

109TH CONGRESS
2^D SESSION

H. R. 4915

To amend section 721 of the Defense Production Act of 1950 to implement certain recommendations relating to the review of certain mergers, acquisitions, or takeovers by or with any foreign person, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2006

Mrs. MALONEY (for herself, Mr. SHAYS, Mr. FRANK of Massachusetts, and Mr. GUTIERREZ) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Energy and Commerce and International Relations, 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 amend section 721 of the Defense Production Act of 1950 to implement certain recommendations relating to the review of certain mergers, acquisitions, or takeovers by or with any foreign person, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Committee on Foreign
5 Investment in the United States Reform Act”.

1 **SEC. 2. CLARIFICATION OF REVIEW AND INVESTIGATION**
2 **PROCESS.**

3 Section 721 of the Defense Production Act of 1950
4 (50 U.S.C. App. 2170) is amended by striking subsections
5 (a) and (b) and inserting the following new subsections:

6 “(a) NATIONAL SECURITY REVIEW.—

7 “(1) IN GENERAL.—Upon receiving written no-
8 tification, as prescribed by regulations under this
9 section, of any proposed or pending merger, acquisi-
10 tion, or takeover by or with any foreign person
11 which could result in foreign control of any person
12 engaged in interstate commerce in the United
13 States, the President or the President’s designee
14 shall review the proposed or pending merger, acqui-
15 sition, or takeover to determine whether the pro-
16 posed or pending merger, acquisition, or takeover
17 may possibly have an effect on the national security
18 of the United States.

19 “(2) PROCEDURE.—The President or the Presi-
20 dent’s designee shall establish, by regulation, proce-
21 dures that—

22 “(A) require each of the factors listed in
23 subsection (f) to be considered in the course of
24 a review under paragraph (1); and

25 “(B) require a specific response to be pre-
26 pared with respect to the applicability of each

1 such factor to the proposed or pending merger,
2 acquisition, or takeover under review.

3 “(3) INVOLVEMENT OF FOREIGN GOVERN-
4 MENT.—If the review under paragraph (1) deter-
5 mines that the merger, acquisition, or takeover could
6 result in the control, directly or indirectly, of any
7 person engaged in interstate commerce in the United
8 States by a foreign government or an entity con-
9 trolled by or acting on behalf of a foreign govern-
10 ment, the merger, acquisition, or takeover shall be
11 treated as possibly having an effect on the national
12 security of the United States for purposes of requir-
13 ing an investigation under subsection (b).

14 “(4) APPROVAL OF SECRETARY.—In the case of
15 any review of a merger, acquisition, or takeover
16 under paragraph (1) that involves or has resulted in
17 any agreement that establishes any conditions on the
18 transaction, or any requirements for any person in-
19 volved in the transaction, in order to mitigate
20 against any possible effect of the transaction on the
21 national security of the United States, any deter-
22 mination resulting from the review shall not be
23 treated as final until the determination is approved
24 by the President, the Secretary of the Treasury, or
25 the Deputy Secretary of the Treasury.

1 “(5) TIMING.—Any review required under para-
2 graph (1) shall be completed before the end of the
3 30-day period beginning on the date of the receipt
4 by the President or the President’s designee of writ-
5 ten notification of the proposed or pending merger,
6 acquisition, or takeover.

7 “(b) NATIONAL SECURITY INVESTIGATION.—

8 “(1) IN GENERAL.—If any review of any pro-
9 posed or pending merger, acquisition, or takeover
10 under subsection (a) results in a determination that
11 the merger, acquisition, or takeover may possibly
12 have an effect on the national security of the United
13 States, the President or the President’s designee
14 shall conduct an investigation of—

15 “(A) the possible effects of the merger, ac-
16 quisition, or takeover on the national security of
17 the United States; and

18 “(B) possible actions to protect the na-
19 tional security of the United States in connec-
20 tion with the merger, acquisition, or takeover.

21 “(2) PROCEDURE.—The President or the Presi-
22 dent’s designee shall establish, by regulation, proce-
23 dures that—

24 “(A) require any investigation under para-
25 graph (1) to analyze the proposed or pending

1 merger, acquisition, or takeover on the basis of
2 each of the factors listed in subsection (f);

3 “(B) require a specific response to be pre-
4 pared with respect to the applicability of each
5 such factor to the proposed or pending merger,
6 acquisition, or takeover under review, the con-
7 cerns that any such applicability raises with re-
8 gard to the transaction, and any possible ac-
9 tions to address such concerns;

10 “(C) subject to paragraph (3), establish
11 appropriate time frames for an investigation
12 that ensures sufficient time to address relevant
13 issues concerning any proposed or pending
14 merger, acquisition, or takeover;

15 “(D) take into account the impact of inves-
16 tigation on the open investment policy of the
17 United States; and

18 “(E) in any case in which the investigation
19 under paragraph (1) is conducted by a designee
20 of the President, provide guidance to the des-
21 ignee for determining the manner and under
22 what circumstances the designee shall report
23 the results of the investigation and the rec-
24 ommendations of the designee to the President
25 for the President’s consideration.

1 “(3) TIMING.—Any investigation required
2 under paragraph (1) shall be completed before the
3 end of the 45-day period beginning on the date of
4 the determination under subsection (a) that the
5 merger, acquisition, or takeover may possibly have
6 an effect on the national security of the United
7 States.”.

8 **SEC. 3. AUTHORITY TO TAKE CERTAIN ACTIONS AFTER**
9 **WITHDRAWAL OF NOTICE.**

10 Section 721 of the Defense Production Act of 1950
11 (50 U.S.C. App. 2170) is amended—

12 (1) by redesignating subsection (k) as sub-
13 section (o); and

14 (2) by inserting after subsection (j) the fol-
15 lowing new subsection:

16 “(k) AUTHORITY IN CASE OF WITHDRAWAL OF NO-
17 TICE.—In the case of any withdrawal of written notice
18 submitted by a person or entity under subsection (a)(1)
19 of any proposed or pending merger, acquisition, or take-
20 over before any review or investigation under subsection
21 (a) or (b), as the case may be, is completed, the President
22 or the President’s designee shall establish—

23 “(1) interim protections to address specific con-
24 cerns with such merger, acquisition, or takeover that
25 have been raised in connection with any such review

1 or investigation pending any resubmission of such
2 written notice by such person or entity and further
3 action by the President under this section;

4 “(2) specific timeframes for resubmitting any
5 such written notice; and

6 “(3) a process for tracking any actions that
7 may be taken by such person or entity in connection
8 with such merger, acquisition, or takeover prior to
9 resubmitting any such written notice.”.

10 **SEC. 4. ADDITIONAL FACTORS REQUIRED TO BE CONSID-**
11 **ERED.**

12 Section 721(f) of the Defense Production Act of 1950
13 (50 U.S.C. App. 2170(f)) is amended—

14 (1) in the matter preceding paragraph (1)—

15 (A) by striking “may” and inserting
16 “shall”; and

17 (B) by striking “among other factors”;

18 (2) by striking “and” at the end of paragraph
19 (4);

20 (3) by striking the period at the end of para-
21 graph (5) and inserting a semicolon; and

22 (4) by adding at the end the following new
23 paragraphs:

24 “(6) whether the acquisition affects the critical
25 infrastructure of the United States;

1 “(7) whether an entity controlled by or acting
2 on behalf of a foreign government is involved in the
3 transaction; and

4 “(8) such other factors as the President or the
5 President’s designee may determine to be appro-
6 priate, generally or in connection with a specific in-
7 vestigation.”.

8 **SEC. 5. INCREASED OVERSIGHT BY THE CONGRESS.**

9 Section 721 of the Defense Production Act of 1950
10 (50 U.S.C. App. 2170) is amended by inserting after sub-
11 section (k) (as added by section 3 of this Act) the following
12 new subsections:

13 “(1) ANNUAL REPORT TO THE CONGRESS.—

14 “(1) IN GENERAL.—The President or the Presi-
15 dent’s designee shall transmit a report to the Con-
16 gress before January 31 of each year on all the re-
17 views under subsection (a) and the investigations
18 under subsection (b) conducted during the preceding
19 year.

20 “(2) CONTENTS OF REPORT.—The report under
21 paragraph (1) shall contain the following informa-
22 tion with respect to each proposed or pending merg-
23 er, acquisition, or takeover covered by the report
24 which was reviewed under subsection (a) or inves-
25 tigated under subsection (b):

1 “(A) The national security concerns, if
2 any, raised by any agency contacted in connec-
3 tion with or involved in any aspect of such re-
4 view and investigation.

5 “(B) The manner in which any such con-
6 cerns were mitigated either by action of the
7 President or the President’s designee or by the
8 action of any party to the merger, acquisition,
9 or takeover.

10 “(C) Whether the merger, acquisition, or
11 takeover was consummated, abandoned, or re-
12 mained pending at the end of the year covered
13 by the report.

14 “(m) QUARTERLY REPORT ON TRANSACTIONS
15 UNDER CONSIDERATION.—

16 “(1) IN GENERAL.—Before the end of the 10-
17 day period beginning on the 1st day of each calendar
18 quarter, the President or the President’s designee
19 shall transmit a report to the Congress on all trans-
20 actions which, as of the last day of the preceding
21 calendar quarter, were under review under sub-
22 section (a) or under investigation under subsection
23 (b).

24 “(2) CONTENTS.—The report under paragraph
25 (1) shall contain such information as may be nec-

1 essary to inform the Congress of the nature and
2 scope of each transaction, the national security im-
3 plications of each transaction, the parties to each
4 transaction, the possible terms of any contemplated,
5 pending, or completed mitigation agreement or other
6 limitations or requirements that may be imposed as
7 a condition for approval of the transaction, and such
8 other information that may be useful to the Con-
9 gress or requested by the Congress in reviewing such
10 transaction.”.

11 **SEC. 6. STATUTORY ESTABLISHMENT OF THE COMMITTEE**
12 **ON FOREIGN INVESTMENT IN THE UNITED**
13 **STATES.**

14 Section 721 of the Defense Production Act of 1950
15 (50 U.S.C. App. 2170) is amended by inserting after sub-
16 section (m) (as added by section 5 of this Act) the fol-
17 lowing new subsection:

18 “(n) COMMITTEE ON FOREIGN INVESTMENT IN THE
19 UNITED STATES.—

20 “(1) ESTABLISHMENT.—The Committee on
21 Foreign Investment in the United States established
22 pursuant to Executive Order No. 11858 (hereafter
23 in this section referred to as the ‘Committee’ shall
24 be a multi-agency committee to carry out this sec-

1 tion as the designee of the President and such other
2 assignments as the President may designate.

3 “(2) MEMBERSHIP.—The Committee shall be
4 comprised of the following members or their des-
5 ignee:

6 “(A) The Secretary of the Treasury.

7 “(B) The Secretary of Commerce.

8 “(C) The Secretary of Defense.

9 “(D) The Secretary of State.

10 “(E) The Attorney General.

11 “(F) The Secretary of Homeland Security.

12 “(G) The Chairman of the Council of Eco-
13 nomic Advisors.

14 “(H) The United States Trade Represent-
15 ative.

16 “(I) The Director of the Office of Manage-
17 ment and Budget.

18 “(J) The Director of the National Eco-
19 nomic Council.

20 “(K) The Director of the Office of Science
21 and Technology Policy.

22 “(L) Any other designee of the President
23 from the Executive Office of the President.

24 “(M) The Director of National Intel-
25 ligence.

1 “(3) CHAIRPERSON.—The Secretary of the
2 Treasury shall be the Chairperson of the Committee.

3 “(4) OTHER MEMBERS.—The Chairperson of
4 the Committee shall involve the heads of such other
5 Federal agencies in any investigation under sub-
6 section (a) as the Chairperson determines to be ap-
7 propriate on the basis of the facts and circumstances
8 of the transaction under investigation or the des-
9 ignee of any such agency head.

10 “(5) MEETINGS.—The Committee shall meet
11 upon the direction of the President or upon the call
12 of the Chairperson of the Committee.

13 “(6) HEARINGS AND EVIDENCE.—The Com-
14 mittee may, for the purpose of carrying out this sec-
15 tion—

16 “(A) hold such hearings and sit and act at
17 such times and places, take such testimony, re-
18 ceive such evidence, administer such oaths; and

19 “(B) subject to paragraph (7)(A), require,
20 by subpoena or otherwise, the attendance and
21 testimony of such witnesses and the production
22 of such books, records, correspondence, memo-
23 randa, papers, and documents as the Chair-
24 person of the Committee may determine advis-
25 able.

1 “(7) SUBPOENAS.—

2 “(A) ISSUANCE.—

3 “(i) IN GENERAL.—A subpoena may
4 be issued under this subsection only by di-
5 rection of the President or the Chair-
6 person.

7 “(ii) SIGNATURE.—Subject to clause
8 (i), subpoenas issued under this subsection
9 may be issued under the signature of the
10 Chairperson and may be served by any
11 person designated by the Chairperson or
12 by a member designated by a majority of
13 the Committee.

14 “(B) ENFORCEMENT.—In the case of con-
15 tumacy or failure to obey a subpoena issued
16 under subparagraph (A), the United States dis-
17 trict court for the judicial district in which the
18 subpoenaed person resides, is served, or may be
19 found, or where the subpoena is returnable,
20 may issue an order requiring such person to ap-
21 pear at any designated place to testify or to
22 produce documentary or other evidence. Any
23 failure to obey the order of the court may be

1 punished by the court as a contempt of that
2 court.”.

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