

CLIENT ALERT

Rep. Hunter Steals Page From NISPOM Play Book (Literally)

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Those of you reading the new February 2006 National Industrial Security Program Operating Manual (yawn) may have been surprised to see that the longstanding list of factors that DoD has traditionally used to assess foreign ownership, control, or influence ("FOCI") has been replaced with general language and the statement that any ownership interest greater than 5% or voting power greater than 10% is deemed a "substantial minority position" requiring FOCI review, but, never fear, we have found most of the traditional list -- including the power to control activities of the corporation and 30% of deriving net annual income from foreign sources -- in Rep. Hunter's proposed legislation, H.R. 4881 National Defense Critical Infrastructure Protection Act (introduced March 7, 2006), as triggering events for review by the Secretary of Defense (in consultation with the Secretary of Homeland Security) to determine whether the company continues to meet "the critical infrastructure national security management requirements" necessary to own or operate "critical infrastructure," defined as any system or asset, "physical or virtual, that is so vital to the United States that the incapacity or destruction of such system or asset would have a debilitating effect" on national security, national economic security, or public health and safety. The proposed legislation would also significantly modify the Exxon-Florio process for review of foreign investment by making pre-acquisition notice mandatory and *public* by publication in the Federal Register.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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