

**THE DEFENSE PRODUCTION ACT
OF 1950, AS AMENDED**

[50 U.S.C. § 4501 *et seq.*]

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Table of Contents

Sec. 1. Short Title [50 U.S.C. § 4501	1
Sec. 2. Declaration of Policy [50 U.S.C. § 4502]	1
Title I – Priorities and Allocations.....	3
Sec. 101. Priority in Contracts and Orders [50 U.S.C. § 4511]	3
Sec. 102. Hoarding of Designated Scarce Materials [50 U.S.C. § 4512].....	5
Sec. 103. Penalties [50 U.S.C. § 4513]	5
Sec. 104. Limitation on Actions Without Congressional Authorization [50 U.S.C. § 4514] ...	5
Sec. 105. Presidential Power to Ration Gasoline Among Classes of End-Users Unaffected [50 U.S.C. § 4515].....	5
Sec. 106. Designation of Energy as a Strategic and Critical Material [50 U.S.C. § 4516].....	6
Sec. 107. Strengthening Domestic Capability [50 U.S.C. § 4517]	6
Sec. 108. Modernization of Small Business Suppliers [50 U.S.C. § 4518]	7
Title II – Authority to Requisition and Condemn [repealed].....	7
Title III – Expansion of Productive Capacity and Supply	7
Sec. 301. Presidential Authorization for the National Defense [50 U.S.C. § 4531]	7
Sec. 302. Loans to Private Business Enterprises. [50 U.S.C. § 4532]	11
Sec. 303. Other Presidential Action Authorized. [50 U.S.C. § 4533].....	12
Sec. 304. Defense Production Act Fund. [50 U.S.C. § 4534]	17
Title IV - Price and Wage Stabilization [repealed].....	18
Title V - Settlement of Labor Disputes [repealed].....	18
Title VI - Control of Consumer and Real Estate Credit [repealed]	18
Title VII - General Provisions.....	18
Sec. 701. Small Business [50 U.S.C. § 4551]	18
Sec. 702. Definitions [50 U.S.C. § 4552].....	19
Sec. 703. Civilian Personnel [50 U.S.C. § 4553]	22
Sec. 704. Regulations and Orders [50 U.S.C. § 4554]	22

Sec. 705. Investigations; Records; Reports; Subpoenas; Right to Counsel [50 U.S.C. § 4555]	22
Sec. 706. Jurisdiction of Courts; Injunctions; Venue; Process; Effect of Termination of Provisions [50 U.S.C. § 4556]	23
Sec. 707. Liability for Compliance with Invalid Regulations; Discrimination Against Orders or Contracts Affected by Priorities or Allocations [50 U.S.C. § 4557]	24
Sec. 708. Voluntary Agreements and Plans of Action for Preparedness Programs and Expansion of Production Capacity and Supply [50 U.S.C. § 4558]	24
Sec. 708a. [50 U.S.C. App. § 2158a] [repealed] Pub. L. 102-99, Sec. 4, Aug. 17, 1991, 105 Stat. 487	32
Sec. 709. Public Participation in Rulemaking [50 U.S.C. § 4559]	32
Sec. 710. Employment of Personnel; Appointment Policies; Nucleus Executive Reserve; Use of Confidential Information by Employees; Printing and Distribution of Reports [50 U.S.C. § 4560]	33
Sec. 711. Authorization of Appropriations [50 U.S.C. § 4561]	35
Sec. 712. Joint Committee on Defense Production [repealed] Pub. L. 102-558, title I, Sec. 153, Oct. 28, 1992, 106 Stat. 4219	35
Sec. 713. Territorial Application of Act [50 U.S.C. § 4562]	35
Sec. 714. Small Defense Plants Administration [repealed] Pub. L. 89-554, Sec. 8(a), Sept. 6, 1966, 80 Stat. 656	35
Sec. 715. Separability [50 U.S.C. § 4563]	35
Sec. 716. Person Disqualified from Employment and Penalties [repealed] Pub. L. 102-558, title I, Sec. 154, Oct. 28, 1992, 106 Stat. 4219	36
Sec. 717. Termination of Act [50 U.S.C. § 4564]	36
Sec. 718. Feasibility Study of Application of Uniform Cost Accounting Standards to Defense Procurement Contracts [repealed] Pub. L. 102-558, title I, Sec. 155, Oct. 28, 1992, 106 Stat. 4219	37
Sec. 719. Formation, Functions, Appointment and Compensation of Staff, Etc., of Cost Accounting Standards Board [repealed] Pub. L. 100-679, Sec. 5(b), Nov. 17, 1988, 102 Stat. 4063	37

Sec. 720. National Commission on Supplies and Shortages [repealed] Pub. L. 102-558, title I, Sec. 156, Oct. 28, 1992, 106 Stat. 4219	37
Sec. 721. Authority to Review Certain Mergers, Acquisitions, and Takeovers [50 U.S.C. § 4565].....	37
Sec. 721a. Prohibition on Purchase of United States Defense Contractors by Entities Controlled by Foreign Governments [50 U.S.C. § 4566]	77
Sec. 722. Defense Production Act Committee [50 U.S.C. § 4567].....	78
Sec. 723. Annual Report on Impact of Offsets [50 U.S.C. § 4568]	79

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Sec. 1. Short Title [50 U.S.C. § 4501

This Act [50 U.S.C. § 4501-4568], divided into titles, may be cited as the “Defense Production Act of 1950”.

Sec. 2. Declaration of Policy [50 U.S.C. § 4502]

(a) Findings

Congress finds that—

(1) the security of the United States is dependent on the ability of the domestic industrial base to supply materials and services for the national defense and to prepare for and respond to military conflicts, natural or man-caused disasters, or acts of terrorism within the United States;

(2) to ensure the vitality of the domestic industrial base, actions are needed—

(A) to promote industrial resources preparedness in the event of domestic or foreign threats to the security of the United States;

(B) to support continuing improvements in industrial efficiency and responsiveness;

(C) to provide for the protection and restoration of domestic critical infrastructure operations under emergency conditions; and

(D) to respond to actions taken outside of the United States that could result in reduced supplies of strategic and critical materials, including energy, necessary for national defense and the general economic well-being of the United States;

(3) in order to provide for the national security, the national defense preparedness effort of the United States Government requires—

(A) preparedness programs to respond to both domestic emergencies and international threats to national defense;

(B) measures to improve the domestic industrial base for national defense;

(C) the development of domestic productive capacity to meet—

(i) essential national defense needs that can result from emergency conditions; and

(ii) unique technological requirements; and

(D) the diversion of certain materials and facilities from ordinary use to national defense purposes, when national defense needs cannot otherwise be satisfied in a timely fashion;

(4) to meet the requirements referred to in this subsection, this Act [sections 4501 to 4568 of 50 U.S.C.] provides the President with an array of authorities to shape national defense preparedness programs and to take appropriate steps to maintain and enhance the domestic industrial base;

(5) in order to ensure national defense preparedness, it is necessary and appropriate to assure the availability of domestic energy supplies for national defense needs;

(6) to further assure the adequate maintenance of the domestic industrial base, to the maximum extent possible, domestic energy supplies should be augmented through reliance on renewable energy sources (including solar, geothermal, wind, and biomass sources), more efficient energy storage and distribution technologies, and energy conservation measures;

(7) much of the industrial capacity that is relied upon by the United States Government for military production and other national defense purposes is deeply and directly influenced by—

(A) the overall competitiveness of the industrial economy of the United States;
and

(B) the ability of industries in the United States, in general, to produce internationally competitive products and operate profitably while maintaining adequate research and development to preserve competitiveness with respect to military and civilian production; and

(8) the inability of industries in the United States, especially smaller subcontractors and suppliers, to provide vital parts and components and other materials would impair the ability to sustain the Armed Forces of the United States in combat for longer than a short period.

(b) Statement of policy

It is the policy of the United States that—

(1) to ensure the adequacy of productive capacity and supply, Federal departments and agencies that are responsible for national defense acquisition should continuously assess the capability of the domestic industrial base to satisfy production requirements under both peacetime and emergency conditions, specifically evaluating the availability of adequate production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel;

(2) every effort should be made to foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components, and equipment;

(3) plans and programs to carry out the purposes of this Act [sections 4501 to 4568 of 50 U.S.C.] should be undertaken with due consideration for promoting efficiency and competition;

(4) in providing United States Government financial assistance under this Act [sections 4501 to 4568 of 50 U.S.C.] to correct a domestic industrial base shortfall, the President should give consideration to the creation or maintenance of production sources that will remain economically viable after such assistance has ended;

(5) authorities under this Act [sections 4501 to 4568 of 50 U.S.C.] should be used to reduce the vulnerability of the United States to terrorist attacks, and to minimize the damage and assist in the recovery from terrorist attacks that occur in the United States;

(6) in order to ensure productive capacity in the event of an attack on the United States, the United States Government should encourage the geographic dispersal of industrial facilities in the United States to discourage the concentration of such productive facilities within limited geographic areas that are vulnerable to attack by an enemy of the United States;

(7) to ensure that essential national defense requirements are met, consideration should be given to stockpiling strategic materials, to the extent that such stockpiling is economical and feasible; and

(8) in the construction of any industrial facility owned by the United States Government, in the rendition of any financial assistance by the United States Government for the construction, expansion, or improvement of any industrial facility, and in the production of goods and services, under this Act [sections 4501 to 4568 of 50 U.S.C.] or any other provision of law, each department and agency of the United States Government should apply, under the coordination of the Federal Emergency Management Agency, when practicable and consistent with existing law and the desirability for maintaining a sound economy, the principle of geographic dispersal of such facilities in the interest of national defense.

Title I – Priorities and Allocations

Sec. 101. Priority in Contracts and Orders [50 U.S.C. § 4511]

(a) Allocation of materials, services, and facilities

The President is authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

(b) Critical and strategic materials

The powers granted in this section shall not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense, and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of

the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

(c) Domestic energy; materials, equipment, and services

(1) Notwithstanding any other provision of this Act [sections 4501 to 4568 of 50 U.S.C.], the President may, by rule or order, require the allocation of, or the priority performance under contracts or orders (other than contracts of employment) relating to, materials, equipment, and services in order to maximize domestic energy supplies if he makes the findings required by paragraph (3) of this subsection.

(2) The authority granted by this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials, services, and facilities in the marketplace, unless the President finds that—

(A) such materials, services, and facilities are scarce, critical, and essential—

(i) to maintain or expand exploration, production, refining, transportation;

(ii) to conserve energy supplies; or

(iii) to construct or maintain energy facilities; and

(B) maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection.

(3) During any period when the authority conferred by this subsection is being exercised, the President shall take such action as may be appropriate to assure that such authority is being exercised in a manner which assures the coordinated administration of such authority with any priorities or allocations established under subsection (a) of this section and in effect during the same period.

(d) Rules; consultation among agency heads

The head of each Federal agency to which the President delegates authority under this section shall—

(1) issue, and annually review and update whenever appropriate, final rules, in accordance with section 553 of title 5, United States Code, that establish standards and procedures by which the priorities and allocations authority under this section is used to promote the national defense, under both emergency and nonemergency conditions; and

(2) as appropriate and to the extent practicable, consult with the heads of other Federal agencies to develop a consistent and unified Federal priorities and allocations system.

Sec. 102. Hoarding of Designated Scarce Materials [50 U.S.C. § 4512]

In order to prevent hoarding, no person shall accumulate (1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at prices in excess of prevailing market prices, materials which have been designated by the President as scarce materials or materials the supply of which would be threatened by such accumulation. The President shall order published in the Federal Register, and in such other manner as he may deem appropriate, every designation of materials the accumulation of which is unlawful and any withdrawal of such designation.

In making such designations the President may prescribe such conditions with respect to the accumulation of materials in excess of the reasonable demands of business, personal, or home consumption as he deems necessary to carry out the objectives of this Act [sections 4501 to 4568 of 50 U.S.C.]. This section shall not be construed to limit the authority contained in sections 101 and 704 of this Act [sections 4511 and 4554 of 50 U.S.C.].

Sec. 103. Penalties [50 U.S.C. § 4513]

Any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this title [sections 4511 to 4518 of 50 U.S.C.] or any rule, regulation, or order thereunder, shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

Sec. 104. Limitation on Actions Without Congressional Authorization [50 U.S.C. § 4514]

(a) Wage or price controls

No provision of this Act [sections 4501 to 4568 of 50 U.S.C.] shall be interpreted as providing for the imposition of wage or price controls without the prior authorization of such action by a joint resolution of Congress.

(b) Chemical or biological weapons

No provision of title I of this Act [sections 4511 to 4518 of 50 U.S.C.] shall be exercised or interpreted to require action or compliance by any private person to assist in any way in the production of or other involvement in chemical or biological warfare capabilities, unless authorized by the President (or the President's designee who is serving in a position at level I of the Executive Schedule in accordance with section 5312 of title 5, United States Code) without further redelegation.

Sec. 105. Presidential Power to Ration Gasoline Among Classes of End-Users Unaffected [50 U.S.C. § 4515]

Nothing in this Act [sections 4501 to 4568 of 50 U.S.C.] shall be construed to authorize the President to institute, without the approval of the Congress, a program for the rationing of gasoline among classes of end-users.

Sec. 106. Designation of Energy as a Strategic and Critical Material [50 U.S.C. § 4516]

For purposes of this Act [sections 4501 to 4568 of 50 U.S.C.], "energy" shall be designated as a "strategic and critical material" after the date of the enactment of this section [June 30, 1980]: Provided, That no provision of this Act [sections 4501 to 4568 of 50 U.S.C.] shall, by virtue of such designation 1 grant any new direct or indirect authority to the President for the mandatory allocation or pricing of any fuel or feedstock (including, but not limited to, crude oil, residual fuel oil, any refined petroleum product, natural gas, or coal) or electricity or any other form of energy.

Sec. 107. Strengthening Domestic Capability [50 U.S.C. § 4517]

(a) In general

Utilizing the authority of title III of this Act [sections 4531 to 4534 of 50 U.S.C.] or any other provision of law, the President may provide appropriate incentives to develop, maintain, modernize, restore, and expand the productive capacities of domestic sources for critical components, critical technology items, materials, and industrial resources essential for the execution of the national security strategy of the United States.

(b) Critical components and critical technology items

(1) Maintenance of reliable sources of supply

The President shall take appropriate actions to assure that critical components, critical technology items, essential materials, and industrial resources are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency.

(2) Appropriate action

For purposes of this subsection, appropriate action may include—

(A) restricting contract solicitations to reliable sources;

(B) restricting contract solicitations to domestic sources pursuant to—

(i) section 2304(b)(1)(B) or section 2304(c)(3) of title 10, United States Code;

(ii) section 303(b)(1)(B) or section 303(c)(3) of the Federal Property and Administrative Services Act of 1949 [now 41 U.S.C. 3303(a)(1)(B), 3304(a)(3)]; or

(iii) other statutory authority;

(C) stockpiling critical components; and

(D) developing substitutes for a critical component or a critical technology item.

Sec. 108. Modernization of Small Business Suppliers [50 U.S.C. § 4518]

(a) In General

In providing any assistance under this Act [sections 4501 to 4568 of 50 U.S.C.], the President shall accord a strong preference for small business concerns which are subcontractors or suppliers, and, to the maximum extent practicable, to such small business concerns located in areas of high unemployment or areas that have demonstrated a continuing pattern of economic decline, as identified by the Secretary of Labor.

(b) Modernization of equipment

(1) In general

Funds authorized under title III [sections 4531 to 4534 of 50 U.S.C.] may be used to guarantee the purchase or lease of advance manufacturing equipment, and any related services with respect to any such equipment for purposes of this Act [sections 4501 to 4568 of 50 U.S.C.].

(2) Small business suppliers

In considering proposals for title III [sections 4531 to 4534 of 50 U.S.C.] projects under paragraph (1), the President shall provide a strong preference for proposals submitted by a small business supplier or subcontractor whose proposal—

(A) has the support of the department or agency which will provide the guarantee;

(B) reflects that the small business concern has made arrangements to obtain qualified outside assistance to support the effective utilization of the advanced manufacturing equipment being proposed for installation; and

(C) meets the requirements of section 301, 302, or 303 [section 4531, 4532, or 4533 of 50 U.S.C.].

Title II – Authority to Requisition and Condemn [repealed]

[This title expired June 30, 1953, and was repealed by Pub. L. 111–67, §2(a)(2), Sept. 30, 2009, 123 Stat. 2007.]

Title III – Expansion of Productive Capacity and Supply

Sec. 301. Presidential Authorization for the National Defense [50 U.S.C. § 4531]

(a) Expediting production and deliveries or services

(1) Authorized activities

To reduce current or projected shortfalls of industrial resources, critical technology items, or essential materials needed for national defense purposes, subject to such regulations as the

President may prescribe, the President may authorize a guaranteeing agency to provide guarantees of loans by private institutions for the purpose of financing any contractor, subcontractor, provider of critical infrastructure, or other person in support of production capabilities or supplies that are deemed by the guaranteeing agency to be necessary to create, maintain, expedite, expand, protect, or restore production and deliveries or services essential to the national defense.

(2) Presidential determinations required

Except during a period of national emergency declared by Congress or the President, a loan guarantee may be entered into under this section only if the President determines that—

(A) the loan guarantee is for an activity that supports the production or supply of an industrial resource, critical technology item, or material that is essential for national defense purposes;

(B) without a loan guarantee, credit is not available to the loan applicant under reasonable terms or conditions sufficient to finance the activity;

(C) the loan guarantee is the most cost effective, expedient, and practical alternative for meeting the needs of the Federal Government;

(D) the prospective earning power of the loan applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed;

(E) the loan to be guaranteed bears interest at a rate determined by the Secretary of the Treasury to be reasonable, taking into account the then-current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan;

(F) the loan agreement for the loan to be guaranteed provides that no provision of the loan agreement may be amended or waived without the consent of the fiscal agent of the United States for the guarantee; and

(G) the loan applicant has provided or will provide—

(i) an assurance of repayment, as determined by the President; and

(ii) security—

(I) in the form of a performance bond, insurance, collateral, or other means acceptable to the fiscal agent of the United States; and

(II) in an amount equal to not less than 20 percent of the amount of the loan.

(3) Limitations on loans

Loans under this section may be—

(A) made or guaranteed under the authority of this section only to the extent that an appropriations Act—

(i) provides, in advance, budget authority for the cost of such guarantees, as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a); and

(ii) establishes a limitation on the total loan principal that may be guaranteed; and

(B) made without regard to the limitations of existing law, other than section 1341 of title 31, United States Code.

(b) Fiscal agents of the United States

(1) In general

Any Federal agency or any Federal reserve bank, when designated by the President, is hereby authorized to act, on behalf of any guaranteeing agency, as fiscal agent of the United States in the making of such contracts of guarantee and in otherwise carrying out the purposes of this section.

(2) Funds

All such funds as may be necessary to enable any fiscal agent described in paragraph (1) to carry out any guarantee made by it on behalf of any guaranteeing agency shall be supplied and disbursed by or under authority from such guaranteeing agency.

(3) Limit on liability

No fiscal agent described in paragraph (1) shall have any responsibility or accountability, except as agent in taking any action pursuant to or under authority of this section.

(4) Reimbursements

Each fiscal agent described in paragraph (1) shall be reimbursed by each guaranteeing agency for all expenses and losses incurred by such fiscal agent in acting as agent on behalf of such guaranteeing agency, including, notwithstanding any other provision of law, attorneys' fees and expenses of litigation.

(c) Oversight

(1) In general

All actions and operations of fiscal agents under authority of or pursuant to this section shall be subject to the supervision of the President, and to such regulations as the President may prescribe.

(2) Other authority

The President is authorized to prescribe—

(A) either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through fiscal agents under this section; and

(B) regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

(d) Aggregate guarantee amounts

(1) Industrial resource and critical technology shortfalls

(A) In general

If the making of any guarantee or obligation of the Federal Government under this title [sections 4531 to 4534 of 50 U.S.C.] relating to a domestic industrial base shortfall would cause the aggregate outstanding amount of all guarantees for such shortfall to exceed \$50,000,000, any such guarantee may be made only—

(i) if the President has notified the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives in writing of the proposed guarantee; and

(ii) after the 30-day period following the date on which notice under clause (i) is provided.

(B) Waivers authorized

The requirements of subparagraph (A) may be waived—

(i) during a period of national emergency declared by Congress or the President; or

(ii) upon a determination by the President, on a nondelegable basis, that a specific guarantee is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability.

(2) Other limitations

The authority conferred by this section shall not be used primarily to prevent the financial insolvency or bankruptcy of any person, unless—

(A) the President certifies that the insolvency or bankruptcy would have a direct and substantially adverse effect upon national defense production; and

(B) a copy of the certification under subparagraph (A), together with a detailed justification thereof, is transmitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 10 days prior to the exercise of that authority for such use.

Sec. 302. Loans to Private Business Enterprises. [50 U.S.C. § 4532]

(a) Loan authority

To reduce current or projected shortfalls of industrial resources, critical technology items, or materials essential for the national defense, the President may make provision for loans to private business enterprises (including nonprofit research corporations and providers of critical infrastructure) for the creation, maintenance, expansion, protection, or restoration of capacity, the development of technological processes, or the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals.

(b) Conditions of loans

Loans may be made under this section on such terms and conditions as the President deems necessary, except that—

(1) financial assistance may be extended only to the extent that it is not otherwise available from private sources on reasonable terms; and

(2) during periods of national emergency declared by the Congress or the President, no such loan may be made unless the President determines that—

(A) the loan is for an activity that supports the production or supply of an industrial resource, critical technology item, or material that is essential to the national defense;

(B) without the loan, United States industry cannot reasonably be expected to provide the needed capacity, technological processes, or materials in a timely manner;

(C) the loan is the most cost-effective, expedient, and practical alternative method for meeting the need;

(D) the prospective earning power of the loan applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan in accordance with the terms of the loan, as determined by the President; and

(E) the loan bears interest at a rate determined by the Secretary of the Treasury to be reasonable, taking into account the then-current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(c) Limitations on Loans

Loans under this section may be—

(1) made or guaranteed under the authority of this section only to the extent that an appropriations Act—

(A) provides, in advance, budget authority for the cost of such guarantees, as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a); and

(B) establishes a limitation on the total loan principal that may be guaranteed; and

(2) made without regard to the limitations of existing law, other than section 1341 of title 31, United States Code.

(d) Aggregate loan amounts

(1) In general

If the making of any loan under this section to correct a shortfall would cause the aggregate outstanding amount of all obligations of the Federal Government under this title [sections 4531 to 4534 of 50 U.S.C.] relating to such shortfall to exceed \$50,000,000, such loan may be made only—

(A) if the President has notified the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, in writing, of the proposed loan; and

(B) after the 30-day period following the date on which notice under subparagraph (A) is provided.

(2) Waivers authorized

The requirements of paragraph (1) may be waived—

(A) during a period of national emergency declared by the Congress or the President; and

(B) upon a determination by the President, on a nondelegable basis, that a specific loan is necessary to avert an industrial resource or critical technology shortfall that would severely impair national defense capability.

Sec. 303. Other Presidential Action Authorized. [50 U.S.C. § 4533]

(a) In general

(1) In general

To create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense, the President may make provision—

(A) for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale;

(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials;

(C) for the development of production capabilities; and

(D) for the increased use of emerging technologies in security program applications and the rapid transition of emerging technologies—

(i) from Government-sponsored research and development to commercial applications; and

(ii) from commercial research and development to national defense applications.

(2) Treatment of certain agricultural commodities

A purchase for resale under this subsection shall not include that part of the supply of an agricultural commodity which is domestically produced, except to the extent that such domestically produced supply may be purchased for resale for industrial use or stock.

(3) Terms of sales

No commodity purchased under this subsection shall be sold at less than—

(A) the established ceiling price for such commodity, except that minerals, metals, and materials shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower; or

(B) if no ceiling price has been established, the higher of—

(i) the current domestic market price for such commodity; or

(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation, as provided in section 407 of the Agricultural Act of 1949 (7 U.S.C. 1427).

(4) Delivery dates

No purchase or commitment to purchase any imported agricultural commodity shall specify a delivery date which is more than 1 year after the date of termination of this section.

(5) Presidential determinations

Except as provided in paragraph (7), the President may not execute a contract under this subsection unless the President, on a non-delegable basis, determines, with appropriate explanatory material and in writing, that—

(A) the industrial resource, material, or critical technology item is essential to the national defense;

(B) without Presidential action under this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and

(C) purchases, purchase commitments, or other action pursuant to this section are the most cost effective, expedient, and practical alternative method for meeting the need.

(6) Notification to Congress of shortfall—

(A) In general

Except as provided in paragraph (7), the President shall provide written notice to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of a domestic industrial base shortfall prior to taking action under this subsection to remedy the shortfall. The notice shall include the determinations made by the President under paragraph (5).

(B) Aggregate amounts

If the taking of any action under this subsection to correct a domestic industrial base shortfall would cause the aggregate outstanding amount of all such actions for such shortfall to exceed \$50,000,000, the action or actions may be taken only after the 30-day period following the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives have been notified in writing of the proposed action.

(C) Limitation.¹

If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed \$50,000,000, no such action or actions may be taken, unless such action or actions are authorized to exceed such amount by an Act of Congress.

(7) Waiver authorized

The requirements of paragraphs (1) through (6) may be waived—

(A) during a period of national emergency declared by the Congress or the President; or

¹Section 4(b) of PL 113-172 provides: “Section 303(a)(6)(C) of the Defense Production Act of 1950, as added by subsection (a)(2), shall not apply to a project undertaken pursuant to a determination made before the date of the enactment of this Act.”

(B) upon a determination by the President, on a nondelegable basis, that action is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability.

(b) Exemption for certain limitations

Subject to the limitations in subsection (a), purchases and commitments to purchase and sales under subsection (a) may be made without regard to the limitations of existing law (other than section 1341 of title 31, United States Code), for such quantities, and on such terms and conditions, including advance payments, and for such periods, but not extending beyond a date that is not more than 10 years from the date on which such purchase, purchase commitment, or sale was initially made, as the President deems necessary, except that purchases or commitments to purchase involving higher than established ceiling prices (or if no such established ceiling prices exist, currently prevailing market prices) or anticipated loss on resale shall not be made, unless it is determined that supply of the materials could not be effectively increased at lower prices or on terms more favorable to the Government, or that such purchases are necessary to assure the availability to the United States of overseas supplies.

(c) Presidential findings

(1) In general

The President may take the actions described in paragraph (2), if the President finds—

(A) under generally fair and equitable ceiling prices, for any raw or nonprocessed material, there will result a decrease in supplies from high-cost sources of such material, and that the continuation of such supplies is necessary to carry out the objectives of this title [sections 4531 to 4534 of 50 U.S.C.]; or

(B) an increase in cost of transportation is temporary in character and threatens to impair maximum production or supply in any area at stable prices of any materials.

(2) Subsidy payments authorized

Upon a finding under paragraph (1), the President may make provision for subsidy payments on any such domestically produced material, other than an agricultural commodity, in such amounts and in such manner (including purchases of such material and its resale at a loss), and on such terms and conditions, as the President determines to be necessary to ensure that supplies from such high-cost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained, as the case may be.

(d) Incidental Authority

The procurement power granted to the President by this section shall include the power to transport and store and have processed and refined any materials procured under this section.

(e) Installation of equipment in industrial facilities

(1) Installation authorized

If the President determines that such action will aid the national defense, the President is authorized—

(A) to procure and install additional equipment, facilities, processes or improvements to plants, factories, and other industrial facilities owned by the Federal Government;

(B) to procure and install equipment owned by the Federal Government in plants, factories, and other industrial facilities owned by private persons;

(C) to provide for the modification or expansion of privately owned facilities, including the modification or improvement of production processes, when taking actions under section 301 [section 4531 of 50 U.S.C.], 302 [section 4532 of 50 U.S.C.], or this section; and

(D) to sell or otherwise transfer equipment owned by the Federal Government and installed under this subsection to the owners of such plants, factories, or other industrial facilities.

(2) Indemnification

The owner of any plant, factory, or other industrial facility that receives equipment owned by the Federal Government under this section shall agree—

(A) to waive any claim against the United States under section 107 or 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607 and 9613); and

(B) to indemnify the United States against any claim described in paragraph (1) made by a third party that arises out of the presence or use of equipment owned by the Federal Government.

(f) Excess metals, minerals, and materials

(1) In general

Notwithstanding any other provision of law to the contrary, metals, minerals, and materials acquired pursuant to this section which, in the judgment of the President, are excess to the needs of programs under this Act [sections 4501 to 4568 of 50 U.S.C.], shall be transferred to the National Defense Stockpile established by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), when the President deems such action to be in the public interest.

(2) Transfers at no charge

Transfers made pursuant to this subsection shall be made without charge against or reimbursement from funds appropriated for the purposes of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), except that costs incident to such transfer, other than acquisition costs, shall be paid or reimbursed from such funds.

(g) Substitutes

When, in the judgement of the President, it will aid the national defense, the President may make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources.

Sec. 304. Defense Production Act Fund. [50 U.S.C. § 4534]

(a) Establishment of Fund

There is established in the Treasury of the United States a separate fund to be known as the "Defense Production Act Fund" (in this section referred to as the "Fund").

(b) Moneys in Fund

There shall be credited to the Fund—

(1) all moneys appropriated for the Fund, as authorized by section 711 [section 4561 of 50 U.S.C.]; and

(2) all moneys received by the Fund on transactions entered into pursuant to section 303 [section 4533 of 50 U.S.C.].

(c) Use of Fund

The Fund shall be available to carry out the provisions and purposes of this title [sections 4531 to 4534 of 50 U.S.C.], subject to the limitations set forth in this Act [sections 4501 to 4568 of 50 U.S.C.] and in appropriations Acts.

(d) Duration of Fund

Moneys in the Fund shall remain available until expended.

(e) Fund balance

The Fund balance at the close of each fiscal year shall not exceed \$750,000,000, excluding any moneys appropriated to the Fund during that fiscal year or obligated funds. If, at the close of any fiscal year, the Fund balance exceeds \$750,000,000, the amount in excess of \$750,000,000 shall be paid into the general fund of the Treasury.

(f) Fund manager

The President shall designate a Fund manager. The duties of the Fund manager shall include—

- (1) determining the liability of the Fund in accordance with subsection (g);
- (2) ensuring the visibility and accountability of transactions engaged in through the Fund; and
- (3) reporting to the Congress each year regarding activities of the Fund during the previous fiscal year.

(g) Liabilities against Fund

When any agreement entered into pursuant to this title [sections 4531 to 4534 of 50 U.S.C.] after December 31, 1991, imposes any contingent liability upon the United States, such liability shall be considered an obligation against the Fund.

Title IV - Price and Wage Stabilization [repealed]

[This title expired April 30, 1953, and was repealed by P.L. 111-67, September 30, 2009. Section 2103 was repealed by P.L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 656]

Title V - Settlement of Labor Disputes [repealed]

[This title expired April 30, 1953, and was repealed by P.L. 111-67, September 30, 2009.]

Title VI - Control of Consumer and Real Estate Credit [repealed]

[The authorities of Sec. 2131 of this title were repealed June 30, 1952. The authorities of Sec. 2132 to 2137 of this title expired June 30, 1953, and were repealed by P.L. 111-67, September 30, 2009. Section 2131 was repealed, June 30, 1952, ch. 530, title I, §116(a), 66 Stat. 305]

Title VII - General Provisions

Sec. 701. Small Business [50 U.S.C. § 4551]

(a) Participation

Small business concerns shall be given the maximum practicable opportunity to participate as contractors, and subcontractors at various tiers, in all programs to maintain and strengthen the Nation's industrial base and technology base undertaken pursuant to this Act [sections 4501 to 4568 of 50 U.S.C.].

(b) Administration of Act

In administering the programs, implementing regulations, policies, and procedures under this Act [sections 4501 to 4568 of 50 U.S.C.], requests, applications, or appeals from small business concerns shall, to the maximum extent practicable, be expeditiously handled.

(c) Advisory committee participation

Representatives of small business concerns shall be afforded the maximum opportunity to participate in such advisory committees as may be established pursuant to this Act [sections 4501 to 4568 of 50 U.S.C.].

(d) Information

Information about this Act [sections 4501 to 4568 of 50 U.S.C.] and activities undertaken in accordance with this Act shall be made available to small business concerns.

(e) Allocations under section 101

Whenever the President makes a determination to exercise any authority to allocate any material pursuant to section 101 [section 4511 of 50 U.S.C.], small business concerns shall be accorded, to the extent practicable, a fair share of such material, in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging small business concerns.

Sec. 702. Definitions [50 U.S.C. § 4552]

For purposes of this Act [sections 4501 to 4568 of 50 U.S.C.], the following definitions shall apply:

(1) Critical component

The term "critical component" includes such components, subsystems, systems, and related special tooling and test equipment essential to the production, repair, maintenance, or operation of weapon systems or other items of equipment identified by the President as being essential to the execution of the national security strategy of the United States. Components identified as critical by a National Security Assessment conducted pursuant to section 113(i) of title 10, United States Code, or by a Presidential determination as a result of a petition filed under section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1862] shall be designated as critical components for purposes of this Act [sections 4501 to 4568 of 50 U.S.C.], unless the President determines that the designation is unwarranted.

(2) Critical infrastructure

The term "critical infrastructure" means any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

(3) Critical technology

The term "critical technology" includes any technology designated by the President to be essential to the national defense.

(4) Critical technology item

The term "critical technology item" means materials directly employing, derived from, or utilizing a critical technology.

(5) Defense contractor

The term "defense contractor" means any person who enters into a contract with the United States—

(A) to furnish materials, industrial resources, or a critical technology for the national defense; or

(B) to perform services for the national defense.

(6) Domestic industrial base

The term “domestic industrial base” means domestic sources which are providing, or which would be reasonably expected to provide, materials or services to meet national defense requirements during peacetime, national emergency, or war.

(7) Domestic source

The term “domestic source” means a business concern –

(A) that performs in the United States or Canada substantially all of the research and development, engineering, manufacturing, and production activities required of such business concern under a contract with the United States relating to a critical component or a critical technology item; and

(B) that procures from business concerns described in subparagraph (A) substantially all of any components and assemblies required under a contract with the United States relating to a critical component or critical technology item.

(8) Facilities

The term “facilities” includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

(9) Foreign source

The term "foreign source" means a business entity other than a "domestic source".

(10) Guaranteeing agency

The term ‘guaranteeing agency’ means a department or agency of the United States engaged in procurement for the national defense.

(11) Homeland security

The term ‘homeland security’ includes efforts—

(A) to prevent terrorist attacks within the United States;

(B) to reduce the vulnerability of the United States to terrorism;

- (C) to minimize damage from a terrorist attack in the United States; and
- (D) to recover from a terrorist attack in the United States.

(12) Industrial resources

The term “industrial resources” means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) needed to establish or maintain an efficient and modern national defense industrial base.

(13) Materials

The term “materials” includes –

- (A) any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and
- (B) any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

(14) National defense

The term "national defense" means programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5195 et seq.] and critical infrastructure protection and restoration.

(15) Person

The term “person” includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

(16) Services

The term “services” includes any effort that is needed for or incidental to –

- (A) the development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item;
- (B) the construction of facilities;
- (C) the movement of individuals and property by all modes of civil transportation; or

(D) other national defense programs and activities.

(17) Small business concern

The term "small business concern" means a business concern that meets the requirements of section 3(a) of the Small Business Act [15 U.S.C. 632(a)] and the regulations promulgated pursuant to that section, and includes such business concerns owned and controlled by socially and economically disadvantaged individuals or by women.

Sec. 703. Civilian Personnel [50 U.S.C. § 4553]

Any officer or agency head may—

(1) appoint civilian personnel without regard to section 5331(b) of title 5, United States Code, and without regard to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(2) fix the rate of basic pay for such personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule, as the President deems appropriate to carry out this Act [sections 4501 to 4568 of 50 U.S.C.].

Sec. 704. Regulations and Orders [50 U.S.C. § 4554]

(a) In general

Subject to section 709 [section 4559 of 50 U.S.C.] and subsection (b), the President may prescribe such regulations and issue such orders as the President may determine to be appropriate to carry out this Act [sections 4501 to 4568 of 50 U.S.C.].

(b) Procurement regulations

Any procurement regulation, procedure, or form issued pursuant to subsection (a) shall be issued pursuant to section 25 of the Office of Federal Procurement Policy Act [now 41 U.S.C. 1302, 1303], and shall conform to any governmentwide procurement policy or regulation issued pursuant to section 6 or 25 of that Act [see 41 U.S.C. 1121 et seq., 1302, 1303].

Sec. 705. Investigations; Records; Reports; Subpoenas; Right to Counsel [50 U.S.C. § 4555]

(a) The President shall be entitled, while this Act [sections 4501 to 4568 of 50 U.S.C.] is in effect and for a period of two years thereafter, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and 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, and administer oaths and affirmations to, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act and the

regulations or orders issued thereunder. The authority of the President under this section includes the authority to obtain information in order to perform industry studies assessing the capabilities of the United States industrial base to support the national defense. The President shall issue regulations insuring that the authority of this subsection will be utilized only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency. In case of contumacy by, or refusal to obey a subpoena served upon, any person referred to in this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) The production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person usually keeps them, if, prior to the return date specified in the regulations, subpoena, or other document issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c) Any person who willfully performs any act prohibited or willfully fails to perform any act required by the above provisions of this section, or any rule, regulation, or order thereunder, shall upon conviction be fined not more than \$10,000 or imprisoned for not more than one year or both.

(d) Information obtained under this section which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both.

(e) Any person subpoenaed under this section shall have the right to make a record of his testimony and to be represented by counsel.

Sec. 706. Jurisdiction of Courts; Injunctions; Venue; Process; Effect of Termination of Provisions [50 U.S.C. § 4556]

(a) Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act [sections 4501 to 4568 of 50 U.S.C.], he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order,

or other order, with or without such injunction or restraining order, shall be granted without bond.

(b) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this Act [sections 4501 to 4568 of 50 U.S.C.] or any rule, regulation, order, or subpoena thereunder, and of all civil actions under this Act to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, order, or subpoena thereunder. Any criminal proceeding on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found; the subpoena for witnesses who are required to attend a court in any district in such case may run into any other district. The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order. No costs shall be assessed against the United States in any proceeding under this Act. All litigation arising under this Act or the regulations promulgated thereunder shall be under the supervision and control of the Attorney General.

Sec. 707. Liability for Compliance with Invalid Regulations; Discrimination Against Orders or Contracts Affected by Priorities or Allocations [50 U.S.C. § 4557]

No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to this Act [sections 4501 to 4568 of 50 U.S.C.], notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid. No person shall discriminate against orders or contracts to which priority is assigned or for which materials or facilities are allocated under title I of this Act [sections 4511 to 4518 of 50 U.S.C.] or under any rule, regulation, or order issued thereunder, by charging higher prices or by imposing different terms and conditions for such orders or contracts than for other generally comparable orders or contracts, or in any other manner.

Sec. 708. Voluntary Agreements and Plans of Action for Preparedness Programs and Expansion of Production Capacity and Supply [50 U.S.C. § 4558]

(a) Immunity from civil and criminal liability or defense to action under antitrust laws; exceptions

Except as specifically provided in subsection (j) of this section, no provision of this Act [sections 4501 to 4568 of 50 U.S.C.] shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(b) Definitions

For purposes of this Act [sections 4501 to 4568 of 50 U.S.C.]—

(1) Antitrust laws

The term "antitrust laws" has the meaning given to such term in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12(a)], except that such term includes section 5 of the Federal Trade Commission Act [15 U.S.C. 45] to the extent that such section 5 applies to unfair methods of competition.

(2) Plan of action

The term "plan of action" means any of 1 or more documented methods adopted by participants in an existing voluntary agreement to implement that agreement.

(c) Prerequisites for agreements and plans of action; delegation of authority to Presidential designees

(1) Upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements and plans of action to help provide for the national defense.

(2) The authority granted to the President in paragraph (1) and subsection (d) may be delegated by him (A) to individuals who are appointed by and with the advice and consent of the Senate, or are holding offices to which they have been appointed by and with the advice and consent of the Senate, (B) upon the condition that such individuals consult with the Attorney General and with the Federal Trade Commission not less than ten days before consulting with any persons under paragraph (1), and (C) upon the condition that such individuals obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to consult under paragraph (1).

(3) Upon a determination by the President, on a nondelegable basis, that a specific voluntary agreement or plan of action is necessary to meet national defense requirements resulting from an event that degrades or destroys critical infrastructure—

(A) an individual that has been delegated authority under paragraph (1) with respect to such agreement or plan shall not be required to consult with the Attorney General or the Federal Trade Commission under paragraph (2)(B); and

(B) the President shall publish a rule in accordance with subsection (e)(2)(B) and publish notice in accordance with subsection (e)(3)(B) with respect to such agreement or plan as soon as is practicable under the circumstances.

(d) Advisory committees; establishment; applicable provisions; membership; notice and participation in meetings; verbatim transcript; availability to public

(1) To achieve the objectives of subsection (c)(1) of this section, the President or any individual designated pursuant to subsection (c)(2) may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified

in this section and except as provided in subsection (n), any such advisory committee shall be subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this Act [sections 4501 to 4568 of 50 U.S.C.] or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code) and shall include representatives of the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of paragraphs (1), (3), and (4) of section 552(b) of title 5, United States Code.

(e) Rules; promulgation by Presidential designees; consultation by Attorney General with Chairman of Federal Trade Commission; approval of Attorney General; procedures; incorporation of standards and procedures for development of agreements and plans of action

(1) The individual or individuals referred to in subsection (c)(2) shall, after approval of the Attorney General, after consultation by the Attorney General with the Chairman of the Federal Trade Commission, promulgate rules, in accordance with section 553 of title 5, United States Code, incorporating standards and procedures by which voluntary agreements and plans of action may be developed and carried out.

(2) In addition to the requirements of section 553 of title 5, United States Code—

(A) general notice of the proposed rulemaking referred to in paragraph (1) shall be published in the Federal Register, and such notice shall include—

(i) a statement of the time, place, and nature of the proposed rulemaking proceedings;

(ii) reference to the legal authority under which the rule is being proposed; and

(iii) either the terms of substance of the proposed rule or a description of the subjects and issues involved;

(B) the required publication of a rule shall be made not less than thirty days before its effective date; and

(C) the individual or individuals referred to in paragraph (1) shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule.

(3) The rules promulgated pursuant to this subsection incorporating standards and procedures by which voluntary agreements may be developed shall provide, among other things, that—

(A) such agreements shall be developed at meetings which include—

(i) the Attorney General or his delegate,

(ii) the Chairman of the Federal Trade Commission or his delegate, and

(iii) an individual designated by the President in subsection (c)(2) or his delegate, and which are chaired by the individual referred to in clause (iii);

(B) at least seven days prior to any such meeting, notice of the time, place, and nature of the meeting shall be published in the Federal Register;

(C) interested persons may submit written data and views concerning the proposed voluntary agreement, with or without opportunity for oral presentation;

(D) interested persons may attend any such meeting unless the individual designated by the President in subsection (c)(2) finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code;

(E) a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Attorney General and to the Chairman of the Federal Trade Commission;

(F) any voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Attorney General, the Chairman of the Federal Trade Commission, and the Congress; and

(G) any transcript referred to in subparagraph (E) and any voluntary agreement referred to in subparagraph (F) shall be available for public inspection and copying, subject to paragraphs (1), (3), and (4) of section 552(b) of title 5, United States Code.

(f) Commencement of agreements and plans of action; expiration date; extensions

(1) A voluntary agreement or plan of action may not become effective unless and until—

(A) the individual referred to in subsection (c)(2) who is to administer the agreement or plan approves it and certifies, in writing, that the agreement or plan is necessary to carry out the purposes of subsection (c)(1) and submits a copy of such agreement or plan to the Congress; and

(B) the Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved

through a voluntary agreement or plan of action having less anticompetitive effects or without any voluntary agreement or plan of action and publishes such finding in the Federal Register.

(2) Each voluntary agreement or plan of action which becomes effective under paragraph (1) shall expire 5 years after the date it becomes effective (and at 5-year intervals thereafter, as the case may be), unless (immediately prior to such expiration date) the individual referred to in subsection (c)(2) who administers the agreement or plan and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) make the certification or finding, as the case may be, described in paragraph (1) with respect to such voluntary agreement or plan of action and publish such certification or finding in the Federal Register, in which case, the voluntary agreement or plan of action may be extended for an additional period of 5 years.

(g) Monitoring of agreements and plans of action by Attorney General and Chairman of Federal Trade Commission

The Attorney General and the Chairman of the Federal Trade Commission shall monitor the carrying out of any voluntary agreement or plan of action to assure—

- (1) that the agreement or plan is carrying out the purposes of subsection (c)(1);
- (2) that the agreement or plan is being carried out under rules promulgated pursuant to subsection (e);
- (3) that the participants are acting in accordance with the terms of the agreement or plan; and
- (4) the protection and fostering of competition and the prevention of anticompetitive practices and effects.

(h) Required provisions of rules for implementation of agreements and plans of action

The rules promulgated under subsection (e) with respect to the carrying out of voluntary agreements and plans of action shall provide—

- (1) for the maintenance, by participants in any voluntary agreement or plan of action, of documents, minutes of meetings, transcripts, records, and other data related to the carrying out of any voluntary agreement or plan of action;
- (2) that participants in any voluntary agreement or plan of action agree, in writing, to make available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to paragraph (1);
- (3) that any item made available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney

General, or the Chairman of the Federal Trade Commission pursuant to paragraph (2) shall be available from such individual, the Attorney General, or the Chairman of the Federal Trade Commission, as the case may be, for public inspection and copying, subject to paragraph (1), (3), or (4) of section 552(b) of title 5, United States Code.

(4) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, and the Chairman of the Federal Trade Commission, or their delegates, may attend meetings to carry out any voluntary agreement or plan of action;

(5) that a Federal employee (other than an individual employed pursuant to section 3109 of title 5 of the United States Code) shall attend meetings to carry out any voluntary agreement or plan of action;

(6) that participants in any voluntary agreement or plan of action provide the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement or plan of action;

(7) for the attendance by interested persons of any meeting held to carry out any voluntary agreement or plan of action, unless the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code;

(8) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action has published in the Federal Register prior notification of the time, place, and nature of any meeting held to carry out any voluntary agreement or plan of action, unless he finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code, in which case, notification of the time, place, and nature of such meeting shall be published in the Federal Register within ten days of the date of such meeting;

(9) that—

(A) the Attorney General (after consultation with the Chairman of the Federal Trade Commission and the individual designated by the President in subsection (c)(2) to administer a voluntary agreement or plan of action), or

(B) the individual designated by the President in subsection (c)(2) to administer a voluntary agreement or plan of action (after consultation with the Attorney General and the Chairman of the Federal Trade Commission), may terminate or modify, in writing, the voluntary agreement or plan of action at any time, and that effective, immediately upon such termination or modification, any antitrust immunity conferred upon the participants in the voluntary agreement or plan of action by subsection (j) shall not apply to any act or omission occurring after the time of such termination or modification;

(10) that participants in any voluntary agreement or plan of action be reasonably representative of the appropriate industry or segment of such industry; and

(11) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action shall provide prior written notification of the time, place, and nature of any meeting to carry out a voluntary agreement or plan of action to the Attorney General, the Chairman of the Federal Trade Commission and the Congress.

(i) Rules; promulgation by Attorney General and Chairman of Federal Trade Commission

The Attorney General and the Chairman of the Federal Trade Commission shall each promulgate such rules as each deems necessary or appropriate to carry out his responsibility under this section.

(j) Defenses

(1) In general

Subject to paragraph (4), there shall be available as a defense for any person to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out any voluntary agreement or plan of action under this section that—

(A) such action was taken—

(i) in the course of developing a voluntary agreement initiated by the President or a plan of action adopted under any such agreement; or

(ii) to carry out a voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement, and

(B) such person—

(i) complied with the requirements of this section and any regulation prescribed under this section; and

(ii) acted in accordance with the terms of the voluntary agreement or plan of action.

(2) Scope of defense

Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense established in paragraph (1) shall be available only if and to the extent that the person asserting the defense demonstrates that the action was specified in, or was within the scope of, an approved voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement and approved in accordance

with this section. The defense established in paragraph (1) shall not be available unless the President or the President's designee has authorized and actively supervised the voluntary agreement or plan of action.

(3) Burden of persuasion

Any person raising the defense established in paragraph (1) shall have the burden of proof to establish the elements of the defense.

(4) Exception for actions taken to violate the antitrust laws

The defense established in paragraph (1) shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.

(k) Surveys and studies by Attorney General and Federal Trade Commission; content; annual report to Congress and President by Attorney General

The Attorney General and the Federal Trade Commission shall each make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this section. Such surveys shall include studies of the voluntary agreements and plans of action authorized by this section. The Attorney General shall (after consultation with the Federal Trade Commission) submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and plans of action.

(l) Annual report to Congress and President by Presidential designees; contents

The individual or individuals designated by the President in subsection (c)(2) shall submit to the Congress and the President at least once every year reports describing each voluntary agreement or plan of action in effect and its contribution to achievement of the purpose of subsection (c)(1).

(m) Jurisdiction to enjoin statutory exemption or suspension and order for production of transcripts, etc.; procedures

On complaint, the United States District Court for the District of Columbia shall have jurisdiction to enjoin any exemption or suspension pursuant to subsections (d)(2), (e)(3)(D) and (G), and (h)(3), (7), and (8), and to order the production of transcripts, agreements, items, or other records maintained pursuant to this section by the Attorney General, the Federal Trade Commission or any individual designated under subsection (c)(2), where the court determines that such transcripts, agreements, items, or other records have been improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such transcripts, agreements, items, or other records in camera to determine whether such transcripts, agreements, items, or other records or any parts thereof shall be withheld under any of the exemption or suspension provisions referred to in

this subsection, and the burden is on the Attorney General, the Federal Trade Commission, or such designated individual, as the case may be, to sustain its action.

(n) Exemption from Advisory Committee Act provisions

Notwithstanding any other provision of law, the Federal Advisory Committee Act [5 U.S.C. App.] and any other provision of Federal law relating to advisory committees shall not apply to—

(1) the consultations referred to in subsection (c)(1); or

(2) any activity conducted under a voluntary agreement or plan of action approved pursuant to this section that complies with the requirements of this section.

(o) Preemption of contract law in emergencies

In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

Sec. 708a. [50 U.S.C. App. § 2158a] [repealed] Pub. L. 102-99, Sec. 4, Aug. 17, 1991, 105 Stat. 487

Sec. 709. Public Participation in Rulemaking [50 U.S.C. § 4559]

(a) Exemption from the Administrative Procedure Act

Any regulation issued under this Act [sections 4501 to 4568 of 50 U.S.C.] shall not be subject to sections 551 through 559 of title 5, United States Code.

(b) Opportunity for notice and comment

(1) In general

Except as provided in subsection (c), any regulation issued under this Act [sections 4501 to 4568 of 50 U.S.C.] shall be published in the Federal Register and opportunity for public comment shall be provided for not less than 30 days, consistent with the requirements of section 553(b) of title 5, United States Code.

(2) Waiver for temporary provisions

The requirements of paragraph (1) may be waived, if—

(A) the officer authorized to issue the regulation finds that urgent and compelling circumstances make compliance with such requirements impracticable;

(B) the regulation is issued on a temporary basis; and

(C) the publication of such temporary regulation is accompanied by the finding made under subparagraph (A) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days before any regulation becomes final.

(3) Consideration of public comments

All comments received during the public comment period specified pursuant to paragraph (1) or (2) shall be considered and the publication of the final regulation shall contain written responses to such comments.

(c) Public comment on procurement regulations

Any procurement policy, regulation, procedure, or form (including any amendment or modification of any such policy, regulation, procedure, or form) issued under this Act [sections 4501 to 4568 of 50 U.S.C.] shall be subject to section 22 of the Office of Federal Procurement Policy Act [now 41 U.S.C. 1707].

Sec. 710. Employment of Personnel; Appointment Policies; Nucleus Executive Reserve; Use of Confidential Information by Employees; Printing and Distribution of Reports [50 U.S.C. § 4560]

(a) [repealed] June 28, 1955, ch. 189, Sec. 12(c)(1), 69 Stat. 180.

(b)(1) The President is further authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act [sections 4501 to 4568 of 50 U.S.C.] and subject to such regulations as he may issue, to employ persons of outstanding experience and ability without compensation;

(2) The President shall be guided in the exercise of the authority provided in this subsection by the following policies:

(i) So far as possible, operations under the Act [said sections] shall be carried on by full-time, salaried employees of the Government, and appointments under this authority shall be to advisory or consultative positions only.

(ii) Appointments to positions other than advisory or consultative may be made under this authority only when the requirements of the position are such that the incumbent must personally possess outstanding experience and ability not obtainable on a full-time, salaried basis.

(3) Appointees under this subsection shall, when policy matters are involved, be limited to advising appropriate full-time salaried Government officials who are responsible for making policy decisions.

(4) Appointments under this subsection shall be supported by written certification by the head of the employing department or agency—

(i) that the appointment is necessary and appropriate in order to carry out the provisions of the Act [sections 4501 to 4568 of 50 U.S.C.];

(ii) that the duties of the position to which the appointment is being made require outstanding experience and ability;

(iii) that the appointee has the outstanding experience and ability required by the position; and

(iv) that the department or agency head has been unable to obtain a person with the qualifications necessary for the position on a full-time, salaried basis.

(5) Notice and financial disclosure requirements

(A) Public notice of appointment—

The head of any department or agency who appoints any individual under this subsection shall publish a notice of such appointment in the Federal Register, including the name of the appointee, the employing department or agency, the title of the appointee's position, and the name of the appointee's private employer.

(B) Financial disclosure—

Any individual appointed under this subsection who is not required to file a financial disclosure report pursuant to section 101 of the Ethics in Government Act of 1978, shall file a confidential financial disclosure report pursuant to section 107 of that Act with the appointing department or agency.

(6) The Director of the Office of Personnel Management shall carry out a biennial survey of appointments made under this subsection biennially and shall report his or her findings to the President and make such recommendations as he or she may deem proper.

(7) Persons appointed under the authority of this subsection may be allowed reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions for which they were appointed in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(c) The President is authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act [sections 4501 to 4568 of 50 U.S.C.] to employ experts and consultants or organizations thereof as authorized by section 55a 1 of title 5 of the United States Code [5 U.S.C. 3109]. Individuals so employed may be compensated at rates not in excess of \$50 per diem and while away from their homes or regular places of business they may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence and other expenses while so employ.

(d) The President may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed.

(e) The President is further authorized to provide for the establishment and training of a nucleus executive reserve for employment in executive positions in Government during periods of national defense emergency, as determined by the President. Members of this executive reserve who are not full-time Government employees may be allowed transportation and per diem in lieu of subsistence, in accordance with title 5 of the United States Code (with respect to individuals serving without pay, while away from their homes or regular places of business), for the purpose of participating in the executive reserve training program.

(f) Whoever, being an officer or employee of the United States or any department or agency thereof (including any Member of the Senate or House of Representatives), receives, by virtue of his office or employment, confidential information, and (1) uses such information in speculating directly or indirectly on any commodity exchange, or (2) discloses such information for the purpose of aiding any other person so to speculate, shall be fined not more than \$10,000 or imprisoned not more than one year, or both. As used in this section, the term "speculate" shall not include a legitimate hedging transaction, or a purchase or sale which is accompanied by actual delivery of the commodity.

(g) The President, when he deems such action necessary, may make provision for the printing and distribution of reports, in such number and in such manner as he deems appropriate, concerning the actions taken to carry out the objectives of this Act [sections 4501 to 4568 of 50 U.S.C.].

Sec. 711. Authorization of Appropriations [50 U.S.C. § 4561]

There is authorized to be appropriated \$133,000,000 for fiscal year 2015 and each fiscal year thereafter for the carrying out of the provisions and purposes of this Act [50 U.S.C. § 4501-4568] by the President and such agencies as he may designate or create.

Sec. 712. Joint Committee on Defense Production [repealed] Pub. L. 102-558, title I, Sec. 153, Oct. 28, 1992, 106 Stat. 4219

Sec. 713. Territorial Application of Act [50 U.S.C. § 4562]

The provisions of this Act [50 U.S.C. § 4501-4568] shall be applicable to the United States, its Territories and possessions, and the District of Columbia.

Sec. 714. Small Defense Plants Administration [repealed] Pub. L. 89-554, Sec. 8(a), Sept. 6, 1966, 80 Stat. 656

Sec. 715. Separability [50 U.S.C. § 4563]

If any provision of this Act [sections 4501 to 4568 of 50 U.S.C.] or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act, and

the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 716. Person Disqualified from Employment and Penalties [repealed] Pub. L. 102-558, title I, Sec. 154, Oct. 28, 1992, 106 Stat. 4219

Sec. 717. Termination of Act [50 U.S.C. § 4564]

(a) Title I [sections 4511 to 451 of 50 U.S.C.] (except section 104 [section 4514 of 50 U.S.C.]), title III [sections 4531 to 4534 of 50 U.S.C.], and title VII [sections 4551 to 4568 of 50 U.S.C.] (except sections 707, 708, and 721 [sections 4557, 4558, and 4565 of 50 U.S.C.]) shall terminate on September 30, 2025, except that all authority extended under title III shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) Notwithstanding subsection (a), any agency created under a provision of law that is terminated under subsection (a) may continue in existence, for purposes of liquidation, for a period not to exceed 6 months, beginning on the date of termination of the provision authorizing the creation of such agency under subsection (a).

(c) The termination of any section of this Act [sections 4501 to 4568 of 50 U.S.C.], or of any agency or corporation utilized under this Act, shall not affect the disbursement of funds under, or the carrying out of, any contract, guarantee, commitment or other obligation entered into pursuant to this Act prior to the date of such termination, or the taking of any action necessary to preserve or protect the interests of the United States in any amounts advanced or paid out in carrying on operations under this Act, or the taking of any action (including the making of new guarantees) deemed by a guaranteeing agency to be necessary to accomplish the orderly liquidation, adjustment or settlement of any loans guaranteed under this Act, including actions deemed necessary to avoid undue hardship to borrowers in reconverting to normal civilian production; and all of the authority granted to the President, guaranteeing agencies, and fiscal agents, under section 301 of this Act [section 4531 of 50 U.S.C.] shall be applicable to actions taken pursuant to the authority contained in this subsection.

(d) No action for the recovery of any cooperative payment made to a cooperative association by a Market Administrator under an invalid provision of a milk marketing order issued by the Secretary of Agriculture pursuant to the Agricultural Marketing Agreement Act of 1937 [7 U.S.C. 671 et seq.] shall be maintained unless such action is brought by producers specifically named as party plaintiffs to recover their respective share of such payments within ninety days after the date of enactment of the Defense Production Act Amendments of 1952 [June 30, 1952] with respect to any cause of action heretofore accrued and not otherwise barred, or within ninety days after accrual with respect to future payments, and unless each claimant shall allege and prove (1) that he objected at the hearing to the provisions of the order under which such payments were made and (2) that he either refused to accept payments computed with such deduction or accepted them under protest to either the Secretary or the Administrator. The district courts of the United States shall have exclusive original jurisdiction of all such actions regardless of the amount involved. This subsection shall not apply to funds held in escrow pursuant to court order. Notwithstanding any other provision of

this Act [sections 4501 to 4568 of 50 U.S.C.], no termination date shall be applicable to this subsection.

Sec. 718. Feasibility Study of Application of Uniform Cost Accounting Standards to Defense Procurement Contracts [repealed] Pub. L. 102-558, title I, Sec. 155, Oct. 28, 1992, 106 Stat. 4219

Sec. 719. Formation, Functions, Appointment and Compensation of Staff, Etc., of Cost Accounting Standards Board [repealed] Pub. L. 100-679, Sec. 5(b), Nov. 17, 1988, 102 Stat. 4063

Sec. 720. National Commission on Supplies and Shortages [repealed] Pub. L. 102-558, title I, Sec. 156, Oct. 28, 1992, 106 Stat. 4219

Sec. 721. Authority to Review Certain Mergers, Acquisitions, and Takeovers [50 U.S.C. § 4565]

(a) Definitions.

In this section:

(1) Clarification.

The term ‘national security’ shall be construed so as to include those issues relating to ‘homeland security’, including its application to critical infrastructure.

(2) 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’ means the power, direct or indirect, whether exercised or not exercised, to determine, direct, or decide important matters affecting an entity, subject to regulations prescribed by the Committee.

(4) Covered transaction.

(A) In general.

Except as otherwise provided, the term ‘covered transaction’ means—

(i) any transaction described in subparagraph (B)(i); and

(ii) any transaction described in clauses (ii) through (v) of subparagraph (B) that is proposed, pending, or completed on or after the effective date set forth in section 1727 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, or takeover 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, including such a merger, acquisition, or takeover carried out through a joint venture.

(ii) Subject to subparagraphs (C) and (E), the purchase or lease by, or a concession to, a foreign person of private or public real estate that—

(I) is located in the United States;

(II)(aa) is, is located within, or will function as part of, an air or maritime port; or

(bb)(AA) is in close proximity to a United States military installation or another facility or property of the United States Government that is sensitive for reasons relating to national security;

(BB) could reasonably provide the foreign person the ability to collect intelligence on activities being conducted at such an installation, facility, or property; or

(CC) could otherwise expose national security activities at such an installation, facility, or property to the risk of foreign surveillance; and

(III) meets such other criteria as the Committee prescribes by regulation, except that such criteria may not expand the categories of real estate to which this clause applies beyond the categories described in subclause (II).

(iii) Any other investment, subject to regulations prescribed under subparagraphs (D) and (E), by a foreign person in any unaffiliated United States business that—

(I) owns, operates, manufactures, supplies, or services critical infrastructure;

(II) produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies; or

(III) maintains or collects sensitive personal data of United States citizens that may be exploited in a manner that threatens national security.

(iv) 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 could result in—

- (I) foreign control of the United States business; or
- (II) an investment described in clause (iii).

(v) Any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of this section, subject to regulations prescribed by the Committee.

(C) Real estate transactions.

- (i) Exception for certain real estate transactions.

A real estate purchase, lease, or concession described in subparagraph (B)(ii) does not include a purchase, lease, or concession of—

- (I) a single ‘housing unit’, as defined by the Census Bureau; or

(II) real estate in ‘urbanized areas’, as defined by the Census Bureau in the most recent census, except as otherwise prescribed by the Committee in regulations in consultation with the Secretary of Defense.

- (ii) Definition of close proximity.

With respect to a real estate purchase, lease, or concession described in subparagraph (B)(ii)(II)(bb)(AA), the Committee shall prescribe regulations to ensure that the term ‘close proximity’ refers only to a distance or distances within which the purchase, lease, or concession of real estate could pose a national security risk in connection with a United States military installation or another facility or property of the United States Government described in that subparagraph.

(D) Other investments.

- (i) Other investment defined.

For purposes of subparagraph (B)(iii), the term ‘other investment’ means an investment, direct or indirect, by a foreign person in a United States business described in that subparagraph that is not an investment described in subparagraph (B)(i) and that affords the foreign person—

(I) access to any material nonpublic technical information in the possession of the United States business;

(II) membership or observer rights on the board of directors or equivalent governing body of the United States business or the right to nominate an individual to a position on the board of directors or equivalent governing body; or

(III) any involvement, other than through voting of shares, in substantive decisionmaking of the United States business regarding—

(aa) the use, development, acquisition, safekeeping, or release of sensitive personal data of United States citizens maintained or collected by the United States business;

(bb) the use, development acquisition, or release of critical technologies; or

(cc) the management, operation, manufacture, or supply of critical infrastructure.

(ii) Material nonpublic technical information defined.

(I) In general.

For purposes of clause (i)(I), and subject to regulations prescribed by the Committee, the term ‘material nonpublic technical information’ means information that—

(aa) provides knowledge, know-how, or understanding, not available in the public domain, of the design, location, or operation of critical infrastructure; or

(bb) is not available in the public domain, and is necessary to design, fabricate, develop, test, produce, or manufacture critical technologies, including processes, techniques, or methods.

(II) Exemption for financial information.

Notwithstanding subclause (I), for purposes of this subparagraph, the term ‘material nonpublic technical information’ does not include financial information regarding the performance of a United States business.

(iii) Regulations.

(I) In general.

The Committee shall prescribe regulations providing guidance on the types of transactions that the Committee considers to be ‘other investment’ for purposes of subparagraph (B)(iii).

(II) United States businesses that own, operate, manufacture, supply, or service critical infrastructure.

The regulations prescribed by the Committee with respect to an investment described in subparagraph (B)(iii)(I) shall—

(aa) specify the critical infrastructure subject to that subparagraph based on criteria intended to limit application of that subparagraph to the subset of critical infrastructure that is likely to be of importance to the national security of the United States; and

(bb) enumerate specific types and examples of such critical infrastructure.

(iv) Specific clarification for investment funds.

(I) Treatment of certain investment fund investments.

Notwithstanding clause (i)(II) and subject to regulations prescribed by the Committee, an indirect investment by a foreign person in a United States business described in subparagraph (B)(iii) through an investment fund that affords the foreign person (or a designee of the foreign person) membership as a limited partner or equivalent on an advisory board or a committee of the fund shall not be considered an 'other investment' for purposes of subparagraph (B)(iii) if—

(aa) the fund is managed exclusively by a general partner, a managing member, or an equivalent;

(bb) the general partner, managing member, or equivalent is not a foreign person;

(cc) the advisory board or committee does not have the ability to approve, disapprove, or otherwise control—

(AA) investment decisions of the fund; or

(BB) decisions made by the general partner, managing member, or equivalent related to entities in which the fund is invested;

(dd) the foreign person does not otherwise have the ability to control the fund, including the authority—

(AA) to approve, disapprove, or otherwise control investment decisions of the fund;

(BB) to approve, disapprove, or otherwise control decisions made by the general partner, managing member, or equivalent related to entities in which the fund is invested; or

(CC) to unilaterally dismiss, prevent the dismissal of, select, or determine the compensation of the general partner, managing member, or equivalent;

(ee) the foreign person does not have access to material nonpublic technical information as a result of its participation on the advisory board or committee; and

(ff) the investment otherwise meets the requirements of this subparagraph.

(II) Treatment of certain waivers.

(aa) In general.

For the purposes of items (cc) and (dd) of subclause (I) and except as provided in item (bb), a waiver of a potential conflict of interest, a waiver of an allocation limitation, or a similar activity, applicable to a transaction pursuant to the terms of an agreement governing an investment fund shall not be considered to constitute control of investment decisions of the fund or decisions relating to entities in which the fund is invested.

(bb) Exception.

The Committee may prescribe regulations providing for exceptions to item (aa) for extraordinary circumstances.

(v) Exception for air carriers.

For purposes of subparagraph (B)(iii), the term ‘other investment’ does not include 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.

(vi) Rule of construction.

Any definition of ‘critical infrastructure’ established under any provision of law other than this section shall not be determinative for purposes of this section.

(E) Country specification.

The Committee shall prescribe regulations that further define the term ‘foreign person’ for purposes of clauses (ii) and (iii) of subparagraph (B). In prescribing such regulations, the Committee shall specify criteria to limit the application of such clauses to the investments of certain categories of foreign persons. Such criteria shall take into consideration how a foreign person is connected to a foreign country or foreign government, and whether the connection may affect the national security of the United States.

(F) 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) that arises pursuant to a bankruptcy proceeding or other form of default on debt.

(5) Critical infrastructure.

The term ‘critical infrastructure’ means, subject to regulations prescribed by the Committee, 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.

(6) Critical technologies.

(A) In general.

The term ‘critical technologies’ means the following:

(i) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations.

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

(I) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(II) for reasons relating to regional stability or surreptitious listening.

(iii) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities).

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

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

(vi) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018.

(B) Recommendations.

(i) In general.

The chairperson may recommend technologies for identification under the interagency process set forth in section 1758(a) of the Export Control Reform Act of 2018.

(ii) Matters informing recommendations.

Recommendations by the chairperson under clause (i) shall draw upon information arising from reviews and investigations conducted under subsection (b), notices submitted under subsection (b)(1)(C)(i), declarations filed under subsection (b)(1)(C)(v), and non-notified and non-declared transactions identified under subsection (b)(1)(H).

(7) Foreign government-controlled transaction.

The term ‘foreign government-controlled transaction’ means any covered transaction that could result in the control of any United States business by a foreign government or an entity controlled by or acting on behalf of a foreign government.

(8) Intelligence community.

The term ‘intelligence community’ has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

(9) Investment.

The term ‘investment’ means the acquisition of equity interest, including contingent equity interest, as further defined in regulations prescribed by the Committee.

(10) Lead agency.

The term ‘lead agency’ means the agency or agencies designated as the lead agency or agencies pursuant to subsection (k)(5).

(11) Party.

The term ‘party’ has the meaning given that term in regulations prescribed by the Committee.

(12) United States.

The term ‘United States’ means the several States, the District of Columbia, and any territory or possession of the United States.

(13) United States business.

The term ‘United States business’ means a person engaged in interstate commerce in the United States.

(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

(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) Comments and acceptance.

(aa) In general.

Subject to item (cc), the Committee shall provide comments on a draft or formal written notice or accept a formal written notice submitted under subclause (I) with respect to a covered transaction not later than the date that is 10 business days after the date of submission of the draft or formal written notice.

(bb) Completeness.

If the Committee determines that a draft or formal written notice described in item (aa) is not complete, the Committee shall notify the party or parties to the transaction in writing that the notice is not complete and provide an explanation of all material respects in which the notice is incomplete.

(cc) Stipulations required.

The timing requirement under item (aa) shall apply only in a case in which the parties stipulate under clause (vi) that the transaction is a covered transaction.

(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.

The Committee may require a written notice submitted under clause (i) to include a copy of any partnership agreements, integration agreements, or other side agreements relating to the transaction, as specified in regulations prescribed by the Committee.’

(v) Declarations for certain covered transactions.

(I) In general.

A party to any covered transaction may submit to the Committee a declaration with basic information regarding the transaction instead of a written notice under clause (i).

(II) Regulations.

The Committee shall prescribe regulations establishing requirements for declarations submitted under this clause. In prescribing such regulations, the Committee shall ensure that such declarations are submitted as abbreviated notifications that would not generally exceed 5 pages in length.

(III) Committee response to declaration.

(aa) In general.

Upon receiving a declaration under this clause with respect to a covered transaction, the Committee may, at the discretion of the Committee—

(AA) request that the parties to the transaction file a written notice under clause (i);

(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) not later than 30 days after receiving a declaration under this clause.

(cc) Rule of construction.

Nothing in this subclause (other than item (aa)(CC)) shall be construed to affect the authority of the President or the Committee to take any action authorized by this section with respect to a covered transaction.

(IV) Mandatory declarations.

(aa) Regulations.

The Committee shall prescribe regulations specifying the types of covered transactions for which the Committee requires a declaration under this subclause.

(bb) Certain covered transactions with foreign government interests.—

(AA) In general.

Except as provided in subitem (BB), the parties to a covered transaction shall submit a declaration described in subclause (I) with respect to the transaction if the transaction involves an investment that results in the acquisition, directly or indirectly, of a substantial interest in a United States business described in subsection (a)(4)(B)(iii) by a foreign person in which a foreign government has, directly or indirectly, a substantial interest.

(BB) Substantial interest defined.

In this item, the term ‘substantial interest’ has the meaning given that term in regulations which the Committee shall prescribe. In developing those regulations, the Committee shall consider the means by which a foreign government could influence the actions of a foreign person, including through board membership, ownership interest, or shareholder rights. An interest that is excluded under subparagraph (D) of subsection (a)(4) from the term ‘other investment’ as used in subparagraph (B)(iii) of that subsection or that is less than a 10 percent voting interest shall not be considered a substantial interest.

(CC) Waiver.

The Committee may waive, with respect to a foreign person, the requirement under subitem (AA) for the submission of a declaration described in subclause (I) if the Committee determines that the foreign person demonstrates that the investments of the foreign person are not directed by a foreign government and the foreign person has a history of cooperation with the Committee.

(cc) Other declarations required by Committee.

The Committee may require the submission of a declaration described in subclause (I) with respect to any covered transaction identified under regulations prescribed by the Committee for purposes of this item, at the discretion of the Committee, that involves a United States business described in subsection (a)(4)(B)(iii)(II).

(dd) Exception.

The submission of a declaration described in subclause (I) shall not be required pursuant to this subclause with respect to an investment by an investment fund if—

(AA) the fund is managed exclusively by a general partner, a managing member, or an equivalent;

(BB) the general partner, managing member, or equivalent is not a foreign person; and

(CC) the investment fund satisfies, with respect to any foreign person with membership as a limited partner on an advisory board or a committee of the fund, the criteria specified in items (cc) and (dd) of subsection (a)(4)(D)(iv).

(ee) Submission of written notice as an alternative.

Parties to a covered transaction for which a declaration is required under this subclause may instead elect to submit a written notice under clause (i).

(ff) Timing and refiling of submission.

(AA) In general.

In the regulations prescribed under item (aa), the Committee may not require a declaration to be submitted under this subclause with respect to a covered transaction more than 45 days before the completion of the transaction.

(BB) Refiling of declaration.

The Committee may not request or recommend that a declaration submitted under this subclause be withdrawn and refiled, except to permit parties to a covered transaction to correct material errors or omissions in the declaration submitted with respect to that transaction.

(gg) Penalties.

The Committee may impose a penalty pursuant to subsection (h)(3) with respect to a party that fails to comply with this subclause.

(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 (G), the President or the Committee may initiate a review under subparagraph (A) of—

(i) any covered transaction (other than a covered transaction described in subparagraph (E));

(ii) any covered transaction described in subparagraph (E), if any party to the transaction submitted false or misleading material information to the Committee in connection with the Committee’s consideration of the transaction or omitted material information, including material documents, from information submitted to the Committee; or

(iii) any covered transaction described in subparagraph (E), if—

(I) any party to the transaction or the entity resulting from consummation of the transaction materially breaches a mitigation agreement or condition described in subsection (I)(3)(A);

(II) such breach is certified to the Committee by the lead department or agency monitoring and enforcing such agreement or condition as a material breach; and

(III) the Committee determines that there are no other adequate and appropriate remedies or enforcement tools available to address such breach.

(E) Covered transactions described

A covered transaction is described in this subparagraph if—

(i) the Committee has informed the parties to the transaction in writing that the Committee has completed all action under this section with respect to the transaction; or

(ii) the President has announced a decision not to exercise the President's authority under subsection (d) with respect to the transaction.

(F) Timing

Any review under this paragraph shall be completed before the end of the 45-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.

(G) Limit of 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.

(H) Identification of non-notified and non-declared transactions

The Committee shall establish a process to identify covered transactions for which—

(i) a notice under clause (i) of subparagraph (C) or a declaration under clause (v) of that subparagraph is not submitted to the Committee; and

(ii) information is reasonably available.

(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 the risk 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 (I), during the review period under paragraph (1); or

(ii) the lead agency recommends, and the Committee concurs, that an investigation be undertaken.

(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 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) a certification that all relevant national security factors 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) Delegation of certifications

(aa) In general

Subject to item (bb), the chairperson, in consultation with the Committee, may determine the level of official to whom the signature requirement under subclause (I) for the chairperson and the head of the lead agency may be delegated. The level of official to whom the signature requirement may be delegated may differ based on any factor relating to a transaction that the chairperson, in consultation with the Committee, deems appropriate, including the type or value of the transaction.

(bb) Limitation on delegation with respect to certain transactions

The signature requirement under subclause (I) may be delegated not below the level of the Assistant Secretary of the Treasury or an equivalent official of the lead agency.

(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) Analysis required

(i) In general

Except as provided in subparagraph (B), 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 community

The Director shall seek and incorporate into the analysis required by clause (i) the views of all affected or appropriate agencies of the intelligence community 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 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)(4)(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 for purposes of this subparagraph.

(C) Timing

The analysis required under subparagraph (A) shall be provided by the Director of National Intelligence to the Committee not later than 30 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.

(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.

(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 submit the analysis required by subparagraph (A) with respect to a covered transaction to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives upon the conclusion of action under this section (other than compliance plans under subsection (1)(6)) with respect to the transaction.

(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

(1) In general

Except as provided in paragraph (2), 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.

(2) Exceptions

Paragraph (1) shall not prohibit the disclosure of the following:

(A) Information relevant to any administrative or judicial action or proceeding.

(B) Information to Congress or any duly authorized committee or subcommittee of Congress.

(C) Information important to the national security analysis or actions of the Committee to any domestic governmental entity, or to any foreign governmental entity of a United States ally or partner, under the exclusive direction and authorization of the chairperson, only to the extent necessary for national security purposes, and subject to appropriate confidentiality and classification requirements.

(D) Information that the parties have consented to be disclosed to third parties.

(3) Cooperation with allies and partners

(A) In general

The chairperson, in consultation with other members of the Committee, should establish a formal process for the exchange of information under paragraph (2)(C) with governments of countries that are allies or partners of the United States, in the discretion of the chairperson, to protect the national security of the United States and those countries.

(B) Requirements

The process established under subparagraph (A) should, in the discretion of the chairperson—

(i) be designed to facilitate the harmonization of action with respect to trends in investment and technology that could pose risks to the national security of the United States and countries that are allies or partners of the United States;

(ii) provide for the sharing of information with respect to specific technologies and entities acquiring such technologies as appropriate to ensure national security; and

(iii) include consultations and meetings with representatives of the governments of such countries on a recurring basis.

(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) 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 (1)(2).

(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 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

(1) In general

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.

(2) Civil actions

A civil action challenging an action or finding under this section may be brought only in the United States Court of Appeals for the District of Columbia Circuit.

(3) Procedures for review of privileged information

If a civil action challenging an action or finding under this section is brought, and the court determines that protected information in the administrative record, including classified or other information subject to privilege or protections under any provision of law, is necessary to resolve the challenge, that information shall be submitted ex parte and in camera to the court and the court shall maintain that information under seal.

(4) Applicability of use of information provisions

The use of information provisions of sections 106, 305, 405, and 706 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806, 1825, 1845, and 1881e) shall not apply in a civil action brought under this subsection.

(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,

(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 [section 4605(j) of 50 U.S.C.], as a country that supports terrorism;

(ii) under section 6(l) of the Export Administration Act of 1979 [section 4605(l) of 50 U.S.C.], as a country of concern regarding missile proliferation; or

(iii) under section 6(m) of the Export Administration Act of 1979 [section 4605(m) of 50 U.S.C.], 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 [42 U.S.C. 2139a(c)] 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) the potential national security-related effects on United States critical infrastructure, including major energy assets;

(7) the potential national security-related effects on United States critical technologies;

(8) whether the covered transaction is a foreign government-controlled transaction, as determined under subsection (b)(1)(B);

(9) 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) the long-term projection of United States requirements for sources of energy and other critical resources and material; and

(11) such other factors as the President or the Committee may determine to be appropriate, generally or in connection with a specific review or investigation.

(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) 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, 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;

(C) provide for an appropriate role for the Secretary of Labor with respect to mitigation agreements; and

(D) provide that, in any review or investigation of a covered transaction conducted by the Committee under subsection (b), the Committee should—

(i) consider the factors specified in subsection (f); and

(ii) as appropriate, require parties to provide to the Committee 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 transaction 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) Hiring authority

(A) Senior officials

(i) In general

Each member of the Committee shall designate an Assistant Secretary, or an equivalent official, who is appointed by the President, by and with the advice and consent of the Senate, to carry out such duties related to the Committee as the member of the Committee may delegate.

(ii) Department of the Treasury

(I) In general

There shall be established in the Office of International Affairs at the Department of the Treasury 2 additional positions of Assistant Secretary of the Treasury, who shall be appointed by the President, by and with the advice and consent of the Senate, to carry out such duties related to the Committee as the Secretary of the Treasury may delegate, consistent with this section.

(II) Assistant Secretary for Investment Security

One of the positions of Assistant Secretary of the Treasury authorized under subclause (I) shall be the Assistant Secretary for Investment Security, whose duties shall be principally related to the Committee, as delegated by the Secretary of the Treasury under this section.

(B) 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. The primary responsibility of positions authorized under the preceding sentence shall be to administer 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).

(I) Actions by the committee to address national security risks

(1) Suspension of transactions

The Committee, acting through the chairperson, may suspend a proposed or pending covered transaction that may pose a risk to the national security of the United States for such time as the covered transaction is under review or investigation under subsection (b).

(2) Referral to President

The Committee may, at any time during the review or investigation of a covered transaction under subsection (b), complete the action of the Committee with respect to the transaction and refer the transaction to the President for action pursuant to subsection (d).

(3) Mitigation

(A) Agreements and conditions

(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 risk 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 risk 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 risk 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) Treatment of outdated agreements or conditions

The chairperson and the head of the lead agency shall periodically review the appropriateness of an agreement or condition imposed under subparagraph (A) and terminate, phase out, or otherwise amend the 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).

(4) Risk-based analysis required

(A) In general

Any determination of the Committee to suspend a covered transaction under paragraph (1), to refer a covered transaction to the President under paragraph (2), or to negotiate, enter into or impose, or enforce any agreement or condition under paragraph (3)(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 an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction.

(B) Actions of members of the committee

(i) In general

Any member of the Committee who concludes that a covered transaction poses an unresolved national security concern shall recommend to the Committee that the Committee suspend the transaction under paragraph (1), refer the transaction to the President under paragraph (2), or negotiate, enter into or impose, or enforce any agreement or condition under paragraph (3)(A) with respect to the transaction. In making that recommendation, the member shall propose or contribute to the risk-based analysis required by subparagraph (A).

(ii) Failure to reach consensus

If the Committee fails to reach consensus with respect to a recommendation under clause (i) regarding a covered transaction, the members of the Committee who support an alternative recommendation shall produce—

(I) a written statement justifying the alternative recommendation; and

(II) as appropriate, a risk-based analysis that supports the alternative recommendation.

(C) Definitions

For purposes of subparagraph (A), the terms ‘threat’, ‘vulnerabilities’, and ‘consequences to national security’ shall have the meanings given those terms by the Committee by regulation.

(5) 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, 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.

(6) 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 (3) 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. The lead agency may, at its discretion, seek and receive the assistance of other departments or agencies in carrying out the purposes of this paragraph.

(B) Designated agency

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 Federal department or agency that may have a material interest in such modification.

(C) Compliance plans

(i) In general

In the case of a covered transaction with respect to which an agreement is entered into under paragraph (3)(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.

(ii) Elements

Each plan required by clause (i) with respect to an agreement entered into under paragraph (3)(A) shall include an explanation of—

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

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

(III) how frequently compliance reviews will be conducted;

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

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

(D) Effect of lack of compliance

If, at any time after a mitigation agreement or condition is entered into or imposed under paragraph (3)(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) and to unilaterally initiate a review of any covered transaction under subsection (b)(1)(D)(iii)—

(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 a written notice under clause (i) of subsection (b)(1)(C) or a declaration under clause (v) of that subsection with respect to a 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 to initiate a review of the transaction under subsection (b); or

(iii) seek injunctive relief.

(E) Use of independent entities to monitor compliance

If the parties to an agreement entered into under paragraph (3)(A) enter into a contract with an independent entity from outside the United States Government for the purpose of monitoring compliance with the agreement, the Committee shall take such action as is necessary to prevent a conflict of interest from arising by ensuring that the independent entity owes no fiduciary duty to the parties.

(F) Successors and assigns

Any agreement or condition entered into or imposed under paragraph (3)(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 its sole discretion.

(G) Additional compliance measures

Subject to subparagraphs (A) through (F), 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) or declaration under clause (v) of that subsection has been filed, 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.

(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 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 (l)(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) basic information on each party to each such transaction;

(iii) 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

(iv) 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 concerns 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.

(G) Statistics on compliance plans conducted and actions taken by the Committee under subsection (l)(6), including subparagraph (D) of that subsection, during that period, a general assessment of the compliance of parties with agreements entered into and conditions imposed under subsection (l)(3)(A) that are in effect during that period, including a description of any actions taken by the Committee to impose penalties or initiate a unilateral review pursuant to subsection (b)(1)(D)(iii), and any recommendations for improving the enforcement of such agreements and conditions.

(H) Cumulative and, as appropriate, trend information on the number of declarations filed under subsection (b)(1)(C)(v), the actions taken by the Committee in response to those declarations, the business sectors involved in those declarations, and the countries involved in those declarations.

(I) A description of—

(i) the methods used by the Committee to identify non-notified and non-declared transactions under subsection (b)(1)(H);

(ii) potential methods to improve such identification and the resources required to do so; and

(iii) the number of transactions identified through the process established under that subsection during the reporting period and the number of such transactions flagged for further review.

(J) A summary of the hiring practices and policies of the Committee pursuant to subsection (k)(4).

(K) A list of the waivers granted by the Committee under subsection (b)(1)(C)(v)(IV)(bb)(CC).

(3) 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)—

(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;

(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; and

(C) a description of the technologies recommended by the chairperson under subsection (a)(6)(B) for identification under the interagency process set forth in section 1758(a) of the Export Control Reform Act of 2018.

(4) Form of report

(A) In general

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.

(B) Inclusion in classified version

If the Committee recommends that the President suspend or prohibit a covered transaction because the transaction threatens to impair the national security of the United States, the Committee shall, in the classified version of the report required under paragraph (1), notify Congress of the recommendation and, upon request, provide a classified briefing on the recommendation.

(C) Inclusions in unclassified version

The unclassified version of the report required under paragraph (1) shall include, with respect to covered transactions for the reporting period—

(i) the number of notices submitted under subsection (b)(1)(C)(i);

(ii) the number of declarations submitted under subsection (b)(1)(C)(v) and the number of such declarations that were required under subclause (IV) of that subsection;

(iii) the number of declarations submitted under subsection (b)(1)(C)(v) for which the Committee required resubmission as notices under subsection (b)(1)(C)(i);

(iv) the average number of days that elapsed between submission of a declaration under subsection (b)(1)(C)(v) and the acceptance of the declaration by the Committee;

(v) the median and average number of days that elapsed between acceptance of a declaration by the Committee and a response described in subsection (b)(1)(C)(v)(III);

(vi) information on the time it took the Committee to provide comments on, or to accept, notices submitted under subsection (b)(1)(C)(i), including—

(I) the average number of business days that elapsed between the date of submission of a draft notice and the date on which the Committee provided written comments on the draft notice;

(II) the average number of business days that elapsed between the date of submission of a formal written notice and the date on which the Committee accepted or provided written comments on the formal written notice; and

(III) if the average number of business days for a response by the Committee reported under subclause (I) or (II) exceeded 10 business days—

(aa) an explanation of the causes of such delays, including whether such delays are caused by resource shortages, unusual fluctuations in the volume of notices, transaction characteristics, or other factors; and

(bb) an explanation of the steps that the Committee anticipates taking to mitigate the causes of such delays and otherwise to improve the ability of the Committee to provide comments on, or to accept, notices within 10 business days;

(vii) the number of reviews or investigations conducted under subsection (b);

(viii) the number of investigations that were subject to an extension under subsection (b)(2)(C)(ii);

(ix) information on the duration of those reviews and investigations, including the median and average number of days required to complete those reviews and investigations;

(x) the number of notices submitted under subsection (b)(1)(C)(i) and declarations submitted under subsection (b)(1)(C)(v) that were rejected by the Committee;

(xi) the number of such notices and declarations that were withdrawn by a party to the covered transaction;

(xii) the number of such withdrawals that were followed by the submission of a subsequent such notice or declaration relating to a substantially similar covered transaction; and

(xiii) such other specific, cumulative, or trend information that the Committee determines is advisable to provide for an assessment of the time required for reviews and investigations of covered transactions under this section.

(n) Certification of notices and assurances

(1) In general

Each notice, and any follow-up 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 (6)(B) of subsection (l), with respect to the implementation of any mitigation agreement or condition described in paragraph (3)(A) of subsection (l), 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—

(A) the notice or information submitted fully complies with the requirements of this section or such regulation, agreement, or condition; and

(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 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) Testimony

(1) In general

Not later than March 31 of each year, the chairperson, or the designee of the chairperson, shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate to present testimony on—

(A) anticipated resources necessary for operations of the Committee in the following fiscal year at each of the departments or agencies represented on the Committee;

(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 that subsection was not submitted to the Committee;

(C) management efforts to strengthen the ability of the Committee to meet the requirements of this section; and

(D) activities of the Committee undertaken in order to—

(i) 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 the Committee;

(ii) disseminate to the governments of countries that are allies or partners of the United States best practices of the Committee that—

(I) strengthen national security reviews of relevant investment transactions; and

(II) expedite such reviews when appropriate; and

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

(2) Sunset

This subsection shall have no force or effect on or after the date that is 7 years after the date of the enactment of the Foreign Investment Risk Review Modernization Act of 2018.

(p) 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 for each of fiscal years 2019 through 2023 \$20,000,000 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, to the extent provided in advance in appropriations Acts, 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). The total amount of fees collected under this paragraph may not exceed the costs of administering this section.

(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, adjusted annually for inflation pursuant to regulations prescribed by the Committee; and

(II) shall be based on the value of the transaction, taking into account—

(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; and

(dd) 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 does not exceed the costs of administering this section and otherwise 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 solely 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.

(D) Study on prioritization fee

(i) In general

Not later than 270 days after the date of the enactment of the Foreign Investment Risk Review Modernization Act of 2018, the chairperson, in consultation with the Committee, shall complete a study of the feasibility and merits of establishing a fee or fee scale to prioritize the timing of the response of the Committee to a draft or formal written notice during the period before the Committee accepts the formal written notice under subsection (b)(1)(C)(i), in the event that the Committee is unable to respond during the time required by subclause (II) of that subsection because of an unusually large influx of notices, or for other reasons.

(ii) Submission to Congress

After completing the study required by clause (i), the chairperson, or a designee of the chairperson, 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 report on the findings of the study.

(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.

(q) 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) Functions

Functions that may be centralized under paragraph (1) include identifying non-notified and non-declared transactions pursuant to subsection (b)(1)(H), and other functions as determined by the chairperson and the Committee.

(3) Rule of construction

Nothing in this section 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. 721a. Prohibition on Purchase of United States Defense Contractors by Entities Controlled by Foreign Governments [50 U.S.C. § 4566]

(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 721 of the Defense Production Act of 1950 [50 U.S.C. § 4565].

(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.

Sec. 722. Defense Production Act Committee [50 U.S.C. § 4567]

(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 the effective use of the priorities and allocations authorities under this Act [sections 4501 to 4568 of 50 U.S.C.] by the departments, agencies, and independent establishments of the Federal Government to which the President has delegated authority under this Act.

(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 Act [sections 4501 to 4568 of 50 U.S.C.]; 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 Act.

(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 Act [50 U.S.C. § 4501-4568] 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 Act in a manner consistent with the statement of policy under section 2(b);
- (3) recommendations for legislation actions, as appropriate, to support the effective use of the priorities and allocations authorities in this Act;
- (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 Act;
- (5) up-to-date copies of the rules described under section 101(d)(1); and
- (6) short attestations signed by each member of the Committee stating their concurrence in the report.

(e) Federal Advisory Committee Act

The provisions of the Federal Advisory Committee Act [5 U.S.C. app.] shall not apply to the Committee.

Sec. 723. Annual Report on Impact of Offsets [50 U.S.C. § 4568]

(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

(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 Act [50 U.S.C. § 4501-4568], 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 to the use of offsets completed during the reporting period.

(2) Alternative findings or recommendations

Each report required under this section shall include any alternative findings or recommendations offered by any departmental Secretary, agency head, or the United States Trade Representative to the Secretary.

(e) Utilization of annual report in negotiations

The findings and recommendations of the reports required by subsection (a), and any interagency reports and analyses shall be considered by representatives of the United States during bilateral and multilateral negotiations to minimize the adverse effects of offsets.

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