

115TH CONGRESS
2D SESSION

H. R. 6430

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 5, 2018

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To amend the Homeland Security Act of 2002 to authorize the Secretary of Homeland Security to implement certain requirements for information relating to supply chain risk, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Securing the Home-
3 land Security Supply Chain Act of 2018”.

4 **SEC. 2. DEPARTMENT OF HOMELAND SECURITY REQUIRE-**
5 **MENTS FOR INFORMATION RELATING TO**
6 **SUPPLY CHAIN RISK.**

7 (a) IN GENERAL.—Subtitle D of title VIII of the
8 Homeland Security Act of 2002 (6 U.S.C. 391 et seq.)
9 is amended by adding at the end the following new section:
10 **“SEC. 836. REQUIREMENTS FOR INFORMATION RELATING**
11 **TO SUPPLY CHAIN RISK.**

12 “(a) AUTHORITY.—Subject to subsection (b), the
13 Secretary may—

14 “(1) carry out a covered procurement action;

15 “(2) limit, notwithstanding any other provision
16 of law, in whole or in part, the disclosure of informa-
17 tion, including classified information, relating to the
18 basis for carrying out such an action; and

19 “(3) exclude, in whole or in part, a source car-
20 ried out in the course of such an action applicable
21 to a covered procurement of the Department.

22 “(b) DETERMINATION AND NOTIFICATION.—Except
23 as authorized by subsection (c) to address an urgent na-
24 tional security interest, the Secretary may exercise the au-
25 thority provided in subsection (a) only after—

1 “(1) obtaining a joint recommendation, in un-
2 classified or classified form, from the Chief Acquisi-
3 tion Officer and the Chief Information Officer of
4 Department, including a review of any risk assess-
5 ment made available by an appropriate person or en-
6 tity, that there is a significant supply chain risk in
7 a covered procurement;

8 “(2) notifying any source named in the joint
9 recommendation described in paragraph (1) advis-
10 ing—

11 “(A) that a recommendation has been ob-
12 tained;

13 “(B) to the extent consistent with the na-
14 tional security and law enforcement interests,
15 the basis for such recommendation;

16 “(C) that, within 30 days after receipt of
17 notice, such source may submit information and
18 argument in opposition to such recommenda-
19 tion; and

20 “(D) of the procedures governing the con-
21 sideration of such submission and the possible
22 exercise of the authority provided in subsection
23 (a);

24 “(3) notifying the relevant components of the
25 Department that such risk assessment has dem-

1 onstrated significant supply chain risk to a covered
2 procurement; and

3 “(4) making a determination in writing, in un-
4 classified or classified form, that after considering
5 any information submitted by a source under para-
6 graph (2), and in consultation with the Chief Infor-
7 mation Officer of the Department, that—

8 “(A) use of authority under subsection
9 (a)(1) is necessary to protect national security
10 by reducing supply chain risk;

11 “(B) less intrusive measures are not rea-
12 sonably available to reduce such risk;

13 “(C) a decision to limit disclosure of infor-
14 mation under subsection (a)(2) is necessary to
15 protect national security interest; and

16 “(D) the use of such authorities will apply
17 to a single covered procurement or a class of
18 covered procurements, and otherwise specifies
19 the scope of such determination;

20 “(5) providing to the Committee on Homeland
21 Security of the House of Representatives and the
22 Committee on Homeland Security and Governmental
23 Affairs of the Senate a classified or unclassified no-
24 tice of the determination made under paragraph (4)
25 that includes—

1 “(A) the joint recommendation described
2 in paragraph (1);

3 “(B) a summary of any risk assessment re-
4 viewed in support of such joint recommenda-
5 tion; and

6 “(C) a summary of the basis for such de-
7 termination, including a discussion of less in-
8 trusive measures that were considered and why
9 such measures were not reasonably available to
10 reduce supply chain risk;

11 “(6) notifying the Director of the Office of
12 Management and Budget, and the heads of other
13 Federal agencies as appropriate, in a manner and to
14 the extent consistent with the requirements of na-
15 tional security; and

16 “(7) taking steps to maintain the confidentiality
17 of any notifications under this subsection.

18 “(c) PROCEDURES TO ADDRESS URGENT NATIONAL
19 SECURITY INTERESTS.—In any case in which the Sec-
20 retary determines that national security interests require
21 the immediate exercise of the authorities under subsection
22 (a), the Secretary—

23 “(1) may, to the extent necessary to address
24 any such national security interest, and subject to
25 the conditions specified in paragraph (2)—

1 “(A) temporarily delay the notice required
2 by subsection (b)(2);

3 “(B) make the determination required by
4 subsection (b)(4), regardless of whether the no-
5 tice required by subsection (b)(2) has been pro-
6 vided or whether the notified source at issue
7 has submitted any information in response to
8 such notice;

9 “(C) temporarily delay the notice required
10 by subsections (b)(4) and (b)(5); and

11 “(D) exercise the authority provided in
12 subsection (a) in accordance with such deter-
13 mination; and

14 “(2) shall take actions necessary to comply with
15 all requirements of subsection (b) as soon as prac-
16 ticable after addressing the urgent national security
17 interest that is the subject of paragraph (1), includ-
18 ing—

19 “(A) providing the notice required by sub-
20 section (b)(2);

21 “(B) promptly considering any information
22 submitted by the source at issue in response to
23 such notice, and making any appropriate modi-
24 fications to the determination required by sub-
25 section (b)(4) based on such information; and

1 “(C) providing the notice required by sub-
2 sections (b)(5) and (b)(6), including a descrip-
3 tion of such urgent national security, and any
4 modifications to such determination made in ac-
5 cordance with subparagraph (B).

6 “(d) ANNUAL REVIEW OF DETERMINATIONS.—The
7 Secretary shall annually review all determinations made
8 under subsection (b).

9 “(e) DELEGATION.—The Secretary may not delegate
10 the authority provided in subsection (a) or the responsi-
11 bility identified in subsection (d) to an official below the
12 Deputy Secretary.

13 “(f) LIMITATION OF REVIEW.—Notwithstanding any
14 other provision of law, no action taken by the Secretary
15 under subsection (a) may be subject to review in a bid
16 protest before the Government Accountability Office or in
17 any Federal court.

18 “(g) CONSULTATION.—In developing procedures and
19 guidelines for the implementation of the authorities de-
20 scribed in this section, the Secretary shall review the pro-
21 cedures and guidelines utilized by the Department of De-
22 fense to carry out similar authorities.

23 “(h) DEFINITIONS.—In this section:

24 “(1) COVERED ARTICLE.—The term ‘covered
25 article’ means:

1 “(A) Information technology, including
2 cloud computing services of all types.

3 “(B) Telecommunications equipment.

4 “(C) Telecommunications services.

5 “(D) The processing of information on a
6 Federal or non-Federal information system,
7 subject to the requirements of the Controlled
8 Unclassified Information program of the De-
9 partment.

10 “(E) Hardware, systems, devices, software,
11 or services that include embedded or incidental
12 information technology.

13 “(2) COVERED PROCUREMENT.—The term ‘cov-
14 ered procurement’ means—

15 “(A) a source selection for a covered arti-
16 cle involving either a performance specification,
17 as provided in subsection (a)(3)(B) of section
18 3306 of title 41, United States Code, or an
19 evaluation factor, as provided in subsection
20 (c)(1)(A) of such section, relating to supply
21 chain risk, or with respect to which supply
22 chain risk considerations are included in the
23 Department’s determination of whether a
24 source is a responsible source as defined in sec-
25 tion 113 of such title;

1 “(B) the consideration of proposals for and
2 issuance of a task or delivery order for a cov-
3 ered article, as provided in section 4106(d)(3)
4 of title 41, United States Code, with respect to
5 which the task or delivery order contract in-
6 cludes a contract clause establishing a require-
7 ment relating to supply chain risk;

8 “(C) any contract action involving a con-
9 tract for a covered article with respect to which
10 such contract includes a clause establishing re-
11 quirements relating to supply chain risk; or

12 “(D) any procurement made via Govern-
13 ment Purchase Card for a covered article when
14 supply chain risk has been identified as a con-
15 cern.

16 “(3) COVERED PROCUREMENT ACTION.—The
17 term ‘covered procurement action’ means any of the
18 following actions, if such action takes place in the
19 course of conducting a covered procurement:

20 “(A) The exclusion of a source that fails to
21 meet qualification requirements established pur-
22 suant to section 3311 of title 41, United States
23 Code, for the purpose of reducing supply chain
24 risk in the acquisition or use of a covered arti-
25 cle.

1 “(B) The exclusion of a source that fails to
2 achieve an acceptable rating with regard to an
3 evaluation factor providing for the consideration
4 of supply chain risk in the evaluation of pro-
5 posals for the award of a contract or the
6 issuance of a task or delivery order.

7 “(C) The determination that a source is
8 not a responsible source based on consider-
9 ations of supply chain risk.

10 “(D) The decision to withhold consent for
11 a contractor to subcontract with a particular
12 source or to direct a contractor to exclude a
13 particular source from consideration for a sub-
14 contract.

15 “(4) INFORMATION SYSTEM.—The term ‘infor-
16 mation system’ has the meaning given such term in
17 section 3502 of title 44, United States Code.

18 “(5) INFORMATION TECHNOLOGY.—The term
19 ‘information technology’ has the meaning given such
20 term in section 11101 of title 40, United States
21 Code.

22 “(6) RESPONSIBLE SOURCE.—The term ‘re-
23 sponsible source’ has the meaning given such term
24 in section 113 of title 41, United States Code.

1 “(7) SUPPLY CHAIN RISK.—The term ‘supply
2 chain risk’ means the risk that a malicious actor
3 may sabotage, maliciously introduce an unwanted
4 function, extract or modify data, or otherwise ma-
5 nipulate the design, integrity, manufacturing, pro-
6 duction, distribution, installation, operation, or
7 maintenance of a covered article so as to surveil,
8 deny, disrupt, or otherwise manipulate the function,
9 use, or operation of the information technology or
10 information stored or transmitted on the covered ar-
11 ticles.

12 “(8) TELECOMMUNICATIONS EQUIPMENT.—The
13 term ‘telecommunications equipment’ has the mean-
14 ing given such term in section 153(52) of title 47,
15 United States Code.

16 “(9) TELECOMMUNICATIONS SERVICE.—The
17 term ‘telecommunications service’ has the meaning
18 given such term in section 153(53) of title 47,
19 United States Code.

20 “(i) EFFECTIVE DATE.—The requirements of this
21 section shall take effect on the date that is 90 days after
22 the date of the enactment of this Act and shall apply to—

23 “(1) contracts awarded on or after such date;
24 and

1 “(2) task and delivery orders issued on or after
2 such date pursuant to contracts awarded before, on,
3 or after such date.”.

4 (b) RULEMAKING.—Section 553 of title 5, United
5 States Code, and section 1707 of title 41, United States
6 Code, shall not apply to the Secretary of Homeland Secu-
7 rity when carrying out the authorities and responsibilities
8 under section 836 of the Homeland Security Act of 2002,
9 as added by subsection (a).

10 (c) CLERICAL AMENDMENT.—The table of contents
11 in section 1(b) of the Homeland Security Act of 2002 is
12 amended by inserting after the item relating to section
13 835 the following new item:

“Sec. 836. Requirements for information relating to supply chain risk.”.

Passed the House of Representatives September 4,
2018.

Attest:

KAREN L. HAAS,
Clerk.