

ministrator of General Services shall provide the Federal Acquisition Institute with amounts from the acquisition workforce training fund established under section 1703(i) of this title sufficient to meet the annual budget for the Federal Acquisition Institute requested by the Administrator under paragraph (1).

(c) **FEDERAL ACQUISITION INSTITUTE BOARD OF DIRECTORS.**—

(1) **REPORTING TO ADMINISTRATOR.**—The Federal Acquisition Institute shall report through its Board of Directors directly to the Administrator.

(2) **COMPOSITION.**—The Board shall be composed of not more than 8 individuals from the Federal Government representing a mix of acquisition functional areas, all of whom shall be appointed by the Administrator.

(3) **DUTIES.**—The Board shall provide general direction to the Federal Acquisition Institute to ensure that the Institute—

(A) meets its statutory requirements;

(B) meets the needs of the Federal acquisition workforce;

(C) implements appropriate programs;

(D) coordinates with appropriate organizations and groups that have an impact on the Federal acquisition workforce;

(E) develops and implements plans to meet future challenges of the Federal acquisition workforce; and

(F) works closely with the Defense Acquisition University.

(4) **RECOMMENDATIONS.**—The Board shall make recommendations to the Administrator regarding the development and execution of the annual budget of the Federal Acquisition Institute.

(d) **DIRECTOR.**—The Director of the Federal Acquisition Institute shall be appointed by, be subject to the direction and control of, and report directly to the Administrator.

(e) **ANNUAL REPORT.**—The Administrator shall submit to the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate and the Committee on Oversight and Government Reform and the Committee on Appropriations of the House of Representatives an annual report on the projected budget needs and expense plans of the Federal Acquisition Institute to fulfill its mandate.

(Added Pub. L. 112–81, div. A, title VIII, § 864(b)(1), Dec. 31, 2011, 125 Stat. 1523.)

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

##### CONSTRUCTION

Pub. L. 112–81, div. A, title VIII, § 864(e), Dec. 31, 2011, 125 Stat. 1525, provided that: “Nothing in this section [enacting this chapter and amending sections 1122, 1703, and 1704 of this title], or the amendments made by this

section, shall be construed to preclude the Secretary of Defense from establishing acquisition workforce policies, procedures, training standards, and certification requirements for acquisition positions in the Department of Defense, as provided in chapter 87 of title 10, United States Code.”

#### TRAINING COURSE ON HUMAN TRAFFICKING AND GOVERNMENT CONTRACTING

Pub. L. 115–425, title I, § 113, Jan. 8, 2019, 132 Stat. 5477, provided that: “Any curriculum, including any continuing education curriculum, for the acquisition workforce used by the Federal Acquisition Institute established under section 1201 of title 41, United States Code, shall include at least 1 course, lasting at least 30 minutes, regarding the law and regulations relating to human trafficking and contracting with the Federal Government.”

## CHAPTER 13—ACQUISITION COUNCILS

### SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL

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#### Editorial Notes

##### AMENDMENTS

2018—Pub. L. 115–390, title II, § 202(b), Dec. 21, 2018, 132 Stat. 5188, added item for subchapter III and items 1321 to 1328.

### SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL

#### § 1301. Definition

In this subchapter, the term “Council” means the Federal Acquisition Regulatory Council established under section 1302(a) of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3691.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1301 .....	41:403(17).	Pub. L. 93–400, § 4(17), as added Pub. L. 108–375, title VIII, § 807(b), Oct. 28, 2004, 118 Stat. 2011.

#### § 1302. Establishment and membership

(a) **ESTABLISHMENT.**—There is a Federal Acquisition Regulatory Council to assist in the direction and coordination of Government-wide procurement policy and Government-wide procure-

ment regulatory activities in the Federal Government.

(b) MEMBERSHIP.—

(1) MAKEUP OF COUNCIL.—The Council consists of—

- (A) the Administrator;
- (B) the Secretary of Defense;
- (C) the Administrator of National Aeronautics and Space; and
- (D) the Administrator of General Services.

(2) DESIGNATION OF OTHER OFFICIALS.—

(A) OFFICIALS WHO MAY BE DESIGNATED.—Notwithstanding section 121(d)(1) and (2) of title 40, the officials specified in subparagraphs (B) to (D) of paragraph (1) may designate to serve on and attend meetings of the Council in place of that official—

(i) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition and Sustainment; or

(ii) if no official of that agency is assigned by statute with the responsibility for acquisition policy for that agency, the official designated pursuant to section 1702(c) of this title.

(B) LIMITATION ON DESIGNATION.—No other official or employee may be designated to serve on the Council.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3691; Pub. L. 116-92, div. A, title IX, § 902(88), Dec. 20, 2019, 133 Stat. 1554.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1302(a) .....	41:421(a).	Pub. L. 93-400, § 25(a), (b), as added Pub. L. 100-679, § 4, Nov. 17, 1988, 102 Stat. 4056; Pub. L. 101-510, title VIII, § 807, Nov. 5, 1990, 104 Stat. 1593; Pub. L. 104-106, title XLIII, § 4322(a)(2), Feb. 10, 1996, 110 Stat. 677.
1302(b) .....	41:421(b).	

In subsection (a), the words “(hereinafter in this section referred to as the ‘Council’)” are omitted as unnecessary.

In subsection (b)(2)(A)(i), the words “Under Secretary of Defense for Acquisition, Technology, and Logistics” are substituted for “Under Secretary of Defense for Acquisition and Technology” because of section 911(a)(1) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65, 113 Stat. 717, 10 U.S.C. 133 note).

In subsection (b)(2)(A)(ii), the cross-reference to section 16(3) of the Office of Federal Procurement Policy Act (41:414(3)) is treated as a cross-reference to section 16(c) of the Act to reflect the amendment of section 16 by section 1421(a)(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, 117 Stat. 1666).

#### Editorial Notes

##### AMENDMENTS

2019—Subsec. (b)(2)(A)(i). Pub. L. 116-92 substituted “Under Secretary of Defense for Acquisition and

Sustainment” for “Under Secretary of Defense for Acquisition, Technology, and Logistics”.

#### Statutory Notes and Related Subsidiaries

##### STATUS OF DIRECTOR OF DEFENSE PROCUREMENT

Pub. L. 102-190, div. A, title VIII, § 809, Dec. 5, 1991, 105 Stat. 1423, as amended by Pub. L. 103-160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106-65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that: “For the purposes of the amendment made by section 807 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1593) to section 25(b)(2) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421(b)(2)) [now 41 U.S.C. 1302(b)(2)], the Director of Defense Procurement of the Department of Defense shall be considered to be an official at an organizational level of an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.”

#### § 1303. Functions and authority

##### (a) FUNCTIONS.—

(1) ISSUE AND MAINTAIN FEDERAL ACQUISITION REGULATION.—Subject to sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title, the Administrator of General Services, the Secretary of Defense, and the Administrator of National Aeronautics and Space, pursuant to their respective authorities under division C of this subtitle, chapter 4 of title 10, chapter 137 legacy provisions (as such term is defined in section 3016 of title 10), and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.),<sup>1</sup> shall jointly issue and maintain in accordance with subsection (d) a single Government-wide procurement regulation, to be known as the Federal Acquisition Regulation.

(2) LIMITATION ON OTHER REGULATIONS.—Other regulations relating to procurement issued by an executive agency shall be limited to—

(A) regulations essential to implement Government-wide policies and procedures within the agency; and

(B) additional policies and procedures required to satisfy the specific and unique needs of the agency.

(3) ENSURE CONSISTENT REGULATIONS.—The Administrator, in consultation with the Council, shall ensure that procurement regulations prescribed by executive agencies are consistent with the Federal Acquisition Regulation and in accordance with the policies prescribed pursuant to section 1121(b) of this title.

##### (4) REQUEST TO REVIEW REGULATION.—

(A) BASIS FOR REQUEST.—Under procedures the Administrator establishes, a person may request the Administrator to review a regulation relating to procurement on the basis that the regulation is inconsistent with the Federal Acquisition Regulation.

(B) PERIOD OF REVIEW.—Unless the request is frivolous or does not, on its face, state a valid basis for the review, the Administrator shall complete the review not later than 60 days after receiving the request. The time for completion of the review may be ex-

<sup>1</sup> See References in Text note below.

tended if the Administrator determines that an additional period of review is required. The Administrator shall advise the requester of the reasons for the extension and the date by which the review will be completed.

(5) WHEN REGULATION IS INCONSISTENT OR NEEDS TO BE IMPROVED.—If the Administrator determines that a regulation relating to procurement is inconsistent with the Federal Acquisition Regulation or that the regulation otherwise should be revised to remove an inconsistency with the policies prescribed under section 1121(b) of this title, the Administrator shall rescind or deny the promulgation of the regulation or take other action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title as may be necessary to remove the inconsistency. If the Administrator determines that the regulation, although not inconsistent with the Federal Acquisition Regulation or those policies, should be revised to improve compliance with the Regulation or policies, the Administrator shall take action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 as may be necessary and appropriate.

(6) DECISIONS TO BE IN WRITING AND PUBLICLY AVAILABLE.—The decisions of the Administrator shall be in writing and made publicly available.

(b) ADDITIONAL RESPONSIBILITIES OF MEMBERSHIP.—

(1) IN GENERAL.—Subject to the authority, direction, and control of the head of the agency concerned, each official who represents an agency on the Council pursuant to section 1302(b) of this title shall—

(A) approve or disapprove all regulations relating to procurement that are proposed for public comment, prescribed in final form, or otherwise made effective by that agency before the regulation may be prescribed in final form, or otherwise made effective, except that the official may grant an interim approval, without review, for not more than 60 days for a procurement regulation in urgent and compelling circumstances;

(B) carry out the responsibilities of that agency set forth in chapter 35 of title 44 for each information collection request that relates to procurement rules or regulations; and

(C) eliminate or reduce—

(i) any redundant or unnecessary levels of review and approval in the procurement system of that agency; and

(ii) redundant or unnecessary procurement regulations which are unique to that agency.

(2) LIMITATION ON DELEGATION.—The authority to review and approve or disapprove regulations under paragraph (1)(A) may not be delegated to an individual outside the office of the official who represents the agency on the Council pursuant to section 1302(b) of this title.

(c) GOVERNING POLICIES.—All actions of the Council and of members of the Council shall be

in accordance with and furtherance of the policies prescribed under section 1121(b) of this title.

(d) GENERAL AUTHORITY WITH RESPECT TO FEDERAL ACQUISITION REGULATION.—Subject to section 1121(d) of this title, the Council shall manage, coordinate, control, and monitor the maintenance of, issuance of, and changes in, the Federal Acquisition Regulation.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3691; Pub. L. 117-81, div. A, title XVII, §1702(h)(2), Dec. 27, 2021, 135 Stat. 2158)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1303(a) .....	41:421(c).	Pub. L. 93-400, §25(c)-(f), as added Pub. L. 100-679, §4, Nov. 17, 1988, 102 Stat. 4056; Pub. L. 104-201, title VIII, §822, title X, §1074(f)(3), Sept. 23, 1996, 110 Stat. 2609, 2661; Pub. L. 105-85, title VIII, §841(d), Nov. 18, 1997, 111 Stat. 1843.
1303(b) .....	41:421(d).	
1303(c) .....	41:421(e).	
1303(d) .....	41:421(f).	

In subsection (a)(6), the text of 41:421(c)(6) (last sentence) is omitted because 41:407 was repealed by section 4305(b) of the National Defense Authorization Act of Fiscal Year 1996 (Public Law 104-106, 110 Stat. 665).

In subsection (b)(1)(A), the words “after 60 days after November 17, 1988” are omitted as obsolete.

In subsection (b)(1)(B), the words “(as that term is defined in section 3502(11) of title 44)” are omitted because chapter 35 of title 44 was amended generally by the Paperwork Reduction Act of 1995 (Public Law 104-13, 109 Stat. 163) and 44:3502 no longer defines “information collection request”. The term “information collection request” is retained in this section of the revised title, however, because 44:ch. 35 still contains provisions about requests for collection of information.

Editorial Notes

REFERENCES IN TEXT

The National Aeronautics and Space Act of 1958, referred to in subsec. (a)(1), is Pub. L. 85-568, July 29, 1958, 72 Stat. 426, which was classified principally to chapter 26 (§2451 et seq.) of Title 42, The Public Health and Welfare, and was substantially repealed and restated as chapter 201 (§20101 et seq.) of Title 51, National and Commercial Space Programs, by Pub. L. 111-314, §§3, 6, Dec. 18, 2010, 124 Stat. 3328, 3444. For complete classification of this Act to the Code, see Short Title of 1958 Act note set out under section 10101 of Title 51 and Tables.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 117-81 substituted “chapter 4 of title 10, chapter 137 legacy provisions (as such term is defined in section 3016 of title 10)” for “chapters 4 and 137 of title 10”.

§ 1304. Contract clauses and certifications

(a) REPETITIVE NONSTANDARD CONTRACT CLAUSES DISCOURAGED.—The Council shall prescribe regulations to discourage the use of a nonstandard contract clause on a repetitive basis. The regulations shall include provisions that—

(1) clearly define what types of contract clauses are to be treated as nonstandard clauses; and

(2) require prior approval for the use of a nonstandard clause on a repetitive basis by an

official at a level of responsibility above the contracting officer.

(b) WHEN CERTIFICATION REQUIRED.—

(1) BY LAW.—A provision of law may not be construed as requiring a certification by a contractor or offeror in a procurement made or to be made by the Federal Government unless that provision of law specifically provides that such a certification shall be required.

(2) IN FEDERAL ACQUISITION REGULATION.—A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation unless—

(A) the certification requirement is specifically imposed by statute; or

(B) written justification for the certification requirement is provided to the Administrator by the Council and the Administrator approves in writing the inclusion of the certification requirement.

(3) EXECUTIVE AGENCY PROCUREMENT REGULATION.—

(A) DEFINITION.—In subparagraph (B), the term “head of the executive agency” with respect to a military department means the Secretary of Defense.

(B) WHEN CERTIFICATION REQUIREMENT MAY BE INCLUDED IN REGULATION.—A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

(i) the certification requirement is specifically imposed by statute; or

(ii) written justification for the certification requirement is provided to the head of the executive agency by the senior procurement executive of the agency and the head of the executive agency approves in writing the inclusion of the certification requirement.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3693.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1304(a) .....	41:425(a).	Pub. L. 93-400, § 29, as added Pub. L. 103-355, title I, § 1093, Oct. 13, 1994, 108 Stat. 3273; Pub. L. 104-106, title XLIII, § 4301(b)(2)(A), (c), Feb. 10, 1996, 110 Stat. 657, 658.
1304(b)(1) ....	41:425(b).	
1304(b)(2), (3).	41:425(c).	

**Statutory Notes and Related Subsidiaries**

CURRENT CERTIFICATION REQUIREMENTS

Pub. L. 104-106, div. D, title XLIII, § 4301(b)(1), Feb. 10, 1996, 110 Stat. 656, provided that:

“(A) Not later than 210 days after the date of the enactment of this Act [Feb. 10, 1996], the Administrator for Federal Procurement Policy shall issue for public comment a proposal to amend the Federal Acquisition Regulation to remove from the Federal Acquisition Regulation certification requirements for contractors and offerors that are not specifically imposed by statute. The Administrator may omit such a certification requirement from the proposal only if—

“(i) the Federal Acquisition Regulatory Council provides the Administrator with a written justification for the requirement and a determination that there is no less burdensome means for administering

and enforcing the particular regulation that contains the certification requirement; and

“(ii) the Administrator approves in writing the retention of the certification requirement.

“(B)(i) Not later than 210 days after the date of the enactment of this Act, the head of each executive agency that has agency procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute shall issue for public comment a proposal to amend the regulations to remove the certification requirements. The head of the executive agency may omit such a certification requirement from the proposal only if—

“(I) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

“(II) the head of the executive agency approves in writing the retention of such certification requirement.

“(ii) For purposes of clause (i), the term ‘head of the executive agency’ with respect to a military department means the Secretary of Defense.”

**Executive Documents**

ADDRESSING TAX DELINQUENCY BY GOVERNMENT CONTRACTORS

Memorandum of President of the United States, Jan. 20, 2010, 75 F.R. 3979, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government pays more than half a trillion dollars a year to contractors and has an important obligation to protect American taxpayer money and the integrity of the Federal acquisition process. Yet reports by the Government Accountability Office (GAO) state that Federal contracts are awarded to tens of thousands of companies with serious tax delinquencies. The total amount in unpaid taxes owed by these contracting companies is estimated to be more than \$5 billion.

Too often, Federal contracting officials do not have the most basic information they need to make informed judgments about whether a company trying to win a Federal contract is delinquent in paying its taxes. We need to give our contracting officials the tools they need to protect taxpayer dollars.

Accordingly, I hereby direct the Commissioner of Internal Revenue (Commissioner) to direct a review of certifications of non-delinquency in taxes that companies bidding for Federal contracts are required to submit pursuant to a 2008 amendment to the Federal Acquisition Regulation. I further direct that the Commissioner report to me within 90 days on the overall accuracy of contractors' certifications.

I also direct the Director of the Office of Management and Budget, working with the Secretary of the Treasury and other agency heads, to evaluate practices of contracting officers and debarring officials in response to contractors' certifications of serious tax delinquencies and to provide me, within 90 days, recommendations on process improvements to ensure these contractors are not awarded new contracts, including a plan to make contractor certifications available in a Government-wide database, as is already being done with other information on contractors.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

## SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

### § 1311. Establishment and membership

(a) ESTABLISHMENT.—There is in the executive branch a Chief Acquisition Officers Council.

(b) MEMBERSHIP.—The members of the Council are—

- (1) the Deputy Director for Management of the Office of Management and Budget;
- (2) the Administrator;
- (3) the Under Secretary of Defense for Acquisition and Sustainment;
- (4) the chief acquisition officer of each executive agency that is required to have a chief acquisition officer under section 1702 of this title and the senior procurement executive of each military department; and
- (5) any other senior agency officer of each executive agency, appointed by the head of the agency in consultation with the Chairman of the Council, who can effectively assist the Council in performing the functions set forth in section 1312(b) of this title and supporting the associated range of acquisition activities.

(c) LEADERSHIP AND SUPPORT.—

(1) CHAIRMAN.—The Deputy Director for Management of the Office of Management and Budget is the Chairman of the Council.

(2) VICE CHAIRMAN.—The Vice Chairman of the Council shall be selected by the Council from among its members. The Vice Chairman serves for one year and may serve multiple terms.

(3) LEADER OF ACTIVITIES.—The Administrator shall lead the activities of the Council on behalf of the Deputy Director for Management.

(4) SUPPORT.—The Administrator of General Services shall provide administrative and other support for the Council.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3694; Pub. L. 116-92, div. A, title IX, § 902(89), Dec. 20, 2019, 133 Stat. 1554.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1311(a) .....	41:414b(a).	Pub. L. 93-400, § 16A(a)-(c), as added Pub. L. 108-136, title XIV, § 1422(a), Nov. 24, 2003, 117 Stat. 1668.
1311(b) .....	41:414b(b)(1) (words before comma), (2)-(5).	
1311(c)(1) ....	41:414b(b)(1) (words after comma).	
1311(c)(2) ....	41:414b(c)(2).	
1311(c)(3) ....	41:414b(c)(1).	
1311(c)(4) ....	41:414b(c)(3).	

#### Editorial Notes

##### AMENDMENTS

2019—Subsec. (b)(3). Pub. L. 116-92 substituted “Under Secretary of Defense for Acquisition and Sustainment” for “Under Secretary of Defense for Acquisition, Technology, and Logistics”.

### § 1312. Functions

(a) PRINCIPAL FORUM.—The Chief Acquisition Officers Council is the principal interagency forum for monitoring and improving the Federal acquisition system.

(b) FUNCTIONS.—The Council shall perform functions that include the following:

(1) Develop recommendations for the Director of the Office of Management and Budget on Federal acquisition policies and requirements.

(2) Share experiences, ideas, best practices, and innovative approaches related to Federal acquisition.

(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Federal acquisition.

(4) Promote effective business practices that ensure the timely delivery of best value products to the Federal Government and achieve appropriate public policy objectives.

(5) Further integrity, fairness, competition, openness, and efficiency in the Federal acquisition system.

(6) Work with the Office of Personnel Management to assess and address the hiring, training, and professional development needs of the Federal Government related to acquisition.

(7) Work with the Administrator and the Federal Acquisition Regulatory Council to promote the business practices referred to in paragraph (4) and other results of the functions carried out under this subsection.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3694.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1312(a) .....	41:414b(d).	Pub. L. 93-400, § 16A(d), (e), as added Pub. L. 108-136, title XIV, § 1422(a), Nov. 24, 2003, 117 Stat. 1668.
1312(b) .....	41:414b(e).	

## SUBCHAPTER III—FEDERAL ACQUISITION SUPPLY CHAIN SECURITY

### § 1321. Definitions

In this subchapter:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES AND LEADERSHIP.—The term “appropriate congressional committees and leadership” means—

(A) the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Armed Services, the Committee on Commerce, Science, and Transportation, the Select Committee on Intelligence, and the majority and minority leader of the Senate; and

(B) the Committee on Oversight and Government Reform, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Homeland Security, the Committee on Armed Services, the Committee on Energy and Commerce, the Permanent Select Committee on Intelligence, and the Speaker and minority leader of the House of Representatives.

(2) COUNCIL.—The term “Council” means the Federal Acquisition Security Council established under section 1322(a) of this title.

(3) COVERED ARTICLE.—The term “covered article” has the meaning given that term in section 4713 of this title.

(4) COVERED PROCUREMENT ACTION.—The term “covered procurement action” has the meaning given that term in section 4713 of this title.

(5) INFORMATION AND COMMUNICATIONS TECHNOLOGY.—The term “information and communications technology” has the meaning given that term in section 4713 of this title.

(6) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

(7) NATIONAL SECURITY SYSTEM.—The term “national security system” has the meaning given that term in section 3552 of title 44.

(8) SUPPLY CHAIN RISK.—The term “supply chain risk” has the meaning given that term in section 4713 of this title.

(Added Pub. L. 115–390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5178.)

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

##### EFFECTIVE DATE

Pub. L. 115–390, title II, §202(c), Dec. 21, 2018, 132 Stat. 5188, provided that: “The amendments made by this section [enacting this subchapter] shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 21, 2018] and shall apply to contracts that are awarded before, on, or after that date.”

Pub. L. 115–390, title II, §205, Dec. 21, 2018, 132 Stat. 5193, provided that: “This title [see section 201 of Pub. L. 115–390, set out as a Short Title of 2018 note under section 101 of this title] shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 21, 2018].”

##### IMPLEMENTATION

Pub. L. 115–390, title II, §202(d), Dec. 21, 2018, 132 Stat. 5188, provided that:

“(1) INTERIM FINAL RULE.—Not later than one year after the date of the enactment of this Act [Dec. 21, 2018], the Federal Acquisition Security Council shall prescribe an interim final rule to implement subchapter III of chapter 13 of title 41, United States Code, as added by subsection (a).

“(2) FINAL RULE.—Not later than one year after prescribing the interim final rule under paragraph (1) and considering public comments with respect to such interim final rule, the Council shall prescribe a final rule to implement subchapter III of chapter 13 of title 41, United States Code, as added by subsection (a).

“(3) FAILURE TO ACT.—

“(A) IN GENERAL.—If the Council does not issue a final rule in accordance with paragraph (2) on or before the last day of the one-year period referred to in that paragraph, the Council shall submit to the appropriate congressional committees and leadership, not later than 10 days after such last day and every 90 days thereafter until the final rule is issued, a report explaining why the final rule was not timely issued and providing an estimate of the earliest date on which the final rule will be issued.

“(B) APPROPRIATE CONGRESSIONAL COMMITTEES AND LEADERSHIP DEFINED.—In this paragraph, the term ‘appropriate congressional committees and leadership’ has the meaning given that term in section 1321 of title 41, United States Code, as added by subsection (a).”

#### § 1322. Federal Acquisition Security Council establishment and membership

(a) ESTABLISHMENT.—There is established in the executive branch a Federal Acquisition Security Council.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The following agencies shall be represented on the Council:

(A) The Office of Management and Budget.

(B) The General Services Administration.

(C) The Department of Homeland Security, including the Cybersecurity and Infrastructure Security Agency.

(D) The Office of the Director of National Intelligence, including the National Counterintelligence and Security Center.

(E) The Department of Justice, including the Federal Bureau of Investigation.

(F) The Department of Defense, including the National Security Agency.

(G) The Department of Commerce, including the National Institute of Standards and Technology.

(H) Such other executive agencies as determined by the Chairperson of the Council.

(2) LEAD REPRESENTATIVES.—

(A) DESIGNATION.—

(i) IN GENERAL.—Not later than 45 days after the date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018, the head of each agency represented on the Council shall designate a representative of that agency as the lead representative of the agency on the Council.

(ii) REQUIREMENTS.—The representative of an agency designated under clause (i) shall have expertise in supply chain risk management, acquisitions, or information and communications technology.

(B) FUNCTIONS.—The lead representative of an agency designated under subparagraph (A) shall ensure that appropriate personnel, including leadership and subject matter experts of the agency, are aware of the business of the Council.

(c) CHAIRPERSON.—

(1) DESIGNATION.—Not later than 45 days after the date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018, the Director of the Office of Management and Budget shall designate a senior-level official from the Office of Management and Budget to serve as the Chairperson of the Council.

(2) FUNCTIONS.—The Chairperson shall perform functions that include—

(A) subject to subsection (d), developing a schedule for meetings of the Council;

(B) designating executive agencies to be represented on the Council under subsection (b)(1)(H);

(C) in consultation with the lead representative of each agency represented on

the Council, developing a charter for the Council; and

(D) not later than 7 days after completion of the charter, submitting the charter to the appropriate congressional committees and leadership.

(d) **MEETINGS.**—The Council shall meet not later than 60 days after the date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018 and not less frequently than quarterly thereafter.

(Added Pub. L. 115-390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5178.)

#### Editorial Notes

##### REFERENCES IN TEXT

The date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018, referred to in subsecs. (b)(2)(A)(i), (c)(1), and (d), is the date of enactment of Pub. L. 115-390, which was approved Dec. 21, 2018.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115-390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

#### § 1323. Functions and authorities

(a) **IN GENERAL.**—The Council shall perform functions that include the following:

(1) Identifying and recommending development by the National Institute of Standards and Technology of supply chain risk management standards, guidelines, and practices for executive agencies to use when assessing and developing mitigation strategies to address supply chain risks, particularly in the acquisition and use of covered articles under section 1326(a) of this title.

(2) Identifying or developing criteria for sharing information with executive agencies, other Federal entities, and non-Federal entities with respect to supply chain risk, including information related to the exercise of authorities provided under this section and sections 1326 and 4713 of this title. At a minimum, such criteria shall address—

(A) the content to be shared;

(B) the circumstances under which sharing is mandated or voluntary; and

(C) the circumstances under which it is appropriate for an executive agency to rely on information made available through such sharing in exercising the responsibilities and authorities provided under this section and section 4713 of this title.

(3) Identifying an appropriate executive agency to—

(A) accept information submitted by executive agencies based on the criteria established under paragraph (2);

(B) facilitate the sharing of information received under subparagraph (A) to support supply chain risk analyses under section 1326 of this title, recommendations under this

section, and covered procurement actions under section 4713 of this title;

(C) share with the Council information regarding covered procurement actions by executive agencies taken under section 4713 of this title; and

(D) inform the Council of orders issued under this section.

(4) Identifying, as appropriate, executive agencies to provide—

(A) shared services, such as support for making risk assessments, validation of products that may be suitable for acquisition, and mitigation activities; and

(B) common contract solutions to support supply chain risk management activities, such as subscription services or machine-learning-enhanced analysis applications to support informed decision making.

(5) Identifying and issuing guidance on additional steps that may be necessary to address supply chain risks arising in the course of executive agencies providing shared services, common contract solutions, acquisitions vehicles, or assisted acquisitions.

(6) Engaging with the private sector and other nongovernmental stakeholders in performing the functions described in paragraphs (1) and (2) and on issues relating to the management of supply chain risks posed by the acquisition of covered articles.

(7) Carrying out such other actions, as determined by the Council, that are necessary to reduce the supply chain risks posed by acquisitions and use of covered articles.

(b) **PROGRAM OFFICE AND COMMITTEES.**—The Council may establish a program office and any committees, working groups, or other constituent bodies the Council deems appropriate, in its sole and unreviewable discretion, to carry out its functions.

(c) **AUTHORITY FOR EXCLUSION OR REMOVAL ORDERS.**—

(1) **CRITERIA.**—To reduce supply chain risk, the Council shall establish criteria and procedures for—

(A) recommending orders applicable to executive agencies requiring the exclusion of sources or covered articles from executive agency procurement actions (in this section referred to as “exclusion orders”);

(B) recommending orders applicable to executive agencies requiring the removal of covered articles from executive agency information systems (in this section referred to as “removal orders”);

(C) requesting and approving exceptions to an issued exclusion or removal order when warranted by circumstances, including alternative mitigation actions or other findings relating to the national interest, including national security reviews, national security investigations, or national security agreements; and

(D) ensuring that recommended orders do not conflict with standards and guidelines issued under section 11331 of title 40 and that the Council consults with the Director of the National Institute of Standards and Technology regarding any recommended orders

that would implement standards and guidelines developed by the National Institute of Standards and Technology.

(2) **RECOMMENDATIONS.**—The Council shall use the criteria established under paragraph (1), information made available under subsection (a)(3), and any other information the Council determines appropriate to issue recommendations, for application to executive agencies or any subset thereof, regarding the exclusion of sources or covered articles from any executive agency procurement action, including source selection and consent for a contractor to subcontract, or the removal of covered articles from executive agency information systems. Such recommendations shall include—

(A) information necessary to positively identify the sources or covered articles recommended for exclusion or removal;

(B) information regarding the scope and applicability of the recommended exclusion or removal order;

(C) a summary of any risk assessment reviewed or conducted in support of the recommended exclusion or removal order;

(D) a summary of the basis for the recommendation, including a discussion of less intrusive measures that were considered and why such measures were not reasonably available to reduce supply chain risk;

(E) a description of the actions necessary to implement the recommended exclusion or removal order; and

(F) where practicable, in the Council's sole and unreviewable discretion, a description of mitigation steps that could be taken by the source that may result in the Council rescinding a recommendation.

(3) **NOTICE OF RECOMMENDATION AND REVIEW.**—A notice of the Council's recommendation under paragraph (2) shall be issued to any source named in the recommendation advising—

(A) that a recommendation has been made;

(B) of the criteria the Council relied upon under paragraph (1) and, to the extent consistent with national security and law enforcement interests, of information that forms the basis for the recommendation;

(C) that, within 30 days after receipt of notice, the source may submit information and argument in opposition to the recommendation;

(D) of the procedures governing the review and possible issuance of an exclusion or removal order pursuant to paragraph (5); and

(E) where practicable, in the Council's sole and unreviewable discretion, a description of mitigation steps that could be taken by the source that may result in the Council rescinding the recommendation.

(4) **CONFIDENTIALITY.**—Any notice issued to a source under paragraph (3) shall be kept confidential until—

(A) an exclusion or removal order is issued pursuant to paragraph (5); and

(B) the source has been notified pursuant to paragraph (6).

(5) **EXCLUSION AND REMOVAL ORDERS.**—

(A) **ORDER ISSUANCE.**—Recommendations of the Council under paragraph (2), together with any information submitted by a source under paragraph (3) related to such a recommendation, shall be reviewed by the following officials, who may issue exclusion and removal orders based upon such recommendations:

(i) The Secretary of Homeland Security, for exclusion and removal orders applicable to civilian agencies, to the extent not covered by clause (ii) or (iii).

(ii) The Secretary of Defense, for exclusion and removal orders applicable to the Department of Defense and national security systems other than sensitive compartmented information systems.

(iii) The Director of National Intelligence, for exclusion and removal orders applicable to the intelligence community and sensitive compartmented information systems, to the extent not covered by clause (ii).

(B) **DELEGATION.**—The officials identified in subparagraph (A) may not delegate any authority under this subparagraph to an official below the level one level below the Deputy Secretary or Principal Deputy Director, except that the Secretary of Defense may delegate authority for removal orders to the Commander of the United States Cyber Command, who may not redelegate such authority to an official below the level one level below the Deputy Commander.

(C) **FACILITATION OF EXCLUSION ORDERS.**—If officials identified under this paragraph from the Department of Homeland Security, the Department of Defense, and the Office of the Director of National Intelligence issue orders collectively resulting in a governmentwide exclusion, the Administrator for General Services and officials at other executive agencies responsible for management of the Federal Supply Schedules, governmentwide acquisition contracts and multi-agency contracts shall help facilitate implementation of such orders by removing the covered articles or sources identified in the orders from such contracts.

(D) **REVIEW OF EXCLUSION AND REMOVAL ORDERS.**—The officials identified under this paragraph shall review all exclusion and removal orders issued under subparagraph (A) not less frequently than annually pursuant to procedures established by the Council.

(E) **RESCISSION.**—Orders issued pursuant to subparagraph (A) may be rescinded by an authorized official from the relevant issuing agency.

(6) **NOTIFICATIONS.**—Upon issuance of an exclusion or removal order pursuant to paragraph (5)(A), the official identified under that paragraph who issued the order shall—

(A) notify any source named in the order of—

(i) the exclusion or removal order; and

(ii) to the extent consistent with national security and law enforcement interests, information that forms the basis for the order;



(B) provide classified or unclassified notice of the exclusion or removal order to the appropriate congressional committees and leadership; and

(C) provide the exclusion or removal order to the agency identified in subsection (a)(3).

(7) COMPLIANCE.—Executive agencies shall comply with exclusion and removal orders issued pursuant to paragraph (5).

(d) AUTHORITY TO REQUEST INFORMATION.—The Council may request such information from executive agencies as is necessary for the Council to carry out its functions.

(e) RELATIONSHIP TO OTHER COUNCILS.—The Council shall consult and coordinate, as appropriate, with other relevant councils and inter-agency committees, including the Chief Information Officers Council, the Chief Acquisition Officers Council, the Federal Acquisition Regulatory Council, and the Committee on Foreign Investment in the United States, with respect to supply chain risks posed by the acquisition and use of covered articles.

(f) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

(1) to limit the authority of the Office of Federal Procurement Policy to carry out the responsibilities of that Office under any other provision of law; or

(2) to authorize the issuance of an exclusion or removal order based solely on the fact of foreign ownership of a potential procurement source that is otherwise qualified to enter into procurement contracts with the Federal Government.

(Added Pub. L. 115-390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5180.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115-390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

#### § 1324. Strategic plan

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018, the Council shall develop a strategic plan for addressing supply chain risks posed by the acquisition of covered articles and for managing such risks that includes—

(1) the criteria and processes required under section 1323(a) of this title, including a threshold and requirements for sharing relevant information about such risks with all executive agencies and, as appropriate, with other Federal entities and non-Federal entities;

(2) an identification of existing authorities for addressing such risks;

(3) an identification and promulgation of best practices and procedures and available resources for executive agencies to assess and mitigate such risks;

(4) recommendations for any legislative, regulatory, or other policy changes to improve efforts to address such risks;

(5) recommendations for any legislative, regulatory, or other policy changes to incentivize the adoption of best practices for supply chain risk management by the private sector;

(6) an evaluation of the effect of implementing new policies or procedures on existing contracts and the procurement process;

(7) a plan for engaging with executive agencies, the private sector, and other nongovernmental stakeholders to address such risks;

(8) a plan for identification, assessment, mitigation, and vetting of supply chain risks from existing and prospective information and communications technology made available by executive agencies to other executive agencies through common contract solutions, shared services, acquisition vehicles, or other assisted acquisition services; and

(9) plans to strengthen the capacity of all executive agencies to conduct assessments of—

(A) the supply chain risk posed by the acquisition of covered articles; and

(B) compliance with the requirements of this subchapter.

(b) SUBMISSION TO CONGRESS.—Not later than 7 calendar days after completion of the strategic plan required by subsection (a), the Chairperson of the Council shall submit the plan to the appropriate congressional committees and leadership.

(Added Pub. L. 115-390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5184.)

#### Editorial Notes

##### REFERENCES IN TEXT

The date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018, referred to in subsec. (a), is the date of enactment of Pub. L. 115-390, which was approved Dec. 21, 2018.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115-390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

#### § 1325. Annual report

Not later than December 31 of each year, the Chairperson of the Council shall submit to the appropriate congressional committees and leadership a report on the activities of the Council during the preceding 12-month period.

(Added Pub. L. 115-390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5184.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115-390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

**§ 1326. Requirements for executive agencies**

(a) IN GENERAL.—The head of each executive agency shall be responsible for—

(1) assessing the supply chain risk posed by the acquisition and use of covered articles and avoiding, mitigating, accepting, or transferring that risk, as appropriate and consistent with the standards, guidelines, and practices identified by the Council under section 1323(a)(1); and

(2) prioritizing supply chain risk assessments conducted under paragraph (1) based on the criticality of the mission, system, component, service, or asset.

(b) INCLUSIONS.—The responsibility for assessing supply chain risk described in subsection (a) includes—

(1) developing an overall supply chain risk management strategy and implementation plan and policies and processes to guide and govern supply chain risk management activities;

(2) integrating supply chain risk management practices throughout the life cycle of the system, component, service, or asset;

(3) limiting, avoiding, mitigating, accepting, or transferring any identified risk;

(4) sharing relevant information with other executive agencies as determined appropriate by the Council in a manner consistent with section 1323(a) of this title;

(5) reporting on progress and effectiveness of the agency's supply chain risk management consistent with guidance issued by the Office of Management and Budget and the Council; and

(6) ensuring that all relevant information, including classified information, with respect to acquisitions of covered articles that may pose a supply chain risk, consistent with section 1323(a) of this title, is incorporated into existing processes of the agency for conducting assessments described in subsection (a) and ongoing management of acquisition programs, including any identification, investigation, mitigation, or remediation needs.

(c) INTERAGENCY ACQUISITIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), in the case of an interagency acquisition, subsection (a) shall be carried out by the head of the executive agency whose funds are being used to procure the covered article.

(2) ASSISTED ACQUISITIONS.—In an assisted acquisition, the parties to the acquisition shall determine, as part of the interagency agreement governing the acquisition, which agency is responsible for carrying out subsection (a).

(3) DEFINITIONS.—In this subsection, the terms “assisted acquisition” and “interagency acquisition” have the meanings given those terms in section 2.101 of title 48, Code of Federal Regulations (or any corresponding similar regulation or ruling).

(d) ASSISTANCE.—The Secretary of Homeland Security may—

(1) assist executive agencies in conducting risk assessments described in subsection (a) and implementing mitigation requirements for

information and communications technology; and

(2) provide such additional guidance or tools as are necessary to support actions taken by executive agencies.

(Added Pub. L. 115–390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5184.)

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE**

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115–390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115–390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115–390, set out as a note under section 1321 of this title.

**§ 1327. Judicial review procedures**

(a) IN GENERAL.—Except as provided in subsection (b) and chapter 71 of this title, and notwithstanding any other provision of law, an action taken under section 1323 or 4713 of this title, or any action taken by an executive agency to implement such an action, shall not be subject to administrative review or judicial review, including bid protests before the Government Accountability Office or in any Federal court.

(b) PETITIONS.—

(1) IN GENERAL.—Not later than 60 days after a party is notified of an exclusion or removal order under section 1323(c)(6) of this title or a covered procurement action under section 4713 of this title, the party may file a petition for judicial review in the United States Court of Appeals for the District of Columbia Circuit claiming that the issuance of the exclusion or removal order or covered procurement action is unlawful.

(2) STANDARD OF REVIEW.—The Court shall hold unlawful a covered action taken under sections 1323 or 4713 of this title, in response to a petition that the court finds to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(D) lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under paragraph (3); or

(E) not in accord with procedures required by law.

(3) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over claims arising under sections 1323(c)(5) or 4713 of this title against the United States, any United States department or agency, or any component or official of any such department or agency, subject to review by the Supreme Court of the United States under section 1254 of title 28.

(4) ADMINISTRATIVE RECORD AND PROCEDURES.—

(A) IN GENERAL.—The procedures described in this paragraph shall apply to the review of a petition under this section.

(B) ADMINISTRATIVE RECORD.—

(i) FILING OF RECORD.—The United States shall file with the court an administrative record, which shall consist of the information that the appropriate official relied upon in issuing an exclusion or removal order under section 1323(c)(5) or a covered procurement action under section 4713 of this title.

(ii) UNCLASSIFIED, NONPRIVILEGED INFORMATION.—All unclassified information contained in the administrative record that is not otherwise privileged or subject to statutory protections shall be provided to the petitioner with appropriate protections for any privileged or confidential trade secrets and commercial or financial information.

(iii) IN CAMERA AND EX PARTE.—The following information may be included in the administrative record and shall be submitted only to the court ex parte and in camera:

(I) Classified information.

(II) Sensitive security information, as defined by section 1520.5 of title 49, Code of Federal Regulations.

(III) Privileged law enforcement information.

(IV) Information obtained or derived from any activity authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), except that, with respect to such information, subsections (c), (e), (f), (g), and (h) of section 106 (50 U.S.C. 1806), subsections (d), (f), (g), (h), and (i) of section 305 (50 U.S.C. 1825), subsections (c), (e), (f), (g), and (h) of section 405 (50 U.S.C. 1845), and section 706 (50 U.S.C. 1881e) of that Act shall not apply.

(V) Information subject to privilege or protections under any other provision of law.

(iv) UNDER SEAL.—Any information that is part of the administrative record filed ex parte and in camera under clause (iii), or cited by the court in any decision, shall be treated by the court consistent with the provisions of this subparagraph and shall remain under seal and preserved in the records of the court to be made available consistent with the above provisions in the event of further proceedings. In no event shall such information be released to the petitioner or as part of the public record.

(v) RETURN.—After the expiration of the time to seek further review, or the conclusion of further proceedings, the court shall return the administrative record, including any and all copies, to the United States.

(C) EXCLUSIVE REMEDY.—A determination by the court under this subsection shall be the exclusive judicial remedy for any claim described in this section against the United States, any United States department or agency, or any component or official of any such department or agency.

(D) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting, superseding, or preventing the invocation of, any privileges or defenses that are otherwise available at law or in equity to protect against the disclosure of information.

(c) DEFINITION.—In this section, the term “classified information”—

(1) has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.); and

(2) includes—

(A) any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation to require protection against unauthorized disclosure for reasons of national security; and

(B) any restricted data, as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

(Added Pub. L. 115-390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5185.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (b)(4)(B)(iii)(IV), is Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to chapter 36 (§1801 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 1801 of Title 50 and Tables.

The Classified Information Procedures Act, referred to in subsec. (c)(1), is Pub. L. 96-456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115-390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

#### § 1328. Termination

This subchapter shall terminate on December 31, 2033.

(Added Pub. L. 115-390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5188; amended Pub. L. 117-263, div. E, title LIX, §5949(k)(1), Dec. 23, 2022, 136 Stat. 3492.)

#### Editorial Notes

##### AMENDMENTS

2022—Pub. L. 117-263 substituted “December 31, 2033” for “the date that is 5 years after the date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115-390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

## CHAPTER 15—COST ACCOUNTING STANDARDS

Sec.	
1501.	Cost Accounting Standards Board.
1502.	Cost accounting standards.
1503.	Contract price adjustment.
1504.	Effect on other standards and regulations.
1505.	Examinations.
1506.	Authorization of appropriations.

### § 1501. Cost Accounting Standards Board

(a) ORGANIZATION.—The Cost Accounting Standards Board is an independent board in the Office of Federal Procurement Policy.

(b) MEMBERSHIP.—

(1) NUMBER OF MEMBERS, CHAIRMAN, AND APPOINTMENT.—The Board consists of 5 members. One member is the Administrator, who serves as Chairman. The other 4 members, all of whom shall have experience in Federal Government contract cost accounting, are as follows:

(A) 2 representatives of the Federal Government—

(i) one of whom is a representative of the Department of Defense appointed by the Secretary of Defense; and

(ii) one of whom is an officer or employee of the General Services Administration appointed by the Administrator of General Services.

(B) 2 individuals from the private sector, each of whom is appointed by the Administrator, and—

(i) one of whom is a representative of industry; and

(ii) one of whom is particularly knowledgeable about cost accounting problems and systems and, if possible, is a representative of a public accounting firm.

(2) TERM OF OFFICE.—

(A) LENGTH OF TERM.—The term of office of each member, other than the Administrator, is 4 years. The terms are staggered, with the terms of 2 members expiring in the same year, the term of another member expiring the next year, and the term of the last member expiring the year after that.

(B) INDIVIDUAL REQUIRED TO REMAIN WITH APPOINTING AGENCY.—A member appointed under paragraph (1)(A) may not continue to serve after ceasing to be an officer or employee of the agency from which that member was appointed.

(3) VACANCY.—A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member appointed to fill a vacancy serves for the remainder of the term for which that member's predecessor was appointed.

(c) DUTIES.—The Board shall—

(1) ensure that the cost accounting standards used by Federal contractors rely, to the maximum extent practicable, on commercial standards and accounting practices and systems;

(2) within one year after the date of enactment of this subsection, and on an ongoing basis thereafter, review any cost accounting standards established under section 1502 of this title and conform such standards, where practicable, to Generally Accepted Accounting Principles; and

(3) annually review disputes involving such standards brought to the boards established in section 7105 of this title or Federal courts, and consider whether greater clarity in such standards could avoid such disputes.

(d) MEETINGS.—The Board shall meet not less than once each quarter and shall publish in the Federal Register notice of each meeting and its agenda before such meeting is held.

(e) REPORT.—The Board shall annually submit a report to the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate describing the actions taken during the prior year—

(1) to conform the cost accounting standards established under section 1502 of this title with Generally Accepted Accounting Principles; and

(2) to minimize the burden on contractors while protecting the interests of the Federal Government.

(f) SENIOR STAFF.—The Administrator, after consultation with the Board—

(1) without regard to the provisions of title 5 governing appointments in the competitive service—

(A) shall appoint an executive secretary; and

(B) may appoint, or detail pursuant to section 3341 of title 5, two additional staff members; and

(2) may pay those employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that those employees may not receive pay in excess of the maximum rate of basic pay payable for level IV of the Executive Schedule.

(g) OTHER STAFF.—The Administrator may appoint, fix the compensation of, and remove additional employees of the Board under the applicable provisions of title 5.

(h) DETAILED AND TEMPORARY PERSONNEL.—For service on advisory committees and task forces to assist the Board in carrying out its functions and responsibilities—

(1) the Board, with the consent of the head of a Federal agency, may use, without reimbursement, personnel of that agency; and

(2) the Administrator, after consultation with the Board, may procure temporary and intermittent services of personnel under section 3109(b) of title 5.

(i) COMPENSATION.—

(1) OFFICERS AND EMPLOYEES OF THE GOVERNMENT.—Members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are used under sub-