

Act June 30, 1953, ch. 170, added second par. 1952—Subsec. (a). Act June 30, 1952, § 121(b), extended termination dates from Apr. 30, 1952, to Apr. 30, 1953, and from June 30, 1952, to June 30, 1953.

Subsec. (d). Act June 30, 1952, § 120, added subsec. (d). 1951—Subsec. (a). Acts July 31, 1951, § 111, and June 30, 1951. Act July 31, 1951, struck out subsec. (a) relating to termination of certain titles of act Sept. 8, 1950, and substituted present subsec. (a). Act June 30, 1951, extended termination date from June 30, 1951, to July 31, 1951.

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

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

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

EFFECTIVE DATE OF 1991 AMENDMENTS

Section 2 of Pub. L. 102-193 provided that: “This Act [amending this section] shall take effect on September 30, 1991.”

Amendment by Pub. L. 102-99 effective Oct. 20, 1990, see section 7 of Pub. L. 102-99, set out as a note under section 2071 of this Appendix.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-294 effective June 30, 1980, see section 107 of Pub. L. 96-294, set out as a note under section 2062 of this Appendix.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-152 effective at close of Nov. 30, 1975, see section 9 of Pub. L. 94-152, as amended, set out as a note under section 2158 of this Appendix.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 9, 1955, effective as of close of July 31, 1955, see section 11 of act Aug. 9, 1955, set out as a note under section 2062 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2095, 2096 of this Appendix.

§ 2167. Repealed. Pub. L. 102-558, title I, § 155, Oct. 28, 1992, 106 Stat. 4219

Section, act Sept. 8, 1950, ch. 932, title VII, § 718, as added July 1, 1968, Pub. L. 90-370, § 3, 82 Stat. 279, authorized a feasibility study of application of uniform cost accounting standards to defense procurement contracts.

EFFECTIVE DATE OF REPEAL

Repeal deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as an Effective Date of 1992 Amendment note under section 2062 of this Appendix.

§ 2168. Repealed. Pub. L. 100-679, § 5(b), Nov. 17, 1988, 102 Stat. 4063

Section, act Sept. 8, 1950, ch. 932, title VII, § 719, as added Aug. 15, 1970, Pub. L. 91-379, title I, § 103, 84 Stat. 796; amended Dec. 16, 1975, Pub. L. 94-152, § 7, 89 Stat. 820; Nov. 8, 1985, Pub. L. 99-145, title IX, § 934(b), 99 Stat. 700; Nov. 14, 1986, Pub. L. 99-661, div. A, title XIII, § 1342(f), 100 Stat. 3991, related to formation, functions, appointment and compensation of staff, etc., of Cost

Accounting Standards Board. See section 422 of Title 41, Public Contracts.

§ 2169. Repealed. Pub. L. 102-558, title I, § 156, Oct. 28, 1992, 106 Stat. 4219

Section, act Sept. 8, 1950, ch. 932, title VII, § 720, as added Sept. 30, 1974, Pub. L. 93-426, § 5, 88 Stat. 1167; amended Mar. 21, 1975, Pub. L. 94-9, 89 Stat. 15; Aug. 5, 1975, Pub. L. 94-72, 89 Stat. 399; Dec. 16, 1975, Pub. L. 94-152, § 8, 89 Stat. 820, established a National Commission on Supplies and Shortages.

EFFECTIVE DATE OF REPEAL

Repeal deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as an Effective Date of 1992 Amendment note under section 2062 of this Appendix.

§ 2170. Authority to review certain mergers, acquisitions, and takeovers

(a) Investigations

The President or the President's designee may make an investigation to determine the effects on national security of mergers, acquisitions, and takeovers proposed or pending on or after the date of enactment of this section [Aug. 23, 1988] by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States. If it is determined that an investigation should be undertaken, it shall commence no later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover as prescribed by regulations promulgated pursuant to this section. Such investigation shall be completed no later than 45 days after such determination.

(b) Mandatory investigations

The President or the President's designee shall make an investigation, as described in subsection (a), in any instance in which an entity controlled by or acting on behalf of a foreign government seeks to engage in any merger, acquisition, or takeover which could result in control of a person engaged in interstate commerce in the United States that could affect the national security of the United States. Such investigation shall—

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

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

(c) Confidentiality of information

Any information or documentary material filed with the President or the President's designee pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this subsection shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.

(d) Action by the President

Subject to subsection (d),¹ the President may take such action for such time as the President considers appropriate to suspend or prohibit any acquisition, merger, or takeover, of a person engaged in interstate commerce in the United States proposed or pending on or after the date of enactment of this section [Aug. 23, 1988] by or with foreign persons so that such control will not threaten to impair the national security. The President shall announce the decision to take action pursuant to this subsection not later than 15 days after the investigation described in subsection (a) is completed. The President may direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce this section.

(e) Findings of the President

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

- (1) there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security, and
- (2) provisions of law, other than this section and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

The provisions of subsection (d)¹ of this section shall not be subject to judicial review.

(f) Factors to be considered

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

- (1) domestic production needed for projected national defense requirements,
- (2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services,
- (3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security,
- (4) the potential effects of the proposed or pending transaction on sales of military goods, equipment, or technology to any country—

(A) identified by the Secretary of State—

- (i) under section 6(j) of the Export Administration Act of 1979 [section 2405(j) of this Appendix], as a country that supports terrorism;
- (ii) under section 6(l) of the Export Administration Act of 1979 [section 2405(l) of this Appendix], as a country of concern regarding missile proliferation; or
- (iii) under section 6(m) of the Export Administration Act of 1979 [section 2405(m) of

this Appendix], as a country of concern regarding the proliferation of chemical and biological weapons; or

(B) listed under section 309(c) of the Nuclear Non-Proliferation Act of 1978 [42 U.S.C. 2139a(c)] on the “Nuclear Non-Proliferation-Special Country List” (15 C.F.R. Part 778, Supplement No. 4) or any successor list; and

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

(g) Report to the Congress

The President shall immediately transmit to the Secretary of the Senate and the Clerk of the House of Representatives a written report of the President's determination of whether or not to take action under subsection (d), including a detailed explanation of the findings made under subsection (e) and the factors considered under subsection (f). Such report shall be consistent with the requirements of subsection (c) of this Act.²

(h) Regulations

The President shall direct the issuance of regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall to the extent possible coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.

(i) Effect on other law

Nothing in this section shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.

(j) Technology risk assessments

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

(k) Quadrennial report**(1) In general**

In order to assist the Congress in its oversight responsibilities with respect to this section, the President and such agencies as the President shall designate shall complete and furnish to the Congress, not later than 1 year after the date of enactment of this section³ and upon the expiration of every 4 years thereafter, a report which—

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

(B) evaluates whether there are industrial espionage activities directed or directly as-

¹ See References in Text note below.

² So in original. Probably should be “section.”

³ See References in Text note below.

sisted by foreign governments against private United States companies aimed at obtaining commercial secrets related to critical technologies.

(2) “Critical technologies” defined

For the purposes of this subsection, the term “critical technologies” means technologies identified under title VI of the National Science and Technology Policy, Organization, and Priorities Act of 1976³ or other critical technology, critical components, or critical technology items essential to national defense identified pursuant to this section.

(3) Release of unclassified study

The report required by this subsection may be classified. An unclassified version of the report shall be made available to the public.

(Sept. 8, 1950, ch. 932, title VII, §721, as added Pub. L. 100-418, title V, §5021, Aug. 23, 1988, 102 Stat. 1425; amended Pub. L. 102-484, div. A, title VIII, §837(a)-(c), (e), Oct. 23, 1992, 106 Stat. 2463-2465; Pub. L. 102-558, title I, §163, Oct. 28, 1992, 106 Stat. 4219; Pub. L. 103-359, title VIII, §809(d), Oct. 14, 1994, 108 Stat. 3454.)

REFERENCES IN TEXT

Subsections (c) and (d), referred to in subsecs. (d) and (e), were redesignated subsecs. (d) and (e), respectively, by Pub. L. 102-484. See 1992 Amendment note below.

The International Emergency Economic Powers Act, referred to in subsec. (e)(2), is title II of Pub. L. 95-223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The date of enactment of this section, referred to in subsec. (k)(1), probably means the date of enactment of Pub. L. 102-558, which enacted subsec. (k) of this section and was approved Oct. 28, 1992.

The National Science and Technology Policy, Organization, and Priorities Act of 1976, referred to in subsec. (k)(2), is Pub. L. 94-282, May 11, 1976, 90 Stat. 459, as amended. Title VI of the Act was classified generally to subchapter VI (§6681 et seq.) of chapter 79 of Title 42, The Public Health and Welfare, and was omitted from the Code. For complete classification of this Act to the Code, see Short Title note set out under section 6601 of Title 42 and Tables.

AMENDMENTS

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

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

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

Memorandum for the Secretary of the Treasury

By virtue of the authority vested in me by the Constitution and statutes of the United States, including without limitation Section 301 of Title 3 of the United States Code, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, August 23, 1988) (the “Act”) [see Tables for classification], it is ordered as follows:

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

The Secretary of the Treasury shall consult with the Committee on Foreign Investment in the United States, established pursuant to Executive Order No. 11858 [15 U.S.C. 78b note] and chaired by the representative of the Secretary of the Treasury, to take such actions or make such recommendations as requested by the Secretary of the Treasury.

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

This interim directive shall be published in the Federal Register.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2166, 2170a of this Appendix; title 10 section 2537; title 22 section 3103.

§ 2170a. Prohibition on purchase of United States defense contractors by entities controlled by foreign governments

(a) In general

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

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

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

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

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

(b) Inapplicability to certain cases

The limitation in subsection (a) shall not apply if a merger, acquisition, or takeover is not