

the Assistant to the President for National Security Affairs a report documenting the results of its review. The report shall also include any resulting policy recommendations that the Committee considers necessary to meet the evolving set of national security risks.

SEC. 5. *Definitions.* For purposes of this order, terms shall have the same meanings ascribed to them in section 721 and regulations promulgated by the Committee under section 721.

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, affect the requirements in section 721 relating to the scope of the Committee's jurisdiction.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

INTERIM DIRECTIVE REGARDING DISPOSITION OF CERTAIN MERGERS, ACQUISITIONS, AND TAKEOVERS

Memorandum of the President of the United States, Oct. 26, 1988, 53 F.R. 43999, provided:

Memorandum for the Secretary of the Treasury

By virtue of the authority vested in me by the Constitution and statutes of the United States, including without limitation Section 301 of Title 3 of the United States Code, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) [now 50 U.S.C. 4501 *et seq.*], and the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, August 23, 1988) (the "Act") [see Tables for classification], it is ordered as follows:

Pending the issuance of an Executive order to implement the Act, the Secretary of the Treasury is hereby designated and empowered to perform the following-described functions of the President: The authority vested in the President by Section 721 of the Defense Production Act of 1950, as amended [50 U.S.C. 4565], relative to mergers, acquisitions, and takeovers proposed or pending on or after the date of enactment of the Act [Aug. 23, 1988] by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States.

The Secretary of the Treasury shall consult with the Committee on Foreign Investment in the United States, established pursuant to Executive Order No. 11858 [set out above] and chaired by the representative of the Secretary of the Treasury, to take such actions or make such recommendations as requested by the Secretary of the Treasury.

The delegation provided herein shall terminate, and this interim directive shall be without any further effect, except as may be provided in the Executive order implementing the Act, upon the effective date of such order.

This interim directive shall be published in the Federal Register.

RONALD REAGAN.

**§ 4566. Prohibition on purchase of United States defense contractors by entities controlled by foreign governments**

**(a) In general**

No entity controlled by a foreign government may merge with, acquire, or take over a company engaged in interstate commerce in the United States that—

(1) is performing a Department of Defense contract, or a Department of Energy contract under a national security program, that cannot be performed satisfactorily unless that company is given access to information in a proscribed category of information; or

(2) during the previous fiscal year, was awarded—

(A) Department of Defense prime contracts in an aggregate amount in excess of \$500,000,000; or

(B) Department of Energy prime contracts under national security programs in an aggregate amount in excess of \$500,000,000.

**(b) Inapplicability to certain cases**

The limitation in subsection (a) shall not apply if a merger, acquisition, or takeover is not suspended or prohibited pursuant to section 4565 of this title.

**(c) Definitions**

In this section:

(1) The term "entity controlled by a foreign government" includes—

(A) any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; and

(B) any individual acting on behalf of a foreign government,

as determined by the President.

(2) The term "proscribed category of information" means a category of information that—

(A) with respect to Department of Defense contracts—

(i) includes special access information;

(ii) is determined by the Secretary of Defense to include information the disclosure of which to an entity controlled by a foreign government is not in the national security interests of the United States; and

(iii) is defined in regulations prescribed by the Secretary of Defense for the purposes of this section; and

(B) with respect to Department of Energy contracts—

(i) is determined by the Secretary of Energy to include information described in subparagraph (A)(ii); and

(ii) is defined in regulations prescribed by the Secretary of Energy for the purposes of this section.

(Pub. L. 102-484, div. A, title VIII, § 835, Oct. 23, 1992, 106 Stat. 2461.)

**Editorial Notes**

**CODIFICATION**

Section was formerly classified to section 2170a of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1993, and not as part of the Defense Production Act of 1950 which comprises this chapter.

**§ 4567. Defense Production Act Committee**

**(a) Committee established**

There is established the Defense Production Act Committee (in this section referred to as

the “Committee”), which shall coordinate and plan for on<sup>1</sup> the effective use of the priorities and allocations authorities under this chapter by the departments, agencies, and independent establishments of the Federal Government to which the President has delegated authority under this chapter.

**(b) Membership**

(1) IN GENERAL.—The members of the Committee shall be—

(A) the head of each Federal agency to which the President has delegated authority under this chapter; and

(B) the Chairperson of the Council of Economic Advisors.

(2) The Chairperson of the Committee shall be the head of the agency to which the President has delegated primary responsibility for government-wide coordination of the authorities in this chapter.

**(c) Coordination of Committee activities**

The Chairperson shall appoint one person to coordinate all of the activities of the Committee, and such person shall—

(1) be a full-time employee of the Federal Government;

(2) report to the Chairperson; and

(3) carry out such activities relating to the Committee as the Chairperson may determine appropriate.

**(d) Report**

The Committee shall issue a report each year by March 31 to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report signed by the Chairperson that contains—

(1) a description of the contingency planning by each department, agency, or independent establishment of the Federal Government to which the President has delegated authority under this chapter for events that might require the use of the priorities and allocations authorities;

(2) recommendations for the effective use of the priorities and allocations authorities in this chapter in a manner consistent with the statement of policy under section 4502(b) of this title;

(3) recommendations for legislation actions, as appropriate, to support the effective use of the priorities and allocations authorities in this chapter;

(4) recommendations for improving information sharing between departments, agencies, and independent establishments of the Federal Government relating to the use of the priorities and allocations authorities in this chapter;

(5) up-to-date copies of the rules described under section 4511(d)(1) of this title; and

(6) short attestations signed by each member of the Committee stating their concurrence in the report.

**(e) Chapter 10 of title 5**

The provisions of chapter 10 of title 5 shall not apply to the Committee.

(Sept. 8, 1950, ch. 932, title VII, §722, as added Pub. L. 102-558, title I, §135, Oct. 28, 1992, 106 Stat. 4212; amended Pub. L. 109-295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410; Pub. L. 111-67, §11, Sept. 30, 2009, 123 Stat. 2019; Pub. L. 113-172, §2, Sept. 26, 2014, 128 Stat. 1896; Pub. L. 117-286, §4(a)(323), Dec. 27, 2022, 136 Stat. 4341.)

TERMINATION OF SECTION

*For termination of section, see section 4564(a) of this title.*

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (d), was in the original “this Act”, meaning act Sept. 8, 1950, ch. 932, 64 Stat. 798, known as the Defense Production Act of 1950, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 4501 of this title and Tables.

CODIFICATION

Section was formerly classified to section 2171 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2022—Subsec. (e). Pub. L. 117-286 substituted “Chapter 10 of title 5” for “Federal Advisory Committee Act” in heading and “chapter 10 of title 5” for “the Federal Advisory Committee Act (5 U.S.C. App.)” in text.

2014—Subsec. (a). Pub. L. 113-172, §2(1), substituted “coordinate and plan for” for “advise the President” and “the priorities and allocations authorities” for “the authority”.

Subsec. (b)(2). Pub. L. 113-172, §2(2), amended par. (2) generally. Prior to amendment, text read as follows: “The President shall designate 1 member of the Committee as the Chairperson of the Committee.”

Subsec. (c). Pub. L. 113-172, §2(3), amended subsec. (c) generally. Prior to amendment, text read as follows:

“(1) IN GENERAL.—The President shall appoint an Executive Director of the Defense Production Act Committee (in this section referred to as the ‘Executive Director’), who shall—

“(A) be responsible to the Chairperson of the Committee; and

“(B) carry out such activities relating to the Committee as the Chairperson may determine.

“(2) APPOINTMENT.—The appointment by the President shall not be subject to the advice and consent of the Senate.

“(3) COMPENSATION.—For pay periods beginning on or after the date on which each Chairperson is appointed, funds for the pay of the Executive Director shall be paid from appropriations to the salaries and expenses account of the department or agency of the Chairperson of the Committee. The Executive Director shall be compensated at a rate of pay equivalent to that of a Deputy Assistant Secretary (or a comparable position) of the Federal agency of the Chairperson of the Committee.”

Subsec. (d). Pub. L. 113-172, §2(4)(A), (B), in introductory provisions, substituted “The Committee shall issue a report each year by March 31” for “Not later than the end of the first quarter of each calendar year, the Committee shall submit” and “the Chairperson” for “each member of the Committee”.

Subsec. (d)(1). Pub. L. 113-172, §2(4)(C), substituted “a description of the contingency planning by” for “a review of the authority under this chapter of” and inserted before semicolon at end “for events that might require the use of the priorities and allocations authorities”.

Subsec. (d)(2). Pub. L. 113-172, §2(4)(D), substituted “priorities and allocations authorities in this chapter” for “authority described in paragraph (1)”.

<sup>1</sup> So in original. The word “on” probably should not appear.

Subsec. (d)(3). Pub. L. 113-172, §2(4)(E), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “recommendations for legislation, regulations, executive orders, or other action by the Federal Government necessary to improve the use of the authority described in paragraph (1); and”.

Subsec. (d)(4). Pub. L. 113-172, §2(4)(F), substituted “the use of the priorities and allocations authorities in this chapter;” for “all aspects of the authority described in paragraph (1).”

Subsec. (d)(5), (6). Pub. L. 113-172, §2(4)(G), added pars. (5) and (6).

2009—Pub. L. 111-67 amended section generally. Prior to amendment, section related to defense industrial base information system with regard to its establishment, sources of information, strategic plan for developing comprehensive system, capabilities, and required report on subcontractor and supplier base.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as an Effective Date of 1992 Amendment note under section 4502 of this title.

#### Executive Documents

##### DESIGNATING THE CHAIRPERSON OF THE DEFENSE PRODUCTION ACT COMMITTEE

Memorandum of President of the United States, May 19, 2010, 75 F.R. 32087, provided:

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

Pursuant to the authority vested in me by section 722(b)(2) of the Defense Production Act of 1950, as amended (section 11 of Public Law 111-67; 50 App. U.S.C. 2171) [now 50 U.S.C. 4567(b)(2)] (the “Act”), I hereby designate the Secretary of Homeland Security and the Secretary of Defense as rotating Chairpersons of the Defense Production Act Committee (the “Committee”). The Chair shall rotate annually on April 1 of each year, with the Secretary of Homeland Security hereby designated to serve as Chairperson of the Committee for the remainder of this first term. The Secretary of Homeland Security and the Secretary of Defense are directed to formalize responsibilities for funding and administratively supporting the Committee through interagency agreement.

Furthermore, the Chairperson shall invite to each meeting of the Committee all Members of the Committee as defined in section 722(b) of the Act [50 U.S.C. 4567(b)], and shall ensure that the reporting requirements of section 722(d) of the Act [50 U.S.C. 4567(d)] are fulfilled.

The Secretary of Homeland Security is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

#### § 4568. Annual report on impact of offsets

##### (a) Report required

###### (1) In general

The President shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, a detailed annual report on the impact of offsets on the defense preparedness, industrial competitiveness, employment, and trade of the United States.

###### (2) Duties of the Secretary of Commerce

The Secretary of Commerce (hereafter in this subsection referred to as the “Secretary”) shall—

(A) prepare the report required by paragraph (1);

(B) consult with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative in connection with the preparation of such report; and

(C) function as the President’s Executive Agent for carrying out this section.

##### (b) Interagency studies and related data

###### (1) Purpose of report

Each report required under subsection (a) shall identify the cumulative effects of offset agreements on—

(A) the full range of domestic defense productive capability (with special attention paid to the firms serving as lower-tier subcontractors or suppliers); and

(B) the domestic defense technology base as a consequence of the technology transfers associated with such offset agreements.

###### (2) Use of data

Data developed or compiled by any agency while conducting any interagency study or other independent study or analysis shall be made available to the Secretary to facilitate the execution of the Secretary’s responsibilities with respect to trade offset and countertrade policy development.

##### (c) Notice of offset agreements

###### (1) In general

If a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset agreement exceeding \$5,000,000 in value, such firm shall furnish to the official designated in the regulations promulgated pursuant to paragraph (2) information concerning such sale.

###### (2) Regulations

The information to be furnished under paragraph (1) shall be prescribed in regulations promulgated by the Secretary. Such regulations shall provide protection from public disclosure for such information, unless public disclosure is subsequently specifically authorized by the firm furnishing the information.

##### (d) Contents of report

###### (1) In general

Each report under subsection (a) shall include—

(A) a net assessment of the elements of the industrial base and technology base covered by the report;

(B) recommendations for appropriate remedial action under the authority of this chapter, or other law or regulations;

(C) a summary of the findings and recommendations of any interagency studies conducted during the reporting period under subsection (b);

(D) a summary of offset arrangements concluded during the reporting period for which information has been furnished pursuant to subsection (c); and

(E) a summary and analysis of any bilateral and multilateral negotiations relating