

**SUBSTITUTE AMENDMENT TO THE AMENDMENT IN  
THE NATURE OF A SUBSTITUTE TO H.R. 5841  
OFFERED BY MR. HECK OF WASHINGTON**

Strike all after the enacting clause and insert the  
following:

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

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

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

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

Sec. 26. Authorization for Defense Advanced Research Projects Agency to limit foreign access to technology through contracts and grant agreements.

Sec. 27. Requirements to identify and control critical technologies in export control regulations.

Sec. 28. Effective date.

Sec. 29. Severability.

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

2 It is the sense of Congress that—

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

11 (2) maintaining the commitment of the United  
12 States to open and fair investment policy also en-  
13 courages other countries to reciprocate and helps  
14 open new foreign markets for United States busi-  
15 nesses and their products;

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

20 (4) at the same time, the national security land-  
21 scape has shifted in recent years, and so have the  
22 nature of the investments that pose the greatest po-

1        potential risk to national security, which warrants a  
2        modernization of the processes and authorities of the  
3        Committee on Foreign Investment in the United  
4        States;

5            (5) the Committee on Foreign Investment in  
6        the United States plays a critical role in protecting  
7        the national security of the United States, and,  
8        therefore, it is essential that the member agencies of  
9        the Committee are adequately resourced and able to  
10       hire appropriately qualified individuals in a timely  
11       manner, and that those individuals' security clear-  
12       ances are processed as a high priority;

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

20           (7) the President should lead a collaborative ef-  
21       fort with allies and partners of the United States to  
22       develop a new, stronger multilateral export control  
23       regime, aimed to address the unprecedented indus-  
24       trial policies of certain countries of special concern,  
25       including aggressive efforts to acquire United States

1       technology, and the blending of civil and military  
2       programs.

3 **SEC. 3. DEFINITIONS.**

4       Section 721(a) of the Defense Production Act of  
5 1950 (50 U.S.C. 4565(a)) is amended to read as follows:

6       “(a) DEFINITIONS.—In this section:

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

10           “(2) COMMITTEE; CHAIRPERSON.—The terms  
11           ‘Committee’ and ‘chairperson’ mean the Committee  
12           on Foreign Investment in the United States and the  
13           chairperson thereof, respectively.

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

18           “(4) COUNTRY OF SPECIAL CONCERN.—

19                   “(A) IN GENERAL.—The term ‘country of  
20                   special concern’ means a country that poses a  
21                   significant threat to the national security inter-  
22                   ests of the United States.

23                   “(B) RULE OF CONSTRUCTION.—This  
24                   paragraph shall not be construed to require the

1           Committee to maintain a list of countries of  
2           special concern.

3           “(5) COVERED TRANSACTION.—

4                   “(A) IN GENERAL.—Except as otherwise  
5           provided, the term ‘covered transaction’ means  
6           any transaction described in subparagraph  
7           (B)(i) or any transaction described in clauses  
8           (ii) through (v) of subparagraph (B) that is  
9           proposed, pending, or completed on or after the  
10          effective date in accordance with section 28(b)  
11          of the Foreign Investment Risk Review Mod-  
12          ernization Act of 2017.

13                   “(B) TRANSACTIONS DESCRIBED.—A  
14          transaction described in this subparagraph is  
15          any of the following:

16                           “(i) Any merger, acquisition, or take-  
17                           over that is proposed or pending after Au-  
18                           gust 23, 1988, by or with any foreign per-  
19                           son that could result in foreign control of  
20                           any United States business.

21                           “(ii) The purchase, lease, or conces-  
22                           sion by or to a foreign person of private or  
23                           public real estate that—

24                                   “(I) is located in the United  
25                                   States;

1                   “(II) is, or is in close proximity  
2                   to—

3                   “(aa) a United States mili-  
4                   tary installation;

5                   “(bb) another facility or  
6                   property of the United States  
7                   Government that is sensitive for  
8                   reasons relating to national secu-  
9                   rity; or

10                  “(cc) a land, air, or sea  
11                  port; and

12                  “(III) meets such other criteria  
13                  as the Committee prescribes by regu-  
14                  lation.

15                  “(iii) Any other investment (other  
16                  than passive investment) by a foreign per-  
17                  son in any United States critical tech-  
18                  nology company or United States critical  
19                  infrastructure company, subject to regula-  
20                  tions prescribed under subparagraph (C).

21                  “(iv) Any change in the rights that a  
22                  foreign person has with respect to a United  
23                  States business in which the foreign person  
24                  has an investment, if that change could re-  
25                  sult in—

1                   “(I) foreign control of the United  
2                   States business; or

3                   “(II) an investment described in  
4                   clause (iii).

5                   “(v) Any other transaction, transfer,  
6                   agreement, or arrangement the structure  
7                   of which is designed or intended to evade  
8                   or circumvent the application of this sec-  
9                   tion, subject to regulations prescribed by  
10                  the Committee.

11                  “(C) FURTHER DEFINITION THROUGH  
12                  REGULATIONS.—

13                  “(i) EXCLUSION OF REAL ESTATE  
14                  TRANSACTIONS.— A real estate purchase  
15                  or lease pursuant to subparagraph  
16                  (a)(5)(B)(ii) does not include—

17                  “(I) a lease or purchase of a sin-  
18                  gle ‘housing unit’, as defined by the  
19                  United States Bureau of the Census;  
20                  or

21                  “(II) a lease or purchase of real  
22                  estate in ‘urbanized areas’ as set forth  
23                  by the United States Bureau of the  
24                  Census in its most recent census, ex-  
25                  cept as otherwise prescribed by the

1 Committee in regulations in consulta-  
2 tion with the Secretary of Defense.

3 “(ii) CERTAIN OTHER INVESTMENT.—  
4 The Committee shall prescribe regulations  
5 further defining covered transactions de-  
6 scribed in clause (iii) of subparagraph (B)  
7 by reference to the technology, sector, sub-  
8 sector, transaction type, or other charac-  
9 teristics of such transactions.

10 “(iii) EXEMPTION FOR TRANSACTIONS  
11 FROM IDENTIFIED COUNTRIES.—

12 “(I) IN GENERAL.—The Com-  
13 mittee may, by regulation, define cir-  
14 cumstances and procedures, under  
15 which a transaction otherwise de-  
16 scribed in clause (ii) or (iii) of sub-  
17 subparagraph (B) would be excluded  
18 from the definition of ‘covered trans-  
19 action’ if each foreign person that is  
20 a party to such transaction, and each  
21 foreign person having control of such  
22 persons, is from, as described by the  
23 Committee in regulations, a country  
24 or part of a country identified by the



1 Committee for purposes of this clause  
2 based on criteria such as—

3 “(aa) whether in the sole  
4 judgment of the Committee, the  
5 country’s foreign investment na-  
6 tional security review process and  
7 associated international coopera-  
8 tion effectively safeguards na-  
9 tional security interests it shares  
10 with the United States nation;

11 “(bb) whether the country is  
12 a NATO member state or des-  
13 ignated as a ‘major non-NATO  
14 ally’ pursuant to section 517 of  
15 the Foreign Assistance Act of  
16 1961 (22 U.S.C. 2321k); and

17 “(cc) any other criteria that  
18 the Committee determines to be  
19 appropriate.

20 “(II) RECURRING ASSESSMENT  
21 OF IDENTIFIED COUNTRIES.—The  
22 Committee shall reconsider on a reg-  
23 ular basis its identification of coun-  
24 tries described in subclause (I).

1                   “(iv) EXEMPTION OF CERTAIN OTHER  
2                   INVESTMENTS.—For purposes of subpara-  
3                   graph (B), the term ‘other investment’  
4                   does not include those involving an ‘air  
5                   carrier’, as that term is defined in 49  
6                   U.S.C. 40102(a)(2), in which the air car-  
7                   rier will continue to be a ‘citizen of the  
8                   United States’, as that term is defined in  
9                   49 U.S.C. 40102(a)(15) and hold a certifi-  
10                  cate under 49 U.S.C. 41102(b).

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

19                  “(D) PASSIVE INVESTMENT DEFINED.—

20                  “(i) IN GENERAL.—For purposes of  
21                  subparagraph (B)(iii), the term ‘passive in-  
22                  vestment’ means an investment, direct or  
23                  indirect, by a foreign person in a United  
24                  States business that meets all of the fol-  
25                  lowing criteria—

1                   “(I) it is not described in sub-  
2 paragraph (B)(i);

3                   “(II) it does not afford the for-  
4 eign person—

5                   “(aa) access to any non-  
6 public technical information in  
7 the possession of the United  
8 States business;

9                   “(bb) membership or ob-  
10 server rights on the board of di-  
11 rectors or equivalent governing  
12 body of the United States busi-  
13 ness or the right to nominate an  
14 individual to such a position; or

15                   “(cc) any involvement, other  
16 than through voting of shares, in  
17 substantive decisionmaking of the  
18 United States business;

19                   “(III) the foreign person and the  
20 United States business do not have a  
21 parallel strategic partnership or other  
22 material financial relationship, as de-  
23 scribed in regulations prescribed by  
24 the Committee; and

1                   “(IV) such other criteria as the  
2                   Committee may prescribe by regula-  
3                   tion.

4                   “(ii) NONPUBLIC TECHNICAL INFOR-  
5                   MATION DEFINED.—For purposes of clause  
6                   (i)(II)(aa), the term ‘nonpublic technical  
7                   information’ has the meaning given that  
8                   term in regulations prescribed by the Com-  
9                   mittee.

10                  “(iii) EFFECT OF LEVEL OF OWNER-  
11                  SHIP INTEREST.—A determination of  
12                  whether an investment is a passive invest-  
13                  ment under clause (i) shall be made with-  
14                  out regard to how low the level of owner-  
15                  ship interest a foreign person would hold  
16                  or acquire in a United States business  
17                  would be as a result of the investment. The  
18                  Committee may prescribe regulations speci-  
19                  fying that any investment greater than a  
20                  certain level or amount would not be con-  
21                  sidered a passive investment.

22                  “(iv) SPECIFIC CLARIFICATION FOR  
23                  INVESTMENT FUNDS.—The Committee  
24                  shall prescribe regulations clarifying, with  
25                  respect to subparagraph (D)(i)(II)(cc),

1 that membership of a foreign person as a  
2 limited partner on an advisory board or a  
3 committee of an investment fund shall not  
4 disqualify the foreign person's participa-  
5 tion in the fund from being a passive in-  
6 vestment, provided—

7 “(I) the fund is managed exclu-  
8 sively by a general partner, managing  
9 member, or the equivalent thereof  
10 that is not a foreign person;

11 “(II) the board or committee  
12 does not have rights to approve, dis-  
13 approve, or otherwise control—

14 “(aa) the investment deci-  
15 sions of the fund; or

16 “(bb) the decisions made by  
17 the general partner, managing  
18 member, or the equivalent thereof  
19 related to companies in which the  
20 fund is invested;

21 “(III) the foreign person does not  
22 have the ability to control the fund,  
23 including the ability to dismiss, pre-  
24 vent the dismissal of, select, or com-  
25 pensate the general partner; and

1                   “(IV) the foreign person’s inter-  
2                   est otherwise satisfies the criteria of  
3                   subparagraph (D).

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

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

18                  “(F) UNITED STATES CRITICAL TECH-  
19                  NOLOGY COMPANY.—For purposes of subpara-  
20                  graph (B), the term ‘United States critical  
21                  technology company’ means a United States  
22                  business that produces, trades in, designs, tests,  
23                  manufactures, services, or develops one or more  
24                  critical technologies, or a subset of such tech-

1 nologies, as defined by regulations prescribed by  
2 the Committee.

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

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

14 “(8) CRITICAL TECHNOLOGIES.—

15 “(A) IN GENERAL.—The term ‘critical  
16 technologies’ means technology, components, or  
17 technology items that are essential or could be  
18 essential to national security, identified for pur-  
19 poses of this section pursuant to regulations  
20 prescribed by the Committee.

21 “(B) INCLUSION OF CERTAIN ITEMS.—The  
22 term ‘critical technologies’ includes the fol-  
23 lowing:

24 “(i) Defense articles or defense serv-  
25 ices included on the United States Muni-

1                   tions List set forth in the International  
2                   Traffic in Arms Regulations under sub-  
3                   chapter M of chapter I of title 22, Code of  
4                   Federal Regulations.

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

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

17                  “(II) for reasons relating to re-  
18                  gional stability or surreptitious listen-  
19                  ing.

20                  “(iii) Specially designed and prepared  
21                  nuclear equipment, parts and components,  
22                  materials, software, and technology covered  
23                  by part 810 of title 10, Code of Federal  
24                  Regulations (relating to assistance to for-  
25                  eign atomic energy activities).



1                   “(iv) Nuclear facilities, equipment,  
2                   and material covered by part 110 of title  
3                   10, Code of Federal Regulations (relating  
4                   to export and import of nuclear equipment  
5                   and material).

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

10                   “(vi) Technology areas identified pur-  
11                   suant to section 27(a) of the Foreign In-  
12                   vestment Risk Review Modernization Act  
13                   of 2017.

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

21                   “(10) FOREIGN PERSON.—The term ‘foreign  
22                   person’ means—

23                   “(A) any foreign national, foreign govern-  
24                   ment, or foreign entity; or

1           “(B) any entity over which control is exer-  
2           cised or exercisable by a foreign national, for-  
3           eign government, or foreign entity.

4           “(11) INTELLIGENCE COMMUNITY.—The term  
5           ‘intelligence community’ has the meaning given that  
6           term in section 3(4) of the National Security Act of  
7           1947 (50 U.S.C. 3003(4)).

8           “(12) INVESTMENT.—The term ‘investment’  
9           means the acquisition of equity interest, including  
10          contingent equity interest, as further defined in reg-  
11          ulations prescribed by the Committee.

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

15          “(14) MALICIOUS CYBER-ENABLED ACTIVI-  
16          TIES.—The term ‘malicious cyber-enabled activities’  
17          means any acts—

18                 “(A) primarily accomplished through or fa-  
19                 cilitated by computers or other electronic de-  
20                 vices;

21                 “(B) that are reasonably likely to result in,  
22                 or materially contribute to, a significant threat  
23                 to the national security of the United States;  
24                 and

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

1                   “(i) significantly compromising the  
2                   provision of services by one or more enti-  
3                   ties in a critical infrastructure sector;

4                   “(ii) harming, or otherwise signifi-  
5                   cantly compromising the provision of serv-  
6                   ices by, a computer or network of com-  
7                   puters that support one or more such enti-  
8                   ties;

9                   “(iii) causing a significant disruption  
10                  to the availability of a computer or net-  
11                  work of computers; or

12                  “(iv) causing a significant misappro-  
13                  priation of funds or economic resources,  
14                  trade secrets, personally identifiable infor-  
15                  mation, or financial information.

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

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

23                  “(17) UNITED STATES.—The term ‘United  
24                  States’ means the several States, the District of Co-

1 lumbia, and any territory or possession of the  
2 United States.

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

6 **SEC. 4. INCLUSION OF PARTNERSHIP AND SIDE AGREE-**  
7 **MENTS IN NOTICE.**

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

11 “(iv) INCLUSION OF PARTNERSHIP  
12 AND SIDE AGREEMENTS.—A written notice  
13 submitted under clause (i) by a party to a  
14 covered transaction shall include a copy of  
15 any partnership agreements, integration  
16 agreements, or other side agreements relat-  
17 ing to the transaction, including any such  
18 agreements relating to the transfer of in-  
19 tellectual property, as specified in regula-  
20 tions prescribed by the Committee.”.

21 **SEC. 5. DECLARATIONS RELATING TO CERTAIN COVERED**  
22 **TRANSACTIONS.**

23 Section 721(b)(1)(C) of the Defense Production Act  
24 of 1950 (50 U.S.C. 4565(b)(1)(C)), as amended by section  
25 4, is further amended by adding at the end the following:

1                   “(v) DECLARATIONS RELATING TO  
2                   CERTAIN COVERED TRANSACTIONS.—

3                   “(I) VOLUNTARY DECLARA-  
4                   TIONS.—Except as provided in this  
5                   clause, a party to any covered trans-  
6                   action may submit to the Committee a  
7                   declaration with basic information re-  
8                   garding the transaction instead of a  
9                   written notice under clause (i).

10                   “(II) MANDATORY DECLARA-  
11                   TIONS.—

12                   “(aa) IN GENERAL.—The  
13                   Committee shall prescribe regula-  
14                   tions providing guidance on the  
15                   types of transactions that the  
16                   Committee considers to require a  
17                   declaration pursuant to this sub-  
18                   section.

19                   “(bb) CERTAIN COVERED  
20                   TRANSACTIONS WITH FOREIGN  
21                   GOVERNMENT INTERESTS.—The  
22                   parties to a covered transaction  
23                   shall submit a declaration de-  
24                   scribed in subclause (I) with re-  
25                   spect to the transaction if the

1 transaction involves an invest-  
2 ment that results in the acqui-  
3 sition directly or indirectly, of a  
4 substantial interest in a United  
5 States business by a foreign per-  
6 son in which a foreign govern-  
7 ment has, directly or indirectly, a  
8 substantial interest.

9 “(cc) SUBSTANTIAL INTER-  
10 EST DEFINED.—For purposes of  
11 this subclause, the term ‘substan-  
12 tial interest’ has the meaning  
13 given to such term in regulations  
14 which the Committee shall pre-  
15 scribe, provided that an interest  
16 that is a passive investment as  
17 defined under subsection  
18 (a)(5)(D) or that is less than ten  
19 percent voting interest shall not  
20 be considered to be a ‘substantial  
21 interest’.

22 “(dd) OTHER DECLARA-  
23 TIONS REQUIRED BY COM-  
24 MITTEE.—The Committee shall  
25 require the submission of a dec-

1 laration described in subclause  
2 (I) with respect to any covered  
3 transaction identified under regu-  
4 lations prescribed by the Com-  
5 mittee for purposes of this item,  
6 at the discretion of the Com-  
7 mittee and based on appropriate  
8 factors, such as—

9 “(AA) the technology,  
10 industry, economic sector, or  
11 economic subsector in which  
12 the United States business  
13 that is a party to the trans-  
14 action trades or of which it  
15 is a part;

16 “(BB) the difficulty of  
17 remedying the harm to na-  
18 tional security that may re-  
19 sult from completion of the  
20 transaction; and

21 “(CC) the difficulty of  
22 obtaining information on the  
23 type of covered transaction  
24 through other means.

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“(ee) SUBMISSION OF WRIT-  
TEN NOTICE AS AN ALTER-  
NATIVE.—Parties to a covered  
transaction for which a declara-  
tion is required under this sub-  
clause may instead elect to sub-  
mit a written notice under clause  
(i).

“(ff) TIMING OF SUBMIS-  
SION.—

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

“(BB) WRITTEN NO-  
TICE.—If, pursuant to item  
(cc), the parties to a covered  
transaction elect to submit a  
written notice under clause  
(i) instead of a declaration  
under this subclause, the



1 written notice shall be filed  
2 not later than 90 days be-  
3 fore the completion of the  
4 transaction.

5 “(III) PENALTIES.—The Com-  
6 mittee may impose a penalty pursuant  
7 to subsection (h)(3) with respect to a  
8 party that fails to comply with this  
9 clause.

10 “(IV) COMMITTEE RESPONSE TO  
11 DECLARATION.—

12 “(aa) IN GENERAL.—Upon  
13 receiving a declaration under this  
14 clause with respect to a trans-  
15 action, the Committee may, at its  
16 discretion—

17 “(AA) request that the  
18 parties to the transaction  
19 file a written notice under  
20 clause (i);

21 “(BB) inform the par-  
22 ties to the transaction that  
23 the Committee is not able to  
24 complete action under this  
25 section with respect to the

1 transaction on the basis of  
2 the declaration and that the  
3 parties may file a written  
4 notice under clause (i) to  
5 seek written notification  
6 from the Committee that the  
7 Committee has completed all  
8 action under this section  
9 with respect to the trans-  
10 action;

11 “(CC) initiate a unilat-  
12 eral review of the trans-  
13 action under subparagraph  
14 (D); or

15 “(DD) notify the par-  
16 ties in writing that the Com-  
17 mittee has completed all ac-  
18 tion under this section with  
19 respect to the transaction.

20 “(bb) TIMING.—The Com-  
21 mittee shall endeavor to take ac-  
22 tion under item (aa) within 30  
23 days of receiving a declaration  
24 under this clause.

1                   “(cc) RULE OF CONSTRUC-  
2                   TION.—Nothing in this subclause  
3                   (other than item (aa)(CC)) shall  
4                   be construed to affect the author-  
5                   ity of the President or the Com-  
6                   mittee to take any action author-  
7                   ized by this section with respect  
8                   to a covered transaction.

9                   “(V) REGULATIONS.—The Com-  
10                  mittee shall prescribe regulations es-  
11                  tablishing requirements for declara-  
12                  tions submitted under this clause. In  
13                  prescribing such regulations, the Com-  
14                  mittee shall ensure that such declara-  
15                  tions are submitted as abbreviated no-  
16                  tifications that would not generally ex-  
17                  ceed 5 pages in length.”.

18 **SEC. 6. STIPULATIONS REGARDING TRANSACTIONS.**

19                  Section 721(b)(1)(C) of the Defense Production Act  
20                  of 1950 (50 U.S.C. 4565(b)(1)(C)), as amended by section  
21                  5, is further amended by adding at the end the following:

22                               “(vi) STIPULATIONS       REGARDING  
23                               TRANSACTIONS.—

24                               “(I) IN GENERAL.—In a written  
25                               notice submitted under clause (i) or a

1 declaration submitted under clause (v)  
2 with respect to a transaction, a party  
3 to the transaction may—

4 “(aa) stipulate that the  
5 transaction is a covered trans-  
6 action; and

7 “(bb) if the party stipulates  
8 that the transaction is a covered  
9 transaction under item (aa), stip-  
10 ulate that the transaction is a  
11 foreign government-controlled  
12 transaction.

13 “(II) BASIS FOR STIPULATION.—  
14 A written notice submitted under  
15 clause (i) or a declaration submitted  
16 under clause (v) that includes a stipu-  
17 lation under subclause (I) shall in-  
18 clude a description of the basis for the  
19 stipulation.”.

20 **SEC. 7. AUTHORITY FOR UNILATERAL INITIATION OF RE-**  
21 **VIEWS.**

22 Section 721(b)(1) of the Defense Production Act of  
23 1950 (50 U.S.C. 4565(b)(1)) is amended—

24 (1) by redesignating subparagraphs (E) and  
25 (F) as subparagraphs (F) and (G), respectively;

1 (2) in subparagraph (D)—

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

5 (B) by striking clause (ii) and inserting the  
6 following:

7 “(ii) any covered transaction described  
8 in subparagraph (E), if any party to the  
9 transaction submitted false or misleading  
10 material information to the Committee in  
11 connection with the Committee’s consider-  
12 ation of the transaction or omitted mate-  
13 rial information, including material docu-  
14 ments, from information submitted to the  
15 Committee; or”; and

16 (C) in clause (iii)—

17 (i) in the matter preceding subclause  
18 (I), by striking “any covered transaction  
19 that has previously been reviewed or inves-  
20 tigated under this section,” and inserting  
21 “any covered transaction described in sub-  
22 paragraph (E),”;

23 (ii) in subclause (I), by striking “in-  
24 tentiously”;

1 (iii) in subclause (II), by striking “an  
2 intentional” and inserting “a”; and

3 (iv) in subclause (III), by inserting  
4 “adequate and appropriate” before “rem-  
5 edies or enforcement tools”; and

6 (3) by inserting after subparagraph (D) the fol-  
7 lowing:

8 “(E) COVERED TRANSACTIONS DE-  
9 SCRIBED.—A covered transaction is described  
10 in this subparagraph if—

11 “(i) the Committee has informed the  
12 parties to the transaction in writing that  
13 the Committee has completed all action  
14 under this section with respect to the  
15 transaction; or

16 “(ii) the President has announced a  
17 decision not to exercise the President’s au-  
18 thority under subsection (d) with respect  
19 to the transaction.”.

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

21 Section 721(b) of the Defense Production Act of  
22 1950 (50 U.S.C. 4565(b)), as amended by section 7, is  
23 further amended—

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

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

3                   “(C) TIMING.—

4                           “(i) IN GENERAL.—Except as pro-  
5                           vided in clause (ii), any investigation under  
6                           subparagraph (A) shall be completed be-  
7                           fore the end of the 45-day period begin-  
8                           ning on the date on which the investigation  
9                           commenced.

10                           “(ii) EXTENSION FOR EXTRAOR-  
11                           DINARY CIRCUMSTANCES.—

12                                   “(I) IN GENERAL.—In extraor-  
13                                   dinary circumstances (as defined by  
14                                   the Committee in regulations), the  
15                                   chairperson may, at the request of the  
16                                   head of the lead agency, extend an in-  
17                                   vestigation under subparagraph (A)  
18                                   for one 30-day period.

19                                   “(II) NONDELEGATION.—The  
20                                   authority of the chairperson and the  
21                                   head of the lead agency referred to in  
22                                   subclause (I) may not be delegated to  
23                                   any person other than the Deputy  
24                                   Secretary of the Treasury or the dep-

1                   uty head (or equivalent thereof) of the  
2                   lead agency, as the case may be.

3                   “(III) NOTIFICATION TO PAR-  
4                   TIES.—If the Committee extends the  
5                   deadline under subclause (I) with re-  
6                   spect to a covered transaction, the  
7                   Committee shall notify the parties to  
8                   the transaction of the extension.”; and

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

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

14 **SEC. 9. MONITORING OF NON-NOTIFIED AND NON-DE-**  
15 **CLARED TRANSACTIONS.**

16                  Section 721(b)(1) of the Defense Production Act of  
17 1950 (50 U.S.C. 4565(b)(1)), as amended by section 7,  
18 is further amended by adding at the end the following:

19                  “(H) MONITORING OF NON-NOTIFIED AND  
20                  NON-DECLARED TRANSACTIONS.—The Com-  
21                  mittee shall establish a mechanism to identify  
22                  covered transactions for which—

23                         “(i) a notice under clause (i) of sub-  
24                         paragraph (C) or a declaration under



1 clause (v) of that subparagraph is not sub-  
2 mitted to the Committee; and

3 “(ii) information is reasonably avail-  
4 able.”.

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

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

8 (1) in clause (iii)—

9 (A) in subclause (II), by inserting “and the  
10 Select Committee on Intelligence” after “Urban  
11 Affairs”; and

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

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

17 “(II) DELEGATION OF CERTIFI-  
18 CATIONS.—

19 “(aa) IN GENERAL.—Sub-  
20 ject to item (bb), the chairperson,  
21 in consultation with the Com-  
22 mittee, may determine the level  
23 of official to whom the signature  
24 requirement under subclause (I)  
25 for the chairperson and the head

1 of the lead agency may be dele-  
2 gated. The level of official to  
3 whom the signature requirement  
4 may be delegated may differ  
5 based on any factor relating to a  
6 transaction that the chairperson,  
7 in consultation with the Com-  
8 mittee, deems appropriate, in-  
9 cluding the type or value of the  
10 transaction.

11 “(bb) LIMITATIONS.—The  
12 signature requirement under sub-  
13 clause (I) may be delegated—

14 “(AA) in the case of a  
15 covered transaction assessed  
16 by the Director of National  
17 Intelligence under paragraph  
18 (4) as more likely than not  
19 to threaten the national se-  
20 curity of the United States,  
21 not below the level of the  
22 Assistant Secretary of the  
23 Treasury or an equivalent  
24 official of another agency or

1 department represented on  
2 the Committee; and

3 “(BB) in the case of  
4 any other covered trans-  
5 action, not below the level of  
6 a Deputy Assistant Sec-  
7 retary of the Treasury or an  
8 equivalent official of another  
9 agency or department rep-  
10 resented on the Com-  
11 mittee.”; and

12 (3) by adding at the following:

13 “(v) AUTHORITY TO CONSOLIDATE  
14 DOCUMENTS.—Instead of transmitting a  
15 separate certified notice or certified report  
16 under subparagraph (A) or (B) with re-  
17 spect to each covered transaction, the  
18 Committee may, on a monthly basis, trans-  
19 mit such notices and reports in a consoli-  
20 dated document to the Members of Con-  
21 gress specified in clause (iii).”.

22 **SEC. 11. ANALYSIS BY DIRECTOR OF NATIONAL INTEL-**  
23 **LIGENCE.**

24 Section 721(b)(4) of the Defense Production Act of  
25 1950 (50 U.S.C. 4565(b)(4)) is amended—

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

3                   “(A) ANALYSIS REQUIRED.—

4                           “(i) IN GENERAL.—The Director of  
5                           National Intelligence shall expeditiously  
6                           carry out a thorough analysis of any threat  
7                           to the national security of the United  
8                           States posed by any covered transaction,  
9                           which shall include the identification of  
10                           any recognized gaps in the collection of in-  
11                           telligence relevant to the analysis.

12                           “(ii) VIEWS OF INTELLIGENCE AGEN-  
13                           CIES.—The Director shall seek and incor-  
14                           porate into the analysis required by clause  
15                           (i) the views of all affected or appropriate  
16                           intelligence agencies with respect to the  
17                           transaction.

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

24                           “(iv) INDEPENDENCE AND OBJEC-  
25                           TIVITY.—The Committee shall ensure that

1           its processes under this section preserve  
2           the ability of the Director to conduct anal-  
3           ysis under clause (i) that is independent,  
4           objective, and consistent with all applicable  
5           directives, policies, and analytic tradecraft  
6           standards of the intelligence community.”;

7           (2) by redesignating subparagraphs (B), (C),  
8           and (D) as subparagraphs (C), (D), and (E), respec-  
9           tively;

10          (3) by inserting after subparagraph (A) the fol-  
11          lowing:

12                 “(B) BASIC THREAT INFORMATION.—

13                         “(i) IN GENERAL.—The Director of  
14                         National Intelligence may provide the  
15                         Committee with basic information regard-  
16                         ing any threat to the national security of  
17                         the United States posed by a covered  
18                         transaction described in clause (ii) instead  
19                         of conducting the analysis required by sub-  
20                         paragraph (A).

21                         “(ii) COVERED TRANSACTION DE-  
22                         SCRIBED.—A covered transaction is de-  
23                         scribed in this clause if—

24                                 “(I) the transaction is described  
25                                 in subsection (a)(5)(B)(ii);

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

9                   “(III) the transaction otherwise  
10                  meets criteria agreed upon by the  
11                  Committee and the Director of Na-  
12                  tional Intelligence for purposes of this  
13                  subparagraph.”;

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

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

18                         “(F) ASSESSMENT OF OPERATIONAL IM-  
19                         PACT.—The Director may provide to the Com-  
20                         mittee an assessment, separate from the anal-  
21                         yses under subparagraphs (A) and (B), of any  
22                         operational impact of a covered transaction on  
23                         the intelligence community and a description of  
24                         any actions that have been or will be taken to  
25                         mitigate any such impact.

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

11 **SEC. 12. INFORMATION SHARING.**

12          Section 721(e) of the Defense Production Act of 1950  
13 (50 U.S.C. 4565(e)) is amended—

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

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

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

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

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

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

1           “(B) Information to either House of Con-  
2           gress or to any duly authorized committee or  
3           subcommittee of Congress.

4           “(C) Information to any domestic or for-  
5           eign governmental entity, under the direction of  
6           the chairperson, to the extent necessary for na-  
7           tional security purposes and pursuant to appro-  
8           priate confidentiality and classification arrange-  
9           ments.

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

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

13           (a) **IN GENERAL.**—Section 721(d) of the Defense  
14           Production Act of 1950 (50 U.S.C. 4565(d)) is amend-  
15           ed—

16           (1) by striking paragraph (1) and inserting the  
17           following:

18           “(1) **IN GENERAL.**—Subject to paragraph (4),  
19           the President may, with respect to a covered trans-  
20           action that threatens to impair the national security  
21           of the United States—

22           “(A) take such action for such time as the  
23           President considers appropriate to suspend or  
24           prohibit the transaction or to require divest-  
25           ment; and



1           “(B) in conjunction with taking any such  
2           action, take any additional action the President  
3           considers appropriate to address the risk to the  
4           national security of the United States identified  
5           during the review and investigation of the  
6           transaction under this section.”; and

7           (2) in paragraph (2), by striking “not later  
8           than 15 days” and all that follows and inserting the  
9           following: “with respect to a covered transaction not  
10          later than 15 days after the earlier of—

11           “(A) the date on which the investigation of  
12          the transaction under subsection (b) is com-  
13          pleted; or

14           “(B) the date on which the Committee oth-  
15          erwise refers the transaction to the President  
16          under subsection (1)(2).”.

17          (b) CIVIL PENALTIES.—Section 721(h)(3)(A) of the  
18          Defense Production Act of 1950 (50 U.S.C.  
19          4565(h)(3)(A)) is amended by striking “including any  
20          mitigation” and all that follows through “subsection (1)”  
21          and inserting “including any mitigation agreement entered  
22          into, conditions imposed, or order issued pursuant to this  
23          section”.

1 **SEC. 14. JUDICIAL REVIEW PROCEDURES.**

2 Section 721(e) of the Defense Production Act of 1950  
3 (50 U.S.C. 4565) is amended to read as follows:

4 “(e) ACTIONS AND FINDINGS NONREVIEWABLE.—

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

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

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

19 “(B) PETITIONS.—

20 “(i) DEFINITION.—In this subpara-  
21 graph, the term ‘classified information’  
22 means any information or material that  
23 has been determined by the United States  
24 Government pursuant to an Executive  
25 order, statute, or regulation to require pro-  
26 tection against unauthorized disclosure for

1 reasons of national security and any re-  
2 stricted data, as defined in section 11 of  
3 the Atomic Energy Act of 1954 (42 U.S.C.  
4 2014).

5 “(ii) PETITION.—

6 “(I) IN GENERAL.—Except as  
7 provided in subclause (II), not later  
8 than 60 days after the date on which  
9 the President or the Committee takes  
10 an action with respect to the covered  
11 transaction, any party to the covered  
12 transaction may file a petition under  
13 this subparagraph alleging that the  
14 action of the Committee is a violation  
15 of a constitutional right, power, privi-  
16 lege, or immunity.

17 “(II) NOTIFICATION.—No party  
18 to a covered transaction shall be per-  
19 mitted to file a petition or any claim  
20 related to a petition under subclause  
21 (I) unless—

22 “(aa) the party initiated the  
23 review of the transaction pursu-  
24 ant to a written notice filed  
25 under clause (i) of subsection

1 (b)(1)(C) or a declaration filed  
2 under clause (v) of that sub-  
3 section or the Committee deter-  
4 mines that such a notice or dec-  
5 laration was not required; and

6 “(bb) the Committee has  
7 completed all action under this  
8 section with respect to the trans-  
9 action.

10 “(III) RELATED CLAIMS.—Any  
11 claims related to a petition filed under  
12 this clause shall be filed before the  
13 date described in subclause (I).

14 “(iii) EXCLUSIVE JURISDICTION.—

15 “(I) IN GENERAL.—The United  
16 States Court of Appeals for the Dis-  
17 trict of Columbia Circuit shall have  
18 exclusive jurisdiction over claims aris-  
19 ing under this subparagraph, subject  
20 to review by the Supreme Court of the  
21 United States under section 1254 of  
22 title 28, United States Code, only—

23 “(aa) to affirm the action of  
24 the Committee; or

1 “(bb) to remand the case to  
2 the Committee for further consid-  
3 eration.

4 “(II) STANDARD OF REVIEW.—  
5 The court shall uphold an action chal-  
6 lenged under this subparagraph unless  
7 the court finds that the action was  
8 contrary to a constitutional right,  
9 power, privilege, or immunity.

10 “(iv) SCOPE OF REVIEW.—In a claim  
11 under this subparagraph, the court shall  
12 decide all relevant questions based solely  
13 on any administrative record submitted by  
14 the United States under clause (v).

15 “(v) ADMINISTRATIVE RECORD AND  
16 PROCEDURES.—

17 “(I) IN GENERAL.—Notwith-  
18 standing any other provision of law,  
19 the procedures described in this clause  
20 shall apply to the review of a petition  
21 under this subparagraph.

22 “(II) ADMINISTRATIVE  
23 RECORD.—

24 “(aa) FILING OF RECORD.—  
25 The United States shall file with

1 the court an administrative  
2 record, which shall consist of the  
3 information that the parties sub-  
4 mitted to the Committee and  
5 that the Committee relied upon  
6 in support of the action of the  
7 Committee under review.

8 “(bb) UNCLASSIFIED, NON-  
9 PRIVILEGED INFORMATION.—All  
10 unclassified information con-  
11 tained in the administrative  
12 record that is not otherwise privi-  
13 leged or subject to statutory pro-  
14 tections shall be provided to the  
15 petitioner with appropriate pro-  
16 tections for any privileged or con-  
17 fidential trade secrets and com-  
18 mercial or financial information.

19 “(cc) DISCOVERY BAR.—  
20 Other than the provision of infor-  
21 mation in the administrative  
22 record described in subparagraph  
23 (II)(bb), no discovery shall be  
24 permitted.

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“(dd) IN CAMERA AND EX PARTE.—The following information may be included in the administrative record and shall be submitted only to the court ex parte and in camera:

“(AA) Unclassified information subject to privilege or statutory protections.

“(BB) Classified information.

“(CC) Sensitive security information.

“(DD) Sensitive law enforcement information.

“(EE) Information obtained or derived from any activity authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), except that, with respect to such information, subsections (c), (e), (f), (g), and (h) of section 106 (50 U.S.C. 1806),

1 subsections (d), (f), (g), (h),  
2 and (i) of section 305 (50  
3 U.S.C. 1825), subsections  
4 (e), (e), (f), (g), and (h) of  
5 section 405 (50 U.S.C.  
6 1845), and section 706 (50  
7 U.S.C. 1881e) of that Act  
8 shall not apply.

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



1 such information be released to  
2 the claimant or as part of the  
3 public record.

4 “(ff) RETURN.—After the  
5 expiration of the time to seek  
6 further review, or the conclusion  
7 of further proceedings, the court  
8 shall return the administrative  
9 record, including any and all cop-  
10 ies, to the United States.

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

22 “(vi) EXCLUSIVE REMEDY.—A deter-  
23 mination by the court under this subpara-  
24 graph shall be the exclusive judicial remedy  
25 for any claim described in this subpara-

1 graph against the United States, any  
2 United States department or agency, or  
3 any component or official of any such de-  
4 partment or agency.

5 “(vii) RULE OF CONSTRUCTION.—  
6 Nothing in this subparagraph shall be con-  
7 strued as limiting, superseding, or pre-  
8 venting the invocation of, any privileges or  
9 defenses that are otherwise available at law  
10 or in equity to protect against the disclo-  
11 sure of information.”.

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

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

15 (1) in paragraph (1), by inserting “including  
16 whether the covered transaction is likely to result in  
17 the increased reliance by the United States on for-  
18 eign suppliers to meet national defense require-  
19 ments;” after “defense requirements;”;

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

22 (3) by striking paragraph (5) and insert the fol-  
23 lowing:

24 “(5) the potential effects of the covered trans-  
25 action on United States international technological

1 and industrial leadership in areas affecting United  
2 States national security, including whether the  
3 transaction is likely to reduce the technological and  
4 industrial advantage of the United States relative to  
5 any country of special concern;”;

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

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

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

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

21 (8) by inserting after paragraph (10) the fol-  
22 lowing:

23 “(11) the degree to which the covered trans-  
24 action is likely to increase the cost to the United  
25 States Government of acquiring or maintaining the

1 equipment and systems that are necessary for de-  
2 fense, intelligence, or other national security func-  
3 tions;

4 “(12) the potential national security-related ef-  
5 fects of the cumulative market share of or a pattern  
6 of recent transactions in any one type of infrastruc-  
7 ture, energy asset, critical material, or critical tech-  
8 nology by foreign persons;

9 “(13) whether any foreign person that would  
10 acquire an interest in a United States business or its  
11 assets as a result of the covered transaction has a  
12 history of—

13 “(A) complying with United States laws  
14 and regulations, including laws and regulations  
15 pertaining to exports, the protection of intellec-  
16 tual property, and immigration; and

17 “(B) adhering to contracts or other agree-  
18 ments with entities of the United States Gov-  
19 ernment;

20 “(14) the extent to which the covered trans-  
21 action is likely to expose, either directly or indirectly,  
22 personally identifiable information, genetic informa-  
23 tion, or other sensitive data of United States citizens  
24 to access by a foreign government or foreign person

1 that may exploit that information in a manner that  
2 threatens national security;

3 “(15) whether the covered transaction is likely  
4 to have the effect of creating any new cybersecurity  
5 vulnerabilities in the United States or exacerbating  
6 existing cybersecurity vulnerabilities;

7 “(16) whether the covered transaction is likely  
8 to result in a foreign government gaining a signifi-  
9 cant new capability to engage in malicious cyber-en-  
10 abled activities against the United States, including  
11 such activities designed to affect the outcome of any  
12 election for Federal office;

13 “(17) whether the covered transaction involves  
14 a country of special concern that has a demonstrated  
15 or declared strategic goal of acquiring a type of crit-  
16 ical technology or critical infrastructure that a  
17 United States business that is a party to the trans-  
18 action possesses;

19 “(18) whether the covered transaction is likely  
20 to facilitate criminal or fraudulent activity affecting  
21 the national security of the United States;

22 “(19) whether the covered transaction is likely  
23 to expose any information regarding sensitive na-  
24 tional security matters or sensitive procedures or op-  
25 erations of a Federal law enforcement agency with

1 national security responsibilities to a foreign person  
2 not authorized to receive that information; and”.

3 **SEC. 16. ACTIONS BY THE COMMITTEE TO ADDRESS NA-**  
4 **TIONAL SECURITY RISKS.**

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

7 (1) in the subsection heading, by striking  
8 “MITIGATION, TRACKING, AND POSTCONSUMMATION  
9 MONITORING AND ENFORCEMENT” and inserting  
10 “ACTIONS BY THE COMMITTEE TO ADDRESS NA-  
11 TIONAL SECURITY RISKS”;

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

14 (3) by inserting before paragraph (3), as reded-  
15 igned by paragraph (2), the following:

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

23 “(2) REFERRAL TO PRESIDENT.—The Com-  
24 mittee may, at any time during the review or inves-  
25 tigation of a covered transaction under subsection

1 (b), complete the action of the Committee with re-  
2 spect to the transaction and refer the transaction to  
3 the President for action pursuant to subsection  
4 (d).”;

5 (4) in paragraph (3), as redesignated by para-  
6 graph (2)—

7 (A) in subparagraph (A)—

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

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

13 “(i) IN GENERAL.—The Committee”;

14 (iii) by striking “threat” and inserting  
15 “risk”; and

16 (iv) by adding at the end the fol-  
17 lowing:

18 “(ii) ABANDONMENT OF TRANS-  
19 ACTIONS.—If a party to a covered trans-  
20 action has voluntarily chosen to abandon  
21 the transaction, the Committee or lead  
22 agency, as the case may be, may negotiate,  
23 enter into or impose, and enforce any  
24 agreement or condition with any party to  
25 the covered transaction for purposes of ef-

1           fectuating such abandonment and miti-  
2           gating any risk to the national security of  
3           the United States that arises as a result of  
4           the covered transaction.

5           “(iii) AGREEMENTS AND CONDITIONS  
6           RELATING TO COMPLETED TRANS-  
7           ACTIONS.—The Committee or lead agency,  
8           as the case may be, may negotiate, enter  
9           into or impose, and enforce any agreement  
10          or condition with any party to a completed  
11          covered transaction in order to mitigate  
12          any interim risk to the national security of  
13          the United States that may arise as a re-  
14          sult of the covered transaction until such  
15          time that the Committee has completed ac-  
16          tion pursuant to subsection (b) or the  
17          President has taken action pursuant to  
18          subsection (d) with respect to the trans-  
19          action.”; and

20          (B) by striking subparagraph (B) and in-  
21          serting the following:

22          “(B) LIMITATIONS.—An agreement may  
23          not be entered into or condition imposed under  
24          subparagraph (A) with respect to a covered  
25          transaction unless the Committee determines



1           that the agreement or condition resolves the na-  
2           tional security concerns posed by the trans-  
3           action, taking into consideration whether the  
4           agreement or condition is reasonably calculated  
5           to—

6                       “(i) be effective;

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

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

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

17                      (5) by inserting after paragraph (3), as redesign-  
18                      nated by paragraph (2), the following:

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

20                      “(A) IN GENERAL.—Any determination of  
21                      the Committee to suspend a covered transaction  
22                      under paragraph (1), to refer a covered trans-  
23                      action to the President under paragraph (2), or  
24                      to negotiate, enter into or impose, or enforce  
25                      any agreement or condition under paragraph

1           (3)(A) with respect to a covered transaction,  
2           shall be based on a risk-based analysis, con-  
3           ducted by the Committee, of the effects on the  
4           national security of the United States of the  
5           covered transaction, which shall include—

6                   “(i) an assessment of the threat,  
7                   vulnerabilities, and consequences to na-  
8                   tional security related to the transaction,  
9                   as these term are clarified in guidance and  
10                  regulations issued by the Committee; and

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

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

16                   “(i) IN GENERAL.—Any member of  
17                   the Committee who concludes that a cov-  
18                   ered transaction poses an unresolved na-  
19                   tional security concern shall recommend to  
20                   the Committee that the Committee sus-  
21                   pend the transaction under paragraph (1),  
22                   refer the transaction to the President  
23                   under paragraph (2), or negotiate, enter  
24                   into or impose, or enforce any agreement  
25                   or condition under paragraph (3)(A) with

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

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

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

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

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

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

24                 (A) in subparagraph (A)—

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

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

9 (B) in subparagraph (B)—

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

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

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

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

21 “(C) COMPLIANCE PLANS.—

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

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

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

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

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

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

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

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

24 “(D) EFFECT OF LACK OF COMPLIANCE.—  
25 If, at any time after a mitigation agreement or

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

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

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

1                   “(iii) seek injunctive relief.

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

13                  “(F) SUCCESSORS AND ASSIGNS.—Any  
14                  agreement or condition entered into or imposed  
15                  under paragraph (3)(A) shall be considered  
16                  binding on all successors and assigns, unless  
17                  and until the agreement or condition terminates  
18                  on its own terms or is otherwise terminated by  
19                  the Committee in its sole discretion.

20                  “(G) ADDITIONAL COMPLIANCE MEAS-  
21                  URES.—Subject to subparagraphs (A) through  
22                  (E), the Committee shall develop and agree  
23                  upon methods for evaluating compliance with  
24                  any agreement entered into or condition im-  
25                  posed with respect to a covered transaction that

1 will allow the Committee to adequately ensure  
2 compliance without unnecessarily diverting  
3 Committee resources from assessing any new  
4 covered transaction for which a written notice  
5 under clause (i) of subsection (b)(1)(C) or dec-  
6 laration under clause (v) of that subsection has  
7 been filed, and if necessary, reaching a mitiga-  
8 tion agreement with or imposing a condition on  
9 a party to such covered transaction or any cov-  
10 ered transaction for which a review has been re-  
11 opened for any reason.”.

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

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

15 (1) in paragraph (1), by striking “committee”  
16 and all that follows through “Representatives,” and  
17 inserting “appropriate congressional committees”;

18 (2) in paragraph (2)—

19 (A) by amending subparagraph (A) to read  
20 as follows:

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

24 “(i) a description of the outcome of  
25 each review or investigation, including



1                   whether an agreement was entered into or  
2                   condition was imposed under subsection  
3                   (l)(3)(A) with respect to the transaction  
4                   being reviewed or investigated, and wheth-  
5                   er the President took any action under this  
6                   section with respect to that transaction;

7                   “(ii) basic information on each party  
8                   to each such transaction;

9                   “(iii) the nature of the business activi-  
10                  ties or products of the United States busi-  
11                  ness with which the transaction was en-  
12                  tered into or intended to be entered into;  
13                  and

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

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

17                  “(G) Statistics on compliance reviews con-  
18                  ducted and actions taken by the Committee  
19                  under subsection (l)(6), including subparagraph  
20                  (D) of that subsection, during that period and  
21                  a description of any actions taken by the Com-  
22                  mittee to impose penalties or initiate a unilat-  
23                  eral review pursuant to subsection  
24                  (b)(1)(D)(iii)(I).

1           “(H) Cumulative and, as appropriate,  
2 trend information on the number of declara-  
3 tions filed under subsection (b)(1)(C)(v), the  
4 actions taken by the Committee in response to  
5 declarations, the business sectors involved in  
6 the declarations which have been made, and the  
7 countries involved in such declarations.”;

8           (3) in paragraph (3)—

9           (A) by striking “CRITICAL TECHNOLOGIES”  
10 and all that follows through “In order to as-  
11 sist” and inserting “CRITICAL TECH-  
12 NOLOGIES.—In order to assist”;

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

14           (C) by redesignating clauses (i) and (ii) as  
15 subparagraphs (A) and (B), respectively, and  
16 by moving such subparagraphs, as so redesign-  
17 dated, 2 ems to the left; and

18           (4) by adding at the end the following:

19           “(4) BIENNIAL INTELLIGENCE COMMUNITY RE-  
20 PORT.—

21           “(A) IN GENERAL.—The Director of Na-  
22 tional Intelligence shall transmit to the chair-  
23 person, for inclusion in a classified portion of  
24 each report required to be submitted under  
25 paragraph (1) during calendar year 2018 and

1 every even-numbered year thereafter, the report  
2 of the interagency group established under sub-  
3 paragraph (C).

4 “(B) ELEMENTS.—The report referred to  
5 in subparagraph (A) shall, consistent with na-  
6 tional security, include an identification, anal-  
7 ysis, and explanation of the following:

8 “(i) Any current or projected major  
9 threats to the national security of the  
10 United States with respect to foreign in-  
11 vestment.

12 “(ii) Any strategies used by countries  
13 of special concern to utilize foreign invest-  
14 ment to target the acquisition of critical  
15 technologies, critical materials, or critical  
16 infrastructure.

17 “(iii) Any economic espionage efforts  
18 directed at the United States by a foreign  
19 country, particularly a country of special  
20 concern.

21 “(C) INTELLIGENCE COMMUNITY INTER-  
22 AGENCY WORKING GROUP.—The Director of  
23 National Intelligence—

24 “(i) shall establish an interagency  
25 working group, composed of representa-

1           tives of elements of the intelligence com-  
2           munity, to prepare the report required  
3           under this paragraph;

4           “(ii) shall serve as the chairperson of  
5           the interagency working group; and

6           “(iii) may consult with and seek input  
7           from any member of the Committee, as the  
8           Director considers necessary.

9           “(5) CLASSIFICATION; AVAILABILITY OF RE-  
10          PORT.—

11           “(A) CLASSIFICATION.—All appropriate  
12           portions of the annual report required by para-  
13           graph (1) may be classified.

14           “(B) PUBLIC AVAILABILITY OF UNCLASSI-  
15           FIED VERSION.—An unclassified version of the  
16           report required by paragraph (1), as appro-  
17           priate and consistent with safeguarding na-  
18           tional security and privacy, shall be made avail-  
19           able to the public. Information regarding trade  
20           secrets or business confidential information may  
21           be included in the classified version and may  
22           not be made available to the public in the un-  
23           classified version.

24           “(C) EXCEPTIONS TO FREEDOM OF INFOR-  
25           MATION ACT.—The exceptions to subsection (a)

1 of section 552 of title 5, United States Code,  
2 provided for under subsection (b) of that sec-  
3 tion shall apply with respect to the report re-  
4 quired by paragraph (1).

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

8 “(A) the Committee on Banking, Housing,  
9 and Urban Affairs, the Select Committee on In-  
10 telligence, the Committee on Armed Services,  
11 the Committee on the Judiciary, and the Com-  
12 mittee on Homeland Security and Govern-  
13 mental Affairs of the Senate; and

14 “(B) the Committee on Financial Services,  
15 the Permanent Select Committee on Intel-  
16 ligence, the Committee on Armed Services, the  
17 Committee on the Judiciary, and the Com-  
18 mittee on Homeland Security of the House of  
19 Representatives.”.

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

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

23 (1) by redesignating paragraphs (1) and (2) as  
24 subparagraphs (A) and (B), respectively, and by

1 moving such subparagraphs, as so redesignated, 2  
2 ems to the right;

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

5 “(1) IN GENERAL.—Each notice”; and

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

7 “(2) EFFECT OF FAILURE TO SUBMIT.—The  
8 Committee may not complete a review under this  
9 section of a covered transaction and may recommend  
10 to the President that the President suspend or pro-  
11 hibit the transaction or require divestment under  
12 subsection (d) if the Committee determines that a  
13 party to the transaction has—

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

16 “(B) included false or misleading informa-  
17 tion in a notice or information described in  
18 paragraph (1) or omitted material information  
19 from such notice or information.

20 “(3) APPLICABILITY OF LAW ON FRAUD AND  
21 FALSE STATEMENTS.—The Committee shall pre-  
22 scribe regulations expressly providing for the appli-  
23 cation of section 1001 of title 18, United States  
24 Code, to all information provided to the Committee

1 under this section by any party to a covered trans-  
2 action.”.

3 **SEC. 19. FUNDING.**

4 Section 721 of the Defense Production Act of 1950  
5 (50 U.S.C. 4565) is amended by adding at the end the  
6 following:

7 “(o) FUNDING.—

8 “(1) ESTABLISHMENT OF FUND.—There is es-  
9 tablished in the Treasury of the United States a  
10 fund, to be known as the ‘Committee on Foreign In-  
11 vestment in the United States Fund’ (in this sub-  
12 section referred to as the ‘Fund’).

13 “(2) APPROPRIATION OF FUNDS FOR THE COM-  
14 MITTEE.—There are authorized to be appropriated  
15 to the Fund such sums as may be necessary to per-  
16 form the functions of the Committee.

17 “(3) FILING FEES.—

18 “(A) IN GENERAL.—The Committee may  
19 assess and collect a fee in an amount deter-  
20 mined by the Committee in regulations, to the  
21 extent provided in advance in appropriations  
22 Acts, without regard to section 9701 of title 31,  
23 United States Code, and subject to subpara-  
24 graph (B), with respect to each covered trans-

1           action for which a written notice is submitted to  
2           the Committee under subsection (b)(1)(C)(i).

3                   “(B) LIMITATION ON AMOUNT OF FEE.—  
4           The amount of the fee determined under sub-  
5           paragraph (A) with respect to a covered trans-  
6           action described in that subparagraph may not  
7           exceed an amount equal to the lesser of—

8                           “(i) 1 percent of the value of the  
9                           transaction; or

10                           “(ii) \$300,000, adjusted annually for  
11                           inflation pursuant to regulations prescribed  
12                           by the Committee.

13                   “(C) DEPOSIT AND AVAILABILITY OF  
14           FEES.—Notwithstanding section 3302 of title  
15           31, United States Code, fees collected under  
16           subparagraph (A) shall—

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

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

23                           “(iii) remain available until expended;  
24                           and



1                   “(iv) be in addition to any appropria-  
2                   tions made available to the members of the  
3                   Committee.

4                   “(4) TRANSFER OF FUNDS.—The chairperson  
5                   may transfer any amounts in the Fund to any other  
6                   department or agency represented on the Committee  
7                   for the purpose of addressing emerging needs in car-  
8                   rying out activities under this section. Amounts so  
9                   transferred shall be in addition to any other  
10                  amounts available to that department or agency for  
11                  that purpose.”.

12 **SEC. 20. CENTRALIZATION OF CERTAIN COMMITTEE FUNC-**  
13                   **TIONS.**

14                  Section 721 of the Defense Production Act of 1950  
15                  (50 U.S.C. 4565), as amended by section 19, is further  
16                  amended by adding at the end the following:

17                  “(p) CENTRALIZATION OF CERTAIN COMMITTEE  
18                  FUNCTIONS.—

19                  “(1) IN GENERAL.—The chairperson, in con-  
20                  sultation with the Committee, may centralize certain  
21                  functions of the Committee within the Department  
22                  of the Treasury for the purpose of enhancing inter-  
23                  agency coordination and collaboration in carrying  
24                  out the functions of the Committee under this sec-  
25                  tion.

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

6           “(3) RULE OF CONSTRUCTION.—Nothing in  
7           this section shall be construed as limiting the au-  
8           thority of any department or agency represented on  
9           the Committee to represent its own interests before  
10          the Committee.”.

11 **SEC. 21. UNIFIED BUDGET REQUEST.**

12          Section 721 of the Defense Production Act of 1950  
13 (50 U.S.C. 4565), as amended by sections 19 and 20, is  
14 further amended by adding at the end the following:

15          “(q) UNIFIED BUDGET REQUEST.—

16               “(1) IN GENERAL.—The President may include,  
17               in the budget of the Department of the Treasury for  
18               a fiscal year (as submitted to Congress with the  
19               budget of the President under section 1105(a) of  
20               title 31, United States Code), a unified request for  
21               funding of all operations under this section con-  
22               ducted by some or all of the departments and agen-  
23               cies represented on the Committee.

24               “(2) FORM OF BUDGET REQUEST.—A unified  
25               request under paragraph (1) should be detailed and

1 include the amounts requested for each department  
2 or agency represented on the Committee to carry out  
3 the functions of that department or agency under  
4 this section.”.

5 **SEC. 22. SPECIAL HIRING AUTHORITY.**

6 Section 721 of the Defense Production Act of 1950  
7 (50 U.S.C. 4565), as amended by sections 19, 20, and  
8 21, is further amended by adding at the end the following:

9 “(r) SPECIAL HIRING AUTHORITY.—The heads of  
10 the departments and agencies represented on the Com-  
11 mittee may appoint, without regard to the provisions of  
12 sections 3309 through 3318 of title 5, United States Code,  
13 candidates directly to positions in the competitive service  
14 (as defined in section 2102 of that title) in their respective  
15 departments and agencies to administer this section.”.

16 **SEC. 23. CONFORMING AMENDMENTS.**

17 Section 721 of the Defense Production Act of 1950  
18 (50 U.S.C. 4565), as amended by this Act, is further  
19 amended—

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

22 (2) in subsection (d)(4)(A), by striking “the  
23 foreign interest exercising control” and inserting “a  
24 foreign person that would acquire an interest in a

1 United States business or its assets as a result of  
2 the covered transaction”.

3 **SEC. 24. ASSESSMENT OF NEED FOR ADDITIONAL RE-**  
4 **SOURCES FOR COMMITTEE.**

5 The President may—

6 (1) determine whether and to what extent the  
7 expansion of the responsibilities of the Committee on  
8 Foreign Investment in the United States pursuant  
9 to the amendments made by this Act necessitates  
10 additional resources for the Committee and members  
11 of the Committee to perform their functions under  
12 section 721 of the Defense Production Act of 1950,  
13 as amended by this Act; and

14 (2) if the President determines that additional  
15 resources are necessary, include in the budget of the  
16 President for fiscal year 2019 submitted to Congress  
17 under section 1105(a) of title 31, United States  
18 Code, a request for such additional resources.

19 **SEC. 25. OTHER SENIOR OFFICIALS.**

20 Section 721(k) of the Defense Production Act of  
21 1950 (50 U.S.C. 4565(k)) is amended by striking para-  
22 graph (4) and inserting the following:

23 “(4) OTHER SENIOR OFFICIALS.—

24 “(A) Each member of the Committee, as  
25 set forth in subsection (k)(2)(A-G), shall des-

1           ignite an Assistant Secretary, or the equivalent  
2           thereof, appointed by the President, by and  
3           with the advice and consent of the Senate,  
4           whose duties shall include those related to the  
5           Committee on Foreign Investment in the  
6           United States, as delegated by such member  
7           under this section.

8           “(B) In addition to officials of the Depart-  
9           ment of the Treasury who are otherwise author-  
10          ized pursuant to section 301 of title 31, United  
11          States Code, to be appointed by the President,  
12          by and with the advice and consent of the Sen-  
13          ate, there is authorized at the Department of  
14          the Treasury no more than one appointment  
15          who shall be compensated at the rate provided  
16          for at level III of the Executive Schedule under  
17          section 5314 of title 5 and no more than two  
18          appointments who shall be compensated at level  
19          IV of the Executive Schedule of section 5315 of  
20          title 5. The duties of any such officials ap-  
21          pointed to this section shall include duties re-  
22          lated to the Committee on Foreign Investment  
23          in the United States, as delegated by the Sec-  
24          retary of the Treasury under this section.”.

1 **SEC. 26. AUTHORIZATION FOR DEFENSE ADVANCED RE-**  
2 **SEARCH PROJECTS AGENCY TO LIMIT FOR-**  
3 **EIGN ACCESS TO TECHNOLOGY THROUGH**  
4 **CONTRACTS AND GRANT AGREEMENTS.**

5 (a) **IN GENERAL.**—The Director of the Defense Ad-  
6 vanced Research Projects Agency, or a designee of the Di-  
7 rector, may include in any contract or grant agreement  
8 that the Director enters into with a person, and that is  
9 funded by that Agency, a provision that—

10 (1) limits access by any foreign person to tech-  
11 nology that is the subject of the contract or grant  
12 agreement under terms defined by the Director, in-  
13 cluding by limiting such access to specific periods of  
14 time; and

15 (2) in a case in which the person violates the  
16 prohibition described in paragraph (1), requires the  
17 person to return all amounts that the person re-  
18 ceived from the Agency under the contract or grant  
19 agreement.

20 (b) **TREATMENT OF RETURNED FUNDS.**—Any  
21 amounts returned to the Defense Advanced Research  
22 Projects Agency under subsection (a)(2) shall be credited  
23 to the same appropriations account from which payment  
24 of such amounts was originally made under the contract  
25 or grant agreement described in subsection (a).

1 (c) EXERCISE OF AUTHORITY.—The Director, or the  
2 designee of the Director, may exercise the authority pro-  
3 vided by this section without the need for further approval  
4 by, or regulatory implementation within, the Department  
5 of Defense.

6 **SEC. 27. REQUIREMENTS TO IDENTIFY AND CONTROL CRIT-**  
7 **ICAL TECHNOLOGIES IN EXPORT CONTROL**  
8 **REGULATIONS.**

9 (a) IN GENERAL.—The President shall establish and,  
10 in coordination with the Secretary of Commerce, the Sec-  
11 retary of Defense, the Secretary of Energy, the Secretary  
12 of State, and other departments as appropriate, lead a  
13 regular, ongoing interagency process to identify emerging  
14 and foundational technologies that are essential to the na-  
15 tional security of the United States and that are not—

16 (1) already regulated as critical technologies de-  
17 scribed in section 721(a)(8)(B)(i)-(v) of the Defense  
18 Production Act of 1950 (50 U.S.C. 4565); or

19 (2) hereafter separately identified as appro-  
20 priate for regulation under such cited authorities by  
21 the agency responsible for administering each such  
22 cited authority.

23 (b) PROCESS.—This process shall—

24 (1) be informed by multiple sources of informa-  
25 tion, including open source and classified informa-

1 tion and transactions reviewed by the Committee on  
2 Foreign Investment in the United States; and

3 (2) take into account foreign development of  
4 such emerging and foundational technologies and the  
5 impact controls may have on the development of the  
6 technology in the United States. The Department of  
7 Commerce, and the Departments of Defense, En-  
8 ergy, State, and other departments as appropriate,  
9 shall consider relevant information provided by the  
10 Director of National Intelligence.

11 (c) COMMERCE CONTROLS.—

12 (1) IN GENERAL.—For such emerging and  
13 foundational technology subject to the Export Ad-  
14 ministration Regulations identified through the proc-  
15 ess as described in subsection (a), the Secretary of  
16 Commerce is authorized to establish additional con-  
17 trols on such technology, as appropriate, including  
18 by publishing additional regulations.

19 (2) LEVELS OF CONTROL.—

20 (A) The Secretary is authorized to, in co-  
21 ordination with the Secretary of Defense, the  
22 Secretary of State and other departments as  
23 appropriate, specify the level of control, includ-  
24 ing the requirements for a license or other au-  
25 thorization to export, reexport, or transfer in-



1 country, for the technologies identified pursuant  
2 to subsection (a) taking into account appro-  
3 priate lists of export restricted countries, end  
4 uses and end users.

5 (B) Such levels of control shall, at a min-  
6 imum, require a license to export, reexport, or  
7 transfer in-country the technologies identified  
8 pursuant to paragraph (1) to a country subject  
9 to an embargo, including an arms embargo, by  
10 the United States if not excepted under the reg-  
11 ulations promulgated under paragraph (1) or  
12 otherwise prohibited by law.

13 (C) For license applications submitted pur-  
14 suant to subparagraph (B), the Secretary of  
15 Commerce may, with respect to any joint ven-  
16 ture, joint development agreement, or similar  
17 collaborative arrangement, require the applicant  
18 to identify, in addition to the foreign partici-  
19 pant directly involved in the collaborative busi-  
20 ness arrangement, any foreign person with sig-  
21 nificant ownership interest in the direct foreign  
22 participant.

23 (3) REVIEW OF LICENSE APPLICATIONS.—

24 (A) The procedures set forth in Executive  
25 Order 12981, as amended by Executive Orders

1           13020, 13026, and 13117, or its successor  
2           order shall apply to the review of applications  
3           for licenses submitted to the Department of  
4           Commerce pursuant to paragraph (2).

5                   (B) The review of applications for licenses  
6           submitted to the Department of Commerce pur-  
7           suant to paragraph (2) should take into account  
8           information regarding any threat to the na-  
9           tional security of the United States posed by  
10          the proposed export, reexport, or in-country  
11          transfer of such technology from the Director of  
12          National Intelligence.

13          (d) EXEMPTIONS FOR ORDINARY BUSINESS TRANS-  
14          ACTIONS.—Subsection (c) does not require that the regu-  
15          lations require that the following types of transactions be  
16          subject to a license or other authorization:

17                   (1) The sale or license of a finished item and  
18          the provision of associated technology where the  
19          United States business generally makes such fin-  
20          ished item and associated technology available to its  
21          customers, distributors, or resellers.

22                   (2) The sale or license to a customer of a prod-  
23          uct and the provision of integration or similar serv-  
24          ices, where the United States person generally  
25          makes such services available to all of its customers.

1           (3) The transfer of equipment and the provision  
2 of associated technology to operate such equipment  
3 that could not result in the foreign person using the  
4 equipment to produce a critical technology.

5           (4) The procurement by the United States per-  
6 son of goods or services, including manufacturing  
7 services, from the foreign person, where the foreign  
8 person has no rights to exploit any technology con-  
9 tributed by the United States person other than to  
10 supply the procured goods or services.

11           (5) Any other transaction identified by regula-  
12 tions prescribed under subsection (c)(1).

13 (e) MULTILATERAL CONTROLS.—

14           (1) The Secretary of State, in consultation with  
15 the Secretary of Commerce and the Secretary of De-  
16 fense, and other departments as appropriate, may  
17 propose to the relevant multilateral export control  
18 regimes in the following year that specific technology  
19 identified pursuant to subsection (a) be added to the  
20 list of technologies controlled by such regimes.

21           (2) The Secretary of Commerce for those items  
22 listed on the Commerce Control List, in consultation  
23 with the Secretary of Defense and the Secretary of  
24 State, and the Secretary of State, for those items  
25 list on the United States Munitions List, in con-

1 sultation with the Secretary of Defense, and other  
2 departments as appropriate, may determine whether  
3 national security concerns warrant continued unilat-  
4 eral export controls over technologies proposed for  
5 multilateral control under paragraph (1) if the rel-  
6 evant multilateral export control regime does not  
7 agree to list such technologies on its control list  
8 within 3 years a United States proposal.

9 (f) EMERGING AND FOUNDATIONAL CRITICAL TECH-  
10 NOLOGIES REVIEW REPORT.—The Departments of Com-  
11 merce, State or Energy, as appropriate, shall provide the  
12 Committee on Foreign Investment in the United States  
13 semiannual updates on the results of any key actions  
14 taken pursuant to this section.

15 (g) RULE OF CONSTRUCTION.—Nothing in this Act  
16 shall be construed to alter or limit the authority of the  
17 President or the Secretary of State to designate those  
18 items which shall be considered as defense articles and de-  
19 fense services for the purposes of the Arms Export Control  
20 Act and related legislation, and to regulate such items,  
21 nor the President's authorities under, the Atomic Energy  
22 Act of 1954, the Nuclear Non-Proliferation Act of 1978,  
23 Energy Reorganization Act of 1974, the Export Adminis-  
24 tration Act of 1979 as kept in effect under the Inter-

1 national Emergency Economic Powers Act, or any other  
2 relevant legislation.

3 **SEC. 28. EFFECTIVE DATE.**

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

10 (1) Sections 4, 6, 8, 12, 13, 14, 15, 18, 20, 21,  
11 22, 24, 25, 26, and 27 and the amendments made  
12 by those sections.

13 (2) Section 11 and the amendments made by  
14 that section (except for clause (iii) of section  
15 721(b)(4)(A) of the Defense Production Act of  
16 1950, as added by section 11).

17 (3) Paragraphs (5)(C)(vi), (7), and (14) of sub-  
18 section (a) of section 721 of the Defense Production  
19 Act of 1950, as amended by section 3.

20 (4) Section 721(m)(4) of the Defense Produc-  
21 tion Act of 1950, as amended by section 17.

22 (5) Paragraphs (1), (2), and (4) of subsection  
23 (o) of section 721 of the Defense Production Act of  
24 1950, as amended by section 19.

1 (b) DELAYED APPLICABILITY OF CERTAIN PROVI-  
2 SIONS.—

3 (1) IN GENERAL.—Any provision of or amend-  
4 ment made by this Act not specified in subsection  
5 (a) shall—

6 (A) take effect on the date that is 30 days  
7 after publication in the Federal Register of a  
8 determination by the chairperson of the Com-  
9 mittee on Foreign Investment in the United  
10 States that the regulations, organizational  
11 structure, personnel, and other resources nec-  
12 essary to administer the new provisions are in  
13 place; and

14 (B) apply with respect to any covered  
15 transaction the review or investigation of which  
16 is initiated under section 721 of the Defense  
17 Production Act of 1950 on or after the date de-  
18 scribed in subparagraph (A).

19 (2) NONDELEGATION OF DETERMINATION.—  
20 The determination of the chairperson of the Com-  
21 mittee on Foreign Investment in the United States  
22 under paragraph (1)(A) may not be delegated.

23 (c) AUTHORIZATION FOR PILOT PROGRAMS.—

24 (1) IN GENERAL.—Beginning on the date of the  
25 enactment of this Act and ending on the date de-

1 scribed in subsection (b)(1)(A), the Committee on  
2 Foreign Investment in the United States may, at its  
3 discretion, conduct one or more pilot programs to  
4 implement any authority provided pursuant to any  
5 provision of or amendment made by this Act not  
6 specified in subsection (a).

7 (2) PUBLICATION IN FEDERAL REGISTER.—A  
8 pilot program may not commence until the date that  
9 is 30 days after publication in the Federal Register  
10 of a determination by the chairperson of the Com-  
11 mittee of the scope of and procedures for the pilot  
12 program. That determination may not be delegated.

13 **SEC. 29. SEVERABILITY.**

14 If any provision of this Act or an amendment made  
15 by this Act, or the application of such a provision or  
16 amendment to any person or circumstance, is held to be  
17 invalid, the application of that provision or amendment to  
18 other persons or circumstances and the remainder of the  
19 provisions of this Act and the amendments made by this  
20 Act, shall not be affected thereby.

