

AMENDMENT TO RULES COMM. PRINT 118–36

OFFERED BY MR. McCAUL OF TEXAS

At the end of title XVII, add the following:

1 **Subtitle D—Preventing Adversaries**
2 **From Developing Critical Capa-**
3 **bilities Act**

4 **SEC. 1751. SHORT TITLE.**

5 This subtitle may be cited as the “Preventing Adver-
6 saries from Developing Critical Capabilities Act”.

7 **SEC. 1752. EXERCISE OF AUTHORITIES UNDER THE INTER-**
8 **NATIONAL EMERGENCY ECONOMIC POWERS**
9 **ACT.**

10 (a) **IN GENERAL.**—The President may exercise all
11 authorities provided under the International Emergency
12 Economic Powers Act (50 U.S.C. 1701 et seq.) necessary
13 to carry out the provisions of this subtitle, including au-
14 thorities to impose penalties under section 206 of such
15 Act.

16 (b) **DELEGATION.**—The President may delegate the
17 authorities described in subsection (a) to the head of any
18 Federal agency the President determines appropriate in
19 order to carry out the provisions of this subtitle.

1 **SEC. 1753. PROHIBITION ON COVERED ACTIVITIES IN COV-**
2 **ERED SECTORS THAT POSE PARTICULARLY**
3 **ACUTE THREATS TO UNITED STATES NA-**
4 **TIONAL SECURITY.**

5 (a) IDENTIFICATION OF CATEGORIES OF TECH-
6 NOLOGIES AND PRODUCTS.—

7 (1) IN GENERAL.—Not later than one year
8 after the date of the enactment of this Act, and an-
9 nually thereafter as described in paragraph (2), the
10 President—

11 (A) shall identify categories of technologies
12 and products in covered sectors that may pose
13 a particularly acute threat to the national secu-
14 rity of the United States if developed or ac-
15 quired by a country of concern; and

16 (B) publish a list of the categories of tech-
17 nologies and products identified under para-
18 graph (1) in the Federal Register.

19 (2) UPDATES.—The President shall annually
20 review and update the list of the categories of tech-
21 nologies and products identified under paragraph
22 (1)(A) and update the Federal Register under para-
23 graph (1)(B) as appropriate.

24 (b) PROHIBITION ON COVERED ACTIVITIES.—The
25 President shall, on or after the date on which the initial
26 list of categories of technologies and products is published

1 in the Federal Register pursuant to subsection (a)(1)(B),
2 prescribe, subject to public notice and comment, regula-
3 tions to prohibit a United States person from engaging,
4 directly or indirectly, in a covered activity involving a cat-
5 egory of technologies and products on such list of cat-
6 egories of technologies and products in a covered sector.

7 Such regulations should—

8 (1) require that a United States person take all
9 reasonable steps to prohibit and prevent any trans-
10 action by a foreign entity under the control of the
11 United States person that would be a prohibited
12 transaction if engaged in by a United States person;
13 and

14 (2) exclude any transaction consisting of the ac-
15 quisition of an equity or other interest in an entity
16 located outside a country of concern, where the
17 President has determined that the government of the
18 country in which that entity is established or has its
19 principal place of business has in place a program
20 for the restriction of certain activities involving
21 countries of concern that is comparable to the provi-
22 sions provided for in this subtitle.

23 (c) SENSE OF CONGRESS.—It is the sense of Con-
24 gress that the covered sectors include certain categories
25 of technologies and products that would pose a particu-

1 larly acute threat to the national security of the United
2 States if developed or acquired by a country of concern,
3 and that the President should identify certain technologies
4 and products in the covered sectors as categories of tech-
5 nologies and products in covered sectors for purposes of
6 subsection (a)(1).

7 **SEC. 1754. MANDATORY NOTIFICATION OF COVERED AC-**
8 **TIVITIES IN COVERED SECTORS THAT MAY**
9 **POSE THREATS TO UNITED STATES NA-**
10 **TIONAL SECURITY.**

11 (a) IDENTIFICATION OF CATEGORIES OF TECH-
12 NOLOGIES AND PRODUCTS.—Not later than one year after
13 the date of the enactment of this Act, the President
14 shall—

15 (1) identify categories of technologies and prod-
16 ucts in covered sectors that may pose a threat to the
17 national security of the United States if developed or
18 acquired by a country of concern;

19 (2) publish a list of the categories of tech-
20 nologies and products identified under paragraph (1)
21 in the Federal Register; and

22 (3) annually thereafter, review the categories of
23 technologies and products identified under para-
24 graph (1) and publish an updated list of the cat-
25 egories of technologies and products in the Federal

1 Register under paragraph (2) if the list identified in
2 paragraph (2) has changed.

3 (b) MANDATORY NOTIFICATION.—

4 (1) IN GENERAL.—Beginning on the date that
5 is 90 days after the date on which the initial list of
6 categories of technologies and products is published
7 in the Federal Register pursuant to subsection
8 (a)(2), a United States person engaging in a covered
9 activity involving a category identified in subsection
10 (a)(1), or controlling a foreign entity engaging in an
11 activity that would be a covered activity if engaged
12 in by a United States person, shall submit to the
13 President a complete written notification of the ac-
14 tivity not later than 14 days after the completion
15 date of the activity.

16 (2) CIRCULATION OF NOTIFICATION.—

17 (A) IN GENERAL.—The President shall,
18 upon receipt of a notification under paragraph
19 (1), promptly inspect the notification for com-
20 pleteness.

21 (B) INCOMPLETE NOTIFICATION.—If a no-
22 tification submitted under paragraph (1) is in-
23 complete, the President shall promptly inform
24 the United States person that submits the noti-
25 fication that the notification is not complete

1 and provide an explanation for relevant mate-
2 rial respect in which the notification is not com-
3 plete.

4 (3) IDENTIFICATION OF NON-NOTIFIED ACTIV-
5 ITY.—The President shall establish a process to
6 identify a covered activity involving a category iden-
7 tified under subsection (a)(1) for which—

8 (A) a notification is not submitted to the
9 President under paragraph (1); and

10 (B) information is reasonably available.

11 (c) CONFIDENTIALITY OF INFORMATION.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2), any information or documentary material
14 filed with the President pursuant to this section
15 shall be exempt from disclosure under section
16 552(b)(3) of title 5, United States Code, and no
17 such information or documentary material may be
18 made public by any government agency or Member
19 of Congress.

20 (2) EXCEPTIONS.—Subject to appropriate con-
21 fidentiality and classification requirements, the ex-
22 emption from disclosure provided by paragraph (1)
23 shall not prevent the disclosure of the following:

24 (A) Information relevant to any adminis-
25 trative or judicial action or proceeding.

1 (B) Information provided to Congress or
2 any of the appropriate congressional commit-
3 tees.

4 (C) Information important to national se-
5 curity analysis or actions of the President to
6 any domestic government entity, or to any for-
7 eign governmental entity of an ally or partner
8 of the United States, under the direction and
9 authorization of the President, only to the ex-
10 tent necessary for national security purposes.

11 (D) Information that the parties have con-
12 sented to be disclosed to third parties.

13 **SEC. 1755. REPORTING REQUIREMENTS.**

14 (a) IN GENERAL.—Not later than one year after the
15 date on which the regulations prescribed under section
16 1756 take effect, and not less frequently than annually
17 thereafter, the President shall submit to the appropriate
18 congressional committees a report that—

19 (1) lists all notifications submitted under sec-
20 tion 1754(b) during the year preceding submission
21 of the report, disaggregated by—

22 (A) sector;

23 (B) covered activity;

24 (C) covered foreign entity; and

25 (D) country of concern;

1 (2) an assessment of whether to amend the reg-
2 ulations, including whether to amend the definition
3 of “covered sectors” to enhance national security;

4 (3) provides additional context and information
5 regarding trends in the sectors, the types of covered
6 activity, and the countries involved in those notifica-
7 tions, including—

8 (A) the location of the relevant covered for-
9 eign entities; and

10 (B) the country in which the United States
11 person or foreign entity controlled by such
12 United States person involved in the relevant
13 covered activity is located; and

14 (4) assesses the overall impact of those notifica-
15 tions, including recommendations for—

16 (A) expanding existing Federal programs
17 to support the production or supply of covered
18 sectors in the United States, including the po-
19 tential of existing authorities to address any re-
20 lated national security concerns; and

21 (B) the continuation, expansion, or modi-
22 fication of the implementation and administra-
23 tion of this subtitle.

1 (b) FORM.—Each report required by this section
2 shall be submitted in unclassified form, but may include
3 a classified annex.

4 (c) PROHIBITION ON DISCLOSURE.—Information
5 contained in each report required by this section may be
6 withheld from disclosure only to the extent otherwise per-
7 mitted by statute, except that all information included
8 pursuant to subsection (a)(1) shall be withheld from public
9 disclosure.

10 **SEC. 1756. REQUIREMENT FOR REGULATIONS.**

11 (a) IN GENERAL.—Not later than 180 days after the
12 date on which the initial list of categories of technologies
13 and products have been published in the Federal Register
14 pursuant to sections 1753(a)(1)(B) and 1754(a)(2), the
15 President shall prescribe and finalize proposed regulations
16 to carry out this subtitle.

17 (b) ELEMENTS.—Regulations prescribed to carry out
18 this subtitle shall specify—

19 (1) the types of activities that will be considered
20 to be covered activities;

21 (2) the technologies and products in covered
22 sectors with respect to which covered activities are
23 prohibited under section 1753(b) or require a notifi-
24 cation under section 1754(b); and

1 (3) a process by which parties can ask ques-
2 tions and get timely guidance as to whether a cov-
3 ered activity is prohibited under section 1753(b) or
4 requires a notification under section 1754(b).

5 (c) REQUIREMENTS FOR CERTAIN REGULATIONS.—
6 The President shall prescribe regulations further defining
7 the terms used in this subtitle, including the terms “cov-
8 ered activity”, “covered foreign entity”, and “party”, to
9 maximize the effectiveness of carrying out this subtitle in
10 accordance with subchapter II of chapter 5 and chapter
11 7 of title 5 (commonly known as the “Administrative Pro-
12 cedure Act”).

13 (d) PUBLIC NOTICE AND COMMENT.—Regulations
14 issued pursuant to subsection (a) shall be subject to public
15 notice and comment.

16 (e) LOW-BURDEN REGULATIONS.—In prescribing
17 regulations under this section, the President shall, to the
18 extent practicable, structure the regulations—

19 (1) to minimize the cost and complexity of com-
20 pliance for affected parties;

21 (2) to ensure the benefits of the regulations
22 outweigh their costs;

23 (3) to adopt the least burdensome alternative
24 that achieves regulatory objectives;

1 (4) to prioritize transparency and stakeholder
2 involvement in the process of prescribing the regula-
3 tions; and

4 (5) to regularly review and streamline existing
5 regulations promulgated pursuant to this subtitle to
6 reduce redundancy and complexity.

7 (f) PENALTIES WITH RESPECT TO UNLAWFUL
8 ACTS.—Regulations issued under this section shall, con-
9 sistent with the authority provided by section 1752(a),
10 provide for the imposition of civil penalties for violations
11 of this section, that involve—

12 (1) engaging in a covered activity prohibited
13 under section 1753(b) pursuant to the regulations
14 issued under this section;

15 (2) failing to submit a timely notification under
16 section 1754(b) with respect to a covered activity or
17 to submit other information as required by the des-
18 ignated agency; or

19 (3) submitting a material misstatement or omit-
20 ting a material fact in any information submitted in
21 a notification under section 1754(b).

22 (g) ENFORCEMENT.—Consistent with the authority
23 provided by section 1752(a), the President may direct the
24 Attorney General to seek appropriate relief in the district

1 courts of the United States, in order to implement and
2 enforce this subtitle.

3 (h) CONGRESSIONAL NOTIFICATION.—The President
4 shall submit to the appropriate congressional committees
5 all regulations prescribed to carry out this subtitle not
6 later than 30 days before such regulations are to take ef-
7 fect.

8 **SEC. 1757. MULTILATERAL ENGAGEMENT AND COORDINA-**
9 **TION.**

10 (a) IN GENERAL.—The President shall delegate the
11 authorities and functions under this section to the Sec-
12 retary of State.

13 (b) AUTHORITIES.—The Secretary of State, in co-
14 ordination with the heads or other relevant Federal agen-
15 cies, should—

16 (1) conduct bilateral and multilateral engage-
17 ment with the governments of countries that are al-
18 lies and partners of the United States to promote
19 and increase coordination of protocols and proce-
20 dures to facilitate the effective implementation of
21 and appropriate compliance with the prohibitions
22 and notifications pursuant to this subtitle;

23 (2) upon adoption of protocols and procedures
24 described in paragraph (1), work with those govern-
25 ments to establish mechanisms for sharing informa-

1 tion, including trends, with respect to such activities;
2 and

3 (3) work with and encourage the governments
4 of countries that are allies and partners of the
5 United States to develop similar mechanisms of their
6 own.

7 (c) STRATEGY FOR MULTILATERAL ENGAGEMENT
8 AND COORDINATION.—Not later than 180 days after the
9 date of the enactment of this Act, the Secretary of State,
10 in coordination with the heads of other relevant Federal
11 agencies, should—

12 (1) develop a strategy to work with the govern-
13 ments of countries that are allies and partners of
14 the United States to develop mechanisms that are
15 comparable to the prohibitions and notifications pur-
16 suant to this subtitle; and

17 (2) assess opportunities to provide technical as-
18 sistance to those countries with respect to the devel-
19 opment of those mechanisms.

20 (d) REPORT.—Not later than one year after the date
21 of the enactment of this Act, and annually thereafter for
22 4 years, the Secretary of State shall submit to the appro-
23 priate congressional committees a report that includes—

24 (1) a discussion of any strategy developed pur-
25 suant to subsection (c)(1), including key tools and

1 objectives for the development of comparable mecha-
2 nisms by the governments of allies and partners of
3 the United States;

4 (2) a list of partner and allied countries to tar-
5 get for cooperation in developing their own screening
6 programs;

7 (3) the status of the strategy's implementation
8 and outcomes; and

9 (4) a description of impediments to the estab-
10 lishment of comparable mechanisms by governments
11 of allies and partners of the United States.

12 **SEC. 1758. AUTHORIZATION OF APPROPRIATIONS.**

13 (a) IN GENERAL.—There is authorized to be appro-
14 priated \$25,000,000, to be derived from amounts other-
15 wise authorized to be appropriated to the President, for
16 each of the first two fiscal years beginning on or after
17 the date of the enactment of this Act, to carry out this
18 subtitle, including to provide outreach to industry and per-
19 sons affected by this subtitle.

20 (b) HIRING AUTHORITY.—

21 (1) PRESIDENT.—The President may appoint,
22 without regard to the provisions of sections 3309
23 through 3318 of title 5, United States Code, not
24 more than 15 candidates directly to positions in the

1 competitive service (as defined in section 2102 of
2 that title).

3 (2) AGENCY.—The head of the Federal depart-
4 ment or agency designated under section 1752(b) to
5 hold primary responsibility for administering this
6 subtitle may appoint, without regard to the provi-
7 sions of sections 3309 through 3318 of title 5,
8 United States Code, not fewer than 25 candidates
9 directly to positions in the competitive service (as de-
10 fined in section 2102 of that title) of such depart-
11 ment or agency.

12 (3) PRIMARY RESPONSIBILITY.—The primary
13 responsibility of individuals in positions authorized
14 to be hired under this subsection shall be to admin-
15 ister this subtitle.

16 **SEC. 1759. RULE OF CONSTRUCTION.**

17 Nothing in this subtitle may be construed to—

18 (1) restrain or deter United States activities
19 abroad if such activities do not pose a risk to the na-
20 tional security of the United States; or

21 (2) alter or negate the authority of the Presi-
22 dent under any authority, process, regulation, inves-
23 tigation, enforcement measure, or review provided by
24 or established under any other provision of Federal
25 law, or any other authority of the President or the

1 Congress under the Constitution of the United
2 States.

3 **SEC. 1760. NATIONAL INTEREST WAIVER.**

4 (a) IN GENERAL.—Subject to subsection (b), the
5 President is authorized to exempt from any applicable pro-
6 hibition or notification requirement any activity deter-
7 mined by the President, in consultation with the heads of
8 relevant Federal agencies, as appropriate, to be in the na-
9 tional interest of the United States.

10 (b) CONGRESSIONAL NOTIFICATION.—The President
11 shall—

12 (1) notify the appropriate congressional com-
13 mittees not later than 48 hours after issuing a waiv-
14 er under subsection (a); and

15 (2) include in such notification an identification
16 of the national interest justifying the use of the
17 waiver.

18 **SEC. 1761. DEFINITIONS.**

19 In this subtitle:

20 (1) APPROPRIATE CONGRESSIONAL COMMIT-
21 TEES.—The term “appropriate congressional com-
22 mittees” means—

23 (A) the Committee on Foreign Affairs, the
24 Committee on Financial Services, the Com-
25 mittee on Ways and Means, the Committee on

1 Appropriations, and the Permanent Select Com-
2 mittee on Intelligence of the House of Rep-
3 resentatives; and

4 (B) the Committee on Foreign Relations,
5 the Committee on Banking, Housing, and
6 Urban Affairs, the Committee on Finance, the
7 Committee on Appropriations, and the Select
8 Committee on Intelligence of the Senate.

9 (2) COUNTRY OF CONCERN.—The term “coun-
10 try of concern”—

11 (A) means—

12 (i) the Democratic People’s Republic
13 of North Korea;

14 (ii) the People’s Republic of China, in-
15 cluding the Hong Kong Special Adminis-
16 trative Region and the Macau Special Ad-
17 ministrative Region;

18 (iii) the Russian Federation; and

19 (iv) the Islamic Republic of Iran; and

20 (B) includes any other country the Presi-
21 dent determines necessary to ensure a country
22 specified in clause (i), (ii), (iii), or (iv) of sub-
23 paragraph (A) is unable to circumvent the pro-
24 visions of this Act and the regulations issued
25 pursuant to this Act.

1 (3) COVERED ACTIVITY.—

2 (A) IN GENERAL.—Subject to such regula-
3 tions as may be prescribed in accordance with
4 section 1756, and except as provided in sub-
5 paragraph (B), the term “covered activity”
6 means any activity engaged in by a United
7 States person that involves—

8 (i) an acquisition by such United
9 States person of an equity interest or con-
10 tingent equity interest, or monetary capital
11 contribution, in a covered foreign entity,
12 directly or indirectly, by contractual com-
13 mitment or otherwise, with the goal of gen-
14 erating income or gain;

15 (ii) an arrangement for an interest
16 held by such United States person in the
17 short- or long-term debt obligations of a
18 covered foreign entity that includes govern-
19 ance rights that are characteristic of an
20 equity investment, management, or other
21 important rights;

22 (iii) the establishment of a wholly
23 owned subsidiary in a country of concern,
24 such as a greenfield investment, for the
25 purpose of production, design, testing,

1 manufacturing, fabrication, or development
2 related to one or more covered sectors;

3 (iv) the establishment by such United
4 States person of a joint venture in a coun-
5 try of concern or with a covered foreign en-
6 tity for the purpose of production, design,
7 testing, manufacturing, fabrication, or re-
8 search, or other contractual or other com-
9 mitments involving a covered foreign entity
10 to jointly research and develop new innova-
11 tion, including through the transfer of cap-
12 ital or intellectual property or other busi-
13 ness proprietary information; or

14 (v) the acquisition by a United States
15 person with a covered foreign entity of—

16 (I) operational cooperation, such
17 as through supply or support arrange-
18 ments;

19 (II) the right to board represen-
20 tation (as an observer, even if limited,
21 or as a member) or an executive role
22 (as may be defined through regula-
23 tion) in a covered foreign entity;

24 (III) the ability to direct or influ-
25 ence such operational decisions as

1 may be defined through such regula-
2 tions;

3 (IV) formal governance represen-
4 tation in any operating affiliate, such
5 as a portfolio company, of a covered
6 foreign entity; or

7 (V) a new relationship to share
8 or provide business services, such as
9 financial services, marketing services,
10 maintenance, or assembly functions;
11 or

12 (vi) knowingly directing transactions
13 by foreign persons that would constitute
14 covered activity if engaged in by a United
15 States person.

16 (B) EXCEPTIONS.—The term “covered ac-
17 tivity” does not include—

18 (i) any transaction the value of which
19 the President determines is de minimis, as
20 defined in regulations prescribed in accord-
21 ance with section 1756;

22 (ii) any category of transactions that
23 the President determines is in the national
24 interest of the United States, as may be

1 defined in regulations prescribed in accord-
2 ance with section 1756;

3 (iii) an investment in—

4 (I) a publicly traded security (as
5 such term is defined in section
6 3(a)(10) of the Securities Exchange
7 Act of 1934); or

8 (II) an index fund, mutual fund,
9 exchange-traded fund, or a similar in-
10 strument (including associated deriva-
11 tives) offered by an investment com-
12 pany (as such term is defined in sec-
13 tion 3(a)(1) of the Investment Com-
14 pany Act of 1940), or by a private in-
15 vestment fund;

16 (III) a venture capital fund, pri-
17 vate equity fund, fund of funds, or
18 other pooled investment funds, as the
19 limited partner, in each case in which
20 the limited partner's contribution is
21 solely capital in a limited partnership
22 structure and—

23 (aa) the limited partner can-
24 not make managerial decisions, is
25 not responsible for any debts be-

1 yond its investment, and does not
2 have the ability (formally or in-
3 formally) to influence or partici-
4 pate in the fund's or a covered
5 foreign entity's decision making
6 or operations; and

7 (bb) the investment is below
8 a de minimis threshold to be de-
9 termined by the President;

10 (iv) the acquisition of the equity or
11 other interest owned or held by a covered
12 foreign entity in an entity or assets located
13 outside of a country of concern in which
14 the United States person is acquiring all
15 interests in the entity or assets held by
16 covered foreign entity;

17 (v) an intracompany transfer of funds
18 from a United States parent company to a
19 subsidiary located in a country of concern;

20 (vi) a transaction made pursuant to a
21 binding, uncalled capital commitment en-
22 tered into before the date on which the
23 regulations prescribed in accordance with
24 section 1756 take effect; or

1 (vii) any ordinary or administrative
2 business transaction as may be defined in
3 such regulations.

4 (4) COVERED FOREIGN ENTITY.—Subject to
5 regulations prescribed in accordance with section
6 1756, the term “covered foreign entity” means the
7 following:

8 (A) Any entity that is incorporated in, has
9 a principal place of business in, or is organized
10 under the laws of a country of concern.

11 (B) Any entity the equity securities of
12 which are traded in the ordinary course of busi-
13 ness on one or more exchanges in a country of
14 concern.

15 (C) Any agency or instrumentality of the
16 government of a country of concern.

17 (D) Any other entity that is not a United
18 States person and that meets such criteria as
19 may be specified by the President in such regu-
20 lations prescribed in accordance with section
21 1756.

22 (5) COVERED SECTORS.—Subject to regulations
23 prescribed in accordance with section 1756, the term
24 “covered sectors” includes sectors within the fol-
25 lowing areas:

1 (A) Semiconductors and microelectronics.

2 (B) Artificial intelligence.

3 (C) Quantum information science and
4 technology.

5 (D) Hypersonics.

6 (E) High-performance computing and
7 supercomputing.

8 (6) PARTY.—The term “party”, with respect to
9 an activity, has the meaning given that term in reg-
10 ulations prescribed in accordance with section 1756.

11 (7) UNITED STATES PERSON.—The term
12 “United States person” means—

13 (A) an individual who is a United States
14 citizen or an alien lawfully admitted for perma-
15 nent residence to the United States; or

16 (B) an entity organized under the laws of
17 the United States or of any jurisdiction within
18 the United States, including any foreign branch
19 of such an entity.

