

Union Calendar No. 146

116TH CONGRESS
1ST SESSION

H. R. 3320

[Report No. 116–188]

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2019

Mr. KING of New York (for himself, Mr. THOMPSON of Mississippi, Miss RICE of New York, Mr. CORREA, Mr. ROGERS of Alabama, Mr. ROSE of New York, and Mr. PAYNE) introduced the following bill; which was referred to the Committee on Homeland Security

AUGUST 27, 2019

Additional sponsors: Mr. MCCAUL and Mr. HAGEDORN

AUGUST 27, 2019

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 18, 2019]

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Securing the Homeland*
 5 *Security Supply Chain Act of 2019”.*

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

9 *(a) IN GENERAL.—Subtitle D of title VIII of the*
 10 *Homeland Security Act of 2002 (6 U.S.C. 391 et seq.) is*
 11 *amended by adding at the end the following new section:*

12 **“SEC. 836. REQUIREMENTS FOR INFORMATION RELATING**
 13 **TO SUPPLY CHAIN RISK.**

14 *“(a) AUTHORITY.—Subject to subsection (b), the Sec-*
 15 *retary may—*

16 *“(1) carry out a covered procurement action;*

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

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

24 *“(b) DETERMINATION AND NOTIFICATION.—Except as*
 25 *authorized by subsection (c) to address an urgent national*

1 *security interest, the Secretary may exercise the authority*
2 *provided in subsection (a) only after—*

3 “(1) *obtaining a joint recommendation, in un-*
4 *classified or classified form, from the Chief Acquisi-*
5 *tion Officer and the Chief Information Officer of the*
6 *Department, including a review of any risk assess-*
7 *ment made available by an appropriate person or en-*
8 *tity, including the national risk management center*
9 *at the Cybersecurity and Infrastructure Security*
10 *Agency, that there is a significant supply chain risk*
11 *in a covered procurement;*

12 “(2) *notifying any source named in the joint rec-*
13 *ommendation described in paragraph (1) advising—*

14 “(A) *that a recommendation has been ob-*
15 *tained;*

16 “(B) *to the extent consistent with the na-*
17 *tional security and law enforcement interests, the*
18 *basis for such recommendation;*

19 “(C) *that, within 30 days after receipt of*
20 *notice, such source may submit information and*
21 *argument in opposition to such recommendation;*
22 *and*

23 “(D) *of the procedures governing the consid-*
24 *eration of such submission and the possible exer-*
25 *cise of the authority provided in subsection (a);*

1 “(3) notifying the relevant components of the De-
2 partment that such risk assessment has demonstrated
3 significant supply chain risk to a covered procure-
4 ment;

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

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

13 “(B) less intrusive measures are not reason-
14 ably available to reduce such risk;

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

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

22 “(5) providing to the Committee on Homeland
23 Security of the House of Representatives and the
24 Committee on Homeland Security and Governmental
25 Affairs of the Senate a classified or unclassified notice

1 *of the determination made under paragraph (4) that*
2 *includes—*

3 *“(A) the joint recommendation described in*
4 *paragraph (1);*

5 *“(B) a summary of any risk assessment re-*
6 *viewed in support of such joint recommendation;*
7 *and*

8 *“(C) a summary of the basis for such deter-*
9 *mination, including a discussion of less intrusive*
10 *measures that were considered and why such*
11 *measures were not reasonably available to reduce*
12 *supply chain risk;*

13 *“(6) notifying the Director of the Office of Man-*
14 *agement and Budget, and the heads of other Federal*
15 *agencies as appropriate, in a manner and to the ex-*
16 *tent consistent with the requirements of national secu-*
17 *rity; and*

18 *“(7) taking steps to maintain the confidentiality*
19 *of any notifications under this subsection.*

20 *“(c) PROCEDURES TO ADDRESS URGENT NATIONAL*
21 *SECURITY INTERESTS.—In any case in which the Secretary*
22 *determines that national security interests require the im-*
23 *mediate exercise of the authorities under subsection (a), the*
24 *Secretary—*

1 “(1) may, to the extent necessary to address any
2 such national security interest, and subject to the con-
3 ditions specified in paragraph (2)—

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

6 “(B) make the determination required by
7 subsection (b)(4), regardless of whether the notice
8 required by subsection (b)(2) has been provided
9 or whether the notified source at issue has sub-
10 mitted any information in response to such no-
11 tice;

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

14 “(D) exercise the authority provided in sub-
15 section (a) in accordance with such determina-
16 tion; and

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

22 “(A) providing the notice required by sub-
23 section (b)(2);

24 “(B) promptly considering any information
25 submitted by the source at issue in response to

1 *such notice, and making any appropriate modi-*
2 *fications to the determination required by sub-*
3 *section (b)(4) based on such information; and*

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

9 “(d) *ANNUAL REVIEW OF DETERMINATIONS.—The*
10 *Secretary shall annually review all determinations made*
11 *under subsection (b).*

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

16 “(f) *LIMITATION OF REVIEW.—Notwithstanding any*
17 *other provision of law, no action taken by the Secretary*
18 *under subsection (a) may be subject to review in a bid pro-*
19 *test before the Government Accountability Office or in any*
20 *Federal court.*

21 “(g) *CONSULTATION.—In developing procedures and*
22 *guidelines for the implementation of the authorities de-*
23 *scribed in this section, the Secretary shall review the proce-*
24 *dures and guidelines utilized by the Department of Defense*
25 *to carry out similar authorities.*

1 “(h) *DEFINITIONS.—In this section:*

2 “(1) *COVERED ARTICLE.—The term ‘covered ar-*
3 *ticle’ means:*

4 “(A) *Information technology, including*
5 *cloud computing services of all types.*

6 “(B) *Telecommunications equipment.*

7 “(C) *Telecommunications services.*

8 “(D) *The processing of information on a*
9 *Federal or non-Federal information system, sub-*
10 *ject to the requirements of the Controlled Unclass-*
11 *ified Information program of the Department.*

12 “(E) *Hardware, systems, devices, software,*
13 *or services that include embedded or incidental*
14 *information technology.*

15 “(2) *COVERED PROCUREMENT.—The term ‘cov-*
16 *ered procurement’ means—*

17 “(A) *a source selection for a covered article*
18 *involving either a performance specification, as*
19 *provided in subsection (a)(3)(B) of section 3306*
20 *of title 41, United States Code, or an evaluation*
21 *factor, as provided in subsection (c)(1)(A) of*
22 *such section, relating to supply chain risk, or*
23 *with respect to which supply chain risk consider-*
24 *ations are included in the Department’s deter-*

1 *mination of whether a source is a responsible*
2 *source as defined in section 113 of such title;*

3 *“(B) the consideration of proposals for and*
4 *issuance of a task or delivery order for a covered*
5 *article, as provided in section 4106(d)(3) of title*
6 *41, United States Code, with respect to which the*
7 *task or delivery order contract includes a con-*
8 *tract clause establishing a requirement relating*
9 *to supply chain risk;*

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

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

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

22 *“(A) The exclusion of a source that fails to*
23 *meet qualification requirements established pur-*
24 *suant to section 3311 of title 41, United States*

1 *Code, for the purpose of reducing supply chain*
2 *risk in the acquisition or use of a covered article.*

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

9 “(C) *The determination that a source is not*
10 *a responsible source based on considerations of*
11 *supply chain risk.*

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

17 “(4) *INFORMATION SYSTEM.—The term ‘informa-*
18 *tion system’ has the meaning given such term in sec-*
19 *tion 3502 of title 44, United States Code.*

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

23 “(6) *RESPONSIBLE SOURCE.—The term ‘respon-*
24 *sible source’ has the meaning given such term in sec-*
25 *tion 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 may*
3 *sabotage, maliciously introduce an unwanted func-*
4 *tion, extract or modify data, or otherwise manipulate*
5 *the design, integrity, manufacturing, production, dis-*
6 *tribution, installation, operation, or maintenance of a*
7 *covered article so as to surveil, deny, disrupt, or oth-*
8 *erwise manipulate the function, use, or operation of*
9 *the information technology or information stored or*
10 *transmitted on the covered articles.*

11 “(8) *TELECOMMUNICATIONS EQUIPMENT.*—*The*
12 *term ‘telecommunications equipment’ has the mean-*
13 *ing given such term in section 3(52) of the Commu-*
14 *nications Act of 1934 (47 U.S.C. 153(52)).*

15 “(9) *TELECOMMUNICATIONS SERVICE.*—*The term*
16 *‘telecommunications service’ has the meaning given*
17 *such term in section 3(53) of the Communications Act*
18 *of 1934 (47 U.S.C. 153(53)).*

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

22 “(1) *contracts awarded on or after such date;*
23 *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 in
11 section 1(b) of the Homeland Security Act of 2002 is
12 amended by inserting after the item relating to section 835
13 the following new item:

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

14 **SEC. 3. REPORT ON THREATS POSED BY FOREIGN STATE-**
15 **OWNED ENTITIES TO DHS INFORMATION**
16 **TECHNOLOGY AND COMMUNICATIONS SYS-**
17 **TEMS.**

18 Not later than 180 days after the date of the enactment
19 of this Act, the Under Secretary for Management of the De-
20 partment of Homeland Security, in coordination with the
21 national risk management center of the Cybersecurity and
22 Infrastructure Security Agency of the Department, shall
23 submit to the Committee on Homeland Security of the
24 House of Representatives and the Committee on Homeland
25 Security and Governmental Affairs of the Senate a report

1 *on cybersecurity threats posed by terrorist actors and for-*
2 *eign state-owned entities to the information technology and*
3 *communications systems of Department of Homeland Secu-*
4 *rity, including information relating to the following:*

5 (1) *The use of foreign state-owned entities' infor-*
6 *mation and communications technology by the De-*
7 *partment of Homeland Security, listed by component.*

8 (2) *The threats, in consultation with the Depart-*
9 *ment's Office of Intelligence and Analysis, of foreign*
10 *state-owned entities' information and communica-*
11 *tions technology equipment that could impact the De-*
12 *partment.*

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