are United States allies — the United Kingdom, Japan, Germany, France, Canada, Switzerland, and the Netherlands — accounted for 72.1 percent of U.S. affiliate value added and over 80 percent of affiliates' R&D expenditures.

(4) According to the Government Accountability Office (GAO), from 2011 to 2016, the number of transactions reviewed by the Committee on Foreign Invest-

ment in the United States (CFIUS) grew by 55 percent, while agency staff assigned to the reviews increased by 11 percent.

(5) In light of staffing constraints at CFIUS, GAO has cautioned against expanding CFIUS's authorities precipitously. According to a February 2018 report (GAO-18-249), GAO noted: "Officials from Treasury and other member agencies are aware of pressures on their CFIUS staff given the current workload and have expressed concerns about possible workload increases." GAO concluded: "Without attaining an understanding of the staffing levels needed to address the current and future CFIUS workload, particularly if legislative changes to CFIUS's authorities further expand its workload, CFIUS may be limited in its ability to fulfill its objectives and address threats to the national security of the United States."

(6) On March 30, 1954, Dwight David Eisenhower – five-star general, Supreme Allied Commander, and 34th President of the United States – in his "Special Message to the Congress on Foreign Economic Policy", counseled: "Great mutual advantages to buyer and seller, to producer and consumer, to investor and to the community where investment is made, accrue from high levels of trade and investment." He continued: "The internal strength of the American economy has evolved from such a system of mutual advantage. In the press of other problems and in the haste to meet emergencies, this nation – and many other nations of the free world – have all too often lost sight of this central fact." President Eisenhower concluded: "If we fail in our trade policy, we may fail in all. Our domestic employment, our standard of living, our security, and the solidarity of the free world – all are involved."

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) foreign investment provides substantial benefits to the United States, including the promotion of economic growth, productivity, innovation, competitiveness, and job creation, thereby enhancing U.S. national security;

(2) maintaining the commitment of the United States to an open investment policy encourages other countries to act similarly and helps expand foreign markets for U.S. businesses;

(3) the Committee on Foreign Investment in the United States, as a complement to domestic and multilateral export control regimes, plays a critical role in protecting the national security of the United States;

(4) in order to maintain the Committee's effectiveness and guard against mission creep, CFIUS should remain narrowly focused on confronting risks related to national security;

(5) it is essential that the member agencies of the Committee are adequately resourced and able to hire appropriately qualified individuals in a timely manner so that CFIUS may promptly complete transaction reviews, identify and respond to evolving national security risks, and enforce mitigation agreements effectively;

(6) the President should carry out international outreach to promote the benefits of foreign investment for global economic growth, while also assisting United States partners to address national security risks; and

(7) it is the policy of the United States to enthusiastically welcome and support foreign investment, consistent with national security considerations.

TITLE II—DEFINITIONS

SEC. 201. DEFINITIONS.

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

(1) by striking paragraphs (2), (3), and (4) and inserting the following:

"(2) CONTROL.—The term 'control' means the power, direct or indirect, whether or not exercised, to determine, direct, or decide important matters affecting an entity, subject to regulations prescribed by the Committee.

"(3) COVERED TRANSACTION.—

"(A) IN GENERAL.—The term 'covered transaction' means any transaction described in subparagraph (B) or (C) that is proposed, pending, or completed on or after the date of the enactment of the Foreign Investment Risk Review Modernization Act of 2018.

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

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

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

“(I) is—

“(aa) located in the United States and is, or is in close proximity to, a United States military installation; or

“(bb) itself, or is located at and will function as part of, an air or sea port;

“(II) is not a single housing unit, as defined by the Bureau of the Census;

“(III) is not in an urbanized area, as set forth by the Bureau of the Census in its most recent census, except as otherwise prescribed by the Committee in regulations in consultation with the Secretary of Defense; and

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

“(iii) Any change in the rights that a foreign person has with respect to a United States business in which the foreign person has an investment, if that change is likely to result in foreign control of the United States business.

“(iv) Any transaction or other device entered into or employed for the purpose of evading this section, subject to regulations prescribed by the Committee.

“(C) SENSITIVE TRANSACTIONS INVOLVING COUNTRIES OF SPECIAL CONCERN.—

“(i) IN GENERAL.—A transaction described in this subparagraph is any investment in an unaffiliated United States business by a foreign person that—

“(I) is—

“(aa) a national or a government of, or a foreign entity organized under the laws of, a country of special concern; or

“(bb) a foreign entity—

“(AA) over which control is exercised or exercisable by a national or a government of, or by a foreign entity organized under the laws of, a country of special concern; or

“(BB) in which the government of a country of special concern has a substantial interest; and

“(II) as a result of the transaction, could obtain—

“(aa) sensitive personal data, as defined by regulations prescribed by the Committee, of United States citizens, if such data may be exploited in a manner that threatens national security; or

“(bb) influence over substantive decisionmaking of the United States business regarding the use, development, acquisition, or release of—

“(AA) sensitive personal data of United States citizens, as described in item (aa); or

“(BB) critical technologies.

“(ii) COUNTRY OF SPECIAL CONCERN.—For the purposes of this subparagraph, the term ‘country of special concern’ means—

“(I) any foreign country that is subject to export restrictions pursuant to section 744.21 of title 15, Code of Federal Regulations;

“(II) any country determined by the Secretary of State to be a state sponsor of terrorism; and

“(III) any country that—

“(aa) is subject to a United States arms embargo, as specified in list D:5 of Country Group D in Supplement No. 1 to part 740 of title 15, Code of Federal Regulations; and

“(bb) is specified in regulations prescribed by the Committee.

“(iii) INVESTMENT DEFINED.—For the purposes of this subparagraph, the term ‘investment’ means the acquisition of an equity interest, including contingent equity interest, as further defined in regulations prescribed by the Committee.

“(iv) UNAFFILIATED UNITED STATES BUSINESS DEFINED.—For the purposes of this subparagraph, with respect to an investment described under clause (i), and as further defined in regulations prescribed by the Committee, the term ‘unaffiliated United States business’ means a United States business that is not subject to the same ultimate ownership of the foreign person undertaking the investment.

“(v) WAIVER.—The President may waive any requirement of this subparagraph upon reporting to the Committees on Financial Services and Foreign Affairs of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Foreign Relations of the Senate that the waiver is important to the national interest of the United States, with a detailed explanation of the reasons therefor.

“(D) EXCEPTION FOR AIR CARRIERS.—Subparagraph (B)(iii) shall not apply to a change in the rights of a person with respect to an investment involving an air carrier, as defined in section 40102(a)(2) of title 49, United States Code, that holds a certificate issued under section 41102 of that title.

“(E) TRANSFERS OF CERTAIN ASSETS PURSUANT TO BANKRUPTCY PROCEEDINGS OR OTHER DEFAULTS.—The Committee shall prescribe regulations to clarify that the term ‘covered transaction’ includes any transaction described in subparagraph (B) or (C) that arises pursuant to a bankruptcy proceeding or other form of default on debt.

“(4) FOREIGN GOVERNMENT-CONTROLLED TRANSACTION.—The term ‘foreign government-controlled transaction’ means any covered transaction that could result in control of a United States business by—

“(A) a foreign government;

“(B) a person controlled by or acting on behalf of a foreign government;

or

“(C) a foreign company or entity of a country of special concern (as defined under paragraph (3)(C)(ii)) domiciled or having its principal place of business in a county of special concern that is a non-market economy, except to the extent the Committee promulgates regulations exempting any such company, entity, or country from this presumption.”;

(2) by amending paragraph (7) to read as follows:

“(7) CRITICAL TECHNOLOGIES.—The term ‘critical technologies’ means—

“(A) defense articles or defense services covered by the United States Munitions List (USML), which is set forth in the International Traffic in Arms Regulations (ITAR) (22 C.F.R. parts 120–130);

“(B) those items specified on the Commerce Control List (CCL) set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 C.F.R. parts 730–774) that are controlled pursuant to multilateral regimes (i.e. for reasons of national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology), as well as those that are controlled for reasons of regional stability or surreptitious listening;

“(C) specially designed and prepared nuclear equipment, parts and components, materials, software, and technology specified in the Assistance to Foreign Atomic Energy Activities regulations (10 C.F.R. part 810), and nuclear facilities, equipment, and material specified in the Export and Import of Nuclear Equipment and Material regulations (10 C.F.R. part 110);

“(D) select agents and toxins specified in the Select Agents and Toxins regulations (7 C.F.R. part 331, 9 C.F.R. part 121, and 42 C.F.R. part 73); and

“(E) emerging, foundational, or other critical technologies that are controlled pursuant to section 819 of the Foreign Investment Risk Review Modernization Act of 2018.”; and

(3) by adding at the end the following:

“(9) FOREIGN PERSON.—The term ‘foreign person’ means—

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

“(B) any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.

“(10) SUBSTANTIAL INTEREST.—The term ‘substantial interest’ has the meaning given to such term in regulations prescribed by the Committee, but does not include a voting interest of less than ten percent or ownership interests held or acquired solely for the purpose of passive investment.

“(11) UNITED STATES BUSINESS.—The term ‘United States business’ means any entity, irrespective of the nationality of the persons that control it, engaged in interstate commerce in the United States, but only to the extent of its activities in interstate commerce.”.

TITLE III—IMPROVEMENTS TO THE OPERATIONS OF THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES

SEC. 301. INCLUSION OF PARTNERSHIP AND SIDE AGREEMENTS IN NOTICE.

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

“(iv) INCLUSION OF PARTNERSHIP AND SIDE AGREEMENTS.—Subject to regulations prescribed by the Committee, the Committee may require a written notice submitted under clause (i) by a party to a covered transaction to include a copy of any partnership agreements, integration agreements, or other side agreements relating to the transaction.”.

SEC. 302. DECLARATIONS RELATING TO CERTAIN COVERED TRANSACTIONS.

(a) IN GENERAL.—Section 721(b)(1)(C) of the Defense Production Act of 1950 (50 U.S.C. 4565(b)(1)(C)), as amended by section 301, is further amended by adding at the end the following:

“(v) DECLARATIONS WITH RESPECT TO CERTAIN COVERED TRANSACTIONS.—

“(I) VOLUNTARY DECLARATIONS.—For the purpose of expediting the review of certain covered transactions that the Committee determines are likely to pose limited risk, the Committee may prescribe regulations to permit parties to the transaction to submit a declaration with basic information regarding the transaction, unless the parties submit a written notice under clause (i).

“(II) MANDATORY DECLARATIONS.—

“(aa) IN GENERAL.—The Committee shall prescribe regulations to require the parties to a covered transaction to submit a declaration described in subclause (I) with respect to the transaction if the transaction involves an investment that results in the release of critical technologies by an unaffiliated United States business (as defined under subsection (a)(3)(C)(iii)) to a foreign person in which a foreign government has, directly or indirectly, a substantial interest.

“(bb) SUBMISSION OF WRITTEN NOTICE AS AN ALTERNATIVE.—Parties to a covered transaction for which a declaration is required under this clause may instead elect to submit a written notice under clause (i).

“(cc) TIMING OF SUBMISSION.—With respect to the regulations described under subclause (I), the Committee may not require a declaration to be submitted more than 30 days in advance of the completion of the transaction.

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

“(IV) COMMITTEE RESPONSE TO DECLARATION.—

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

“(AA) request that the parties to the transaction file a written notice under clause (i), provided that the Committee includes an explanation of the reasons for the request;

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

“(CC) initiate a unilateral review of the transaction under subparagraph (D); or

“(DD) notify the parties in writing that the Committee has completed all action under this section with respect to the transaction.

“(bb) TIMING.—The Committee shall take action under item (aa) within 15 days of receiving a declaration under this clause.

“(cc) REFILE OF DECLARATION.—The Committee may not request or recommend that a declaration be withdrawn and refiled, except to permit parties to a transaction to correct material errors or omissions.

“(V) REGULATIONS.—In prescribing regulations establishing requirements for declarations submitted under this clause, the Committee shall ensure that such declarations are submitted as abbreviated notifications that do not generally exceed 5 pages in length.

“(VI) INVESTMENT DEFINED.—For the purposes of this clause, the term ‘investment’ means the acquisition of an equity interest, including contingent equity interest, as further defined in regulations prescribed by the Committee.”

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

“(vi) STIPULATIONS REGARDING TRANSACTIONS.—

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

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

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

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

SEC. 303. TIMING FOR REVIEWS AND INVESTIGATIONS.

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

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

“(C) TIMING.—

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

“(ii) EXTENSION FOR EXTRAORDINARY CIRCUMSTANCES.—

“(I) IN GENERAL.—In extraordinary circumstances (as defined by the Committee in regulations), the chairperson may, at the request of the head of the lead agency, extend an investigation under subparagraph (A) for not more than one 15-day period.

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

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

(2) by adding at the end the following:

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

SEC. 304. SUBMISSION OF CERTIFICATIONS TO CONGRESS.

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

(1) in clause (i), by amending subclause (II) to read as follows:

“(II) a certification that all relevant national security factors, including factors enumerated in subsection (f), have received full consideration.”; and

(2) by adding at the end the following:

“(v) AUTHORITY TO CONSOLIDATE DOCUMENTS.—Instead of transmitting a separate certified notice or certified report under subparagraph

(A) or (B) with respect to each covered transaction, the Committee may, on a monthly basis, transmit such notices and reports in a consolidated document to the Members of Congress specified in clause (iii).”.

SEC. 305. ANALYSIS BY DIRECTOR OF NATIONAL INTELLIGENCE.

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

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

“(A) ANALYSIS REQUIRED.—

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

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

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

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

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

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

“(B) BASIC THREAT INFORMATION.—

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

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

“(I) the transaction is described in subsection (a)(3)(B)(ii);

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

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

(4) by adding at the end the following:

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

“(G) SUBMISSION TO CONGRESS.—The Committee shall include the analysis required by subparagraph (A) with respect to a covered transaction in the report required under subsection (m)(1), subject to the requirements of subsection (m)(5).”.

SEC. 306. INFORMATION SHARING.

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

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

“(1) IN GENERAL.—Any information”; and

(2) by adding at the end the following:

“(2) EXCEPTION.—Paragraph (1) shall not prohibit the disclosure of information or documentary material that the party filing such information or material consented to be disclosed to third parties.”.

SEC. 307. ACTION BY THE PRESIDENT.

(a) IN GENERAL.—Section 721(d)(2) of the Defense Production Act of 1950 (50 U.S.C. 4565(d)(2)) is amended by striking “not later than 15 days” and all that fol-

lows and inserting the following: “with respect to a covered transaction not later than 15 days after the earlier of—

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

“(B) the date on which the Committee otherwise refers the transaction to the President under subsection (l)(4).”.

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

SEC. 308. FACTORS TO BE CONSIDERED.

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

(1) in paragraph (3), by striking the comma at the end and inserting the following: “, including the availability of human resources, products, technology, materials, and other supplies and services;”;

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

(3) by striking paragraph (5);

(4) by redesignating paragraphs (6), (7), (8), (9), (10), and (11) as paragraphs (5), (6), (7), (8), (9), and (16), respectively;

(5) in paragraph (9), as so redesignated, by striking “and” at the end;

(6) by inserting after paragraph (9), as so redesignated, the following:

“(10) the degree to which the covered transaction is likely to threaten the ability of the United States Government to acquire or maintain the equipment and systems that are necessary for defense, intelligence, or other national security functions;

“(11) the potential national security-related effects of the cumulative control of any one type of critical infrastructure, energy asset, material, or critical technology by a foreign person;

“(12) whether any foreign person that would acquire control of a United States business as a result of the covered transaction has a history of—

“(A) complying with United States laws and regulations and prior adherence, if applicable, to any agreement or condition, as described under (l)(1)(A); and

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

“(13) the extent to which the covered transaction is likely to release, either directly or indirectly, sensitive personal data of United States citizens to a foreign person that may exploit that information in a manner that threatens national security;

“(14) whether the covered transaction is likely to exacerbate cybersecurity vulnerabilities or is likely to result in a foreign government gaining a significant new capability to engage in malicious cyber-enabled activities against the United States, including such activities designed to affect the outcome of any election for Federal office;

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

(7) by adding at the end the following flush-left text:

“For purposes of this subsection, the phrase ‘the availability of human resources’ shall be construed to consider potential losses of such availability resulting from reductions in the employment of United States persons whose knowledge or skills are critical to national security, including the continued production in the United States of items that are likely to be acquired by the Department of Defense or other Federal departments or agencies for the advancement of the national security of the United States.”.

SEC. 309. MITIGATION AND OTHER ACTIONS BY THE COMMITTEE TO ADDRESS NATIONAL SECURITY RISKS.

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

(1) in paragraph (1)—

(A) in subparagraph (A)—

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

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

“(i) IN GENERAL.—The Committee”;

(iii) by adding at the end the following:

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

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

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

“(B) TREATMENT OF OUTDATED AGREEMENTS OR CONDITIONS.—The chairperson and the head of any applicable lead agency shall periodically review the appropriateness of an agreement or condition described under subparagraph (A) and terminate, phase out, or otherwise amend any agreement or condition if a threat no longer requires mitigation through the agreement or condition.”; and

(C) by adding at the end the following:

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

“(i) be effective;

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

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

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

(2) by adding at the end the following:

“(4) 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).

“(5) RISK-BASED ANALYSIS REQUIRED.—

“(A) IN GENERAL.—Any determination of the Committee to refer a covered transaction to the President under paragraph (4), to suspend a covered transaction under paragraph (6), or to negotiate, enter into, impose, or enforce any agreement or condition under paragraph (1)(A) with respect to a covered transaction, shall be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered transaction, which shall include—

“(i) an assessment of the threat, vulnerabilities, and consequences to national security resulting from the transaction, as these terms are defined or clarified in guidance and regulations issued by the Committee; and

“(ii) an identification of each relevant factor described in subsection (f) that the transaction may substantially implicate.

“(B) COMPLIANCE PLANS.—

“(i) IN GENERAL.—In the case of a covered transaction with respect to which an agreement or condition is entered into under paragraph (1)(A), the Committee or lead agency, as the case may be, shall formulate, adhere to, and keep updated a plan for monitoring compliance with the agreement or condition.

“(ii) ELEMENTS.—Each plan required by clause (i) with respect to an agreement or condition entered into under paragraph (1)(A) shall include an explanation of—

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

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

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

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

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

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

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

“(ii) require that the party or parties submit any covered transaction initiated after the date of the determination of noncompliance and before the date that is 5 years after the date of the determination to the Committee for review under subsection (b); or

“(iii) seek injunctive relief.

“(D) USE OF INDEPENDENT ENTITIES TO MONITOR COMPLIANCE.—If the parties to an agreement or condition entered into under paragraph (1)(A) enter into a contract with an independent entity from outside the United States Government for the purpose of monitoring compliance with the agreement or condition, the Committee shall take such action as is necessary to prevent any significant conflict of interest from arising with respect to the entity and the parties to the transaction.

“(E) SUCCESSORS AND ASSIGNS.—Any agreement or condition entered or imposed under paragraph (1)(A) shall be considered binding on all successors and assigns, unless and until the agreement or condition terminates on its own terms or is otherwise terminated by the Committee in the Committee’s sole discretion.

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

“(6) 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).”.

SEC. 310. CERTIFICATION OF NOTICES AND INFORMATION.

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

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

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

“(1) IN GENERAL.—Each notice”; and

(3) by adding at the end the following:

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

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

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

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

SEC. 311. ADDITIONAL REGULATIONS.

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

- (1) in subparagraph (B)(ii), by striking “and” at the end;
- (2) in subparagraph (C), by striking the period at the end and inserting “; and”; and
- (3) by adding at the end the following:
 - “(D) provide that in connection with any national security review or investigation of a covered transaction conducted by the Committee, the Committee should—
 - “(i) consider the factors described in paragraphs (2) and (3) of subsection (f); and
 - “(ii) as appropriate, require parties to provide the information necessary to consider such factors.”.

TITLE IV—MODIFICATION OF ANNUAL REPORT

SEC. 401. MODIFICATION OF ANNUAL REPORT.

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

- (1) in paragraph (2), by amending subparagraph (A) to read as follows:
 - “(A) A list of all notices filed and all reviews or investigations of covered transactions completed during the period, with—
 - “(i) a description of the outcome of each review or investigation, including whether an agreement was entered into or condition was imposed under subsection (1)(3)(A) with respect to the transaction being reviewed or investigated, and whether the President took any action under this section with respect to that transaction;
 - “(ii) the nature of the business activities or products of the United States business with which the transaction was entered into or intended to be entered into; and
 - “(iii) information about any withdrawal from the process.”;
- (2) in paragraph (3)—
 - (A) by striking “CRITICAL TECHNOLOGIES” and all that follows through “In order to assist” and inserting “CRITICAL TECHNOLOGIES.—In order to assist”;
 - (B) by striking subparagraph (B); and
 - (C) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and by moving such subparagraphs, as so redesignated, 2 ems to the left; and
- (3) by adding at the end the following:
 - “(4) ADDITIONAL CONTENTS OF REPORT.—Each annual report required under paragraph (1) shall contain the following additional information:
 - “(A) Statistics on compliance reviews conducted and actions taken by the Committee under subsection (1)(6), including subparagraph (D) of that subsection (1)(6), during that period and a description of any actions taken by the Committee to impose penalties or initiate a unilateral review pursuant to subsection (b)(1)(D)(iii)(I).
 - “(B) Cumulative and trend information on the number of declarations filed under subsection (b)(1)(C)(v), the actions taken by the Committee in response to declarations, the business sectors involved in the declarations which have been made, and the countries involved in such declarations.
 - “(C) The number of new hires made since the preceding report through the authorities described under subsection (q), along with summary statistics, position titles, and associated pay grades for such hires and a summary of such hires’ responsibilities in administering this section.
- (5) CLASSIFICATION; AVAILABILITY OF REPORT.—
 - “(A) CLASSIFICATION.—All appropriate portions of the annual report required by paragraph (1) may be classified.
 - “(B) PUBLIC AVAILABILITY OF UNCLASSIFIED VERSION.—An unclassified version of the report required by paragraph (1), as appropriate and consistent with safeguarding national security and privacy, shall be made

available to the public. Information regarding trade secrets or business confidential information may be included in the classified version and may not be made available to the public in the unclassified version.

“(C) EXCEPTIONS TO FREEDOM OF INFORMATION ACT.—The exceptions to subsection (a) of section 552 of title 5, United States Code, provided for under subsection (b) of that section shall apply with respect to the report required by paragraph (1).”

SEC. 402. REPORT ON TRANSACTIONS WITH CENSORSHIP IMPLICATIONS.

Not later than one year from the date of enactment of this Act, the Committee on Foreign Investment in the United States shall issue a report to the Congress, appropriate portions of which may be classified, on investments by foreign persons into the entertainment and information sectors of the United States, which shall include analysis of the extent to which such investments have resulted in or could result in direct or indirect censorship, including self-censorship, within the United States.

TITLE V—RESOURCES, SPECIAL HIRING AUTHORITY, AND OUTREACH

SEC. 501. CENTRALIZATION OF CERTAIN COMMITTEE FUNCTIONS.

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

“(o) CENTRALIZATION OF CERTAIN COMMITTEE FUNCTIONS.—

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

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

SEC. 502. CFIVS RESOURCE NEEDS.

(a) UNIFIED BUDGET REQUEST.—Section 721 of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended by section 501, is further amended by adding at the end the following:

“(p) UNIFIED BUDGET REQUEST; ANNUAL SPENDING PLAN.—

“(1) UNIFIED BUDGET REQUEST.—

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

“(B) FORM OF BUDGET REQUEST.—A unified request under subparagraph (A) shall be detailed and include the amounts and staffing levels requested for each department or agency represented on the Committee to carry out the functions of that department or agency under this section.

“(2) ANNUAL SPENDING PLAN.—Not later than 90 days following the date of enactment of this subsection, and annually thereafter, the chairperson of the Committee shall transmit to the Committees on Appropriations and Financial Services of the House of Representatives and the Committees on Appropriations and Banking, Housing, and Urban Affairs of the Senate a detailed spending plan to expeditiously meet the requirements of subsections (b), (l), and (m), including estimated expenditures and staffing levels required by operations of the Committee for not less than the following fiscal year at each of the Committee’s member agencies.

“(3) WAIVER.—The chairperson may waive the reporting requirement under paragraph (2) with respect to a fiscal year for which a unified budget request described under paragraph (1) has been submitted.”

(b) SPECIAL HIRING AUTHORITY.—Section 721 of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended by subsection (a), is further amended by adding at the end the following:

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

(c) TESTIMONY REQUIRED.—Section 721 of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended by subsection (d), is further amended by adding at the end the following:

“(r) TESTIMONY.—

“(1) IN GENERAL.—After submitting the unified budget request described under subsection (p)(1), or the spending plan described under subsection (p)(2), as the case may be, but not later than March 31 of each year, the chairperson, or the chairperson’s designee, shall appear before the Committee on Financial Services of the House of Representatives and present testimony on—

“(A) anticipated resources necessary for operations of the Committee in the following fiscal year at each of the Committee’s member agencies;

“(B) the adequacy of appropriations for the Committee in the current and the previous fiscal year to—

“(i) ensure that thorough reviews and investigations are completed as expeditiously as possible;

“(ii) monitor and enforce mitigation agreements; and

“(iii) identify covered transactions for which a notice under clause (i) of subsection (b)(1)(C) or a declaration under clause (v) of subsection (b)(1)(C) was not submitted to the Committee; and

“(C) management efforts to strengthen the ability of the Committee to meet the requirements of this section.

“(2) SUNSET.—This subsection shall have no force or effect on the date that is five years following the date of enactment of the Foreign Investment Risk Review Modernization Act of 2018.”.

SEC. 503. FUNDING.

Section 721 of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended by section 602, is further amended by adding at the end the following:

“(t) FUNDING.—

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

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

“(3) FILING FEES.—

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

“(B) DETERMINATION OF AMOUNT OF FEE.—

“(i) IN GENERAL.—The amount of the fee to be assessed under subparagraph (A) with respect to a covered transaction—

“(I) may not exceed an amount equal to the lesser of—

“(aa) 1 percent of the value of the transaction; or

“(bb) \$300,000, as such amount is adjusted annually for inflation pursuant to regulations prescribed by the Committee; and

“(II) shall be determined by the Committee after taking into consideration—

“(aa) the effect of the fee on small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632));

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

“(cc) the effect of the fee on foreign investment;

“(dd) the unified budget request or annual spending plan, as appropriate, described in section 502 of the Foreign Investment Risk Review Modernization Act of 2018; and

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

“(ii) UPDATES.—The Committee shall periodically reconsider and adjust the amount of the fee to be assessed under subparagraph (A) with respect to a covered transaction to ensure that the amount of the fee remains appropriate.

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

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

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

“(iii) remain available until expended; and

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

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

SEC. 504. CFIUS OUTREACH.

Not later than 180 days after the date of enactment of this Act, and every year thereafter for five years, the chairperson of the Committee on Foreign Investment in the United States (“CFIUS”), or the chairperson’s designee, shall brief the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on activities of CFIUS undertaken in order to—

(1) educate the business community, with a particular focus on the technology sector and other sectors of importance to national security, on the goals and operations of CFIUS; and

(2) disseminate to the governments of United States allies best practices of CFIUS that—

(A) strengthen national security reviews of relevant investment transactions;

(B) expedite such reviews when appropriate; and

(C) promote openness to foreign investment, consistent with national security considerations.

TITLE VI—MISCELLANEOUS FIRMA PROVISIONS

SEC. 601. CONFORMING AMENDMENT.

Section 721(d)(4)(A) of the Defense Production Act of 1950 (50 U.S.C. 4565(d)(4)(A)) is amended by striking “the foreign interest exercising control” and inserting “a foreign person that would acquire an interest in a United States business or its assets as a result of the covered transaction”.

SEC. 602. REGULATORY CERTAINTY FOR UNITED STATES BUSINESSES.

Section 721 of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended by section 502, is further amended by adding at the end the following:

“(s) REGULATORY CERTAINTY FOR UNITED STATES BUSINESSES.—With respect to mitigating a national security risk that results from a foreign person’s investment in, or joint venture with, a United States business, a member agency of the Committee may not prescribe or implement regulations to require divestment by, or of, the United States business, unless—

“(1) the regulations are prescribed under this section or pursuant to authorities of the President under the International Emergency Economic Powers Act; or

“(2) the President reports to Congress in writing that the regulations—

“(A) are, wherever applicable, consistent with regulations prescribed under this section, including any such regulations pertaining to—

“(i) foreign control or influence over a United States business;

“(ii) the identification of emerging, foundational, or other critical technologies; and

“(iii) confidentiality requirements with respect to information and documentary material regarding United States businesses; and

“(B) in the case of regulations prescribed or finalized following the effective date of this subsection, were prescribed in consultation with the chairperson of the Committee and with the head of any member agency determined by the President to be affected by the regulations.”.

TITLE VII—COMMON SENSE CREDIT UNION CAPITAL RELIEF

SEC. 701. DELAY IN EFFECTIVE DATE.

Notwithstanding any effective date set forth in the rule issued by the National Credit Union Administration titled “Risk-Based Capital” (published at 80 Fed. Reg. 66626 (October 29, 2015)), such final rule shall take effect on January 1, 2021.

TITLE VIII—EXPORT CONTROL REFORM

SEC. 801. SHORT TITLE.

This title may be cited as the “Export Control Reform Act of 2018”.

SEC. 802. DEFINITIONS.

In this title:

(1) **CONTROLLED.**—The term “controlled” means the export, reexport, or transfer of an item subject to the jurisdiction of the United States under subtitle A.

(2) **DUAL-USE.**—The term “dual-use”, with respect to an item, means the item has civilian applications and military, terrorism, weapons of mass destruction, or law-enforcement-related applications.

(3) **EXPORT.**—The term “export”, with respect to an item subject to controls under subtitle A, includes—

(A) the shipment or transmission of the item out of the United States, including the sending or taking of the item out of the United States, in any manner; and

(B) the release or transfer of technology or source code relating to the item to a foreign person in the United States.

(4) **EXPORT ADMINISTRATION REGULATIONS.**—The term “Export Administration Regulations” means—

(A) the Export Administration Regulations as promulgated, maintained, and amended under the authority of the International Emergency Economic Powers Act and codified, as of the date of the enactment of this Act, in subchapter C of chapter VII of title 15, Code of Federal Regulations; or

(B) regulations that are promulgated, maintained, and amended under the authority of subtitle A on or after the date of the enactment of this Act.

(5) **FOREIGN PERSON.**—The term “foreign person” means a person that is not a United States person.

(6) **ITEM.**—The term “item” means a commodity, software, or technology.

(7) **PERSON.**—The term “person” means—

(A) a natural person;

(B) a corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, or any government or agency thereof; and

(C) any successor to any entity described in subparagraph (B).

(8) **REEXPORT.**—The term “reexport”, with respect to an item subject to controls under subtitle A, includes—

(A) the shipment or transmission of the item from a foreign country to another foreign country, including the sending or taking of the item from the foreign country to the other foreign country, in any manner; and

(B) the release or transfer of technology or source code relating to the item to a foreign person outside the United States.

(9) **SECRETARY.**—Except as otherwise provided, the term “Secretary” means the Secretary of Commerce.

(10) **TECHNOLOGY.**—The term “technology” includes foundational information and information and know-how necessary for the development (at all stages prior to serial production), production, use, operation, installation, maintenance, repair, overhaul or refurbishing of an item.

(11) **TRANSFER.**—The term “transfer”, with respect to an item subject to controls under title I, means a change in the end-use or end user of the item within the same foreign country.

(12) **UNITED STATES.**—The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States.

(13) **UNITED STATES PERSON.**—The term “United States person” means—

- (A) for purposes of subtitles A and C—
- (i) any individual who is a citizen or national of the United States or who is an individual described in subparagraph (B) of section 274B(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(3));
 - (ii) a corporation or other legal entity which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia; and
 - (iii) any person in the United States; and
- (B) for purposes of subtitle B, any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations by the Secretary.
- (14) WEAPONS OF MASS DESTRUCTION.—The term “weapons of mass destruction” means nuclear, radiological, chemical, and biological weapons and delivery systems for such weapons.

Subtitle A—Authority and Administration of Controls

SEC. 811. SHORT TITLE.

This subtitle may be cited as the “Export Controls Act of 2018”.

SEC. 812. STATEMENT OF POLICY.

The following is the policy of the United States:

- (1) The national security and foreign policy of the United States require that the export, reexport, and transfer of items, and specific activities of United States persons, wherever located, be controlled for the following purposes:
 - (A) To control the release of items for use in—
 - (i) the proliferation of weapons of mass destruction or of conventional weapons;
 - (ii) the acquisition of destabilizing numbers or types of conventional weapons;
 - (iii) acts of terrorism;
 - (iv) military programs that could pose a threat to the security of the United States or its allies; or
 - (v) activities undertaken specifically to cause significant interference with or disruption of critical infrastructure.
 - (B) To preserve the qualitative military superiority of the United States.
 - (C) To strengthen the United States industrial base.
 - (D) To carry out the foreign policy of the United States, including the protection of human rights and the promotion of democracy.
 - (E) To carry out obligations and commitments under international agreements and arrangements, including multilateral export control regimes.
 - (F) To facilitate military interoperability between the United States and its North Atlantic Treaty Organization (NATO) and other close allies.
 - (G) To ensure national security controls are tailored to focus on those core technologies and other items that are capable of being used to pose a serious national security threat to the United States.
- (2) The national security of the United States requires that the United States maintain its leadership in the science, technology, engineering, and manufacturing sectors, including foundational technology that is essential to innovation. Such leadership requires that United States persons are competitive in global markets. The impact of the implementation of this subtitle on such leadership and competitiveness must be evaluated on an ongoing basis and applied in imposing controls under sections 813 and 814 to avoid negatively affecting such leadership.
- (3) The national security and foreign policy of the United States require that the United States participate in multilateral organizations and agreements regarding export controls on items that are consistent with the policy of the United States, and take all the necessary steps to secure the adoption and consistent enforcement, by the governments of such countries, of export controls on items that are consistent with such policy.

(4) Export controls should be fully coordinated with the multilateral export control regimes. Export controls that are multilateral are most effective, and should be tailored to focus on those core technologies and other items that are capable of being used to pose a serious national security threat to the United States and its allies.

(5) Export controls applied unilaterally to items widely available from foreign sources generally are less effective in preventing end-users from acquiring those items.

(6) The effective administration of export controls requires a clear understanding both inside and outside the United States Government of which technologies and other items are controlled and an efficient process should be created to update the controls, such as by removing and adding technologies and other items.

(7) The export control system must ensure that it is transparent, predictable, and timely, has the flexibility to be adapted to address new threats in the future, and allows seamless access to and sharing of export control information among all relevant United States national security and foreign policy agencies.

(8) Implementation and enforcement of United States export controls require robust capabilities in monitoring, intelligence, and investigation, appropriate penalties for violations, and the ability to swiftly interdict unapproved transfers.

(9) Export controls should be balanced with United States counterterrorism, information security, and cyber-security policies to ensure the ability to export, reexport, and transfer technology and other items in support of counterterrorism, critical infrastructure, and other homeland security priorities, while effectively preventing malicious cyber terrorists from obtaining items that threaten the United States and its interests, including the protection of and safety of United States citizens abroad.

(10) Export controls complement and are a critical element of the national security policies underlying the laws and regulations governing foreign direct investment in the United States, including controlling the transfer of critical technologies to certain foreign persons. Thus, the President, in close coordination with the Department of Commerce, the Department of Defense, the Department of State, the Department of Energy, and other agencies responsible for export controls, should have a regular and robust process to identify the emerging and other types of critical technologies of concern and regulate their release to foreign persons as warranted regardless of the nature of the underlying transaction. Such identification efforts should draw upon the resources and expertise of all relevant parts of the United States Government, industry, and academia. These efforts should be in addition to traditional efforts to modernize and update the lists of controlled items under the multilateral export control regimes.

(11) The authority under this subtitle may be exercised only in furtherance of all of the objectives set forth in paragraphs (1) through (10).

SEC. 813. AUTHORITY OF THE PRESIDENT.

(a) **AUTHORITY.**—In order to carry out the policy set forth in paragraphs (1) through (10) of section 812, the President shall control—

(1) the export, reexport, and transfer of items subject to the jurisdiction of the United States, whether by United States persons or by foreign persons; and

(2) the activities of United States persons, wherever located, relating to specific—

- (A) nuclear explosive devices;
- (B) missiles;
- (C) chemical or biological weapons;
- (D) whole plants for chemical weapons precursors;
- (E) foreign maritime nuclear projects; and
- (F) foreign military intelligence services.

(b) **REQUIREMENTS.**—In exercising authority under this subtitle, the President shall impose controls to achieve the following objectives:

(1) To regulate the export, reexport, and transfer of items described in subsection (a)(1) of United States persons or foreign persons.

(2) To regulate the activities described in subsection (a)(2) of United States persons, wherever located.

(3) To secure the cooperation of other governments and multilateral organizations to impose control systems that are consistent, to the extent possible, with the controls imposed under subsection (a).

(4) To maintain the leadership of the United States in science, engineering, technology research and development, manufacturing, and foundational technology that is essential to innovation.

(5) To protect United States technological advances by prohibiting unauthorized technology transfers to foreign persons in the United States or outside the United States, particularly with respect to countries that may pose a significant threat to the national security of the United States.

(6) To enhance the viability of commercial firms, academic institutions, and research establishments, and maintain the skilled workforce of such firms, institutions, and establishments, that are necessary to preserving the leadership of the United States described in paragraph (4).

(7) To strengthen the United States industrial base, both with respect to current and future defense requirements.

(8) To enforce the controls through means such as regulations, requirements for compliance, lists of controlled items, lists of foreign persons who threaten the national security or foreign policy of the United States, and guidance in a form that facilitates compliance by United States persons and foreign persons, in particular academic institutions, scientific and research establishments, and small- and medium-sized businesses.

(c) APPLICATION OF CONTROLS.—The President shall impose controls over the export, reexport, or transfer of items for purposes of the objectives described in subsections (b)(1) or (b)(2) without regard to the nature of the underlying transaction or any circumstances pertaining to the activity, including whether such export, reexport, or transfer occurs pursuant to a purchase order or other contract requirement, voluntary decision, inter-company arrangement, marketing effort, or during a joint venture, joint development agreement, or similar collaborative agreement.

SEC. 814. ADDITIONAL AUTHORITIES.

(a) IN GENERAL.—In carrying out this subtitle, the President shall—

(1) establish and maintain lists published by the Secretary of items that are controlled under this subtitle;

(2) establish and maintain lists published by the Secretary of foreign persons and end-uses that are determined to be a threat to the national security and foreign policy of the United States pursuant to the policy set forth in section 812(1)(A);

(3) prohibit unauthorized exports, reexports, and transfers of controlled items, including to foreign persons in the United States or outside the United States;

(4) restrict exports, reexports, and transfers of any controlled items to any foreign person or end-use listed under paragraph (2);

(5) require licenses or other authorizations, as appropriate, for exports, reexports, and transfers of controlled items, including imposing conditions or restrictions on United States persons and foreign persons with respect to such licenses or other authorizations;

(6) establish a process by which a license applicant may request an assessment to determine whether a foreign item is comparable in quality to an item controlled under this subtitle, and is available in sufficient quantities to render the United States export control of that item or the denial of a license ineffective, including a mechanism to address that disparity;

(7) require measures for compliance with the export controls established under this subtitle;

(8) require and obtain such information from United States persons and foreign persons as is necessary to carry out this subtitle;

(9) require, as appropriate, advance notice before an item is exported, reexported, or transferred, as an alternative to requiring a license;

(10) require, to the extent feasible, identification of items subject to controls under this subtitle in order to facilitate the enforcement of such controls;

(11) inspect, search, detain, seize, or impose temporary denial orders with respect to items, in any form, that are subject to controls under this subtitle, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported, reexported, or transferred in violation of this subtitle;

(12) monitor shipments, or other means of transfer;

(13) keep the public fully apprised of changes in policy, regulations, and procedures established under this subtitle;

(14) appoint technical advisory committees in accordance with the Federal Advisory Committee Act;

(15) create, as warranted, exceptions to licensing requirements in order to further the objectives of this subtitle;

(16) establish and maintain processes to inform persons, either individually by specific notice or through amendment to any regulation or order issued under this subtitle, that a license from the Bureau of Industry and Security of the Department of Commerce is required to export; and

(17) undertake any other action as is necessary to carry out this subtitle that is not otherwise prohibited by law.

(b) RELATIONSHIP TO IEEPA.—The authority under this subtitle may not be used to regulate or prohibit under this subtitle the export, reexport, or transfer of any item that may not be regulated or prohibited under section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), except to the extent the President has made a determination necessary to impose controls under subparagraph (A), (B), or (C) of paragraph (2) of such section.

(c) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—

(1) LICENSE REQUIREMENT.—

(A) IN GENERAL.—A license shall be required for the export, reexport, or transfer of items to a country if the Secretary of State has made the following determinations:

(i) The government of such country has repeatedly provided support for acts of international terrorism.

(ii) The export, reexport, or transfer of such items could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

(B) DETERMINATION UNDER OTHER PROVISIONS OF LAW.—A determination of the Secretary of State under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law that the government of a country described in subparagraph (A) has repeatedly provided support for acts of international terrorism shall be deemed to be a determination with respect to such government for purposes of clause (i) of subparagraph (A).

(2) NOTIFICATION TO CONGRESS.—The Secretary of State or the Secretary of Commerce shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any license required by paragraph (1).

(3) PUBLICATION IN FEDERAL REGISTER.—Each determination of the Secretary of State under paragraph (1)(A) shall be published in the Federal Register, except that the Secretary of State may exclude confidential information and trade secrets contained in such determination.

(4) RESCISSION OF DETERMINATION.—A determination of the Secretary of State under paragraph (1)(A) may not be rescinded unless the President submits to the Speaker of the House of Representatives, the chairman of the Committee on Foreign Affairs, and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate—

(A) before the proposed rescission would take effect, a report certifying that—

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 90 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(i) the government concerned has not provided any support for acts of international terrorism during the preceding 24-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(5) DISAPPROVAL OF RESCISSION.—No rescission under paragraph (4)(B) of a determination under paragraph (1)(A) with respect to the government of a country may be made if Congress, within 90 days after receipt of a report under paragraph (4)(B), enacts a joint resolution described in subsection (f)(2) of section 40 of the Arms Export Control Act with respect to a rescission under subsection (f)(1) of such section with respect to the government of such country.

(6) NOTIFICATION AND BRIEFING.—Not later than—

(A) ten days after initiating a review of the activities of the government of the country concerned within the 24-month period referred to in paragraph (4)(B)(i), the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate of such initiation; and

(B) 20 days after the notification described in paragraph (1), the Secretary of State shall brief the congressional committees described in paragraph (1) on the status of such review.

(7) CONTENTS OF NOTIFICATION OF LICENSE.—The Secretary of State shall include in the notification required by paragraph (2)—

(A) a detailed description of the items to be offered, including a brief description of the capabilities of any item for which a license to export, reexport, or transfer the items is sought;

(B) the reasons why the foreign country, person, or entity to which the export, reexport, or transfer is proposed to be made has requested the items under the export, reexport, or transfer, and a description of the manner in which such country, person, or entity intends to use such items;

(C) the reasons why the proposed export, reexport, or transfer is in the national interest of the United States;

(D) an analysis of the impact of the proposed export, reexport, or transfer on the military capabilities of the foreign country, person, or entity to which such transfer would be made;

(E) an analysis of the manner in which the proposed export, reexport, or transfer would affect the relative military strengths of countries in the region to which the items that are the subject of such export, reexport, or transfer would be delivered and whether other countries in the region have comparable kinds and amounts of items; and

(F) an analysis of the impact of the proposed export, reexport, or transfer on the relations of the United States with the countries in the region to which the items that are the subject of such export, reexport, or transfer would be delivered.

(d) ENHANCED CONTROLS.—

(1) IN GENERAL.—In furtherance of section 813(a), the President shall, except to the extent authorized by a statute or regulation administered by a Federal department or agency other than the Department of Commerce, require a United States person, wherever located, to apply for and receive a license from the Department of Commerce for—

(A) the export, reexport, or transfer of items described in paragraph (2), including items that are not subject to control under this subtitle; and

(B) other activities that may support the design, development, production, use, operation, installation, maintenance, repair, overhaul, or refurbishing of, or for the performance of services relating to, any such items.

(2) ITEMS DESCRIBED.—The items described in this paragraph include—

(A) nuclear explosive devices;

(B) missiles;

(C) chemical or biological weapons;

(D) whole plants for chemical weapons precursors; and

(E) foreign maritime nuclear projects that would pose a risk to the national security or foreign policy of the United States.

(e) ADDITIONAL PROHIBITIONS.—The Secretary may inform United States persons, either individually by specific notice or through amendment to any regulation or order issued under this subtitle, that a license from the Bureau of Industry and Security of the Department of Commerce is required to engage in any activity if the activity involves the types of movement, service, or support described in subsection (d). The absence of any such notification does not excuse the United States person from compliance with the license requirements of subsection (d), or any regulation or order issued under this subtitle.

(f) LICENSE REVIEW STANDARDS.—The Secretary shall deny an application to engage in any activity described in subsection (d) if the activity would make a material contribution to any of the items described in subsection (d)(2).

SEC. 815. ADMINISTRATION OF EXPORT CONTROLS.

(a) IN GENERAL.—The President shall delegate to the Secretary of Commerce, the Secretary of Defense, the Secretary of State, the Secretary of Energy, and, as appropriate, the Director of National Intelligence and the heads of other appropriate Federal departments and agencies, the authority to carry out the purposes set forth in subsection (b).

(b) PURPOSES.—

(1) IN GENERAL.—The purpose of the delegations of authority pursuant to subsection (a) are—

(A) to advise the President with respect to—

(i) identifying specific threats to the national security and foreign policy that the authority of this subtitle may be used to address; and

- (ii) exercising the authority under this subtitle to implement policies, regulations, procedures, and actions that are necessary to effectively counteract those threats;
- (B) to review and approve—
 - (i) criteria for including items on, and removing such an item from, a list of controlled items established under this subtitle;
 - (ii) an interagency procedure for compiling and amending any list described in clause (i);
 - (iii) criteria for including a person on a list of persons to whom exports, reexports, and transfers of items are prohibited or restricted under this subtitle;
 - (iv) standards for compliance by persons subject to controls under this subtitle; and
 - (v) policies and procedures for the end-use monitoring of exports, reexports, and transfers of items controlled under this subtitle;
- (C) to obtain independent evaluations, including from Inspectors General of the relevant departments or agencies, on a periodic basis on the effectiveness of the implementation of this subtitle in carrying out the policy set forth in section 812; and
- (D) to benefit from the inherent equities, experience, and capabilities of the Federal officials described in subsection (a), including—
 - (i) the views of the Department of Defense with respect to the national security implications of a particular control or decision;
 - (ii) the views of the Department of State with respect to the foreign policy implications of a particular control or decision;
 - (iii) the views of the Department of Energy with respect to the implications for nuclear proliferation of a particular control or decision; and
 - (iv) the views of the Department of Commerce with respect to the administration of an efficient, coherent, reliable, enforceable, and predictable export control system, and the resolution of competing views or policy objectives described in section 812.
- (2) **AUTHORITY TO SEEK INFORMATION.**—The Federal officials described in subsection (a) may, in carrying out the purposes set forth in paragraph (1), seek information and advice from experts who are not officers or employees of the Federal Government.
- (3) **TRANSMITTAL AND IMPLEMENTATION OF EVALUATIONS.**—The results of the independent evaluations conducted pursuant to paragraph (1)(C) shall be transmitted to the President and the Congress, in classified form if necessary. Subject to the delegation of authority by the President, the Federal officials described in subsection (a) shall determine, direct, and ensure that improvements recommended in the evaluations are implemented.
- (c) **SENSE OF CONGRESS.**—It is the sense of Congress that the administration of export controls under this subtitle should be consistent with the procedures relating to export license applications described in Executive Order 12981 (1995).

SEC. 816. CONTROL LISTS.

The President shall, pursuant to the delegation of authority in section 815, ensure that—

- (1) a process is established for regular interagency review of each list established under section 814(a)(1), that pursuant to such review the Secretary regularly updates such lists to ensure that new items (including emerging critical technologies) are appropriately controlled, and that the level of control of items on the lists are adjusted as conditions change;
- (2) information and expertise are obtained from officers and employees from relevant Federal departments, agencies, and offices and persons outside the Federal Government who have technical expertise, with respect to the characteristics of the items considered for each list established under section 814(a)(1) and the effect of controlling the items on addressing the policy set forth in section 812;
- (3) each list established under section 814(a)(1) appropriately identifies each entry that has been included by virtue of the participation of the United States in a multilateral regime, organization, or group the purpose of which is consistent with and supports the policy of the United States under this subtitle relating to the control of exports, reexports, and transfers of items; and
- (4) each list established under section 814(a)(1) is published by the Secretary in a form that facilitates compliance with it and related requirements, particularly by small- and medium-sized businesses, and academic institutions.

SEC. 817. LICENSING.

(a) **IN GENERAL.**—The President shall, pursuant to the delegation of authority in section 815, establish a procedure for the Department of Commerce to license or otherwise authorize the export, reexport, and transfer of items controlled under this subtitle in order to carry out the policy set forth in section 812 and the requirements set forth in section 813(b). The procedure shall ensure that—

(1) license applications, other requests for authorization, and related dispute resolution procedures are considered and decisions made with the participation of appropriate departments, agencies, and offices that have delegated functions under this subtitle; and

(2) licensing decisions are made in an expeditious manner, with transparency to applicants on the status of license and other authorization processing and the reason for denying any license or request for authorization.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that the President should make best efforts to ensure that an accurate, consistent, and timely evaluation and processing of licenses or other requests for authorization to export, reexport, or transfer items controlled under this subtitle is accomplished within 30 days from the date of such license request.

(c) **FEEES.**—No fee may be charged in connection with the submission, processing, or consideration of any application for a license or other authorization or other request made in connection with any regulation in effect under the authority of this subtitle.

SEC. 818. COMPLIANCE ASSISTANCE.

(a) **SYSTEM FOR SEEKING ASSISTANCE.**—The President may authorize the Secretary to establish a system to provide United States persons with assistance in complying with this subtitle, which may include a mechanism for providing information, in classified form as appropriate, who are potential customers, suppliers, or business partners with respect to items controlled under this subtitle, in order to further ensure the prevention of the export, reexport, or transfer of items that may pose a threat to the national security or foreign policy of the United States.

(b) **SECURITY CLEARANCES.**—In order to carry out subsection (a), the President may issue appropriate security clearances to persons described in that subsection who are responsible for complying with this subtitle.

(c) **ASSISTANCE FOR CERTAIN BUSINESSES.**—

(1) **IN GENERAL.**—Not later than 120 days after the date of the enactment of this Act, the President shall develop and submit to Congress a plan to assist small- and medium-sized United States in export licensing and other processes under this subtitle.

(2) **CONTENTS.**—The plan shall include, among other things, arrangements for the Department of Commerce to provide counseling to businesses described in paragraph (1) on filing applications and identifying items controlled under this subtitle, as well as proposals for seminars and conferences to educate such businesses on export controls, licensing procedures, and related obligations.

SEC. 819. REQUIREMENTS TO IDENTIFY AND CONTROL EMERGING, FOUNDATIONAL, AND OTHER CRITICAL TECHNOLOGIES IN EXPORT CONTROL REGULATIONS.

(a) **IN GENERAL.**—The President shall establish and, in coordination with the Secretary, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the heads of other departments as appropriate, lead a regular, ongoing inter-agency process to identify the following:

(1) Emerging, foundational, or other critical technologies that are essential to the national security of the United States and that are not—

(A) identified in any list of items controlled for export under United States law or regulations; or

(B) hereafter separately identified in any law or regulation under the authority of a department or agency responsible for administering United States export controls.

(2) Other technologies that are not identified in any list of items controlled for export under United States law or regulations that are essential to the national security of the United States.

(3) Subject to subsections (c) and (d), the President shall require the relevant export control authority to publish proposed regulations for public comment, including, as appropriate, interim final rules, that would control such emerging, foundational, or other critical technologies identified pursuant to this subsection and control the release of each such technology to destinations, end uses, or end users as determined by the President.

(b) **REQUIREMENTS.**—The interagency process required under subsection (a) shall—

(1) be informed by multiple sources of information, including industry, academia, other open source and classified information and transactions reviewed by the Committee on Foreign Investment in the United States;

(2) take into account the foreign development or availability of such emerging, foundational, and other critical technologies and the impact the controls established in subsection (c) may have on the development of the technology in the United States; and

(3) the Secretary, the Secretary of Defense, the Secretary of Energy, and the Secretary of State, and the heads of other departments as appropriate, shall consider relevant information provided by the Director of National Intelligence.

(c) COMMERCE CONTROLS.—

(1) IN GENERAL.—The Secretary is authorized to establish controls, as appropriate, on technologies identified through the interagency process required under subsection (a) and subject to the Export Administration Regulations, including by publishing additional regulations.

(2) LEVELS OF CONTROL.—

(A) IN GENERAL.—The Secretary, in coordination with the Secretary of Defense, the Secretary of State, and the heads of other departments as appropriate, is authorized to develop and apply levels of control, including the requirements for a license or other authorization, to export, reexport, or transfer such technologies.

(B) REQUIREMENTS.—In developing and applying the levels of control for such technologies, the Secretary—

(i) shall take into account—

(I) whether a country is subject to a United States arms embargo or is otherwise subject to United States sanctions;

(II) potential end users and end uses; and

(III) the threat to the national security and foreign policy of the United States;

(ii) shall, at a minimum, require a license to export, reexport, or transfer such technologies to a country that is subject to a comprehensive United States arms embargo; and

(iii) may provide for appropriate license exceptions for the export, reexport, or transfer of such technologies.

(C) LICENSE APPLICATIONS SUBMITTED PURSUANT TO SUBPARAGRAPH

(B)(ii).—For license applications submitted pursuant to subparagraph (B)(ii), the Secretary may, with respect to any joint venture, joint development agreement, or similar collaborative arrangement, require the applicant to identify, in addition to the foreign participant directly involved in the collaborative arrangement, any foreign person with significant ownership interest in the direct foreign participant.

(3) REVIEW OF LICENSE APPLICATIONS.—

(A) IN GENERAL.—The procedures set forth in Executive Order 12981 (1995) (as amended) or any successor Executive order, shall apply to the review of applications for licenses to export, reexport, or transfer technologies identified through the interagency process required under subsection (a) submitted to the Department of Commerce pursuant to paragraph (2).

(B) OTHER INFORMATION.—In addition to the procedures described in subparagraph (A), the review of applications for such licenses shall take into account information provided by the Director of National Intelligence regarding any threat to the national security of the United States posed by the proposed export, reexport, or transfer of such technologies.

(d) MULTILATERAL CONTROLS.—

(1) IN GENERAL.—The Secretary of State, in consultation with the Secretary and the Secretary of Defense and heads of other departments as appropriate, shall propose to the relevant multilateral export control regimes in the following year that technologies identified through the interagency process required under subsection (a) be added to the list of technologies controlled by such regimes.

(2) REVIEW OF CONTINUED UNILATERAL EXPORT CONTROLS.—The Secretary, with respect to those items on the Commerce Control List maintained under part 774 of title 15, Code of Federal Regulations, and in consultation with the Secretary of Defense and the Secretary of State, and the Secretary of State, with respect to those items on the United States Munitions List and in consultation with the Secretary of Defense and the heads of other departments as appropriate, shall determine whether national security concerns warrant continued unilateral export controls over technologies proposed for multilateral control under paragraph (1) if the relevant multilateral export control regime does not

agree to list such technologies on its control list within three years of a proposal by the United States.

(e) REPORT.—The Secretary, the Secretary of State, and the Secretary of Energy, as appropriate, shall submit to the Committee on Foreign Investment in the United States on a semiannual basis a report on updates of any key actions taken pursuant to this section.

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

(1) the authority of the President and the Secretary of State to designate those items that are considered to be defense articles or defense services for purposes of the Arms Export Control Act (22 U.S.C. 2751 et seq.) or any other relevant law, and to regulate such items; or

(2) the authority of the President under the Atomic Energy Act of 1954, the Nuclear Non-Proliferation Act of 1978, the Energy Reorganization Act of 1974, this title, or any other relevant law.

(g) SENSE OF CONGRESS.—It is the sense of the Congress that the President should request in the annual budget of the President submitted under section 1105(a) of title 31, United States Code, sufficient resources to enable the relevant departments and agencies to effectively implement this section.

SEC. 820. REVIEW RELATING TO COUNTRIES SUBJECT TO COMPREHENSIVE UNITED STATES ARMS EMBARGO.

Not later than 180 days after the date of the enactment of this Act, the Secretary, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the heads of other departments as appropriate, shall conduct a review of—

(1) section 744.21 of title 15, Code of Federal Regulations, including to assess whether the current and anticipated risks of direct or indirect diversion, such as from policies and practices that effectively obscure distinctions between civil and military end-users and end-uses, require that the scope of control under such section should be expanded to apply to exports, reexports, or transfers for military end uses and military end users in countries that are subject to a comprehensive United States arms embargo; and

(2) entries on the Commerce Control List maintained under part 774 of title 15, Code of Federal Regulations, that do not impose license requirements for exports, reexports, or transfers to countries subject to a comprehensive United States arms embargo.

SEC. 821. PENALTIES.

(a) UNLAWFUL ACTS.—

(1) IN GENERAL.—It shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of this subtitle or of any regulation, order, license, or other authorization issued under this subtitle, including any of the unlawful acts described in paragraph (2).

(2) SPECIFIC UNLAWFUL ACTS.—The unlawful acts described in this paragraph are the following:

(A) No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by this subtitle, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(B) No person may cause or aid, abet, counsel, command, induce, procure, permit, or approve the doing of any act prohibited, or the omission of any act required by this subtitle, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(C) No person may solicit or attempt a violation of this subtitle, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(D) No person may conspire or act in concert with one or more other persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of this subtitle, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(E) No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, or conduct negotiations to facilitate such activities for, any item exported or to be exported from the United States, or that is otherwise subject to the Export Administration Regulations, with knowledge that a violation of this subtitle, the Export Administration Regulations, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item unless valid authorization is obtained therefor.

(F) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to the Department of Commerce, or an official of any other United States agency, or indirectly through any other person—

(i) in the course of an investigation or other action subject to the Export Administration Regulations;

(ii) in connection with the preparation, submission, issuance, use, or maintenance of any export control document or any report filed or required to be filed pursuant to the Export Administration Regulations; or

(iii) for the purpose of or in connection with effecting any export, re-export, or transfer of an item subject to the Export Administration Regulations or a service or other activity of a United States person described in section 814.

(G) No person may engage in any transaction or take any other action with intent to evade the provisions of this subtitle, the Export Administration Regulations, or any order, license, or authorization issued thereunder.

(H) No person may fail or refuse to comply with any reporting or record-keeping requirements of the Export Administration Regulations or of any order, license, or authorization issued thereunder.

(I) Except as specifically authorized in the Export Administration Regulations or in writing by the Department of Commerce, no person may alter any license, authorization, export control document, or order issued under the Export Administration Regulations.

(J) No person may take any action that is prohibited by a denial order issued by the Department of Commerce to prevent imminent violations of this subtitle, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(3) ADDITIONAL REQUIREMENTS.—For purposes of subparagraph (G), any representation, statement, or certification made by any person shall be deemed to be continuing in effect. Each person who has made a representation, statement, or certification to the Department of Commerce relating to any order, license, or other authorization issued under this subtitle shall notify the Department of Commerce, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention had occurred or may occur in the future.

(b) CRIMINAL PENALTY.—A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids and abets in the commission of, an unlawful act described in subsection (a)—

(1) shall be fined not more than \$1,000,000; and

(2) in the case of the individual, shall be imprisoned for not more than 20 years, or both.

(c) CIVIL PENALTIES.—

(1) AUTHORITY.—The President may impose the following civil penalties on a person for each violation by that person of this subtitle or any regulation, order, or license issued under this subtitle, for each violation:

(A) A fine of not more than \$300,000 or an amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.

(B) Revocation of a license issued under this subtitle to the person.

(C) A prohibition on the person's ability to export, reexport, or transfer any items, whether or not subject to controls under this subtitle.

(2) PROCEDURES.—Any civil penalty under this subsection may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(3) STANDARDS FOR LEVELS OF CIVIL PENALTY.—The Secretary may by regulation provide standards for establishing levels of civil penalty under this subsection based upon factors such as the seriousness of the violation, the culpability of the violator, and such mitigating factors as the violator's record of cooperation with the Government in disclosing the violation.

(d) CRIMINAL FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—

(1) FORFEITURE.—Any person who is convicted under subsection (b) of a violation of a control imposed under section 813 (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) PROCEDURES.—The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18, United States Code.

(e) PRIOR CONVICTIONS.—

(1) LICENSE BAR.—

(A) IN GENERAL.—The Secretary may—

(i) deny the eligibility of any person convicted of a criminal violation described in subparagraph (B) to export, reexport, or transfer outside the United States any item, whether or not subject to controls under this subtitle, for a period of up to 10 years beginning on the date of the conviction; and

(ii) revoke any license or other authorization to export, reexport, or transfer items that was issued under this subtitle and in which such person has an interest at the time of the conviction.

(B) VIOLATIONS.—The violations referred to in subparagraph (A) are any criminal violations of, or criminal attempt or conspiracy to violate—

(i) this subtitle (or any regulation, license, or order issued under this subtitle);

(ii) any regulation, license, or order issued under the International Emergency Economic Powers Act;

(iii) section 371, 554, 793, 794, or 798 of title 18, United States Code;

(iv) section 1001 of title 18, United States Code;

(v) section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b));

or

(vi) section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(2) APPLICATION TO OTHER PARTIES.—The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or business, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in subsection (e)(2).

(f) OTHER AUTHORITIES.—Nothing in subsection (c), (d), or (e) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this subtitle, or any regulation, order, license or other authorization issued under this subtitle;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this subtitle, or any regulation, order, license, or other authorization issued under this subtitle; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

SEC. 822. ENFORCEMENT.

(a) AUTHORITIES.—In order to enforce this subtitle, the President shall delegate to the heads of other appropriate Federal departments and agencies the authority to—

(1) issue regulations, orders, and guidelines;

(2) require, inspect, and obtain books, records, and any other information from any person subject to the provisions of this subtitle;

(3) administer oaths or affirmations and by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both;

(4) conduct investigations (including undercover) in the United States and in other countries using all applicable laws of the United States, including intercepting any wire, oral, and electronic communications, conducting electronic surveillance, using pen registers and trap and trace devices, and carrying out acquisitions, to the extent authorized under chapters 119, 121, and 206 of title 18, United States Code;

(5) inspect, search, detain, seize, or issue temporary denial orders with respect to items, in any form, that are subject to controls under this subtitle, or conveyances on which it is believed that there are items that have been, are

being, or are about to be exported, reexported, or transferred in violation of this subtitle, or any regulations, order, license, or other authorization issued thereunder;

- (6) carry firearms;
- (7) conduct prelicense inspections and post-shipment verifications; and
- (8) execute warrants and make arrests.

(b) ENFORCEMENT OF SUBPOENAS.—In the case of contumacy by, or refusal to obey a subpoena issued to, any person under subsection (a)(3), a district court of the United States, after notice to such person and a hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, regardless of format, that are the subject of the subpoena. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) BEST PRACTICE GUIDELINES.—

(1) IN GENERAL.—The Secretary, in consultation with the heads of other appropriate Federal agencies, should publish and update “best practices” guidelines to assist persons in developing and implementing, on a voluntary basis, effective export control programs in compliance with the regulations issued under this subtitle.

(2) EXPORT COMPLIANCE PROGRAM.—The implementation by a person of an effective export compliance program and a high quality overall export compliance effort by a person should ordinarily be given weight as mitigating factors in a civil penalty action against the person under this subtitle.

(d) REFERENCE TO ENFORCEMENT.—For purposes of this section, a reference to the enforcement of, or a violation of, this subtitle includes a reference to the enforcement or a violation of any regulation, order, license or other authorization issued pursuant to this subtitle.

(e) IMMUNITY.—A person shall not be excused from complying with any requirements under this section because of the person’s privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

(f) CONFIDENTIALITY OF INFORMATION.—

(1) EXEMPTIONS FROM DISCLOSURE.—

(A) IN GENERAL.—Information obtained under this subtitle may be withheld from disclosure only to the extent permitted by statute, except that information described in subparagraph (B) shall be withheld from public disclosure and shall not be subject to disclosure under section 552(b)(3) of title 5, United States Code, unless the release of such information is determined by the Secretary to be in the national interest.

(B) INFORMATION DESCRIBED.—Information described in this subparagraph is information submitted or obtained in connection with an application for a license or other authorization to export, reexport, or transfer items, engage in other activities, a recordkeeping or reporting requirement, enforcement activity, or other operations under this subtitle, including—

- (i) the license application, license, or other authorization itself;
- (ii) classification or advisory opinion requests, and the response thereto;
- (iii) license determinations, and information pertaining thereto;
- (iv) information or evidence obtained in the course of any investigation; and
- (v) information obtained or furnished in connection with any international agreement, treaty, or other obligation.

(2) INFORMATION TO THE CONGRESS AND GAO.—

(A) IN GENERAL.—Nothing in this section shall be construed as authorizing the withholding of information from the Congress or from the Government Accountability Office.

(B) AVAILABILITY TO THE CONGRESS.—

(i) IN GENERAL.—Any information obtained at any time under any provision of the Export Administration Act of 1979 (as in effect on the day before the date of the enactment of this Act and as continued in effect pursuant to the International Emergency Economic Powers Act), under the Export Administration Regulations, or under this subtitle, including any report or license application required under any such provision, shall be made available to a committee or subcommittee of Congress of appropriate jurisdiction, upon the request of the chairman or ranking minority member of such committee or subcommittee.

(ii) PROHIBITION ON FURTHER DISCLOSURE.—No such committee or subcommittee, or member thereof, may disclose any information made available under clause (i), that is submitted on a confidential basis un-

less the full committee determines that the withholding of that information is contrary to the national interest.

(C) AVAILABILITY TO GAO.—

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

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

(3) INFORMATION SHARING.—

(A) IN GENERAL.—Any Federal official described in section 815(a) who obtains information that is relevant to the enforcement of this subtitle, including information pertaining to any investigation, shall furnish such information to each appropriate department, agency, or office with enforcement responsibilities under this section to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities.

(B) EXCEPTIONS.—The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code, and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1986 (26 U.S.C. 6103(b)), may be disclosed only as authorized by that section.

(C) EXCHANGE OF INFORMATION.—The President shall ensure that the heads of departments, agencies, and offices with enforcement authorities under this subtitle, consistent with protection of law enforcement and its sources and methods—

(i) exchange any licensing and enforcement information with one another that is necessary to facilitate enforcement efforts under this section; and

(ii) consult on a regular basis with one another and with the head of other departments, agencies, and offices that obtain information subject to this paragraph, in order to facilitate the exchange of such information.

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

(g) REPORTING REQUIREMENTS.—In the administration of this section, reporting requirements shall be designed to reduce the cost of reporting, recordkeeping, and documentation to the extent consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(h) CIVIL FORFEITURE.—

(1) IN GENERAL.—Any tangible items seized under subsection (a) by designated officers or employees shall be subject to forfeiture to the United States in accordance with applicable law, except that property seized shall be returned if the property owner is not found guilty of a civil or criminal violation under section 819.

(2) PROCEDURES.—Any seizure or forfeiture under this subsection shall be carried out in accordance with the procedures set forth in section 981 of title 18, United States Code.

SEC. 823. ADMINISTRATIVE PROCEDURE.

(a) IN GENERAL.—The functions exercised under this subtitle shall not be subject to sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) ADMINISTRATIVE LAW JUDGES.—The Secretary is authorized to appoint an administrative law judge, and may designate administrative law judges from other Federal agencies who are provided pursuant to a legally authorized interagency agreement with the Department of Commerce, and consistent with the provisions of section 3105 of title 5, United States Code.

(c) AMENDMENTS TO REGULATIONS.—The President shall notify in advance the Committee on Banking, Housing, and Urban Affairs of the Senate and the Com-

mittee on Foreign Affairs of the House of Representatives of any proposed amendments to the Export Administration Regulations with an explanation of the intent and rationale of such amendments.

SEC. 824. ANNUAL REPORT TO CONGRESS.

(a) **IN GENERAL.**—The President shall submit to Congress, by December 31 of each year, a report on the implementation of this subtitle during the preceding fiscal year. The report shall include a review of—

(1) the effect of controls imposed under this subtitle on exports, reexports, and transfers of items in addressing threats to the national security or foreign policy of the United States, including a description of licensing processing times;

(2) the impact of such controls on the scientific and technological leadership of the United States;

(3) the consistency with such controls of export controls imposed by other countries;

(4) efforts to provide exporters with compliance assistance, including specific actions to assist small- and medium-sized businesses;

(5) a summary of regulatory changes from the prior fiscal year;

(6) a summary of export enforcement actions, including of actions taken to implement end-use monitoring of dual-use, military, and other items subject to the Export Administration Regulations;

(7) a summary of approved license applications to proscribed persons;

(8) efforts undertaken within the previous year to comply with the requirements of section 819, including any critical technologies identified under such section and how or whether such critical technologies were controlled for export; and

(9) a summary of industrial base assessments conducted during the previous year by the Department of Commerce, including with respect to counterfeit electronics, foundational technologies, and other research and analysis of critical technologies and industrial capabilities of key defense-related sectors.

(b) **FORM.**—The report required under subsection (a) shall be submitted in unclassified form, but may contain a classified annex.

SEC. 825. REPEAL.

(a) **IN GENERAL.**—The Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) (as continued in effect pursuant to the International Emergency Economic Powers Act) is repealed.

(b) **IMPLEMENTATION.**—The President shall implement the amendment made by subsection (a) by exercising the authorities of the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

SEC. 826. EFFECT ON OTHER ACTS.

(a) **IN GENERAL.**—Except as otherwise provided in this subtitle, nothing contained in this subtitle shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports, reexports, or transfers of any item, or activities of United States persons subject to the Export Administration Regulations.

(b) **COORDINATION OF CONTROLS.**—

(1) **IN GENERAL.**—The authority granted to the President under this subtitle shall be exercised in such manner so as to achieve effective coordination with all export control and sanctions authorities exercised by Federal departments and agencies delegated with authority under this subtitle, particularly the Department of State, the Department of the Treasury, and the Department of Energy.

(2) **SENSE OF CONGRESS.**—It is the sense of Congress that in order to achieve effective coordination described in paragraph (1), such Federal departments and agencies—

(A) should continuously work to create enforceable regulations with respect to the export, reexport, and transfer by United States and foreign persons of commodities, software, technology, and services to various end uses and end users for foreign policy and national security reasons;

(B) should regularly work to reduce complexity in the system, including complexity caused merely by the existence of structural, definitional, and other non-policy based differences between and among different export control and sanctions systems; and

(C) should coordinate controls on items exported, reexported, or transferred in connection with a foreign military sale under chapter 2 of the Arms Export Control Act or a commercial sale under section 38 of the Arms Export Control Act to reduce as much unnecessary administrative burden

as possible that is a result of differences between the exercise of those two authorities.

(c) NONPROLIFERATION CONTROLS.—Nothing in this subtitle shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

SEC. 827. TRANSITION PROVISIONS.

(a) IN GENERAL.—All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (as in effect on the day before the date of the enactment of this Act and as continued in effect pursuant to the International Emergency Economic Powers Act), or the Export Administration Regulations, and are in effect as of the date of the enactment of this Act, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of this subtitle.

(b) ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—This subtitle shall not affect any administrative or judicial proceedings commenced, or any applications for licenses made, under the Export Administration Act of 1979 (as in effect on the day before the date of the enactment of this Act and as continued in effect pursuant to the International Emergency Economic Powers Act), or the Export Administration Regulations.

(c) CERTAIN DETERMINATIONS AND REFERENCES.—

(1) STATE SPONSORS OF TERRORISM.—Any determination that was made under section 6(j) of the Export Administration Act of 1979 (as in effect on the day before the date of the enactment of this Act and as continued in effect pursuant to the International Emergency Economic Powers Act) shall continue in effect as if the determination had been made under section 814(c) of this Act.

(2) REFERENCE.—Any reference in any other provision of law to a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (as in effect on the day before the date of the enactment of this Act and as continued in effect pursuant to the International Emergency Economic Powers Act), is a government that has repeatedly provided support for acts of international terrorism shall be deemed to refer to a country the government of which the Secretary of State has determined, for purposes of section 814(c), is a government that has repeatedly provided support for acts of international terrorism.

Subtitle B—Anti-Boycott Act of 2018

SEC. 831. SHORT TITLE.

This subtitle may be cited as the “Anti-Boycott Act of 2018”.

SEC. 832. STATEMENT OF POLICY.

Congress declares it is the policy of the United States—

(1) to oppose restrictive trade practices or boycotts fostered or imposed by any foreign country against other countries friendly to the United States or against any United States person;

(2) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against any United States person; and

(3) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

SEC. 833. FOREIGN BOYCOTTS.

(a) PROHIBITIONS AND EXCEPTIONS.—

(1) PROHIBITIONS.—For the purpose of implementing the policies set forth in section 832, the President shall issue regulations prohibiting any United States person, with respect to that person’s activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by any foreign country, against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted

country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) Furnishing information, or requesting the furnishing of information, about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this subparagraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) EXCEPTIONS.—Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) complying or agreeing to comply with requirements—

(i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country; or

(ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) SPECIAL RULES.—Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) APPLICATION.—This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) FOREIGN POLICY CONTROLS.—

(1) IN GENERAL.—In addition to the regulations issued pursuant to subsection (a), regulations issued under subtitle A to carry out the policies set forth in section 812(1)(D) shall implement the policies set forth in this section.

(2) REQUIREMENTS.—Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in subsection (a) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 832.

(c) PREEMPTION.—The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States.

SEC. 834. ENFORCEMENT.

(a) CRIMINAL PENALTY.—A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act section 833—

(1) shall, upon conviction, be fined not more than \$1,000,000; or

(2) if a natural person, may be imprisoned for not more than 20 years, or both.

(b) CIVIL PENALTIES.—The President may impose the following civil penalties on a person who violates section 833 or any regulation issued under this subtitle:

(1) A fine of not more than \$300,000 or an amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.

(2) Revocation of a license issued under title I to the person.

(3) A prohibition on the person's ability to export, reexport, or transfer any items controlled under subtitle A.

(c) PROCEDURES.—Any civil penalty or administrative sanction (including any suspension or revocation of authority to export) under this section may be imposed only after notice and opportunity for an agency hearing on the record in accordance with

sections 554 through 557 of title 5, United States Code, and shall be subject to judicial review in accordance with chapter 7 of such title.

(d) **STANDARDS FOR LEVELS OF CIVIL PENALTY.**—The President may by regulation provide standards for establishing levels of civil penalty under this section based upon factors such as the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

Subtitle C—Sanctions Regarding Missile Proliferation and Chemical and Biological Weapons Proliferation

SEC. 841. MISSILE PROLIFERATION CONTROL VIOLATIONS.

(a) VIOLATIONS BY UNITED STATES PERSONS.—

(1) SANCTIONS.—

(A) **SANCTIONABLE ACTIVITY.**—The President shall impose the applicable sanctions described in subparagraph (B) if the President determines that a United States person knowingly—

(i) exports, reexports, or transfers of any item on the MTCR Annex, in violation of the provisions of section 38 (22 U.S.C. 2778) or chapter 7 of the Arms Export Control Act, subtitle A, or any regulations or orders issued under any such provisions; or

(ii) conspires to or attempts to engage in such export, reexport, or transfer.

(B) **SANCTIONS.**—The sanctions that apply to a United States person under subparagraph (A) are the following:

(i) If the item on the MTCR Annex involved in the export, reexport, or transfer is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person, for a period of 2 years, licenses for the transfer of missile equipment or technology controlled under subtitle A.

(ii) If the item on the MTCR Annex involved in the export, reexport, or transfer is missile equipment or technology within category I of the MTCR Annex, then the President shall deny to such United States person, for a period of not less than 2 years, all licenses for items the transfer of which is controlled under subtitle A.

(2) **DISCRETIONARY SANCTIONS.**—In the case of any determination referred to in paragraph (1), the President may pursue any other appropriate penalties under section 820.

(3) **WAIVER.**—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(A) the product or service is essential to the national security of the United States; and

(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(b) TRANSFERS OF MISSILE EQUIPMENT OR TECHNOLOGY BY FOREIGN PERSONS.—

(1) SANCTIONS.—

(A) **SANCTIONABLE ACTIVITY.**—Subject to paragraphs (3) through (7), the President shall impose the applicable sanctions under subparagraph (B) on a foreign person if the President—

(i) determines that a foreign person knowingly—

(I) exports, reexports, or transfers any MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under subtitle A;

(II) conspires to or attempts to engage in such export, reexport, or transfer; or

(III) facilitates such export, reexport, or transfer by any other person; or

(ii) has made a determination with respect to the foreign person under section 73(a) of the Arms Export Control Act.

(B) **SANCTIONS.**—The sanctions that apply to a foreign person under subparagraph (A) are the following:

- (i) If the item involved in the export, reexport, or transfer is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of missile equipment or technology the transfer of which is controlled under subtitle A.
- (ii) If the item involved in the export, reexport, or transfer is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years, licenses for the transfer to such foreign person of items the transfer of which is controlled under subtitle A.
- (2) INAPPLICABILITY WITH RESPECT TO MTCR ADHERENTS.—Paragraph (1) does not apply with respect to—
 - (A) any export, reexport, or transfer that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or
 - (B) any export, reexport, or transfer of an item to an end user in a country that is an MTCR adherent.
- (3) EFFECT OF ENFORCEMENT ACTIONS BY MTCR ADHERENTS.—Sanctions set forth in paragraph (1) may not be imposed under this subsection on a person with respect to acts described in such paragraph or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts.
- (4) WAIVER AND REPORT TO CONGRESS.—
 - (A) WAIVER AUTHORITY.—The President may waive the application of paragraph (1) to a foreign person if the President determines that such waiver is essential to the national security of the United States.
 - (B) NOTIFICATION AND REPORT TO CONGRESS.—In the event that the President decides to apply the waiver described in subparagraph (A), the President shall so notify the appropriate congressional committees not less than 20 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.
- (5) ADDITIONAL WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the appropriate congressional committees that—
 - (A) the product or service is essential to the national security of the United States; and
 - (B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.
- (6) EXCEPTIONS.—The President shall not apply the sanction under this subsection prohibiting the importation of the products of a foreign person—
 - (A) in the case of procurement of defense articles or defense services—
 - (i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;
 - (ii) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles or defense services, that the defense articles or defense services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or
 - (iii) if the President determines that such articles or services are essential to the national security of the United States under defense co-production agreements or NATO Programs of Cooperation;
 - (B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or
 - (C) to—
 - (i) spare parts;
 - (ii) component parts, but not finished products, essential to United States products or production;
 - (iii) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available; or
 - (iv) information and technology essential to United States products or production.
- (c) DEFINITIONS.—In this section:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

- (A) the Committee on Foreign Affairs of the House of Representatives; and
- (B) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) **DEFENSE ARTICLES; DEFENSE SERVICES.**—The terms “defense articles” and “defense services” mean those items on the United States Munitions List as defined in section 47(7) of the Arms Export Control Act (22 U.S.C. 2794 note).

(3) **MISSILE.**—The term “missile” means a category I system as defined in the MTCR Annex.

(4) **MISSILE TECHNOLOGY CONTROL REGIME; MTCR.**—The term “Missile Technology Control Regime” or “MTCR” means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto.

(5) **MTCR ADHERENT.**—The term “MTCR adherent” means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR.

(6) **MTCR ANNEX.**—The term “MTCR Annex” means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto.

(7) **MISSILE EQUIPMENT OR TECHNOLOGY; MTCR EQUIPMENT OR TECHNOLOGY.**—The terms “missile equipment or technology” and “MTCR equipment or technology” mean those items listed in category I or category II of the MTCR Annex.

SEC. 842. CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS.

(a) **IMPOSITION OF SANCTIONS.**—

(1) **DETERMINATION BY THE PRESIDENT.**—Except as provided in subsection (b)(2), the President shall impose the sanction described in subsection (c) if the President determines that a foreign person has knowingly and materially contributed—

(A) through the export from the United States of any item that is subject to the jurisdiction of the United States under this subtitle; or

(B) through the export from any other country of any item that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this subtitle,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) **COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.**—Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after January 1, 1980—

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 914(c) to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) **PERSONS AGAINST WHICH SANCTIONS ARE TO BE IMPOSED.**—A sanction shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person; and

(C) any foreign person that is a parent, subsidiary, or affiliate of that foreign person if that parent, subsidiary, or affiliate knowingly assisted in the activities which were the basis of that determination.

(b) **CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.**—

(1) **CONSULTATIONS.**—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary

jurisdiction over that foreign person with respect to the imposition of a sanction pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of a sanction pursuant to this section for a period of up to 90 days. Following such consultations, the President shall impose the sanction unless the President determines and certifies to the appropriate congressional committees that the Government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of the sanction for an additional period of up to 90 days if the President determines and certifies to the Congress that the government is in the process of taking the actions described in the preceding sentence.

(3) REPORT TO CONGRESS.—The President shall report to the appropriate congressional committees, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) SANCTION.—

(1) DESCRIPTION OF SANCTION.—The sanction to be imposed pursuant to subsection (a)(1) is, except as provided that the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

(2) EXCEPTIONS.—The President shall not be required to apply or maintain a sanction under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or defense services, that the defense articles or defense services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

(C) to—

(i) spare parts;

(ii) component parts, but not finished products, essential to United States products or production; or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) TERMINATION OF SANCTIONS.—A sanction imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of one sanction and shall cease to apply thereafter only if the President determines and certifies to the appropriate congressional committees that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) WAIVER.—

(1) CRITERION FOR WAIVER.—The President may waive the application of any sanction imposed on any person pursuant to this section if the President determines and certifies to the appropriate congressional committees that such waiver is important to the national security interests of the United States.

(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the appropriate congressional committees not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) DEFENSE ARTICLES; DEFENSE SERVICES.—The terms “defense articles” and “defense services” mean those items on the United States Munitions List or are otherwise controlled under the Arms Export Control Act.

Subtitle D—Administrative Authorities

SEC. 851. UNDER SECRETARY OF COMMERCE FOR INDUSTRY AND SECURITY.

(a) APPOINTMENT.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Industry and Security who shall carry out all the functions of the Secretary under this title and such other provisions of law that relate to the implementation of the dual-use export system.

(2) ASSISTANT SECRETARIES OF COMMERCE.—The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out the functions described in paragraph (1).

(b) DELEGATION.—

(1) TO SECRETARY.—The President shall continue the delegation of functions to the Secretary to administer and enforce the export control system authorized by this title that were delegated to the Secretary as of the day before the date of the enactment of this Act.

(2) TO BUREAU OF INDUSTRY AND SECURITY.—The Secretary shall further delegate implementation of the authorities set forth in this title to the Bureau of Industry and Security within the Department of Commerce.

PURPOSE AND SUMMARY

On May 16, 2018, Rep. Pittenger introduced H.R. 5841, the “Foreign Investment Risk Review Modernization Act of 2018” (FIRRMA). This legislation would modernize the Committee on Foreign Investment in the United States (CFIUS), codify an interagency process to identify emerging technologies essential for United States national security, and establish a statutory basis for export controls involving certain commercial and military items.

Since its last statutory update under the Foreign Investment and National Security Act of 2007 (P.L. 110–49), CFIUS has encountered increased risks and operational challenges as foreign investment transactions have grown in number and complexity. H.R. 5841 seeks to address these new challenges.

In particular, FIRRMA would permit CFIUS to review sensitive non-controlling investments involving countries of special concern, including China, Russia, Venezuela, and state sponsors of terrorism. In addition, the bill includes certain real estate purchases or leases in close proximity to military installations, or at air and sea ports, under the definition of covered transactions. FIRRMA also establishes an ongoing interagency review of emerging and foundational technologies that are essential for national security so that their transfer to foreign persons is appropriately restricted.

In response to a Government Accountability Office report (GAO–18–249), this legislation would further require the Department of the Treasury to report on CFIUS resource needs at each member agency in order to better ensure that CFIUS is adequately funded to meet its national security objectives.

BACKGROUND AND NEED FOR LEGISLATION

Background

Originally formed under a 1975 executive order to monitor U.S. policy on foreign direct investments, the Committee on Foreign Investment in the United States (CFIUS) is an interagency committee chaired by Treasury that consists of the executive branch agencies that deal with national security or intelligence. In 1988, as part of the Omnibus Trade Act, Congress expanded the role of CFIUS by enacting the Exon-Florio amendment to the Defense Production Act. The Exon-Florio amendment authorized the President to suspend or prohibit foreign acquisitions of U.S. businesses if the foreign controlling interest might threaten national security. The President delegated this authority to CFIUS.

The Exon-Florio amendment established a four-step process for exercising this authority: (1) voluntary notice by the companies; (2) a 30-day review to identify national security concerns; (3) an optional 45-day investigation to determine whether national security concerns required more extensive mitigation efforts or a recommendation to the President for possible denial; and (4) potentially, a Presidential decision to suspend or prohibit an acquisition that raised national security concerns.

Most CFIUS reviews are routine. Either the panel finds no objection to the purchase, or the companies involved agree to mitigation procedures ranging from changes in the sales agreement to divestiture of a division or operating unit. Alternatively, a transaction can be withdrawn when it is clear the President would block it.

In 2006, however, controversy arose over a Dubai company's acquisition of a number of U.S. port-operating authorities, which prompted the Financial Services Committee to undertake a major reform of CFIUS. These reforms became part of the Foreign Investment and National Security Act of 2007 (FISIA). That act generally left the CFIUS review process intact, but clarified and specified some timelines for the scrutiny of acquisitions. The legislation also required that senior Senate-confirmed officials from the appropriate member agencies of CFIUS certify to Congress that they did not object to a transaction that CFIUS "approved." The legislation also gave Congress greater oversight over CFIUS and expanded the definition of "national security" to include issues relating to homeland security.

Perspectives on the current state of CFIUS

As the size, complexity, and volume of cross-border transactions being undertaken in the last few years have increased, a variety of factors have contributed to concerns that the vital strategic lead the United States seeks to maintain over competitor countries such as China may be eroding. China is flexing its military muscle, creating security concerns throughout East Asia. Its increasingly hardline leadership also seeks to graduate from being a value-adding low-cost assembly platform to an innovator and technological powerhouse. The unambiguous "civil-military integration" China's leaders have articulated adds to concerns that even relatively modest technology transfers to China may, in aggregate, help narrow or erase the U.S. lead in microchips, biotechnology, pharmaceuticals, artificial intelligence, quantum computing, and other

technologies that may form the building blocks for both military and economic leadership throughout the 21st Century.

As a result, both Presidents Obama and Trump took action to deny proposed U.S. investments by Chinese companies, including the December 2016 blocking of Fujian Grand Chip Investment Fund's acquisition of Aixtron; the breakup in January 2018 of a proposal that involved a Chinese purchase of MoneyGram; as well as the March 2018 blocking of Broadcom's purchase of Qualcomm, which was linked to concerns over Chinese advances in 5G technologies. These actions by CFIUS demonstrated its increased scrutiny of Chinese investments, as well as its broad interpretation of authorities under current law.

At the same time, witnesses at the Financial Services Committee's hearings have testified that the United States needs continued influxes of foreign direct investment (FDI) to fuel the research and development, capital equipment, and expansion needed to keep the economy healthy, which itself is an element of national security. This calls for thoughtfully and appropriately updating CFIUS's jurisdiction rather than *carte blanche* delegation of additional powers.

The impact on the U.S. economy of continued strong FDI is immense. As Nancy McLernon, president and CEO of the Organization for International Investment, testified at a December 2017 Committee hearing, she said: "[B]etween 2010 and 2014, two thirds of all new manufacturing jobs that were created can be attributed to FDI. Across the country, U.S. workers at FDI companies earn 24 percent higher compensation than the economy-wide average. In addition, these companies engage in high levels of research and development (R&D), accounting for 16 percent of all R&D performed by U.S. companies. They also make extensive capital investments in new facilities and equipment totaling nearly \$100 billion dollars annually and produce 23 percent of U.S. exports—that's nearly a billion dollars of exports every single day. Further, international companies fuel local growth by purchasing hundreds of billions of dollars in goods and services from local U.S. suppliers—creating huge opportunities for America's small businesses."

As former Deputy Treasury Secretary Robert M. Kimmitt said at the same hearing, "Any analysis of foreign direct investment (FDI) should begin by recognizing its important contribution to the US economy. . . . [Former] Treasury Secretary Baker described foreign investment as America's economic 'ace in the hole,' because such investment represented a foreign company's strong vote of confidence in the U.S. market and American workers. . . . If we want to continue to grow well-paying FDI jobs in the United States, we must send a clear message that we are open to investment."

Concerns were raised in Committee hearings that excessive and indiscriminate tightening of CFIUS filters may force some of this needed investment overseas, not because it presents a threat to national security, but because stiffer scrutiny, especially without added resources, would drag out an already long CFIUS process. Additionally, some witnesses argued that language in the original FIRRMA proposal, introduced as H.R. 4311 on November 8, 2017, might make it difficult for multinationals to export research from a U.S. laboratory it owns to a foreign subsidiary of the same com-

pany, or may make it difficult for U.S. subsidiaries of foreign companies to compete for the company's investment dollars.

Rod Hunter, a former special assistant to the President and senior director at the National Security Council, testified that, while CFIUS needs to be updated, the country's export control process should be the principal tool for stopping the exfiltration of critical technology. CFIUS would be an "ineffective substitute," he said, and could create something of a parallel export control system. Mr. Hunter further noted, "Imposing such a regime on U.S. technology businesses would be burdensome and could undermine U.S. innovation. Uncertainty around CFIUS determinations could encourage investment in research and development to move offshore, beyond the scope of the bureaucratic review process. This in turn could undermine the U.S. innovation and technological development so essential for our defense industrial base and economy more broadly."

CFIUS enhancements under H.R. 5841

FIRRMA would extend CFIUS jurisdiction to certain sensitive investments involving "countries of special concern," which include countries subject to certain export restrictions as well as those classified by the Secretary of State as state sponsors of terrorism. At the time of reporting H.R. 5841 to the House for its consideration, the countries of special concern designation applied to China, Russia, Venezuela, and Iran, among others. Since countries of special concern are defined in H.R. 5841 by reference to existing country lists that are updated by the federal government over time, such countries would also change for the purposes of CFIUS, reflecting future threats as they emerge.

H.R. 5841 adopts a targeted approach in order to devote CFIUS's limited resources to those countries that pose the greatest risk with respect to foreign investment. The legislation does not apply new jurisdiction to all countries with the possibility of later exemptions (commonly referred to as a "country white list"). Such an approach would dilute the attention CFIUS could devote to the most pressing risks, create unnecessary diplomatic tensions with United States allies, and, as proposed in other legislation, may also permit Chinese and Russian actors, among others, to escape appropriate CFIUS scrutiny by routing investments through white-listed countries. As a result, a white list would likely undermine rather than enhance national security, and is therefore not part of H.R. 5841 as reported.

H.R. 5841 further tailors CFIUS's jurisdiction in order to address the transfer of nonpublic technical information and decision-making influence to a subset of non-controlling investors involved with countries of special concern. Unlike other proposals, H.R. 5841 targets these transfers specifically; it does not permit regulators to create new categories of United States businesses as candidates for blanket scrutiny. For instance, FIRRMA refers to decision-making regarding the use, development, acquisition, or release of critical technologies instead of encompassing all decision-making over a so-called "critical technology company." FIRRMA also excludes the term "critical infrastructure company," which has been proposed elsewhere and could sweep up thousands of United States businesses with little or no relation to national security, or even to critical infrastructure.

While H.R. 5841 requires certain mandatory declarations for transactions resulting in the release of critical technologies to foreign persons in which a foreign government has a substantial interest, the bill does not permit CFIUS to mandate additional declarations based on industries and economic sectors. Such discretion could facilitate an ill-advised industrial policy with no demonstrable link to national security. Another proposal would have based mandatory declarations on the foreign share of ownership in United States businesses, without a clear link to national security risks. Such a policy was excluded from H.R. 5841.

FIRRMA appropriately expands CFIUS's jurisdiction to include real estate purchases or leases near United States military installations. This provision is designed to confront the problem of "encroachment," where foreign persons could use real estate near testing ranges and other facilities for the purpose of collecting intelligence. It is not intended to capture real estate transactions where there is no risk of foreign surveillance. The provision also clarifies that investments in port property that is unconnected to the takeover of a United States business may be reviewed by CFIUS.

Finally, H.R. 5841 does not include proposals to expand CFIUS jurisdiction to the outbound "contribution of intellectual property and associated services" to foreign persons via joint ventures, a policy reflected in earlier drafts of FIRRMA. Such transfers are already overseen by the U.S. export controls regime, which has substantial experience and expertise in assessing those transfers where CFIUS has none.

As multiple stakeholders, including former CFIUS officials from Republican and Democratic administrations, expressed during Committee consideration of CFIUS reforms, adding to CFIUS's jurisdiction in this way would have overwhelmed CFIUS and threatened its ability to effectively execute its existing mandate, thereby putting national security at risk. Such a policy would have also undermined export controls' ongoing mission to identify and restrict the release of dual-use technologies; and it would have incentivized innovators to pursue research and development outside the United States, thus harming national security profoundly. H.R. 5841 therefore does not provide for expanding CFIUS's remit in this way. Instead, FIRRMA establishes an ongoing interagency process to more effectively identify and control emerging technologies that are essential to the national security of the United States.

HEARINGS

The Subcommittee on Monetary Policy and Trade held the following hearings examining matters related to H.R. 5841:

- "Examining the Operations of the Committee on Foreign Investment in the United States (CFIUS)," December 14, 2017;
- "Evaluating CFIUS: Challenges Posed by a Changing Global Economy," January 9, 2018;
- "Evaluating CFIUS: Administration Perspectives," March 15, 2018;
- "H.R. 4311, the Foreign Investment Risk Review Modernization Act of 2017," April 12, 2018.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 22, 2018 and ordered H.R. 5841 to be reported favorably to the House as amended by a recorded vote of 53 yeas to 0 nays (recorded vote no. FC-176), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. An amendment offered by Mr. Green was not agreed to by a recorded vote of 20 yeas to 32 nays (Record vote no. FC-175). A motion by Chairman Hensarling to report the bill favorably to the House as amended was agreed to by a recorded vote of 53 yeas to 0 nays (Record vote no. FC-176), a quorum being present.

Record vote no. FC-175

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry		X		Mrs. Carolyn B. Maloney (NY) ..	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce				Mr. Capuano			
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers				Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore			
Mr. Ross		X		Mr. Ellison			
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney			
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty			
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen			
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-176

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY) ..	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce				Mr. Capuano			
Mr. Posey	X			Mr. Clay	X		
Mr. Luetkemeyer	X			Mr. Lynch	X		
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers				Mr. Cleaver	X		
Mr. Hultgren	X			Ms. Moore			
Mr. Ross	X			Mr. Ellison	X		
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			Mr. Delaney			
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty			
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen			
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that funding is authorized to meet reasonable expenses of the Committee on Foreign Investment in the United States, with the goal of 1) thoroughly undertaking CFIUS action on declarations, reviews, and investigations as expeditiously as possible; 2) promptly submitting required reports to Congress; and 3) staffing CFIUS in order to effectively scrutinize covered transactions, as defined in H.R. 5841, particularly those involving countries of special concern.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974. In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee opines that H.R. 5841 will not establish any new budget or entitlement authority or create any tax expenditures.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

The cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974 was not submitted timely to the Committee.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

H.R. 5841 mandates declarations of no more than 5 pages in length for certain covered transactions involving the release of critical technologies to a foreign investor in which a foreign government has a substantial interest. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rule makings: The Committee requires CFIUS to prescribe regulations regarding mandatory declarations regarding certain covered transactions involving the release of critical technologies to a foreign person in which a foreign government has a substantial interest.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

TITLE I: FINDINGS AND SENSE OF CONGRESS

Sec. 101: Findings and Sense of Congress

Congressional findings highlight how foreign investment benefits the U.S. economy, helps create millions of American jobs, strengthens economic cooperation with U.S. allies, and supports research and development (R&D).

The findings cite a Government Accountability Office analysis (GAO–18–249) which shows that staffing for the Committee on Foreign Investment in the United States (CFIUS) has not kept pace with CFIUS’s increased workload, leading GAO to caution that overly burdensome legislative changes may limit CFIUS’s ability to address national security threats.

The Sense of Congress expresses continued strong support for foreign investment, calls for CFIUS to complement export controls and remain narrowly focused on national security, and notes the importance of adequate resources for CFIUS.

TITLE II: DEFINITIONS

Sec. 201: Definitions

This section codifies terms as they already operate under CFIUS’s existing regulations, including “control,” “foreign government-controlled transaction,” and “United States business.”

Section 201 modifies the definition of “covered transactions” to explicitly include:

- the purchase or lease by, or concession to, a foreign person of private or public real estate that 1) is in close proximity to a U.S. military installation, or 2) is an air or sea port, or could be used to function as a port, provided that the real estate is not a “single housing unit” or in an “urbanized area,” as classified by the Bureau of the Census;
- any change in a foreign investor’s rights that is likely to result in foreign control of a U.S. business;
- any transaction or other device employed for the purpose of evading CFIUS.

Sensitive Transactions Involving Countries of Special Concern: This section permits CFIUS to review a non-controlling investment if the foreign investor is:

- A national or a government of a “country of special concern;”
- A foreign entity organized under the laws of a country of special concern;
- A foreign entity controlled by either of the above; or
- A foreign entity in which a government of a country of special concern has a substantial interest; and

The investment would allow that foreign person to obtain:

- Sensitive personal data of U.S. citizens that could be exploited in a manner that threatens national security; or
- Influence over the use, development, acquisition, or release of 1) such personal data; or 2) critical technologies.

A country of special concern includes:

- Any foreign country subject to certain export restrictions on military end-use items (China, Russia, and Venezuela);
- Any state sponsor of terrorism (Iran, North Korea, Syria, and Sudan); and
- And country that is subject to a U.S. arms embargo and named as a country of special concern in CFIUS regulations.

Critical Technologies: Under this section, the definition of critical technologies codifies existing CFIUS regulations, which define critical technologies as controlled technologies on the U.S. Munitions List and the Commerce Control List, as well as controlled nuclear equipment and toxins. FIRRMA 2018 also specifies that “emerging technologies” qualify as critical technologies if they have been controlled and made public following the interagency process described in Section 819.

TITLE III: IMPROVEMENTS TO THE OPERATIONS OF THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES

Sec. 301: Inclusion of partnership and side agreements in notice

This section allows CFIUS to require partnership and side agreements to be submitted with a written notice.

Sec. 302: Declarations relating to certain covered transactions

Under this section, CFIUS shall require short declarations of five pages or less—commonly referred to as “light filings”—for covered transactions that result in the release of critical technologies by a U.S. business to a foreign person in which a foreign government has a substantial interest. The term “substantial interest” would be defined by regulations, but does not include a voting interest of less

than 10 percent, or ownership interests held solely for passive investment purposes.

CFIUS may also allow voluntary light filings for the purpose of expediting the review of covered transaction deemed to be of limited risk.

Parties to a covered transaction may submit a written notice, as already provided for under current law, in lieu of a light filing.

CFIUS may require a light filing to be submitted prior to the completion of a transaction, but not more than 30 days in advance.

CFIUS may impose penalties with respect to a party that fails to comply with the light filing requirement.

Committee Response to a Declaration (Light Filing): In response to a light filing, CFIUS may 1) request that a written notice be submitted; 2) inform the parties to a transaction that CFIUS is unable to complete action, but that parties may file a written notice to receive a written notification that action has been completed; 3) initiate a unilateral review of the transaction; or 3) notify the parties that it has completed all action with respect to the transaction.

CFIUS must take action on a light filing within 15 days of receiving it, and may not request or recommend that it be withdrawn and refiled except to permit the correction of material errors or omissions.

Sec. 303: Timing for reviews and investigations

This section allows for deadlines to be tolled during a lapse in appropriations, and allows for one 15-day extension to CFIUS's investigation phase in the case of "extraordinary circumstances."

Sec. 304: Submission of certifications to Congress

This section requires CFIUS's notifications to Congress to include a certification that all relevant national security factors have been considered by the Committee during its review. Section 304 also permits Treasury to batch certifications and submit them to Congress monthly.

Sec. 305: Analysis by Director of National Intelligence

Sec. 305 requires the Director of National Intelligence to carry out an analysis of any national security threat posed by a covered transaction, and describes procedures for completing a basic threat assessment with respect to certain real estate transactions.

Sec. 306: Information sharing

CFIUS may disclose information that a party to a transaction has consented to be disclosed.

Sec. 307: Action by the President

This section clarifies that the President shall take action not later than 15 days after the end of an investigation (as prescribed under current law) or 15 days after CFIUS has referred a transaction to the President.

Sec. 308: Factors to be considered

Sec. 307 adds the following discretionary factors that may be considered by CFIUS during its reviews:

- The degree to which a covered transaction threatens the United States' ability to acquire or maintain equipment and systems that are necessary for national security purposes;
- The potential security-related effects of the cumulative control of any one type of critical infrastructure, energy asset, material, or critical technology by a foreign person or government;
- Whether a foreign investor has a history of complying with U.S. laws;
- The extent to which a covered transaction is likely to expose sensitive personal data of U.S. citizens in a manner that threatens national security;
- Whether the transaction is likely to exacerbate cybersecurity vulnerabilities; and
- Whether the transaction is likely to expose information regarding sensitive national security matters or law enforcement operations.

Sec. 309: Mitigation and other actions by the Committee to address national security risks

This section largely codifies existing CFIUS practice when designing agreements to mitigate a national security threat by requiring CFIUS to ensure that such agreements are effective and adhered to. It also requires the CFIUS Chairperson (Secretary of the Treasury) and head of a lead agency to periodically review the appropriateness of mitigation agreements, and terminate, phase out, or otherwise amend them if they are no longer required to mitigate a threat.

Sec. 310: Certification of notices and information

CFIUS may not complete a review, and may recommend that the President suspend or prohibit a transaction, if a party to a transaction fails to submit a certification that a written notice is accurate and complete, or includes false or misleading information. This section applies penalties for false statements contained in 18 U.S.C. Sec. 1001.

TITLE IV: MODIFICATION OF ANNUAL REPORT

Sec. 401: Modification of annual report

This section contains requirements for the CFIUS annual report, which shall describe the outcome of reviews and investigations, and include statistics on compliance reviews and light filings. The annual report would also include the number of new hires made under CFIUS's special hiring authority, and allow for appropriate classification of report sections.

TITLE V: RESOURCES, SPECIAL HIRING AUTHORITY, AND OUTREACH

Sec. 501: Centralization of certain committee functions

The CFIUS Chairperson (Secretary of the Treasury) may centralize CFIUS functions at Treasury in order to better coordinate CFIUS operations.

Sec. 502: CFIUS Resource needs

The President may include in the budget for Treasury a unified request for CFIUS operations across all member agencies. This request shall include staffing levels required to carry out CFIUS functions at each member agency. Alternatively, CFIUS must submit an annual spending plan to Congress with this information in each of the five years following enactment. House testimony by the CFIUS chairperson or the chairperson's designee would be required to explain CFIUS's anticipated resource needs and the adequacy of existing resources.

The heads of CFIUS agencies are exempted from certain competitive service hiring requirements in order to directly fill positions.

Sec. 503: CFIUS outreach

From FY19 through FY23, CFIUS's chairperson, or the chairperson's designee, would be required to brief the House Financial Services Committee and Senate Banking Committee on outreach activities that inform the business community of its activities, with a particular focus on the technology sector and other sectors of importance to national security.

TITLE VI: MISCELLANEOUS PROVISIONS

Sec. 601–602: Conforming amendment and regulatory certainty for U.S. businesses

These sections make a conforming amendment and clarify that a member agency of CFIUS may not prescribe or implement regulations to require divestment by or of a U.S. business as mitigation for a national security risk, unless the President reports that such regulations are consistent with those prescribed under CFIUS's authorizing statute.

TITLE VII: COMMON SENSE CREDIT UNION CAPITAL RELIEF

Sec. 701: Delay effective date

Delays the effective date of the National Credit Union Administration's "Risk-Based Capital" rule until January 1, 2021.

TITLE VIII: EXPORT CONTROL REFORM

Subtitle A—Authority and administration of controls

This subtitle requires the President to establish controls over the export of certain "dual-use" and military items in order to advance the foreign policy and national security of the United States. The administration of those controls would be delegated to the Secretary of Commerce, Secretary of Defense, Secretary of State, the Director of National Intelligence, and other appropriate Federal agencies. Subject to interagency review, the Department of Commerce would be delegated with authority to issue licenses and other authorization for exports. Consistent with existing law, this title provides authority to impose criminal and civil penalties for export control violations. It also provides robust authority to enforce such controls, including the ability to stop unapproved transfers. The title establishes strong Congressional oversight of these controls. The title also repeals the Export Administration Act of 1979 (EAA) and includes transition provisions to ensure that rules

and regulations established under the EAA, or otherwise enforced through emergency decree, shall remain in effect unless changed or revoked under the new authority established by this title.

Section 801. Short Title. This section establishes the short title for title VIII as the “Export Control Reform Act of 2018.”

Section 802. Definitions. This section includes definitions for the Export Control title.

Section 811. This establishes the short title for subtitle A as the “Export Controls Act of 2018.”

Section 812. Statement of Policy. This section describes the purposes of U.S. export controls authorized by this Act.

Section 813. Authority of the President. This section requires that the President establish controls over the export, reexport, and transfer of “dual-use” and certain military items, as well as establish controls over discrete activities relating to the proliferation of weapons of mass destruction and their means of delivery.

Section 814. Additional Authorities. Section 814(a) requires the President to establish lists of controlled items, as well as lists of foreign persons and end-uses determined to be a threat to the United States. Section 104(a) also states that the President shall:

- prohibit or restrict certain exports;
- require licenses or other authorization for exports of controlled items and create, as appropriate, exceptions to licensing requirements;
- establish measures for compliance, information gathering, and the prevention of unauthorized exports;
- keep the public fully informed of changes in policy and appoint technical advisory committees; and
- undertake any other action necessary to implement this authority not otherwise prohibited by law.

Section 814(b) states that the authority under this title may not generally be used to regulate any postal, telegraphic, telephonic, or other personal communication that does not involve a transfer of anything of value.

Section 814(c) strengthens Congressional oversight over rescission of a country’s designation as a State Sponsor of Terrorism. This section would increase the period of time the Congress would have to review any such proposed rescission from 45 days to 90 days, increasing the period of time a country must refrain from supporting terrorism before the President could remove such a designation from 6 months to 2 years, as well as requiring the President to notify the Congress when the Administration initiates a review of a country’s designation and, 20 days later, brief the Congress on the status of that review.

Section 814(d) establishes a license requirement for certain activities primarily relating to the proliferation of weapons of mass destruction. Section 104(e) establishes specific notice requirement with respect to those licensed activities. Section 104(f) establishes strict license review standards for activities representing a proliferation concern.

Section 815. Administration of Export Controls. This section requires the President to delegate the administration of dual-use export controls to the Secretary of Commerce, the Secretary of Defense, the Secretary of State, the Director of National Intelligence, and the heads of other appropriate Federal Departments and agen-

cies. A sense of Congress is added that such delegation should be consistent with the delegation of authority and export licensing practices established under Executive Order 12981.

Section 816. Control Lists. Section 106 requires that the President establish a regular interagency review of each list of controlled items. In accordance with such review, the Secretary of Commerce is required to regularly update such lists to ensure that new items are appropriately controlled, with such controls adjusted as conditions change. Each list of controlled items shall be published in a form that facilitates compliance with it, particularly by small and medium-sized businesses, and academic institutions.

Section 817. Licensing. This section requires the President to establish a procedure by which the Department of Commerce shall issue licenses or other authorization for the export, reexport, or transfer of items controlled under this title. It also states that no fee may be charged in connection with license applications for controlled items.

Section 818. Compliance Assistance. This section authorizes the President to establish procedures to encourage closer collaboration between the public and private sectors in identifying proliferation or other export-control risks to U.S. national security.

Section 819. Requirements to Identify and Control Emerging, Foundational, and other Critical Technologies in Export Control Regulations. This section requires the President to establish an interagency process to identify emerging, foundational, and other critical technologies that are not identified in any U.S. or multilateral export control list, but nonetheless could be essential to U.S. national security.

Section 820. Review Relating to Countries Subject to a Comprehensive U.S. Arms Embargo. This would require the Secretaries of Commerce, Defense, Energy, State, and the heads of other departments as appropriate, to conduct a review of U.S. dual-use licensing policy toward countries subject to a comprehensive U.S. arms embargo.

Section 821. Penalties. This section defines what acts are unlawful under this title. Consistent with current law, this section also establishes criminal and civil penalties for export control violations, well as authority and procedures for criminal forfeiture. It also authorizes the President to establish a basis for denying the eligibility of persons convicted of a criminal violation to export, as well as to revoke any license or other authorization from such person.

Section 822. Enforcement. This section provides broad authority to the President, as delegated to appropriate Federal departments and agencies, to enforce U.S. export controls established under this title. Such measures should include the publication of best practices guidelines to assist industry in compliance with U.S. export controls. This section also includes provisions for protection of confidentiality of information relating to license applications, with exceptions relating to transmission of such information to the Congress and General Accountability Office.

Section 823. Administrative Procedure. This section provides that regulations relating to U.S. dual-use export controls shall not be subject to several administrative procedures as defined in title 5 of the United States Code.

Section 824. Annual Report to Congress. This section requires the President to report annually to Congress on the implementation of these authorities. The report shall be unclassified but may contain a classified annex.

Section 825. Repeal. This section repeals the Export Administration Act of 1979.

Section 826. Effect on Other Acts. This section clarifies that except as otherwise provided in this title, nothing contained in this title shall be construed to impact any current U.S. export control laws. It also details Congressional expectations about the importance of close coordination of controls between Executive Branch agencies delegated with such responsibility.

Section 827. Transition Provisions. This section provides that all delegations of authority, rules, regulations, orders, determinations, licenses or other forms of administrative action that were made under the Export Administration Act, the International Emergency Economic Powers Act, or the Export Administration Regulations, and are in effect as of the date of enactment of this Act, shall continue in effect unless otherwise changed under the authority of this title. These transition provisions also apply to administrative and judicial proceedings, as well as determinations relating to state sponsors of terrorism.

Subtitle B—Anti-boycott Provisions

This title incorporates the existing anti-boycott provisions from the expired Export Administration Act of 1979. These provisions discourage, and in some circumstances, prohibit U.S. companies from furthering or supporting the boycott of Israel sponsored by the Arab League, or certain other countries, including complying with certain requests for information designed to verify compliance with the boycott.

Section 831. Short Title. This title may be cited as the “Anti-boycott Act of 2018.”

Section 832. Statement of Policy. This section states that it is the policy of the United States to oppose restrictive trade practices or boycotts imposed by foreign countries against other countries friendly to the United States or against any U.S. person.

Section 833. Foreign Boycott. This section requires the President to issue regulations prohibiting any U.S. person, with respect to that person’s activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take certain actions with intent to comply with, further, or support any foreign boycott against a country that is friendly to the U.S. that is also contrary to U.S. law or policy. Certain exceptions to this general prohibition also apply. It further provides that these anti-boycott restrictions shall also be enforced through foreign policy controls authorized under title I. This section imposes certain reporting requirements on U.S. persons who receive requests to implement restrictive anti-boycott measures. And it provides that this provision preempts other state and local laws regarding compliance with foreign boycotts.

Section 834. Enforcement. Consistent with existing law, this section provides for the imposition of criminal and civil penalties on a person who violates section 203 or any related regulation. Such penalties may only be imposed after notice and opportunity for a

hearing in accordance with applicable sections of title 5, United States Code, and shall be subject to judicial review.

Subtitle C—Sanctions on ballistic missiles and chemical and biological weapons proliferation

In general, this title carries over sanctions from the expired Export Administration Act against U.S. persons and foreign persons who engage in commercial transactions that violate missile proliferation, chemical and biological weapons controls.

Section 841. Missile Proliferation Control Violations. This section imposes sanctions against U.S. persons and foreign persons who engage in commercial transactions that violate missile proliferation controls. The section requires sanctions against any U.S. citizen whom the President determines to be engaged in exporting, transferring, conspiring to export or transfer, or facilitating an export or transfer of, any equipment or technology identified by the Missile Technology Control Regime Annex. The section further requires sanctions against any foreign person whom the President determines to be engaged in conduct that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent. The President may also prohibit importation into the U.S. of products produced by the foreign person. With notice to Congress, the President may also waive the imposition of the sanctions authorized in this section.

Section 842. Chemical and Biological Weapons Proliferation Sanctions. This section authorizes the President to apply procurement and import sanctions against foreign persons that he determines knowingly contribute to the use, development, production, stockpile, or acquisition of chemical or biological weapons by exporting goods or technology from the United States or any other country. If certain conditions are met, the President may delay the imposition of sanctions for up to 180 days or utilize certain foreign policy and national security exceptions. The President may terminate the sanctions after 12 months if he determines and certifies to Congress that the sanctioned person no longer engages in such activity. The President may waive the application of a sanction after a year of its imposition, if he determines it is in U.S. national security interests to do so. Not less than 20 days before a national security waiver is issued, the President must notify Congress with a full explanation of the rationale for waiving the sanction.

Subtitle D—Administrative Authorities

This title and section 851 continues current delegations to the Secretary of Commerce and to the Bureau of Industry and Security, establishes and Under Secretary of Commerce to implement the dual-use export system, and requires the appointment of two Assistant Secretaries of Commerce to assist the Secretary in carrying out these export control functions.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic,

and existing law in which no change is proposed is shown in roman):

DEFENSE PRODUCTION ACT OF 1950

* * * * *

TITLE VII—GENERAL PROVISIONS

* * * * *

AUTHORITY TO REVIEW CERTAIN MERGERS, ACQUISITIONS, AND TAKEOVERS

SEC. 721. (a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

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

[(2) CONTROL.—The term “control” has the meaning given to such term in regulations which the Committee shall prescribe.]

[(3) COVERED TRANSACTION.—The term “covered transaction” means any merger, acquisition, or takeover that is proposed or pending after August 23, 1988, by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States.]

[(4) FOREIGN GOVERNMENT-CONTROLLED TRANSACTION.—The term “foreign government-controlled transaction” means any covered transaction that could result in the control of any person engaged in interstate commerce in the United States by a foreign government or an entity controlled by or acting on behalf of a foreign government.]

(2) CONTROL.—*The term “control” means the power, direct or indirect, whether or not exercised, to determine, direct, or decide important matters affecting an entity, subject to regulations prescribed by the Committee.*

(3) COVERED TRANSACTION.—

(A) IN GENERAL.—*The term “covered transaction” means any transaction described in subparagraph (B) or (C) that is proposed, pending, or completed on or after the date of the enactment of the Foreign Investment Risk Review Modernization Act of 2018.*

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

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

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

(I) *is—*

(aa) *located in the United States and is, or is in close proximity to, a United States military installation; or*

(bb) *itself, or is located at and will function as part of, an air or sea port;*

(II) is not a single housing unit, as defined by the Bureau of the Census;

(III) is not in an urbanized area, as set forth by the Bureau of the Census in its most recent census, except as otherwise prescribed by the Committee in regulations in consultation with the Secretary of Defense; and

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

(iii) Any change in the rights that a foreign person has with respect to a United States business in which the foreign person has an investment, if that change is likely to result in foreign control of the United States business.

(iv) Any transaction or other device entered into or employed for the purpose of evading this section, subject to regulations prescribed by the Committee.

(C) SENSITIVE TRANSACTIONS INVOLVING COUNTRIES OF SPECIAL CONCERN.—

(i) IN GENERAL.—A transaction described in this subparagraph is any investment in an unaffiliated United States business by a foreign person that—

(I) is—

(aa) a national or a government of, or a foreign entity organized under the laws of, a country of special concern; or

(bb) a foreign entity—

(AA) over which control is exercised or exercisable by a national or a government of, or by a foreign entity organized under the laws of, a country of special concern; or

(BB) in which the government of a country of special concern has a substantial interest; and

(II) as a result of the transaction, could obtain—

(aa) sensitive personal data, as defined by regulations prescribed by the Committee, of United States citizens, if such data may be exploited in a manner that threatens national security; or

(bb) influence over substantive decision-making of the United States business regarding the use, development, acquisition, or release of—

(AA) sensitive personal data of United States citizens, as described in item (aa); or

(BB) critical technologies.

(ii) COUNTRY OF SPECIAL CONCERN.—For the purposes of this subparagraph, the term “country of special concern” means—

(I) any foreign country that is subject to export restrictions pursuant to section 744.21 of title 15, Code of Federal Regulations;

(II) any country determined by the Secretary of State to be a state sponsor of terrorism; and

(III) any country that—

(aa) is subject to a United States arms embargo, as specified in list D:5 of Country Group D in Supplement No. 1 to part 740 of title 15, Code of Federal Regulations; and

(bb) is specified in regulations prescribed by the Committee.

(iii) INVESTMENT DEFINED.—For the purposes of this subparagraph, the term “investment” means the acquisition of an equity interest, including contingent equity interest, as further defined in regulations prescribed by the Committee.

(iv) UNAFFILIATED UNITED STATES BUSINESS DEFINED.—For the purposes of this subparagraph, with respect to an investment described under clause (i), and as further defined in regulations prescribed by the Committee, the term “unaffiliated United States business” means a United States business that is not subject to the same ultimate ownership of the foreign person undertaking the investment.

(v) WAIVER.—The President may waive any requirement of this subparagraph upon reporting to the Committees on Financial Services and Foreign Affairs of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Foreign Relations of the Senate that the waiver is important to the national interest of the United States, with a detailed explanation of the reasons therefor.

(D) EXCEPTION FOR AIR CARRIERS.—Subparagraph (B)(iii) shall not apply to a change in the rights of a person with respect to an investment involving an air carrier, as defined in section 40102(a)(2) of title 49, United States Code, that holds a certificate issued under section 41102 of that title.

(E) TRANSFERS OF CERTAIN ASSETS PURSUANT TO BANKRUPTCY PROCEEDINGS OR OTHER DEFAULTS.—The Committee shall prescribe regulations to clarify that the term “covered transaction” includes any transaction described in subparagraph (B) or (C) that arises pursuant to a bankruptcy proceeding or other form of default on debt.

(4) FOREIGN GOVERNMENT-CONTROLLED TRANSACTION.—The term “foreign government-controlled transaction” means any covered transaction that could result in control of a United States business by—

(A) a foreign government;

(B) a person controlled by or acting on behalf of a foreign government; or

(C) a foreign company or entity of a country of special concern (as defined under paragraph (3)(C)(ii)) domiciled or having its principal place of business in a county of spe-

cial concern that is a non-market economy, except to the extent the Committee promulgates regulations exempting any such company, entity, or country from this presumption.

(5) CLARIFICATION.—The term “national security” shall be construed so as to include those issues relating to “homeland security”, including its application to critical infrastructure.

(6) CRITICAL INFRASTRUCTURE.—The term “critical infrastructure” means, subject to rules issued under this section, systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security.

[(7) CRITICAL TECHNOLOGIES.—The term “critical technologies” means critical technology, critical components, or critical technology items essential to national defense, identified pursuant to this section, subject to regulations issued at the direction of the President, in accordance with subsection (h).]

(7) CRITICAL TECHNOLOGIES.—*The term “critical technologies” means—*

(A) *defense articles or defense services covered by the United States Munitions List (USML), which is set forth in the International Traffic in Arms Regulations (ITAR) (22 C.F.R. parts 120–130);*

(B) *those items specified on the Commerce Control List (CCL) set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 C.F.R. parts 730–774) that are controlled pursuant to multilateral regimes (i.e. for reasons of national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology), as well as those that are controlled for reasons of regional stability or surreptitious listening;*

(C) *specially designed and prepared nuclear equipment, parts and components, materials, software, and technology specified in the Assistance to Foreign Atomic Energy Activities regulations (10 C.F.R. part 810), and nuclear facilities, equipment, and material specified in the Export and Import of Nuclear Equipment and Material regulations (10 C.F.R. part 110);*

(D) *select agents and toxins specified in the Select Agents and Toxins regulations (7 C.F.R. part 331, 9 C.F.R. part 121, and 42 C.F.R. part 73); and*

(E) *emerging, foundational, or other critical technologies that are controlled pursuant to section 819 of the Foreign Investment Risk Review Modernization Act of 2018.*

(8) LEAD AGENCY.—The term “lead agency” means the agency, or agencies, designated as the lead agency or agencies pursuant to subsection (k)(5) for the review of a transaction.

(9) FOREIGN PERSON.—*The term “foreign person” means—*

(A) *any foreign national, foreign government, or foreign entity; or*

(B) *any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.*

(10) SUBSTANTIAL INTEREST.—*The term “substantial interest” has the meaning given to such term in regulations prescribed by the Committee, but does not include a voting interest of less*

than ten percent or ownership interests held or acquired solely for the purpose of passive investment.

(11) *UNITED STATES BUSINESS.*—*The term “United States business” means any entity, irrespective of the nationality of the persons that control it, engaged in interstate commerce in the United States, but only to the extent of its activities in interstate commerce.*

(b) NATIONAL SECURITY REVIEWS AND INVESTIGATIONS.—

(1) NATIONAL SECURITY REVIEWS.—

(A) IN GENERAL.—Upon receiving written notification under subparagraph (C) of any covered transaction, or pursuant to a unilateral notification initiated under subparagraph (D) with respect to any covered transaction, the President, acting through the Committee—

(i) shall review the covered transaction to determine the effects of the transaction on the national security of the United States; and

(ii) shall consider the factors specified in subsection (f) for such purpose, as appropriate.

(B) CONTROL BY FOREIGN GOVERNMENT.—If the Committee determines that the covered transaction is a foreign government-controlled transaction, the Committee shall conduct an investigation of the transaction under paragraph (2).

(C) WRITTEN NOTICE.—

(i) IN GENERAL.—Any party or parties to any covered transaction may initiate a review of the transaction under this paragraph by submitting a written notice of the transaction to the Chairperson of the Committee.

(ii) WITHDRAWAL OF NOTICE.—No covered transaction for which a notice was submitted under clause (i) may be withdrawn from review, unless a written request for such withdrawal is submitted to the Committee by any party to the transaction and approved by the Committee.

(iii) CONTINUING DISCUSSIONS.—A request for withdrawal under clause (ii) shall not be construed to preclude any party to the covered transaction from continuing informal discussions with the Committee or any member thereof regarding possible resubmission for review pursuant to this paragraph.

(iv) *INCLUSION OF PARTNERSHIP AND SIDE AGREEMENTS.*—*Subject to regulations prescribed by the Committee, the Committee may require a written notice submitted under clause (i) by a party to a covered transaction to include a copy of any partnership agreements, integration agreements, or other side agreements relating to the transaction.*

(v) *DECLARATIONS WITH RESPECT TO CERTAIN COVERED TRANSACTIONS.*—

(I) *VOLUNTARY DECLARATIONS.*—*For the purpose of expediting the review of certain covered transactions that the Committee determines are likely to pose limited risk, the Committee may prescribe regulations to permit parties to the transaction to sub-*

mit a declaration with basic information regarding the transaction, unless the parties submit a written notice under clause (i).

(II) MANDATORY DECLARATIONS.—

(aa) IN GENERAL.—The Committee shall prescribe regulations to require the parties to a covered transaction to submit a declaration described in subclause (I) with respect to the transaction if the transaction involves an investment that results in the release of critical technologies by an unaffiliated United States business (as defined under subsection (a)(3)(C)(iii)) to a foreign person in which a foreign government has, directly or indirectly, a substantial interest.

(bb) SUBMISSION OF WRITTEN NOTICE AS AN ALTERNATIVE.—Parties to a covered transaction for which a declaration is required under this clause may instead elect to submit a written notice under clause (i).

(cc) TIMING OF SUBMISSION.—With respect to the regulations described under subclause (I), the Committee may not require a declaration to be submitted more than 30 days in advance of the completion of the transaction.

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

(IV) COMMITTEE RESPONSE TO DECLARATION.—

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

(AA) request that the parties to the transaction file a written notice under clause (i), provided that the Committee includes an explanation of the reasons for the request;

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

(CC) initiate a unilateral review of the transaction under subparagraph (D); or

(DD) notify the parties in writing that the Committee has completed all action under this section with respect to the transaction.

(bb) *TIMING.*—*The Committee shall take action under item (aa) within 15 days of receiving a declaration under this clause.*

(cc) *REFILING OF DECLARATION.*—*The Committee may not request or recommend that a declaration be withdrawn and refiled, except to permit parties to a transaction to correct material errors or omissions.*

(V) *REGULATIONS.*—*In prescribing regulations establishing requirements for declarations submitted under this clause, the Committee shall ensure that such declarations are submitted as abbreviated notifications that do not generally exceed 5 pages in length.*

(VI) *INVESTMENT DEFINED.*—*For the purposes of this clause, the term “investment” means the acquisition of an equity interest, including contingent equity interest, as further defined in regulations prescribed by the Committee.*

(vi) *STIPULATIONS REGARDING TRANSACTIONS.*—

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

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

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

(II) *BASIS FOR STIPULATION.*—*A written notice submitted under clause (i) or a declaration submitted under clause (v) that includes a stipulation under subclause (I) shall include a description of the basis for the stipulation.*

(D) *UNILATERAL INITIATION OF REVIEW.*—*Subject to subparagraph (F), the President or the Committee may initiate a review under subparagraph (A) of—*

(i) *any covered transaction;*

(ii) *any covered transaction that has previously been reviewed or investigated under this section, if any party to the transaction submitted false or misleading material information to the Committee in connection with the review or investigation or omitted material information, including material documents, from information submitted to the Committee; or*

(iii) *any covered transaction that has previously been reviewed or investigated under this section, if—*

(I) *any party to the transaction or the entity resulting from consummation of the transaction intentionally materially breaches a mitigation agreement or condition described in subsection (1)(1)(A);*

(II) *such breach is certified to the Committee by the lead department or agency monitoring and en-*

forcing such agreement or condition as an intentional material breach; and

(III) the Committee determines that there are no other remedies or enforcement tools available to address such breach.

(E) TIMING.—Any review under this paragraph shall be completed before the end of the 30-day period beginning on the date of the acceptance of written notice under subparagraph (C) by the chairperson, or beginning on the date of the initiation of the review in accordance with subparagraph (D), as applicable.

(F) LIMIT ON DELEGATION OF CERTAIN AUTHORITY.—The authority of the Committee to initiate a review under subparagraph (D) may not be delegated to any person, other than the Deputy Secretary or an appropriate Under Secretary of the department or agency represented on the Committee.

(2) NATIONAL SECURITY INVESTIGATIONS.—

(A) IN GENERAL.—In each case described in subparagraph (B), the Committee shall immediately conduct an investigation of the effects of a covered transaction on the national security of the United States, and take any necessary actions in connection with the transaction to protect the national security of the United States.

(B) APPLICABILITY.—Subparagraph (A) shall apply in each case in which—

(i) a review of a covered transaction under paragraph (1) results in a determination that—

(I) the transaction threatens to impair the national security of the United States and that threat has not been mitigated during or prior to the review of a covered transaction under paragraph (1);

(II) the transaction is a foreign government-controlled transaction; or

(III) the transaction would result in control of any critical infrastructure of or within the United States by or on behalf of any foreign person, if the Committee determines that the transaction could impair national security, and that such impairment to national security has not been mitigated by assurances provided or renewed with the approval of the Committee, as described in subsection (l), during the review period under paragraph (1); or

(ii) the lead agency recommends, and the Committee concurs, that an investigation be undertaken.

[(C) TIMING.—Any investigation under subparagraph (A) shall be completed before the end of the 45-day period beginning on the date on which the investigation commenced.]

(C) TIMING.—

(i) IN GENERAL.—*Except as provided in clause (ii), any investigation under subparagraph (A) shall be completed before the end of the 45-day period begin-*

ning on the date on which the investigation commenced.

(ii) *EXTENSION FOR EXTRAORDINARY CIRCUMSTANCES.*—

(I) *IN GENERAL.*—*In extraordinary circumstances (as defined by the Committee in regulations), the chairperson may, at the request of the head of the lead agency, extend an investigation under subparagraph (A) for not more than one 15-day period.*

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

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

(D) *EXCEPTION.*—

(i) *IN GENERAL.*—*Notwithstanding subparagraph (B)(i), an investigation of a foreign government-controlled transaction described in subclause (II) of subparagraph (B)(i) or a transaction involving critical infrastructure described in subclause (III) of subparagraph (B)(i) shall not be required under this paragraph, if the Secretary of the Treasury and the head of the lead agency jointly determine, on the basis of the review of the transaction under paragraph (1), that the transaction will not impair the national security of the United States.*

(ii) *NONDELEGATION.*—*The authority of the Secretary or the head of an agency referred to in clause (i) may not be delegated to any person, other than the Deputy Secretary of the Treasury or the deputy head (or the equivalent thereof) of the lead agency, respectively.*

(E) *GUIDANCE ON CERTAIN TRANSACTIONS WITH NATIONAL SECURITY IMPLICATIONS.*—*The Chairperson shall, not later than 180 days after the effective date of the Foreign Investment and National Security Act of 2007, publish in the Federal Register guidance on the types of transactions that the Committee has reviewed and that have presented national security considerations, including transactions that may constitute covered transactions that would result in control of critical infrastructure relating to United States national security by a foreign government or an entity controlled by or acting on behalf of a foreign government.*

(3) *CERTIFICATIONS TO CONGRESS.*—

(A) *CERTIFIED NOTICE AT COMPLETION OF REVIEW.*—*Upon completion of a review under subsection (b) that concludes action under this section, the chairperson and the head of*

the lead agency shall transmit a certified notice to the members of Congress specified in subparagraph (C)(iii).

(B) CERTIFIED REPORT AT COMPLETION OF INVESTIGATION.—As soon as is practicable after completion of an investigation under subsection (b) that concludes action under this section, the chairperson and the head of the lead agency shall transmit to the members of Congress specified in subparagraph (C)(iii) a certified written report (consistent with the requirements of subsection (c)) on the results of the investigation, unless the matter under investigation has been sent to the President for decision.

(C) CERTIFICATION PROCEDURES.—

(i) IN GENERAL.—Each certified notice and report required under subparagraphs (A) and (B), respectively, shall be submitted to the members of Congress specified in clause (iii), and shall include—

(I) a description of the actions taken by the Committee with respect to the transaction; and

【(II) identification of the determinative factors considered under subsection (f).】

(II) a certification that all relevant national security factors, including factors enumerated in subsection (f), have received full consideration.

(ii) CONTENT OF CERTIFICATION.—Each certified notice and report required under subparagraphs (A) and (B), respectively, shall be signed by the chairperson and the head of the lead agency, and shall state that, in the determination of the Committee, there are no unresolved national security concerns with the transaction that is the subject of the notice or report.

(iii) MEMBERS OF CONGRESS.—Each certified notice and report required under subparagraphs (A) and (B), respectively, shall be transmitted—

(I) to the Majority Leader and the Minority Leader of the Senate;

(II) to the chair and ranking member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of any committee of the Senate having oversight over the lead agency;

(III) to the Speaker and the Minority Leader of the House of Representatives;

(IV) to the chair and ranking member of the Committee on Financial Services of the House of Representatives and of any committee of the House of Representatives having oversight over the lead agency; and

(V) with respect to covered transactions involving critical infrastructure, to the members of the Senate from the State in which the principal place of business of the acquired United States person is located, and the member from the Congressional District in which such principal place of business is located.

(iv) SIGNATURES; LIMIT ON DELEGATION.—

(I) IN GENERAL.—Each certified notice and report required under subparagraphs (A) and (B), respectively, shall be signed by the chairperson and the head of the lead agency, which signature requirement may only be delegated in accordance with subclause (II).

(II) LIMITATION ON DELEGATION OF CERTIFICATIONS.—The chairperson and the head of the lead agency may delegate the signature requirement under subclause (I)—

(aa) only to an appropriate employee of the Department of the Treasury (in the case of the Secretary of the Treasury) or to an appropriate employee of the lead agency (in the case of the lead agency) who was appointed by the President, by and with the advice and consent of the Senate, with respect to any notice provided under paragraph (1) following the completion of a review under this section; or

(bb) only to a Deputy Secretary of the Treasury (in the case of the Secretary of the Treasury) or a person serving in the Deputy position or the equivalent thereof at the lead agency (in the case of the lead agency), with respect to any report provided under subparagraph (B) following an investigation under this section.

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

(4) ANALYSIS BY DIRECTOR OF NATIONAL INTELLIGENCE.—

[(A) IN GENERAL.—The Director of National Intelligence shall expeditiously carry out a thorough analysis of any threat to the national security of the United States posed by any covered transaction. The Director of National Intelligence shall also seek and incorporate the views of all affected or appropriate intelligence agencies with respect to the transaction.]

(A) ANALYSIS REQUIRED.—

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

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

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

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

(B) BASIC THREAT INFORMATION.—

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

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

(I) the transaction is described in subsection (a)(3)(B)(ii);

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

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

[(B)] (C) TIMING.—The analysis required under subparagraph (A) shall be provided by the Director of National Intelligence to the Committee not later than 20 days after the date on which notice of the transaction is accepted by the Committee under paragraph (1)(C), but such analysis may be supplemented or amended, as the Director considers necessary or appropriate, or upon a request for additional information by the Committee. The Director may begin the analysis at any time prior to acceptance of the notice, in accordance with otherwise applicable law.

[(C)] (D) INTERACTION WITH INTELLIGENCE COMMUNITY.—The Director of National Intelligence shall ensure that the intelligence community remains engaged in the collection, analysis, and dissemination to the Committee of any additional relevant information that may become available during the course of any investigation conducted under subsection (b) with respect to a transaction.

[(D)] (E) INDEPENDENT ROLE OF DIRECTOR.—The Director of National Intelligence shall be a nonvoting, ex officio member of the Committee, and shall be provided with all notices received by the Committee under paragraph (1)(C) regarding covered transactions, but shall serve no policy

role on the Committee, other than to provide analysis under subparagraphs (A) and (C) in connection with a covered transaction.

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

(G) *SUBMISSION TO CONGRESS.*—*The Committee shall include the analysis required by subparagraph (A) with respect to a covered transaction in the report required under subsection (m)(1), subject to the requirements of subsection (m)(5).*

(5) *SUBMISSION OF ADDITIONAL INFORMATION.*—No provision of this subsection shall be construed as prohibiting any party to a covered transaction from submitting additional information concerning the transaction, including any proposed restructuring of the transaction or any modifications to any agreements in connection with the transaction, while any review or investigation of the transaction is ongoing.

(6) *NOTICE OF RESULTS TO PARTIES.*—The Committee shall notify the parties to a covered transaction of the results of a review or investigation under this section, promptly upon completion of all action under this section.

(7) *REGULATIONS.*—Regulations prescribed under this section shall include standard procedures for—

(A) submitting any notice of a covered transaction to the Committee;

(B) submitting a request to withdraw a covered transaction from review;

(C) resubmitting a notice of a covered transaction that was previously withdrawn from review; and

(D) providing notice of the results of a review or investigation to the parties to the covered transaction, upon completion of all action under this section.

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

(c) *CONFIDENTIALITY OF INFORMATION.*—**[Any information]**

(1) *IN GENERAL.*—*Any information or documentary material filed with the President or the President's designee pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this subsection shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.*

(2) *EXCEPTION.*—*Paragraph (1) shall not prohibit the disclosure of information or documentary material that the party filing such information or material consented to be disclosed to third parties.*

(d) *ACTION BY THE PRESIDENT.*—

(1) IN GENERAL.—Subject to paragraph (4), the President may take such action for such time as the President considers appropriate to suspend or prohibit any covered transaction that threatens to impair the national security of the United States.

(2) ANNOUNCEMENT BY THE PRESIDENT.—The President shall announce the decision on whether or not to take action pursuant to paragraph (1) [not later than 15 days after the date on which an investigation described in subsection (b) is completed.] *with respect to a covered transaction not later than 15 days after the earlier of—*

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

(B) *the date on which the Committee otherwise refers the transaction to the President under subsection (l)(4).*

(3) ENFORCEMENT.—The President may direct the Attorney General of the United States to seek appropriate relief, including divestment relief, in the district courts of the United States, in order to implement and enforce this subsection.

(4) FINDINGS OF THE PRESIDENT.—The President may exercise the authority conferred by paragraph (1), only if the President finds that—

(A) there is credible evidence that leads the President to believe that [the foreign interest exercising control] *a foreign person that would acquire an interest in a United States business or its assets as a result of the covered transaction* might take action that threatens to impair the national security; and

(B) provisions of law, other than this section and the International Emergency Economic Powers Act, do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

(5) FACTORS TO BE CONSIDERED.—For purposes of determining whether to take action under paragraph (1), the President shall consider, among other factors each of the factors described in subsection (f), as appropriate.

(e) ACTIONS AND FINDINGS NONREVIEWABLE.—The actions of the President under paragraph (1) of subsection (d) and the findings of the President under paragraph (4) of subsection (d) shall not be subject to judicial review.

(f) FACTORS TO BE CONSIDERED.—For purposes of this section, the President or the President's designee may, taking into account the requirements of national security, consider—

(1) domestic production needed for projected national defense requirements,

(2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services,

(3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security[,], *including the availability of human resources,*

products, technology, materials, and other supplies and services;

(4) the potential effects of the **[proposed or pending]** transaction on sales of military goods, equipment, or technology to any country—

(A) identified by the Secretary of State—

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

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

(iii) under section 6(m) of the Export Administration Act of 1979, as a country of concern regarding the proliferation of chemical and biological weapons;

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

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

[(5)] the potential effects of the proposed or pending transaction on United States international technological leadership in areas affecting United States national security;

[(6)] (5) the potential national security-related effects on United States critical infrastructure, including major energy assets;

[(7)] (6) the potential national security-related effects on United States critical technologies;

[(8)] (7) whether the covered transaction is a foreign government-controlled transaction, as determined under subsection (b)(1)(B);

[(9)] (8) as appropriate, and particularly with respect to transactions requiring an investigation under subsection (b)(1)(B), a review of the current assessment of—

(A) the adherence of the subject country to nonproliferation control regimes, including treaties and multilateral supply guidelines, which shall draw on, but not be limited to, the annual report on “Adherence to and Compliance with Arms Control, Nonproliferation and Disarmament Agreements and Commitments” required by section 403 of the Arms Control and Disarmament Act;

(B) the relationship of such country with the United States, specifically on its record on cooperating in counterterrorism efforts, which shall draw on, but not be limited to, the report of the President to Congress under section 7120 of the Intelligence Reform and Terrorism Prevention Act of 2004; and

(C) the potential for transshipment or diversion of technologies with military applications, including an analysis of national export control laws and regulations;

[(10)] (9) the long-term projection of United States requirements for sources of energy and other critical resources and material; **[and]**

(10) the degree to which the covered transaction is likely to threaten the ability of the United States Government to acquire or maintain the equipment and systems that are necessary for defense, intelligence, or other national security functions;

(11) the potential national security-related effects of the cumulative control of any one type of critical infrastructure, energy asset, material, or critical technology by a foreign person;

(12) whether any foreign person that would acquire control of a United States business as a result of the covered transaction has a history of—

(A) complying with United States laws and regulations and prior adherence, if applicable, to any agreement or condition, as described under (l)(1)(A); and

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

(13) the extent to which the covered transaction is likely to release, either directly or indirectly, sensitive personal data of United States citizens to a foreign person that may exploit that information in a manner that threatens national security;

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

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

[(11)] (16) such other factors as the President or the Committee may determine to be appropriate, generally or in connection with a specific review or investigation.

For purposes of this subsection, the phrase “the availability of human resources” shall be construed to consider potential losses of such availability resulting from reductions in the employment of United States persons whose knowledge or skills are critical to national security, including the continued production in the United States of items that are likely to be acquired by the Department of Defense or other Federal departments or agencies for the advancement of the national security of the United States.

(g) ADDITIONAL INFORMATION TO CONGRESS; CONFIDENTIALITY.—

(1) BRIEFING REQUIREMENT ON REQUEST.—The Committee shall, upon request from any Member of Congress specified in subsection (b)(3)(C)(iii), promptly provide briefings on a covered transaction for which all action has concluded under this section, or on compliance with a mitigation agreement or condition imposed with respect to such transaction, on a classified basis, if deemed necessary by the sensitivity of the information. Briefings under this paragraph may be provided to the congressional staff of such a Member of Congress having appropriate security clearance.

(2) APPLICATION OF CONFIDENTIALITY PROVISIONS.—

(A) IN GENERAL.—The disclosure of information under this subsection shall be consistent with the requirements

of subsection (c). Members of Congress and staff of either House of Congress or any committee of Congress, shall be subject to the same limitations on disclosure of information as are applicable under subsection (c).

(B) PROPRIETARY INFORMATION.—Proprietary information which can be associated with a particular party to a covered transaction shall be furnished in accordance with subparagraph (A) only to a committee of Congress, and only when the committee provides assurances of confidentiality, unless such party otherwise consents in writing to such disclosure.

(h) REGULATIONS.—

(1) IN GENERAL.—The President shall direct, subject to notice and comment, the issuance of regulations to carry out this section.

(2) EFFECTIVE DATE.—Regulations issued under this section shall become effective not later than 180 days after the effective date of the Foreign Investment and National Security Act of 2007.

(3) CONTENT.—Regulations issued under this subsection shall—

(A) provide for the imposition of civil penalties for any violation of this section, **[including any mitigation agreement entered into or conditions imposed pursuant to subsection (l)]** *including any mitigation agreement entered into, conditions imposed, or order issued pursuant to this section;*

(B) to the extent possible—

(i) minimize paperwork burdens; and

(ii) coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law; **[and]**

(C) provide for an appropriate role for the Secretary of Labor with respect to mitigation agreements**[.]; and**

(D) provide that in connection with any national security review or investigation of a covered transaction conducted by the Committee, the Committee should—

(i) consider the factors described in paragraphs (2) and (3) of subsection (f); and

(ii) as appropriate, require parties to provide the information necessary to consider such factors.

(i) EFFECT ON OTHER LAW.—No provision of this section shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of Federal law, including the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.

(j) TECHNOLOGY RISK ASSESSMENTS.—In any case in which an assessment of the risk of diversion of defense critical technology is performed by a designee of the President, a copy of such assessment shall be provided to any other designee of the President responsible for reviewing or investigating a merger, acquisition, or takeover under this section.

(k) COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES.—

(1) ESTABLISHMENT.—The Committee on Foreign Investment in the United States, established pursuant to Executive Order No. 11858, shall be a multi agency committee to carry out this section and such other assignments as the President may designate.

(2) MEMBERSHIP.—The Committee shall be comprised of the following members or the designee of any such member:

- (A) The Secretary of the Treasury.
- (B) The Secretary of Homeland Security.
- (C) The Secretary of Commerce.
- (D) The Secretary of Defense.
- (E) The Secretary of State.
- (F) The Attorney General of the United States.
- (G) The Secretary of Energy.
- (H) The Secretary of Labor (nonvoting, ex officio).
- (I) The Director of National Intelligence (nonvoting, ex officio).

(J) The heads of any other executive department, agency, or office, as the President determines appropriate, generally or on a case-by-case basis.

(3) CHAIRPERSON.—The Secretary of the Treasury shall serve as the chairperson of the Committee.

(4) ASSISTANT SECRETARY FOR THE DEPARTMENT OF THE TREASURY.—There shall be established an additional position of Assistant Secretary of the Treasury, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary appointed under this paragraph shall report directly to the Undersecretary of the Treasury for International Affairs. The duties of the Assistant Secretary shall include duties related to the Committee on Foreign Investment in the United States, as delegated by the Secretary of the Treasury under this section.

(5) DESIGNATION OF LEAD AGENCY.—The Secretary of the Treasury shall designate, as appropriate, a member or members of the Committee to be the lead agency or agencies on behalf of the Committee—

(A) for each covered transaction, and for negotiating any mitigation agreements or other conditions necessary to protect national security; and

(B) for all matters related to the monitoring of the completed transaction, to ensure compliance with such agreements or conditions and with this section.

(6) OTHER MEMBERS.—The chairperson shall consult with the heads of such other Federal departments, agencies, and independent establishments in any review or investigation under subsection (a), as the chairperson determines to be appropriate, on the basis of the facts and circumstances of the covered transaction under review or investigation (or the designee of any such department or agency head).

(7) MEETINGS.—The Committee shall meet upon the direction of the President or upon the call of the chairperson, without regard to section 552b of title 5, United States Code (if otherwise applicable).

(1) MITIGATION, TRACKING, AND POSTCONSUMMATION MONITORING AND ENFORCEMENT.—

(1) MITIGATION.—

(A) **【IN GENERAL】 AGREEMENTS AND CONDITIONS.—【The Committee】**

(i) *IN GENERAL.—The Committee or a lead agency may, on behalf of the Committee, negotiate, enter into or impose, and enforce any agreement or condition with any party to the covered transaction in order to mitigate any threat to the national security of the United States that arises as a result of the covered transaction.*

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

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

【(B) RISK-BASED ANALYSIS REQUIRED.—Any agreement entered into or condition imposed under subparagraph (A) shall be based on a risk-based analysis, conducted by the Committee, of the threat to national security of the covered transaction.】

(B) TREATMENT OF OUTDATED AGREEMENTS OR CONDITIONS.—The chairperson and the head of any applicable lead agency shall periodically review the appropriateness of an agreement or condition described under subparagraph (A) and terminate, phase out, or otherwise amend any agreement or condition if a threat no longer requires mitigation through the agreement or condition.

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

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

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

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

(2) TRACKING AUTHORITY FOR WITHDRAWN NOTICES.—

(A) IN GENERAL.—If any written notice of a covered transaction that was submitted to the Committee under this section is withdrawn before any review or investigation by the Committee under subsection (b) is completed, the Committee shall establish, as appropriate—

(i) interim protections to address specific concerns with such transaction that have been raised in connection with any such review or investigation pending any resubmission of any written notice under this section with respect to such transaction and further action by the President under this section;

(ii) specific time frames for resubmitting any such written notice; and

(iii) a process for tracking any actions that may be taken by any party to the transaction, in connection with the transaction, before the notice referred to in clause (ii) is resubmitted.

(B) DESIGNATION OF AGENCY.—The lead agency, other than any entity of the intelligence community (as defined in the National Security Act of 1947), shall, on behalf of the Committee, ensure that the requirements of subparagraph (A) with respect to any covered transaction that is subject to such subparagraph are met.

(3) NEGOTIATION, MODIFICATION, MONITORING, AND ENFORCEMENT.—

(A) DESIGNATION OF LEAD AGENCY.—The lead agency shall negotiate, modify, monitor, and enforce, on behalf of the Committee, any agreement entered into or condition imposed under paragraph (1) with respect to a covered transaction, based on the expertise with and knowledge of the issues related to such transaction on the part of the designated department or agency. Nothing in this paragraph shall prohibit other departments or agencies in assisting the lead agency in carrying out the purposes of this paragraph.

(B) REPORTING BY DESIGNATED AGENCY.—

(i) MODIFICATION REPORTS.—The lead agency in connection with any agreement entered into or condition imposed with respect to a covered transaction shall—

(I) provide periodic reports to the Committee on any material modification to any such agreement or condition imposed with respect to the transaction; and

(II) ensure that any material modification to any such agreement or condition is reported to the Director of National Intelligence, the Attorney General of the United States, and any other Fed-

eral department or agency that may have a material interest in such modification.

(ii) COMPLIANCE.—The Committee shall develop and agree upon methods for evaluating compliance with any agreement entered into or condition imposed with respect to a covered transaction that will allow the Committee to adequately assure compliance, without—

(I) unnecessarily diverting Committee resources from assessing any new covered transaction for which a written notice has been filed pursuant to subsection (b)(1)(C), and if necessary, reaching a mitigation agreement with or imposing a condition on a party to such covered transaction or any covered transaction for which a review has been reopened for any reason; or

(II) placing unnecessary burdens on a party to a covered transaction.

(4) 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).*

(5) RISK-BASED ANALYSIS REQUIRED.—

(A) IN GENERAL.—*Any determination of the Committee to refer a covered transaction to the President under paragraph (4), to suspend a covered transaction under paragraph (6), or to negotiate, enter into, impose, or enforce any agreement or condition under paragraph (1)(A) with respect to a covered transaction, shall be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered transaction, which shall include—*

(i) *an assessment of the threat, vulnerabilities, and consequences to national security resulting from the transaction, as these terms are defined or clarified in guidance and regulations issued by the Committee; and*

(ii) *an identification of each relevant factor described in subsection (f) that the transaction may substantially implicate.*

(B) COMPLIANCE PLANS.—

(i) IN GENERAL.—*In the case of a covered transaction with respect to which an agreement or condition is entered into under paragraph (1)(A), the Committee or lead agency, as the case may be, shall formulate, adhere to, and keep updated a plan for monitoring compliance with the agreement or condition.*

(ii) ELEMENTS.—*Each plan required by clause (i) with respect to an agreement or condition entered into under paragraph (1)(A) shall include an explanation of—*

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

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

(III) how frequently compliance reviews will be conducted;

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

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

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

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

(ii) require that the party or parties submit any covered transaction initiated after the date of the determination of noncompliance and before the date that is 5 years after the date of the determination to the Committee for review under subsection (b); or

(iii) seek injunctive relief.

(D) **USE OF INDEPENDENT ENTITIES TO MONITOR COMPLIANCE.**—If the parties to an agreement or condition entered into under paragraph (1)(A) enter into a contract with an independent entity from outside the United States Government for the purpose of monitoring compliance with the agreement or condition, the Committee shall take such action as is necessary to prevent any significant conflict of interest from arising with respect to the entity and the parties to the transaction.

(E) **SUCCESSORS AND ASSIGNS.**—Any agreement or condition entered or imposed under paragraph (1)(A) shall be considered binding on all successors and assigns, unless and until the agreement or condition terminates on its own terms or is otherwise terminated by the Committee in the Committee's sole discretion.

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

agreement with or imposing a condition on a party to such covered transaction or any covered transaction for which a review has been reopened for any reason.

(6) *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).*

(m) *ANNUAL REPORT TO CONGRESS.*—

(1) *IN GENERAL.*—*The chairperson shall transmit a report to the chairman and ranking member of the committee of jurisdiction in the Senate and the House of Representatives, before July 31 of each year on all of the reviews and investigations of covered transactions completed under subsection (b) during the 12-month period covered by the report.*

(2) *CONTENTS OF REPORT RELATING TO COVERED TRANSACTIONS.*—*The annual report under paragraph (1) shall contain the following information, with respect to each covered transaction, for the reporting period:*

[(A) *A list of all notices filed and all reviews or investigations completed during the period, with basic information on each party to the transaction, the nature of the business activities or products of all pertinent persons, along with information about any withdrawal from the process, and any decision or action by the President under this section.*]

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

(i) *a description of the outcome of each review or investigation, including whether an agreement was entered into or condition was imposed under subsection (1)(3)(A) with respect to the transaction being reviewed or investigated, and whether the President took any action under this section with respect to that transaction;*

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

(iii) *information about any withdrawal from the process.*

(B) *Specific, cumulative, and, as appropriate, trend information on the numbers of filings, investigations, withdrawals, and decisions or actions by the President under this section.*

(C) *Cumulative and, as appropriate, trend information on the business sectors involved in the filings which have been made, and the countries from which the investments have originated.*

(D) *Information on whether companies that withdrew notices to the Committee in accordance with subsection (b)(1)(C)(ii) have later refiled such notices, or, alternatively, abandoned the transaction.*

(E) *The types of security arrangements and conditions the Committee has used to mitigate national security con-*

cerns about a transaction, including a discussion of the methods that the Committee and any lead agency are using to determine compliance with such arrangements or conditions.

(F) A detailed discussion of all perceived adverse effects of covered transactions on the national security or critical infrastructure of the United States that the Committee will take into account in its deliberations during the period before delivery of the next report, to the extent possible.

(3) CONTENTS OF REPORT RELATING TO **【CRITICAL TECHNOLOGIES.—】**

【(A) IN GENERAL.—In order to assist **】** *CRITICAL TECHNOLOGIES.—In order to assist* Congress in its oversight responsibilities with respect to this section, the President and such agencies as the President shall designate shall include in the annual report submitted under paragraph (1)—

【(i) (A) an evaluation of whether there is credible evidence of a coordinated strategy by 1 or more countries or companies to acquire United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer; and

【(ii) (B) an evaluation of whether there are industrial espionage activities directed or directly assisted by foreign governments against private United States companies aimed at obtaining commercial secrets related to critical technologies.

【(B) RELEASE OF UNCLASSIFIED STUDY.—All appropriate portions of the annual report under paragraph (1) may be classified. An unclassified version of the report, as appropriate, consistent with safeguarding national security and privacy, shall be made available to the public.**】**

(4) *ADDITIONAL CONTENTS OF REPORT.—Each annual report required under paragraph (1) shall contain the following additional information:*

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

(B) *Cumulative and trend information on the number of declarations filed under subsection (b)(1)(C)(v), the actions taken by the Committee in response to declarations, the business sectors involved in the declarations which have been made, and the countries involved in such declarations.*

(C) *The number of new hires made since the preceding report through the authorities described under subsection (q), along with summary statistics, position titles, and associated pay grades for such hires and a summary of such hires' responsibilities in administering this section.*

(5) **CLASSIFICATION; AVAILABILITY OF REPORT.—**

(A) CLASSIFICATION.—All appropriate portions of the annual report required by paragraph (1) may be classified.

(B) *PUBLIC AVAILABILITY OF UNCLASSIFIED VERSION.*—An unclassified version of the report required by paragraph (1), as appropriate and consistent with safeguarding national security and privacy, shall be made available to the public. Information regarding trade secrets or business confidential information may be included in the classified version and may not be made available to the public in the unclassified version.

(C) *EXCEPTIONS TO FREEDOM OF INFORMATION ACT.*—The exceptions to subsection (a) of section 552 of title 5, United States Code, provided for under subsection (b) of that section shall apply with respect to the report required by paragraph (1).

(n) **CERTIFICATION OF NOTICES AND ASSURANCES.**—**[Each notice]**

(1) *IN GENERAL.*—Each notice, and any followup information, submitted under this section and regulations prescribed under this section to the President or the Committee by a party to a covered transaction, and any information submitted by any such party in connection with any action for which a report is required pursuant to paragraph (3)(B) of subsection (1), with respect to the implementation of any mitigation agreement or condition described in paragraph (1)(A) of subsection (1), or any material change in circumstances, shall be accompanied by a written statement by the chief executive officer or the designee of the person required to submit such notice or information certifying that, to the best of the knowledge and belief of that person—

[(1)] (A) the notice or information submitted fully complies with the requirements of this section or such regulation, agreement, or condition; and

[(2)] (B) the notice or information is accurate and complete in all material respects.

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

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

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

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

(o) **CENTRALIZATION OF CERTAIN COMMITTEE FUNCTIONS.**—

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

(2) *RULE OF CONSTRUCTION.*—Nothing in this subsection shall be construed as limiting the authority of any department or agency represented on the Committee to represent its own interests before the Committee.

(p) *UNIFIED BUDGET REQUEST; ANNUAL SPENDING PLAN.*—

(1) *UNIFIED BUDGET REQUEST.*—

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

(B) *FORM OF BUDGET REQUEST.*—A unified request under subparagraph (A) shall be detailed and include the amounts and staffing levels requested for each department or agency represented on the Committee to carry out the functions of that department or agency under this section.

(2) *ANNUAL SPENDING PLAN.*—Not later than 90 days following the date of enactment of this subsection, and annually thereafter, the chairperson of the Committee shall transmit to the Committees on Appropriations and Financial Services of the House of Representatives and the Committees on Appropriations and Banking, Housing, and Urban Affairs of the Senate a detailed spending plan to expeditiously meet the requirements of subsections (b), (l), and (m), including estimated expenditures and staffing levels required by operations of the Committee for not less than the following fiscal year at each of the Committee's member agencies.

(3) *WAIVER.*—The chairperson may waive the reporting requirement under paragraph (2) with respect to a fiscal year for which a unified budget request described under paragraph (1) has been submitted.

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

(r) *TESTIMONY.*—

(1) *IN GENERAL.*—After submitting the unified budget request described under subsection (p)(1), or the spending plan described under subsection (p)(2), as the case may be, but not later than March 31 of each year, the chairperson, or the chairperson's designee, shall appear before the Committee on Financial Services of the House of Representatives and present testimony on—

(A) anticipated resources necessary for operations of the Committee in the following fiscal year at each of the Committee's member agencies;

(B) the adequacy of appropriations for the Committee in the current and the previous fiscal year to—

(i) ensure that thorough reviews and investigations are completed as expeditiously as possible;

(ii) monitor and enforce mitigation agreements; and

(iii) identify covered transactions for which a notice under clause (i) of subsection (b)(1)(C) or a declaration under clause (v) of subsection (b)(1)(C) was not submitted to the Committee; and

(C) management efforts to strengthen the ability of the Committee to meet the requirements of this section.

(2) *SUNSET.*—This subsection shall have no force or effect on the date that is five years following the date of enactment of the Foreign Investment Risk Review Modernization Act of 2018.

(s) *REGULATORY CERTAINTY FOR UNITED STATES BUSINESSES.*—With respect to mitigating a national security risk that results from a foreign person’s investment in, or joint venture with, a United States business, a member agency of the Committee may not prescribe or implement regulations to require divestment by, or of, the United States business, unless—

(1) the regulations are prescribed under this section or pursuant to authorities of the President under the International Emergency Economic Powers Act; or

(2) the President reports to Congress in writing that the regulations—

(A) are, wherever applicable, consistent with regulations prescribed under this section, including any such regulations pertaining to—

(i) foreign control or influence over a United States business;

(ii) the identification of emerging, foundational, or other critical technologies; and

(iii) confidentiality requirements with respect to information and documentary material regarding United States businesses; and

(B) in the case of regulations prescribed or finalized following the effective date of this subsection, were prescribed in consultation with the chairperson of the Committee and with the head of any member agency determined by the President to be affected by the regulations.

(t) *FUNDING.*—

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

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

(3) *FILING FEES.*—

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

(B) *DETERMINATION OF AMOUNT OF FEE.*—

(i) *IN GENERAL.*—*The amount of the fee to be assessed under subparagraph (A) with respect to a covered transaction—*

(I) may not exceed an amount equal to the lesser of—

(aa) 1 percent of the value of the transaction;

or

(bb) \$300,000, as such amount is adjusted annually for inflation pursuant to regulations prescribed by the Committee; and

(II) shall be determined by the Committee after taking into consideration—

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

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

(cc) the effect of the fee on foreign investment;

(dd) the unified budget request or annual spending plan, as appropriate, described in section 502 of the Foreign Investment Risk Review Modernization Act of 2018; and

(ee) such other matters as the Committee considers appropriate.

(ii) UPDATES.—*The Committee shall periodically reconsider and adjust the amount of the fee to be assessed under subparagraph (A) with respect to a covered transaction to ensure that the amount of the fee remains appropriate.*

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

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

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

(iii) remain available until expended; and

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

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

* * * * *

EXPORT ADMINISTRATION ACT OF 1979

SHORT TITLE

[SECTION 1. This Act may be cited as the “Export Administration Act of 1979”.]

[FINDINGS

[SEC. 2. The Congress makes the following findings:

[(1) The ability of the United States citizens to engage in international commerce is a fundamental concern of United States policy.

[(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and by earning foreign exchange, thereby contributing favorably to the trade balance. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

[(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, consistent with the economic, security, and foreign policy objectives of the United States.

[(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

[(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

[(6) Uncertainty of export control policy can inhibit the efforts of United States business and work to the detriment of the overall attempt to improve the trade balance of the United States.

[(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

[(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

[(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to a positive contribution to the balance of payments, to reducing the level of Fed-

eral expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

【(10) It is important that the administration of export controls imposed for foreign policy purposes give special emphasis to the need to control exports of goods and substances hazardous to the public health and the environment which are banned or severely restricted for use in the United States, and which, if exported, could affect the international reputation of the United States as a responsible trading partner.

【(11) Availability to controlled countries of goods and technology from foreign sources is a fundamental concern of the United States and should be eliminated through negotiations and other appropriate means whenever possible.

【(12) Excessive dependence of the United States, its allies, or countries sharing common strategic objectives with the United States, on energy and other critical resources from potential adversaries can be harmful to the mutual and individual security of all those countries.

【DECLARATION OF POLICY

【SEC. 3. The Congress makes the following declarations:

【(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

【(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

【(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

【(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

【(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

【(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments or common strategic objectives.

【(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

【(5) It is the policy of the United States—

【(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

【(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

【(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

【(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

【(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make reasonable and prompt efforts to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before imposing export controls. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

【(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make reasonable and prompt efforts to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before imposing export controls.

【(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitments or common strategic objectives in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments, or common strategic objectives, and to encourage other friendly countries to cooperate in restricting the sale of goods and technology that can harm the security of the United States.

【(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

【(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

【(12) It is the policy of the United States to sustain vigorous scientific enterprise. To do so involves sustaining the ability of scientists and other scholars freely to communicate research findings, in accordance with applicable provisions of law, by means of publication, teaching, conferences, and other forms of scholarly exchange.

【(13) It is the policy of the United States to control the export of goods and substances banned or severely restricted for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States as well as to the credibility of the United States as a responsible trading partner.

【(14) It is the policy of the United States to cooperate with countries which are allies of the United States and countries which share common strategic objectives with the United States in minimizing dependence on imports of energy and other critical resources from potential adversaries and in developing alternative supplies of such resources in order to minimize strategic threats posed by excessive hard currency earnings derived from such resource exports by countries with policies adverse to the security interests of the United States.

【GENERAL PROVISIONS

【SEC. 4. (a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act, the Secretary may require any of the following types of export licenses:

【(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

【(2) Validated licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of an individual validated license for each such export, including, but not limited to, the following:

【(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods in countries other than controlled countries, except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China. The Secretary shall grant the distribution license primarily on the basis of the reliability of the applicant and foreign consignees with respect to the prevention of diversion of goods to controlled countries. The Secretary shall have the responsibility of determining, with the assistance of all appropriate agencies, the reliability of applicants and their immediate consignees. The Secretary's determination shall be based on appropriate investigations of each applicant

and periodic reviews of licensees and their compliance with the terms of licenses issued under this Act. Factors such as the applicant's products or volume of business, or the consignees' geographic location, sales distribution area, or degree of foreign ownership, which may be relevant with respect to individual cases, shall not be determinative in creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

[(B) A comprehensive operations license, authorizing exports and reexports of technology and related goods, including items from the list of militarily critical technologies developed pursuant to section 5(d) of this Act which are included on the control list in accordance with that section, from a domestic concern to and among its foreign subsidiaries, affiliates, joint venturers, and licensees that have long-term, contractually defined relations with the exporter, are located in countries other than controlled countries (except the People's Republic of China), and are approved by the Secretary. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's systems of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and with the assistance of all appropriate agencies, shall periodically, but not less frequently than annually, perform audits of licensing procedures under this subparagraph in order to assure the integrity and effectiveness of those procedures.

[(C) A project license, authorizing exports of goods or technology for a specified activity.

[(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.

[(3) A general license, authorizing exports, without application by the exporter.

[(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

[(b) CONTROL LIST.—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the "control list") stating license requirements (other than for general licenses) for exports of goods and technology under this Act.

[(c) FOREIGN AVAILABILITY.—In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in sufficient quantities and comparable in quality to those produced in the United States, so as to render the controls ineffective in achieving their purposes unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States. In complying with the provisions of this subsection, the President shall give strong emphasis

to bilateral or multilateral negotiations to eliminate foreign availability. The Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.

[(d) RIGHT OF EXPORT.—No authority or permission to export may be required under this Act, or under regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

[(e) DELEGATION OF AUTHORITY.—The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

[(f) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH BUSINESS.—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls, in order to obtain their views on United States export control policy and the foreign availability of goods and technology.

[(g) FEES.—No fee may be charged in connection with the submission or processing of an export license application.

NATIONAL SECURITY CONTROLS

[SEC. 5. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. For purposes of the preceding sentence, the term “affiliates” includes both governmental entities and commercial entities that are controlled in fact by controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

[(2) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

[(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take the effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States.

[(4)(A) No authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States to any country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee, or pursuant to an agreement described in subsection (k) of this section. The Secretary may require any person reexporting any goods or technology under this subparagraph to notify the Secretary of such reexports.

[(B) Notwithstanding subparagraph (A), the Secretary may require authority or permission to reexport the following:

- [(i) supercomputers;
- [(ii) goods or technology for sensitive nuclear uses (as defined by the Secretary);
- [(iii) devices for surreptitious interception of wire or oral communications; and
- [(iv) goods or technology intended for such end users as the Secretary may specify by regulation.

[(5)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States from any country when the goods or technology to be reexported are incorporated in another good and—

- [(i) the value of the controlled United States content of that other good is 25 percent or less of the total value of the good; or
- [(ii) the export of the goods or technology to a controlled country would require only notification of the participating governments of the Coordinating Committee.

For purposes of this paragraph, the “controlled United States content” of a good means those goods or technology subject to the jurisdiction of the United States which are incorporated in the good, if the export of those goods or technology from the United States to a country, at the time that the good is exported to that country, would require a validated license.

[(B) The Secretary may by regulation provide that subparagraph (A) does not apply to the reexport of a supercomputer which contains goods or technology subject to the jurisdiction of the United States.

[(6) Not later than 90 days after the date of the enactment of this paragraph, the Secretary shall issue regulations to carry out paragraphs (4) and (5). Such regulations shall define the term “supercomputer” for purposes of those paragraphs.

[(b) POLICY TOWARD INDIVIDUAL COUNTRIES.—(1) In administering export controls for national security purposes under this section, the President shall establish as a list of controlled countries those countries set forth in section 620(f) of the Foreign As-

sistance Act of 1961, except that the President may add any country to or remove any country from such list of controlled countries if he determines that the export of goods or technology to such country would or would not (as the case may be) make a significant contribution to the military potential of such country or a combination of countries which would prove detrimental to the national security of the United States. In determining whether a country is added to or removed from the list of controlled countries, the President shall take into account—

[(A) the extent to which the country's policies are adverse to the national security interests of the United States;

[(B) the country's Communist or non-Communist status;

[(C) the present and potential relationship of the country with the United States;

[(D) the present and potential relationship of the country with countries friendly or hostile to the United States;

[(E) the country's nuclear weapons capability and the country's compliance record with respect to multilateral nuclear weapons agreements to which the United States is a party; and

[(F) such other factors as the President considers appropriate.

Nothing in the preceding sentence shall be interpreted to limit the authority of the President provided in this Act to prohibit or curtail the export of any goods or technology to any country to which exports are controlled for national security purposes other than countries on the list of controlled countries specified in this paragraph. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors set forth in this paragraph.

[(2)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to export goods or technology to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section, if the export of such goods or technology to the People's Republic of China or a controlled country on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee.

[(B)(i) The Secretary may require a license for the export of goods or technology described in subparagraph (A) to such end users as the Secretary may specify by regulation.

[(ii) The Secretary may require any person exporting goods or technology under this paragraph to notify the Secretary of those exports.

[(C) The Secretary shall, within 3 months after the date of the enactment of the Export Enhancement Act of 1988, determine which countries referred to in subparagraph (A) are implementing an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

[(i) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

[(ii) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

[(iii) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

[(iv) a system of export control documentation to verify the movement of goods and technology; and

[(v) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

The Secretary shall, at least once each year, review the determinations made under the preceding sentence with respect to all countries referred to in subparagraph (A). The Secretary may, as appropriate, add countries to, or remove countries from, the list of countries that are implementing an effective export control system in accordance with this subparagraph. No authority or permission to export may be required for the export of goods or technology to a country on such list.

[(3)(A) No authority or permission may be required under this section to export to any country, other than a controlled country, any goods or technology if the export of the goods or technology to controlled countries would require only notification of the participating governments of the Coordinating Committee.

[(B) The Secretary may require any person exporting any goods or technology under subparagraph (A) to notify the Secretary of those exports.

[(c) CONTROL LIST.—(1) The Secretary shall establish and maintain, as part of the control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

[(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, as determined by the Secretary, the Secretary of Defense may, within 20 days after receiving notification of the Secretary's determination, refer the matter to the President for resolution. The Secretary of Defense shall notify the Secretary of any such referral. The President shall, not later than 20 days after such referral, notify the Secretary of his determination with respect to the inclusion of such items on the list. Failure of the Secretary of Defense to notify the President or the Secretary, or failure of the President to notify the Secretary, in accordance with this paragraph, shall be deemed by the Secretary to constitute concurrence in the implementation of the actions proposed by the Secretary regarding the inclusion of such items on the list.

[(3) The Secretary shall conduct partial reviews of the list established pursuant to this subsection at least once each calendar quar-

ter in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each quarterly review, the Secretary shall publish notice of that review in the Federal Register. The Secretary shall provide a 30-day period during each review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. After consultation with appropriate Government agencies, the Secretary shall make a determination of any revisions in the list within 30 days after the end of the review period. The concurrence or approval of any other department or agency is not required before any such revision is made. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall use the data developed from each review in formulating United States proposals relating to multilateral export controls in the group known as the Coordinating Committee. The Secretary shall further assess, as part of each review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section. All goods and technology on the list shall be reviewed at least once each year. The provisions of this paragraph apply to revisions of the list which consist of removing items from the list or making changes in categories of, or other specifications in, items on the list.

[(4) The appropriate technical advisory committee appointed under subsection (h) of this section shall be consulted by the Secretary with respect to changes, pursuant to paragraph (2) or (3), in the list established pursuant to this subsection, and such technical advisory committee may submit recommendations to the Secretary with respect to such changes. The Secretary shall consider the recommendations of the technical advisory committee and shall inform the committee of the disposition of its recommendations.

[(5)(A) Not later than 6 months after the date of the enactment of this paragraph, the following shall no longer be subject to export controls under this section:

[(i) All goods or technology the export of which to controlled countries on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee, except for those goods or technology on which the Coordinating Committee agrees to maintain such notification requirement.

[(ii) All medical instruments and equipment, subject to the provisions of subsection (m) of this section.

[(B) The Secretary shall submit to the Congress annually a report setting forth the goods and technology from which export controls have been removed under this paragraph.”

[(6)(A) Notwithstanding subsection (f) or (h)(6) of this section, any export control imposed under this section which is maintained unilaterally by the United States shall expire 6 months after the date of the enactment of this paragraph, or 6 months after the export control is imposed, whichever date is later, except that—

[(i) any such export controls on those goods or technology for which a determination of the Secretary that there is no foreign availability has been made under subsection (f) or (h)(6) of this

section before the end of the applicable 6-month period and is in effect may be renewed for periods of not more than 6 months each, and

[(ii) any such export controls on those goods or technology with respect to which the President, by the end of the applicable 6-month period, is actively pursuing negotiations with other countries to achieve multilateral export controls on those goods or technology may be renewed for 2 periods of not more than 6 months each.

[(B) Export controls on goods or technology described in clause (i) or (ii) of subparagraph (A) may be renewed only if, before each renewal, the President submits to the Congress a report setting forth all the controls being renewed and stating the specific reasons for such renewal.

[(7) Notwithstanding any other provision of this subsection, after 1 year has elapsed since the last review in the Federal Register on any item within a category on the control list the export of which to the People's Republic of China would require only notification of the members of the group known as the Coordinating Committee, an export license applicant may file an allegation with the Secretary that such item has not been so reviewed within such 1-year period. Within 90 days after receipt of such allegation, the Secretary—

[(A) shall determine the truth of the allegation;

[(B) shall, if the allegation is confirmed, commence and complete the review of the item; and

[(C) shall, pursuant to such review, submit a finding for publication in the Federal Register.

In such finding, the Secretary shall identify those goods or technology which shall remain on the control list and those goods or technology which shall be removed from the control list. If such review and submission for publication are not completed within that 90-day period, the goods or technology encompassed by such item shall immediately be removed from the control list.

[(d) MILITARILY CRITICAL TECHNOLOGIES.—(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

[(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list, primary emphasis shall be given to—

[(A) arrays of design and manufacturing know-how,

[(B) keystone manufacturing, inspection, and test equipment,

[(C) goods accompanied by sophisticated operation, application, or maintenance know-how; and

[(D) keystone equipment with would reveal or give insight into the design and manufacture of a United States military system,

which are not possessed by, or available in fact from sources outside the United States to, controlled countries and which, if exported, would permit a significant advance in a military system of any such country.

[(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

[(4) The Secretary and the Secretary of Defense shall integrate items on the list of militarily critical technologies into the control list in accordance with the requirements of subsection (c) of this section. The integration of items on the list of militarily critical technologies into the control list shall proceed with all deliberate speed. Any disagreement between the Secretary and the Secretary of Defense regarding the integration of an item on the list of militarily critical technologies into the control list shall be resolved by the President. Except in the case of a good or technology for which a validated license may be required under subsection (f)(4) or (h)(6) of this section, a good or technology shall be included on the control list only if the Secretary finds that controlled countries do not possess that good or technology, or a functionally equivalent good or technology, and the good or technology or functionally equivalent good or technology, is not available in fact to a controlled country from sources outside the United States in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such good or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section. The Secretary and the Secretary of Defense shall jointly submit a report to the Congress, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, on actions taken to carry out this paragraph. For the purposes of this paragraph, assessment of whether a good or technology is functionally equivalent shall include consideration of the factors described in subsection (f)(3) of this section.

[(5) The Secretary of Defense shall establish a procedure for reviewing the goods and technology on the list of militarily critical technologies on an ongoing basis for the purpose of removing from the list of militarily critical technologies any goods or technology that are no longer militarily critical. The Secretary of Defense may add to the list of militarily critical technologies and good or technology that the Secretary of Defense determines is militarily critical, consistent with the provisions of paragraph (2) of this subsection. If the Secretary and the Secretary of Defense disagree as to whether any change in the list of militarily critical technologies by the addition or removal of a good or technology should also be made in the control list, consistent with the provisions of the fourth sentence of paragraph (4) of this subsection, the President shall resolve the disagreement.

[(6) The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied by suitable reductions in the controls on the products of that technology and equipment.

[(7) The Secretary of Defense shall, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, report to the Congress on efforts by the Department of Defense to assess the impact that the transfer of goods or

technology on the list of militarily critical technologies to controlled countries has had or will have on the military capabilities of those countries.

[(e) EXPORT LICENSES.—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of individual validated licenses.

[(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

[(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

[(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

[(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

[(3) The Secretary, subject to the provisions of subsection (1) of this section, shall not require an individual validated export license for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that has been lawfully exported from the United States.

[(4) The Secretary shall periodically review the procedures with respect to the multiple validated export licenses, taking appropriate action to increase their utilization by reducing qualification requirements or lowering minimum thresholds, to combine procedures which overlap, and to eliminate those procedures which appear to be of marginal utility.

[(5) The export of goods subject to export controls under this section shall be eligible, at the discretion of the Secretary, for a distribution license and other licenses authorizing multiple exports of goods, in accordance with section 4(a)(2) of this Act. The export of technology and related goods subject to export controls under this section shall be eligible for a comprehensive operations license in accordance with section 4(a)(2)(B) of this Act.

[(6) Any application for a license for the export to the People's Republic of China of any good on which export controls are in effect under this section, without regard to the technical specifications of the good, for the purpose of demonstration or exhibition at a trade show shall carry a presumption of approval if—

[(A) the United States exporter retains title to the good during the entire period in which the good is in the People's Republic of China; and

[(B) the exporter removes the good from the People's Republic of China no later than at the conclusion of the trade show.

[(f) FOREIGN AVAILABILITY.—

[(1) FOREIGN AVAILABILITY TO CONTROLLED COUNTRIES.—(A) The Secretary, in consultation with the Secretary of Defense and other appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to controlled countries from such sources in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

[(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a controlled country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

[(2) FOREIGN AVAILABILITY TO OTHER THAN CONTROLLED COUNTRIES.—(A) The Secretary shall review, on a continuing basis, the availability to countries other than controlled countries, from sources outside the United States, of any goods or technology the export of which requires a validated license under this section. If the Secretary determines, in accordance

with procedures which the Secretary shall establish, that any goods or technology in sufficient quantity and of comparable quality are available in fact from sources outside the United States (other than availability under license from a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section), the Secretary may not, after the determination is made and during the period of such foreign availability, require a validated license for the export of such goods or technology to any country (other than a controlled country) to which the country from which the goods or technology is available does not place controls on the export of such goods or technology. The requirement with respect to a validated license in the preceding sentence shall not apply if the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

[(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a country (other than a controlled country) and which meets all other requirements for such an application, if the Secretary determines that such goods or technology are available from foreign sources to that country under the criteria established in subparagraph (A), unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

[(3) PROCEDURES FOR MAKING DETERMINATIONS.—(A) The Secretary shall make a foreign availability determination under paragraph (1) or (2) on the Secretary's own initiative or upon receipt of an allegation from an export license applicant that such availability exists. In making any such determination, the Secretary shall accept the representations of applicants made in writing and supported by reasonable evidence, unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In making determinations of foreign availability, the Secretary may consider such factors as cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, durability, quality of end products produced by the item proposed for export, and scale of production. For purposes of this subparagraph, "evidence"

may include such items as foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

[(B) In a case in which an allegation is received from an export license applicant, the Secretary shall, upon receipt of the allegation, submit for publication in the Federal Register notice of such receipt. Within 4 months after receipt of the allegation, the Secretary shall determine whether the foreign availability exists, and shall so notify the applicant. If the Secretary has determined that the foreign availability exists, the Secretary shall, upon making such determination, submit the determination for review to other departments and agencies as the Secretary considers appropriate. The Secretary's determination of foreign availability does not require the concurrence or approval of any official, department, or agency to which such a determination is submitted. Not later than 1 month after the Secretary makes the determination, the Secretary shall respond in writing to the applicant and submit for publication in the Federal Register, that—

[(i) the foreign availability does exist and—

[(I) the requirement of a validated license has been removed,

[(II) the President has determined that export controls under this section must be maintained notwithstanding the foreign availability and the applicable steps are being taken under paragraph (4), or

[(III) in the case of a foreign availability determination under paragraph (1), the foreign availability determination will be submitted to a multilateral review process in accordance with the agreement of the Coordinating Committee for a period of not more than 4 months beginning on the date of the publication; or

[(ii) the foreign availability does not exist.

In any case in which the submission for publication is not made within the time period specified in the preceding sentence, the Secretary may not thereafter require a license for the export of the goods or technology with respect to which the foreign availability allegation was made. In the case of a foreign availability determination under paragraph (1) to which clause (i)(III) applies, no license for such export may be required after the end of the 9-month period beginning on the date on which the allegation is received.

[(4) NEGOTIATIONS TO ELIMINATE FOREIGN AVAILABILITY.—(A) In any case in which export controls are maintained under this section notwithstanding foreign availability, on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United States, the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. No later than the commencement of such negotiations, the President shall notify in writing the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives that he has begun such negotiations

and why he believes it is important to national security that export controls on the goods or technology involved be maintained.

【(B) If, within 6 months after the President's determination that export controls be maintained, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export controls involved would prove detrimental to the national security of the United States. Whenever the President has reason to believe that goods or technology subject to export controls for national security purposes by the United States may become available from other countries to controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

【(C) After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate or prevent foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

【(5) EXPEDITED LICENSES FOR ITEMS AVAILABLE TO COUNTRIES OTHER THAN CONTROLLED COUNTRIES.—(A) In any case in which the Secretary finds that any goods or technology from foreign sources is of similar quality to goods or technology the export of which requires a validated license under this section and is available to a country other than a controlled country without effective restrictions, the Secretary shall designate such goods or technology as eligible for export to such country under this paragraph.

【(B) In the case of goods or technology designated under subparagraph (A), then 20 working days after the date of formal filing with the Secretary of an individual validated license application for the export of those goods or technology to an eligible country, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless the license has been denied by the Secretary on account of an inappropriate end user. The Secretary may extend the 20-day period provided in the preceding sentence for an additional period of 15 days if the Secretary requires additional time to consider the application and so notifies the applicant.

【(C) The Secretary may make a foreign availability determination under subparagraph (A) on the Secretary's own initiative, upon receipt of an allegation from an export license applicant that such availability exists, or upon the submission of a certification by a technical advisory committee of appropriate jurisdiction that such availability exists. Upon receipt of such an allegation or certification, the Secretary shall publish notice of such allegation or certification in the Federal Register and

shall make the foreign availability determination within 30 days after such receipt and publish the determination in the Federal Register. In the case of the failure of the Secretary to make and publish such determination within that 30-day period, the goods or technology involved shall be deemed to be designated as eligible for export to the country or countries involved, for purposes of subparagraph (B).

[(D) The provisions of paragraphs (1), (2), (3), and (4) do not apply with respect to determinations of foreign availability under this paragraph.

[(6) OFFICE OF FOREIGN AVAILABILITY.—The Secretary shall establish in the Department of Commerce an Office of Foreign Availability, which shall be under the direction of the Under Secretary of Commerce for Export Administration. The Office shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under this Act. The Secretary shall make available to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability, during that 6-month period, including information on the training of personnel, the use of computers, and the use of Commercial Service Officers of the United States and Foreign Commercial Service. Such information shall also include a description of representative determinations made under this Act during that 6-month period that foreign availability did or did not exist (as the case may be), together with an explanation of such determinations.

[(7) SHARING OF INFORMATION.—Each department or agency of the United States, including any intelligence agency, and all contractors with any such department or agency, shall, upon the request of the Secretary and consistent with the protection of intelligence sources and methods, furnish information to the Office of Foreign Availability concerning foreign availability of goods and technology subject to export controls under this Act. Each such department or agency shall allow the Office of Foreign Availability access to any information from a laboratory or other facility within such department or agency.

[(8) REMOVAL OF CONTROLS ON LESS SOPHISTICATED GOODS OR TECHNOLOGY.—In any case in which Secretary may not, pursuant to paragraph (1), (2), (3), or (4) of this subsection or paragraph (6) of subsection (h) of this section, require a validated license for the export of goods or technology, then the Secretary may not require a validated license for the export of any similar goods or technology whose function, technological approach, performance thresholds, and other attributes that form the basis for export controls under this section do not exceed the technical parameters of the goods or technology from which the validated license requirement is removed under the applicable paragraph.

[(9) NOTICE OF ALL FOREIGN AVAILABILITY ASSESSMENTS.—Whenever the Secretary undertakes a foreign availability assessment under this subsection or subsection (h)(6), the Sec-

retary shall publish notice of such assessment in the Federal Register.

[(10) AVAILABILITY DEFINED.—For purposes of this subsection and subsections (f) and (h), the term “available in fact to controlled countries” includes production or availability of any goods or technology in any country—

[(A) from which the goods or technology is not restricted for export to any controlled country; or

[(B) in which such export restrictions are determined by the Secretary to be ineffective.

For purposes of subparagraph (B), the mere inclusion of goods or technology on a list of goods or technology subject to bilateral or multilateral national security export controls shall not alone constitute credible evidence that a country provides an effective means of controlling the export of such goods or technology to controlled countries.

[(g) INDEXING.—(1) In order to ensure that requirements for validated licenses and other licenses authorizing multiple exports are periodically removed as goods or technology subject to such requirements becomes obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology from such license requirements the anticipated needs of the military of controlled countries. Any such goods or technology which no longer meets the performance levels established by the regulations shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

[(2)(A) In carrying out this subsection, the Secretary shall conduct annual reviews of the performance levels of goods or technology—

[(i) which are eligible for export under a distribution license,

[(ii) below which exports to the People’s Republic of China require only notification of the governments participating in the group known as the Coordinating Committee, and

[(iii) below which no authority or permission to export may be required under subsection (b)(2) or (b)(3) of this section.

The Secretary shall make appropriate adjustments to such performance levels based on these reviews.

[(B) In any case in which the Secretary receives a request which—

[(i) is to revise the qualification requirements or minimum thresholds of any goods eligible for export under a distribution license, and

[(ii) is made by an exporter of such goods, representatives of an industry which produces such goods, or a technical advisory committee established under subsection (h) of this section, the Secretary, after consulting with other appropriate Government agencies and technical advisory committees established under subsection (h) of this section, shall determine whether to make such revision, or some other appropriate revision, in such qualification requirements or minimum thresholds. In making this determination, the Secretary shall take into account the availability of the goods from sources outside the United States. The Secretary shall make a determination on a request made under this subparagraph within 90 days after the date on which the request is filed. If the Secretary's determination pursuant to such a request is to make a revision, such revision shall be implemented within 120 days after the date on which the request is filed and shall be published in the Federal Register.

[(h) TECHNICAL ADVISORY COMMITTEES.—(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State, the intelligence community, and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

[(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, (D) revisions of the control list (as provided in subsection (c)(4)), including proposed revisions of multilateral controls in which the United States participates, (E) the issuance of regulations, and (F) any other questions relating to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

[(3) Upon request of any member of any such committee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

[(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary shall consult each such committee with respect to such termination or extension of that committee.

[(5) To facilitate the work of the technical advisory committees, the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.

[(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, the technical advisory committee shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification. The Secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the technical advisory committee and the Congress stating that—

[(A) the Secretary has removed the requirement of a validated license for the export of the goods or technology, on account of the foreign availability,

[(B) the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, or

[(C) the Secretary has determined on the basis of the investigation that the foreign availability does not exist.

To the extent necessary, the report may be submitted on a classified basis. In any case in which the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, the President shall actively pursue such negotiations with the governments of the appropriate foreign countries. If, within 6 months after the Secretary submits such report to the Congress, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the Presi-

dent certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States. After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

【(i) MULTILATERAL EXPORT CONTROLS.—Recognizing the ineffectiveness of unilateral controls and the importance of uniform enforcement measures to the effectiveness of multilateral controls, the President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the “Committee”) with a view toward accomplishing the following objectives:

【(1) Enhanced public understanding of the Committee’s purpose and procedures, including publication of the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

【(2) Periodic meetings of high-level representatives of participating governments for the purpose of coordinating export control policies and issuing policy guidance to the Committee.

【(3) Strengthened legal basis for each government’s export control system, including, as appropriate, increased penalties and statutes of limitations.

【(4) Harmonization of export control documentation by the participating governments to verify the movement of goods and technology subject to controls by the Committee.

【(5) Improved procedures for coordination and exchange of information concerning violations of the agreement of the Committee.

【(6) Procedures for effective implementation of the agreement through uniform and consistent interpretations of export controls agreed to by the governments participating in the Committee.

【(7) Coordination of national licensing and enforcement efforts by governments participating in the Committee, including sufficient technical expertise to assess the licensing status of exports and to ensure end-use verification.

【(8) More effective procedures for enforcing export controls, including adequate training, resources, and authority for enforcement officers to investigate and prevent illegal exports.

【(9) Agreement to provide adequate resources to enhance the functioning of individual national export control systems and of the Committee.

【(10) Improved enforcement and compliance with the agreement through elimination of unnecessary export controls and maintenance of an effective control list.

【(11) Agreement to enhance cooperation among members of the Committee in obtaining the agreement of governments outside the Committee to restrict the export of goods and technology on the International Control List, to establish an ongoing mechanism in the Committee to coordinate planning and implementation of export control measures related to such agreements, and to remove items from the International Con-

trol List if such items continue to be available to controlled countries or if the control of the items no longer serves the common strategic objectives of the members of the Committee. For purposes of reviews of the International Control List, the President may include as advisors of the United States delegation to the Committee representatives of industry who are knowledgeable with respect to the items being reviewed.

[(j) COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.—(1) Any United States firm, enterprise, or other nongovernmental entity which enters into an agreement with any agency of the government of a controlled country, that calls for the encouragement of technical cooperation and that is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report to the Secretary the agreement with such agency in sufficient detail.

[(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.

[(k) NEGOTIATIONS WITH OTHER COUNTRIES.—The Secretary of State in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries, including those countries not participating in the group known as the Coordinating Committee, regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions. In cases where such negotiations produce agreements on export restrictions comparable in practice to those maintained by the Coordinating Committee, the Secretary shall treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports to members of the Coordinating Committee are treated, including the same manner as exports are treated under subsection (b)(2) of this section and section 10(o) of this Act.

[(l) DIVERSION OF CONTROLLED GOODS OR TECHNOLOGY.—(1) Whenever there is reliable evidence, as determined by the Secretary, that goods or technology which were exported subject to national security controls under this section to a controlled country have been diverted to an unauthorized use or consignee in violation of the conditions of an export license, the Secretary for as long as that diversion continues—

[(A) shall deny all further exports, to or by the party or parties responsible for that diversion or who conspired in that diversion, of any goods or technology subject to national security controls under this section, regardless of whether such goods or technology are available from sources outside the United States; and

[(B) may take such additional actions under this Act with respect to the party or parties referred to in subparagraph (A) as the Secretary determines are appropriate in the circumstances to deter the further unauthorized use of the previously exported goods or technology.

[(2) As used in this subsection, the term “unauthorized use” means the use of United States goods or technology in the design, production, or maintenance of any item on the United States Munitions List, or the military use of any item on the International Control List of the Coordinating Committee.

[(m) GOODS CONTAINING CONTROLLED PARTS AND COMPONENTS.—Export controls may not be imposed under this section, or under any other provision of law, on a good solely on the basis that the good contains parts or components subject to export controls under this section if such parts or components—

[(1) are essential to the functioning of the good,

[(2) are customarily included in sales of the good in countries other than controlled countries, and

[(3) comprise 25 percent or less of the total value of the good,

unless the good itself, if exported, would by virtue of the functional characteristics of the good as a whole make a significant contribution to the military potential of a controlled country which would prove detrimental to the national security of the United States.

[(n) SECURITY MEASURES.—The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and in consultation with the Director of the Federal Bureau of Investigation, shall provide advice and technical assistance to persons engaged in the manufacture or handling of goods or technology subject to export controls under this section to develop security systems to prevent violations or evasions of those export controls.

[(o) RECORDKEEPING.—The Secretary, the Secretary of Defense, and any other department or agency consulted in connection with a license application under this Act or a revision of a list of goods or technology subject to export controls under this Act, shall make and keep records of their respective advice, recommendations, or decisions in connection with any such license application or revision, including the factual and analytical basis of the advice, recommendations, or decisions.

[(p) NATIONAL SECURITY CONTROL OFFICE.—To assist in carrying out the policy and other authorities and responsibilities of the Secretary of Defense under this section, there is established in the Department of Defense a National Security Control Office under the direction of the Under Secretary of Defense Policy. The Secretary of Defense may delegate to that office such of those authorities and responsibilities, together with such ancillary functions, as the Secretary of Defense considers appropriate.

[(q) EXCLUSION FOR AGRICULTURAL COMMODITIES.—This section does not authorize export controls on agricultural commodities, including fats, oils, and animal hides and skins.

[(FOREIGN POLICY CONTROLS

[(SEC. 6. (a) AUTHORITY.—(1) In order to carry out the policy set forth in paragraph (2)(B), (7), (8), or (13) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its de-

clared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

[(2) Any export control imposed under this section shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity.

[(3) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (f). Any such extension and any subsequent extension shall not be for a period of more than a year.

[(4) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

[(5) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

[(6) Before imposing, expanding, or extending export controls under this section on exports to a country which can use goods, technology, or information available from foreign sources and so incur little or no economic costs as a result of the controls, the President should, through diplomatic means, employ alternatives to export controls which offer opportunities of distinguishing the United States from, and expressing the displeasure of the United States with, the specific actions of that country in response to which the controls are proposed. Such alternatives include private discussions with foreign leaders, public statements in situations where private diplomacy is unavailable or not effective, withdrawal of ambassadors, and reduction of the size of the diplomatic staff that the country involved is permitted to have in the United States.

[(b) CRITERIA.—(1) Subject to paragraph (2) of this subsection, the President may impose, extend, or expand export controls under this section only if the President determines that—

[(A) such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls, and that foreign policy purpose cannot be achieved through negotiations or other alternative means;

[(B) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

[(C) the reaction of other countries to the imposition, extension, or expansion of such export controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to United States foreign policy interests;

[(D) the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

[(E) the United States has the ability to enforce the proposed controls effectively.

[(2) With respect to those export controls in effect under this section on the date of the enactment of the Export Administration Amendments Act of 1985, the President, in determining whether to extend those controls, as required by subsection (a)(3) of this section, shall consider the criteria set forth in paragraph (1) of this subsection and shall consider the foreign policy consequences of modifying the export controls.

[(c) CONSULTATION WITH INDUSTRY.—The Secretary in every possible instance shall consult with and seek advice from affected United States industries and appropriate advisory committees established under section 135 of the Trade Act of 1974 before imposing any export control under this section. Such consultation and advice shall be with respect to the criteria set forth in subsection (b)(1) and such other matters as the Secretary considers appropriate.

[(d) CONSULTATION WITH OTHER COUNTRIES.—When imposing export controls under this section, the President shall, at the earliest appropriate opportunity, consult with the countries with which the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate, with respect to the criteria set forth in subsection (b)(1) and such other matters as the President considers appropriate.

[(e) ALTERNATIVE MEANS.—Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

[(f) CONSULTATION WITH THE CONGRESS.—(1) The president may impose or expand export controls under this section, or extend such controls as required by subsection (a)(3) of this section, only after consultation with the Congress, including the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

[(2) The President may not impose, expand, or extend export controls under this section until the President has submitted to the Congress a report—

[(A) specifying the purpose of the controls;

[(B) specifying the determinations of the President (or, in the case of those export controls described in subsection (b)(2), the considerations of the President) with respect to each of the criteria set forth in subsection (b)(1), the bases for such determinations (or considerations), and any possible adverse foreign policy consequences of the controls;

[(C) describing the nature, the subjects, and the results of, or the plans for, the consultation with industry pursuant to subsection (c) and with other countries pursuant to subsection (d);

[(D) specifying the nature and results of any alternative means attempted under subsection (e), or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means; and

[(E) describing the availability from other countries of goods or technology comparable to the goods or technology subject to the proposed export controls, and describing the nature and results of the efforts made pursuant to subsection (h) to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations.

[(3) To the extent necessary to further the effectiveness of the export controls portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.

[(4) In the case of export controls under this section which prohibit or curtail the export of any agricultural commodity, a report submitted pursuant to paragraph (2) shall be deemed to be the report required by section 7(g)(3)(A) of this Act.

[(5) In addition to any written report required, under this section, the Secretary, not less frequently than annually, shall present in oral testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on policies and actions taken by the Government to carry out the provisions of this section.

[(g) EXCLUSION FOR MEDICINE AND MEDICAL SUPPLIES AND FOR CERTAIN FOOD EXPORTS.—This section does not authorize export controls on medicine or medical supplies. This section also does not authorize export controls on donations of goods (including, but not limited to, food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies) that are intended to meet basic human needs. Before export controls on food are imposed, expanded, or extended under this section, the Secretary shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Administrator of the Agency for International Development in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Administrator with respect to developing countries, shall determine whether the proposed export control on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the

proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interest of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Administrator of the Agency for International Development, and any such determination by the President, shall be reported to the Congress, together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. The subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies or of food under the International Emergency Economic Powers Act. This subsection shall not apply to any export control on medicine, medical supplies, or food, except for donations, which is in effect on the date of the enactment of the Export Administration Amendments Act of 1985. Notwithstanding the preceding provisions of this subsection, the President may impose export controls under this section on medicine, medical supplies, food, and donations of goods in order to carry out the policy set forth in paragraph (13) of section 3 of this Act.

[(h) FOREIGN AVAILABILITY.—(1) In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

[(2) Before extending any export control pursuant to subsection (a)(3) of this section, the President shall evaluate the results of his actions under paragraph (1) of this subsection and shall include the results of that evaluation in his report to the Congress pursuant to subsection (f) of this section.

[(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6 months after the date of the enactment of the Export Administration Amendments Act of 1985 in the case of export controls in effect on such date of enactment, the President's efforts under paragraph (1) are not successful in securing the cooperation of foreign governments described in paragraph (1) with respect to those export controls, the Secretary shall thereafter take into account the foreign availability of the goods or technology subject to the export controls. If the Secretary affirmatively determines that a good or technology subject to the export controls is available in sufficient quantity and comparable quality from sources outside the United States to countries subject to the export controls so that denial of an export license would be ineffective in achieving purposes of the controls, then the Secretary shall, during the period of such foreign availability, approve any license application which is required for the export of the good or technology and which meets all require-

ments for such a license. The Secretary shall remove the good or technology from the list established pursuant to subsection (1) of this section if the Secretary determines that such action is appropriate.

[(4) In making a determination of foreign availability under paragraph (3) of this subsection, the Secretary shall follow the procedures set forth in section 5(f)(3) of this Act.

[(i) INTERNATIONAL OBLIGATIONS.—The provisions of subsections (b), (c), (d), (e), (g), and (h) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

[(j) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—(1) A validated license shall be required for the export of goods or technology to a country if the Secretary of State has made the following determinations:

[(A) The government of such country has repeatedly provided support for acts of international terrorism.

[(B) The export of such goods or technology could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

[(2) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any validated license required by paragraph (1).

[(3) Each determination of the Secretary of State under paragraph (1)(A), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989, shall be published in the Federal Register.

[(4) A determination made by the Secretary of State under paragraph (1)(A) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate—

[(A) before the proposed rescission would take effect, a report certifying that—

[(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

[(ii) that government is not supporting acts of international terrorism; and

[(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

[(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

[(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

[(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

[(5)(A) As used in paragraph (1), the term “repeatedly provided support for acts of international terrorism” shall include the recurring use of any part of the territory of the country as a sanctuary for terrorists or terrorist organizations.

[(B) In this paragraph—

[(i) the term “territory of a country” means the land, waters, and airspace of the country; and

[(ii) the term “sanctuary” means an area in the territory of a country—

[(I) that is used by a terrorist or terrorist organization—

[(aa) to carry out terrorist activities, including training, financing, and recruitment; or

[(bb) as a transit point; and

[(II) the government of which expressly consents to, or with knowledge, allows, tolerates, or disregards such use of its territory.

[(6) The Secretary and the Secretary of State shall include in the notification required by paragraph (2)—

[(A) a detailed description of the goods or services to be offered, including a brief description of the capabilities of any article for which a license to export is sought;

[(B) the reasons why the foreign country or international organization to which the export or transfer is proposed to be made needs the goods or services which are the subject of such export or transfer and a description of the manner in which such country or organization intends to use such articles, services, or design and construction services;

[(C) the reasons why the proposed export or transfer is in the national interest of the United States;

[(D) an analysis of the impact of the proposed export or transfer on the military capabilities of the foreign country or international organization to which such export or transfer would be made;

[(E) an analysis of the manner in which the proposed export would affect the relative military strengths of countries in the region to which the goods or services which are the subject of such export would be delivered and whether other countries in the region have comparable kinds and amounts of articles, services, or design and construction services; and

[(F) an analysis of the impact of the proposed export or transfer on the United States relations with the countries in the region to which the goods or services which are the subject of such export would be delivered.

[(k) NEGOTIATIONS WITH OTHER COUNTRIES.—

[(1) COUNTRIES PARTICIPATING IN CERTAIN AGREEMENTS.— The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with those countries participating in the groups

known as the Coordinating Committee, the Missile Technology Control Regime, the Australia Group, and the Nuclear Suppliers' Group, regarding their cooperation in restricting the export of goods and technology in order to carry out—

【(A) the policy set forth in section 3(2)(B) of this Act, and

【(B) United States policy opposing the proliferation of chemical, biological, nuclear, and other weapons and their delivery systems, and effectively restricting the export of dual use components of such weapons and their delivery systems, in accordance with this subsection and subsections (a) and (1).

Such negotiations shall cover, among other issues, which goods and technology should be subject to multilaterally agreed export restrictions, and the implementation of the restrictions consistent with the principles identified in section 5(b)(2)(C) of this Act.

【(2) OTHER COUNTRIES.—The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with countries and groups of countries not referred to in paragraph (1) regarding their cooperation in restricting the export of goods and technology consistent with purposes set forth in paragraph (1). In cases where such negotiations produce agreements on export restrictions that the Secretary, in consultation with the Secretary of State and the Secretary of Defense, determines to be consistent with the principles identified in section 5(b)(2)(C) of this Act, the Secretary may treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports are treated to countries that are MTCR adherents.

【(3) REVIEW OF DETERMINATIONS.—The Secretary shall annually review any determination under paragraph (2) with respect to a country. For each such country which the Secretary determines is not meeting the requirements of an effective export control system in accordance with section 5(a)(4)(D), the Secretary shall restrict or eliminate any preferential licensing treatment for exports to that country provided under this subsection.

【(1) MISSILE TECHNOLOGY.—

【(1) DETERMINATION OF CONTROLLED ITEMS.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies—

【(A) shall establish and maintain, as part of the control list established under this section, a list of all dual use goods and technology on the MTCR Annex; and

【(B) may include, as part of the control list established under this section, goods and technology that would provide a direct and immediate impact on the development of missile delivery systems and are not included in the MTCR Annex but which the United States is proposing to the other MTCR adherents to have included in the MTCR Annex.

【(2) REQUIREMENT OF INDIVIDUAL VALIDATED LICENSES.—The Secretary shall require an individual validated license for—

【(A) any export of goods or technology on the list established under paragraph (1) to any country; and

【(B) any export of goods or technology that the exporter knows is destined for a project or facility for the design, development, or manufacture of a missile in a country that is not an MTCR adherent.

【(3) POLICY OF DENIAL OF LICENSES.—(A) Licenses under paragraph (2) should in general be denied if the ultimate consignee of the goods or technology is a facility in a country that is not an adherent to the Missile Technology Control Regime and the facility is designed to develop or build missiles.

【(B) Licenses under paragraph (2) shall be denied if the ultimate consignee of the goods or technology is a facility in a country the government of which has been determined under subsection (j) to have repeatedly provided support for acts of international terrorism.

【(4) CONSULTATION WITH OTHER DEPARTMENTS.—(A) A determination of the Secretary to approve an export license under paragraph (2) for the export of goods or technology to a country of concern regarding missile proliferation may be made only after consultation with the Secretary of Defense and the Secretary of State for a period of 20 days. The countries of concern referred to in the preceding sentence shall be maintained on a classified list by the Secretary of State, in consultation with the Secretary and the Secretary of Defense.

【(B) Should the Secretary of Defense disagree with the determination of the Secretary to approve an export license to which subparagraph (A) applies, the Secretary of Defense shall so notify the Secretary within the 20 days provided for consultation on the determination. The Secretary of Defense shall at the same time submit the matter to the President for resolution of the dispute. The Secretary shall also submit the Secretary's recommendation to the President on the license application.

【(C) The President shall approve or disapprove the export license application within 20 days after receiving the submission of the Secretary of Defense under subparagraph (B).

【(D) Should the Secretary of Defense fail to notify the Secretary within the time period prescribed in subparagraph (B), the Secretary may approve the license application without awaiting the notification by the Secretary of Defense. Should the President fail to notify the Secretary of his decision on the export license application within the time period prescribed in subparagraph (C), the Secretary may approve the license application without awaiting the President's decision on the license application.

【(E) Within 10 days after an export license is issued under this subsection, the Secretary shall provide to the Secretary of Defense and the Secretary of State the license application and accompanying documents issued to the applicant, to the extent that the relevant Secretary indicates the need to receive such application and documents.

[(5) INFORMATION SHARING.—The Secretary shall establish a procedure for information sharing with appropriate officials of the intelligence community, as determined by the Director of Central Intelligence, and other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCR equipment or technology and other missile technology.

[(m) CHEMICAL AND BIOLOGICAL WEAPONS.—

[(1) ESTABLISHMENT OF LIST.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the list maintained under this section, a list of goods and technology that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons, the licensing of which would be effective in barring acquisition or enhancement of such capability.

[(2) REQUIREMENT FOR VALIDATED LICENSES.—The Secretary shall require a validated license for any export of goods or technology on the list established under paragraph (1) to any country of concern.

[(3) COUNTRIES OF CONCERN.—For purposes of paragraph (2), the term “country of concern” means any country other than—

[(A) a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of goods or technology on the list established under paragraph (1); and

[(B) such other countries as the Secretary of State, in consultation with the Secretary and the Secretary of Defense, shall designate consistent with the purposes of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

[(n) CRIME CONTROL INSTRUMENTS.—(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license. Notwithstanding any other provision of this Act—

[(A) any determination of the Secretary of what goods or technology shall be included on the list established pursuant to subsection (1) of this section as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State, and

[(B) any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act,

except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.

[(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent

with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

[(o) CONTROL LIST.—The Secretary shall establish and maintain, as part of the control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

[(p) EFFECT ON EXISTING CONTRACTS AND LICENSES.—The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other information—

[(1) in performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the export or reexport of such goods, technology, or other information, or

[(2) under a validated license or other authorization issued under this Act,

unless and until the President determines and certifies to the Congress that—

[(A) a breach of the peace poses a serious and direct threat to the strategic interest of the United States,

[(B) the prohibition or curtailment of such contracts, agreements, licenses, or authorizations will be instrumental in remedying the situation posing the direct threat, and

[(C) the export controls will continue only so long as the direct threat persists.

[(q) EXTENSION OF CERTAIN CONTROLS.—Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection, and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

[(r) EXPANDED AUTHORITY TO IMPOSE CONTROLS.—(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m) of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to sub-

section (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

[(2) For purposes of this subsection, the term “joint resolution” means a joint resolution the matter after the resolving clause of which is as follows: “That the Congress, having received on a determination of the President under section 6(o)(1) of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.”, with the date of the receipt of the determination and report inserted in the blank.

[(3) In the computation of the periods of 30 days referred to in paragraph (1), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

[(s) SPARE PARTS.—(1) At the same time as the President imposes or expands export controls under this section, the President shall determine whether such export controls will apply to replacement parts for parts in goods subject to such export controls.

[(2) With respect to export controls imposed under this section before the date of the enactment of this subsection, an individual validated export license shall not be required for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that was lawfully exported from the United States, unless the President determines that such a license should be required for such parts.

【SHORT SUPPLY CONTROLS

【SEC. 7. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

[(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days from the

date of publication on the impact of such restrictions and the method of licensing used to implement them.

[(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

[(b) MONITORING.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

[(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

[(3) The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

[(c) PETITIONS FOR MONITORING OR CONTROLS.—(1)(A) any entity, including a trade association, firm, or certified or recognized union or group of workers, that is representative of an industry or a substantial segment of an industry that processes metallic materials capable of being recycled may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to any such material, in order to carry out the policy set forth in section 3(2)(C) of this Act.

[(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating that each of the criteria set forth in paragraph (3)(A) of this subsection is satisfied.

[(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall—

[(A) include the name of the material that is the subject of the petition,

[(B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States,

[(C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and

[(D) provide that interested persons shall have a period of 30 days beginning on the date of publication of such notice to submit to the Secretary written data, views or arguments, with or without opportunity for oral presentation, with respect to the matter involved.

At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material that is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

[(3)(A) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall determine whether to impose monitoring or controls, or both, on the export of the material that is the subject of the petition, in order to carry out the policy set forth in section 3(2)(C) of this Act. In making such determination, the Secretary shall determine whether—

[(i) there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand;

[(ii) there has been a significant increase in the domestic price of such material or a domestic shortage of such material relative to demand;

[(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

[(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry; and

[(v) monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act.

[(B) The Secretary shall publish in the Federal Register a detailed statement of the reasons for the Secretary's determination pursuant to subparagraph (A) of whether to impose monitoring or controls, or both, including the findings of fact in support of that determination.

[(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days after the publication of such proposed regulations, and after considering any public comments on the proposed regulations, the

Secretary shall publish and implement final regulations with respect to such monitoring or controls.

[(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses to such petitions which involve the same or related materials.

[(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after the consideration of the prior petition has been completed does not merit complete consideration under this subsection.

[(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

[(8) The Secretary may impose monitoring or controls, on a temporary basis, on the export of a metallic material after a petition is filed under paragraph (1)(A) with respect to that material but before the Secretary makes a determination under paragraph (3) with respect to that material only if—

[(A) the failure to take such temporary action would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry, and

[(B) the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act.

[(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act, except that if the Secretary determines, on the Secretary's own initiative, to impose monitoring or controls, or both, on the export of metallic materials capable of being recycled, under the authority of this section, the Secretary shall publish the reasons for such action in accordance with paragraph (3) (A) and (B) of this subsection.

[(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act, or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

[(d) DOMESTICALLY PRODUCED CRUDE OIL.—(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased effi-

ciency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code) may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.

[(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

[(A) the President so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges—

[(i) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

[(ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

[(iii) will be made only pursuant to contracts which may be terminated if the crude oil suppliers of the United States are interrupted, threatened, or diminished;

[(iv) are clearly necessary to protect the national interest; and

[(v) are in accordance with the provisions of this Act; and

[(B) the President includes such findings in his recommendation to the Congress and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

[(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

[(e) REFINED PETROLEUM PRODUCTS.—(1) In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 3(2)(C) of this Act, the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination

that such export controls are necessary is in effect, no refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

[(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

[(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

[(4) For purposes of this subsection, "refined petroleum product" means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

[(5) The Secretary may extend any time period prescribed in section 10 of this Act to the extent necessary to take into account delays in action by the Secretary on a license application on account of the provisions of this subsection.

[(f) CERTAIN PETROLEUM PRODUCTS.—Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

[(g) AGRICULTURAL COMMODITIES.—(1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) of paragraph (2) of section 3 of this Act. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

[(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

[(3)(A) If the President imposes export controls on any agricultural commodity in order to carry out the policy set forth in paragraph (2)(B), (2)(C), (7), or (8) of section 3 of this Act, the President shall immediately transmit a report on such action to the Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If the Congress, within 60 days after the date of its receipt of the report, adopts a joint resolution pursuant to paragraph (4) approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If the Congress, within 60 days after the date of its receipt of such report, fails to adopt a joint resolution approving such controls, then such controls shall cease to be effective upon the expiration of that 60-day period.

[(B) The provisions of subparagraph (A) and paragraph (4) shall not apply to export controls—

[(i) which are extended under this Act if the controls, when imposed, were approved by the Congress under subparagraph (A) and paragraph (4); or

[(ii) which are imposed with respect to a country as part of the prohibition or curtailment of all exports to that country.

[(4)(A) For purposes of this paragraph, the term joint resolution means only a joint resolution the matter after the resolving clause of which is as follows: "That, pursuant to section 7(g)(3) of the Export Administration Act of 1979, the President may impose export controls as specified in the report submitted to the Congress on.", with the blank space being filled with the appropriate date.

[(B) On the day on which a report is submitted to the House of Representatives and the Senate under paragraph (3), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or

by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

[(C) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and all joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs.

[(D) If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

[(E) A joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this paragraph, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this paragraph which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

[(F) In the case of a joint resolution described in subparagraph (A), if, before the passage by one House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

[(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

[(ii) the vote on final passage shall be on the joint resolution of the other House.

[(5) In the computation of the period of 60 days referred to in paragraph (3) and the period of 30 days referred to in subparagraph (D) of paragraph (4), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

[(h) BARTER AGREEMENTS.—(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act.

[(2) the Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

[(A) for the period during which the barter agreement is to be performed—

[(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be re-

quired to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

[(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

[(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

[(3) For purposes of this subsection, the term “barter agreement” means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

[(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act.

[(i) UNPROCESSED RED CEDAR.—(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (*Thuja plicata*) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act as follows:

[(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

[(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

[(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs harvested from State or Federal lands may be exported from the United States.

[(2) To the maximum extent practicable, the Secretary shall utilize the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of validated licenses for exports under this subsection.

[(3) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

[(4) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

[(5) As used in this subsection, the term “unprocessed western red cedar” means red cedar timber which has not been processed into—

[(A) lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better;

[(B) chips, pulp, and pulp products;

[(C) veneer and plywood;

[(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

[(E) shakes and shingles.

[(j) EFFECT OF CONTROLS ON EXISTING CONTRACTS.—The export restrictions contained in subsection (i) of this section and any export controls imposed under this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export. Any export controls imposed under this section on any agricultural commodity (including fats, oils, and animal hides and skins) or on any forest product or fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For purposes of this subsection, the term “contract to export” includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology.

[(k) OIL EXPORTS FOR USE BY UNITED STATES MILITARY FACILITIES.—For purposes of subsection (d) of this section, and for purposes of any export controls imposed under this Act, shipments of crude oil, refined petroleum products, or partially refined petroleum products from the United States for use by the Department of Defense or United States-supported installations or facilities shall not be considered to be exports.

【FOREIGN BOYCOTTS

【SEC. 8. (a) PROHIBITIONS AND EXCEPTIONS.—(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act, the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

【(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

【(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

[(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

[(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

[(E) Furnishing information about whether any person is a member of, has made contribution to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

[(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

[(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

[(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotted country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

[(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

[(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

[(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

[(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

[(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

[(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

[(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust, or civil rights laws of the United States.

[(5) This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

[(b) FOREIGN POLICY CONTROLS.—(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act shall implement the policies set forth in section 3(5).

[(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the

information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of this Act.

[(c) PREEMPTION.—The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

[PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

[SEC. 9. (a) FILING OF PETITIONS.—Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

[(b) DECISION OF THE SECRETARY.—Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary considers appropriate.

[(c) FACTORS TO BE CONSIDERED.—For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

[(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account—

[(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

[(B) potential serious financial loss to the applicant if not granted an exception;

[(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

[(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

[(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

[(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

[(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

【PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS;
OTHER INQUIRIES

【SEC. 10. (a) PRIMARY RESPONSIBILITY OF THE SECRETARY.—(1) All export license applications required under this Act shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

[(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

[(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

【(b) INITIAL SCREENING.—Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall—

[(1) sent the applicant an acknowledgment of the receipt of the application and the date of the receipt;

[(2) submit to this applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application and the rights of the applicant;

[(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case of such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

[(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

[(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilat-

eral agreement, formal or informal, to which the United States is a part and, if so inform the applicant of this requirement.

[(c) ACTION ON CERTAIN APPLICATIONS.—Except as provided in subsection (o), in each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within 60 days after a properly completed application has been submitted pursuant to this section.

[(d) REFERRAL TO OTHER DEPARTMENTS AND AGENCIES.—Except in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 20 days after the submission of a properly completed application—

[(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

[(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

Notwithstanding the 10-day period set forth in subsection (b), in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, immediately upon receipt of the properly completed application, refer the application to such department or agency for its review. Such review shall be concurrent with that of the Department of Commerce.

[(e) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary the information or recommendations requested with respect to the application. The information or recommendations shall be submitted within 20 days after the department or agency receives the application or, in the case of exports described in subsection (o), before the expiration of the time periods permitted by that subsection. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

[(2)(A) Except in the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional 20-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

[(B) In the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary, before the

expiration of the 15-day period provided in subsection (o)(1), that more time is required for review by such department or agency, the Secretary shall notify the applicant, pursuant to subsection (o)(1)(C), that additional time is required to consider the application, and such department or agency shall have additional time to consider the application within the limits permitted by subsection (o)(2). If such department or agency does not submit its recommendations within the time periods permitted under subsection (o), it shall be deemed by the Secretary to have no objection to the approval of such application.

[(f) ACTION BY THE SECRETARY.—(1) Within 60 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the 60-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

[(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant in writing of the specific questions raised and any such negative considerations or recommendations. Before a final determination with respect to the application in made, the applicant shall be entitled—

[(A) to respond in writing to such questions, considerations, or recommendations within 30 days after receipt of such information from the Secretary; and

[(B) upon the filing of a written request with the Secretary within 15 days after the receipt of such information, to respond in person to the department or agency raising such questions, considerations, or recommendations.

The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

[(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of—

[(A) the determination,

[(B) the statutory basis for the proposed denial,

[(C) the policies set forth in section 3 of this Act which would be furthered by the proposed denial,

[(D) what if any modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with export controls imposed under this Act,

[(E) which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for considerations with regard to such modifications or restrictions, if appropriate,

[(F) to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the determination to deny the application, and

[(G) the availability of appeal procedures.

The Secretary shall allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after such deferral.

[(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

[(g) SPECIAL PROCEDURES FOR SECRETARY OF DEFENSE.—(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

[(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 20 days after notification of the request, shall—

[(A) recommend to the President and the Secretary that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

[(B) notify the Secretary that he would recommend approval subject to specified conditions; or

[(C) recommend to the Secretary that the export of goods or technology be approved.

Whenever the Secretary of Defense makes a recommendation to the President pursuant to paragraph (2)(A), the Secretary shall also

submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense. If the President notifies the Secretary, with 20 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country. If the Secretary of Defense fails to make a recommendation or notification under this paragraph within the 20-day period specified in the third sentence, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary that he approves or disapproves the export, the Secretary shall approve or deny the request for a license or other authority to export without such recommendation or notification.

[(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

[(h) MULTILATERAL CONTROLS.—In any case in which an application, which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within 40 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such 40-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every 40-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

[(i) RECORDS.—The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the Secretary, any dissenting recommendations received from any such department or agency.

【(j) APPEAL AND COURT ACTION.—(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

【(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

【(3) If, within 20 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

【(k) CHANGES IN REQUIREMENTS FOR APPLICATIONS.—Except as provided in subsection (b)(3) of this section, in any case in which, after a license application is submitted, the Secretary changes the requirements for such a license application, the Secretary may request appropriate additional information of the applicant, but the Secretary may not return the application to the applicant without action because it fails to meet the changed requirements.

【(l) OTHER INQUIRIES.—(1) In any case in which the Secretary receives a written request asking for the proper classification of a good or technology on the control list, the Secretary shall, within 10 working days after receipt of the request, inform the person making the request of the proper classification.

【(2) In any case in which the Secretary receives a written request for information about the applicability of export license requirements under this Act to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receipt of the request, reply with that information to the person making the request.

【(m) SMALL BUSINESS ASSISTANCE.—Not later than 120 days after the date of the enactment of this subsection, the Secretary shall develop and transmit to the Congress a plan to assist small businesses in the export licensing application process under this Act. The plan shall include, among other things, arrangements for counseling small businesses on filing applications and identifying goods or technology on the control list, proposals for seminars and conferences to educate small businesses on export controls and licensing procedures, and the preparation of informational brochures. The Secretary shall, not later than 120 days after the date of the enactment of the Export Enhancement Act of 1988, report to the Congress on steps taken to implement the plan developed under this subsection to assist small businesses in the export licensing application process.

[(n) REPORTS ON LICENSE APPLICATIONS.—(1) Not later than 180 days after the date of the enactment of this subsection, and not later than the end of each 3-month period thereafter, the Secretary shall submit to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate a report listing—

[(A) all applications on which action was completed during the preceding 3-month period and which required a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, before notification of a decision to approve or deny the application was sent to the applicant; and

[(B) in a separate section, all applications which have been in process for a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, and upon which final action has not been taken.

[(2) With regard to each application, each listing shall identify—

[(A) the application case number;

[(B) the value of the goods or technology to which the application relates;

[(C) the country of destination of the goods or technology;

[(D) the date on which the application was received by the Secretary;

[(E) the date on which the Secretary approved or denied the application;

[(F) the date on which the notification of approval or denial of the application was sent to the applicant; and

[(G) the total number of days which elapsed between receipt of the application, in its properly completed form, and the earlier of the last day of the 3-month period to which the report relates, or the date on which notification of approval or denial of the application was sent to the applicant.

[(3) With respect to an application which was referred to other departments or agencies, the listing shall also include—

[(A) the departments or agencies to which the application was referred;

[(B) the date or dates of such referral; and

[(C) the date or dates on which recommendations were received from those departments or agencies.

[(4) With respect to an application referred to any other department or agency which did not submit or has not submitted its recommendations on the application within the period permitted under subsection (e) of this section to submit such recommendations, the listing shall also include—

[(A) the office responsible for processing the application and the position of the officer responsible for the office; and

[(B) the period of time that elapsed before the recommendations were submitted or that has elapsed since referral of the application, as the case may be.

[(5) Each report shall also provide an introduction which contains—

[(A) summary of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in the applications, grouped according to—

[(i) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, as follows: 61 to 75 days, 76 to 90 days, 91 to 105 days, 106 to 120 days, and more than 120 days; and

[(ii) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, beyond the period permitted under subsection (c), (f)(1), or (h) of this section for the processing of applications, as follows: not more than 15 days, 16 to 30 days, 31 to 45 days, 46 to 60 days, and more than 60 days; and

[(B) a summary by country of destination of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in applications, on which action was not completed within 60 days.

[(o) EXPORTS TO MEMBERS OF COORDINATING COMMITTEE.—(1) Fifteen working days after the date of formal filing with the Secretary of an individual validated license application for the export of goods or technology to a country that maintains export controls on such goods or technology pursuant to the agreement of the governments participating in the group known as the coordinating Committee, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless—

[(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval;

[(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied; or

[(C) the Secretary requires additional time to consider the application and the applicant has been so informed.

[(2) In the event that the Secretary notifies an applicant pursuant to paragraph (1)(C) that the Secretary notifies an applicant pursuant to paragraph (1)(C) that more time is required to consider an individual validated license application, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license 30 working days after the date that such license application was formally filed with the Secretary unless—

[(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval; or

[(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied.

[(3) In reviewing an individual license application subject to this subsection, the Secretary shall evaluate the information set forth in the application and the reliability of the end-user.

[(4) Nothing in this subsection shall affect the scope or availability of licenses authorizing multiple exports set forth in section 4(a)(2) of this Act.

[(5) The provisions of this subsection shall take effect 4 months after the date of the enactment of the Export Administration Amendments Act of 1985.

VIOLATIONS

[SEC. 11. (a) IN GENERAL.—Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than 5 years, or both.

[(b) WILLFUL VIOLATIONS.—(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes—

[(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

[(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 10 years, or both.

[(2) Any person who is issued a validated license under this Act for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use of the Secretary of Defense—

[(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

[(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 5 years, or both.

[(3) Any person who possesses any goods or technology—

[(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act or any regulation, order, or license issued with respect to such control, or

[(B) knowing or having reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under section 5 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

[(4) Any person who takes any action with the intent to evade the provisions of this act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in sub-

section (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

[(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act.

[(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed \$10,000 for each violation of this Act or any regulation, order, or license issued under this act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act may not exceed \$100,000.

[(2)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act.

[(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

[(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act shall be made available for public inspection and copying.

[(3) An exception may not be made to any order issued under this Act which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

[(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

[(d) PAYMENT OF PENALTIES.—The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not op-

erate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

[(e) REFUNDS.—Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c), or any amounts realized from the forfeiture of any property interest or proceeds pursuant to subsection (g), shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty imposed pursuant to subsection (c), within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

[(f) ACTIONS FOR RECOVERY OF PENALTIES.—In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c) a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

[(g) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—(1) Any person who is convicted under subsection (a) or (b) of a violation of an export control imposed under section 5 of this Act (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States—

[(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

[(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

[(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

[(2) The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18, United States Code.

[(h) PRIOR CONVICTIONS.—(1) No person convicted of a violation of this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act, section 793, 794, or 798 of title 18, United States Code, section 4(b) on the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act for a period of up to 10 years from the date of the conviction. The

Secretary may revoke any export license under this Act in which such person has an interest at the time of the conviction.

[(2) The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in section 13(c) of this Act.

[(i) OTHER AUTHORITIES.—Nothing in subsection (c), (d), (f), (g), or (h) limits—

[(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

[(2) the authority to compromise and settle, administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

[(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

[MULTILATERAL EXPORT CONTROL VIOLATIONS

[SEC. 11A. (a) DETERMINATION BY THE PRESIDENT.—The President, subject to subsection (c), shall apply sanctions under subsection (b) for a period of not less than 2 years and not more than 5 years, if the President determines that—

[(1) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, and

[(2) such violation has resulted in substantial enhancement of Soviet and East bloc capabilities in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies as determined by the President, on the advice of the National Security Council, to represent a serious adverse impact on the strategic balance of forces.

The President shall notify the Congress of each action taken under this section. This section, except subsections (h) and (j), applies only to violations that occur after the date of the enactment of the Export Enhancement Act of 1988.

[(b) SANCTIONS.—The sanctions referred to in subsection (a) shall apply to the foreign person committing the violation, as well as to any parent, affiliate, subsidiary, and successor entity of the foreign person, and, except as provided in subsection (c), are as follows:

[(1) a prohibition on contracting with, and procurement of products and services from, a sanctioned person, by any department, agency, or instrumentality of the United States Government, and

[(2) a prohibition on importation into the United States of all products produced by a sanctioned person.

[(c) EXCEPTIONS.—The President shall not apply sanctions under this section—

[(1) in the case of procurement of defense articles or defense services—

[(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

[(B) if the President determines that the foreign person or other entity to which the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

[(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements; or

[(2) to—

[(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before the date on which the President notifies the Congress of the intention to impose the sanctions;

[(B) spare parts;

[(C) component parts, but not finished products, essential to United States products or production;

[(D) routine servicing and maintenance of products; or

[(E) information and technology.

[(d) EXCLUSION.—The President shall not apply sanctions under this section to a parent, affiliate, subsidiary, and successor entity of a foreign person if the President determines that—

[(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not knowingly violated the export control regulation violated by the foreign person, and

[(2) the government of the country with jurisdiction over the parent, affiliate, subsidiary, or successor entity had in effect, at the time of the violation by the foreign person, an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

[(A) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

[(B) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

[(C) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

[(D) a system of export control documentation to verify the movement of goods and technology; and

[(E) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

[(e) DEFINITIONS.—For purposes of this section—

[(1) the term “component part” means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

[(2) the term “finished product” means any article which is usable for its intended functions without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

[(3) the term “sanctioned person” means a foreign person, and any parent, affiliate, subsidiary, or successor entity of the foreign person, upon whom sanctions have been imposed under this section.

[(f) SUBSEQUENT MODIFICATIONS OF SANCTIONS.—The President may, after consultation with the Congress, limit the scope of sanctions applied to a parent, affiliate, subsidiary, or successor entity of the foreign person determined to have committed the violation on account of which the sanctions were imposed if the President determines that—

[(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not, on the basis of available evidence, itself violated the export control regulation involved, either directly or through a course of conduct;

[(2) the government with jurisdiction over the parent, affiliate, subsidiary, or successor entity has improved its export control system as measured by the criteria set forth in subsection (d)(2);

[(3) the parent, affiliate, subsidiary, or successor entity, has instituted improvements in internal controls sufficient to detect and prevent violations of the export control regime implemented under paragraph (2); and

[(4) the impact of the sanctions imposed on the parent, affiliate, subsidiary, or successor entity is proportionate to the increased defense expenditures imposed on the United States.

Notwithstanding the preceding sentence, the President may not limit the scope of the sanction referred to in subsection (b)(1) with respect to the parent of the foreign person determined to have committed the violation, until that sanction has been in effect for at least 2 years.

[(g) REPORTS TO CONGRESS.—The President shall include in the annual report submitted under section 14, a report on the status of any sanctions imposed under this section, including any exceptions, exclusions, or modifications of sanctions that have been applied under subsection (c), (d), or (f).

[(h) DISCRETIONARY IMPOSITION OF SANCTIONS.—If the President determines that a foreign person has violated a regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, but in a case in which subsection (a)(2) may not apply, the President may apply the sanctions referred to in subsection (b) against that foreign person for a period of not more than 5 years.

[(i) COMPENSATION FOR DIVERSION OF MILITARILY CRITICAL TECHNOLOGIES TO CONTROLLED COUNTRIES.—(1) In cases in which sanctions have been applied against a foreign person under subsection (a), the President shall initiate discussions with the foreign person and the government with jurisdiction over that foreign per-

son regarding compensation on the part of the foreign person in an amount proportionate to the costs of research and development and procurement of new defensive systems by the United States and the allies of the United States to counteract the effect of the technological advance achieved by the Soviet Union as a result of the violation by that foreign person.

[(2) The President shall, at the time that discussions are initiated under paragraph (1), report to the Congress that such discussions are being undertaken, and shall report to the Congress the outcome of those discussions.

[(j) OTHER ACTIONS BY THE PRESIDENT.—Upon making a determination under subsection (a) or (h), the President shall—

[(1) initiate consultations with the foreign government with jurisdiction over the foreign person who committed the violation involved, in order to seek prompt remedial action by that government;

[(2) initiate discussions with the governments participating in the Coordinating Committee regarding the violation and means to ensure that similar violations do not occur; and

[(3) consult with and report to the Congress on the nature of the violation and the actions the President proposes to take, or has taken, to rectify the situation.

[(k) DAMAGES FOR CERTAIN VIOLATIONS.—(1) In any case in which the President makes a determination under subsection (a), the Secretary of Defense shall determine the costs of restoring the military preparedness of the United States on account of the violation involved. The Secretary of Defense shall notify the Attorney General of his determination, and the Attorney General may bring an action for damages, in any appropriate district court of the United States, to recover such costs against the person who committed the violation, any person that is owned or controlled by the person who committed the violation, and any person who owns and controls the person who committed the violation.

[(3) The total amount awarded in any case brought under paragraph (2) shall be determined by the court in light of the facts and circumstances, but shall not exceed the amount of the net loss to the national security of the United States. An action under this subsection shall be commenced not later than 3 years after the violation occurs, or one year after the violation is discovered, whichever is later.

[(l) DEFINITION.—For purposes of this section, the term “foreign person” means any person other than a United States person.

【MISSILE PROLIFERATION CONTROL VIOLATIONS

【SEC. 11B. (a) VIOLATIONS BY UNITED STATES PERSONS.—

[(1) SANCTIONS.—(A) If the President determines that a United States person knowingly—

[(i) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 (22 U.S.C. 2778) or chapter 7 of the Arms Export Control Act, section 5 or 6 of this Act, or any regulations or orders issued under any such provisions,

[(ii) conspires to or attempts to engage in such export, transfer, or trade, or

[(iii) facilitates such export, transfer, or trade by any other person, then the President shall impose the applicable sanctions described in subparagraph (B).

[(B) The sanctions which apply to a United States person under subparagraph (A) are the following:

[(i) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person, for a period of 2 years, licenses for the transfer of missile equipment or technology controlled under this Act.

[(ii) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR Annex, then the President shall deny to such United States person, for a period of not less than 2 years, all licenses for items the export of which is controlled under this Act.

[(2) DISCRETIONARY SANCTIONS.—In the case of any determination referred to in paragraph (1), the Secretary may pursue any other appropriate penalties under section 11 of this Act.

[(3) WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

[(A) the product or service is essential to the national security of the United States; and

[(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

[(b) TRANSFERS OF MISSILE EQUIPMENT OR TECHNOLOGY BY FOREIGN PERSONS.—

[(1) SANCTIONS.—(A) Subject to paragraphs (3) through (7), if the President determines that a foreign person, after the date of the enactment of this section, knowingly—

[(i) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act,

[(ii) conspires to or attempts to engage in such export, transfer, or trade, or

[(iii) facilitates such export, transfer, or trade by any other person, or if the President has made a determination with respect to a foreign person under section 73(a) of the Arms Export Control Act, then the President shall impose on that foreign person the applicable sanctions under subparagraph (B).

[(B) The sanctions which apply to a foreign person under subparagraph (A) are the following:

[(i) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of missile equipment or technology the export of which is controlled under this Act.

[(ii) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years, licenses for the transfer to such foreign person of items the export of which is controlled under this Act.

[(iii) If, in addition to actions taken under clauses (i) and (ii), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

[(2) INAPPLICABILITY WITH RESPECT TO MTCR ADHERENTS.—Paragraph (1) does not apply with respect to—

[(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

[(B) any export, transfer, or trade of an item to an end user in a country that is an MTCR adherent.

[(3) EFFECT OF ENFORCEMENT ACTIONS BY MTCR ADHERENTS.—Sanctions set forth in paragraph (1) may not be imposed under this subsection on a person with respect to acts described in such paragraph or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts.

[(4) ADVISORY OPINIONS.—The Secretary, in consultation with the Secretary of State and the Secretary of Defense, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this subsection. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

[(5) WAIVER AND REPORT TO CONGRESS.—(A) In any case other than one in which an advisory opinion has been issued under paragraph (4) stating that a proposed activity would not subject a person to sanctions under this subsection, the President may waive the application of paragraph (1) to a foreign person if the President determines that such waiver is essential to the national security of the United States.

[(B) In the event that the President decides to apply the waiver described in subparagraph (A), the President shall so notify the Congress not less than 20 working days before issuing the waiver. Such notification shall include a report

fully articulating the rationale and circumstances which led the President to apply the waiver.

[(6) ADDITIONAL WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

[(A) the product or service is essential to the national security of the United States; and

[(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

[(7) EXCEPTIONS.—The President shall not apply the sanction under this subsection prohibiting the importation of the products of a foreign person—

[(A) in the case of procurement of defense articles or defense services—

[(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

[(ii) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

[(iii) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

[(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

[(C) to—

[(i) spare parts,

[(ii) component parts, but not finished products, essential to United States products or production,

[(iii) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

[(iv) information and technology essential to United States products or production.

[(c) DEFINITIONS.—For purposes of this section and subsection (k) and (l) of section 6—

[(1) the term “missile” means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems;

[(2) the term “Missile Technology Control Regime” or “MTCR” means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16,

1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

[(3) the term “MTCR adherent” means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR;

[(4) the term “MTCR Annex” means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

[(5) the terms “missile equipment or technology” and “MTCR equipment or technology” mean those items listed in category I or category II of the MTCR Annex;

[(6) the term “foreign person” means any person other than a United States person;

[(7)(A) the term “person” means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

[(B) in the case of countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), the term “person” means—

[(i) all activities of that government relating to the development or production of any missile equipment or technology; and

[(ii) all activities of that government affecting the development or production of aircraft, electronics, and space systems or equipment; and

[(8) the term “otherwise engaged in the trade of” means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

[CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS

[SEC. 11C. (a) IMPOSITION OF SANCTIONS.—

[(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of the enactment of this section, has knowingly and materially contributed—

[(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this Act, or

[(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this Act,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

[(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

[(A) any foreign country that the President determines has, at any time after January 1, 1980—

[(i) used chemical or biological weapons in violation of international law;

[(ii) used lethal chemical or biological weapons against its own nationals; or

[(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

[(B) any foreign country whose government is determined for purposes of section 6(j) of this Act to be a government that has repeatedly provided support for acts of international terrorism; or

[(C) any other foreign country, project, or entity designated by the President for purposes of this section.

[(3) PERSONS AGAINST WHICH SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

[(A) the foreign person with respect to which the President makes the determination described in that paragraph;

[(B) any successor entity to that foreign person;

[(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

[(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

[(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

[(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

[(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

[(3) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis

for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

[(c) SANCTIONS.—

[(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

[(A) PROCUREMENT SANCTION.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

[(B) IMPORT SANCTIONS.—The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

[(2) EXCEPTIONS.—The President shall not be required to apply or maintain sanctions under this section—

[(A) in the case of procurement of defense articles or defense services—

[(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

[(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

[(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

[(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

[(C) to—

[(i) spare parts,

[(ii) component parts, but not finished products, essential to United States products or production, or

[(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

[(D) to information and technology essential to United States products or production; or

[(E) to medical or other humanitarian items.

[(d) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

[(e) WAIVER.—

[(1) CRITERION FOR WAIVER.—The President may waive the application of any sanction imposed on any person pursuant to

this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

[(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

[(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term “foreign person” means—

[(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

[(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

ENFORCEMENT

[SEC. 12. (a) GENERAL AUTHORITY.—(1) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations within the United States, and the Commissioner of Customs (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department of agency (and such officers or employees) may obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may be subpena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpena issued to, any such person, a district court of the United States, after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. In addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of section 8 of this Act.

[(2)(A) Subject to subparagraph (B) of this paragraph, the United States Customs Service is authorized, in the enforcement of this

Act, to search, detain (after search), and seize goods or technology at those ports of entry or exit from the United States where officers of the Customs Service are authorized by law to conduct such searches, detentions, and seizures, and at those places outside the United States where the Customs Service, pursuant to agreements or other arrangements with other countries, is authorized to perform enforcement activities.

[(B) An officer of the United States Customs Service may do the following in carrying out enforcement authority under this Act:

[(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

[(ii) Search any package or container in which such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

[(iii) Detain (after search) or seize and secure for trial any goods or technology on or about such vehicle, vessel, aircraft, or person, or in such package or container, if such officer has probable cause to believe the goods or technology has been, is being, or is about to be exported from the United States in violation of this Act.

[(iv) Make arrests without warrant for any violation of this Act committed in his or her presence or view or if the officer has probable cause to believe that the person to be arrested has committed or is committing such a violation.

The arrest authority conferred by clause (iv) of this subparagraph is in addition to any arrest authority under other laws. The Customs Service may not detain for more than 20 days any shipment of goods or technology eligible for export under a general license under section 4(a)(3). In a case in which such detention is on account of a disagreement between the Secretary and the head of any other department or agency with export license authority under other provisions of law concerning the export license requirements for such goods or technology, such disagreement shall be resolved within that 20-day period. At the end of that 20-day period, the Customs Service shall either release the goods or technology, or seize the goods or technology as authorized by other provisions of law.

[(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall have the responsibility for the enforcement of section 8 of this Act and, in the enforcement of the other provisions of this Act, the Secretary is authorized to search, detain (after search), and seize goods or technology at those places within the United States other than those ports specified in paragraph (2)(A) of this subsection. The search, detention (after search), or seizure of goods or technology at those ports and places specified in paragraph (2)(A) may be conducted by officers or employees of the Department of Commerce designated by the Secretary with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

[(B) The Secretary may designate any employee of the Office of Export Enforcement of the Department of Commerce to do the following in carrying out enforcement authority under this Act:

[(i) Execute any warrant or other process issued by a court or officer of competent jurisdiction with respect to the enforcement of the provisions of this Act.

[(ii) Make arrests without warrant for any violation of this Act committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing such a violation.

[(iii) Carry firearms in carrying out any activity described in clause (i) or (ii).

[(4) The authorities first conferred by the Export Administration Amendments Act of 1985 under paragraph (3) shall be exercised pursuant to guidelines approved by the Attorney General. Such guidelines shall be issued not later than 120 days after the date of the enactment of the Export Administration Amendments Act of 1985.

[(5) All cases involving violations of this Act shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 11(c) of this Act, or to the Attorney General for criminal action in accordance with this Act.

[(6) Notwithstanding any other provision of law, the United States Customs Service may expend in the enforcement of export controls under this Act not more than \$12,000,000 in the fiscal year 1985 and not more than \$14,000,000 in the fiscal year 1986.

[(7) Not later than 90 days after the date of the enactment of the Export Administration Amendments Act of 1985, the Secretary, with the concurrence of the Secretary of the Treasury, shall publish in the Federal Register procedures setting forth, in accordance with this subsection, the responsibilities of the Department of Commerce and the United States Customs Service in the enforcement of this Act. In addition, the Secretary, with the concurrence of the Secretary of the Treasury, may publish procedures for the sharing of information in accordance with subsection (c)(3) of this section, and procedures for the submission to the appropriate departments and agencies by private persons of information relating to the enforcement of this Act.

[(8) For purposes of this section, a reference to the enforcement of this Act or to a violation of this Act includes a reference to the enforcement or a violation of any regulation, order, or license issued under this Act.

[(b) IMMUNITY.—No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

[(c) CONFIDENTIALITY.—(1) Except as otherwise provided by the third sentence of section 8(b)(2) and by section 11(c)(2)(C) of this Act, information obtained under this Act on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or dis-

closed unless the Secretary determines that the withholding thereof is contrary to the national interest. Information obtained under this Act after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act had not been enacted.

[(2) Nothing in this Act shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office. All information at any time under this Act or previous Acts regarding the control of exports, including any report or license application required under this Act, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest. Notwithstanding paragraph (1) of this subsection, information referred to in the second sentence of this paragraph shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 313 of the Budget and Accounting Act, 1921, be made available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office who is authorized by the Comptroller General to have access to such information. No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

[(3) Any department or agency which obtains information which is relevant to the enforcement of this Act, including information pertaining to any investigation, shall furnish such information to each department or agency with enforcement responsibilities under this Act to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities. The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code; and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1954, may be disclosed only as authorized by such section. The Secretary and the Commissioner of Customs, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions. The Secretary, the Attorney General, and the Commissioner of Customs shall consult on a continuing basis with one an-

other and with the heads of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.

[(d) REPORTING REQUIREMENTS.—In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

[(e) SIMPLIFICATION OF REGULATIONS.—The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h), shall review the regulations issued under this Act and the commodity control list in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

[ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

[SEC. 13. (a) EXEMPTION.—Except as provided in section 11(c)(2) and subsection (c) of this section, the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

[(b) PUBLIC PARTICIPATION.—It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

[(c) PROCEDURES RELATING TO CIVIL PENALTIES AND SANCTIONS.—(1) In any case in which a civil penalty or other civil sanction (other than a temporary denial order or a penalty or sanction for a violation of section 8) is sought under section 11 of this Act, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Subject to the provisions of this subsection, any such hearing shall be conducted in accordance with sections 556 and 557 of title 5, United States Code. With the approval of the administrative law judge, the Government may present evidence in camera in the presence of the charged party or his or her representative. After the hearing, the administrative law judge shall make findings of fact and conclusions of law in a written decision, which shall be referred to the Secretary. The Secretary shall, in a written order, affirm, modify, or vacate the decision of the administrative law judge within 30 days after receiving the decision. The order of the Secretary shall be final and is not subject to judicial review, except as provided in paragraph (3).

[(2) The proceedings described in paragraph (1) shall be concluded within a period of 1 year after the complaint is submitted,

unless the administrative law judge extends such period for good cause shown.

[(3) The order of the Secretary under paragraph (1) shall be final, except that the charged party may, within 15 days after the order is issued, appeal the order in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may, while the appeal is pending, stay the order of the Secretary. The court may review only those issues necessary to determine liability for the civil penalty or other sanction involved. In an appeal filed under this paragraph, the court shall set aside any finding of fact for which the court finds there is not substantial evidence on the record and any conclusion of law which the court finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

[(4) An administrative law judge referred to in this subsection shall be appointed by the Secretary from among those considered qualified for selection and appointment under section 3105 of title 5, United States Code. Any person who, for at least 2 of the 10 years immediately preceding the date of the enactment of the Export Administration Amendments Act of 1985, has served as a hearing commissioner of the Department of Commerce shall be included among these considered as qualified for selection and appointment to such position.

[(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—(1) In any case in which it is necessary, in the public interest, to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act, the Secretary may, without a hearing, issue an order temporarily denying United States export privileges (hereinafter in this subsection referred to as a “temporary denial order”) to a person. A temporary denial order may be effective no longer than 180 days unless renewed in writing by the Secretary for additional 180-day periods in order to prevent such an imminent violation, except that a temporary denial order may be renewed only after notice and an opportunity for a hearing is provided.

[(2) A temporary denial order shall define the imminent violation and state why the temporary denial order was granted without a hearing. The person or persons subject to the issuance or renewal of a temporary denial order may file an appeal of the issuance or renewal of the temporary denial order with an administrative law judge who shall, within 10 working days after the appeal is filed, recommend that the temporary denial order be affirmed, modified, or vacated. Parties may submit briefs and other material to the judge. The recommendation of the administrative law judge shall be submitted to the Secretary who shall either accept, reject, or modify the recommendation by written order within 5 working days after receiving the recommendation. The written order of the Secretary under the preceding sentence shall be final and is not subject to judicial review, except as provided in paragraph (3). The temporary denial order shall be affirmed only if it is reasonable to believe that the order is required in the public interest to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act. All materials submitted to the administrative law judge and the Secretary shall constitute the administrative record for purposes of review by the courts.

[(3) An order of the Secretary affirming, in whole or in part, the issuance of a temporary denial order may, within 15 days after the order is issued, be appealed by a person subject to the order to the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may review only those issues necessary to determine whether the standard for issuing the temporary denial order has been met. The court shall vacate the Secretary's order if the court finds that the Secretary's order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

[(e) APPEALS FROM LICENSE DENIALS.—A determination of the Secretary, under section 10(f) of this Act, to deny a license may be appealed by the applicant to an administrative law judge who shall have the authority to conduct proceedings to determine only whether the item sought to be exported is in fact on the control list. Such proceedings shall be conducted within 90 days after the appeal is filed. Any determination by an administrative law judge under this subsection and all materials filed before such judge in the proceedings shall be reviewed by the Secretary, who shall either affirm or vacate the determination in a written decision within 30 days after receiving the determination. The Secretary's written decision shall be final and is not subject to judicial review. Subject to the limitations provided in section 12(c) of this Act, the Secretary's decision shall be published in the Federal Register.

[ANNUAL REPORT

[SEC. 14. (a) CONTENTS.—Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

[(1) the implementation of the policies set forth in section 3;

[(2) general licensing activities under sections 5, 6, and 7, and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a);

[(3) the results of the review of United States policy toward individual countries pursuant to section 5(b);

[(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3);

[(5) actions taken to carry out section 5(d);

[(6) changes in categories of items under export control referred to in section 5(e);

[(7) determinations of foreign availability made under section 5(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

[(8) actions taken in compliance with section 5(f)(6);

[(9) the operation of the indexing system under section 5(g);

[(10) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the ad-

vice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

[(11) the effectiveness of export controls imposed under section 6 in furthering the foreign policy of the United States;

[(12) export controls and monitoring under section 7;

[(13) the information contained in the reports required by section 7(b)(2), together with an analysis of—

[(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970;

[(B) the worldwide supply of such commodities; and

[(C) actions being taken by other countries in response to such shortages or increased prices;

[(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act;

[(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

[(16) delegations of authority by the President as provided in section 4(e) of this Act;

[(17) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act;

[(18) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d), and any action taken, on the basis of the review required by section 12(e), to simplify regulations issued under this Act;

[(19) violations under section 11 and enforcement activities under section 12; and

[(20) the issuance of regulations under the authority of this Act, including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b).

[(b) REPORT ON CERTAIN EXPORT CONTROLS.—To the extent that the President determines that the policies set forth in section 3 of this Act require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

[(c) REPORT ON NEGOTIATIONS.—The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i), until such negotiations are concluded.

[(d) REPORT ON EXPORTS TO CONTROLLED COUNTRIES.—The Secretary shall include in each annual report a detailed report which lists every license for exports to controlled countries which was ap-

proved under this Act during the preceding fiscal year. Such report shall specify to whom the license was granted, the type of goods or technology exported, and the country receiving the goods or technology. The information required by this subsection shall be subject to the provisions of section 12(c) of this Act.

[(e) REPORT ON DOMESTIC ECONOMIC IMPACT OF EXPORTS TO CONTROLLED COUNTRIES.—The Secretary shall include in each annual report a detailed description of the extent of injury to United States industry and the extent of job displacement caused by United States exports of goods and technology to controlled countries. The annual report shall also include a full analysis of the consequences of exports of turnkey plants and manufacturing facilities to controlled countries which are used by such countries to produce goods for export to the United States or to compete with United States products in export markets.

[(f) ANNUAL REPORT OF THE PRESIDENT.—The President shall submit an annual report to the Congress estimating the additional defense expenditures of the United States arising from illegal technology transfers, focusing on estimated defense costs arising from illegal technology transfers that resulted in a serious adverse impact on the strategic balance of forces. These estimates shall be based on assessment by the intelligence community of any technology transfers that resulted in such serious adverse impact. This report may have a classified annex covering any information of a sensitive nature.

[(ADMINISTRATIVE AND REGULATORY AUTHORITY

[SEC. 15. (a) UNDER SECRETARY OF COMMERCE.—The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this Act and such other statutes that relate to national security which were delegated to the office of the Assistant Secretary of Commerce for Trade Administration before the date of the enactment of the Export Administration Amendments Act of 1985, and such other functions under this Act which were delegated to such office before such date of enactment, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

[(b) ISSUANCE OF REGULATIONS.—The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or (8)(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person. Any such regulations the purpose of which is to carry out the provisions of section 5, or of section 4(a) for the purpose of administering the provisions of section 5, may be issued only after the regulations are submitted for review to the Secretary of Defense, the Secretary of State, such other departments and agencies as the Secretary considers appropriate, and the appropriate technical advisory committee. The preceding sentence does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

[(c) AMENDMENTS TO REGULATIONS.—If the Secretary proposes to amend regulations issued under this Act, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the technical advisory committees authorized under section 5(h) of this Act in formulating or amending regulations issued under this Act. The procedures defined by regulations in effect on January 1, 1984, with respect to sections 4 and 5 of this Act, shall remain in effect unless the Secretary determines, on the basis of substantial and reliable evidence, that specific change is necessary to enhance the prevention of diversions of exports which would prove detrimental to the national security of the United States or to reduce the licensing and paperwork burden on exporters and their distributors.

[DEFINITIONS

[SEC. 16. As used in this Act—

[(1) the term “person” includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

[(2) the term “United States person” means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

[(3) the term “good” means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

[(4) the term “technology” means the information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves;

[(5) the term “export” means—

[(A) an actual shipment, transfer, or transmission of goods or technology out of the United States;

[(B) a transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or

[(C) a transfer to any person of goods or technology either within the United States or outside of the United States with the knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient;

[(6) the term “controlled country” means a controlled country under section 5(b)(1) of this Act;

[(7) the term “United States” means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

[(8) the term “Secretary” means the Secretary of Commerce.

【EFFECT ON OTHER ACTS

【SEC. 17. (a) IN GENERAL.—Except as otherwise provided in this Act, nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

【(b) COORDINATION OF CONTROLS.—The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

【(c) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product (1) which is standard equipment certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act.

【(d) NONPROLIFERATION CONTROLS.—(1) Nothing in section 5 or 6 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

【(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act.

【(e) TERMINATION OF OTHER AUTHORITY.—On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611–1613d), is superseded.

【(f) AGRICULTURAL ACT OF 1970.—Nothing in this Act shall affect the provisions of the last sentence of section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c–3).

【AUTHORIZATION OF APPROPRIATIONS

【SEC. 18. (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—(1) Notwithstanding any other provisions of law, money appropriated to the Department of Commerce for expenses to carry out the purposes of this Act may be obligated or expended only if—

[(A) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of the Export Administration Amendments Act of 1985; or

[(B) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

[(2) To the extent that legislation enacted after the making of an appropriation to carry out the purposes of this Act authorizes the obligation or expenditure thereof, the limitation contained in paragraph (1) shall have no effect.

[(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the Export Administration Amendments Act of 1985 which specifically repeals, modifies, or supersedes the provisions of this subsection.

[(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

[(1) \$42,813,000 for the fiscal year 1993;

[(2) such sums as may be necessary for the fiscal year 1994; and

[(3) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

【EFFECTIVE DATE

【SEC. 19. (a) EFFECTIVE DATE.—This Act shall take effect upon the expiration of the Export Administration Act of 1969.

[(b) ISSUANCE OF REGULATIONS.—(1) Regulations implementing the provisions of section 10 of this Act shall be issued and take effect not later than July 1, 1980.

[(2) Regulations implementing the provisions of section 7(c) of this Act shall be issued and take effect not later than January 1, 1980.

【TERMINATION DATE

【SEC. 20. The authority granted by this Act terminates on August 20, 2001.

【SAVINGS PROVISIONS

【SEC. 21. (a) IN GENERAL.—All, delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 or the Export Administration Act of 1969 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

[(b) ADMINISTRATIVE PROCEEDINGS.—This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969, which is pending at the time this Act takes effect.

【TECHNICAL AMENDMENTS

【SEC. 22. (a) Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) is amended by striking out “sections 6(c), (d), (e), and (f) and 7(a) and (c) of the Export Administration Act of 1969” and inserting in lieu thereof “subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act”.

【(b)(1) Section 103(c) of the Energy Policy and Conservation Act (42 U.S.C. 6212(c)) is amended—

【(A) by striking out “1969” and inserting in lieu thereof “1979”; and

【(B) by striking out “(A)” and inserting in lieu thereof “(C)”.

【(2) Section 254(e)(3) of such Act (42 U.S.C. 6274(e)(3)) is amended by striking out “section 7 of the Export Administration Act of 1969” and inserting in lieu thereof “section 12 of the Export Administration Act of 1979”.

【(c) Section 993(c)(2)(D) of the Internal Revenue Code of 1954 (26 U.S.C. 993(c)(2)(D)) is amended—

【(1) by striking out “403(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2403(b))” and inserting in lieu thereof “7(a) of the Export Administration Act of 1979”; and

【(2) by striking out “(A)” and inserting in lieu thereof “(C)”.

【INTERNATIONAL INVESTMENT SURVEY ACT AUTHORIZATIONS

【SEC. 23. (a) Section 9 of the International Investment Survey Act of 1976 (22 U.S.C. 3108) is amended to read as follows: * * *

【(b) The amendment made by subsection (a) shall take effect on October 1, 1979.

【MISCELLANEOUS

【SEC. 24. Section 402 of the Agricultural Trade Development and Assistance Act of 1954 is amended by inserting “or beer” in the second sentence immediately after “wine”.】

