



National Critical Capabilities Defense Act

U.S. Senators Bob Casey and John Cornyn

The National Critical Capabilities Defense Act establishes the National Critical Capabilities Committee (NCCC) to conduct ongoing reviews of supply chain security, domestic production and manufacturing capacities of identified National Critical Capabilities. This legislation would enhance visibility on supply chain vulnerabilities and prevent the offshoring of critical production capacity.

This proposal will establish an outbound investment review which covers proposed offshoring of U.S. production, development, manufacturing, or fabrication of identified critical national capabilities for foreign adversaries, like China and Russia.

“National Critical Capabilities” are systems, services and assets vital to U.S. national security, this includes agricultural security, health security, homeland security, energy security, infrastructure security, and natural resources security.

The act deems the production of (1) medical supplies, medicines, PPE, (2) articles critical to maintaining the electrical grid (3) articles critical to infrastructure construction after natural or manmade disasters, and (4) critical services as “National Critical Capabilities” and directs a rulemaking to deem other covered production capacity.

I. National Critical Capabilities Committee

This bill creates the National Critical Capabilities Committee (NCCC), co-chaired by Commerce and DOD. The Committee is made up of Assistant Secretary-level representatives from a broad range of federal agencies, as well as the Centers for Disease Control and Prevention (CDC), National Institute for Allergies and Infectious Diseases (NIAID), the Federal Emergency Management Agency (FEMA), the National Institute for Standards and Technology (NIST), the Federal Communications Commission (FCC), Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), and the Federal Aviation Commission (FAA).

Firms operating in critical industries would need to report outbound investments to certain foreign markets (such as China) and how that might compromise U.S. national security - like emergency medical supply shortages for pandemic response. The Committee would, under limited circumstances, have the ability to block certain outsourcing activities while undertaking a review of the transaction. The Committee will take sourcing and supply chain conditions into account when making a determination on permissibility of a transaction, with less concern related to supply chains housed wholly in North America or in allied nations, and heightened concern related to supply chains located in part or wholly in countries of concern, such as non-market economies, like China.

Upon a finding by the Committee that a transaction will result in a national security risk, the committee shall make recommendations to the President to take remedial action including procurement, use of authorities to increase production, establishment of Federal programs to support production, or any other actions the Committee deems appropriate, which may include suspension of the transaction.

II. Presidential Action

President, in consultation with the National Critical Capabilities Committee, should take action deemed necessary to mitigate the national security risk associated with a proposed transaction.

III. Rulemaking on Covered Transactions

Directs an interagency rulemaking process to add relevant industries to national critical capabilities.

Agencies should consider capacities related to the FEMA emergency support functions list as well as critical industries identified under the National Network for Manufacturing Innovation which include but are not limited to energy; medical; communications, including electronic and communications components; defense; transportation; aerospace; robotics; artificial intelligence; semiconductors; shipbuilding; water, including water purification.

IV. Critical Capabilities and Government Procurement

This bill would revise the Federal Acquisition Regulation to adjust request for proposals (RFPs) to include a request that firms disclose the sourcing and supply chains a contractor would use to carry out the project, including disclosure of any reliance on foreign-made materials, and an estimate of the contract's impact on U.S. jobs. Failure to disclose this information would result in negative points on the RFP.

V. Multilateral Engagement and Coordination

This bill would direct the USTR, in coordination with relevant federal agencies, to conduct multilateral engagement with U.S. allies to coordinate protocols and procedures for covered transactions with countries of concern. Upon adopting these protocols, the bill directs the USTR to implement information sharing regimes with allied nations.

VI. Rule of Construction with Respect to Free and Fair Commerce

This bill states that nothing in its provisions may be construed as prohibiting or limiting the free or fair flow of commerce outside of the U.S. that does not pose an unacceptable risk to national critical capabilities.