

109TH CONGRESS
2D SESSION

H. R. 4820

To amend the Defense Production Act of 1950 to strengthen the requirements relating to investigations under such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2006

Mr. MARKEY introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Energy and Commerce, International Relations, and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Defense Production Act of 1950 to strengthen the requirements relating to investigations under such Act, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Port Operations Re-
5 quire Tough Scrutiny (PORTS) Act of 2006”.

1 **SEC. 2. COMMENCEMENT OF INVESTIGATIONS.**

2 (a) DISCRETIONARY INVESTIGATIONS.—Section
3 721(a) of the Defense Production Act of 1950 (50 U.S.C.
4 App. 2170(a)) is amended—

5 (1) in the second sentence, by striking “30
6 days” and inserting “60 days”;

7 (2) by inserting after the second sentence the
8 following new sentence: “The 60-day period specified
9 in the preceding sentence may be extended by an ad-
10 ditional 10 days if the President or the President’s
11 designee determines that it is appropriate to do so.”;
12 and

13 (3) in the fourth sentence (as so redesignated),
14 by striking “such determination” and inserting “a
15 determination is made under this subsection that an
16 investigation should be undertaken”.

17 (b) MANDATORY INVESTIGATIONS.—Section 721(b)
18 of the Defense Production Act of 1950 (50 U.S.C. App.
19 2170(b)) is amended—

20 (1) in paragraph (1), by striking “30 days” and
21 inserting “60 days”; and

22 (2) by adding at the end the following new sen-
23 tence:

24 “The 60-day period specified in paragraph (1) may be ex-
25 tended by an additional 10 days if the President or the

1 President’s designee determines that it is appropriate to
 2 do so.”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 subsections (a) and (b) apply with respect to written noti-
 5 fications of proposed or pending mergers, acquisitions, or
 6 takeovers received pursuant to section 721 of the Defense
 7 Production Act of 1950 (50 U.S.C. App. 2170) on or after
 8 the date of the enactment of this Act.

9 **SEC. 3. ADDITIONAL MANDATORY INVESTIGATIONS.**

10 (a) AMENDMENTS.—Section 721(b) of the Defense
 11 Production Act of 1950 (50 U.S.C. App. 2170(b)), as
 12 amended by section 2(b) of this Act, is further amended—

13 (1) in the first sentence—

14 (A) by striking “The President or the
 15 President’s designee” and inserting the fol-
 16 lowing new paragraph:

17 “(1) IN GENERAL.—The President or the Presi-
 18 dent’s designee”;

19 (B) by striking “in which an entity” and
 20 inserting “in which—

21 “(A) an entity”;

22 (C) by striking “which could result in con-
 23 trol” and inserting “which could result in—

24 “(i) control”;

1 (D) by striking the period at the end and
2 inserting “; or

3 “(ii) control of a person engaged
4 in interstate commerce in the United
5 States that could affect the critical in-
6 frastructure of the United States; or”;
7 and

8 (E) by adding at the end the following new
9 subparagraph:

10 “(B) a foreign person seeks to engage in
11 any merger, acquisition, or takeover which
12 could result in foreign control of persons en-
13 gaged in interstate commerce in the United
14 States that could affect the critical infrastruc-
15 ture of the United States.”;

16 (2) in the second sentence—

17 (A) by striking “Such investigation” and
18 inserting the following new paragraph:

19 “(2) REQUIREMENTS RELATING TO COMMENCE-
20 MENT AND COMPLETION.—

21 “(A) IN GENERAL.—An investigation de-
22 scribed in paragraph (1)”;

23 (B) by redesignating paragraphs (1) and
24 (2) as clauses (i) and (ii), respectively, and

1 moving the margins of clauses (i) and (ii) (as
2 so redesignated) 4 ems to the right;

3 (3) in the third sentence (as added by section
4 2(b)(2) of this Act), by striking “The 60-day period
5 specified in paragraph (1)” and inserting the fol-
6 lowing new subparagraph:

7 “(B) EXTENSION OF COMMENCEMENT.—

8 The 60-day period specified in clause (i)”; and

9 (4) by adding at the end the following new
10 paragraph:

11 “(3) DEFINITION.—In this subsection, the term
12 ‘critical infrastructure’—

13 “(A) has the meaning given the term in
14 section 2(4) of the Homeland Security Act of
15 2002 (6 U.S.C. 101(4)); and

16 “(B) includes seaports in the United
17 States.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 subsection (a) apply with respect to written notifications
20 of proposed or pending mergers, acquisitions, or takeovers
21 received pursuant to section 721 of the Defense Produc-
22 tion Act of 1950 (50 U.S.C. App. 2170) on or after the
23 date of the enactment of this Act.

1 **SEC. 4. REPORT; ACTION WITH RESPECT TO CERTAIN MAN-**
2 **DATORY INVESTIGATIONS.**

3 (a) AMENDMENTS.—Section 721 of the Defense Pro-
4 duction Act of 1950 (50 U.S.C. App. 2170) is amended—

5 (1) by redesignating subsections (g) through (k)
6 as subsections (h) through (l), respectively; and

7 (2) by inserting after subsection (f) the fol-
8 lowing new subsection:

9 “(g) REPORT; ACTION WITH RESPECT TO CERTAIN
10 MANDATORY INVESTIGATIONS.—

11 “(1) REPORT.—If the determination of the
12 President or the President’s designee pursuant to an
13 investigation described in subsection (b)(1)(A)(ii) of
14 this section is that the President or the President’s
15 designee, as the case may be, approves or does not
16 otherwise object to the merger, acquisition, or take-
17 over which is the subject of the investigation and the
18 President decides not to take action pursuant to
19 subsection (d) of this section with respect to the
20 merger, acquisition, or takeover, as the case may be,
21 then the President shall, not later than 30 days
22 after the date on which the investigation is com-
23 pleted, transmit to the Congress a report that con-
24 tains the decision of the President not to take action
25 pursuant to subsection (d) of this section with re-

1 spect to the merger, acquisition, or takeover, as the
2 case may be.

3 “(2) ACTION PURSUANT TO JOINT RESOLU-
4 TION.—If, not later than 45 days after the date on
5 which the Congress receives the report referred to in
6 paragraph (1), a joint resolution described in para-
7 graph (3) is enacted into law, then the President
8 shall take such action under subsection (d) of this
9 section as is necessary to prohibit the merger, acqui-
10 sition, or takeover which is the subject of the inves-
11 tigation, including, if the merger, acquisition, or
12 takeover, as the case may be, has been completed,
13 directing the Attorney General to seek divestment or
14 other appropriate relief in the district courts of the
15 United States.

16 “(3) JOINT RESOLUTION DESCRIBED.—For
17 purposes of paragraph (2), the term ‘joint resolu-
18 tion’ means a joint resolution of the Congress, the
19 sole matter after the resolving clause of which is as
20 follows: ‘That the Congress disapproves the decision
21 of the President contained in the report transmitted
22 to the Congress pursuant to section 721(g)(1) of the
23 Defense Production Act of 1950 on
24 _____.’, with the blank space being
25 filled with the appropriate date.

1 “(4) COMPUTATION OF REVIEW PERIOD.—In
 2 computing the 45-day period referred to in para-
 3 graph (2), there shall be excluded any day described
 4 in section 154(b) of the Trade Act of 1974 (19
 5 U.S.C. 2194(b)).”.

6 (b) EFFECTIVE DATE.—The amendments made by
 7 subsection (a) apply with respect to investigations com-
 8 menced under section 721(b)(1)(A)(ii) of the Defense Pro-
 9 duction Act of 1950 (as added by section 3(a)(1)(D) of
 10 this Act) on or after the date of the enactment of this
 11 Act.

12 **SEC. 5. ANNUAL REPORT.**

13 (a) AMENDMENTS.—Subsection (h) of section 721 of
 14 the Defense Production Act of 1950 (50 U.S.C. App.
 15 2170(g)), as redesignated by section 2(a)(1) of this Act,
 16 is amended—

17 (1) in the heading, by striking “REPORT” and
 18 inserting “REPORTS”;

19 (2) by striking “The President” and inserting
 20 the following:

21 “(1) REPORT ON PRESIDENTIAL ACTION.—The
 22 President”; and

23 (3) by adding at the end the following new
 24 paragraph:

25 “(2) ANNUAL REPORT.—

1 “(A) IN GENERAL.—The President or the
2 President’s designee shall transmit to the ap-
3 propriate congressional committees an annual
4 report that contains—

5 “(i) a description of each written noti-
6 fication of a proposed or pending merger,
7 acquisition, or takeover received pursuant
8 to this section during the preceding year,
9 including, with respect to each such writ-
10 ten notification involving a merger, acquisi-
11 tion, or takeover described in subsection
12 (b)(1)(A)(ii), an analysis of the corporate
13 structure of the entity controlled by or act-
14 ing on behalf of a foreign government, in-
15 cluding whether or not the entity is a pub-
16 licly-traded corporation, and an identifica-
17 tion of the majority shareholder or share-
18 holders; and

19 “(ii) a description of the determina-
20 tion to undertake or not undertake an in-
21 vestigation of the merger, acquisition, or
22 takeover referred to in clause (i) and the
23 reasons therefor.

1 “(B) DEFINITION.—In this paragraph, the
2 term ‘appropriate congressional committees’
3 means—

4 “(i) the Committee on Homeland Se-
5 curity and the Permanent Select Com-
6 mittee on Intelligence of the House of Rep-
7 resentatives; and

8 “(ii) the Committee on Homeland Se-
9 curity and Governmental Affairs and the
10 Select Committee on Intelligence of the
11 Senate.”.

12 (b) EFFECTIVE DATE.—The report required to be
13 transmitted to Congress under section 721(h)(2) of the
14 Defense Production Act of 1950 (as added by subsection
15 (a) of this section) shall be transmitted beginning in 2007
16 and each subsequent calendar year.

17 **SEC. 6. TECHNICAL AMENDMENTS.**

18 Section 721 of the Defense Production Act of 1950
19 (50 U.S.C. App. 2170), as amended by this Act, is further
20 amended—

21 (1) in subsection (d), by striking “Subject to
22 subsection (d)” and inserting “Subject to subsection
23 (e)”;

1 (2) in subsection (e), by striking “the authority
2 conferred by subsection (c)” and inserting “the au-
3 thority conferred by subsection (d)”; and

4 (3) in subsection (h)(1) (as redesignated by sec-
5 tion 2(a)(1) and further amended by section 3(a)(2)
6 of this Act), by striking “subsection (c) of this Act”
7 and inserting “subsection (c) of this section”.

8 **SEC. 7. VERIFICATION OF SECURITY MEASURES UNDER**
9 **THE CUSTOMS-TRADE PARTNERSHIP**
10 **AGAINST TERRORISM (C-TPAT) PROGRAM**
11 **AND THE FREE AND SECURE TRADE (FAST)**
12 **PROGRAM.**

13 (a) GENERAL VERIFICATION.—Not later than one
14 year after the date of the enactment of this Act, and on
15 a biannual basis thereafter, the Commissioner of the Bu-
16 reau of Customs and Border Protection of the Department
17 of Homeland Security shall verify on-site the security
18 measures of each individual and entity that is partici-
19 pating in the Customs-Trade Partnership Against Ter-
20 rorism (C-TPAT) program and the Free And Secure
21 Trade (FAST) program.

22 (b) POLICIES FOR NONCOMPLIANCE WITH C-TPAT
23 PROGRAM REQUIREMENTS.—The Commissioner shall es-
24 tablish policies for non-compliance with the requirements
25 of the C-TPAT program by individuals and entities par-

- 1 participating in the program, including probation or expulsion
- 2 from the program, as appropriate.

