

1974—Subsec. (a). Pub. L. 93-426 extended termination date from June 30, 1974, to June 30, 1975.

Pub. L. 93-367 extended termination date from July 30, 1974, to Sept. 30, 1974.

Pub. L. 93-323 extended termination date from June 30, 1974, to July 30, 1974.

1972—Subsec. (a). Pub. L. 92-325 substituted “June 30, 1974” for “June 30, 1972”.

1971—Subsec. (a). Pub. L. 92-15 inserted parenthetical reference to section 4558 of this title.

1970—Subsec. (a). Pub. L. 91-379 extended termination date from Aug. 15, 1970, to June 30, 1972, and inserted reference to section 719 of act Sept. 8, 1950, ch. 932, after reference to section 714 of such act.

Pub. L. 91-371 extended termination date from July 30, 1970, to Aug. 15, 1970.

Pub. L. 91-300 extended termination date from June 30, 1970, to July 30, 1970.

1968—Subsec. (a). Pub. L. 90-370 extended termination date from June 30, 1968, to June 30, 1970.

1966—Subsec. (a). Pub. L. 89-482 extended termination date from June 30, 1966, to June 30, 1968.

1964—Subsec. (a). Pub. L. 88-343 extended termination date from June 30, 1964, to June 30, 1966.

1962—Subsec. (a). Pub. L. 87-505 extended termination date from June 30, 1962, to June 30, 1964.

1960—Subsec. (a). Pub. L. 86-560 extended termination date from June 30, 1960, to June 30, 1962.

1958—Subsec. (a). Pub. L. 85-471 extended termination date from June 30, 1958, to June 30, 1960.

1956—Subsec. (a). Act June 29, 1956, extended termination date from June 30, 1956, to June 30, 1958.

1955—Subsec. (a). Act Aug. 9, 1955, extended termination date from July 31, 1955, to June 30, 1956.

Act June 30, 1955, extended termination date from June 30, 1955, to July 31, 1955.

1953—Subsec. (a). Act June 30, 1953, ch. 171, §11, extended termination date of subchapters I to III from June 30, 1953, to June 30, 1955.

Subsec. (c). Act June 30, 1953, ch. 171, §12, inserted “or the taking of any action (including the making of new guarantees) deemed by a guaranteeing agency to be necessary to accomplish the orderly liquidation, adjustment or settlement of any loans guaranteed under this chapter, including actions deemed necessary to avoid undue hardship to borrowers in reconverting to normal civilian production; and all of the authority granted to the President, guaranteeing agencies, and fiscal agents, under section 4531 of this title shall be applicable to actions taken pursuant to the authority contained in this subsection”.

Act June 30, 1953, ch. 170, added second par.

1952—Subsec. (a). Act June 30, 1952, §121(b), extended termination dates from Apr. 30, 1952, to Apr. 30, 1953, and from June 30, 1952, to June 30, 1953.

Subsec. (d). Act June 30, 1952, §120, added subsec. (d).

1951—Subsec. (a). Acts July 31, 1951, §111, and June 30, 1951. Act July 31, 1951, struck out subsec. (a) relating to termination of certain titles of act Sept. 8, 1950, and substituted present subsec. (a). Act June 30, 1951, extended termination date from June 30, 1951, to July 31, 1951.

Subsec. (b). Act July 31, 1951, redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to termination date of certain titles of act Sept. 8, 1950. Former subsec. (b) was amended by act June 30, 1951, to extend termination date from June 30, 1951, to July 31, 1951.

Subsecs. (c), (d). Act July 31, 1951, §111, redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENTS

Pub. L. 102-193, §2, Dec. 6, 1991, 105 Stat. 1593, provided that: “This Act [amending this section] shall take effect on September 30, 1991.”

Amendment by Pub. L. 102-99 effective Oct. 20, 1990, see section 7 of Pub. L. 102-99, set out as a note under section 4511 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-294 effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as a note under section 4502 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-152 effective at close of Nov. 30, 1975, see section 9 of Pub. L. 94-152, as amended, set out as a note under section 4558 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 9, 1955, effective as of close of July 31, 1955, see section 11 of act Aug. 9, 1955, set out as a note under section 4502 of this title.

§ 4565. Authority to review certain mergers, acquisitions, and takeovers

(a) Definitions

In this section:

(1) Clarification

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

(2) Committee; chairperson

The terms “Committee” and “chairperson” mean the Committee on Foreign Investment in the United States and the chairperson thereof, respectively.

(3) Control

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

(4) Covered transaction

(A) In general

Except as otherwise provided, the term “covered transaction” means—

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

(ii) any transaction described in clauses (ii) through (v) of subparagraph (B) that is proposed, pending, or completed on or after the effective date set forth in section 1727 of the Foreign Investment Risk Review Modernization Act of 2018.

(B) Transactions described

A transaction described in this subparagraph is any of the following:

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

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

(I) is located in the United States;

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

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

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

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

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

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

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

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

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

(iv) Any change in the rights that a foreign person has with respect to a United States business in which the foreign person has an investment, if that change could result in—

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

(II) an investment described in clause (iii).

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

(C) Real estate transactions

(i) Exception for certain real estate transactions

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

(I) a single “housing unit”, as defined by the Census Bureau; or

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

(ii) Definition of close proximity

With respect to a real estate purchase, lease, or concession described in subpara-

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

(D) Other investments

(i) Other investment defined

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

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

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

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

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

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

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

(ii) Material nonpublic technical information defined

(I) In general

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

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

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

(II) Exemption for financial information

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

(iii) Regulations**(I) In general**

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

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

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

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

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

(iv) Specific clarification for investment funds**(I) Treatment of certain investment fund investments**

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

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

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

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

(AA) investment decisions of the fund; or

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

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

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

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

(CC) to unilaterally dismiss, prevent the dismissal of, select, or de-

termine the compensation of the general partner, managing member, or equivalent;

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

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

(II) Treatment of certain waivers**(aa) In general**

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

(bb) Exception

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

(v) Exception for air carriers

For purposes of subparagraph (B)(iii), the term “other investment” does not include an investment involving an air carrier, as defined in section 40102(a)(2) of title 49, that holds a certificate issued under section 41102 of that title.

(vi) Rule of construction

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

(E) Country specification

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

(F) Transfers of certain assets pursuant to bankruptcy proceedings or other defaults

The Committee shall prescribe regulations to clarify that the term “covered transaction” includes any transaction described in subparagraph (B) that arises pursuant to a bankruptcy proceeding or other form of default on debt.

(5) Critical infrastructure

The term “critical infrastructure” means, subject to regulations prescribed by the Com-

mittee, systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security.

(6) Critical technologies

(A) In general

The term “critical technologies” means the following:

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

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

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

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

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

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

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

(vi) Emerging and foundational technologies controlled pursuant to section 4817 of this title.

(B) Recommendations

(i) In general

The chairperson may recommend technologies for identification under the inter-agency process set forth in section 4817(a) of this title.

(ii) Matters informing recommendations

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

(7) Foreign government-controlled transaction

The term “foreign government-controlled transaction” means any covered transaction that could result in the control of any United States business by a foreign government or an

entity controlled by or acting on behalf of a foreign government.

(8) Intelligence community

The term “intelligence community” has the meaning given that term in section 3003(4) of title 50.

(9) Investment

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

(10) Lead agency

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

(11) Party

The term “party” has the meaning given that term in regulations prescribed by the Committee.

(12) United States

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

(13) United States business

The term “United States business” means a person engaged in interstate commerce in the United States.

(b) National security reviews and investigations

(1) National security reviews

(A) In general

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

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

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

(B) Control by foreign government

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

(C) Written notice

(i) In general

(I) In general

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

(II) Comments and acceptance

(aa) In general

Subject to item (cc), the Committee shall provide comments on a draft or formal written notice or accept a for-

mal written notice submitted under subclause (I) with respect to a covered transaction not later than the date that is 10 business days after the date of submission of the draft or formal written notice.

(bb) Completeness

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

(cc) Stipulations required

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

(ii) Withdrawal of notice

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

(iii) Continuing discussions

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

(iv) Inclusion of partnership and side agreements

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

(v) Declarations for certain covered transactions

(I) In general

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

(II) Regulations

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

(III) Committee response to declaration

(aa) In general

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

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

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

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

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

(bb) Timing

The Committee shall take action under item (aa) not later than 30 days after receiving a declaration under this clause.

(cc) Rule of construction

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

(IV) Mandatory declarations

(aa) Regulations

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

(bb) Certain covered transactions with foreign government interests

(AA) In general

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

(BB) Substantial interest defined

In this item, the term “substantial interest” has the meaning given that term in regulations which the Com-

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

(CC) Waiver

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

(cc) Other declarations required by Committee

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

(dd) Exception

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

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

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

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

(ee) Submission of written notice as an alternative

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

(ff) Timing and refiling of submission

(AA) In general

In the regulations prescribed under item (aa), the Committee may not

require a declaration to be submitted under this subclause with respect to a covered transaction more than 45 days before the completion of the transaction.

(BB) Refiling of declaration

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

(gg) Penalties

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

(vi) Stipulations regarding transactions

(I) In general

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

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

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

(II) Basis for stipulation

A written notice submitted under clause (i) or a declaration submitted under clause (v) that includes a stipulation under subclause (I) shall include a description of the basis for the stipulation.

(D) Unilateral initiation of review

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

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

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

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

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

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

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

(E) Covered transactions described

A covered transaction is described in this subparagraph if—

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

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

(F) Timing

Any review under this paragraph shall be completed before the end of the 45-day period beginning on the date of the acceptance of written notice under subparagraph (C) by the chairperson, or beginning on the date of the initiation of the review in accordance with subparagraph (D), as applicable.

(G) Limit on delegation of certain authority

The authority of the Committee to initiate a review under subparagraph (D) may not be delegated to any person, other than the Deputy Secretary or an appropriate Under Secretary of the department or agency represented on the Committee.

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

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

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

(ii) information is reasonably available.

(2) National security investigations

(A) In general

In each case described in subparagraph (B), the Committee shall immediately conduct an investigation of the effects of a covered transaction on the national security of the United States, and take any necessary actions in connection with the transaction to protect the national security of the United States.

(B) Applicability

Subparagraph (A) shall apply in each case in which—

(i) a review of a covered transaction under paragraph (1) results in a determination that—

(I) the transaction threatens to impair the national security of the United States and the risk has not been mitigated during or prior to the review of a covered transaction under paragraph (1);

(II) the transaction is a foreign government-controlled transaction; or

(III) the transaction would result in control of any critical infrastructure of or within the United States by or on behalf of any foreign person, if the Com-

mittee determines that the transaction could impair national security, and that such impairment to national security has not been mitigated by assurances provided or renewed with the approval of the Committee, as described in subsection (l), during the review period under paragraph (1); or

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

(C) Timing

(i) In general

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

(ii) Extension for extraordinary circumstances

(I) In general

In extraordinary circumstances (as defined by the Committee in regulations), the chairperson may, at the request of the head of the lead agency, extend an investigation under subparagraph (A) for one 15-day period.

(II) Nondelegation

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

(III) Notification to parties

If the Committee extends the deadline under subclause (I) with respect to a covered transaction, the Committee shall notify the parties to the transaction of the extension.

(D) Exception

(i) In general

Notwithstanding subparagraph (B)(i), an investigation of a foreign government-controlled transaction described in subclause (II) of subparagraph (B)(i) or a transaction involving critical infrastructure described in subclause (III) of subparagraph (B)(i) shall not be required under this paragraph, if the Secretary of the Treasury and the head of the lead agency jointly determine, on the basis of the review of the transaction under paragraph (1), that the transaction will not impair the national security of the United States.

(ii) Nondelegation

The authority of the Secretary or the head of an agency referred to in clause (i) may not be delegated to any person, other than the Deputy Secretary of the Treasury or the deputy head (or the equivalent thereof) of the lead agency, respectively.

(E) Guidance on certain transactions with national security implications

The Chairperson shall, not later than 180 days after the effective date of the Foreign

Investment and National Security Act of 2007, publish in the Federal Register guidance on the types of transactions that the Committee has reviewed and that have presented national security considerations, including transactions that may constitute covered transactions that would result in control of critical infrastructure relating to United States national security by a foreign government or an entity controlled by or acting on behalf of a foreign government.

(3) Certifications to Congress

(A) Certified notice at completion of review or assessment

Upon completion of a review under this subsection that concludes action under this section, or upon the Committee making a notification under paragraph (1)(C)(v)(III)(aa)(DD), the chairperson and the head of the lead agency shall transmit a certified notice to the members of Congress specified in subparagraph (C)(iii).

(B) Certified report at completion of investigation

As soon as is practicable after completion of an investigation under subsection (b) that concludes action under this section, the chairperson and the head of the lead agency shall transmit to the members of Congress specified in subparagraph (C)(iii) a certified written report (consistent with the requirements of subsection (c)) on the results of the investigation, unless the matter under investigation has been sent to the President for decision.

(C) Certification procedures

(i) In general

Each certified notice and report required under subparagraphs (A) and (B), respectively, shall be submitted to the members of Congress specified in clause (iii), and shall include—

(I) a description of the actions taken by the Committee with respect to the transaction;

(II) a certification that all relevant national security factors have received full consideration; and

(III) whether the transaction is described under clause (i), (ii), (iii), (iv), or (v) of subsection (a)(4)(B).

(ii) Content of certification

Each certified notice and report required under subparagraphs (A) and (B), respectively, shall be signed by the chairperson and the head of the lead agency, and shall state that, in the determination of the Committee, there are no unresolved national security concerns with the transaction that is the subject of the notice or report.

(iii) Members of Congress

Each certified notice and report required under subparagraphs (A) and (B), respectively, shall be transmitted—

(I) to the Majority Leader and the Minority Leader of the Senate;

(II) to the chair and ranking member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of any committee of the Senate having oversight over the lead agency;

(III) to the Speaker and the Minority Leader of the House of Representatives;

(IV) to the chair and ranking member of the Committee on Financial Services of the House of Representatives and of any committee of the House of Representatives having oversight over the lead agency; and

(V) with respect to covered transactions involving critical infrastructure, to the members of the Senate from the State in which the principal place of business of the acquired United States person is located, and the member from the Congressional District in which such principal place of business is located.

(iv) Signatures; limit on delegation

(I) In general

Each certified notice and report required under subparagraphs (A) and (B), respectively, shall be signed by the chairperson and the head of the lead agency, which signature requirement may only be delegated in accordance with subclause (II).

(II) Delegation of certifications

(aa) In general

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

(bb) Limitation on delegation with respect to certain transactions

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

(v) Authority to consolidate documents

Instead of transmitting a separate certified notice or certified report under subparagraph (A) or (B) with respect to each covered transaction, the Committee may, on a monthly basis, transmit such notices and reports in a consolidated document to the Members of Congress specified in clause (iii).

(4) Analysis by Director of National Intelligence

(A) Analysis required

(i) In general

Except as provided in subparagraph (B), the Director of National Intelligence shall

expeditiously carry out a thorough analysis of any threat to the national security of the United States posed by any covered transaction, which shall include the identification of any recognized gaps in the collection of intelligence relevant to the analysis.

(ii) Views of intelligence community

The Director shall seek and incorporate into the analysis required by clause (i) the views of all affected or appropriate agencies of the intelligence community with respect to the transaction.

(iii) Updates

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

(iv) Independence and objectivity

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

(B) Basic threat information

(i) In general

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

(ii) Covered transaction described

A covered transaction is described in this clause if—

(I) the transaction is described in subsection (a)(4)(B)(ii);

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

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

(C) Timing

The analysis required under subparagraph (A) shall be provided by the Director of National Intelligence to the Committee not later than 30 days after the date on which notice of the transaction is accepted by the Committee under paragraph (1)(C), but such analysis may be supplemented or amended, as the Director considers necessary or appropriate, or upon a request for additional information by the Committee. The Director may begin the analysis at any time prior to acceptance of the notice, in accordance with otherwise applicable law.

(D) Interaction with intelligence community

The Director of National Intelligence shall ensure that the intelligence community remains engaged in the collection, analysis, and dissemination to the Committee of any additional relevant information that may become available during the course of any investigation conducted under subsection (b) with respect to a transaction.

(E) Independent role of Director

The Director of National Intelligence shall be a nonvoting, ex officio member of the Committee, and shall be provided with all notices received by the Committee under paragraph (1)(C) regarding covered transactions, but shall serve no policy role on the Committee, other than to provide analysis under subparagraphs (A) and (C) in connection with a covered transaction.

(F) Assessment of operational impact

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

(G) Submission to Congress

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

(5) Submission of additional information

No provision of this subsection shall be construed as prohibiting any party to a covered transaction from submitting additional information concerning the transaction, including any proposed restructuring of the transaction or any modifications to any agreements in connection with the transaction, while any review or investigation of the transaction is ongoing.

(6) Notice of results to parties

The Committee shall notify the parties to a covered transaction of the results of a review or investigation under this section, promptly upon completion of all action under this section.

(7) Regulations

Regulations prescribed under this section shall include standard procedures for—

(A) submitting any notice of a covered transaction to the Committee;

(B) submitting a request to withdraw a covered transaction from review;

(C) resubmitting a notice of a covered transaction that was previously withdrawn from review; and

(D) providing notice of the results of a review or investigation to the parties to the covered transaction, upon completion of all action under this section.

(8) Tolling of deadlines during lapse in appropriations

Any deadline or time limitation under this subsection shall be tolled during a lapse in appropriations.

(c) Confidentiality of information**(1) In general**

Except as provided in paragraph (2), any information or documentary material filed with the President or the President's designee pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public.

(2) Exceptions

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

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

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

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

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

(3) Cooperation with allies and partners**(A) In general**

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

(B) Requirements

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

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

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

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

(d) Action by the President**(1) In general**

Subject to paragraph (4), the President may take such action for such time as the Presi-

dent considers appropriate to suspend or prohibit any covered transaction that threatens to impair the national security of the United States.

(2) Announcement by the President

The President shall announce the decision on whether or not to take action pursuant to paragraph (1) with respect to a covered transaction not later than 15 days after the earlier of—

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

(B) the date on which the Committee otherwise refers the transaction to the President under subsection (1)(2).

(3) Enforcement

The President may direct the Attorney General of the United States to seek appropriate relief, including divestment relief, in the district courts of the United States, in order to implement and enforce this subsection.

(4) Findings of the President

The President may exercise the authority conferred by paragraph (1), only if the President finds that—

(A) there is credible evidence that leads the President to believe that a foreign person that would acquire an interest in a United States business or its assets as a result of the covered transaction might take action that threatens to impair the national security; and

(B) provisions of law, other than this section and the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.], do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

(5) Factors to be considered

For purposes of determining whether to take action under paragraph (1), the President shall consider, among other factors each of the factors described in subsection (f), as appropriate.

(e) Actions and findings nonreviewable**(1) In general**

The actions of the President under paragraph (1) of subsection (d) and the findings of the President under paragraph (4) of subsection (d) shall not be subject to judicial review.

(2) Civil actions

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

(3) Procedures for review of privileged information

If a civil action challenging an action or finding under this section is brought, and the court determines that protected information in the administrative record, including classified or other information subject to privilege or protections under any provision of law, is necessary to resolve the challenge, that infor-

mation shall be submitted ex parte and in camera to the court and the court shall maintain that information under seal.

(4) Applicability of use of information provisions

The use of information provisions of sections 1806, 1825, 1845, and 1881e of this title shall not apply in a civil action brought under this subsection.

(f) Factors to be considered

For purposes of this section, the President or the President's designee may, taking into account the requirements of national security, consider—

(1) domestic production needed for projected national defense requirements,

(2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services,

(3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security,

(4) the potential effects of the proposed or pending transaction on sales of military goods, equipment, or technology to any country—

(A) identified by the Secretary of State—

(i) under section 4605(j)¹ of this title, as a country that supports terrorism;

(ii) under section 4605(l)¹ of this title, as a country of concern regarding missile proliferation; or

(iii) under section 4605(m)¹ of this title, as a country of concern regarding the proliferation of chemical and biological weapons;

(B) identified by the Secretary of Defense as posing a potential regional military threat to the interests of the United States; or

(C) listed under section 2139a(c) of title 42 on the “Nuclear Non-Proliferation-Special Country List” (15 C.F.R. Part 778, Supplement No. 4) or any successor list;

(5) the potential effects of the proposed or pending transaction on United States international technological leadership in areas affecting United States national security;

(6) the potential national security-related effects on United States critical infrastructure, including major energy assets;

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

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

(9) as appropriate, and particularly with respect to transactions requiring an investigation under subsection (b)(1)(B), a review of the current assessment of—

(A) the adherence of the subject country to nonproliferation control regimes, including treaties and multilateral supply guidelines,

which shall draw on, but not be limited to, the annual report on “Adherence to and Compliance with Arms Control, Nonproliferation and Disarmament Agreements and Commitments” required by section 2593a of title 22;

(B) the relationship of such country with the United States, specifically on its record on cooperating in counter-terrorism efforts, which shall draw on, but not be limited to, the report of the President to Congress under section 7120 of the Intelligence Reform and Terrorism Prevention Act of 2004; and

(C) the potential for transshipment or diversion of technologies with military applications, including an analysis of national export control laws and regulations;

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

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

(g) Additional information to Congress; confidentiality

(1) Briefing requirement on request

The Committee shall, upon request from any Member of Congress specified in subsection (b)(3)(C)(iii), promptly provide briefings on a covered transaction for which all action has concluded under this section, or on compliance with a mitigation agreement or condition imposed with respect to such transaction, on a classified basis, if deemed necessary by the sensitivity of the information. Briefings under this paragraph may be provided to the congressional staff of such a Member of Congress having appropriate security clearance.

(2) Application of confidentiality provisions

(A) In general

The disclosure of information under this subsection shall be consistent with the requirements of subsection (c). Members of Congress and staff of either House of Congress or any committee of Congress, shall be subject to the same limitations on disclosure of information as are applicable under subsection (c).

(B) Proprietary information

Proprietary information which can be associated with a particular party to a covered transaction shall be furnished in accordance with subparagraph (A) only to a committee of Congress, and only when the committee provides assurances of confidentiality, unless such party otherwise consents in writing to such disclosure.

(h) Regulations

(1) In general

The President shall direct, subject to notice and comment, the issuance of regulations to carry out this section.

(2) Content

Regulations issued under this subsection shall—

¹ See References in Text note below.

(A) provide for the imposition of civil penalties for any violation of this section, including any mitigation agreement entered into, conditions imposed, or order issued pursuant to this section;

(B) to the extent possible—

- (i) minimize paperwork burdens; and
- (ii) coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law;

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

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

- (i) consider the factors specified in subsection (f); and
- (ii) as appropriate, require parties to provide to the Committee the information necessary to consider such factors.

(i) Effect on other law

No provision of this section shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of Federal law, including the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.], or any other authority of the President or the Congress under the Constitution of the United States.

(j) Technology risk assessments

In any case in which an assessment of the risk of diversion of defense critical technology is performed by a designee of the President, a copy of such assessment shall be provided to any other designee of the President responsible for reviewing or investigating a transaction under this section.

(k) Committee on Foreign Investment in the United States

(1) Establishment

The Committee on Foreign Investment in the United States, established pursuant to Executive Order No. 11858, shall be a multi agency committee to carry out this section and such other assignments as the President may designate.

(2) Membership

The Committee shall be comprised of the following members or the designee of any such member:

- (A) The Secretary of the Treasury.
- (B) The Secretary of Homeland Security.
- (C) The Secretary of Commerce.
- (D) The Secretary of Defense.
- (E) The Secretary of State.
- (F) The Attorney General of the United States.
- (G) The Secretary of Energy.
- (H) The Secretary of Labor (nonvoting, ex officio).
- (I) The Director of National Intelligence (nonvoting, ex officio).
- (J) The heads of any other executive department, agency, or office, as the President

determines appropriate, generally or on a case-by-case basis.

(3) Chairperson

The Secretary of the Treasury shall serve as the chairperson of the Committee.

(4) Hiring authority

(A) Senior officials

(i) In general

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

(ii) Department of the Treasury

(I) In general

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

(II) Assistant Secretary for Investment Security

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

(B) Special hiring authority

The heads of the departments and agencies represented on the Committee may appoint, without regard to the provisions of sections 3309 through 3318 of title 5, candidates directly to positions in the competitive service (as defined in section 2102 of that title) in their respective departments and agencies. The primary responsibility of positions authorized under the preceding sentence shall be to administer this section.

(5) Designation of lead agency

The Secretary of the Treasury shall designate, as appropriate, a member or members of the Committee to be the lead agency or agencies on behalf of the Committee—

- (A) for each covered transaction, and for negotiating any mitigation agreements or other conditions necessary to protect national security; and
- (B) for all matters related to the monitoring of the completed transaction, to ensure compliance with such agreements or conditions and with this section.

(6) Other members

The chairperson shall consult with the heads of such other Federal departments, agencies, and independent establishments in any review

or investigation under subsection (a), as the chairperson determines to be appropriate, on the basis of the facts and circumstances of the covered transaction under review or investigation (or the designee of any such department or agency head).

(7) Meetings

The Committee shall meet upon the direction of the President or upon the call of the chairperson, without regard to section 552b of title 5 (if otherwise applicable).

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

(1) Suspension of transactions

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

(2) Referral to President

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

(3) Mitigation

(A) Agreements and conditions

(i) In general

The Committee or a lead agency may, on behalf of the Committee, negotiate, enter into or impose, and enforce any agreement or condition with any party to the covered transaction in order to mitigate any risk to the national security of the United States that arises as a result of the covered transaction.

(ii) Abandonment of transactions

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

(iii) Agreements and conditions relating to completed transactions

The Committee or lead agency, as the case may be, may negotiate, enter into or impose, and enforce any agreement or condition with any party to a completed covered transaction in order to mitigate any interim risk to the national security of the United States that may arise as a result of the covered transaction until such time that the Committee has completed action pursuant to subsection (b) or the President has taken action pursuant to subsection (d) with respect to the transaction.

(B) Treatment of outdated agreements or conditions

The chairperson and the head of the lead agency shall periodically review the appropriateness of an agreement or condition imposed under subparagraph (A) and terminate, phase out, or otherwise amend the agreement or condition if a threat no longer requires mitigation through the agreement or condition.

(C) Limitations

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

- (i) be effective;
- (ii) allow for compliance with the terms of the agreement or condition in an appropriately verifiable way; and
- (iii) enable effective monitoring of compliance with and enforcement of the terms of the agreement or condition.

(D) Jurisdiction

The provisions of section 4556(b) of this title shall apply to any mitigation agreement entered into or condition imposed under subparagraph (A).

(4) Risk-based analysis required

(A) In general

Any determination of the Committee to suspend a covered transaction under paragraph (1), to refer a covered transaction to the President under paragraph (2), or to negotiate, enter into or impose, or enforce any agreement or condition under paragraph (3)(A) with respect to a covered transaction, shall be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered transaction, which shall include an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction.

(B) Actions of members of the Committee

(i) In general

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

(ii) Failure to reach consensus

If the Committee fails to reach consensus with respect to a recommendation

under clause (i) regarding a covered transaction, the members of the Committee who support an alternative recommendation shall produce—

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

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

(C) Definitions

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

(5) Tracking authority for withdrawn notices

(A) In general

If any written notice of a covered transaction that was submitted to the Committee under this section is withdrawn before any review or investigation by the Committee under subsection (b) is completed, the Committee shall establish, as appropriate—

(i) interim protections to address specific concerns with such transaction that have been raised in connection with any such review or investigation pending any resubmission of any written notice under this section with respect to such transaction and further action by the President under this section;

(ii) specific time frames for resubmitting any such written notice; and

(iii) a process for tracking any actions that may be taken by any party to the transaction, in connection with the transaction, before the notice referred to in clause (ii) is resubmitted.

(B) Designation of agency

The lead agency, other than any entity of the intelligence community, shall, on behalf of the Committee, ensure that the requirements of subparagraph (A) with respect to any covered transaction that is subject to such subparagraph are met.

(6) Negotiation, modification, monitoring, and enforcement

(A) Designation of lead agency

The lead agency shall negotiate, modify, monitor, and enforce, on behalf of the Committee, any agreement entered into or condition imposed under paragraph (3) with respect to a covered transaction, based on the expertise with and knowledge of the issues related to such transaction on the part of the designated department or agency. The lead agency may, at its discretion, seek and receive the assistance of other departments or agencies in carrying out the purposes of this paragraph.

(B) Reporting by designated agency

The lead agency in connection with any agreement entered into or condition imposed with respect to a covered transaction shall—

(i) provide periodic reports to the Committee on any material modification to any such agreement or condition imposed with respect to the transaction; and

(ii) ensure that any material modification to any such agreement or condition is reported to the Director of National Intelligence, the Attorney General of the United States, and any other Federal department or agency that may have a material interest in such modification.

(C) Compliance plans

(i) In general

In the case of a covered transaction with respect to which an agreement is entered into under paragraph (3)(A), the Committee or lead agency, as the case may be, shall formulate, adhere to, and keep updated a plan for monitoring compliance with the agreement.

(ii) Elements

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

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

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

(III) how frequently compliance reviews will be conducted;

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

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

(D) Effect of lack of compliance

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

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

(ii) require that the party or parties submit a written notice under clause (i) of subsection (b)(1)(C) or a declaration under clause (v) of that subsection with respect to a covered transaction initiated after the date of the determination of noncompliance and before the date that is 5 years after the date of the determination to the Committee to initiate a review of the transaction under subsection (b); or

(iii) seek injunctive relief.

(E) Use of independent entities to monitor compliance

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

(F) Successors and assigns

Any agreement or condition entered into or imposed under paragraph (3)(A) shall be considered binding on all successors and assigns unless and until the agreement or condition terminates on its own terms or is otherwise terminated by the Committee in its sole discretion.

(G) Additional compliance measures

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

(m) Annual report to Congress**(1) In general**

The chairperson shall transmit a report to the chairman and ranking member of the committee of jurisdiction in the Senate and the House of Representatives, before July 31 of each year on all of the reviews and investigations of covered transactions completed under subsection (b) during the 12-month period covered by the report.

(2) Contents of report relating to covered transactions

The annual report under paragraph (1) shall contain the following information, with respect to each covered transaction, for the reporting period:

(A) A list of all notices filed and all reviews or investigations of covered transactions completed during the period, with—

(i) a description of the outcome of each review or investigation, including whether an agreement was entered into or condition was imposed under subsection (l)(3)(A) with respect to the transaction being reviewed or investigated, and whether the President took any action under this section with respect to that transaction;

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

(iii) the nature of the business activities or products of the United States business

with which the transaction was entered into or intended to be entered into; and

(iv) information about any withdrawal from the process.

(B) Specific, cumulative, and, as appropriate, trend information on the numbers of filings, investigations, withdrawals, and decisions or actions by the President under this section.

(C) Cumulative and, as appropriate, trend information on the business sectors involved in the filings which have been made, and the countries from which the investments have originated.

(D) Information on whether companies that withdrew notices to the Committee in accordance with subsection (b)(1)(C)(ii) have later refiled such notices, or, alternatively, abandoned the transaction.

(E) The types of security arrangements and conditions the Committee has used to mitigate national security concerns about a transaction, including a discussion of the methods that the Committee and any lead agency are using to determine compliance with such arrangements or conditions.

(F) A detailed discussion of all perceived adverse effects of covered transactions on the national security or critical infrastructure of the United States that the Committee will take into account in its deliberations during the period before delivery of the next report, to the extent possible.

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

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

(I) A description of—

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

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

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

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

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

(3) Contents of report relating to critical technologies

In order to assist Congress in its oversight responsibilities with respect to this section, the President and such agencies as the President shall designate shall include in the annual report submitted under paragraph (1)—

(A) an evaluation of whether there is credible evidence of a coordinated strategy by 1 or more countries or companies to acquire United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer;

(B) an evaluation of whether there are industrial espionage activities directed or directly assisted by foreign governments against private United States companies aimed at obtaining commercial secrets related to critical technologies; and

(C) a description of the technologies recommended by the chairperson under subsection (a)(6)(B) for identification under the interagency process set forth in section 4817(a) of this title.

(4) Form of report

(A) In general

All appropriate portions of the annual report under paragraph (1) may be classified. An unclassified version of the report, as appropriate, consistent with safeguarding national security and privacy, shall be made available to the public.

(B) Inclusion in classified version

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

(C) Inclusions in unclassified version

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

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

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

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

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

(v) the median and average number of days that elapsed between acceptance of a declaration by the Committee and a re-

sponse described in subsection (b)(1)(C)(v)(III);

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Certification of notices and assurances

(1) In general

Each notice, and any followup information, submitted under this section and regulations prescribed under this section to the President or the Committee by a party to a covered transaction, and any information submitted

by any such party in connection with any action for which a report is required pursuant to paragraph (6)(B) of subsection (I), with respect to the implementation of any mitigation agreement or condition described in paragraph (3)(A) of subsection (I), or any material change in circumstances, shall be accompanied by a written statement by the chief executive officer or the designee of the person required to submit such notice or information certifying that, to the best of the knowledge and belief of that person—

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

(B) the notice or information is accurate and complete in all material respects.

(2) Effect of failure to submit

The Committee may not complete a review under this section of a covered transaction and may recommend to the President that the President suspend or prohibit the transaction under subsection (d) if the Committee determines that a party to the transaction has—

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

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

(3) Applicability of law on fraud and false statements

The Committee shall prescribe regulations expressly providing for the application of section 1001 of title 18, United States Code, to all information provided to the Committee under this section by any party to a covered transaction.

(o) Testimony

(1) In general

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

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

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

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

(ii) monitor and enforce mitigation agreements; and

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

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

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

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

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

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

(II) expedite such reviews when appropriate; and

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

(2) Sunset

This subsection shall have no force or effect on or after the date that is 7 years after August 13, 2018.

(p) Funding

(1) Establishment of Fund

There is established in the Treasury of the United States a fund, to be known as the “Committee on Foreign Investment in the United States Fund” (in this subsection referred to as the “Fund”), to be administered by the chairperson.

(2) Authorization of appropriations for the Committee

There are authorized to be appropriated to the Fund for each of fiscal years 2019 through 2023 \$20,000,000 to perform the functions of the Committee.

(3) Filing fees

(A) In general

The Committee may assess and collect a fee in an amount determined by the Committee in regulations, to the extent provided in advance in appropriations Acts, without regard to section 9701 of title 31, and subject to subparagraph (B), with respect to each covered transaction for which a written notice is submitted to the Committee under subsection (b)(1)(C)(i). The total amount of fees collected under this paragraph may not exceed the costs of administering this section.

(B) Determination of amount of fee

(i) In general

The amount of the fee to be assessed under subparagraph (A) with respect to a covered transaction—

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

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

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

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

(aa) the effect of the fee on small business concerns (as defined in section 632 of title 15);

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

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

(dd) such other matters as the Committee considers appropriate.

(ii) Updates

The Committee shall periodically reconsider and adjust the amount of the fee to be assessed under subparagraph (A) with respect to a covered transaction to ensure that the amount of the fee does not exceed the costs of administering this section and otherwise remains appropriate.

(C) Deposit and availability of fees

Notwithstanding section 3302 of title 31, fees collected under subparagraph (A) shall—

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

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

(iii) remain available until expended; and

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

(D) Study on prioritization fee

(i) In general

Not later than 270 days after August 13, 2018, the chairperson, in consultation with the Committee, shall complete a study of the feasibility and merits of establishing a fee or fee scale to prioritize the timing of the response of the Committee to a draft or formal written notice during the period before the Committee accepts the formal written notice under subsection (b)(1)(C)(i), in the event that the Committee is unable to respond during the time required by subclause (II) of that subsection because of an unusually large influx of notices, or for other reasons.

(ii) Submission to Congress

After completing the study required by clause (i), the chairperson, or a designee of the chairperson, shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the findings of the study.

(4) Transfer of funds

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

(q) Centralization of certain Committee functions

(1) In general

The chairperson, in consultation with the Committee, may centralize certain functions

of the Committee within the Department of the Treasury for the purpose of enhancing interagency coordination and collaboration in carrying out the functions of the Committee under this section.

(2) Functions

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

(3) Rule of construction

Nothing in this section shall be construed as limiting the authority of any department or agency represented on the Committee to represent its own interests before the Committee.

(Sept. 8, 1950, ch. 932, title VII, §721, as added Pub. L. 100-418, title V, §5021, Aug. 23, 1988, 102 Stat. 1425; amended Pub. L. 102-484, div. A, title VIII, §837(a)-(c), (e), Oct. 23, 1992, 106 Stat. 2463-2465; Pub. L. 102-558, title I, §163, Oct. 28, 1992, 106 Stat. 4219; Pub. L. 103-359, title VIII, §809(d), Oct. 14, 1994, 108 Stat. 3454; Pub. L. 110-49, §§2-7(b), 8-10, July 26, 2007, 121 Stat. 246, 252-257, 259; Pub. L. 115-232, div. A, title XVII, §§1703-1717(a), 1718, 1719(a), 1720, 1721(c), 1723-1725, Aug. 13, 2018, 132 Stat. 2177-2193, 2197, 2202, 2204-2206; Pub. L. 116-283, div. H, title XCVII, §9721(a), Jan. 1, 2021, 134 Stat. 4839.)

Editorial Notes

REFERENCES IN TEXT

Section 1727 of the Foreign Investment Risk Review Modernization Act of 2018, referred to in subsec. (a)(4)(A)(ii), is section 1727 of Pub. L. 115-232. Section 1727(a), (b) of Pub. L. 115-232 is set out as an Effective Date of 2018 Amendment note under this section.

For the effective date of the Foreign Investment and National Security Act of 2007, referred to in subsec. (b)(2)(E), see section 12 of Pub. L. 110-49, set out as an Effective Date of 2007 Amendment note under section 5315 of Title 5, Government Organization and Employees.

The International Emergency Economic Powers Act, referred to in subsecs. (d)(4)(B) and (i), is title II of Pub. L. 95-223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

Section 4605 of this title, referred to in subsec. (f)(4)(A), was repealed by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232.

Section 7120 of the Intelligence Reform and Terrorism Prevention Act of 2004, referred to in subsec. (f)(9)(B), is section 7120 of Pub. L. 108-458, title VII, Dec. 17, 2004, 118 Stat. 3803, which is not classified to the Code.

Executive Order 11858, referred to in subsec. (k)(1), is set out as a note under this section.

CODIFICATION

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

AMENDMENTS

2021—Subsec. (b)(3)(A). Pub. L. 116-283, §9721(a)(1), inserted “or assessment” after “review” in heading and substituted “this subsection that concludes action under this section, or upon the Committee making a

notification under paragraph (1)(C)(v)(III)(aa)(DD)” for “subsection (b) that concludes action under this section” in text.

Subsec. (b)(3)(C)(i)(III). Pub. L. 116-283, §9721(a)(2), added subcl. (III).

2018—Subsec. (a). Pub. L. 115-232, §1703, amended subsec. (a) generally. Prior to amendment, subsec. (a) defined the terms “Committee”, “chairperson”, “control”, “covered transaction”, “foreign government-controlled transaction”, “critical infrastructure”, “critical technologies”, and “lead agency” for purposes of this section, and clarified construction of the term “national security” for purposes of this section.

Subsec. (b)(1)(C)(i). Pub. L. 115-232, §1704, designated existing provisions as subcl. (I), inserted heading, and added subcl. (II).

Subsec. (b)(1)(C)(iv) to (vi). Pub. L. 115-232, §§1705-1707, added cls. (iv) to (vi).

Subsec. (b)(1)(D). Pub. L. 115-232, §1708(2)(A), substituted “subparagraph (G)” for “subparagraph (F)” in introductory provisions.

Subsec. (b)(1)(D)(i). Pub. L. 115-232, §1708(2)(B), inserted “(other than a covered transaction described in subparagraph (E))” after “any covered transaction”.

Subsec. (b)(1)(D)(ii). Pub. L. 115-232, §1708(2)(C), added cl. (ii) and struck out former cl. (ii) which read as follows: “any covered transaction that has previously been reviewed or investigated under this section, if any party to the transaction submitted false or misleading material information to the Committee in connection with the review or investigation or omitted material information, including material documents, from information submitted to the Committee; or”.

Subsec. (b)(1)(D)(iii). Pub. L. 115-232, §1708(2)(D)(i), substituted “any covered transaction described in subparagraph (E),” for “any covered transaction that has previously been reviewed or investigated under this section,” in introductory provisions.

Subsec. (b)(1)(D)(iii)(I). Pub. L. 115-232, §1725(1)(A), substituted “subsection (l)(3)(A)” for “subsection (l)(1)(A)”.

Pub. L. 115-232, §1708(2)(D)(ii), struck out “intentionally” before “materially breaches”.

Subsec. (b)(1)(D)(iii)(II). Pub. L. 115-232, §1708(2)(D)(iii), substituted “a material breach” for “an intentional material breach”.

Subsec. (b)(1)(D)(iii)(III). Pub. L. 115-232, §1708(2)(D)(iv), inserted “adequate and appropriate” before “remedies or enforcement tools”.

Subsec. (b)(1)(E). Pub. L. 115-232, §1708(3), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (b)(1)(F). Pub. L. 115-232, §1709(1), which directed the substitution of “45” for “30”, was executed by substituting “45-day” for “30-day”, to reflect the probable intent of Congress.

Pub. L. 115-232, §1708(1), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Subsec. (b)(1)(G). Pub. L. 115-232, §1708(1), redesignated subpar. (F) as (G).

Subsec. (b)(1)(H). Pub. L. 115-232, §1710, added subpar. (H).

Subsec. (b)(2)(B)(i)(I). Pub. L. 115-232, §1725(1)(B), substituted “the risk” for “that threat”.

Subsec. (b)(2)(C). Pub. L. 115-232, §1709(2), added subpar. (C) and struck out former subpar. (C). Prior to amendment, text read as follows: “Any investigation under subparagraph (A) shall be completed before the end of the 45-day period beginning on the date on which the investigation commenced.”

Subsec. (b)(3)(C)(i)(II). Pub. L. 115-232, §1711(1), added subcl. (II) and struck out former subcl. (II) which read as follows: “identification of the determinative factors considered under subsection (f).”

Subsec. (b)(3)(C)(iv)(II). Pub. L. 115-232, §1711(2), added subcl. (II) and struck out former subcl. (II) which was comprised of introductory provisions and items (aa) and (bb) relating to limitation on delegation of certifications.

Subsec. (b)(3)(C)(v). Pub. L. 115-232, §1711(3), added cl. (v).

Subsec. (b)(4)(A). Pub. L. 115-232, §1712(1), added subpar. (A) and struck out former subpar. (A). Prior to amendment, text read as follows: “The Director of National Intelligence shall expeditiously carry out a thorough analysis of any threat to the national security of the United States posed by any covered transaction. The Director of National Intelligence shall also seek and incorporate the views of all affected or appropriate intelligence agencies with respect to the transaction.”

Subsec. (b)(4)(B) to (E). Pub. L. 115-232, §1712(2)-(4), added subpar. (B), redesignated former subpars. (B) to (D) as (C) to (E), respectively, and in subpar. (C) substituted “30” for “20”.

Subsec. (b)(4)(F), (G). Pub. L. 115-232, §1712(5), added subpars. (F) and (G).

Subsec. (b)(8). Pub. L. 115-232, §1709(3), added par. (8).

Subsec. (c)(1). Pub. L. 115-232, §1713(1), (2), designated existing provisions as par. (1), inserted heading, substituted “Except as provided in paragraph (2), any information” for “Any information”, and struck out at end “, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this subsection shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.”

Subsec. (c)(2), (3). Pub. L. 115-232, §1713(3), added pars. (2) and (3).

Subsec. (d)(2). Pub. L. 115-232, §1714, substituted “with respect to a covered transaction not later than 15 days after the earlier of—

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

“(B) the date on which the Committee otherwise refers the transaction to the President under subsection (l)(2)”

for “not later than 15 days after the date on which an investigation described in subsection (b) is completed”.

Subsec. (d)(4)(A). Pub. L. 115-232, §1725(2), substituted “a foreign person that would acquire an interest in a United States business or its assets as a result of the covered transaction” for “the foreign interest exercising control”.

Subsec. (e). Pub. L. 115-232, §1715, designated existing provisions as par. (1), inserted heading, and added pars. (2) to (4).

Subsec. (h)(2). Pub. L. 115-232, §1716(1), (2), redesignated par. (3) as (2) and struck out former par. (2). Prior to amendment, text read as follows: “Regulations issued under this section shall become effective not later than 180 days after the effective date of the Foreign Investment and National Security Act of 2007.”

Subsec. (h)(2)(A). Pub. L. 115-232, §1716(3)(A), substituted “including any mitigation agreement entered into, conditions imposed, or order issued pursuant to this section” for “including any mitigation agreement entered into or conditions imposed pursuant to subsection (l)”.

Subsec. (h)(2)(D). Pub. L. 115-232, §1716(3)(B)-(D), added subpar. (D).

Subsec. (h)(3). Pub. L. 115-232, §1716(2), redesignated par. (3) as (2).

Subsec. (j). Pub. L. 115-232, §1725(3), substituted “transaction” for “merger, acquisition, or takeover”.

Subsec. (k)(4). Pub. L. 115-232, §1717(a), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: “There shall be established an additional position of Assistant Secretary of the Treasury, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary appointed under this paragraph shall report directly to the Undersecretary of the Treasury for International Affairs. The duties of the Assistant Secretary shall include duties related to the Committee on Foreign Investment in the United States, as delegated by the Secretary of the Treasury under this section.”

Subsec. (l). Pub. L. 115-232, §1718(1), substituted “Actions by the Committee to address national security risks” for “Mitigation, tracking, and postconsumption monitoring and enforcement” in heading.

Subsec. (l)(1), (2). Pub. L. 115-232, § 1718(3), added pars. (1) and (2). Former pars. (1) and (2) redesignated (3) and (5), respectively.

Subsec. (l)(3). Pub. L. 115-232, § 1718(2), redesignated par. (1) as (3). Former par. (3) redesignated (6).

Subsec. (l)(3)(A). Pub. L. 115-232, § 1718(4)(A), substituted "Agreements and conditions" for "In general" in subpar. heading, designated existing provisions as cl. (i), inserted cl. heading, substituted "risk" for "threat", and added cls. (ii) and (iii).

Subsec. (l)(3)(B) to (D). Pub. L. 115-232, § 1718(4)(B), added subpars. (B) to (D) and struck out former subpar. (B). Prior to amendment, text of subpar. (B) read as follows: "Any agreement entered into or condition imposed under subparagraph (A) shall be based on a risk-based analysis, conducted by the Committee, of the threat to national security of the covered transaction."

Subsec. (l)(4). Pub. L. 115-232, § 1718(5), added par. (4).

Subsec. (l)(5). Pub. L. 115-232, § 1718(2), redesignated par. (2) as (5).

Subsec. (l)(5)(B). Pub. L. 115-232, § 1718(6), struck out "(as defined in the National Security Act of 1947)" after "intelligence community".

Subsec. (l)(6). Pub. L. 115-232, § 1718(2), redesignated par. (3) as (6).

Subsec. (l)(6)(A). Pub. L. 115-232, § 1718(7)(A), substituted "paragraph (3)" for "paragraph (1)" and "The lead agency may, at its discretion, seek and receive the assistance of other departments or agencies in carrying out the purposes of this paragraph" for "Nothing in this paragraph shall prohibit other departments or agencies in assisting the lead agency in carrying out the purposes of this paragraph".

Subsec. (l)(6)(B). Pub. L. 115-232, § 1718(7)(B), struck out "(i) Modification reports" before "The lead agency", redesignated former subcls. (I) and (II) as cls. (i) and (ii), respectively, and struck out former cl. (ii). Prior to amendment, text of cl. (ii) read as follows: "The Committee shall develop and agree upon methods for evaluating compliance with any agreement entered into or condition imposed with respect to a covered transaction that will allow the Committee to adequately assure compliance, without—

"(I) unnecessarily diverting Committee resources from assessing any new covered transaction for which a written notice has been filed pursuant to subsection (b)(1)(C), and if necessary, reaching a mitigation agreement with or imposing a condition on a party to such covered transaction or any covered transaction for which a review has been reopened for any reason; or

"(II) placing unnecessary burdens on a party to a covered transaction."

Subsec. (l)(6)(C) to (G). Pub. L. 115-232, § 1718(7)(C), added subpars. (C) to (G).

Subsec. (m)(2)(A). Pub. L. 115-232, § 1719(a)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "A list of all notices filed and all reviews or investigations completed during the period, with basic information on each party to the transaction, the nature of the business activities or products of all pertinent persons, along with information about any withdrawal from the process, and any decision or action by the President under this section."

Subsec. (m)(2)(G) to (K). Pub. L. 115-232, § 1719(a)(1)(B), added subpars. (G) to (K).

Subsec. (m)(3). Pub. L. 115-232, § 1719(a)(2), struck out "(A) In general" before "In order to assist", redesignated former cls. (i) and (ii) as subpars. (A) and (B), respectively, added subpar. (C), and struck out former subpar. (B), which related to release of an unclassified version of the report.

Subsec. (m)(4). Pub. L. 115-232, § 1719(a)(3), added par. (4).

Subsec. (n). Pub. L. 115-232, § 1720, designated existing provisions as par. (1), inserted heading, in introductory provisions substituted "paragraph (6)(B)" for "paragraph (3)(B)" and "paragraph (3)(A)" for "paragraph (1)(A)", redesignated former pars. (1) and (2) as subpars.

(A) and (B), respectively, of par. (1), and added pars. (2) and (3).

Subsec. (o). Pub. L. 115-232, § 1721(c), added subsec. (o).

Subsec. (p). Pub. L. 115-232, § 1723, added subsec. (p).

Subsec. (q). Pub. L. 115-232, § 1724, added subsec. (q).

2007—Subsec. (a). Pub. L. 110-49, § 2, added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The President or the President's designee may make an investigation to determine the effects on national security of mergers, acquisitions, and takeovers proposed or pending on or after August 23, 1988, by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States. If it is determined that an investigation should be undertaken, it shall commence no later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover as prescribed by regulations promulgated pursuant to this section. Such investigation shall be completed no later than 45 days after such determination."

Subsec. (b). Pub. L. 110-49, § 2, added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: "The President or the President's designee shall make an investigation, as described in subsection (a), in any instance in which an entity controlled by or acting on behalf of a foreign government seeks to engage in any merger, acquisition, or takeover which could result in control of a person engaged in interstate commerce in the United States that could affect the national security of the United States. Such investigation shall—

"(1) commence not later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover, as prescribed by regulations promulgated pursuant to this section; and

"(2) shall be completed not later than 45 days after its commencement."

Subsec. (d). Pub. L. 110-49, § 6, added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: "Subject to subsection (d), the President may take such action for such time as the President considers appropriate to suspend or prohibit any acquisition, merger, or takeover, of a person engaged in interstate commerce in the United States proposed or pending on or after August 23, 1988, by or with foreign persons so that such control will not threaten to impair the national security. The President shall announce the decision to take action pursuant to this subsection not later than 15 days after the investigation described in subsection (a) is completed. The President may direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce this section."

Subsec. (e). Pub. L. 110-49, § 6, added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: "The President may exercise the authority conferred by subsection (c) only if the President finds that—

"(1) there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security; and

"(2) provisions of law, other than this section and the International Emergency Economic Powers Act (50 U.S.C. 1701-1706), do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

The provisions of subsection (d) of this section shall not be subject to judicial review."

Subsec. (f). Pub. L. 110-49, § 4(1), struck out "among other factors" after "consider" in introductory provisions.

Subsec. (f)(4)(B), (C). Pub. L. 110-49, § 4(2)(A)-(C), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(6) to (11). Pub. L. 110-49, § 4(2)(D)-(4), added pars. (6) to (11).

Subsec. (g). Pub. L. 110-49, §7(a), amended subsec. (g) generally. Prior to amendment, text read as follows: “The President shall immediately transmit to the Secretary of the Senate and the Clerk of the House of Representatives a written report of the President’s determination of whether or not to take action under subsection (d), including a detailed explanation of the findings made under subsection (e) and the factors considered under subsection (f). Such report shall be consistent with the requirements of subsection (c) of this Act.”

Subsec. (h). Pub. L. 110-49, §9, amended subsec. (h) generally. Prior to amendment, text read as follows: “The President shall direct the issuance of regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall to the extent possible coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.”

Subsec. (i). Pub. L. 110-49, §10, amended subsec. (i) generally. Prior to amendment, text read as follows: “Nothing in this section shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.”

Subsec. (k). Pub. L. 110-49, §3, added subsec. (k) and struck out former subsec. (k) which defined “critical technologies” and required the President and such agencies as the President shall designate to submit quadrennial reports, which could be classified, to Congress concerning credible evidence of a coordinated strategy by 1 or more countries or companies to acquire U.S. companies involved in critical technologies or foreign industrial espionage activities directed at obtaining commercial secrets related to critical technologies.

Subsec. (l). Pub. L. 110-49, §5, added subsec. (l).

Subsec. (m). Pub. L. 110-49, §7(b), added subsec. (m).

Subsec. (n). Pub. L. 110-49, §8, added subsec. (n).

1994—Subsec. (k)(1)(B). Pub. L. 103-359 inserted “or directly assisted” after “directed”.

1992—Subsecs. (b) to (e). Pub. L. 102-484, §837(a), added subsec. (b) and redesignated former subsecs. (b) to (d) as (c) to (e), respectively. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 102-484, §837(a)(1), (b), redesignated subsec. (e) as (f) and added pars. (4) and (5). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 102-484, §837(c), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “If the President determines to take action under subsection (c), the President shall immediately transmit to the Secretary of the Senate and the Clerk of the House of Representatives a written report of the action which the President intends to take, including a detailed explanation of the findings made under subsection (d).”

Pub. L. 102-484, §837(a)(1), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsecs. (h), (i). Pub. L. 102-484, §837(a)(1), redesignated subsecs. (g) and (h) as (h) and (i), respectively.

Subsec. (j). Pub. L. 102-484, §837(e), added subsec. (j).

Subsec. (k). Pub. L. 102-558 added subsec. (k).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-232, div. A, title XVII, §1727(a), (b), Aug. 13, 2018, 132 Stat. 2206, 2207, as amended by Pub. L. 116-283, div. H, title XCVII, §9721(b)(1), Jan. 1, 2021, 134 Stat. 4840, provided that:

“(a) IMMEDIATE APPLICABILITY OF CERTAIN PROVISIONS.—The following shall take effect on the date of the enactment of this Act [Aug. 13, 2018] and, as applicable, apply with respect to any covered transaction the review or investigation of which is initiated under section 721 of the Defense Production Act of 1950 [50 U.S.C. 4565] on or after such date of enactment:

“(1) Sections 1705, 1707, 1708, 1709, 1710, 1713, 1714, 1715, 1716, 1717, 1718, 1720, 1721, 1722, 1723, 1724, and 1725

[amending this section and enacting provisions set out as a note under this section] and any amendments made by those sections.

“(2) Section 1712 [amending this section] and the amendments made by that section (except for clause (iii) of section 721(b)(4)(A) of the Defense Production Act of 1950 [50 U.S.C. 4565(b)(4)(A)], as added by section 1712).

“(3) Paragraphs (1), (2), (3), (4)(A)(i), (4)(B)(i), (4)(B)(iv)(I), (4)(B)(v), (4)(F), (5), (6), (7), (8), (9), (10), (11), (12), and (13) of subsection (a) of section 721 of the Defense Production Act of 1950 [50 U.S.C. 4565], as amended by section 1703.

“(4) Section 721(m)(4) of the Defense Production Act of 1950 [50 U.S.C. 4565(m)(4)], as amended by section 1719 (except for clauses (ii), (iii), (iv), and (v) of subparagraph (C) of that section).

“(b) DELAYED APPLICABILITY OF CERTAIN PROVISIONS.—

“(1) IN GENERAL.—Any provision of or amendment made by this subtitle [subtitle A (§§1701-1728) of title XVII of div. A of Pub. L. 115-232, amending this section and enacting provisions set out as notes under this section and section 4501 of this title] not specified in subsection (a) shall—

“(A) take effect on the earlier of—

“(i) the date that is 18 months after the date of the enactment of this Act [Aug. 13, 2018]; or

“(ii) the date that is 30 days after publication in the Federal Register of a determination by the chairperson of the Committee on Foreign Investment in the United States that the regulations, organizational structure, personnel, and other resources necessary to administer the new provisions are in place; and

“(B) apply with respect to any covered transaction the review or investigation of which is initiated under section 721 of the Defense Production Act of 1950 [50 U.S.C. 4565] on or after the date described in subparagraph (A).

“(2) NONDELEGATION OF DETERMINATION.—The determination of the chairperson of the Committee on Foreign Investment in the United States under paragraph (1)(A) may not be delegated.”

[Pub. L. 116-283, div. H, title XCVII, §9721(b)(2), Jan. 1, 2021, 134 Stat. 4840, provided that: “The amendments under paragraph (1) [amending section 1727(a) of Pub. L. 115-232, set out above] shall take effect on the date of enactment of the Foreign Investment Risk Review Modernization Act of 2018 [Aug. 13, 2018].”]

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-49 applicable after the end of the 90-day period beginning on July 26, 2007, see section 12 of Pub. L. 110-49, set out as a note under section 5315 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

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

SEVERABILITY

Pub. L. 115-232, div. A, title XVII, §1728, Aug. 13, 2018, 132 Stat. 2207, provided that: “If any provision of this subtitle [subtitle A (§§1701-1728) of title XVII of div. A of Pub. L. 115-232, amending this section and enacting provisions set out as notes under this section and section 4501 of this title] or an amendment made by this subtitle, or the application of such a provision or amendment to any person or circumstance, is held to be invalid, the application of that provision or amendment to other persons or circumstances and the remainder of the provisions of this subtitle and the amendments made by this subtitle, shall not be affected thereby.”

FINDINGS REGARDING FOREIGN INVESTMENT RISK
REVIEW

Pub. L. 115-232, div. A, title XVII, §1702(a), Aug. 13, 2018, 132 Stat. 2174, provided that: “Congress makes the following findings:

“(1) According to a February 2016 report by the International Trade Administration of the Department of Commerce, 12,000,000 United States workers, equivalent to 8.5 percent of the labor force, have jobs resulting from foreign investment, including 3,500,000 jobs in the manufacturing sector alone.

“(2) In 2016, new foreign direct investment in United States manufacturing totaled \$129,400,000,000.

“(3) The Bureau of Economic Analysis of the Department of Commerce concluded that, in 2015—

“(A) foreign-owned affiliates in the United States—

“(i) contributed \$894,500,000,000 in value added to the United States economy;

“(ii) exported goods valued at \$352,800,000,000, accounting for nearly a quarter of total exports of goods from the United States; and

“(iii) undertook \$56,700,000,000 in research and development; and

“(B) the 7 countries investing the most in the United States, all of which are United States allies (the United Kingdom, Japan, Germany, France, Canada, Switzerland, and the Netherlands) accounted for 72.1 percent of the value added by foreign-owned affiliates in the United States and more than 80 percent of research and development expenditures by such entities.

“(4) According to the Government Accountability Office, from 2011 to 2016, the number of transactions reviewed by the Committee on Foreign Investment in the United States (commonly referred to as ‘CFIUS’) grew by 55 percent, while the staff of the Committees assigned to the reviews increased by 11 percent.

“(5) According to a February 2018 report of the Government Accountability Office on the Committee on Foreign Investment in the United States (GAO-18-249): ‘Officials from Treasury and other member agencies are aware of pressures on their CFIUS staff given the current workload and have expressed concerns about possible workload increases.’. The Government Accountability Office concluded: ‘Without attaining an understanding of the staffing levels needed to address the current and future CFIUS workload, particularly if legislative changes to CFIUS’s authorities further expand its workload, CFIUS may be limited in its ability to fulfill its objectives and address threats to the national security of the United States.’.

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

PROCEDURES FOR RECUSAL OF MEMBERS OF COMMITTEE
FOR CONFLICTS OF INTEREST

Pub. L. 115-232, div. A, title XVII, §1717(b), Aug. 13, 2018, 132 Stat. 2193, provided that: “Not later than 90 days after the date of the enactment of this Act [Aug. 13, 2018], the Committee on Foreign Investment in the United States shall—

“(1) establish procedures for the recusal of any member of the Committee that has a conflict of interest with respect to a covered transaction (as defined in section 721(a) of the Defense Production Act of 1950 [50 U.S.C. 4565(a)], as amended by section 1703);

“(2) submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report describing those procedures; and

“(3) brief the committees specified in paragraph (1) on the report required by paragraph (2).”

IMPLEMENTATION OF 2018 AMENDMENT

Pub. L. 115-232, div. A, title XVII, §1721, Aug. 13, 2018, 132 Stat. 2202, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the chairperson of the Committee on Foreign Investment in the United States and the Secretary of Commerce shall, in consultation with the appropriate members of the Committee—

“(1) develop plans to implement this subtitle [subtitle A (§§1701-1728) of title XVII of div. A of Pub. L. 115-232, amending this section and enacting provisions set out as notes under this section and section 4501 of this title]; and

“(2) submit to the appropriate congressional committees a report on the plans developed under paragraph (1), which shall include a description of—

“(A) the timeline and process to implement the provisions of, and amendments made by, this subtitle;

“(B) any additional staff necessary to implement the plans; and

“(C) the resources required to effectively implement the plans.

“(b) ANNUAL RESOURCE NEEDS OF CFIUS MEMBER AGENCIES.—Not later than one year after the submission of the report under subsection (a)(2), and annually thereafter for 7 years, each department or agency represented on the Committee on Foreign Investment in the United States shall submit to the appropriate congressional committees a detailed spending plan to expeditiously meet the requirements of section 721 of the Defense Production Act of 1950 [50 U.S.C. 4565], as amended by this subtitle, including estimated expenditures and staffing levels for not less than the following fiscal year.

“(c) TESTIMONY.—[Amended this section.]

“(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ‘appropriate congressional committees’ means—

“(1) the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate; and

“(2) the Committee on Financial Services and the Committee on Appropriations of the House of Representatives.”

ASSESSMENT OF NEED FOR ADDITIONAL RESOURCES FOR
COMMITTEE

Pub. L. 115-232, div. A, title XVII, §1722, Aug. 13, 2018, 132 Stat. 2203, provided that: “The President shall—

“(1) determine whether and to what extent the expansion of the responsibilities of the Committee on Foreign Investment in the United States pursuant to the amendments made by this subtitle [subtitle A (§§1701-1728) of title XVII of div. A of Pub. L. 115-232, amending this section] necessitates additional resources for the Committee and the departments and agencies represented on the Committee to perform their functions under section 721 of the Defense Production Act of 1950 [50 U.S.C. 4565], as amended by this subtitle; and

“(2) if the President determines that additional resources are necessary, include in the budget of the President for fiscal year 2019 and each fiscal year thereafter submitted to Congress under section 1105(a) of title 31, United States Code, a request for such additional resources.”

AUTHORIZATION FOR PILOT PROGRAMS

Pub. L. 115-232, div. A, title XVII, §1727(c), Aug. 13, 2018, 132 Stat. 2207, provided that:

“(1) IN GENERAL.—Beginning on the date of the enactment of this Act [Aug. 13, 2018] and ending on the date that is 570 days thereafter, the Committee on Foreign Investment in the United States may, at its discretion, conduct one or more pilot programs to implement any authority provided pursuant to any provision of or amendment made by this subtitle [subtitle A (§§1701-1728) of title XVII of div. A of Pub. L. 115-232, amending this section and enacting provisions set out as notes under this section and section 4501 of this title] not specified in subsection (a) [set out in an Effective Date of 2018 Amendment note above].

“(2) PUBLICATION IN FEDERAL REGISTER.—A pilot program under paragraph (1) may not commence until the date that is 30 days after publication in the Federal Register of a determination by the chairperson of the Committee of the scope of and procedures for the pilot program. That determination may not be delegated.”

STUDY AND REPORT ON FOREIGN DIRECT INVESTMENTS
IN UNITED STATES

Pub. L. 110-49, §7(c), July 26, 2007, 121 Stat. 258, provided that:

“(1) STUDY REQUIRED.—Before the end of the 120-day period beginning on the date of enactment of this Act [July 26, 2007] and annually thereafter, the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce, shall conduct a study on foreign direct investments in the United States, especially investments in critical infrastructure and industries affecting national security, by—

“(A) foreign governments, entities controlled by or acting on behalf of a foreign government, or persons of foreign countries which comply with any boycott of Israel; or

“(B) foreign governments, entities controlled by or acting on behalf of a foreign government, or persons of foreign countries which do not ban organizations designated by the Secretary of State as foreign terrorist organizations.

“(2) REPORT.—Before the end of the 30-day period beginning upon the date of completion of each study under paragraph (1), and thereafter in each annual report under section 721(m) of the Defense Production Act of 1950 [50 U.S.C. 4565(m)] (as added by this section), the Secretary of the Treasury shall submit a report to Congress, for transmittal to all appropriate committees of the Senate and the House of Representatives, containing the findings and conclusions of the Secretary with respect to the study described in paragraph (1), together with an analysis of the effects of such investment on the national security of the United States and on any efforts to address those effects.”

Executive Documents

DELEGATION OF FUNCTIONS

For delegation of functions of President under subsecs. (b)(1)(A), (D), (h), and (m)(3)(A) of this section, see section 4(a), (b) of Ex. Ord. No. 11858, May 7, 1975, 40 F.R. 20263, set out below.

EX. ORD. NO. 11858. FOREIGN INVESTMENT IN THE UNITED STATES

Ex. Ord. No. 11858, May 7, 1975, 40 F.R. 20263, as amended by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989; Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779; Ex. Ord. No. 12860, Sept. 3, 1993, 58 F.R. 47201; Ex. Ord. No. 13286, § 57, Feb. 28, 2003, 68 F.R. 10629; Ex. Ord. No. 13456, § 1, Jan. 23, 2008, 73 F.R. 4677, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 721 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2170) [now 50 U.S.C. 4565], and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy.* International investment in the United States promotes economic growth, productivity, competitiveness, and job creation. It is the policy of the United States to support unequivocally such investment, consistent with the protection of the national security.

SEC. 2. *Definitions.* (a) The “Act” as used in this order means section 721 of the Defense Production Act of 1950 [50 U.S.C. 4565], as amended.

(b) Terms used in this order that are defined in subsection 721(a) of the Act [50 U.S.C. 4565(a)] shall have the same meaning in this order as they have in such subsection.

(c) “Risk mitigation measure” as used in this order means any provision of a risk mitigation agreement or a condition to which section 7 of this order refers.

SEC. 3. *Establishment.* (a) There is hereby established the Committee on Foreign Investment in the United States (the “Committee”) as provided in the Act.

(b) In addition to the members specified in the Act, the following heads of departments, agencies, or offices shall be members of the Committee:

(i) The United States Trade Representative;

(ii) The Director of the Office of Science and Technology Policy; and

(iii) The heads of any other executive department, agency, or office, as the President or the Secretary of the Treasury determines appropriate, on a case-by-case basis.

(c) The following officials (or their designees) shall observe and, as appropriate, participate in and report to the President on the Committee’s activities:

(i) The Director of the Office of Management and Budget;

(ii) The Chairman of the Council of Economic Advisers;

(iii) The Assistant to the President for National Security Affairs;

(iv) The Assistant to the President for Economic Policy; and

(v) The Assistant to the President for Homeland Security and Counterterrorism.

SEC. 4. *Duties of the Secretary of the Treasury.*

(a) The functions of the President under subsections (b)(1)(A) (relating to review and consideration after notification), (b)(1)(D) (relating to unilateral initiation of review and consideration), and (m)(3)(A) (relating to inclusion in annual report and designation) of the Act [now 50 U.S.C. 4565(b)(1)(A), (D), (m)(3)(A), (B)] are assigned to the Secretary of the Treasury.

(b) The Secretary of the Treasury shall perform the function of issuance of regulations under section 721(h) of the Act [50 U.S.C. 4565(h)]. The Secretary shall consult the Committee with respect to such regulations prior to any notice and comment and prior to their issuance.

(c) Except as otherwise provided in the Act or this order, the chairperson shall have the authority, exclusive of the heads of departments or agencies, after consultation with the Committee:

(i) to act, or authorize others to act, on behalf of the Committee; and

(ii) to communicate on behalf of the Committee with the Congress and the public.

(d) The chairperson shall coordinate the preparation of and transmit the annual report to the Congress provided for in the Act and may assign to any member of the Committee, as the chairperson determines appropriate and consistent with the Act, responsibility for conducting studies and providing analyses necessary for the preparation of the report.

(e) After consultation with the Committee, the chairperson may request that the Director of National Intelligence begin preparing the analysis required by the Act at any time, including prior to acceptance of the notice of a transaction, in accordance with otherwise applicable law. The Director of National Intelligence shall provide the Director’s analysis as soon as possible and consistent with section 721(b)(4) of the Act [50 U.S.C. 4565(b)(4)].

SEC. 5. *Lead Agency.* (a) The lead agency or agencies (“lead agency”) shall have primary responsibility, on behalf of the Committee, for the specific activity for which the Secretary of the Treasury designates it a lead agency.

(b) In acting on behalf of the Committee, the lead agency shall keep the Committee fully informed of its activities. In addition, the lead agency shall notify the chairperson of any material action that the lead agency proposes to take on behalf of the Committee, sufficiently in advance to allow adequate time for the chairperson to consult the Committee and provide the Committee’s direction to the lead agency not to take, or to amend, such action.

SEC. 6. *Reviews and Investigations.*

(a) Any member of the Committee may conduct its own inquiry with respect to the potential national security risk posed by a transaction, but communication with the parties to a transaction shall occur through or in the presence of the lead agency, or the chairperson if no lead agency has been designated.

(b) The Committee shall undertake an investigation of a transaction in any case, in addition to the circumstances described in the Act, in which following a review a member of the Committee advises the chairperson that the member believes that the transaction threatens to impair the national security of the United States and that the threat has not been mitigated.

(c) The Committee shall send a report to the President requesting the President’s decision with respect to a review or investigation of a transaction in the following circumstances:

(i) the Committee recommends that the President suspend or prohibit the transaction;

(ii) the Committee is unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction; or

(iii) the Committee requests that the President make a determination with regard to the transaction.

(d) Upon completion of a review or investigation of a transaction, the lead agency shall prepare for the approval of the chairperson the appropriate certified notice or report to the Congress called for under the Act. The chairperson shall transmit such notice or report to the Congress, as appropriate.

SEC. 7. *Risk Mitigation.* (a) The Committee, or any lead agency acting on behalf of the Committee, may seek to mitigate any national security risk posed by a transaction that is not adequately addressed by other provisions of law by entering into a mitigation agreement with the parties to a transaction or by imposing conditions on such parties.

(b) Prior to the Committee or a department or agency proposing risk mitigation measures to the parties to a transaction, the department or agency seeking to propose any such measure shall prepare and provide to the Committee a written statement that: (1) identifies the national security risk posed by the transaction based on factors including the threat (taking into account the Director of National Intelligence’s threat analysis), vulnerabilities, and potential consequences; and (2) sets forth the risk mitigation measures the department or agency believes are reasonably necessary to address the risk. If the Committee agrees that mitigation is appropriate and approves the risk mitigation measures, the lead agency shall seek to negotiate such measures with the parties to the transaction.

(c) A risk mitigation measure shall not, except in extraordinary circumstances, require that a party to a transaction recognize, state its intent to comply with, or consent to the exercise of any authorities under existing provisions of law.

(d) The lead agency designated for the purpose of monitoring a risk mitigation measure shall seek to ensure that adequate resources are available for such monitoring. When designating a lead agency for those purposes, the Secretary of the Treasury shall consider the agency’s views on the adequacy of its resources for such purposes.

(e)(i) Nothing in this order shall be construed to limit the ability of a department or agency, in the exercise

of authorities other than those provided under the Act, to:

(A) conduct inquiries with respect to a transaction;

(B) communicate with the parties to a transaction; or

(C) negotiate, enter into, impose, or enforce contractual provisions with the parties to a transaction.

(ii) A department or agency shall not condition actions or the exercise of authorities to which paragraph (i) of this subsection refers upon the exercise, or forbearance in the exercise, of its authority under the Act or this order, and no authority under the Act shall be available for the enforcement of such actions or authorities.

(f) The Committee may initiate a review of a transaction that has previously been reviewed by the Committee only in the extraordinary circumstances provided in the Act.

SEC. 8. *Additional Assignments to the Committee.* In addition to the functions assigned to the Committee by the Act, the Committee shall review the implementation of the Act and this order and report thereon from time to time to the President, together with such recommendations for policy, administrative, or legislative proposals as the Committee determines appropriate.

SEC. 9. *Duties of the Secretary of Commerce.* The Secretary of Commerce shall:

(a) obtain, consolidate, and analyze information on foreign investment in the United States;

(b) monitor and, where necessary, improve procedures for the collection and dissemination of information on foreign investment in the United States;

(c) prepare for the public, the President or heads of departments or agencies, as appropriate, reports, analyses of trends, and analyses of significant developments in appropriate categories of foreign investment in the United States; and

(d) compile and evaluate data on significant transactions involving foreign investment in the United States.

SEC. 10. *General Provisions.* (a) The heads of departments and agencies shall provide, as appropriate and to the extent permitted by law, such information and assistance as the Committee may request to implement the Act and this order.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof;

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

(iii) existing mitigation agreements.

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

(d) Officers of the United States with authority or duties under the Act or this order shall ensure that, in carrying out the Act and this order, the actions of departments, agencies, and the Committee are consistent with the President’s constitutional authority to: (i) conduct the foreign affairs of the United States; (ii) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive’s constitutional duties; (iii) recommend for congressional consideration such measures as the President may judge necessary and expedient; and (iv) supervise the unitary executive branch.

SEC. 11. *Revocation.* Section 801 of Executive Order 12919 of June 3, 1994, is revoked.

EX. ORD. NO. 14083. ENSURING ROBUST CONSIDERATION OF EVOLVING NATIONAL SECURITY RISKS BY THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES

Ex. Ord. No. 14083, Sept. 15, 2022, 87 F.R. 57369, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 721 of the Defense Production Act of 1950, as amended (50 U.S.C. 4565) (section

721), and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. Policy. The United States welcomes and supports foreign investment, consistent with the protection of national security. The United States commitment to open investment is a cornerstone of our economic policy and provides the United States with substantial economic benefits, including “the promotion of economic growth, productivity, competitiveness, and job creation, thereby enhancing national security,” as the Congress recognized in section 1702(b)(1) of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (Subtitle A of Title XVII of Public Law 115–232) [132 Stat. 2175]. Some investments in the United States by foreign persons, however, present risks to the national security of the United States, and it is for this reason that the United States maintains a robust foreign investment review process focused on identifying and addressing such risks.

It is important to ensure that the foreign investment review process remains responsive to an evolving national security landscape and the nature of the investments that pose related risks to national security, as the Congress recognized in section 1702(b)(4) of FIRRMA [132 Stat. 2175]. One factor for the Committee on Foreign Investment in the United States (Committee) to consider, as the Congress highlighted in section 1702(c)(1) of FIRRMA [132 Stat. 2176], is that national security risks may arise from foreign investments involving “a country of special concern that has a demonstrated or declared strategic goal of acquiring a type of critical technology or critical infrastructure that would affect United States leadership in areas related to national security.” Along these lines, I previously underscored in Executive Order 14034 of June 9, 2021 (Protecting Americans’ Sensitive Data From Foreign Adversaries) [listed in a table under 50 U.S.C. 1701], and emphasize in this order the risks presented by foreign adversaries’ access to data of United States persons. With respect to investments directly or indirectly involving foreign adversaries or other countries of special concern, what may otherwise appear to be an economic transaction undertaken for commercial purposes may actually present an unacceptable risk to United States national security due to the legal environment, intentions, or capabilities of the foreign person, including foreign governments, involved in the transaction. It is the policy of the United States Government to continue to respond to these risks as they evolve, including through a robust review of foreign investments in United States businesses.

In light of these risks, this order provides direction to the Committee to ensure that, in reviewing transactions within its jurisdiction (covered transactions), the Committee’s review remains responsive to evolving national security risks, including by elaborating and expanding on the factors identified in subsections (f)(1)–(10) of section 721. This order shall be implemented consistent with the Committee’s statutory mandate to determine the effects of each covered transaction reviewed by the Committee on the national security of the United States.

SEC. 2. Elaboration on Existing Statutory Factors. (a) In considering the factors described in subsection (f)(3) of section 721, the Committee shall, taking into account the requirements of national security, consider the following, as appropriate:

(i) It is important to national security that the Committee continues to assess the effect of foreign investment on domestic capacity to meet national security requirements, including those requirements that fall outside of the defense industrial base. In particular, the resilience of certain critical United States supply chains may have national security implications. The United States recognizes the importance of cooperating with its allies and partners to secure supply chains; however, certain foreign investment may undermine supply chain resilience efforts and therefore national security by making the United States vulnerable to future supply disruptions. These vulnerabilities may

occur if an investment shifts ownership, rights, or control with respect to certain manufacturing capabilities, services, critical mineral resources, or technologies that are fundamental to national security—including because they are critical to United States supply chain resilience—to a foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, or to other foreign persons, including foreign governments, to whom the foreign person has commercial, investment, non-economic, or other ties (relevant third-party ties) that might cause the transaction to pose a threat to national security.

(ii) The Committee shall consider, as appropriate, the covered transaction’s effect on supply chain resilience and security, both within and outside of the defense industrial base, in manufacturing capabilities, services, critical mineral resources, or technologies that are fundamental to national security, including: microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, advanced clean energy (such as battery storage and hydrogen), climate adaptation technologies, critical materials (such as lithium and rare earth elements), elements of the agriculture industrial base that have implications for food security, and any other sectors identified in section 3(b) or section 4(a) of Executive Order 14017 of February 24, 2021 (America’s Supply Chains) [86 F.R. 11849].

(A) The Committee shall consider, as appropriate, the degree of involvement in the United States supply chain by a foreign person who is a party to the covered transaction and who might take actions that threaten to impair the national security of the United States as a result of the transaction, or who might have relevant third-party ties that might cause the transaction to pose such a threat.

(B) The Committee shall consider, as appropriate, the United States capability with respect to manufacturing capabilities, services, critical mineral resources, or technologies, including those described in subsection (a)(ii) of this section; the degree of diversification through alternative suppliers across the supply chain, including suppliers located in allied or partner economies; whether the United States business that is party to the covered transaction supplies, directly or indirectly, the United States Government, the energy sector industrial base, or the defense industrial base; and the concentration of ownership or control by the foreign person in a given supply chain, among other factors that the Committee determines to be appropriate in considering whether the covered transaction may undermine the resilience and security of supply chains critical to national security.

(b) In considering the factors described in subsection (f)(5) of section 721, the Committee shall, taking into account the requirements of national security, consider the following, as appropriate:

(i) Although foreign investments can in many circumstances help to foster domestic innovation, it is important to protect United States technological leadership by addressing the risks posed by investments by foreign persons who might take actions that threaten to impair the national security of the United States as a result of the transaction, and by addressing whether such persons have relevant third-party ties that might cause the transaction to pose such a threat.

(ii) The Committee shall consider, as appropriate, whether a covered transaction involves manufacturing capabilities, services, critical mineral resources, or technologies that are fundamental to United States technological leadership and therefore national security, such as microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, advanced clean energy, and climate adaptation technologies. The Committee shall also consider, as appropriate, relevant third-party ties that might cause the transaction to threaten to impair the national security of the United States.

(iii) The Committee shall consider, as appropriate, whether a covered transaction could reasonably result

in future advancements and applications in technology that could undermine national security.

(iv) The Office of Science and Technology Policy (OSTP), in consultation with other members of the Committee, shall periodically publish a list of technology sectors, including those technologies listed in subsection (b)(ii) of this section, that it assesses are fundamental to United States technological leadership in areas relevant to national security. OSTP shall, as appropriate, draw on the findings of other United States Government efforts to identify technology sectors that are fundamental to United States technological leadership. The Committee shall consider the list described in this subsection, as appropriate.

SEC. 3. *Additional Factors to be Considered.* (a) In addition to the factors identified in subsections (f)(1)–(10) of section 721, the Committee shall consider, in reviewing the effects of a covered transaction on the national security of the United States, the following factors relating to aggregate industry investment trends that may have consequences for an individual covered transaction's impact on national security:

(i) Incremental investments over time in a sector or technology may cede, part-by-part, domestic development or control in that sector or technology and may give a foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, or their relevant third-party ties that might cause the transaction to pose such a threat, control of or rights in United States businesses in a manner that may result in national security risk. A series of acquisitions in the same, similar, or related United States businesses involved in activities that are fundamental to national security or on terms that implicate national security may result in a particular covered transaction giving rise to a national security risk when considered in the context of transactions that preceded it. In aggregate, these transactions may facilitate harmful technology transfer in key industries or otherwise harm national security through the cumulative effect of these investments. As the Congress identified in section 1702(c)(2) of FIRRMA [132 Stat. 2176], the Committee may consider “the cumulative control of, or pattern of recent transactions involving, any one type of critical infrastructure, energy asset, critical material, or critical technology by a foreign government or foreign person” in considering national security risks. Contextualizing the Committee's review of an individual transaction in light of the aggregate or series of related transactions could reveal national security risks arising from the covered transaction that were not otherwise apparent.

(ii) The Committee shall consider, as appropriate, as part of the Committee's review of a covered transaction, the risks arising from the covered transaction in the context of multiple acquisitions or investments in a single sector or in related manufacturing capabilities, services, critical mineral resources, or technologies, by any foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, or involving relevant third-party ties that might cause the transaction to pose such a threat.

(iii) The Committee may request, as part of the Committee's review of a covered transaction, that the Department of Commerce's International Trade Administration provide the Committee an analysis of the industry or industries in which the United States business operates, and the cumulative control of, or pattern of recent transactions by, a foreign person, including, directly or indirectly, a foreign government, in that sector or industry.

(b) In addition to the factors identified in subsections (f)(1)–(10) of section 721, the Committee shall consider, in reviewing the effects of a covered transaction on the national security of the United States, the following factors relating to cybersecurity risks resulting from a covered transaction that threaten to impair national security:

(i) It is important for the United States to ensure that foreign investment in United States businesses

does not erode United States cybersecurity. Investments by foreign persons with the capability and intent to conduct cyber intrusions or other malicious cyber-enabled activity—such as activity designed to affect the outcome of any election for Federal, State, Tribal, local, or territorial office; the operation of United States critical infrastructure; or the confidentiality, integrity, or availability of United States communications—may pose a risk to national security. The Congress, in section 1702(c)(6) of FIRRMA [132 Stat. 2177], identified “exacerbating or creating new cybersecurity vulnerabilities” as a relevant consideration for the Committee when considering national security risks arising from a covered transaction. Review of foreign investment is an important tool as part of broader United States efforts to ensure the cybersecurity of the United States.

(ii) The Committee shall consider, as appropriate, whether a covered transaction may provide a foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, or their relevant third-party ties that might cause the transaction to pose such a threat, with direct or indirect access to capabilities or information databases and systems on which threat actors could engage in malicious cyber-enabled activities affecting the interests of the United States or United States persons, including:

(A) activity designed to undermine the protection or integrity of data in storage or databases or systems housing sensitive data;

(B) activity designed to interfere with United States elections, United States critical infrastructure, the defense industrial base, or other cybersecurity national security priorities set forth in Executive Order 14028 of May 12, 2021 (Improving the Nation's Cybersecurity) [44 U.S.C. 3551 note]; and

(C) the sabotage of critical energy infrastructure, including smart grids.

(iii) The Committee shall also consider, as appropriate, the cybersecurity posture, practices, capabilities, and access of both the foreign person and the United States business that could allow a foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, or their relevant third-party ties that might cause the transaction to pose such a threat, to manifest cyber intrusion and other malicious cyber-enabled activity within the United States.

(c) In addition to the factors identified in subsections (f)(1)–(10) of section 721, the Committee shall consider, in reviewing the effects of a covered transaction on the national security of the United States, the following factors relating to national security concerns surrounding sensitive data:

(i) Data is an increasingly powerful tool for the surveillance, tracing, tracking, and targeting of individuals or groups of individuals, with potential adverse impacts on national security. In section 1702(c)(5) of FIRRMA [132 Stat. 2177], the Congress recognized that the Committee may consider whether a covered transaction may “expose, either directly or indirectly, personally identifiable information, genetic information, or other sensitive data of United States citizens to access by a foreign government or foreign person that may exploit that information in a manner that threatens national security.” Moreover, advances in technology, combined with access to large data sets, increasingly enable the re-identification or de-anonymization of what once was unidentifiable data. Therefore, it is important for the United States Government to stay current with threats posed by advances in such technology, including by considering potential risks posed by foreign persons who might exploit access to certain data on United States persons to target individuals or groups within the United States to the detriment of national security. Accordingly, the Committee shall consider whether foreign investments in United States businesses that have access to or that store United States persons' sensitive data, including

health and biological data, involve a foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, including whether the foreign person might have relevant third-party ties that might cause the transaction to pose such a threat.

(ii) The Committee shall consider, as appropriate, whether a covered transaction involves a United States business that:

(A) has access to United States persons' sensitive data, including United States persons' health, digital identity, or other biological data and any data that could be identifiable or de-anonymized, that could be exploited to distinguish or trace an individual's identity in a manner that threatens national security; or

(B) has access to data on sub-populations in the United States that could be used by a foreign person to target individuals or groups of individuals in the United States in a manner that threatens national security.

(iii) The Committee shall also consider, as appropriate, whether a covered transaction involves the transfer of United States persons' sensitive data to a foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, and whether the foreign person has relevant third-party ties that have sought to exploit such information or have the ability to exploit such information to the detriment of national security, including through the use of commercial or other means.

SEC. 4. *Periodic Review.* Consistent with the policy described in section 1 of this order, it is important for the Committee, on an ongoing basis, to continue to review its processes, practices, and regulations, and to continue to make any updates as needed and appropriate to ensure that the Committee's consideration of national security risks remains robust alongside changes to the national security landscape. Accordingly, the Committee shall regularly review its processes, practices, and regulations, and shall periodically provide to the Assistant to the President for National Security Affairs a report documenting the results of its review. The report shall also include any resulting policy recommendations that the Committee considers necessary to meet the evolving set of national security risks.

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

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

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

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

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

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

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

J.R. BIDEN, JR.

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

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

Memorandum for the Secretary of the Treasury

By virtue of the authority vested in me by the Constitution and statutes of the United States, including without limitation Section 301 of Title 3 of the United States Code, the Defense Production Act of 1950, as

amended (50 U.S.C. App. 2061 *et seq.*) [now 50 U.S.C. 4501 *et seq.*], and the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, August 23, 1988) (the "Act") [see Tables for classification], it is ordered as follows:

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

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

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

This interim directive shall be published in the Federal Register.

RONALD REAGAN.

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

(a) In general

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

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

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

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

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

(b) Inapplicability to certain cases

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

(c) Definitions

In this section:

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

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

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

as determined by the President.

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

(A) with respect to Department of Defense contracts—