

115TH CONGRESS
2D SESSION

H. R. 5841

To modernize and strengthen the Committee on Foreign Investment in the United States to more effectively guard against the risk to the national security of the United States posed by certain types of foreign investment, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 16, 2018

Mr. PITTINGER introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on Financial Services, Energy and Commerce, Intelligence (Permanent Select), and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To modernize and strengthen the Committee on Foreign Investment in the United States to more effectively guard against the risk to the national security of the United States posed by certain types of foreign investment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Foreign Investment Risk Review Modernization Act of
4 2018”.

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

Sec. 1. Short title; table of contents.

TITLE I—FINDINGS AND SENSE OF CONGRESS

Sec. 101. Findings and sense of Congress.

TITLE II—DEFINITIONS

Sec. 201. Definitions.

TITLE III—IMPROVEMENTS TO THE OPERATIONS OF THE
COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES

Sec. 301. Inclusion of partnership and side agreements in notice.

Sec. 302. Declarations relating to certain covered transactions.

Sec. 303. Timing for reviews and investigations.

Sec. 304. Submission of certifications to Congress.

Sec. 305. Analysis by Director of National Intelligence.

Sec. 306. Information sharing.

Sec. 307. Action by the President.

Sec. 308. Factors to be considered.

Sec. 309. Mitigation and other actions by the Committee to address national
security risks.

Sec. 310. Certification of notices and information.

TITLE IV—MODIFICATION OF ANNUAL REPORT

Sec. 401. Modification of annual report.

TITLE V—RESOURCES, SPECIAL HIRING AUTHORITY, AND
OUTREACH

Sec. 501. Centralization of certain Committee functions.

Sec. 502. CFIUS resource needs.

Sec. 503. CFIUS outreach.

TITLE VI—MISCELLANEOUS FIRRM PROVISIONS

Sec. 601. Conforming amendment.

Sec. 602. Regulatory certainty for United States businesses.

TITLE VII—COMMON SENSE CREDIT UNION CAPITAL RELIEF

Sec. 701. Delay in effective date.

TITLE VIII—EXPORT CONTROL REFORM

- Sec. 801. Short title.
 Sec. 802. Definitions.

Subtitle A—Authority and Administration of Controls

- Sec. 811. Short title.
 Sec. 812. Statement of policy.
 Sec. 813. Authority of the President.
 Sec. 814. Additional authorities.
 Sec. 815. Administration of export controls.
 Sec. 816. Control lists.
 Sec. 817. Licensing.
 Sec. 818. Compliance assistance.
 Sec. 819. Requirements to identify and control emerging, foundational, and other critical technologies in export control regulations.
 Sec. 820. Review relating to countries subject to comprehensive United States arms embargo.
 Sec. 821. Penalties.
 Sec. 822. Enforcement.
 Sec. 823. Administrative procedure.
 Sec. 824. Annual report to Congress.
 Sec. 825. Repeal.
 Sec. 826. Effect on other Acts.
 Sec. 827. Transition provisions.

Subtitle B—Anti-Boycott Act of 2018

- Sec. 831. Short title.
 Sec. 832. Statement of policy.
 Sec. 833. Foreign boycotts.
 Sec. 834. Enforcement.

Subtitle C—Sanctions Regarding Missile Proliferation and Chemical and Biological Weapons Proliferation

- Sec. 841. Missile proliferation control violations.
 Sec. 842. Chemical and biological weapons proliferation sanctions.

Subtitle D—Administrative Authorities

- Sec. 851. Under Secretary of Commerce for Industry and Security.

1 **TITLE I—FINDINGS AND SENSE**
 2 **OF CONGRESS**

3 **SEC. 101. FINDINGS AND SENSE OF CONGRESS.**

4 (a) FINDINGS.—The Congress finds the following:

5 (1) According to a February 2016 report by the
 6 Department of Commerce’s International Trade Ad-
 7 ministration, 12 million United States workers,

1 equivalent to 8.5 percent of the labor force, have
2 jobs resulting from foreign investment, including 3.5
3 million jobs in the manufacturing sector alone.

4 (2) In 2016, new foreign direct investment in
5 U.S. manufacturing totaled \$129.4 billion.

6 (3) The Department of Commerce's Bureau of
7 Economic Analysis concluded that in 2015, foreign-
8 owned affiliates in the United States—

9 (A) Contributed \$894.5 billion in value
10 added to the U.S. economy;

11 (B) exported goods valued at \$352.8 bil-
12 lion, accounting for nearly a quarter of total
13 U.S. goods exports;

14 (C) undertook \$56.7 billion in research
15 and development; and

16 (D) the seven largest investing countries,
17 all of which are United States allies—the
18 United Kingdom, Japan, Germany, France,
19 Canada, Switzerland, and the Netherlands—ac-
20 counted for 72.1 percent of U.S. affiliate value
21 added and over 80 percent of affiliates' R&D
22 expenditures.

23 (4) According to the Government Accountability
24 Office (GAO), from 2011 to 2016, the number of
25 transactions reviewed by the Committee on Foreign

1 Investment in the United States (CFIUS) grew by
2 55 percent, while agency staff assigned to the re-
3 views increased by 11 percent.

4 (5) In light of staffing constraints at CFIUS,
5 GAO has cautioned against expanding CFIUS’s au-
6 thorities precipitously. According to a February
7 2018 report (GAO–18–249), GAO noted: “Officials
8 from Treasury and other member agencies are aware
9 of pressures on their CFIUS staff given the current
10 workload and have expressed concerns about possible
11 workload increases.”. GAO concluded: “Without at-
12 taining an understanding of the staffing levels need-
13 ed to address the current and future CFIUS work-
14 load, particularly if legislative changes to CFIUS’s
15 authorities further expand its workload, CFIUS may
16 be limited in its ability to fulfill its objectives and
17 address threats to the national security of the
18 United States.”.

19 (6) On March 30, 1954, Dwight David Eisen-
20 hower—five-star general, Supreme Allied Com-
21 mander, and 34th President of the United States—
22 in his “Special Message to the Congress on Foreign
23 Economic Policy”, counseled: “Great mutual advan-
24 tages to buyer and seller, to producer and consumer,
25 to investor and to the community where investment

1 is made, accrue from high levels of trade and invest-
2 ment.”. He continued: “The internal strength of the
3 American economy has evolved from such a system
4 of mutual advantage. In the press of other problems
5 and in the haste to meet emergencies, this nation—
6 and many other nations of the free world—have all
7 too often lost sight of this central fact.”. President
8 Eisenhower concluded: “If we fail in our trade pol-
9 icy, we may fail in all. Our domestic employment,
10 our standard of living, our security, and the soli-
11 darity of the free world—all are involved.”.

12 (b) SENSE OF CONGRESS.—It is the sense of Con-
13 gress that—

14 (1) foreign investment provides substantial ben-
15 efits to the United States, including the promotion
16 of economic growth, productivity, innovation, com-
17 petitiveness, and job creation, thereby enhancing
18 U.S. national security;

19 (2) maintaining the commitment of the United
20 States to an open investment policy encourages
21 other countries to act similarly and helps expand
22 foreign markets for U.S. businesses;

23 (3) the Committee on Foreign Investment in
24 the United States, as a complement to domestic and
25 multilateral export control regimes, plays a critical

1 role in protecting the national security of the United
2 States;

3 (4) in order to maintain the Committee's effec-
4 tiveness and guard against mission creep, CFIUS
5 should remain narrowly focused on confronting risks
6 related to national security;

7 (5) it is essential that the member agencies of
8 the Committee are adequately resourced and able to
9 hire appropriately qualified individuals in a timely
10 manner so that CFIUS may promptly complete
11 transaction reviews, identify and respond to evolving
12 national security risks, and enforce mitigation agree-
13 ments effectively;

14 (6) the President should carry out international
15 outreach to promote the benefits of foreign invest-
16 ment for global economic growth, while also assisting
17 United States partners to address national security
18 risks; and

19 (7) it is the policy of the United States to en-
20 thusiastically welcome and support foreign invest-
21 ment, consistent with national security consider-
22 ations.

TITLE II—DEFINITIONS

SEC. 201. DEFINITIONS.

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

(1) by striking paragraphs (2), (3), and (4) and inserting the following:

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

“(3) COVERED TRANSACTION.—

“(A) IN GENERAL.—The term ‘covered transaction’ means any transaction described in subparagraph (B) or (C) that is proposed, pending, or completed on or after the date of the enactment 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, takeover, or joint venture that is proposed or pending after August 23, 1988, by or with any

1 foreign person that could result in foreign
2 control of any United States business.

3 “(ii) The purchase or lease by, or con-
4 cession to, a foreign person of private or
5 public real estate that—

6 “(I) is—

7 “(aa) located in the United
8 States and is, or is in close prox-
9 imity to, a United States military
10 installation; or

11 “(bb) itself, or is located at
12 and will function as part of, an
13 air or sea port;

14 “(II) is not a single housing unit,
15 as defined by the Bureau of the Cen-
16 sus;

17 “(III) is not in an urbanized
18 area, as set forth by the Bureau of
19 the Census in its most recent census,
20 except as otherwise prescribed by the
21 Committee in regulations in consulta-
22 tion with the Secretary of Defense;
23 and

1 “(IV) meets such other criteria
2 as the Committee prescribes by regu-
3 lation.

4 “(iii) Any change in the rights that a
5 foreign person has with respect to a United
6 States business in which the foreign person
7 has an investment, if that change is likely
8 to result in foreign control of the United
9 States business.

10 “(iv) Any transaction or other device
11 entered into or employed for the purpose of
12 evading this section, subject to regulations
13 prescribed by the Committee.

14 “(C) SENSITIVE TRANSACTIONS INVOLVING
15 COUNTRIES OF SPECIAL CONCERN.—

16 “(i) IN GENERAL.—A transaction de-
17 scribed in this subparagraph is any invest-
18 ment in an unaffiliated United States busi-
19 ness by a foreign person that—

20 “(I) is—

21 “(aa) a national or a govern-
22 ment of, or a foreign entity orga-
23 nized under the laws of, a coun-
24 try of special concern; or

25 “(bb) a foreign entity—

1 “(AA) over which con-
2 trol is exercised or exer-
3 cisable by a national or a
4 government of, or by a for-
5 eign entity organized under
6 the laws of, a country of
7 special concern; or

8 “(BB) in which the
9 government of a country of
10 special concern has a sub-
11 stantial interest; and

12 “(II) as a result of the trans-
13 action, could obtain—

14 “(aa) sensitive personal
15 data, as defined by regulations
16 prescribed by the Committee, of
17 United States citizens, if such
18 data may be exploited in a man-
19 ner that threatens national secu-
20 rity; or

21 “(bb) influence over sub-
22 stantive decisionmaking of the
23 United States business regarding
24 the use, development, acquisition,
25 or release of—

1 “(AA) sensitive per-
2 sonal data of United States
3 citizens, as described in item
4 (aa); or

5 “(BB) critical tech-
6 nologies.

7 “(III) COUNTRIES OF SPECIAL
8 CONCERN.—For the purposes of this
9 subparagraph, the term ‘countries of
10 special concern’ means—

11 “(aa) any foreign country
12 that is subject to export restric-
13 tions pursuant to section 744.21
14 of title 15, Code of Federal Reg-
15 ulations;

16 “(bb) any country deter-
17 mined by the Secretary of State
18 to be a state sponsor of ter-
19 rorism; and

20 “(cc) any country that—

21 “(AA) is subject to a
22 United States arms embar-
23 go, as specified in list D:5 of
24 Country Group D in Supple-
25 ment No. 1 to part 740 of

1 title 15, Code of Federal
2 Regulations; and

3 “(BB) is identified as a
4 country of special concern in
5 regulations prescribed by the
6 Committee.

7 “(ii) INVESTMENT DEFINED.—For the
8 purposes of this subparagraph, the term
9 ‘investment’ means the acquisition of an
10 equity interest, including contingent equity
11 interest, as further defined in regulations
12 prescribed by the Committee.

13 “(iii) UNAFFILIATED UNITED STATES
14 BUSINESS DEFINED.—For the purposes of
15 this subparagraph, with respect to an in-
16 vestment described under clause (i), and as
17 further defined in regulations prescribed by
18 the Committee, the term ‘unaffiliated
19 United States business’ means a United
20 States business that is not subject to the
21 same ultimate ownership of the foreign
22 person undertaking the investment.

23 “(iv) WAIVER.—The President may
24 waive any requirement of this subpara-
25 graph upon reporting to the Committees

1 on Financial Services and Foreign Affairs
2 of the House and the Committees on
3 Banking, Housing, and Urban Affairs and
4 Foreign Relations of the Senate that the
5 waiver is important to the national interest
6 of the United States, with a detailed expla-
7 nation of the reasons therefor.

8 “(D) TRANSFERS OF CERTAIN ASSETS
9 PURSUANT TO BANKRUPTCY PROCEEDINGS OR
10 OTHER DEFAULTS.—The Committee shall pre-
11 scribe regulations to clarify that the term ‘cov-
12 ered transaction’ includes any transaction de-
13 scribed in subparagraphs (B) or (C) that arises
14 pursuant to a bankruptcy proceeding or other
15 form of default on debt.

16 “(4) FOREIGN GOVERNMENT-CONTROLLED
17 TRANSACTION.—The term ‘foreign government-con-
18 trolled transaction’ means any covered transaction
19 that could result in control of a United States busi-
20 ness by a foreign government or a person controlled
21 by or acting on behalf of a foreign government.”;

22 (2) by amending paragraph (7) to read as fol-
23 lows:

24 “(7) CRITICAL TECHNOLOGIES.—The term
25 ‘critical technologies’ means—

1 “(A) defense articles or defense services
2 covered by the United States Munitions List
3 (USML), which is set forth in the International
4 Traffic in Arms Regulations (ITAR) (22 C.F.R.
5 parts 120–130);

6 “(B) those items specified on the Com-
7 merce Control List (CCL) set forth in Supple-
8 ment No. 1 to part 774 of the Export Adminis-
9 tration Regulations (EAR) (15 C.F.R. parts
10 730–774) that are controlled pursuant to multi-
11 lateral regimes (i.e. for reasons of national se-
12 curity, chemical and biological weapons pro-
13 liferation, nuclear nonproliferation, or missile
14 technology), as well as those that are controlled
15 for reasons of regional stability or surreptitious
16 listening;

17 “(C) specially designed and prepared nu-
18 clear equipment, parts and components, mate-
19 rials, software, and technology specified in the
20 Assistance to Foreign Atomic Energy Activities
21 regulations (10 C.F.R. part 810), and nuclear
22 facilities, equipment, and material specified in
23 the Export and Import of Nuclear Equipment
24 and Material regulations (10 C.F.R. part 110);

1 “(D) select agents and toxins specified in
2 the Select Agents and Toxins regulations (7
3 C.F.R. part 331, 9 C.F.R. part 121, and 42
4 C.F.R. part 73); and

5 “(E) emerging, foundational, or other crit-
6 ical technologies that are controlled pursuant to
7 section 819 of the Foreign Investment Risk Re-
8 view Modernization Act of 2018.”; and

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

10 “(9) FOREIGN PERSON.—The term ‘foreign per-
11 son’ means—

12 “(A) any foreign national, foreign govern-
13 ment, or foreign entity; or

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

17 “(10) SUBSTANTIAL INTEREST.—The term
18 ‘substantial interest’ has the meaning given to such
19 term in regulations prescribed by the Committee,
20 but does not include a voting interest of less than
21 ten percent or ownership interests held or acquired
22 solely for the purpose of passive investment.

23 “(11) UNITED STATES BUSINESS.—The term
24 ‘United States business’ means any entity, irrespec-
25 tive of the nationality of the persons that control it,

1 engaged in interstate commerce in the United
2 States, but only to the extent of its activities in
3 interstate commerce.”.

4 **TITLE III—IMPROVEMENTS TO**
5 **THE OPERATIONS OF THE**
6 **COMMITTEE ON FOREIGN IN-**
7 **VESTMENT IN THE UNITED**
8 **STATES**

9 **SEC. 301. INCLUSION OF PARTNERSHIP AND SIDE AGREE-**
10 **MENTS IN NOTICE.**

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

14 “(iv) INCLUSION OF PARTNERSHIP
15 AND SIDE AGREEMENTS.—Subject to regu-
16 lations prescribed by the Committee, the
17 Committee may require a written notice
18 submitted under clause (i) by a party to a
19 covered transaction to include a copy of
20 any partnership agreements, integration
21 agreements, or other side agreements relat-
22 ing to the transaction, as specified in regu-
23 lations prescribed by the Committee.”.

1 **SEC. 302. DECLARATIONS RELATING TO CERTAIN COVERED**
2 **TRANSACTIONS.**

3 (a) IN GENERAL.—Section 721(b)(1)(C) of the De-
4 fense Production Act of 1950 (50 U.S.C. 4565(b)(1)(C)),
5 as amended by section 301, is further amended by adding
6 at the end the following:

7 “(v) DECLARATIONS WITH RESPECT
8 TO CERTAIN COVERED TRANSACTIONS.—

9 “(I) VOLUNTARY DECLARA-
10 TIONS.—For the purpose of expe-
11 diting the review of certain covered
12 transactions that the Committee de-
13 termines are likely to pose limited
14 risk, the Committee may prescribe
15 regulations to permit parties to the
16 transaction to submit a declaration
17 with basic information regarding the
18 transaction, unless the parties submit
19 a written notice under clause (i).

20 “(II) MANDATORY DECLARA-
21 TIONS.—

22 “(aa) IN GENERAL.—The
23 Committee may prescribe regula-
24 tions to require the parties to a
25 covered transaction to submit a
26 declaration described in sub-

1 clause (I) with respect to the
2 transaction if the transaction in-
3 volves an investment that results
4 in the acquisition, directly or in-
5 directly, of a substantial interest
6 in a United States business by a
7 foreign person in which a foreign
8 government has, directly or indi-
9 rectly, a substantial interest.

10 “(bb) SUBMISSION OF WRIT-
11 TEN NOTICE AS AN ALTER-
12 NATIVE.—Parties to a covered
13 transaction for which a declara-
14 tion is required under this clause
15 may instead elect to submit a
16 written notice under clause (i).

17 “(cc) TIMING OF SUBMIS-
18 SION.—With respect to the regu-
19 lations described under subclause
20 (I), the Committee may not re-
21 quire a declaration to be sub-
22 mitted more than 30 days in ad-
23 vance of the completion of the
24 transaction.

1 “(III) PENALTIES.—The Com-
2 mittee may impose a penalty pursuant
3 to subsection (h)(3)(A) with respect to
4 a party that fails to comply with this
5 clause.

6 “(IV) COMMITTEE RESPONSE TO
7 DECLARATION.—

8 “(aa) IN GENERAL.—Upon
9 receiving a declaration under this
10 clause with respect to a trans-
11 action, the Committee may, at its
12 discretion—

13 “(AA) request that the
14 parties to the transaction
15 file a written notice under
16 clause (i), provided that the
17 Committee includes an ex-
18 planation of the reasons for
19 the request;

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

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

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

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

19 “(bb) TIMING.—The Com-
20 mittee shall take action under
21 item (aa) within 15 days of re-
22 ceiving a declaration under this
23 clause.

24 “(cc) REFILING OF DEC-
25 LARATION.—The Committee may

1 not request or recommend that a
2 declaration be withdrawn and
3 refiled, except to permit parties
4 to a transaction to correct mate-
5 rial errors or omissions.

6 “(V) REGULATIONS.—In pre-
7 scribing regulations establishing re-
8 quirements for declarations submitted
9 under this clause, the Committee shall
10 ensure that such declarations are sub-
11 mitted as abbreviated notifications
12 that do not generally exceed 5 pages
13 in length.

14 “(VI) INVESTMENT DEFINED.—
15 For the purposes of this clause, the
16 term ‘investment’ means the acquisi-
17 tion of an equity interest, including
18 contingent equity interest, as further
19 defined in regulations prescribed by
20 the Committee.”.

21 (b) STIPULATIONS REGARDING TRANSACTIONS.—
22 Section 721(b)(1)(C) of the Defense Production Act of
23 1950 (50 U.S.C. 4565(b)(1)(C)), as amended by this sec-
24 tion, is further amended by adding at the end the fol-
25 lowing:

1 “(viii) STIPULATIONS REGARDING
2 TRANSACTIONS.—

3 “(I) IN GENERAL.—In a written
4 notice submitted under clause (i) or a
5 declaration submitted under clause (v)
6 with respect to a transaction, a party
7 to the transaction may—

8 “(aa) stipulate that the
9 transaction is a covered trans-
10 action; and

11 “(bb) if the party stipulates
12 that the transaction is a covered
13 transaction under item (aa), stip-
14 ulate that the transaction is a
15 foreign government-controlled
16 transaction.

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

1 **SEC. 303. TIMING FOR REVIEWS AND INVESTIGATIONS.**

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

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

6 “(C) TIMING.—

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

13 “(ii) EXTENSION FOR EXTRAOR-
14 DINARY CIRCUMSTANCES.—

15 “(I) IN GENERAL.—In extraor-
16 dinary circumstances (as defined by
17 the Committee in regulations), the
18 chairperson may, at the request of the
19 head of the lead agency, extend an in-
20 vestigation under subparagraph (A)
21 for not more than one 15-day period.

22 “(II) NONDELEGATION.—The
23 authority of the chairperson and the
24 head of the lead agency referred to in
25 subclause (I) may not be delegated to
26 any person other than the Deputy

1 Secretary of the Treasury or the dep-
2 uty head (or equivalent thereof) of the
3 lead agency, as the case may be.

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

10 (2) by adding at the end the following:

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

15 **SEC. 304. SUBMISSION OF CERTIFICATIONS TO CONGRESS.**

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

18 (1) in clause (i), by amending subclause (II) to
19 read as follows:

20 “(II) a certification that all rel-
21 evant national security factors, includ-
22 ing factors enumerated in subsection
23 (f), have received full consideration.”;
24 and

25 (2) by adding at the end the following:

1 “(v) AUTHORITY TO CONSOLIDATE
2 DOCUMENTS.—Instead of transmitting a
3 separate certified notice or certified report
4 under subparagraph (A) or (B) with re-
5 spect to each covered transaction, the
6 Committee may, on a monthly basis, trans-
7 mit such notices and reports in a consoli-
8 dated document to the Members of Con-
9 gress specified in clause (iii).”.

10 **SEC. 305. ANALYSIS BY DIRECTOR OF NATIONAL INTEL-**
11 **LIGENCE.**

12 Section 721(b)(4) of the Defense Production Act of
13 1950 (50 U.S.C. 4565(b)(4)) is amended—

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

16 “(A) ANALYSIS REQUIRED.—

17 “(i) IN GENERAL.—The Director of
18 National Intelligence shall expeditiously
19 carry out a thorough analysis of any threat
20 to the national security of the United
21 States posed by any covered transaction,
22 which shall include the identification of
23 any recognized gaps in the collection of in-
24 telligence relevant to the analysis.

1 “(ii) VIEWS OF INTELLIGENCE AGEN-
2 CIES.—The Director shall seek and incor-
3 porate into the analysis required by clause
4 (i) the views of all affected or appropriate
5 intelligence agencies with respect to the
6 transaction.

7 “(iii) UPDATES.—At the request of
8 the lead agency, the Director shall update
9 the analysis conducted under clause (i)
10 with respect to a covered transaction with
11 respect to which an agreement was entered
12 into under subsection (1)(3)(A).

13 “(iv) INDEPENDENCE AND OBJEC-
14 TIVITY.—The Committee shall ensure that
15 its processes under this section preserve
16 the ability of the Director to conduct an
17 analysis under clause (i) that is inde-
18 pendent, objective, and consistent with all
19 applicable directives, policies, and analytic
20 tradecraft standards of the intelligence
21 community.”;

22 (2) by redesignating subparagraphs (B), (C),
23 and (D) as subparagraphs (C), (D), and (E), respec-
24 tively;

1 (3) by inserting after subparagraph (A) the fol-
2 lowing:

3 “(B) BASIC THREAT INFORMATION.—

4 “(i) IN GENERAL.—The Director of
5 National Intelligence may provide the
6 Committee with basic information regard-
7 ing any threat to the national security of
8 the United States posed by a covered
9 transaction described in clause (ii) instead
10 of conducting the analysis required by sub-
11 paragraph (A).

12 “(ii) COVERED TRANSACTION DE-
13 SCRIBED.—A covered transaction is de-
14 scribed in this clause if—

15 “(I) the transaction is described
16 in subsection (a)(3)(B)(ii);

17 “(II) the Director of National In-
18 telligence has completed an analysis
19 pursuant to subparagraph (A) involv-
20 ing each foreign person that is a party
21 to the transaction during the 12
22 months preceding the review or inves-
23 tigation of the transaction under this
24 section; or

1 “(III) the transaction otherwise
2 meets criteria agreed upon by the
3 Committee and the Director of Na-
4 tional Intelligence for purposes of this
5 subparagraph.”; and

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

7 “(F) ASSESSMENT OF OPERATIONAL IM-
8 PACT.—The Director may provide to the Com-
9 mittee an assessment, separate from the anal-
10 yses under subparagraphs (A) and (B), of any
11 operational impact of a covered transaction on
12 the intelligence community and a description of
13 any actions that have been or will be taken to
14 mitigate any such impact.

15 “(G) SUBMISSION TO CONGRESS.—The
16 Committee shall include the analysis required
17 by subparagraph (A) with respect to a covered
18 transaction in the report required under sub-
19 section (m)(1), subject to the requirements of
20 subsection (m)(5).”.

21 **SEC. 306. INFORMATION SHARING.**

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

24 (1) by striking “Any information” and inserting
25 the following:

1 “(1) IN GENERAL.—Any information”; and

2 (2) by adding at the end the following:

3 “(2) EXCEPTION.—Paragraph (1) shall not pro-
4 hibit the disclosure of information or documentary
5 material that the party filing such information or
6 material consented to be disclosed to third parties.”.

7 **SEC. 307. ACTION BY THE PRESIDENT.**

8 (a) IN GENERAL.—Section 721(d)(2) of the Defense
9 Production Act of 1950 (50 U.S.C. 4565(d)(2)) is amend-
10 ed by striking “not later than 15 days” and all that fol-
11 lows and inserting the following: “with respect to a cov-
12 ered transaction not later than 15 days after the earlier
13 of—

14 “(A) the date on which the investigation of
15 the transaction under subsection (b) is com-
16 pleted; or

17 “(B) the date on which the Committee oth-
18 erwise refers the transaction to the President
19 under subsection (l)(4).”.

20 (b) CIVIL PENALTIES.—Section 721(h)(3)(A) of the
21 Defense Production Act of 1950 (50 U.S.C.
22 4565(h)(3)(A)) is amended by striking “including any
23 mitigation” and all that follows through “subsection (l)”
24 and inserting “including any mitigation agreement entered

1 into, conditions imposed, or order issued pursuant to this
2 section”.

3 **SEC. 308. FACTORS TO BE CONSIDERED.**

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

6 (1) in paragraph (4), by striking “proposed or
7 pending”;

8 (2) by striking paragraph (5);

9 (3) by redesignating paragraphs (6), (7), (8),
10 (9), (10), and (11) as paragraphs (5), (6), (7), (8),
11 (9), and (16), respectively;

12 (4) in paragraph (9), as so redesignated, by
13 striking “and” at the end; and

14 (5) by inserting after paragraph (9), as so re-
15 designated, the following:

16 “(10) the degree to which the covered trans-
17 action is likely to threaten the ability of the United
18 States Government to acquire or maintain the equip-
19 ment and systems that are necessary for defense, in-
20 telligence, or other national security functions;

21 “(11) the potential national security-related ef-
22 fects of the cumulative control of any one type of
23 critical infrastructure, energy asset, material, or
24 critical technology by a foreign person;

1 “(12) whether any foreign person that would
2 acquire control of a United States business as a re-
3 sult of the covered transaction has a history of—

4 “(A) complying with United States laws
5 and regulations and prior adherence, if applica-
6 ble, to any agreement or condition, as described
7 under (l)(1)(A); and

8 “(B) adhering to contracts or other agree-
9 ments with entities of the United States Gov-
10 ernment;

11 “(13) the extent to which the covered trans-
12 action is likely to release, either directly or indi-
13 rectly, sensitive personal data of United States citi-
14 zens to a foreign person that may exploit that infor-
15 mation in a manner that threatens national security;

16 “(14) whether the covered transaction is likely
17 to exacerbate cybersecurity vulnerabilities or is likely
18 to result in a foreign government gaining a signifi-
19 cant new capability to engage in malicious cyber-en-
20 abled activities against the United States, including
21 such activities designed to affect the outcome of any
22 election for Federal office;

23 “(15) whether the covered transaction is likely
24 to expose any information regarding sensitive na-
25 tional security matters or sensitive procedures or op-

1 erations of a Federal law enforcement agency with
2 national security responsibilities to a foreign person
3 not authorized to receive that information; and”.

4 **SEC. 309. MITIGATION AND OTHER ACTIONS BY THE COM-**
5 **MITTEE TO ADDRESS NATIONAL SECURITY**
6 **RISKS.**

7 Section 721(l) of the Defense Production Act of 1950
8 (50 U.S.C. 4565(l)) is amended—

9 (1) in paragraph (1)—

10 (A) in subparagraph (A)—

11 (i) in the heading, by striking “IN
12 GENERAL” and inserting “AGREEMENTS
13 AND CONDITIONS”;

14 (ii) by striking “The Committee” and
15 inserting the following:

16 “(i) IN GENERAL.—The Committee”;

17 and

18 (iii) by adding at the end the fol-
19 lowing:

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

1 agreement or condition with any party to
2 the covered transaction for purposes of ef-
3 fectuating such abandonment and miti-
4 gating any threat to the national security
5 of the United States that arises as a result
6 of the covered transaction.

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

22 (B) by amending subparagraph (B) to read
23 as follows:

24 “(B) TREATMENT OF OUTDATED AGREE-
25 MENTS OR CONDITIONS.—The chairperson and

1 the head of any applicable lead agency shall pe-
2 riodically review the appropriateness of an
3 agreement or condition described under sub-
4 paragraph (A) and terminate, phase out, or
5 otherwise amend any agreement or condition if
6 a threat no longer requires mitigation through
7 the agreement or condition.”; and

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

9 “(C) LIMITATIONS.—An agreement may
10 not be entered into or condition imposed under
11 subparagraph (A) with respect to a covered
12 transaction unless the Committee determines
13 that the agreement or condition resolves the na-
14 tional security concerns posed by the trans-
15 action, taking into consideration whether the
16 agreement or condition is reasonably calculated
17 to—

18 “(i) be effective;

19 “(ii) allow for compliance with the
20 terms of the agreement or condition in an
21 appropriately verifiable way; and

22 “(iii) enable effective monitoring of
23 compliance with and enforcement of the
24 terms of the agreement or condition.

1 “(D) JURISDICTION.—The provisions of
2 section 706(b) shall apply to any mitigation
3 agreement entered into or condition imposed
4 under subparagraph (A).”; and

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

6 “(4) REFERRAL TO PRESIDENT.—The Com-
7 mittee may, at any time during the review or inves-
8 tigation of a covered transaction under subsection
9 (b), complete the action of the Committee with re-
10 spect to the transaction and refer the transaction to
11 the President for action pursuant to subsection (d).

12 “(5) RISK-BASED ANALYSIS REQUIRED.—

13 “(A) IN GENERAL.—Any determination of
14 the Committee to refer a covered transaction to
15 the President under paragraph (4), or to nego-
16 tiate, enter into, impose, or enforce any agree-
17 ment or condition under paragraph (1)(A) with
18 respect to a covered transaction, shall be based
19 on a risk-based analysis, conducted by the Com-
20 mittee, of the effects on the national security of
21 the United States of the covered transaction,
22 which shall include—

23 “(i) an assessment of the threat,
24 vulnerabilities, and consequences to na-
25 tional security resulting from the trans-

1 action, as these terms are defined or clari-
2 fied in guidance and regulations issued by
3 the Committee; and

4 “(ii) an identification of each relevant
5 factor described in subsection (f) that the
6 transaction may substantially implicate.

7 “(B) COMPLIANCE PLANS.—

8 “(i) IN GENERAL.—In the case of a
9 covered transaction with respect to which
10 an agreement or condition is entered into
11 under paragraph (1)(A), the Committee or
12 lead agency, as the case may be, shall for-
13 mulate, adhere to, and keep updated a
14 plan for monitoring compliance with the
15 agreement or condition.

16 “(ii) ELEMENTS.—Each plan required
17 by clause (i) with respect to an agreement
18 or condition entered into under paragraph
19 (1)(A) shall include an explanation of—

20 “(I) which member of the Com-
21 mittee will have primary responsibility
22 for monitoring compliance with the
23 agreement or condition;

1 “(II) how compliance with the
2 agreement or condition will be mon-
3 itored;

4 “(III) how frequently compliance
5 reviews will be conducted;

6 “(IV) whether an independent
7 entity will be utilized under subpara-
8 graph (D) to conduct compliance re-
9 views; and

10 “(V) what actions will be taken if
11 the parties fail to cooperate regarding
12 monitoring compliance with the agree-
13 ment or condition.

14 “(C) EFFECT OF LACK OF COMPLIANCE.—
15 If, at any time after a mitigation agreement or
16 condition is entered into or imposed under
17 paragraph (1)(A), the Committee or lead agen-
18 cy, as the case may be, determines that a party
19 or parties to the agreement or condition are not
20 in compliance with the terms of the agreement
21 or condition, the Committee or lead agency
22 may, in addition to the authority of the Com-
23 mittee to impose penalties pursuant to sub-
24 section (h)(3)(A) and to unilaterally initiate a

1 review of any covered transaction under sub-
2 section (b)(1)(D)(iii)(I)—

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

10 “(ii) require that the party or parties
11 submit any covered transaction initiated
12 after the date of the determination of non-
13 compliance and before the date that is 5
14 years after the date of the determination
15 to the Committee for review under sub-
16 section (b); or

17 “(iii) seek injunctive relief.

18 “(D) USE OF INDEPENDENT ENTITIES TO
19 MONITOR COMPLIANCE.—If the parties to an
20 agreement or condition entered into under para-
21 graph (1)(A) enter into a contract with an inde-
22 pendent entity from outside the United States
23 Government for the purpose of monitoring com-
24 pliance with the agreement or condition, the
25 Committee shall take such action as is nec-

1 essary to prevent any significant conflict of in-
2 terest from arising with respect to the entity
3 and the parties to the transaction.

4 “(E) SUCCESSORS AND ASSIGNS.—Any
5 agreement or condition entered or imposed
6 under paragraph (1)(A) shall be considered
7 binding on all successors and assigns, unless
8 and until the agreement or condition terminates
9 on its own terms or is otherwise terminated by
10 the Committee in the Committee’s sole discre-
11 tion.

12 “(F) ADDITIONAL COMPLIANCE MEAS-
13 URES.—Subject to subparagraphs (A) through
14 (D), the Committee shall develop and agree
15 upon methods for evaluating compliance with
16 any agreement entered into or condition im-
17 posed with respect to a covered transaction that
18 will allow the Committee to adequately ensure
19 compliance without unnecessarily diverting
20 Committee resources from assessing any new
21 covered transaction for which a written notice
22 under clause (i) of subsection (b)(1)(C) has
23 been filed, and if necessary, reaching a mitiga-
24 tion agreement with or imposing a condition on
25 a party to such covered transaction or any cov-

1 ered transaction for which a review has been re-
2 opened for any reason.”.

3 **SEC. 310. CERTIFICATION OF NOTICES AND INFORMATION.**

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

6 (1) by redesignating paragraphs (1) and (2) as
7 subparagraphs (A) and (B), respectively, and by
8 moving such subparagraphs, as so redesignated, 2
9 ems to the right;

10 (2) by striking “Each notice” and inserting the
11 following:

12 “(1) IN GENERAL.—Each notice”; and

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

14 “(2) EFFECT OF FAILURE TO SUBMIT.—The
15 Committee may not complete a review under this
16 section of a covered transaction and may recommend
17 to the President that the President suspend or pro-
18 hibit the transaction or require divestment under
19 subsection (d) if the Committee determines that a
20 party to the transaction has—

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

23 “(B) included false or misleading informa-
24 tion in a notice or information described in

1 paragraph (1) or omitted material information
2 from such notice or information.

3 “(3) APPLICABILITY OF LAW ON FRAUD AND
4 FALSE STATEMENTS.—The Committee shall pre-
5 scribe regulations expressly providing for the appli-
6 cation of section 1001 of title 18, United States
7 Code, to all information provided to the Committee
8 under this section by any party to a covered trans-
9 action.”.

10 **TITLE IV—MODIFICATION OF** 11 **ANNUAL REPORT**

12 **SEC. 401. MODIFICATION OF ANNUAL REPORT.**

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

15 (1) in paragraph (2), by amending subpara-
16 graph (A) to read as follows:

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

20 “(i) a description of the outcome of
21 each review or investigation, including
22 whether an agreement was entered into or
23 condition was imposed under subsection
24 (l)(3)(A) with respect to the transaction
25 being reviewed or investigated, and wheth-

1 er the President took any action under this
2 section with respect to that transaction;

3 “(ii) the nature of the business activi-
4 ties or products of the United States busi-
5 ness with which the transaction was en-
6 tered into or intended to be entered into;
7 and

8 “(iii) information about any with-
9 drawal from the process.”;

10 (2) in paragraph (3)—

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

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

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

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

21 “(4) ADDITIONAL CONTENTS OF REPORT.—

22 “(A) Statistics on compliance reviews con-
23 ducted and actions taken by the Committee
24 under subsection (l)(6), including subparagraph
25 (D) of that subsection (l)(6), during that period

1 and a description of any actions taken by the
2 Committee to impose penalties or initiate a uni-
3 lateral review pursuant to subsection
4 (b)(1)(D)(iii)(I).

5 “(B) Cumulative and trend information on
6 the number of declarations filed under sub-
7 section (b)(1)(C)(v), the actions taken by the
8 Committee in response to declarations, the busi-
9 ness sectors involved in the declarations which
10 have been made, and the countries involved in
11 such declarations.

12 “(C) The number of new hires made since
13 the preceding report through the authorities de-
14 scribed under subsection (q), along with sum-
15 mary statistics, position titles, and associated
16 pay grades for such hires and a summary of
17 such hires’ responsibilities in administering this
18 section.

19 “(5) CLASSIFICATION; AVAILABILITY OF RE-
20 PORT.—

21 “(A) CLASSIFICATION.—All appropriate
22 portions of the annual report required by para-
23 graph (1) may be classified.

24 “(B) PUBLIC AVAILABILITY OF UNCLASSI-
25 FIED VERSION.—An unclassified version of the

1 report required by paragraph (1), as appro-
2 priate and consistent with safeguarding na-
3 tional security and privacy, shall be made avail-
4 able to the public. Information regarding trade
5 secrets or business confidential information may
6 be included in the classified version and may
7 not be made available to the public in the un-
8 classified version.

9 “(C) EXCEPTIONS TO FREEDOM OF INFOR-
10 MATION ACT.—The exceptions to subsection (a)
11 of section 552 of title 5, United States Code,
12 provided for under subsection (b) of that sec-
13 tion shall apply with respect to the report re-
14 quired by paragraph (1).”

15 **TITLE V—RESOURCES, SPECIAL**
16 **HIRING AUTHORITY, AND**
17 **OUTREACH**

18 **SEC. 501. CENTRALIZATION OF CERTAIN COMMITTEE**
19 **FUNCTIONS.**

20 Section 721 of the Defense Production Act of 1950
21 (50 U.S.C. 4565) is amended by adding at the end the
22 following:

23 “(o) CENTRALIZATION OF CERTAIN COMMITTEE
24 FUNCTIONS.—

1 “(1) IN GENERAL.—The chairperson, in con-
2 sultation with the Committee, may centralize certain
3 functions of the Committee within the Department
4 of the Treasury for the purpose of enhancing inter-
5 agency coordination and collaboration in carrying
6 out the functions of the Committee under this sec-
7 tion.

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

13 **SEC. 502. CFIUS RESOURCE NEEDS.**

14 (a) UNIFIED BUDGET REQUEST.—Section 721 of the
15 Defense Production Act of 1950 (50 U.S.C. 4565), as
16 amended by section 501, is further amended by adding
17 at the end the following:

18 “(p) UNIFIED BUDGET REQUEST.—

19 “(1) IN GENERAL.—The President may include,
20 in the budget of the Department of the Treasury for
21 a fiscal year (as submitted to Congress with the
22 budget of the President under section 1105(a) of
23 title 31, United States Code), a unified request for
24 funding of all operations under this section con-

1 ducted by all of the departments and agencies rep-
2 resented on the Committee.

3 “(2) FORM OF BUDGET REQUEST.—A unified
4 request under paragraph (1) shall be detailed and
5 include the amounts and staffing levels requested for
6 each department or agency represented on the Com-
7 mittee to carry out the functions of that department
8 or agency under this section.”.

9 (b) ANNUAL SPENDING PLAN.—Not later than 90
10 days following the date of enactment of this Act, and an-
11 nually thereafter, the chairperson of the Committee on
12 Foreign Investment in the United States shall transmit
13 to the Committees on Appropriations and Financial Serv-
14 ices of the House of Representatives and the Committees
15 on Appropriations and Banking, Housing, and Urban Af-
16 fairs of the Senate a detailed spending plan to expedi-
17 tiously meet the requirements of subsections (b), (l), and
18 (m) of section 721 of the Defense Production Act of 1950,
19 as amended by this Act, including estimated expenditures
20 and staffing levels required by operations of the Com-
21 mittee for not less than the following fiscal year at each
22 of the Committee’s member agencies.

23 (c) WAIVER.—The chairperson may waive the report-
24 ing requirement under subsection (b) with respect to a fis-
25 cal year for which a unified budget request described

1 under section 721(p) of the Defense Production Act of
2 1950 has been submitted.

3 (d) SPECIAL HIRING AUTHORITY.—Section 721 of
4 the Defense Production Act of 1950 (50 U.S.C. 4565),
5 as amended by subsection (a), is further amended by add-
6 ing at the end the following:

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

14 (e) TESTIMONY REQUIRED.—Section 721 of the De-
15 fense Production Act of 1950 (50 U.S.C. 4565), as
16 amended by subsection (d), is further amended by adding
17 at the end the following:

18 “(r) TESTIMONY.—

19 “(1) IN GENERAL.—After submitting the uni-
20 fied budget request described under subsection (p),
21 or the spending plan described under section 502 of
22 the Foreign Investment Risk Review Modernization
23 Act of 2018, as the case may be, but not later than
24 March 31 of each year, the chairperson, or the
25 chairperson’s designee, shall appear before the Com-

1 committee on Financial Services of the House of Rep-
2 resentatives and present testimony on—

3 “(A) anticipated resources necessary for
4 operations of the Committee in the following
5 fiscal year at each of the Committee’s member
6 agencies;

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

10 “(i) ensure that thorough reviews and
11 investigations are completed as expedi-
12 tiously as possible;

13 “(ii) monitor and enforce mitigation
14 agreements; and

15 “(iii) identify covered transactions for
16 which a notice under clause (i) of sub-
17 section (b)(1)(C) or a declaration under
18 clause (v) of subsection (b)(1)(C) was not
19 submitted to the Committee; and

20 “(C) management efforts to strengthen the
21 ability of the Committee to meet the require-
22 ments of this section.

23 “(2) SUNSET.—This subsection shall have no
24 force or effect on the date that is five years following

1 the date of enactment of the Foreign Investment
2 Risk Review Modernization Act of 2018.”.

3 **SEC. 503. CFIUS OUTREACH.**

4 Not later than 180 days after the date of enactment
5 of this Act, and every year thereafter for five years, the
6 chairperson of the Committee on Foreign Investment in
7 the United States (“CFIUS”), or the chairperson’s des-
8 ignee, shall brief the Committee on Financial Services of
9 the House of Representatives and the Committee on
10 Banking, Housing, and Urban Affairs of the Senate on
11 activities of CFIUS undertaken in order to—

12 (1) educate the business community, with a
13 particular focus on the technology sector and other
14 sectors of importance to national security, on the
15 goals and operations of CFIUS; and

16 (2) disseminate to the governments of United
17 States allies best practices of CFIUS that—

18 (A) strengthen national security reviews of
19 relevant investment transactions;

20 (B) expedite such reviews when appro-
21 priate; and

22 (C) promote openness to foreign invest-
23 ment, consistent with national security consid-
24 erations.

1 **TITLE VI—MISCELLANEOUS**
2 **FIRMA PROVISIONS**

3 **SEC. 601. CONFORMING AMENDMENT.**

4 Section 721(d)(4)(A) of the Defense Production Act
5 of 1950 (50 U.S.C. 4565(d)(4)(A)) is amended by striking
6 “the foreign interest exercising control” and inserting “a
7 foreign person that would acquire an interest in a United
8 States business or its assets as a result of the covered
9 transaction”.

10 **SEC. 602. REGULATORY CERTAINTY FOR UNITED STATES**
11 **BUSINESSES.**

12 Section 721 of the Defense Production Act of 1950
13 (50 U.S.C. 4565), as amended by section 502, is further
14 amended by adding at the end the following:

15 “(s) REGULATORY CERTAINTY FOR UNITED STATES
16 BUSINESSES.—With respect to mitigating a national secu-
17 rity risk that results from a foreign person’s investment
18 in, or joint venture with, a United States business, a mem-
19 ber agency of the Committee may not prescribe or imple-
20 ment regulations to require divestment by, or of, the
21 United States business, unless—

22 “(1) the regulations are prescribed under this
23 section or pursuant to authorities of the President
24 under the International Emergency Economic Pow-
25 ers Act; or

1 “(2) the President reports to Congress in writ-
2 ing that the regulations—

3 “(A) are, wherever applicable, consistent
4 with regulations prescribed under this section,
5 including any such regulations pertaining to—

6 “(i) foreign control or influence over a
7 United States business;

8 “(ii) the identification of emerging,
9 foundational, or other critical technologies;
10 and

11 “(iii) confidentiality requirements with
12 respect to information and documentary
13 material regarding United States busi-
14 nesses; and

15 “(B) in the case of regulations prescribed
16 or finalized following the effective date of this
17 subsection, were prescribed in consultation with
18 the chairperson of the Committee and with the
19 head of any member agency determined by the
20 President to be affected by the regulations.”.

21 **TITLE VII—COMMON SENSE**

22 **CREDIT UNION CAPITAL RELIEF**

23 **SEC. 701. DELAY IN EFFECTIVE DATE.**

24 Notwithstanding any effective date set forth in the
25 rule issued by the National Credit Union Administration

1 titled “Risk-Based Capital” (published at 80 Fed. Reg.
2 66626 (October 29, 2015)), such final rule shall take ef-
3 fect on January 1, 2021.

4 **TITLE VIII—EXPORT CONTROL** 5 **REFORM**

6 **SEC. 801. SHORT TITLE.**

7 This title may be cited as the “Export Control Re-
8 form Act of 2018”.

9 **SEC. 802. DEFINITIONS.**

10 In this title:

11 (1) **CONTROLLED.**—The term “controlled”
12 means the export, reexport, or transfer of an item
13 subject to the jurisdiction of the United States
14 under subtitle A.

15 (2) **DUAL-USE.**—The term “dual-use”, with re-
16 spect to an item, means the item has civilian appli-
17 cations and military, terrorism, weapons of mass de-
18 struction, or law-enforcement-related applications.

19 (3) **EXPORT.**—The term “export”, with respect
20 to an item subject to controls under subtitle A, in-
21 cludes—

22 (A) the shipment or transmission of the
23 item out of the United States, including the
24 sending or taking of the item out of the United
25 States, in any manner; and

1 (B) the release or transfer of technology or
2 source code relating to the item to a foreign
3 person in the United States.

4 (4) EXPORT ADMINISTRATION REGULATIONS.—
5 The term “Export Administration Regulations”
6 means—

7 (A) the Export Administration Regulations
8 as promulgated, maintained, and amended
9 under the authority of the International Emer-
10 gency Economic Powers Act and codified, as of
11 the date of the enactment of this Act, in sub-
12 chapter C of chapter VII of title 15, Code of
13 Federal Regulations; or

14 (B) regulations that are promulgated,
15 maintained, and amended under the authority
16 of subtitle A on or after the date of the enact-
17 ment of this Act.

18 (5) FOREIGN PERSON.—The term “foreign per-
19 son” means a person that is not a United States
20 person.

21 (6) ITEM.—The term “item” means a com-
22 modity, software, or technology.

23 (7) PERSON.—The term “person” means—

24 (A) a natural person;

1 (B) a corporation, business association,
2 partnership, society, trust, financial institution,
3 insurer, underwriter, guarantor, and any other
4 business organization, any other nongovern-
5 mental entity, organization, or group, or any
6 government or agency thereof; and

7 (C) any successor to any entity described
8 in subparagraph (B).

9 (8) REEXPORT.—The term “reexport”, with re-
10 spect to an item subject to controls under subtitle A,
11 includes—

12 (A) the shipment or transmission of the
13 item from a foreign country to another foreign
14 country, including the sending or taking of the
15 item from the foreign country to the other for-
16 eign country, in any manner; and

17 (B) the release or transfer of technology or
18 source code relating to the item to a foreign
19 person outside the United States.

20 (9) SECRETARY.—Except as otherwise provided,
21 the term “Secretary” means the Secretary of Com-
22 merce.

23 (10) TECHNOLOGY.—The term “technology”
24 includes foundational information and information
25 and know-how necessary for the development (at all

1 stages prior to serial production), production, use,
2 operation, installation, maintenance, repair, overhaul
3 or refurbishing of an item.

4 (11) TRANSFER.—The term “transfer”, with
5 respect to an item subject to controls under title I,
6 means a change in the end-use or end user of the
7 item within the same foreign country.

8 (12) UNITED STATES.—The term “United
9 States” means the several States, the District of Co-
10 lumbia, the Commonwealth of Puerto Rico, the Com-
11 monwealth of the Northern Mariana Islands, Amer-
12 ican Samoa, Guam, the United States Virgin Is-
13 lands, and any other territory or possession of the
14 United States.

15 (13) UNITED STATES PERSON.—The term
16 “United States person” means—

17 (A) for purposes of subtitles A and C—

18 (i) any individual who is a citizen or
19 national of the United States or who is an
20 individual described in subparagraph (B)
21 of section 274B(a)(3) of the Immigration
22 and Nationality Act (8 U.S.C.
23 1324b(a)(3));

24 (ii) a corporation or other legal entity
25 which is organized under the laws of the

1 United States, any State or territory there-
2 of, or the District of Columbia; and

3 (iii) any person in the United States;

4 and

5 (B) for purposes of subtitle B, any United
6 States resident or national (other than an indi-
7 vidual resident outside the United States and
8 employed by other than a United States per-
9 son), any domestic concern (including any per-
10 manent domestic establishment of any foreign
11 concern) and any foreign subsidiary or affiliate
12 (including any permanent foreign establish-
13 ment) of any domestic concern which is con-
14 trolled in fact by such domestic concern, as de-
15 termined under regulations by the Secretary.

16 (14) WEAPONS OF MASS DESTRUCTION.—The
17 term “weapons of mass destruction” means nuclear,
18 radiological, chemical, and biological weapons and
19 delivery systems for such weapons.

20 **Subtitle A—Authority and**
21 **Administration of Controls**

22 **SEC. 811. SHORT TITLE.**

23 This subtitle may be cited as the “Export Controls
24 Act of 2018”.

1 **SEC. 812. STATEMENT OF POLICY.**

2 The following is the policy of the United States:

3 (1) The national security and foreign policy of
4 the United States require that the export, reexport,
5 and transfer of items, and specific activities of
6 United States persons, wherever located, be con-
7 trolled for the following purposes:

8 (A) To control the release of items for use
9 in—

10 (i) the proliferation of weapons of
11 mass destruction or of conventional weap-
12 ons;

13 (ii) the acquisition of destabilizing
14 numbers or types of conventional weapons;

15 (iii) acts of terrorism;

16 (iv) military programs that could pose
17 a threat to the security of the United
18 States or its allies; or

19 (v) activities undertaken specifically to
20 cause significant interference with or dis-
21 ruption of critical infrastructure.

22 (B) To preserve the qualitative military su-
23 periority of the United States.

24 (C) To strengthen the United States in-
25 dustrial base.

1 (D) To carry out the foreign policy of the
2 United States, including the protection of
3 human rights and the promotion of democracy.

4 (E) To carry out obligations and commit-
5 ments under international agreements and ar-
6 rangements, including multilateral export con-
7 trol regimes.

8 (F) To facilitate military interoperability
9 between the United States and its North Atlan-
10 tic Treaty Organization (NATO) and other
11 close allies.

12 (G) To ensure national security controls
13 are tailored to focus on those core technologies
14 and other items that are capable of being used
15 to pose a serious national security threat to the
16 United States.

17 (2) The national security of the United States
18 requires that the United States maintain its leader-
19 ship in the science, technology, engineering, and
20 manufacturing sectors, including foundational tech-
21 nology that is essential to innovation. Such leader-
22 ship requires that United States persons are com-
23 petitive in global markets. The impact of the imple-
24 mentation of this subtitle on such leadership and
25 competitiveness must be evaluated on an ongoing

1 basis and applied in imposing controls under sec-
2 tions 813 and 814 to avoid negatively affecting such
3 leadership.

4 (3) The national security and foreign policy of
5 the United States require that the United States
6 participate in multilateral organizations and agree-
7 ments regarding export controls on items that are
8 consistent with the policy of the United States, and
9 take all the necessary steps to secure the adoption
10 and consistent enforcement, by the governments of
11 such countries, of export controls on items that are
12 consistent with such policy.

13 (4) Export controls should be fully coordinated
14 with the multilateral export control regimes. Export
15 controls that are multilateral are most effective, and
16 should be tailored to focus on those core technologies
17 and other items that are capable of being used to
18 pose a serious national security threat to the United
19 States and its allies.

20 (5) Export controls applied unilaterally to items
21 widely available from foreign sources generally are
22 less effective in preventing end-users from acquiring
23 those items.

24 (6) The effective administration of export con-
25 trols requires a clear understanding both inside and

1 outside the United States Government of which tech-
2 nologies and other items are controlled and an effi-
3 cient process should be created to update the con-
4 trols, such as by removing and adding technologies
5 and other items.

6 (7) The export control system must ensure that
7 it is transparent, predictable, and timely, has the
8 flexibility to be adapted to address new threats in
9 the future, and allows seamless access to and shar-
10 ing of export control information among all relevant
11 United States national security and foreign policy
12 agencies.

13 (8) Implementation and enforcement of United
14 States export controls require robust capabilities in
15 monitoring, intelligence, and investigation, appro-
16 priate penalties for violations, and the ability to
17 swiftly interdict unapproved transfers.

18 (9) Export controls should be balanced with
19 United States counterterrorism, information secu-
20 rity, and cyber-security policies to ensure the ability
21 to export, reexport, and transfer technology and
22 other items in support of counterterrorism, critical
23 infrastructure, and other homeland security prior-
24 ities, while effectively preventing malicious cyber ter-
25 rorists from obtaining items that threaten the

1 United States and its interests, including the protec-
2 tion of and safety of United States citizens abroad.

3 (10) Export controls complement and are a
4 critical element of the national security policies un-
5 derlying the laws and regulations governing foreign
6 direct investment in the United States, including
7 controlling the transfer of critical technologies to
8 certain foreign persons. Thus, the President, in close
9 coordination with the Department of Commerce, the
10 Department of Defense, the Department of State,
11 the Department of Energy, and other agencies re-
12 sponsible for export controls, should have a regular
13 and robust process to identify the emerging and
14 other types of critical technologies of concern and
15 regulate their release to foreign persons as war-
16 ranted regardless of the nature of the underlying
17 transaction. Such identification efforts should draw
18 upon the resources and expertise of all relevant
19 parts of the United States Government, industry,
20 and academia. These efforts should be in addition to
21 traditional efforts to modernize and update the lists
22 of controlled items under the multilateral export con-
23 trol regimes.

1 (11) The authority under this subtitle may be
2 exercised only in furtherance of all of the objectives
3 set forth in paragraphs (1) through (10).

4 **SEC. 813. AUTHORITY OF THE PRESIDENT.**

5 (a) **AUTHORITY.**—In order to carry out the policy set
6 forth in paragraphs (1) through (10) of section 812, the
7 President shall control—

8 (1) the export, reexport, and transfer of items
9 subject to the jurisdiction of the United States,
10 whether by United States persons or by foreign per-
11 sons; and

12 (2) the activities of United States persons,
13 wherever located, relating to specific—

14 (A) nuclear explosive devices;

15 (B) missiles;

16 (C) chemical or biological weapons;

17 (D) whole plants for chemical weapons pre-
18 cursors;

19 (E) foreign maritime nuclear projects; and

20 (F) foreign military intelligence services.

21 (b) **REQUIREMENTS.**—In exercising authority under
22 this subtitle, the President shall impose controls to achieve
23 the following objectives:

1 (1) To regulate the export, reexport, and trans-
2 fer of items described in subsection (a)(1) of United
3 States persons or foreign persons.

4 (2) To regulate the activities described in sub-
5 section (a)(2) of United States persons, wherever lo-
6 cated.

7 (3) To secure the cooperation of other govern-
8 ments and multilateral organizations to impose con-
9 trol systems that are consistent, to the extent pos-
10 sible, with the controls imposed under subsection
11 (a).

12 (4) To maintain the leadership of the United
13 States in science, engineering, technology research
14 and development, manufacturing, and foundational
15 technology that is essential to innovation.

16 (5) To protect United States technological ad-
17 vances by prohibiting unauthorized technology trans-
18 fers to foreign persons in the United States or out-
19 side the United States, particularly with respect to
20 countries that may pose a significant threat to the
21 national security of the United States.

22 (6) To enhance the viability of commercial
23 firms, academic institutions, and research establish-
24 ments, and maintain the skilled workforce of such
25 firms, institutions, and establishments, that are nec-

1 essary to preserving the leadership of the United
2 States described in paragraph (4).

3 (7) To strengthen the United States industrial
4 base, both with respect to current and future de-
5 fense requirements.

6 (8) To enforce the controls through means such
7 as regulations, requirements for compliance, lists of
8 controlled items, lists of foreign persons who threat-
9 en the national security or foreign policy of the
10 United States, and guidance in a form that facili-
11 tates compliance by United States persons and for-
12 eign persons, in particular academic institutions, sci-
13 entific and research establishments, and small- and
14 medium-sized businesses.

15 (c) APPLICATION OF CONTROLS.—The President
16 shall impose controls over the export, reexport, or transfer
17 of items for purposes of the objectives described in sub-
18 sections (b)(1) or (b)(2) without regard to the nature of
19 the underlying transaction or any circumstances per-
20 taining to the activity, including whether such export, re-
21 export, or transfer occurs pursuant to a purchase order
22 or other contract requirement, voluntary decision, inter-
23 company arrangement, marketing effort, or during a joint
24 venture, joint development agreement, or similar collabo-
25 rative agreement.

1 **SEC. 814. ADDITIONAL AUTHORITIES.**

2 (a) IN GENERAL.—In carrying out this subtitle, the
3 President shall—

4 (1) establish and maintain lists published by
5 the Secretary of items that are controlled under this
6 subtitle;

7 (2) establish and maintain lists published by
8 the Secretary of foreign persons and end-uses that
9 are determined to be a threat to the national secu-
10 rity and foreign policy of the United States pursuant
11 to the policy set forth in section 812(1)(A);

12 (3) prohibit unauthorized exports, reexports,
13 and transfers of controlled items, including to for-
14 eign persons in the United States or outside the
15 United States;

16 (4) restrict exports, reexports, and transfers of
17 any controlled items to any foreign person or end-
18 use listed under paragraph (2);

19 (5) require licenses or other authorizations, as
20 appropriate, for exports, reexports, and transfers of
21 controlled items, including imposing conditions or re-
22 strictions on United States persons and foreign per-
23 sons with respect to such licenses or other authoriza-
24 tions;

25 (6) establish a process by which a license appli-
26 cant may request an assessment to determine wheth-

1 er a foreign item is comparable in quality to an item
2 controlled under this subtitle, and is available in suf-
3 ficient quantities to render the United States export
4 control of that item or the denial of a license ineffec-
5 tive, including a mechanism to address that dis-
6 parity;

7 (7) require measures for compliance with the
8 export controls established under this subtitle;

9 (8) require and obtain such information from
10 United States persons and foreign persons as is nec-
11 essary to carry out this subtitle;

12 (9) require, as appropriate, advance notice be-
13 fore an item is exported, reexported, or transferred,
14 as an alternative to requiring a license;

15 (10) require, to the extent feasible, identifica-
16 tion of items subject to controls under this subtitle
17 in order to facilitate the enforcement of such con-
18 trols;

19 (11) inspect, search, detain, seize, or impose
20 temporary denial orders with respect to items, in
21 any form, that are subject to controls under this
22 subtitle, or conveyances on which it is believed that
23 there are items that have been, are being, or are
24 about to be exported, reexported, or transferred in
25 violation of this subtitle;

1 (12) monitor shipments, or other means of
2 transfer;

3 (13) keep the public fully apprised of changes
4 in policy, regulations, and procedures established
5 under this subtitle;

6 (14) appoint technical advisory committees in
7 accordance with the Federal Advisory Committee
8 Act;

9 (15) create, as warranted, exceptions to licens-
10 ing requirements in order to further the objectives of
11 this subtitle;

12 (16) establish and maintain processes to inform
13 persons, either individually by specific notice or
14 through amendment to any regulation or order
15 issued under this subtitle, that a license from the
16 Bureau of Industry and Security of the Department
17 of Commerce is required to export; and

18 (17) undertake any other action as is necessary
19 to carry out this subtitle that is not otherwise pro-
20 hibited by law.

21 (b) RELATIONSHIP TO IEEPA.—The authority under
22 this subtitle may not be used to regulate or prohibit under
23 this subtitle the export, reexport, or transfer of any item
24 that may not be regulated or prohibited under section
25 203(b) of the International Emergency Economic Powers

1 Act (50 U.S.C. 1702(b)), except to the extent the Presi-
2 dent has made a determination necessary to impose con-
3 trols under subparagraph (A), (B), or (C) of paragraph
4 (2) of such section.

5 (c) COUNTRIES SUPPORTING INTERNATIONAL TER-
6 RORISM.—

7 (1) LICENSE REQUIREMENT.—

8 (A) IN GENERAL.—A license shall be re-
9 quired for the export, reexport, or transfer of
10 items to a country if the Secretary of State has
11 made the following determinations:

12 (i) The government of such country
13 has repeatedly provided support for acts of
14 international terrorism.

15 (ii) The export, reexport, or transfer
16 of such items could make a significant con-
17 tribution to the military potential of such
18 country, including its military logistics ca-
19 pability, or could enhance the ability of
20 such country to support acts of inter-
21 national terrorism.

22 (B) DETERMINATION UNDER OTHER PRO-
23 VISIONS OF LAW.—A determination of the Sec-
24 retary of State under section 620A of the For-
25 eign Assistance Act of 1961 (22 U.S.C. 2371),

1 section 40 of the Arms Export Control Act (22
2 U.S.C. 2780), or any other provision of law
3 that the government of a country described in
4 subparagraph (A) has repeatedly provided sup-
5 port for acts of international terrorism shall be
6 deemed to be a determination with respect to
7 such government for purposes of clause (i) of
8 subparagraph (A).

9 (2) NOTIFICATION TO CONGRESS.—The Sec-
10 retary of State or the Secretary of Commerce shall
11 notify the Committee on Foreign Affairs of the
12 House of Representatives and the Committee on
13 Banking, Housing, and Urban Affairs and the Com-
14 mittee on Foreign Relations of the Senate at least
15 30 days before issuing any license required by para-
16 graph (1).

17 (3) PUBLICATION IN FEDERAL REGISTER.—
18 Each determination of the Secretary of State under
19 paragraph (1)(A) shall be published in the Federal
20 Register, except that the Secretary of State may ex-
21 clude confidential information and trade secrets con-
22 tained in such determination.

23 (4) RESCISSION OF DETERMINATION.—A deter-
24 mination of the Secretary of State under paragraph
25 (1)(A) may not be rescinded unless the President

1 submits to the Speaker of the House of Representa-
2 tives, the chairman of the Committee on Foreign Af-
3 fairs, and the chairman of the Committee on Bank-
4 ing, Housing, and Urban Affairs and the chairman
5 of the Committee on Foreign Relations of the Sen-
6 ate—

7 (A) before the proposed rescission would
8 take effect, a report certifying that—

9 (i) there has been a fundamental
10 change in the leadership and policies of the
11 government of the country concerned;

12 (ii) that government is not supporting
13 acts of international terrorism; and

14 (iii) that government has provided as-
15 surances that it will not support acts of
16 international terrorism in the future; or

17 (B) at least 90 days before the proposed
18 rescission would take effect, a report justifying
19 the rescission and certifying that—

20 (i) the government concerned has not
21 provided any support for acts international
22 terrorism during the preceding 24-month
23 period; and

24 (ii) the government concerned has
25 provided assurances that it will not sup-

1 port acts of international terrorism in the
2 future.

3 (5) DISAPPROVAL OF RESCISSION.—No rescis-
4 sion under paragraph (4)(B) of a determination
5 under paragraph (1)(A) with respect to the govern-
6 ment of a country may be made if Congress, within
7 90 days after receipt of a report under paragraph
8 (4)(B), enacts a joint resolution described in sub-
9 section (f)(2) of section 40 of the Arms Export Con-
10 trol Act with respect to a rescission under subsection
11 (f)(1) of such section with respect to the government
12 of such country.

13 (6) NOTIFICATION AND BRIEFING.—Not later
14 than—

15 (A) ten days after initiating a review of the
16 activities of the government of the country con-
17 cerned within the 24-month period referred to
18 in paragraph (4)(B)(i), the Secretary of State
19 shall notify the Committee on Foreign Affairs
20 of the House of Representatives and the Com-
21 mittee on Foreign Relations of the Senate of
22 such initiation; and

23 (B) 20 days after the notification described
24 in paragraph (1), the Secretary of State shall

1 brief the congressional committees described in
2 paragraph (1) on the status of such review.

3 (7) CONTENTS OF NOTIFICATION OF LI-
4 CENSE.—The Secretary of State shall include in the
5 notification required by paragraph (2)—

6 (A) a detailed description of the items to
7 be offered, including a brief description of the
8 capabilities of any item for which a license to
9 export, reexport, or transfer the items is
10 sought;

11 (B) the reasons why the foreign country,
12 person, or entity to which the export, reexport,
13 or transfer is proposed to be made has re-
14 quested the items under the export, reexport, or
15 transfer, and a description of the manner in
16 which such country, person, or entity intends to
17 use such items;

18 (C) the reasons why the proposed export,
19 reexport, or transfer is in the national interest
20 of the United States;

21 (D) an analysis of the impact of the pro-
22 posed export, reexport, or transfer on the mili-
23 tary capabilities of the foreign country, person,
24 or entity to which such transfer would be made;

1 (E) an analysis of the manner in which the
2 proposed export, reexport, or transfer would af-
3 fect the relative military strengths of countries
4 in the region to which the items that are the
5 subject of such export, reexport, or transfer
6 would be delivered and whether other countries
7 in the region have comparable kinds and
8 amounts of items; and

9 (F) an analysis of the impact of the pro-
10 posed export, reexport, or transfer on the rela-
11 tions of the United States with the countries in
12 the region to which the items that are the sub-
13 ject of such export, reexport, or transfer would
14 be delivered.

15 (d) ENHANCED CONTROLS.—

16 (1) IN GENERAL.—In furtherance of section
17 813(a), the President shall, except to the extent au-
18 thorized by a statute or regulation administered by
19 a Federal department or agency other than the De-
20 partment of Commerce, require a United States per-
21 son, wherever located, to apply for and receive a li-
22 cense from the Department of Commerce for—

23 (A) the export, reexport, or transfer of
24 items described in paragraph (2), including

1 items that are not subject to control under this
2 subtitle; and

3 (B) other activities that may support the
4 design, development, production, use, operation,
5 installation, maintenance, repair, overhaul, or
6 refurbishing of, or for the performance of serv-
7 ices relating to, any such items.

8 (2) ITEMS DESCRIBED.—The items described in
9 this paragraph include—

10 (A) nuclear explosive devices;

11 (B) missiles;

12 (C) chemical or biological weapons;

13 (D) whole plants for chemical weapons pre-
14 cursors; and

15 (E) foreign maritime nuclear projects that
16 would pose a risk to the national security or
17 foreign policy of the United States.

18 (e) ADDITIONAL PROHIBITIONS.—The Secretary may
19 inform United States persons, either individually by spe-
20 cific notice or through amendment to any regulation or
21 order issued under this subtitle, that a license from the
22 Bureau of Industry and Security of the Department of
23 Commerce is required to engage in any activity if the ac-
24 tivity involves the types of movement, service, or support
25 described in subsection (d). The absence of any such noti-

1 fication does not excuse the United States person from
2 compliance with the license requirements of subsection (d),
3 or any regulation or order issued under this subtitle.

4 (f) LICENSE REVIEW STANDARDS.—The Secretary
5 shall deny an application to engage in any activity de-
6 scribed in subsection (d) if the activity would make a ma-
7 terial contribution to any of the items described in sub-
8 section (d)(2).

9 **SEC. 815. ADMINISTRATION OF EXPORT CONTROLS.**

10 (a) IN GENERAL.—The President shall delegate to
11 the Secretary of Commerce, the Secretary of Defense, the
12 Secretary of State, the Secretary of Energy, and, as ap-
13 propriate, the Director of National Intelligence and the
14 heads of other appropriate Federal departments and agen-
15 cies, the authority to carry out the purposes set forth in
16 subsection (b).

17 (b) PURPOSES.—

18 (1) IN GENERAL.—The purpose of the delega-
19 tions of authority pursuant to subsection (a) are—

20 (A) to advise the President with respect
21 to—

22 (i) identifying specific threats to the
23 national security and foreign policy that
24 the authority of this subtitle may be used
25 to address; and

1 (ii) exercising the authority under this
2 subtitle to implement policies, regulations,
3 procedures, and actions that are necessary
4 to effectively counteract those threats;

5 (B) to review and approve—

6 (i) criteria for including items on, and
7 removing such an item from, a list of con-
8 trolled items established under this sub-
9 title;

10 (ii) an interagency procedure for com-
11 piling and amending any list described in
12 clause (i);

13 (iii) criteria for including a person on
14 a list of persons to whom exports, reex-
15 ports, and transfers of items are prohibited
16 or restricted under this subtitle;

17 (iv) standards for compliance by per-
18 sons subject to controls under this subtitle;
19 and

20 (v) policies and procedures for the
21 end-use monitoring of exports, reexports,
22 and transfers of items controlled under
23 this subtitle;

24 (C) to obtain independent evaluations, in-
25 cluding from Inspectors General of the relevant

1 departments or agencies, on a periodic basis on
2 the effectiveness of the implementation of this
3 subtitle in carrying out the policy set forth in
4 section 812; and

5 (D) to benefit from the inherent equities,
6 experience, and capabilities of the Federal offi-
7 cials described in subsection (a), including—

8 (i) the views of the Department of De-
9 fense with respect to the national security
10 implications of a particular control or deci-
11 sion;

12 (ii) the views of the Department of
13 State with respect to the foreign policy im-
14 plications of a particular control or deci-
15 sion;

16 (iii) the views of the Department of
17 Energy with respect to the implications for
18 nuclear proliferation of a particular control
19 or decision; and

20 (iv) the views of the Department of
21 Commerce with respect to the administra-
22 tion of an efficient, coherent, reliable, en-
23 forceable, and predictable export control
24 system, and the resolution of competing

1 views or policy objectives described in sec-
2 tion 812.

3 (2) **AUTHORITY TO SEEK INFORMATION.**—The
4 Federal officials described in subsection (a) may, in
5 carrying out the purposes set forth in paragraph (1),
6 seek information and advice from experts who are
7 not officers or employees of the Federal Govern-
8 ment.

9 (3) **TRANSMITTAL AND IMPLEMENTATION OF**
10 **EVALUATIONS.**—The results of the independent eval-
11 uations conducted pursuant to paragraph (1)(C)
12 shall be transmitted to the President and the Con-
13 gress, in classified form if necessary. Subject to the
14 delegation of authority by the President, the Federal
15 officials described in subsection (a) shall determine,
16 direct, and ensure that improvements recommended
17 in the evaluations are implemented.

18 (c) **SENSE OF CONGRESS.**—It is the sense of Con-
19 gress that the administration of export controls under this
20 subtitle should be consistent with the procedures relating
21 to export license applications described in Executive Order
22 12981 (1995).

23 **SEC. 816. CONTROL LISTS.**

24 The President shall, pursuant to the delegation of au-
25 thority in section 815, ensure that—

1 (1) a process is established for regular inter-
2 agency review of each list established under section
3 814(a)(1), that pursuant to such review the Sec-
4 retary regularly updates such lists to ensure that
5 new items (including emerging critical technologies)
6 are appropriately controlled, and that the level of
7 control of items on the lists are adjusted as condi-
8 tions change;

9 (2) information and expertise are obtained from
10 officers and employees from relevant Federal depart-
11 ments, agencies, and offices and persons outside the
12 Federal Government who have technical expertise,
13 with respect to the characteristics of the items con-
14 sidered for each list established under section
15 814(a)(1) and the effect of controlling the items on
16 addressing the policy set forth in section 812;

17 (3) each list established under section 814(a)(1)
18 appropriately identifies each entry that has been in-
19 cluded by virtue of the participation of the United
20 States in a multilateral regime, organization, or
21 group the purpose of which is consistent with and
22 supports the policy of the United States under this
23 subtitle relating to the control of exports, reexports,
24 and transfers of items; and

1 (4) each list established under section 814(a)(1)
2 is published by the Secretary in a form that facili-
3 tates compliance with it and related requirements,
4 particularly by small- and medium-sized businesses,
5 and academic institutions.

6 **SEC. 817. LICENSING.**

7 (a) IN GENERAL.—The President shall, pursuant to
8 the delegation of authority in section 815, establish a pro-
9 cedure for the Department of Commerce to license or oth-
10 erwise authorize the export, reexport, and transfer of
11 items controlled under this subtitle in order to carry out
12 the policy set forth in section 812 and the requirements
13 set forth in section 813(b). The procedure shall ensure
14 that—

15 (1) license applications, other requests for au-
16 thorization, and related dispute resolution proce-
17 dures are considered and decisions made with the
18 participation of appropriate departments, agencies,
19 and offices that have delegated functions under this
20 subtitle; and

21 (2) licensing decisions are made in an expedi-
22 tious manner, with transparency to applicants on the
23 status of license and other authorization processing
24 and the reason for denying any license or request for
25 authorization.

1 (b) SENSE OF CONGRESS.—It is the sense of Con-
2 gress that the President should make best efforts to en-
3 sure that an accurate, consistent, and timely evaluation
4 and processing of licenses or other requests for authoriza-
5 tion to export, reexport, or transfer items controlled under
6 this subtitle is accomplished within 30 days from the date
7 of such license request.

8 (c) FEES.—No fee may be charged in connection with
9 the submission, processing, or consideration of any appli-
10 cation for a license or other authorization or other request
11 made in connection with any regulation in effect under
12 the authority of this subtitle.

13 **SEC. 818. COMPLIANCE ASSISTANCE.**

14 (a) SYSTEM FOR SEEKING ASSISTANCE.—The Presi-
15 dent may authorize the Secretary to establish a system
16 to provide United States persons with assistance in com-
17 plying with this subtitle, which may include a mechanism
18 for providing information, in classified form as appro-
19 priate, who are potential customers, suppliers, or business
20 partners with respect to items controlled under this sub-
21 title, in order to further ensure the prevention of the ex-
22 port, reexport, or transfer of items that may pose a threat
23 to the national security or foreign policy of the United
24 States.

1 (b) SECURITY CLEARANCES.—In order to carry out
2 subsection (a), the President may issue appropriate secu-
3 rity clearances to persons described in that subsection who
4 are responsible for complying with this subtitle.

5 (c) ASSISTANCE FOR CERTAIN BUSINESSES.—

6 (1) IN GENERAL.—Not later than 120 days
7 after the date of the enactment of this Act, the
8 President shall develop and submit to Congress a
9 plan to assist small- and medium-sized United
10 States in export licensing and other processes under
11 this subtitle.

12 (2) CONTENTS.—The plan shall include, among
13 other things, arrangements for the Department of
14 Commerce to provide counseling to businesses de-
15 scribed in paragraph (1) on filing applications and
16 identifying items controlled under this subtitle, as
17 well as proposals for seminars and conferences to
18 educate such businesses on export controls, licensing
19 procedures, and related obligations.

20 **SEC. 819. REQUIREMENTS TO IDENTIFY AND CONTROL**
21 **EMERGING, FOUNDATIONAL, AND OTHER**
22 **CRITICAL TECHNOLOGIES IN EXPORT CON-**
23 **TROL REGULATIONS.**

24 (a) IN GENERAL.—The President shall establish and,
25 in coordination with the Secretary, the Secretary of De-

1 fense, the Secretary of Energy, the Secretary of State, and
2 the heads of other departments as appropriate, lead a reg-
3 ular, ongoing interagency process to identify the following:

4 (1) Emerging, foundational, or other critical
5 technologies that are essential to the national secu-
6 rity of the United States and that are not—

7 (A) identified in any list of items con-
8 trolled for export under United States law or
9 regulations; or

10 (B) hereafter separately identified in any
11 law or regulation under the authority of a de-
12 partment or agency responsible for admin-
13 istering United States export controls.

14 (2) Other technologies that are not identified in
15 any list of items controlled for export under United
16 States law or regulations that are essential to the
17 national security of the United States.

18 (3) Subject to subsections (c) and (d), the
19 President shall require the relevant export control
20 authority to publish proposed regulations for public
21 comment, including, as appropriate, interim final
22 rules, that would control such emerging,
23 foundational, or other critical technologies identified
24 pursuant to this subsection and control the release

1 of each such technology to destinations, end uses, or
2 end users as determined by the President.

3 (b) REQUIREMENTS.—The interagency process re-
4 quired under subsection (a) shall—

5 (1) be informed by multiple sources of informa-
6 tion, including industry, academia, other open source
7 and classified information and transactions reviewed
8 by the Committee on Foreign Investment in the
9 United States;

10 (2) take into account the foreign development
11 or availability of such emerging, foundational, and
12 other critical technologies and the impact the con-
13 trols established in subsection (c) may have on the
14 development of the technology in the United States;
15 and

16 (3) the Secretary, the Secretary of Defense, the
17 Secretary of Energy, and the Secretary of State, and
18 the heads of other departments as appropriate, shall
19 consider relevant information provided by the Direc-
20 tor of National Intelligence.

21 (c) COMMERCE CONTROLS.—

22 (1) IN GENERAL.—The Secretary is authorized
23 to establish controls, as appropriate, on technologies
24 identified through the interagency process required
25 under subsection (a) and subject to the Export Ad-

1 ministration Regulations, including by publishing ad-
2 ditional regulations.

3 (2) LEVELS OF CONTROL.—

4 (A) IN GENERAL.—The Secretary, in co-
5 ordination with the Secretary of Defense, the
6 Secretary of State, and the heads of other de-
7 partments as appropriate, is authorized to de-
8 velop and apply levels of control, including the
9 requirements for a license or other authoriza-
10 tion, to export, reexport, or transfer such tech-
11 nologies.

12 (B) REQUIREMENTS.—In developing and
13 applying the levels of control for such tech-
14 nologies, the Secretary—

15 (i) shall take into account—

16 (I) whether a country is subject
17 to a United States arms embargo or is
18 otherwise subject to United States
19 sanctions;

20 (II) potential end users and end
21 uses; and

22 (III) the threat to the national
23 security and foreign policy of the
24 United States;

1 (ii) shall, at a minimum, require a li-
2 cense to export, reexport, or transfer such
3 technologies to a country that is subject to
4 a comprehensive United States arms em-
5 bargo; and

6 (iii) may provide for appropriate li-
7 cense exceptions for the export, reexport,
8 or transfer of such technologies.

9 (C) LICENSE APPLICATIONS SUBMITTED
10 PURSUANT TO SUBPARAGRAPH (B)(ii).—For li-
11 cense applications submitted pursuant to sub-
12 paragraph (B)(ii), the Secretary may, with re-
13 spect to any joint venture, joint development
14 agreement, or similar collaborative arrange-
15 ment, require the applicant to identify, in addi-
16 tion to the foreign participant directly involved
17 in the collaborative arrangement, any foreign
18 person with significant ownership interest in
19 the direct foreign participant.

20 (3) REVIEW OF LICENSE APPLICATIONS.—

21 (A) IN GENERAL.—The procedures set
22 forth in Executive Order 12981 (1995) (as
23 amended) or any successor Executive order,
24 shall apply to the review of applications for li-
25 censes to export, reexport, or transfer tech-

1 nologies identified through the interagency
2 process required under subsection (a) submitted
3 to the Department of Commerce pursuant to
4 paragraph (2).

5 (B) OTHER INFORMATION.—In addition to
6 the procedures described in subparagraph (A),
7 the review of applications for such licenses shall
8 take into account information provided by the
9 Director of National Intelligence regarding any
10 threat to the national security of the United
11 States posed by the proposed export, reexport,
12 or transfer of such technologies.

13 (d) MULTILATERAL CONTROLS.—

14 (1) IN GENERAL.—The Secretary of State, in
15 consultation with the Secretary and the Secretary of
16 Defense and heads of other departments as appro-
17 priate, shall propose to the relevant multilateral ex-
18 port control regimes in the following year that tech-
19 nologies identified through the interagency process
20 required under subsection (a) be added to the list of
21 technologies controlled by such regimes.

22 (2) REVIEW OF CONTINUED UNILATERAL EX-
23 PORT CONTROLS.—The Secretary, with respect to
24 those items on the Commerce Control List main-
25 tained under part 774 of title 15, Code of Federal

1 Regulations, and in consultation with the Secretary
2 of Defense and the Secretary of State, and the Sec-
3 retary of State, with respect to those items on the
4 United States Munitions List and in consultation
5 with the Secretary of Defense and the heads of other
6 departments as appropriate, shall determine whether
7 national security concerns warrant continued unilat-
8 eral export controls over technologies proposed for
9 multilateral control under paragraph (1) if the rel-
10 evant multilateral export control regime does not
11 agree to list such technologies on its control list
12 within three years of a proposal by the United
13 States.

14 (e) REPORT.—The Secretary, the Secretary of State,
15 and the Secretary of Energy, as appropriate, shall submit
16 to the Committee on Foreign Investment in the United
17 States on a semiannual basis a report on updates of any
18 key actions taken pursuant to this section.

19 (f) RULE OF CONSTRUCTION.—Nothing in this sec-
20 tion should be construed to alter or limit—

21 (1) the authority of the President and the Sec-
22 retary of State to designate those items that are
23 considered to be defense articles or defense services
24 for purposes of the Arms Export Control Act (22

1 U.S.C. 2751 et seq.) or any other relevant law, and
2 to regulate such items; or

3 (2) the authority of the President under the
4 Atomic Energy Act of 1954, the Nuclear Non-Pro-
5 liferation Act of 1978, the Energy Reorganization
6 Act of 1974, this title, or any other relevant law.

7 (g) SENSE OF CONGRESS.—It is the sense of the
8 Congress that the President should request in the annual
9 budget of the President submitted under section 1105(a)
10 of title 31, United States Code, sufficient resources to en-
11 able the relevant departments and agencies to effectively
12 implement this section.

13 **SEC. 820. REVIEW RELATING TO COUNTRIES SUBJECT TO**
14 **COMPREHENSIVE UNITED STATES ARMS EM-**
15 **BARGO.**

16 Not later than 180 days after the date of the enact-
17 ment of this Act, the Secretary, the Secretary of Defense,
18 the Secretary of Energy, the Secretary of State, and the
19 heads of other departments as appropriate, shall conduct
20 a review of—

21 (1) section 744.21 of title 15, Code of Federal
22 Regulations, including to assess whether the current
23 and anticipated risks of direct or indirect diversion,
24 such as from policies and practices that effectively
25 obscure distinctions between civil and military end-

1 users and end-uses, require that the scope of control
2 under such section should be expanded to apply to
3 exports, reexports, or transfers for military end uses
4 and military end users in countries that are subject
5 to a comprehensive United States arms embargo;
6 and

7 (2) entries on the Commerce Control List main-
8 tained under part 774 of title 15, Code of Federal
9 Regulations, that do not impose license requirements
10 for exports, reexports, or transfers to countries sub-
11 ject to a comprehensive United States arms embar-
12 go.

13 **SEC. 821. PENALTIES.**

14 (a) UNLAWFUL ACTS.—

15 (1) IN GENERAL.—It shall be unlawful for a
16 person to violate, attempt to violate, conspire to vio-
17 late, or cause a violation of this subtitle or of any
18 regulation, order, license, or other authorization
19 issued under this subtitle, including any of the un-
20 lawful acts described in paragraph (2).

21 (2) SPECIFIC UNLAWFUL ACTS.—The unlawful
22 acts described in this paragraph are the following:

23 (A) No person may engage in any conduct
24 prohibited by or contrary to, or refrain from en-
25 gaging in any conduct required by this subtitle,

1 the Export Administration Regulations, or any
2 order, license or authorization issued there-
3 under.

4 (B) No person may cause or aid, abet,
5 counsel, command, induce, procure, permit, or
6 approve the doing of any act prohibited, or the
7 omission of any act required by this subtitle,
8 the Export Administration Regulations, or any
9 order, license or authorization issued there-
10 under.

11 (C) No person may solicit or attempt a vio-
12 lation of this subtitle, the Export Administra-
13 tion Regulations, or any order, license or au-
14 thorization issued thereunder.

15 (D) No person may conspire or act in con-
16 cert with one or more other persons in any
17 manner or for any purpose to bring about or to
18 do any act that constitutes a violation of this
19 subtitle, the Export Administration Regula-
20 tions, or any order, license or authorization
21 issued thereunder.

22 (E) No person may order, buy, remove,
23 conceal, store, use, sell, loan, dispose of, trans-
24 fer, transport, finance, forward, or otherwise
25 service, in whole or in part, or conduct negotia-

1 tions to facilitate such activities for, any item
2 exported or to be exported from the United
3 States, or that is otherwise subject to the Ex-
4 port Administration Regulations, with knowl-
5 edge that a violation of this subtitle, the Export
6 Administration Regulations, or any order, li-
7 cense or authorization issued thereunder, has
8 occurred, is about to occur, or is intended to
9 occur in connection with the item unless valid
10 authorization is obtained therefor.

11 (F) No person may make any false or mis-
12 leading representation, statement, or certifi-
13 cation, or falsify or conceal any material fact,
14 either directly to the Department of Commerce,
15 or an official of any other United States agen-
16 cy, or indirectly through any other person—

17 (i) in the course of an investigation or
18 other action subject to the Export Admin-
19 istration Regulations;

20 (ii) in connection with the prepara-
21 tion, submission, issuance, use, or mainte-
22 nance of any export control document or
23 any report filed or required to be filed pur-
24 suant to the Export Administration Regu-
25 lations; or

1 (iii) for the purpose of or in connec-
2 tion with effecting any export, reexport, or
3 transfer of an item subject to the Export
4 Administration Regulations or a service or
5 other activity of a United States person de-
6 scribed in section 814.

7 (G) No person may engage in any trans-
8 action or take any other action with intent to
9 evade the provisions of this subtitle, the Export
10 Administration Regulations, or any order, li-
11 cense, or authorization issued thereunder.

12 (H) No person may fail or refuse to com-
13 ply with any reporting or recordkeeping require-
14 ments of the Export Administration Regula-
15 tions or of any order, license, or authorization
16 issued thereunder.

17 (I) Except as specifically authorized in the
18 Export Administration Regulations or in writ-
19 ing by the Department of Commerce, no person
20 may alter any license, authorization, export con-
21 trol document, or order issued under the Export
22 Administration Regulations.

23 (J) No person may take any action that is
24 prohibited by a denial order issued by the De-
25 partment of Commerce to prevent imminent

1 violations of this subtitle, the Export Adminis-
2 tration Regulations, or any order, license or au-
3 thorization issued thereunder.

4 (3) ADDITIONAL REQUIREMENTS.—For pur-
5 poses of subparagraph (G), any representation,
6 statement, or certification made by any person shall
7 be deemed to be continuing in effect. Each person
8 who has made a representation, statement, or certifi-
9 cation to the Department of Commerce relating to
10 any order, license, or other authorization issued
11 under this subtitle shall notify the Department of
12 Commerce, in writing, of any change of any material
13 fact or intention from that previously represented,
14 stated, or certified, immediately upon receipt of any
15 information that would lead a reasonably prudent
16 person to know that a change of material fact or in-
17 tention had occurred or may occur in the future.

18 (b) CRIMINAL PENALTY.—A person who willfully
19 commits, willfully attempts to commit, or willfully con-
20 spires to commit, or aids and abets in the commission of,
21 an unlawful act described in subsection (a)—

22 (1) shall be fined not more than \$1,000,000;

23 and

24 (2) in the case of the individual, shall be im-
25 prisoned for not more than 20 years, or both.

1 (c) CIVIL PENALTIES.—

2 (1) AUTHORITY.—The President may impose
3 the following civil penalties on a person for each vio-
4 lation by that person of this subtitle or any regula-
5 tion, order, or license issued under this subtitle, for
6 each violation:

7 (A) A fine of not more than \$300,000 or
8 an amount that is twice the value of the trans-
9 action that is the basis of the violation with re-
10 spect to which the penalty is imposed, which-
11 ever is greater.

12 (B) Revocation of a license issued under
13 this subtitle to the person.

14 (C) A prohibition on the person's ability to
15 export, reexport, or transfer any items, whether
16 or not subject to controls under this subtitle.

17 (2) PROCEDURES.—Any civil penalty under this
18 subsection may be imposed only after notice and op-
19 portunity for an agency hearing on the record in ac-
20 cordance with sections 554 through 557 of title 5,
21 United States Code.

22 (3) STANDARDS FOR LEVELS OF CIVIL PEN-
23 ALTY.—The Secretary may by regulation provide
24 standards for establishing levels of civil penalty
25 under this subsection based upon factors such as the

1 seriousness of the violation, the culpability of the vi-
2 olator, and such mitigating factors as the violator's
3 record of cooperation with the Government in dis-
4 closing the violation.

5 (d) CRIMINAL FORFEITURE OF PROPERTY INTEREST
6 AND PROCEEDS.—

7 (1) FORFEITURE.—Any person who is convicted
8 under subsection (b) of a violation of a control im-
9 posed under section 813 (or any regulation, order,
10 or license issued with respect to such control) shall,
11 in addition to any other penalty, forfeit to the
12 United States—

13 (A) any of that person's interest in, secu-
14 rity of, claim against, or property or contractual
15 rights of any kind in the tangible items that
16 were the subject of the violation;

17 (B) any of that person's interest in, secu-
18 rity of, claim against, or property or contractual
19 rights of any kind in tangible property that was
20 used in the violation; and

21 (C) any of that person's property consti-
22 tuting, or derived from, any proceeds obtained
23 directly or indirectly as a result of the violation.

24 (2) PROCEDURES.—The procedures in any for-
25 feiture under this subsection, and the duties and au-

1 thority of the courts of the United States and the
2 Attorney General with respect to any forfeiture ac-
3 tion under this subsection or with respect to any
4 property that may be subject to forfeiture under this
5 subsection, shall be governed by the provisions of
6 section 1963 of title 18, United States Code.

7 (e) PRIOR CONVICTIONS.—

8 (1) LICENSE BAR.—

9 (A) IN GENERAL.—The Secretary may—

10 (i) deny the eligibility of any person
11 convicted of a criminal violation described
12 in subparagraph (B) to export, reexport, or
13 transfer outside the United States any
14 item, whether or not subject to controls
15 under this subtitle, for a period of up to 10
16 years beginning on the date of the convic-
17 tion; and

18 (ii) revoke any license or other author-
19 ization to export, reexport, or transfer
20 items that was issued under this subtitle
21 and in which such person has an interest
22 at the time of the conviction.

23 (B) VIOLATIONS.—The violations referred
24 to in subparagraph (A) are any criminal viola-

1 tions of, or criminal attempt or conspiracy to
2 violate—

3 (i) this subtitle (or any regulation, li-
4 cense, or order issued under this subtitle);

5 (ii) any regulation, license, or order
6 issued under the International Emergency
7 Economic Powers Act;

8 (iii) section 371, 554, 793, 794, or
9 798 of title 18, United States Code;

10 (iv) section 1001 of title 18, United
11 States Code;

12 (v) section 4(b) of the Internal Secu-
13 rity Act of 1950 (50 U.S.C. 783(b)); or

14 (vi) section 38 of the Arms Export
15 Control Act (22 U.S.C. 2778).

16 (2) APPLICATION TO OTHER PARTIES.—The
17 Secretary may exercise the authority under para-
18 graph (1) with respect to any person related,
19 through affiliation, ownership, control, position of
20 responsibility, or other connection in the conduct of
21 trade or business, to any person convicted of any
22 violation of law set forth in paragraph (1), upon a
23 showing of such relationship with the convicted
24 party, and subject to the procedures set forth in
25 subsection (c)(2).

1 (f) OTHER AUTHORITIES.—Nothing in subsection
2 (c), (d), or (e) limits—

3 (1) the availability of other administrative or
4 judicial remedies with respect to violations of this
5 subtitle, or any regulation, order, license or other
6 authorization issued under this subtitle;

7 (2) the authority to compromise and settle ad-
8 ministrative proceedings brought with respect to vio-
9 lations of this subtitle, or any regulation, order, li-
10 cense, or other authorization issued under this sub-
11 title; or

12 (3) the authority to compromise, remit or miti-
13 gate seizures and forfeitures pursuant to section
14 1(b) of title VI of the Act of June 15, 1917 (22
15 U.S.C. 401(b)).

16 **SEC. 822. ENFORCEMENT.**

17 (a) AUTHORITIES.—In order to enforce this subtitle,
18 the President shall delegate to the heads of other appro-
19 priate Federal departments and agencies the authority
20 to—

21 (1) issue regulations, orders, and guidelines;

22 (2) require, inspect, and obtain books, records,
23 and any other information from any person subject
24 to the provisions of this subtitle;

1 (3) administer oaths or affirmations and by
2 subpoena require any person to appear and testify or
3 to appear and produce books, records, and other
4 writings, or both;

5 (4) conduct investigations (including under-
6 cover) in the United States and in other countries
7 using all applicable laws of the United States, in-
8 cluding intercepting any wire, oral, and electronic
9 communications, conducting electronic surveillance,
10 using pen registers and trap and trace devices, and
11 carrying out acquisitions, to the extent authorized
12 under chapters 119, 121, and 206 of title 18,
13 United States Code;

14 (5) inspect, search, detain, seize, or issue tem-
15 porary denial orders with respect to items, in any
16 form, that are subject to controls under this subtitle,
17 or conveyances on which it is believed that there are
18 items that have been, are being, or are about to be
19 exported, reexported, or transferred in violation of
20 this subtitle, or any regulations, order, license, or
21 other authorization issued thereunder;

22 (6) carry firearms;

23 (7) conduct prelicense inspections and post-
24 shipment verifications; and

25 (8) execute warrants and make arrests.

1 (b) ENFORCEMENT OF SUBPOENAS.—In the case of
2 contumacy by, or refusal to obey a subpoena issued to,
3 any person under subsection (a)(3), a district court of the
4 United States, after notice to such person and a hearing,
5 shall have jurisdiction to issue an order requiring such
6 person to appear and give testimony or to appear and
7 produce books, records, and other writings, regardless of
8 format, that are the subject of the subpoena. Any failure
9 to obey such order of the court may be punished by such
10 court as a contempt thereof.

11 (c) BEST PRACTICE GUIDELINES.—

12 (1) IN GENERAL.—The Secretary, in consulta-
13 tion with the heads of other appropriate Federal
14 agencies, should publish and update “best practices”
15 guidelines to assist persons in developing and imple-
16 menting, on a voluntary basis, effective export con-
17 trol programs in compliance with the regulations
18 issued under this subtitle.

19 (2) EXPORT COMPLIANCE PROGRAM.—The im-
20 plementation by a person of an effective export com-
21 pliance program and a high quality overall export
22 compliance effort by a person should ordinarily be
23 given weight as mitigating factors in a civil penalty
24 action against the person under this subtitle.

1 (d) REFERENCE TO ENFORCEMENT.—For purposes
2 of this section, a reference to the enforcement of, or a vio-
3 lation of, this subtitle includes a reference to the enforce-
4 ment or a violation of any regulation, order, license or
5 other authorization issued pursuant to this subtitle.

6 (e) IMMUNITY.—A person shall not be excused from
7 complying with any requirements under this section be-
8 cause of the person’s privilege against self-incrimination,
9 but the immunity provisions of section 6002 of title 18,
10 United States Code, shall apply with respect to any indi-
11 vidual who specifically claims such privilege.

12 (f) CONFIDENTIALITY OF INFORMATION.—

13 (1) EXEMPTIONS FROM DISCLOSURE.—

14 (A) IN GENERAL.—Information obtained
15 under this subtitle may be withheld from disclo-
16 sure only to the extent permitted by statute, ex-
17 cept that information described in subpara-
18 graph (B) shall be withheld from public disclo-
19 sure and shall not be subject to disclosure
20 under section 552(b)(3) of title 5, United
21 States Code, unless the release of such informa-
22 tion is determined by the Secretary to be in the
23 national interest.

24 (B) INFORMATION DESCRIBED.—Informa-
25 tion described in this subparagraph is informa-

1 tion submitted or obtained in connection with
2 an application for a license or other authoriza-
3 tion to export, reexport, or transfer items, en-
4 gage in other activities, a recordkeeping or re-
5 porting requirement, enforcement activity, or
6 other operations under this subtitle, including—

7 (i) the license application, license, or
8 other authorization itself;

9 (ii) classification or advisory opinion
10 requests, and the response thereto;

11 (iii) license determinations, and infor-
12 mation pertaining thereto;

13 (iv) information or evidence obtained
14 in the course of any investigation; and

15 (v) information obtained or furnished
16 in connection with any international agree-
17 ment, treaty, or other obligation.

18 (2) INFORMATION TO THE CONGRESS AND
19 GAO.—

20 (A) IN GENERAL.—Nothing in this section
21 shall be construed as authorizing the with-
22 holding of information from the Congress or
23 from the Government Accountability Office.

24 (B) AVAILABILITY TO THE CONGRESS.—

1 (i) IN GENERAL.—Any information
2 obtained at any time under any provision
3 of the Export Administration Act of 1979
4 (as in effect on the day before the date of
5 the enactment of this Act and as continued
6 in effect pursuant to the International
7 Emergency Economic Powers Act), under
8 the Export Administration Regulations, or
9 under this subtitle, including any report or
10 license application required under any such
11 provision, shall be made available to a
12 committee or subcommittee of Congress of
13 appropriate jurisdiction, upon the request
14 of the chairman or ranking minority mem-
15 ber of such committee or subcommittee.

16 (ii) PROHIBITION ON FURTHER DIS-
17 CLOSURE.—No such committee or sub-
18 committee, or member thereof, may dis-
19 close any information made available under
20 clause (i), that is submitted on a confiden-
21 tial basis unless the full committee deter-
22 mines that the withholding of that infor-
23 mation is contrary to the national interest.

24 (C) AVAILABILITY TO GAO.—

1 (i) IN GENERAL.—Information de-
2 scribed in clause (i) of subparagraph (B)
3 shall be subject to the limitations con-
4 tained in section 716 of title 31, United
5 States Code.

6 (ii) PROHIBITION ON FURTHER DIS-
7 CLOSURE.—An officer or employee of the
8 Government Accountability Office may not
9 disclose, except to the Congress in accord-
10 ance with this paragraph, any such infor-
11 mation that is submitted on a confidential
12 basis or from which any individual can be
13 identified.

14 (3) INFORMATION SHARING.—

15 (A) IN GENERAL.—Any Federal official de-
16 scribed in section 815(a) who obtains informa-
17 tion that is relevant to the enforcement of this
18 subtitle, including information pertaining to any
19 investigation, shall furnish such information to
20 each appropriate department, agency, or office
21 with enforcement responsibilities under this sec-
22 tion to the extent consistent with the protection
23 of intelligence, counterintelligence, and law en-
24 forcement sources, methods, and activities.

1 (B) EXCEPTIONS.—The provisions of this
2 paragraph shall not apply to information sub-
3 ject to the restrictions set forth in section 9 of
4 title 13, United States Code, and return infor-
5 mation, as defined in subsection (b) of section
6 6103 of the Internal Revenue Code of 1986 (26
7 U.S.C. 6103(b)), may be disclosed only as au-
8 thorized by that section.

9 (C) EXCHANGE OF INFORMATION.—The
10 President shall ensure that the heads of depart-
11 ments, agencies, and offices with enforcement
12 authorities under this subtitle, consistent with
13 protection of law enforcement and its sources
14 and methods—

15 (i) exchange any licensing and en-
16 forcement information with one another
17 that is necessary to facilitate enforcement
18 efforts under this section; and

19 (ii) consult on a regular basis with
20 one another and with the head of other de-
21 partments, agencies, and offices that ob-
22 tain information subject to this paragraph,
23 in order to facilitate the exchange of such
24 information.

1 (D) INFORMATION SHARING WITH FED-
2 ERAL AGENCIES.—Licensing or enforcement in-
3 formation obtained under this subtitle may be
4 shared with heads of departments, agencies,
5 and offices that do not have enforcement au-
6 thorities under this subtitle on a case-by-case
7 basis at the discretion of the President. Such
8 information may be shared only when the Presi-
9 dent makes a determination that the sharing of
10 this information is in the national interest.

11 (g) REPORTING REQUIREMENTS.—In the administra-
12 tion of this section, reporting requirements shall be de-
13 signed to reduce the cost of reporting, recordkeeping, and
14 documentation to the extent consistent with effective en-
15 forcement and compilation of useful trade statistics. Re-
16 porting, recordkeeping, and documentation requirements
17 shall be periodically reviewed and revised in the light of
18 developments in the field of information technology.

19 (h) CIVIL FORFEITURE.—

20 (1) IN GENERAL.—Any tangible items seized
21 under subsection (a) by designated officers or em-
22 ployees shall be subject to forfeiture to the United
23 States in accordance with applicable law, except that
24 property seized shall be returned if the property

1 owner is not found guilty of a civil or criminal viola-
2 tion under section 819.

3 (2) PROCEDURES.—Any seizure or forfeiture
4 under this subsection shall be carried out in accord-
5 ance with the procedures set forth in section 981 of
6 title 18, United States Code.

7 **SEC. 823. ADMINISTRATIVE PROCEDURE.**

8 (a) IN GENERAL.—The functions exercised under
9 this subtitle shall not be subject to sections 551, 553
10 through 559, and 701 through 706 of title 5, United
11 States Code.

12 (b) ADMINISTRATIVE LAW JUDGES.—The Secretary
13 is authorized to appoint an administrative law judge, and
14 may designate administrative law judges from other Fed-
15 eral agencies who are provided pursuant to a legally au-
16 thorized interagency agreement with the Department of
17 Commerce, and consistent with the provisions of section
18 3105 of title 5, United States Code.

19 (c) AMENDMENTS TO REGULATIONS.—The President
20 shall notify in advance the Committee on Banking, Hous-
21 ing, and Urban Affairs of the Senate and the Committee
22 on Foreign Affairs of the House of Representatives of any
23 proposed amendments to the Export Administration Regu-
24 lations with an explanation of the intent and rationale of
25 such amendments.

1 **SEC. 824. ANNUAL REPORT TO CONGRESS.**

2 (a) IN GENERAL.—The President shall submit to
3 Congress, by December 31 of each year, a report on the
4 implementation of this subtitle during the preceding fiscal
5 year. The report shall include a review of—

6 (1) the effect of controls imposed under this
7 subtitle on exports, reexports, and transfers of items
8 in addressing threats to the national security or for-
9 eign policy of the United States, including a descrip-
10 tion of licensing processing times;

11 (2) the impact of such controls on the scientific
12 and technological leadership of the United States;

13 (3) the consistency with such controls of export
14 controls imposed by other countries;

15 (4) efforts to provide exporters with compliance
16 assistance, including specific actions to assist small-
17 and medium-sized businesses;

18 (5) a summary of regulatory changes from the
19 prior fiscal year;

20 (6) a summary of export enforcement actions,
21 including of actions taken to implement end-use
22 monitoring of dual-use, military, and other items
23 subject to the Export Administration Regulations;

24 (7) a summary of approved license applications
25 to proscribed persons;

1 (8) efforts undertaken within the previous year
2 to comply with the requirements of section 819, in-
3 cluding any critical technologies identified under
4 such section and how or whether such critical tech-
5 nologies were controlled for export; and

6 (9) a summary of industrial base assessments
7 conducted during the previous year by the Depart-
8 ment of Commerce, including with respect to coun-
9 terfeit electronics, foundational technologies, and
10 other research and analysis of critical technologies
11 and industrial capabilities of key defense-related sec-
12 tors.

13 (b) FORM.—The report required under subsection (a)
14 shall be submitted in unclassified form, but may contain
15 a classified annex.

16 **SEC. 825. REPEAL.**

17 (a) IN GENERAL.—The Export Administration Act of
18 1979 (50 U.S.C. App. 2401 et seq.) (as continued in effect
19 pursuant to the International Emergency Economic Pow-
20 ers Act) is repealed.

21 (b) IMPLEMENTATION.—The President shall imple-
22 ment the amendment made by subsection (a) by exercising
23 the authorities of the President under the International
24 Emergency Economic Powers Act (50 U.S.C. 1701 et
25 seq.).

1 **SEC. 826. EFFECT ON OTHER ACTS.**

2 (a) IN GENERAL.—Except as otherwise provided in
3 this subtitle, nothing contained in this subtitle shall be
4 construed to modify, repeal, supersede, or otherwise affect
5 the provisions of any other laws authorizing control over
6 exports, reexports, or transfers of any item, or activities
7 of United States persons subject to the Export Adminis-
8 tration Regulations.

9 (b) COORDINATION OF CONTROLS.—

10 (1) IN GENERAL.—The authority granted to the
11 President under this subtitle shall be exercised in
12 such manner so as to achieve effective coordination
13 with all export control and sanctions authorities ex-
14 ercised by Federal departments and agencies dele-
15 gated with authority under this subtitle, particularly
16 the Department of State, the Department of the
17 Treasury, and the Department of Energy.

18 (2) SENSE OF CONGRESS.—It is the sense of
19 Congress that in order to achieve effective coordina-
20 tion described in paragraph (1), such Federal de-
21 partments and agencies—

22 (A) should continuously work to create en-
23 forceable regulations with respect to the export,
24 reexport, and transfer by United States and
25 foreign persons of commodities, software, tech-
26 nology, and services to various end uses and

1 end users for foreign policy and national secu-
2 rity reasons;

3 (B) should regularly work to reduce com-
4 plexity in the system, including complexity
5 caused merely by the existence of structural,
6 definitional, and other non-policy based dif-
7 ferences between and among different export
8 control and sanctions systems; and

9 (C) should coordinate controls on items ex-
10 ported, reexported, or transferred in connection
11 with a foreign military sale under chapter 2 of
12 the Arms Export Control Act or a commercial
13 sale under section 38 of the Arms Export Con-
14 trol Act to reduce as much unnecessary admin-
15 istrative burden as possible that is a result of
16 differences between the exercise of those two
17 authorities.

18 (e) NONPROLIFERATION CONTROLS.—Nothing in
19 this subtitle shall be construed to supersede the proce-
20 dures published by the President pursuant to section
21 309(e) of the Nuclear Non-Proliferation Act of 1978.

22 **SEC. 827. TRANSITION PROVISIONS.**

23 (a) IN GENERAL.—All delegations, rules, regulations,
24 orders, determinations, licenses, or other forms of admin-
25 istrative action that have been made, issued, conducted,

1 or allowed to become effective under the Export Adminis-
2 tration Act of 1979 (as in effect on the day before the
3 date of the enactment of this Act and as continued in ef-
4 fect pursuant to the International Emergency Economic
5 Powers Act), or the Export Administration Regulations,
6 and are in effect as of the date of the enactment of this
7 Act, shall continue in effect according to their terms until
8 modified, superseded, set aside, or revoked under the au-
9 thority of this subtitle.

10 (b) ADMINISTRATIVE AND JUDICIAL PRO-
11 CEEDINGS.—This subtitle shall not affect any administra-
12 tive or judicial proceedings commenced, or any applica-
13 tions for licenses made, under the Export Administration
14 Act of 1979 (as in effect on the day before the date of
15 the enactment of this Act and as continued in effect pur-
16 suant to the International Emergency Economic Powers
17 Act), or the Export Administration Regulations.

18 (c) CERTAIN DETERMINATIONS AND REFERENCES.—

19 (1) STATE SPONSORS OF TERRORISM.—Any de-
20 termination that was made under section 6(j) of the
21 Export Administration Act of 1979 (as in effect on
22 the day before the date of the enactment of this Act
23 and as continued in effect pursuant to the Inter-
24 national Emergency Economic Powers Act) shall

1 continue in effect as if the determination had been
2 made under section 814(c) of this Act.

3 (2) REFERENCE.—Any reference in any other
4 provision of law to a country the government of
5 which the Secretary of State has determined, for
6 purposes of section 6(j) of the Export Administra-
7 tion Act of 1979 (as in effect on the day before the
8 date of the enactment of this Act and as continued
9 in effect pursuant to the International Emergency
10 Economic Powers Act), is a government that has re-
11 peatedly provided support for acts of international
12 terrorism shall be deemed to refer to a country the
13 government of which the Secretary of State has de-
14 termined, for purposes of section 814(c), is a gov-
15 ernment that has repeatedly provided support for
16 acts of international terrorism.

17 **Subtitle B—Anti-Boycott Act of**
18 **2018**

19 **SEC. 831. SHORT TITLE.**

20 This subtitle may be cited as the “Anti-Boycott Act
21 of 2018”.

22 **SEC. 832. STATEMENT OF POLICY.**

23 Congress declares it is the policy of the United
24 States—

1 (1) to oppose restrictive trade practices or boy-
2 cotts fostered or imposed by any foreign country
3 against other countries friendly to the United States
4 or against any United States person;

5 (2) to encourage and, in specified cases, require
6 United States persons engaged in the export of
7 goods or technology or other information to refuse to
8 take actions, including furnishing information or en-
9 tering into or implementing agreements, which have
10 the effect of furthering or supporting the restrictive
11 trade practices or boycotts fostered or imposed by
12 any foreign country against any United States per-
13 son; and

14 (3) to foster international cooperation and the
15 development of international rules and institutions
16 to assure reasonable access to world supplies.

17 **SEC. 833. FOREIGN BOYCOTTS.**

18 (a) PROHIBITIONS AND EXCEPTIONS.—

19 (1) PROHIBITIONS.—For the purpose of imple-
20 menting the policies set forth in section 832, the
21 President shall issue regulations prohibiting any
22 United States person, with respect to that person's
23 activities in the interstate or foreign commerce of
24 the United States, from taking or knowingly agree-
25 ing to take any of the following actions with intent

1 to comply with, further, or support any boycott fos-
2 tered or imposed by any foreign country, against a
3 country which is friendly to the United States and
4 which is not itself the object of any form of boycott
5 pursuant to United States law or regulation:

6 (A) Refusing, or requiring any other per-
7 son to refuse, to do business with or in the boy-
8 cotted country, with any business concern orga-
9 nized under the laws of the boycotted country,
10 with any national or resident of the boycotted
11 country, or with any other person, pursuant to
12 an agreement with, a requirement of, or a re-
13 quest from or on behalf of the boycotting coun-
14 try. The mere absence of a business relationship
15 with or in the boycotted country with any busi-
16 ness concern organized under the laws of the
17 boycotted country, with any national or resident
18 of the boycotted country, or with any other per-
19 son, does not indicate the existence of the in-
20 tent required to establish a violation of regula-
21 tions issued to carry out this subparagraph.

22 (B) Refusing, or requiring any other per-
23 son to refuse, to employ or otherwise discrimi-
24 nating against any United States person on the
25 basis of race, religion, sex, or national origin of

1 that person or of any owner, officer, director, or
2 employee of such person.

3 (C) Furnishing information with respect to
4 the race, religion, sex, or national origin of any
5 United States person or of any owner, officer,
6 director, or employee of such person.

7 (D) Furnishing information, or requesting
8 the furnishing of information, about whether
9 any person has, has had, or proposes to have
10 any business relationship (including a relation-
11 ship by way of sale, purchase, legal or commer-
12 cial representation, shipping or other transport,
13 insurance, investment, or supply) with or in the
14 boycotted country, with any business concern
15 organized under the laws of the boycotted coun-
16 try, with any national or resident of the boy-
17 cotted country, or with any other person which
18 is known or believed to be restricted from hav-
19 ing any business relationship with or in the boy-
20 coting country. Nothing in this subparagraph
21 shall prohibit the furnishing of normal business
22 information in a commercial context as defined
23 by the Secretary.

24 (E) Furnishing information about whether
25 any person is a member of, has made contribu-

1 tions to, or is otherwise associated with or in-
2 volved in the activities of any charitable or fra-
3 ternal organization which supports the boy-
4 cotted country.

5 (F) Paying, honoring, confirming, or other-
6 wise implementing a letter of credit which con-
7 tains any condition or requirement compliance
8 with which is prohibited by regulations issued
9 pursuant to this paragraph, and no United
10 States person shall, as a result of the applica-
11 tion of this paragraph, be obligated to pay or
12 otherwise honor or implement such letter of
13 credit.

14 (2) EXCEPTIONS.—Regulations issued pursuant
15 to paragraph (1) shall provide exceptions for—

16 (A) complying or agreeing to comply with
17 requirements—

18 (i) prohibiting the import of goods or
19 services from the boycotted country or
20 goods produced or services provided by any
21 business concern organized under the laws
22 of the boycotted country or by nationals or
23 residents of the boycotted country; or

24 (ii) prohibiting the shipment of goods
25 to the boycotting country on a carrier of

1 the boycotted country, or by a route other
2 than that prescribed by the boycotting
3 country or the recipient of the shipment;

4 (B) complying or agreeing to comply with
5 import and shipping document requirements
6 with respect to the country of origin, the name
7 of the carrier and route of shipment, the name
8 of the supplier of the shipment or the name of
9 the provider of other services, except that no in-
10 formation knowingly furnished or conveyed in
11 response to such requirements may be stated in
12 negative, blacklisting, or similar exclusionary
13 terms, other than with respect to carriers or
14 route of shipment as may be permitted by such
15 regulations in order to comply with pre-
16 cautionary requirements protecting against war
17 risks and confiscation;

18 (C) complying or agreeing to comply in the
19 normal course of business with the unilateral
20 and specific selection by a boycotting country,
21 or national or resident thereof, of carriers, in-
22 surers, suppliers of services to be performed
23 within the boycotting country or specific goods
24 which, in the normal course of business, are

1 identifiable by source when imported into the
2 boycotting country;

3 (D) complying or agreeing to comply with
4 export requirements of the boycotting country
5 relating to shipments or transshipments of ex-
6 ports to the boycotted country, to any business
7 concern of or organized under the laws of the
8 boycotted country, or to any national or resi-
9 dent of the boycotted country;

10 (E) compliance by an individual or agree-
11 ment by an individual to comply with the immi-
12 gration or passport requirements of any country
13 with respect to such individual or any member
14 of such individual's family or with requests for
15 information regarding requirements of employ-
16 ment of such individual within the boycotting
17 country; and

18 (F) compliance by a United States person
19 resident in a foreign country or agreement by
20 such person to comply with the laws of that
21 country with respect to his activities exclusively
22 therein, and such regulations may contain ex-
23 ceptions for such resident complying with the
24 laws or regulations of that foreign country gov-
25 erning imports into such country of

1 trademarked, trade named, or similarly specifi-
2 cally identifiable products, or components of
3 products for his own use, including the per-
4 formance of contractual services within that
5 country, as may be defined by such regulations.

6 (3) SPECIAL RULES.—Regulations issued pur-
7 suant to paragraphs (2)(C) and (2)(F) shall not pro-
8 vide exceptions from paragraphs (1)(B) and (1)(C).

9 (4) RULE OF CONSTRUCTION.—Nothing in this
10 subsection may be construed to supersede or limit
11 the operation of the antitrust or civil rights laws of
12 the United States.

13 (5) APPLICATION.—This section shall apply to
14 any transaction or activity undertaken, by or
15 through a United States person or any other person,
16 with intent to evade the provisions of this section as
17 implemented by the regulations issued pursuant to
18 this subsection, and such regulations shall expressly
19 provide that the exceptions set forth in paragraph
20 (2) shall not permit activities or agreements (ex-
21 pressed or implied by a course of conduct, including
22 a pattern of responses) otherwise prohibited, which
23 are not within the intent of such exceptions.

24 (b) FOREIGN POLICY CONTROLS.—

1 (1) IN GENERAL.—In addition to the regula-
2 tions issued pursuant to subsection (a), regulations
3 issued under subtitle A to carry out the policies set
4 forth in section 812(1)(D) shall implement the poli-
5 cies set forth in this section.

6 (2) REQUIREMENTS.—Such regulations shall
7 require that any United States person receiving a re-
8 quest for the furnishing of information, the entering
9 into or implementing of agreements, or the taking of
10 any other action referred to in subsection (a) shall
11 report that fact to the Secretary, together with such
12 other information concerning such request as the
13 Secretary may require for such action as the Sec-
14 retary considers appropriate for carrying out the
15 policies of that section. Such person shall also report
16 to the Secretary whether such person intends to
17 comply and whether such person has complied with
18 such request. Any report filed pursuant to this para-
19 graph shall be made available promptly for public in-
20 spection and copying, except that information re-
21 garding the quantity, description, and value of any
22 goods or technology to which such report relates
23 may be kept confidential if the Secretary determines
24 that disclosure thereof would place the United States
25 person involved at a competitive disadvantage. The

1 Secretary shall periodically transmit summaries of
2 the information contained in such reports to the Sec-
3 retary of State for such action as the Secretary of
4 State, in consultation with the Secretary, considers
5 appropriate for carrying out the policies set forth in
6 section 832.

7 (c) PREEMPTION.—The provisions of this section and
8 the regulations issued pursuant thereto shall preempt any
9 law, rule, or regulation of any of the several States or the
10 District of Columbia, or any of the territories or posses-
11 sions of the United States, or of any governmental subdivi-
12 sion thereof, which law, rule, or regulation pertains to par-
13 ticipation in, compliance with, implementation of, or the
14 furnishing of information regarding restrictive trade prac-
15 tices or boycotts fostered or imposed by foreign countries
16 against other countries friendly to the United States.

17 **SEC. 834. ENFORCEMENT.**

18 (a) CRIMINAL PENALTY.—A person who willfully
19 commits, willfully attempts to commit, or willfully con-
20 spires to commit, or aids or abets in the commission of,
21 an unlawful act section 833—

22 (1) shall, upon conviction, be fined not more
23 than \$1,000,000; or

24 (2) if a natural person, may be imprisoned for
25 not more than 20 years, or both.

1 (b) CIVIL PENALTIES.—The President may impose
2 the following civil penalties on a person who violates sec-
3 tion 833 or any regulation issued under this subtitle:

4 (1) A fine of not more than \$300,000 or an
5 amount that is twice the value of the transaction
6 that is the basis of the violation with respect to
7 which the penalty is imposed, whichever is greater.

8 (2) Revocation of a license issued under title I
9 to the person.

10 (3) A prohibition on the person's ability to ex-
11 port, reexport, or transfer any items controlled
12 under subtitle A.

13 (c) PROCEDURES.—Any civil penalty or administra-
14 tive sanction (including any suspension or revocation of
15 authority to export) under this section may be imposed
16 only after notice and opportunity for an agency hearing
17 on the record in accordance with sections 554 through 557
18 of title 5, United States Code, and shall be subject to judi-
19 cial review in accordance with chapter 7 of such title.

20 (d) STANDARDS FOR LEVELS OF CIVIL PENALTY.—
21 The President may by regulation provide standards for es-
22 tablishing levels of civil penalty under this section based
23 upon factors such as the seriousness of the violation, the
24 culpability of the violator, and the violator's record of co-
25 operation with the Government in disclosing the violation.

1 **Subtitle C—Sanctions Regarding**
2 **Missile Proliferation and Chem-**
3 **ical and Biological Weapons**
4 **Proliferation**

5 **SEC. 841. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

6 (a) VIOLATIONS BY UNITED STATES PERSONS.—

7 (1) SANCTIONS.—

8 (A) SANCTIONABLE ACTIVITY.—The Presi-
9 dent shall impose the applicable sanctions de-
10 scribed in subparagraph (B) if the President
11 determines that a United States person know-
12 ingly—

13 (i) exports, reexports, or transfers of
14 any item on the MTCR Annex, in violation
15 of the provisions of section 38 (22 U.S.C.
16 2778) or chapter 7 of the Arms Export
17 Control Act, subtitle A, or any regulations
18 or orders issued under any such provisions;
19 or

20 (ii) conspires to or attempts to engage
21 in such export, reexport, or transfer.

22 (B) SANCTIONS.—The sanctions that apply
23 to a United States person under subparagraph
24 (A) are the following:

1 (i) If the item on the MTCR Annex
2 involved in the export, reexport, or transfer
3 is missile equipment or technology within
4 category II of the MTCR Annex, then the
5 President shall deny to such United States
6 person, for a period of 2 years, licenses for
7 the transfer of missile equipment or tech-
8 nology controlled under subtitle A.

9 (ii) If the item on the MTCR Annex
10 involved in the export, reexport, or transfer
11 is missile equipment or technology within
12 category I of the MTCR Annex, then the
13 President shall deny to such United States
14 person, for a period of not less than 2
15 years, all licenses for items the transfer of
16 which is controlled under subtitle A.

17 (2) DISCRETIONARY SANCTIONS.—In the case
18 of any determination referred to in paragraph (1),
19 the President may pursue any other appropriate
20 penalties under section 820.

21 (3) WAIVER.—The President may waive the im-
22 position of sanctions under paragraph (1) on a per-
23 son with respect to a product or service if the Presi-
24 dent certifies to the Congress that—

1 (A) the product or service is essential to
2 the national security of the United States; and

3 (B) such person is a sole source supplier of
4 the product or service, the product or service is
5 not available from any alternative reliable sup-
6 plier, and the need for the product or service
7 cannot be met in a timely manner by improved
8 manufacturing processes or technological devel-
9 opments.

10 (b) TRANSFERS OF MISSILE EQUIPMENT OR TECH-
11 NOLOGY BY FOREIGN PERSONS.—

12 (1) SANCTIONS.—

13 (A) SANCTIONABLE ACTIVITY.—Subject to
14 paragraphs (3) through (7), the President shall
15 impose the applicable sanctions under subpara-
16 graph (B) on a foreign person if the Presi-
17 dent—

18 (i) determines that a foreign person
19 knowingly—

20 (I) exports, reexports, or trans-
21 fers any MTCR equipment or tech-
22 nology that contributes to the design,
23 development, or production of missiles
24 in a country that is not an MTCR ad-
25 herent and would be, if it were United

1 States-origin equipment or technology,
2 subject to the jurisdiction of the
3 United States under subtitle A;

4 (II) conspires to or attempts to
5 engage in such export, reexport, or
6 transfer; or

7 (III) facilitates such export, reex-
8 port, or transfer by any other person;
9 or

10 (ii) has made a determination with re-
11 spect to the foreign person under section
12 73(a) of the Arms Export Control Act.

13 (B) SANCTIONS.—The sanctions that apply
14 to a foreign person under subparagraph (A) are
15 the following:

16 (i) If the item involved in the export,
17 reexport, or transfer is within category II
18 of the MTCR Annex, then the President
19 shall deny, for a period of 2 years, licenses
20 for the transfer to such foreign person of
21 missile equipment or technology the trans-
22 fer of which is controlled under subtitle A.

23 (ii) If the item involved in the export,
24 reexport, or transfer is within category I of
25 the MTCR Annex, then the President shall

1 deny, for a period of not less than 2 years,
2 licenses for the transfer to such foreign
3 person of items the transfer of which is
4 controlled under subtitle A.

5 (2) INAPPLICABILITY WITH RESPECT TO MTCR
6 ADHERENTS.—Paragraph (1) does not apply with
7 respect to—

8 (A) any export, reexport, or transfer that
9 is authorized by the laws of an MTCR adher-
10 ent, if such authorization is not obtained by
11 misrepresentation or fraud; or

12 (B) any export, reexport, or transfer of an
13 item to an end user in a country that is an
14 MTCR adherent.

15 (3) EFFECT OF ENFORCEMENT ACTIONS BY
16 MTCR ADHERENTS.—Sanctions set forth in para-
17 graph (1) may not be imposed under this subsection
18 on a person with respect to acts described in such
19 paragraph or, if such sanctions are in effect against
20 a person on account of such acts, such sanctions
21 shall be terminated, if an MTCR adherent is taking
22 judicial or other enforcement action against that
23 person with respect to such acts, or that person has
24 been found by the government of an MTCR adher-

1 ent to be innocent of wrongdoing with respect to
2 such acts.

3 (4) WAIVER AND REPORT TO CONGRESS.—

4 (A) WAIVER AUTHORITY.—The President
5 may waive the application of paragraph (1) to
6 a foreign person if the President determines
7 that such waiver is essential to the national se-
8 curity of the United States.

9 (B) NOTIFICATION AND REPORT TO CON-
10 GRESS.—In the event that the President decides
11 to apply the waiver described in subparagraph
12 (A), the President shall so notify the appro-
13 priate congressional committees not less than
14 20 working days before issuing the waiver.
15 Such notification shall include a report fully ar-
16 ticulating the rationale and circumstances
17 which led the President to apply the waiver.

18 (5) ADDITIONAL WAIVER.—The President may
19 waive the imposition of sanctions under paragraph
20 (1) on a person with respect to a product or service
21 if the President certifies to the appropriate congres-
22 sional committees that—

23 (A) the product or service is essential to
24 the national security of the United States; and

1 (B) such person is a sole source supplier of
2 the product or service, the product or service is
3 not available from any alternative reliable sup-
4 plier, and the need for the product or service
5 cannot be met in a timely manner by improved
6 manufacturing processes or technological devel-
7 opments.

8 (6) EXCEPTIONS.—The President shall not
9 apply the sanction under this subsection prohibiting
10 the importation of the products of a foreign per-
11 son—

12 (A) in the case of procurement of defense
13 articles or defense services—

14 (i) under existing contracts or sub-
15 contracts, including the exercise of options
16 for production quantities to satisfy require-
17 ments essential to the national security of
18 the United States;

19 (ii) if the President determines that
20 the person to which the sanctions would be
21 applied is a sole source supplier of the de-
22 fense articles or defense services, that the
23 defense articles or defense services are es-
24 sential to the national security of the

1 United States, and that alternative sources
2 are not readily or reasonably available; or

3 (iii) if the President determines that
4 such articles or services are essential to the
5 national security of the United States
6 under defense coproduction agreements or
7 NATO Programs of Cooperation;

8 (B) to products or services provided under
9 contracts entered into before the date on which
10 the President publishes his intention to impose
11 the sanctions; or

12 (C) to—

13 (i) spare parts;

14 (ii) component parts, but not finished
15 products, essential to United States prod-
16 ucts or production;

17 (iii) routine services and maintenance
18 of products, to the extent that alternative
19 sources are not readily or reasonably avail-
20 able; or

21 (iv) information and technology essen-
22 tial to United States products or produc-
23 tion.

24 (c) DEFINITIONS.—In this section:

1 (1) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES.—The term “appropriate congressional com-
3 mittees” means—

4 (A) the Committee on Foreign Affairs of
5 the House of Representatives; and

6 (B) the Committee on Foreign Relations
7 and the Committee on Banking, Housing, and
8 Urban Affairs of the Senate.

9 (2) DEFENSE ARTICLES; DEFENSE SERVICES.—
10 The terms “defense articles” and “defense services”
11 mean those items on the United States Munitions
12 List as defined in section 47(7) of the Arms Export
13 Control Act (22 U.S.C. 2794 note).

14 (3) MISSILE.—The term “missile” means a cat-
15 egory I system as defined in the MTCR Annex.

16 (4) MISSILE TECHNOLOGY CONTROL REGIME;
17 MTCR.—The term “Missile Technology Control Re-
18 gime” or “MTCR” means the policy statement, be-
19 tween the United States, the United Kingdom, the
20 Federal Republic of Germany, France, Italy, Can-
21 ada, and Japan, announced on April 16, 1987, to re-
22 strict sensitive missile-relevant transfers based on
23 the MTCR Annex, and any amendments thereto.

24 (5) MTCR ADHERENT.—The term “MTCR ad-
25 herent” means a country that participates in the

1 MTCR or that, pursuant to an international under-
2 standing to which the United States is a party, con-
3 trols MTCR equipment or technology in accordance
4 with the criteria and standards set forth in the
5 MTCR.

6 (6) MTCR ANNEX.—The term “MTCR Annex”
7 means the Guidelines and Equipment and Tech-
8 nology Annex of the MTCR, and any amendments
9 thereto.

10 (7) MISSILE EQUIPMENT OR TECHNOLOGY;
11 MTCR EQUIPMENT OR TECHNOLOGY.—The terms
12 “missile equipment or technology” and “MTCR
13 equipment or technology” mean those items listed in
14 category I or category II of the MTCR Annex.

15 **SEC. 842. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**
16 **LIFERATION SANCTIONS.**

17 (a) IMPOSITION OF SANCTIONS.—

18 (1) DETERMINATION BY THE PRESIDENT.—Ex-
19 cept as provided in subsection (b)(2), the President
20 shall impose the sanction described in subsection (c)
21 if the President determines that a foreign person has
22 knowingly and materially contributed—

23 (A) through the export from the United
24 States of any item that is subject to the juris-

1 diction of the United States under this subtitle;
2 or

3 (B) through the export from any other
4 country of any item that would be, if they were
5 United States goods or technology, subject to
6 the jurisdiction of the United States under this
7 subtitle,

8 to the efforts by any foreign country, project, or en-
9 tity described in paragraph (2) to use, develop,
10 produce, stockpile, or otherwise acquire chemical or
11 biological weapons.

12 (2) COUNTRIES, PROJECTS, OR ENTITIES RE-
13 CEIVING ASSISTANCE.—Paragraph (1) applies in the
14 case of—

15 (A) any foreign country that the President
16 determines has, at any time after January 1,
17 1980—

18 (i) used chemical or biological weap-
19 ons in violation of international law;

20 (ii) used lethal chemical or biological
21 weapons against its own nationals; or

22 (iii) made substantial preparations to
23 engage in the activities described in clause
24 (i) or (ii);

1 (B) any foreign country whose government
2 is determined for purposes of section 914(e) to
3 be a government that has repeatedly provided
4 support for acts of international terrorism; or

5 (C) any other foreign country, project, or
6 entity designated by the President for purposes
7 of this section.

8 (3) PERSONS AGAINST WHICH SANCTIONS ARE
9 TO BE IMPOSED.—A sanction shall be imposed pur-
10 suant to paragraph (1) on—

11 (A) the foreign person with respect to
12 which the President makes the determination
13 described in that paragraph;

14 (B) any successor entity to that foreign
15 person; and

16 (C) any foreign person that is a parent,
17 subsidiary, or affiliate of that foreign person if
18 that parent, subsidiary, or affiliate knowingly
19 assisted in the activities which were the basis of
20 that determination.

21 (b) CONSULTATIONS WITH AND ACTIONS BY FOR-
22 EIGN GOVERNMENT OF JURISDICTION.—

23 (1) CONSULTATIONS.—If the President makes
24 the determinations described in subsection (a)(1)
25 with respect to a foreign person, the Congress urges

1 the President to initiate consultations immediately
2 with the government with primary jurisdiction over
3 that foreign person with respect to the imposition of
4 a sanction pursuant to this section.

5 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
6 TION.—In order to pursue such consultations with
7 that government, the President may delay imposition
8 of a sanction pursuant to this section for a period
9 of up to 90 days. Following such consultations, the
10 President shall impose the sanction unless the Presi-
11 dent determines and certifies to the appropriate con-
12 gressional committees that the Government has
13 taken specific and effective actions, including appro-
14 priate penalties, to terminate the involvement of the
15 foreign person in the activities described in sub-
16 section (a)(1). The President may delay imposition
17 of the sanction for an additional period of up to 90
18 days if the President determines and certifies to the
19 Congress that the government is in the process of
20 taking the actions described in the preceding sen-
21 tence.

22 (3) REPORT TO CONGRESS.—The President
23 shall report to the appropriate congressional commit-
24 tees, not later than 90 days after making a deter-
25 mination under subsection (a)(1), on the status of

1 consultations with the appropriate government under
2 this subsection, and the basis for any determination
3 under paragraph (2) of this subsection that such
4 government has taken specific corrective actions.

5 (c) SANCTION.—

6 (1) DESCRIPTION OF SANCTION.—The sanction
7 to be imposed pursuant to subsection (a)(1) is, ex-
8 cept as provided that the United States Government
9 shall not procure, or enter into any contract for the
10 procurement of, any goods or services from any per-
11 son described in subsection (a)(3).

12 (2) EXCEPTIONS.—The President shall not be
13 required to apply or maintain a sanction under this
14 section—

15 (A) in the case of procurement of defense
16 articles or defense services—

17 (i) under existing contracts or sub-
18 contracts, including the exercise of options
19 for production quantities to satisfy United
20 States operational military requirements;

21 (ii) if the President determines that
22 the person or other entity to which the
23 sanctions would otherwise be applied is a
24 sole source supplier of the defense articles
25 or defense services, that the defense arti-

1 cles or defense services are essential, and
2 that alternative sources are not readily or
3 reasonably available; or

4 (iii) if the President determines that
5 such articles or services are essential to the
6 national security under defense coproduc-
7 tion agreements;

8 (B) to products or services provided under
9 contracts entered into before the date on which
10 the President publishes his intention to impose
11 sanctions;

12 (C) to—

13 (i) spare parts;

14 (ii) component parts, but not finished
15 products, essential to United States prod-
16 ucts or production; or

17 (iii) routine servicing and mainte-
18 nance of products, to the extent that alter-
19 native sources are not readily or reason-
20 ably available;

21 (D) to information and technology essen-
22 tial to United States products or production; or

23 (E) to medical or other humanitarian
24 items.

1 (d) TERMINATION OF SANCTIONS.—A sanction im-
2 posed pursuant to this section shall apply for a period of
3 at least 12 months following the imposition of one sanction
4 and shall cease to apply thereafter only if the President
5 determines and certifies to the appropriate congressional
6 committees that reliable information indicates that the
7 foreign person with respect to which the determination
8 was made under subsection (a)(1) has ceased to aid or
9 abet any foreign government, project, or entity in its ef-
10 forts to acquire chemical or biological weapons capability
11 as described in that subsection.

12 (e) WAIVER.—

13 (1) CRITERION FOR WAIVER.—The President
14 may waive the application of any sanction imposed
15 on any person pursuant to this section if the Presi-
16 dent determines and certifies to the appropriate con-
17 gressional committees that such waiver is important
18 to the national security interests of the United
19 States.

20 (2) NOTIFICATION OF AND REPORT TO CON-
21 GRESS.—If the President decides to exercise the
22 waiver authority provided in paragraph (1), the
23 President shall so notify the appropriate congress-
24 sional committees not less than 20 days before the
25 waiver takes effect. Such notification shall include a

1 report fully articulating the rationale and cir-
2 cumstances which led the President to exercise the
3 waiver authority.

4 (f) DEFINITIONS.—In this section:

5 (1) APPROPRIATE CONGRESSIONAL COMMIT-
6 TEES.—The term “appropriate congressional com-
7 mittees” means—

8 (A) the Committee on Foreign Affairs of
9 the House of Representatives; and

10 (B) the Committee on Foreign Relations
11 and the Committee on Banking, Housing, and
12 Urban Affairs of the Senate.

13 (2) DEFENSE ARTICLES; DEFENSE SERVICES.—
14 The terms “defense articles” and “defense services”
15 mean those items on the United States Munitions
16 List or are otherwise controlled under the Arms Ex-
17 port Control Act.

18 **Subtitle D—Administrative** 19 **Authorities**

20 **SEC. 851. UNDER SECRETARY OF COMMERCE FOR INDUS-** 21 **TRY AND SECURITY.**

22 (a) APPOINTMENT.—

23 (1) IN GENERAL.—The President shall appoint,
24 by and with the advice and consent of the Senate,
25 an Under Secretary of Commerce for Industry and

1 Security who shall carry out all the functions of the
2 Secretary under this title and such other provisions
3 of law that relate to the implementation of the dual-
4 use export system.

5 (2) ASSISTANT SECRETARIES OF COMMERCE.—

6 The President shall appoint, by and with the advice
7 and consent of the Senate, two Assistant Secretaries
8 of Commerce to assist the Under Secretary in car-
9 rying out the functions described in paragraph (1).

10 (b) DELEGATION.—

11 (1) TO SECRETARY.—The President shall con-
12 tinue the delegation of functions to the Secretary to
13 administer and enforce the export control system au-
14 thorized by this title that were delegated to the Sec-
15 retary as of the day before the date of the enact-
16 ment of this Act.

17 (2) TO BUREAU OF INDUSTRY AND SECU-
18 RITY.—The Secretary shall further delegate imple-
19 mentation of the authorities set forth in this title to
20 the Bureau of Industry and Security within the De-
21 partment of Commerce.

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