

116TH CONGRESS
2D SESSION

S. 5049

To require reviews of United States investment in foreign countries that may threaten national critical capabilities and to improve the use of authorities under the Defense Production Act of 1950, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2020

Mr. CASEY introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require reviews of United States investment in foreign countries that may threaten national critical capabilities and to improve the use of authorities under the Defense Production Act of 1950, 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 “National Critical Capa-
5 bilities Defense Act of 2020”.

1 **SEC. 2. NATIONAL CRITICAL CAPABILITIES REVIEWS.**

2 The Defense Production Act of 1950 (50 U.S.C.
3 4501 et seq.) is amended by adding at the end the fol-
4 lowing:

5 **“TITLE VIII—NATIONAL CRIT-**
6 **ICAL CAPABILITIES REVIEWS**

7 **“SEC. 801. DEFINITIONS.**

8 “In this title:

9 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
10 TEES.—The term ‘appropriate congressional com-
11 mittees’ means—

12 “(A) the Committee on Armed Services,
13 the Committee on Banking, Housing, and
14 Urban Affairs, the Committee on Commerce,
15 Science, and Transportation, the Committee on
16 Finance, the Committee on Health, Education,
17 Labor, and Pensions, and the Committee on
18 Homeland Security and Governmental Affairs
19 of the Senate; and

20 “(B) the Committee on Armed Services,
21 the Committee on Education and Labor, the
22 Committee on Financial Services, the Com-
23 mittee on Homeland Security, the Committee
24 on Transportation and Infrastructure, and the
25 Committee on Ways and Means of the House of
26 Representatives.

1 “(2) COMMISSION.—The term ‘Commission’
2 means the commission established under section
3 803.

4 “(3) COMMITTEE.—The term ‘Committee’
5 means the Committee on National Critical Capabili-
6 ties established under section 802.

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

12 “(5) COUNTRY OF CONCERN.—The term ‘coun-
13 try of concern’ has the meaning given that term in
14 regulations prescribed by the Committee.

15 “(6) COVERED TRANSACTION.—

16 “(A) IN GENERAL.—Except as otherwise
17 provided, the term ‘covered transaction’ means
18 any of the following forms of outbound invest-
19 ment, proposed or pending on or after the date
20 of the enactment of this title:

21 “(i) Any merger, acquisition, or take-
22 over of a foreign person by or with a
23 United States business that could result in
24 a threat to one or more national critical
25 capabilities, including such a merger, ac-

1 quisition, or takeover carried out through a
2 joint venture.

3 “(ii) Any other investment, subject to
4 regulations prescribed under subparagraph
5 (B), by a United States business in a for-
6 eign person that—

7 “(I) owns, operates, manufac-
8 tures, supplies, or services national
9 critical capabilities; or

10 “(II) produces, designs, tests,
11 manufactures, fabricates, or develops
12 one or more national critical capabili-
13 ties.

14 “(iii) Any change in the rights that a
15 United States business has with respect to
16 a foreign person in which the United
17 States business has an investment, if that
18 change could result in—

19 “(I) a threat to one or more na-
20 tional critical capabilities; or

21 “(II) an investment described in
22 clause (ii).

23 “(iv) Any other transaction, transfer,
24 agreement, or arrangement, the structure
25 of which is designed or intended to evade

1 or circumvent the application of this title,
2 subject to regulations prescribed by the
3 Committee.

4 “(B) OTHER INVESTMENTS.—

5 “(i) OTHER INVESTMENT DEFINED.—

6 For purposes of subparagraph (A)(ii), the
7 term ‘other investment’ means an invest-
8 ment, direct or indirect, by a United States
9 business in a foreign person described in
10 that subparagraph that is not an invest-
11 ment described in subparagraph (A)(i) and
12 that—

13 “(I) affords the foreign person—

14 “(aa) the ability to shift to a
15 foreign country any material non-
16 public technical information re-
17 lated to national critical capabili-
18 ties in the possession of the
19 United States business;

20 “(bb) membership or ob-
21 server rights on the board of di-
22 rectors or equivalent governing
23 body of the United States busi-
24 ness or the right to nominate an
25 individual to a position on the

1 board of directors or equivalent
2 governing body; or

3 “(cc) any involvement, other
4 than through voting of shares, in
5 substantive decision making of
6 the United States business re-
7 garding—

8 “(AA) the use, develop-
9 ment, acquisition, safe-
10 keeping, or release of sen-
11 sitive personal data of
12 United States citizens main-
13 tained or collected by the
14 United States business;

15 “(BB) a shift to a for-
16 eign country of production,
17 development acquisition, or
18 release of national critical
19 capabilities;

20 “(CC) a shift to a for-
21 eign county of the manage-
22 ment, operation, manufac-
23 ture, or supply of national
24 critical capabilities; or

1 “(DD) the transfer of
2 knowledge from the United
3 States business by any
4 means, including the train-
5 ing of an employee under an
6 agreement, either written or
7 verbal, under which the em-
8 ployee is expected to acquire
9 such knowledge and later
10 the such knowledge with an
11 entity in a foreign country;

12 “(II) results in a shift in produc-
13 tion from the United States to a for-
14 eign country; or

15 “(III) results in the establish-
16 ment of a new entity in a foreign
17 country.

18 “(ii) MATERIAL NONPUBLIC TECH-
19 NICAL INFORMATION DEFINED.—

20 “(I) IN GENERAL.—For purposes
21 of clause (i)(I), and subject to regula-
22 tions prescribed by the Committee,
23 the term ‘material nonpublic technical
24 information’ means information
25 that—

1 “(aa) relates to the knowl-
2 edge, know-how, or under-
3 standing, not available in the
4 public domain, of the design, lo-
5 cation, or operation of national
6 critical capabilities; or

7 “(bb) is not available in the
8 public domain, and is necessary
9 to design, fabricate, develop, test,
10 produce, or manufacture national
11 critical capabilities, including
12 processes, techniques, or meth-
13 ods.

14 “(II) EXEMPTION FOR FINAN-
15 CIAL INFORMATION.—Notwith-
16 standing subclause (I), for purposes of
17 this subparagraph, the term ‘material
18 nonpublic technical information’ does
19 not include financial information re-
20 garding the performance of a foreign
21 person.

22 “(iii) REGULATIONS.—

23 “(I) IN GENERAL.—The Com-
24 mittee shall prescribe regulations pro-
25 viding guidance on the types of trans-

1 actions that the Committee considers
2 to be ‘other investment’ for purposes
3 of subparagraph (A)(ii).

4 “(II) UNITED STATES BUSI-
5 NESSES THAT OWN, OPERATE, MANU-
6 FACTURE, SUPPLY, OR SERVICE NA-
7 TIONAL CRITICAL CAPABILITIES.—The
8 regulations prescribed by the Com-
9 mittee with respect to an investment
10 described in subparagraph (A)(ii)(I)
11 shall—

12 “(aa) specify the national
13 critical capabilities subject to
14 that subparagraph based on cri-
15 teria intended to limit application
16 of that subparagraph to the sub-
17 set of national critical capabilities
18 that is likely to be of importance
19 to the national security of the
20 United States; and

21 “(bb) enumerate specific
22 types and examples of such capa-
23 bilities.

24 “(7) FOREIGN PERSON.—The term ‘foreign per-
25 son’ means—

1 “(A) an individual who is not a United
2 States citizen or an alien lawfully admitted for
3 permanent residence to the United States; or

4 “(B) an entity that is not organized under
5 the laws of the United States or of any jurisdic-
6 tion within the United States, including such an
7 entity—

8 “(i) owned or controlled by a United
9 States business; or

10 “(ii) owned or controlled by the gov-
11 ernment of a foreign country.

12 “(8) NATIONAL CRITICAL CAPABILITIES.—The
13 term ‘national critical capabilities’, subject to regula-
14 tions prescribed by the Committee—

15 “(A) means systems and assets, whether
16 physical or virtual, so vital to the United States
17 that the inability to develop such systems and
18 assets or the incapacity or destruction of such
19 systems or assets would have a debilitating im-
20 pact on national security; and

21 “(B) includes the following:

22 “(i) The production, in sufficient
23 quantities, of any of the following articles:

24 “(I) Medical supplies, medicines,
25 and personal protective equipment.

1 “(II) Articles critical to the
2 maintenance of the national electrical
3 grid.

4 “(III) Articles critical to infra-
5 structure construction after a natural
6 or manmade disaster.

7 “(IV) Any other articles the
8 Committee considers appropriate, in-
9 cluding articles recommended by the
10 Commission under section 806(c).

11 “(ii) The supply chains for the pro-
12 duction of such articles.

13 “(iii) The supply chain for the De-
14 partment of Defense.

15 “(iv) Any other supply chain the Com-
16 mittee considers appropriate, including
17 supply chains recommended by the Com-
18 mission under section 806(c).

19 “(v) Services critical to the production
20 of articles described in clause (i) or a sup-
21 ply chain described in clause (ii), (iii), or
22 (iv).

23 “(vi) Medical services.

24 “(vii) Services critical to the mainte-
25 nance of the national electrical grid.

1 “(viii) Services critical to infrastruc-
2 ture construction after a natural or man-
3 made disaster.

4 “(9) NATIONAL SECURITY.—The term ‘national
5 security’—

6 “(A) has the meaning given that term in
7 section 721; and

8 “(B) includes agricultural security, health
9 security, homeland security, infrastructure secu-
10 rity, and natural resources security.

11 “(10) PARTY.—The term ‘party’, with respect
12 to a transaction, has the meaning given that term in
13 regulations prescribed by the Committee.

14 “(11) UNITED STATES.—The term ‘United
15 States’ means the several States, the District of Co-
16 lumbia, and any territory or possession of the
17 United States.

18 “(12) UNITED STATES BUSINESS.—The term
19 ‘United States business’ means a person engaged in
20 interstate commerce in the United States.

21 **“SEC. 802. COMMITTEE ON NATIONAL CRITICAL CAPABILI-**
22 **TIES.**

23 “(a) IN GENERAL.—There is established a com-
24 mittee, to be known as the ‘Committee on National Crit-

1 ical Capabilities’, which shall carry out this title and such
2 other assignments as the President may designate.

3 “(b) MEMBERSHIP.—

4 “(1) IN GENERAL.—The Committee shall be
5 comprised of the head, or a designee of the head, of
6 each of the following:

7 “(A) The Office of Science and Technology
8 Policy.

9 “(B) The Department of the Treasury.

10 “(C) The Department of Homeland Secu-
11 rity.

12 “(D) The Department of Commerce.

13 “(E) The Department of Defense.

14 “(F) The Department of State.

15 “(G) The Department of Justice.

16 “(H) The Department of Energy.

17 “(I) The Department of Health and
18 Human Services.

19 “(J) The Department of Agriculture.

20 “(K) The Department of Labor.

21 “(L) The Federal Emergency Management
22 Agency.

23 “(M) The National Institute of Standards
24 and Technology.

1 “(N) The Centers for Disease Control and
2 Prevention.

3 “(O) The National Institute of Allergy and
4 Infectious Diseases.

5 “(P) Any other Federal agency the Presi-
6 dent determines appropriate, generally or on a
7 case-by-case basis.

8 “(2) EX OFFICIO MEMBER.—In addition the
9 members of the Committee specified in paragraph
10 (1), the Director of National Intelligence shall be a
11 nonvoting, ex officio member of the Committee.

12 “(c) CO-CHAIRS.—The Secretary of Homeland Secu-
13 rity and the Secretary of Commerce shall serve as the co-
14 chairs of the Committee.

15 “(d) DESIGNATION OF OFFICIALS TO CARRY OUT
16 DUTIES RELATED TO COMMITTEE.—The head of each
17 agency represented on the Committee shall designate an
18 official, at or equivalent to the level of Assistant Secretary
19 in the Department of the Treasury, who is appointed by
20 the President, by and with the advice and consent of the
21 Senate, to carry out such duties related to the Committee
22 as the head of the agency may assign.

23 **“SEC. 803. REVIEW OF COVERED TRANSACTIONS.**

24 “(a) MANDATORY NOTIFICATION.—A United States
25 business that engages in a covered transaction shall sub-

1 mit a written notification of the transaction to the Com-
2 mittee.

3 “(b) REVIEW.—

4 “(1) IN GENERAL.—Not later than 60 days
5 after receiving written notification under subsection
6 (a) of a covered transaction, the Committee shall—

7 “(A) review the transaction to determine if
8 the transaction is likely to result in a threat to
9 one or more national critical capabilities, con-
10 sidering factors specified in section 805(a); and

11 “(B) if the Committee determines under
12 subparagraph (A) that the transaction poses a
13 threat described in that subparagraph, rec-
14 ommend to the President that appropriate ac-
15 tion be taken to address or mitigate that threat,
16 such as—

17 “(i) procurement by the Federal Gov-
18 ernment of articles and services described
19 in section 801(a)(8)(B) produced or sup-
20 plied in the United States;

21 “(ii) use of authorities under title I or
22 III to increase the production and supply
23 of such articles and services in the United
24 States;

1 “(iii) the use or establishment of Fed-
2 eral programs to support the production or
3 supply of such articles and services in the
4 United States;

5 “(iv) the initiation of an investigation
6 under section 232 of the Trade Expansion
7 Act of 1962 (19 U.S.C. 1862) with respect
8 to such articles; or

9 “(v) such other actions as the Com-
10 mittee considers appropriate.

11 “(2) UNILATERAL INITIATION OF REVIEW.—
12 The Committee may initiate a review under para-
13 graph (1) of a covered transaction for which written
14 notification is not submitted under subsection (a).

15 “(3) INITIATION OF REVIEW BY REQUEST FROM
16 CONGRESS.—The Committee shall initiate a review
17 under paragraph (1) of a covered transaction if the
18 chairperson and the ranking member of any of the
19 appropriate congressional committees request the
20 Committee to review the transaction.

21 “(c) AUTHORITY TO SUSPEND TRANSACTIONS.—

22 “(1) IN GENERAL.—Except as provided in para-
23 graph (3), the Committee may suspend or prohibit,
24 in accordance with paragraph (4), a proposed or
25 pending covered transaction described in paragraph

1 (2) for such time as the covered transaction is under
2 review under this section.

3 “(2) TRANSACTIONS DESCRIBED.—A covered
4 transaction is described in this paragraph if the
5 Committee determines that the transaction poses a
6 threat to one or more national critical capabilities.

7 “(3) EXCEPTION.—The Committee may not
8 suspend or prohibit a covered transaction under
9 paragraph (1) if the transaction is related to an arti-
10 cle or service the supply chain for which is housed
11 wholly within the United States or countries that are
12 allies of the United States.

13 “(4) PROCEDURES.—The Committee may sus-
14 pend or prohibit a proposed or pending covered
15 transaction under paragraph (1) if—

16 “(A) the motion to suspend or prohibit the
17 transaction is be raised by not less than $\frac{1}{3}$ of
18 the members of the Committee; and

19 “(B) not less than $\frac{3}{5}$ of the members of
20 the Committee vote in favor of the motion.

21 **“SEC. 804. ACTION BY THE PRESIDENT.**

22 “(a) IN GENERAL.—Subject to subsection (d), the
23 President may take such action for such time as the Presi-
24 dent considers appropriate to suspend or prohibit any cov-

1 ered transaction that poses a threat to one or more na-
2 tional critical capabilities.

3 “(b) ANNOUNCEMENT BY THE PRESIDENT.—The
4 President shall announce the decision on whether or not
5 to take action pursuant to subsection (a) with respect to
6 a covered transaction not later than 15 days after the ear-
7 lier of the date on which the review of the transaction
8 under section 803 is completed.

9 “(c) ENFORCEMENT.—The President may direct the
10 Attorney General of the United States to seek appropriate
11 relief, including divestment relief, in the district courts of
12 the United States, in order to implement and enforce this
13 section.

14 “(d) FINDINGS OF THE PRESIDENT.—The President
15 may exercise the authority conferred by subsection (a)
16 with respect to a covered transaction only if the President
17 finds that—

18 “(1) there is credible evidence that leads the
19 President to believe that the transaction poses a
20 threat to one or more national critical capabilities;
21 and

22 “(2) provisions of law (other than this section)
23 do not, in the judgment of the President, provide
24 adequate and appropriate authority for the Presi-
25 dent to protect such capabilities.

1 “(e) **FACTORS TO BE CONSIDERED.**—For purposes
2 of determining whether to take action under subsection
3 (a), the President shall consider, among other factors each
4 of the factors described in section 805(a), as appropriate.

5 **“SEC. 805. FACTORS TO BE CONSIDERED.**

6 “(a) **IN GENERAL.**—The Committee, in reviewing
7 and making a determination with respect to a covered
8 transaction under section 803, and the President, in deter-
9 mining whether to take action under section 804 with re-
10 spect to a covered transaction, shall consider any factors
11 relating to national critical capabilities that the Committee
12 or the President considers relevant, including—

13 “(1) the long-term strategic economic, national
14 security, and crisis preparedness interests of the
15 United States;

16 “(2) the history of distortive trade practices in
17 each country in which a foreign party to the trans-
18 action is domiciled;

19 “(3) control and beneficial ownership (as deter-
20 mined in accordance with section 847 of the Na-
21 tional Defense Authorization Act for Fiscal Year
22 2020 (Public Law 116–92)) of each foreign person
23 that is a party to the transaction; and

24 “(4) impact on the domestic industry and re-
25 sulting resiliency, including the domestic skills base,

1 taking into consideration any pattern of foreign in-
2 vestment in the domestic industry.

3 “(b) SUPPLY CHAIN SENSITIVITIES.—The Com-
4 mittee shall determine the sensitivities and national secu-
5 rity risks for sourcing of articles described in section
6 801(a)(8)(B)(i), in accordance with the following:

7 “(1) The sourcing of least concern shall be arti-
8 cles the supply chains for which are housed in whole
9 within North America.

10 “(2) The sourcing of lesser concern shall be ar-
11 ticles the supply chains for which are housed in
12 whole within countries that are allies of the United
13 States.

14 “(3) The sourcing of greater concern shall be
15 articles the supply chains for which are housed in
16 part within countries of concern.

17 “(4) The sourcing of greatest concern shall be
18 articles the supply chains for which are housed or
19 substantially dependent on resources from countries
20 of concern.

21 **“SEC. 806. CONGRESSIONAL COMMISSION.**

22 “(a) ESTABLISHMENT OF COMMISSION.—There is es-
23 tablished a congressional commission, which shall—

24 “(1) review the activities of the Committee an-
25 nually; and

1 “(2) make recommendations with respect to in-
2 dustries to be reviewed.

3 “(b) MEMBERSHIP.—The Commission shall be com-
4 prised of the following:

5 “(1) Three Members of the Senate from the
6 majority party, appointed by the majority leader of
7 the Senate.

8 “(2) Three Members of the Senate from the mi-
9 nority party, appointed by the minority leader of the
10 Senate.

11 “(3) Three Members of the House of Rep-
12 resentatives from the majority party, appointed by
13 the Speaker of the House.

14 “(4) Three Members of the House of Rep-
15 resentatives from the minority party, appointed by
16 the minority leader of the House.

17 “(5) Three individuals representing workers
18 and labor organizations, appointed by the chair-
19 person of the policy advisory committee on labor es-
20 tablished under section 135(c)(1) of the Trade Act
21 of 1974 (19 U.S.C. 2155(c)(1)).

22 “(6) Three individuals with expertise in domes-
23 tic manufacturing and supply chains, appointed by
24 the chairperson of the committee referred to in para-
25 graph (5).

1 “(c) REVIEW OF INDUSTRIES.—

2 “(1) IN GENERAL.—The Commission shall—

3 “(A) conduct a review of—

4 “(i) the industries specified in para-
5 graph (2); and

6 “(ii) all industries identified by Fed-
7 eral Emergency Management Agency as
8 carrying out emergency support functions;
9 and

10 “(B) not later than 2 years after the date
11 of the enactment of the National Critical Capa-
12 bilities Defense Act of 2020, submit to the
13 Committee recommendations with respect to ad-
14 ditional articles, supply chains, and services to
15 be included in the definition of ‘national critical
16 capabilities’ under section 801(a)(8).

17 “(2) INDUSTRIES SPECIFIED.—The industries
18 specified in this subsection are the following:

19 “(A) Energy.

20 “(B) Medical.

21 “(C) Communications, including electronic
22 and communications components.

23 “(D) Defense.

24 “(E) Transportation.

25 “(F) Aerospace.

1 “(G) Robotics.

2 “(H) Artificial intelligence.

3 “(I) Semiconductors.

4 “(J) Shipbuilding.

5 “(K) Water, including water purification.

6 “(d) APPLICATION OF FEDERAL ADVISORY COM-
7 MITTEE ACT.—The provisions of the Federal Advisory
8 Committee Act (5 U.S.C. App.) shall not apply with re-
9 spect to the Commission.

10 **“SEC. 807. INCLUSION OF ADDITIONAL ARTICLES, SUPPLY**
11 **CHAINS, AND SERVICES IN DEFINITION OF**
12 **NATIONAL CRITICAL CAPABILITIES.**

13 “(a) PROPOSAL BY COMMITTEE.—Not later than 60
14 days after receiving the recommendations of the Commis-
15 sion under section 806(c)(1)(B), the Committee shall sub-
16 mit to Congress a list of additional articles, supply chains,
17 and services the Committee proposes for inclusion in the
18 definition of ‘national critical capabilities’ under section
19 801(a)(8).

20 “(b) EFFECTIVENESS OF PROPOSAL.—The proposal
21 of the Committee under subsection (a) with respect to ad-
22 ditional articles, supply chains, and services to include in
23 the definition of ‘national critical capabilities’ under sec-
24 tion 801(a)(8) shall take effect on the date that is 45 days
25 after the Committee submits the proposal to Congress un-

1 less there is enacted into law a joint resolution dis-
2 approving the proposal before that date.

3 **“SEC. 808. REPORTING REQUIREMENTS.**

4 “(a) ANNUAL REPORT TO CONGRESS.—

5 “(1) IN GENERAL.—Not later than 90 days
6 after the date of the enactment of the National Crit-
7 ical Capabilities Defense Act of 2020, and annually
8 thereafter, the Committee shall submit to the Com-
9 mission and the appropriate congressional commit-
10 tees a report—

11 “(A) on the determination under section
12 805(b) with respect to sensitivities and national
13 security risks for sourcing of articles described
14 in section 801(a)(8)(B)(i);

15 “(B) describing, for the year preceding
16 submission of the report—

17 “(i) the notifications received under
18 subsection (a) of section 803 and reviews
19 conducted pursuant to such notifications;

20 “(ii) reviews initiated under para-
21 graph (2) or (3) of subsection (b) of that
22 section;

23 “(iii) actions recommended by the
24 Committee under subsection (b)(1)(B) of

1 that section as a result of such reviews;

2 and

3 “(iv) reviews during which the Com-

4 mittee determined no action was required;

5 and

6 “(C) assessing the overall impact of such

7 reviews on national critical capabilities.

8 “(2) FORM OF REPORT.—The report required

9 by paragraph (1) shall be submitted in unclassified

10 form but may include a classified annex.

11 “(b) USE OF TITLE III AUTHORITIES.—Not later

12 than 180 days after the date of the enactment of the Na-

13 tional Critical Capabilities Defense Act of 2020, the Com-

14 mittee shall submit to Congress a report that includes rec-

15 ommendations relating to use the authorities under title

16 III to make investments to enhance national critical capa-

17 bilities and reduce dependency on materials and services

18 imported from foreign countries.

19 **“SEC. 809. REQUIREMENTS RELATED TO GOVERNMENT**

20 **PROCUREMENT.**

21 “(a) IN GENERAL.—Not later than 90 days after the

22 date of the enactment of the National Critical Capabilities

23 Defense Act of 2020, the Federal Acquisition Regulation

24 shall be revised to require each person that is a prospective

25 contractor for an executive agency to disclose—

1 “(1) the supply chains the person would use to
2 carry out the contract and the extent to which the
3 person would depend on materials and services im-
4 ported from foreign countries, including the percent-
5 age of such materials and services imported from
6 countries of concern; and

7 “(2) a good faith estimate of the effect of the
8 contract on employment by the person in the United
9 States.

10 “(b) MATERIALITY.—The head of an executive agen-
11 cy shall consider the failure of a person to make the disclo-
12 sures required by subsection (a) to be material deter-
13 minants in awarding a contract to that person.

14 “(c) APPLICABILITY.—The revisions to the Federal
15 Acquisition Regulation required under subsection (a) shall
16 apply with respect to contracts for which solicitations are
17 issued on or after the date that is 90 days after the date
18 of the enactment of the National Critical Capabilities De-
19 fense Act of 2020.

20 “(d) DEFINITIONS.—In this section:

21 “(1) EXECUTIVE AGENCY.—The term ‘executive
22 agency’ has the meaning given that term in section
23 133 of title 41, United States Code.

24 “(2) FEDERAL ACQUISITION REGULATION.—
25 The term ‘Federal Acquisition Regulation’ means

1 the regulation issued pursuant to section 1303(a)(1)
2 of title 41, United States Code.”.

3 **SEC. 3. USE OF AUTHORITIES UNDER TITLE VII OF THE DE-**
4 **FENSE PRODUCTION ACT OF 1950 FOR PRO-**
5 **DUCTION AND DISTRIBUTION OF A SARS-**
6 **COV-2 VACCINE.**

7 Not later than 90 days after the date of the enact-
8 ment of this Act, the President shall, pursuant to section
9 708(c) of the Defense Production Act of 1950 (50 U.S.C.
10 4558(c)), conduct consultations with representatives of in-
11 dustry to provide for the making of voluntary agreements
12 and plans of action to coordinate the production and dis-
13 tribution of a vaccine for the SARS-CoV-2 virus.

14 **SEC. 4. EXECUTIVE DIRECTOR OF DEFENSE PRODUCTION**
15 **ACT COMMITTEE.**

16 Section 722(c) of the Defense Production Act of 1950
17 (50 U.S.C. 4567(c)) is amended to read as follows:

18 “(c) EXECUTIVE DIRECTOR.—

19 “(1) IN GENERAL.—The President shall ap-
20 point an Executive Director of the Committee (in
21 this subsection referred to as the ‘Executive Direc-
22 tor’), who shall—

23 “(A) be responsible to the Chairperson of
24 the Committee; and

1 “(B) carry out such activities relating to
2 the Committee as the Chairperson may assign.

3 “(2) COMPENSATION.—For pay periods begin-
4 ning on or after the date on which each Chairperson
5 is appointed, funds for the pay of the Executive Di-
6 rector shall be paid from amounts appropriated for
7 the salaries and expenses account of the agency of
8 the Chairperson of the Committee. The Executive
9 Director shall be compensated at a rate of pay
10 equivalent to that of a Deputy Assistant Secretary
11 (or a comparable position) of the agency of the
12 Chairperson.”.

13 **SEC. 5. REPORTING BY ENTITIES RECEIVING FINANCIAL**
14 **ASSISTANCE RELATING TO COVID-19 RE-**
15 **SPONSE EFFORTS.**

16 (a) IN GENERAL.—Not later than one year after the
17 date of the enactment of this Act, and 5 years after such
18 date of enactment, any entity that receives more than
19 \$50,000,000 in direct or indirect financial assistance from
20 the Federal Government related to the response to the
21 coronavirus disease 2019 (commonly referred to as
22 “COVID-19”), including such assistance provided under,
23 or treated as provided under, the Internal Revenue Code
24 of 1986, or provided under title III of the Defense Produc-
25 tion Act of 1950 (50 U.S.C. 4531 et seq.), shall submit

1 to the appropriate congressional committees a report that
2 discloses—

3 (1)(A) the value of property, plant, and equip-
4 ment investments of the entity in the United States;

5 (B) the number of individuals employed by the
6 entity in the United States; and

7 (C) the production and capacity production ca-
8 pacity of the entity in the United States; and

9 (2)(A) the value of property, plant, and equip-
10 ment investments of the entity in foreign countries;

11 (B) the number of individuals employed by the
12 entity in foreign countries; and

13 (C) the production and capacity production ca-
14 pacity of the entity in foreign countries.

15 (b) PENALTIES AND FEDERAL ASSISTANCE

16 CLAWBACK.—

17 (1) IN GENERAL.—An entity described in sub-
18 section (a) shall pay a penalty to the United States
19 in an amount the Secretary of the Treasury deter-
20 mines is equivalent to the amount, if any, by which
21 investments of the entity described in subsection
22 (a)(2)(A) exceed the amount of investments of the
23 entity described in subsection (a)(1)(A).

24 (2) LIMITATION.—The amount of a penalty im-
25 posed under paragraph (1) on an entity may not ex-

1 ceed 5 times the amount of direct or indirect finan-
2 cial assistance described in subsection (a) received
3 by the entity from the Federal Government.

4 (c) APPROPRIATE CONGRESSIONAL COMMITTEES DE-
5 FINED.—In this section, the term “appropriate congres-
6 sional committees” means

7 (1) the Committee on Homeland Security and
8 Governmental Affairs, the Committee on Finance,
9 the Committee on Banking, Housing, and Urban Af-
10 fairs, and the Committee on Appropriations, and the
11 Committee on Health, Education, Labor, and Pen-
12 sions of the Senate; and

13 (2) the Committee on Homeland Security, the
14 Committee on Ways and Means, the Committee on
15 Financial Services, the Committee on Appropria-
16 tions, and the Committee on Education and Labor
17 of the House of Representatives.

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