

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 [set out above] 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.

§ 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 suspended or prohibited pursuant to section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170).

(c) Definitions

In this section:

(1) The term “entity controlled by a foreign government” includes—

(A) any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; and

(B) any individual acting on behalf of a foreign government,

as determined by the President.

(2) The term “proscribed category of information” means a category of information that—

(A) with respect to Department of Defense contracts—

(i) includes special access information;

(ii) is determined by the Secretary of Defense to include information the disclosure of which to an entity controlled by a foreign government is not in the national security interests of the United States; and

(iii) is defined in regulations prescribed by the Secretary of Defense for the purposes of this section; and

(B) with respect to Department of Energy contracts—

(i) is determined by the Secretary of Energy to include information described in subparagraph (A)(ii); and

(ii) is defined in regulations prescribed by the Secretary of Energy for the purposes of this section.

(Pub. L. 102-484, div. A, title VIII, §835, Oct. 23, 1992, 106 Stat. 2461.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1993, and not as part of the Defense Production Act of 1950 which comprises sections 2061 to 2170, 2171, and 2172 of this Appendix.

§ 2170b. Reports on foreign industrial espionage

(a) In general

(1) Submission and contents

In order to assist Congress in its oversight functions with respect to this Act and to improve the awareness of United States industry of foreign industrial espionage and the ability of such industry to protect against such espionage, the President shall submit to Congress a report that describes, as of the time of the report, the following:

(A) The respective policy functions and operational roles of the agencies of the executive branch of the Federal Government in identifying and countering threats to United States industry of foreign industrial espionage, including the manner in which such functions and roles are coordinated.

(B) The means by which the Federal Government communicates information on such threats, and on methods to protect against such threats, to United States industry in general and to United States companies known to be targets of foreign industrial espionage.

(C) The specific measures that are being or could be undertaken in order to improve the activities referred to in subparagraphs (A) and (B), including proposals for any modifications of law necessary to facilitate the undertaking of such activities.

(D) The threat to United States industry of foreign industrial espionage and any trends in that threat, including—

(i) the number and identity of the foreign governments conducting foreign industrial espionage;

(ii) the industrial sectors and types of information and technology targeted by such espionage; and

(iii) the methods used to conduct such espionage.

(2) Date of submission

The President shall submit the report required under this subsection not later than six months after the date of the enactment of this Act [Oct. 14, 1994].

(b) Biennial report**(1) Requirement to submit**

Not later than February 1, 2011, and once every two years thereafter, the President shall submit to the congressional intelligence committees and congressional leadership a report updating the information referred to in subsection (a)(1)(D).¹

(2) Definitions

In this subsection:

(A) Congressional intelligence committees

The term “congressional intelligence committees” has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(B) Congressional leadership

The term “congressional leadership” means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.

(c) Form of reports

To the maximum extent practicable, the reports referred to in subsections (a) and (b) shall be submitted in an unclassified form, but may be accompanied by a classified appendix.

(d) Omitted**(e) Definition**

For the purposes of this section, “foreign industrial espionage” means industrial espionage conducted by a foreign government or by a foreign company with direct assistance of a foreign government against a private United States company and aimed at obtaining commercial secrets.

(Pub. L. 103-359, title VIII, § 809, Oct. 14, 1994, 108 Stat. 3454; Pub. L. 107-306, title VIII, § 811(b)(5)(A), Nov. 27, 2002, 116 Stat. 2423; Pub. L. 111-259, title III, § 347(h), Oct. 7, 2010, 124 Stat. 2699.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), is Pub. L. 103-359, Oct. 14, 1994, 108 Stat. 3423, known as the Intelligence Authorization Act for Fiscal Year 1995. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is comprised of section 809 of Pub. L. 103-359. Subsec. (d) of section 809 of Pub. L. 103-359 amended section 2170 of this Appendix.

Section was enacted as part of the Counterintelligence and Security Enhancements Act of 1994 and also as part of the Intelligence Authorization Act for Fiscal Year 1995, and not as part of the Defense Production Act of 1950 which comprises sections 2061 to 2170, 2171, and 2172 of this Appendix.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111-259 substituted “Biennial report” for “Annual update” in heading, added

par. (1), redesignated par. (3) as (2), and struck out former par. (2). Prior to amendment, text of par. (2) read as follows: “Not later than April 14 each year, the President shall submit to the congressional leadership a report updating the information referred to in subsection (a)(1)(D).”

2002—Subsec. (b). Pub. L. 107-306 added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “Not later than one year after the date referred to in paragraph (2) of subsection (a), and on the expiration of each year thereafter, the President shall submit to Congress a report updating the information referred to in paragraph (1)(D) of that subsection.”

DELEGATION OF FUNCTIONS

For delegation of congressional reporting functions of President under subsec. (b) of this section, see section 1 of Ex. Ord. No. 13313, July 31, 2003, 68 F.R. 46075, set out as a note under section 301 of Title 3, The President.

§ 2171. Defense Production Act Committee**(a) Committee established**

There is established the Defense Production Act Committee (in this section referred to as the “Committee”), which shall advise the President on the effective use of the authority under this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix] by the departments, agencies, and independent establishments of the Federal Government to which the President has delegated authority under this Act.

(b) Membership**(1) In general**

The members of the Committee shall be—

(A) the head of each Federal agency to which the President has delegated authority under this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix]; and

(B) the Chairperson of the Council of Economic Advisors.

(2) Chairperson

The President shall designate 1 member of the Committee as the Chairperson of the Committee.

(c) Executive Director**(1) In general**

The President shall appoint an Executive Director of the Defense Production Act Committee (in this section referred to as the “Executive Director”), who shall—

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

(B) carry out such activities relating to the Committee as the Chairperson may determine.

(2) Appointment

The appointment by the President shall not be subject to the advice and consent of the Senate.

(3) Compensation

For pay periods beginning on or after the date on which each Chairperson is appointed, funds for the pay of the Executive Director shall be paid from appropriations to the salaries and expenses account of the department or agency of the Chairperson of the Committee. The Executive Director shall be com-

¹ So in original. Probably should be “(a)(1)(D).”