

Public Law 110–49
110th Congress

An Act

July 26, 2007
[H.R. 556]

Foreign
Investment and
National Security
Act of 2007.
50 USC
app. 2061 note.

To ensure national security while promoting foreign investment and the creation and maintenance of jobs, to reform the process by which such investments are examined for any effect they may have on national security, to establish the Committee on Foreign Investment in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Foreign Investment and National Security Act of 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. United States security improvement amendments; clarification of review and investigation process.
- Sec. 3. Statutory establishment of the Committee on Foreign Investment in the United States.
- Sec. 4. Additional factors for consideration.
- Sec. 5. Mitigation, tracking, and postconsummation monitoring and enforcement.
- Sec. 6. Action by the President.
- Sec. 7. Increased oversight by Congress.
- Sec. 8. Certification of notices and assurances.
- Sec. 9. Regulations.
- Sec. 10. Effect on other law.
- Sec. 11. Clerical amendments
- Sec. 12. Effective date.

SEC. 2. UNITED STATES SECURITY IMPROVEMENT AMENDMENTS; CLARIFICATION OF REVIEW AND INVESTIGATION PROCESS.

Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by striking subsections (a) and (b) and inserting the following:

“(a) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

“(1) **COMMITTEE; CHAIRPERSON.**—The terms ‘Committee’ and ‘chairperson’ mean the Committee on Foreign Investment in the United States and the chairperson thereof, respectively.

“(2) **CONTROL.**—The term ‘control’ has the meaning given to such term in regulations which the Committee shall prescribe.

“(3) **COVERED TRANSACTION.**—The term ‘covered transaction’ means any merger, acquisition, or takeover that is proposed or pending after August 23, 1988, by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States.

“(4) FOREIGN GOVERNMENT-CONTROLLED TRANSACTION.—The term ‘foreign government-controlled transaction’ means any covered transaction that could result in the control of any person engaged in interstate commerce in the United States by a foreign government or an entity controlled by or acting on behalf of a foreign government.

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

“(6) CRITICAL INFRASTRUCTURE.—The term ‘critical infrastructure’ means, subject to rules issued under this section, 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.

“(7) CRITICAL TECHNOLOGIES.—The term ‘critical technologies’ means critical technology, critical components, or critical technology items essential to national defense, identified pursuant to this section, subject to regulations issued at the direction of the President, in accordance with subsection (h).

“(8) LEAD AGENCY.—The term ‘lead agency’ means the agency, or agencies, designated as the lead agency or agencies pursuant to subsection (k)(5) for the review of a transaction.

“(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—

President.

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

“(iii) CONTINUING DISCUSSIONS.—A request for withdrawal under clause (ii) shall not be construed to preclude any party to the covered transaction from continuing informal discussions with the Committee

or any member thereof regarding possible resubmission for review pursuant to this paragraph.

“(D) UNILATERAL INITIATION OF REVIEW.—Subject to subparagraph (F), the President or the Committee may initiate a review under subparagraph (A) of—

“(i) any covered transaction;

“(ii) 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

“(iii) any covered transaction that has previously been reviewed or investigated under this section, if—

“(I) any party to the transaction or the entity resulting from consummation of the transaction intentionally materially breaches a mitigation agreement or condition described in subsection (1)(1)(A);

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

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

Deadline.

“(E) TIMING.—Any review under this paragraph shall be completed before the end of the 30-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.

“(F) 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.

“(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 that threat has not been mitigated during or prior to the review of a covered transaction under paragraph (1);

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

“(III) the transaction would result in control of any critical infrastructure of or within the United States by or on behalf of any foreign person, if the Committee determines that the transaction could impair national security, and that such impairment to national security has not been mitigated by assurances provided or renewed with the approval of the Committee, as described in subsection (1), during the review period under paragraph (1); or

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

“(C) TIMING.—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.

Deadline.

“(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.

Deadline.
Federal Register,
publication.

“(3) CERTIFICATIONS TO CONGRESS.—

“(A) CERTIFIED NOTICE AT COMPLETION OF REVIEW.—Upon completion of a review under subsection (b) that concludes action under this section, the chairperson and the head of the lead agency shall transmit a certified notice to the members of Congress specified in subparagraph (C)(iii).

“(B) CERTIFIED REPORT AT COMPLETION OF INVESTIGATION.—As soon as is practicable after completion of an investigation under subsection (b) that concludes action under this section, the chairperson and the head of the

lead agency shall transmit to the members of Congress specified in subparagraph (C)(iii) a certified written report (consistent with the requirements of subsection (c)) on the results of the investigation, unless the matter under investigation has been sent to the President for decision.

“(C) CERTIFICATION PROCEDURES.—

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

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

“(II) identification of the determinative factors considered under subsection (f).

“(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) LIMITATION ON DELEGATION OF CERTIFICATIONS.—The chairperson and the head of the lead agency may delegate the signature requirement under subclause (I)—

“(aa) only to an appropriate employee of the Department of the Treasury (in the case

of the Secretary of the Treasury) or to an appropriate employee of the lead agency (in the case of the lead agency) who was appointed by the President, by and with the advice and consent of the Senate, with respect to any notice provided under paragraph (1) following the completion of a review under this section; or

“(bb) only to a Deputy Secretary of the Treasury (in the case of the Secretary of the Treasury) or a person serving in the Deputy position or the equivalent thereof at the lead agency (in the case of the lead agency), with respect to any report provided under subparagraph (B) following an investigation under this section.

“(4) ANALYSIS BY DIRECTOR OF NATIONAL INTELLIGENCE.—

“(A) IN GENERAL.—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.

“(B) TIMING.—The analysis required under subparagraph (A) shall be provided by the Director of National Intelligence to the Committee not later than 20 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.

Deadline.

“(C) 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.

“(D) 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.

“(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.”

SEC. 3. STATUTORY ESTABLISHMENT OF THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES.

Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by striking subsection (k) and inserting the following:

“(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) ASSISTANT SECRETARY FOR THE DEPARTMENT OF THE TREASURY.—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.

“(5) DESIGNATION OF LEAD AGENCY.—The Secretary of the Treasury shall designate, as appropriate, a member or members

Establishment.
President.

of the Committee to be the lead agency or agencies on behalf of the Committee—

“(A) for each covered transaction, and for negotiating any mitigation agreements or other conditions necessary to protect national security; and

“(B) for all matters related to the monitoring of the completed transaction, to ensure compliance with such agreements or conditions and with this section.

“(6) OTHER MEMBERS.—The chairperson shall consult with the heads of such other Federal departments, agencies, and independent establishments in any review or investigation under subsection (a), as the chairperson determines to be appropriate, on the basis of the facts and circumstances of the covered transaction under review or investigation (or the designee of any such department or agency head).

“(7) MEETINGS.—The Committee shall meet upon the direction of the President or upon the call of the chairperson, without regard to section 552b of title 5, United States Code (if otherwise applicable).”.

SEC. 4. ADDITIONAL FACTORS FOR CONSIDERATION.

Section 721(f) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(f)) is amended—

(1) in the matter preceding paragraph (1), by striking “among other factors”;

(2) in paragraph (4)—

(A) in subparagraph (A) by striking “or” at the end;

(B) by redesignating subparagraph (B) as subparagraph (C);

(C) by inserting after subparagraph (A) the following:

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

(D) by striking “and” at the end;

(3) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

“(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 non-proliferation control regimes, including treaties and multilateral supply guidelines, which shall draw on, but not be limited to, the annual report on ‘Adherence to and Compliance with Arms Control, Nonproliferation and Disarmament Agreements and Commitments’ required by section 403 of the Arms Control and Disarmament Act;

“(B) the relationship of such country with the United States, specifically on its record on cooperating in 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.”.

SEC. 5. MITIGATION, TRACKING, AND POSTCONSUMMATION MONITORING AND ENFORCEMENT.

Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by adding at the end the following:

“(1) MITIGATION, TRACKING, AND POSTCONSUMMATION MONITORING AND ENFORCEMENT.—

“(1) MITIGATION.—

“(A) 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 threat to the national security of the United States that arises as a result of the covered transaction.

“(B) RISK-BASED ANALYSIS REQUIRED.—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.

“(2) 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 (as defined in the National Security Act of 1947), 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.

“(3) 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 (1) 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. Nothing in this paragraph shall prohibit other departments or agencies in assisting the lead agency in carrying out the purposes of this paragraph.

“(B) REPORTING BY DESIGNATED AGENCY.—

“(i) MODIFICATION REPORTS.—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.

“(ii) COMPLIANCE.—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.”.

SEC. 6. ACTION BY THE PRESIDENT.

Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by striking subsections (d) and (e) and inserting the following:

“(d) ACTION BY THE PRESIDENT.—

“(1) IN GENERAL.—Subject to paragraph (4), the President may take such action for such time as the President considers appropriate to suspend or prohibit any covered transaction that threatens to impair the national security of the United States.

“(2) ANNOUNCEMENT BY THE PRESIDENT.—The President shall announce the decision on whether or not to take action pursuant to paragraph (1) not later than 15 days after the date on which an investigation described in subsection (b) is completed.

Deadline.

“(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 the foreign interest exercising control might take action that threatens to impair the national security; and

“(B) provisions of law, other than this section and the International Emergency Economic Powers Act, do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

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

“(e) ACTIONS AND FINDINGS NONREVIEWABLE.—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.”.

SEC. 7. INCREASED OVERSIGHT BY CONGRESS.

(a) REPORT ON ACTIONS.—Section 721(g) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(g)) is amended to read as follows:

“(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.”.

(b) ANNUAL REPORT.—Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by adding at the end the following:

“(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 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.

“(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.

“(3) CONTENTS OF REPORT RELATING TO CRITICAL TECHNOLOGIES.—

“(A) IN GENERAL.—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)—

President.

“(i) 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; and

“(ii) 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.

“(B) RELEASE OF UNCLASSIFIED STUDY.—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.”.

50 USC
app. 2170 note.

(c) STUDY AND REPORT.—

(1) STUDY REQUIRED.—Before the end of the 120-day period beginning on the date of enactment of this Act 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 (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.

(d) INVESTIGATION BY INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the Department of the Treasury shall conduct an independent investigation to determine all of the facts and circumstances concerning each failure of the Department of the Treasury to make any report to the Congress that was required under section 721(k) of the Defense Production Act of 1950, as in effect on the day before the date of enactment of this Act.

(2) REPORT TO THE CONGRESS.—Before the end of the 270-day period beginning on the date of enactment of this Act, the Inspector General of the Department of the Treasury shall submit a report on the investigation under paragraph (1) containing the findings and conclusions of the Inspector General, to the chairman and ranking member of each committee of the Senate and the House of Representatives having jurisdiction over any aspect of the report, including, at a minimum, the Committee on Foreign Relations, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee

on Foreign Affairs, the Committee on Financial Services, and the Committee on Energy and Commerce of the House of Representatives.

SEC. 8. CERTIFICATION OF NOTICES AND ASSURANCES.

Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by adding at the end the following:

“(n) CERTIFICATION OF NOTICES AND ASSURANCES.—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 (3)(B) of subsection (l), with respect to the implementation of any mitigation agreement or condition described in paragraph (1)(A) of subsection (l), or any material change in circumstances, shall be accompanied by a written statement by the chief executive officer or the designee of the person required to submit such notice or information certifying that, to the best of the knowledge and belief of that person—

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

“(2) the notice or information is accurate and complete in all material respects.”.

SEC. 9. REGULATIONS.

Section 721(h) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(h)) is amended to read as follows:

“(h) REGULATIONS.—

“(1) IN GENERAL.—The President shall direct, subject to notice and comment, the issuance of regulations to carry out this section.

President.

“(2) EFFECTIVE DATE.—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.

“(3) CONTENT.—Regulations issued under this subsection shall—

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

“(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; and

“(C) provide for an appropriate role for the Secretary of Labor with respect to mitigation agreements.”.

SEC. 10. EFFECT ON OTHER LAW.

Section 721(i) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(i)) is amended to read as follows:

“(i) EFFECT ON OTHER LAW.—No provision of this section shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of Federal law, including the International Emergency Economic Powers Act, or

any other authority of the President or the Congress under the Constitution of the United States.”.

SEC. 11. CLERICAL AMENDMENTS.

(a) TITLE 31.—Section 301(e) of title 31, United States Code, is amended by striking “8 Assistant” and inserting “9 Assistant”.

(b) TITLE 5.—Section 5315 of title 5, United States Code, is amended in the item relating to “Assistant Secretaries of the Treasury”, by striking “(8)” and inserting “(9)”.

5 USC 5315 note. **SEC. 12. EFFECTIVE DATE.**

The amendments made by this Act shall apply after the end of the 90-day period beginning on the date of enactment of this Act.

Approved July 26, 2007.

LEGISLATIVE HISTORY—H.R. 556 (S. 1610):

HOUSE REPORTS: No. 110–24, Pt. 1 (Comm. on Financial Services).

SENATE REPORTS: No. 110–80 accompanying S. 1610 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 153 (2007):

Feb. 28, considered and passed House.

June 29, considered and passed Senate, amended, in lieu of S. 1610.

June 10, 11, House considered and concurred in Senate amendment.