

Editorial Notes**REFERENCES IN TEXT**

Executive Order No. 13873, referred to in subsec. (c)(2), is Ex. Ord. No. 13873, May 15, 2019, 84 F.R. 22689, which is listed in a table under section 1701 of Title 50, War and National Defense.

Section 889(f)(3) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, referred to in subsec. (c)(3), is section 889(f)(3) of Pub. L. 115-232, which is set out in a note preceding section 3901 of Title 41, Public Contracts.

Statutory Notes and Related Subsidiaries**SHORT TITLE**

Pub. L. 116-124, §1, Mar. 12, 2020, 134 Stat. 158, provided that: “This Act [enacting this chapter] may be cited as the ‘Secure and Trusted Communications Networks Act of 2019’.”

SECURE EQUIPMENT

Pub. L. 117-55, Nov. 11, 2021, 135 Stat. 423, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Secure Equipment Act of 2021’.

“SEC. 2. UPDATES TO EQUIPMENT AUTHORIZATION PROCESS OF FEDERAL COMMUNICATIONS COMMISSION.

“(a) RULEMAKING.—

“(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Nov. 11, 2021], the Commission shall adopt rules in the proceeding initiated in the Notice of Proposed Rulemaking in the matter of Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program (ET Docket No. 21-232; FCC 21-73; adopted June 17, 2021), in accordance with paragraph (2), to update the equipment authorization procedures of the Commission.

“(2) UPDATES REQUIRED.—In the rules adopted under paragraph (1), the Commission shall clarify that the Commission will no longer review or approve any application for equipment authorization for equipment that is on the list of covered communications equipment or services published by the Commission under section 2(a) of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. 1601(a)).

“(3) APPLICABILITY.—

“(A) IN GENERAL.—In the rules adopted under paragraph (1), the Commission may not provide for review or revocation of any equipment authorization granted before the date on which such rules are adopted on the basis of the equipment being on the list described in paragraph (2).

“(B) RULE OF CONSTRUCTION.—Nothing in this section may be construed to prohibit the Commission, other than in the rules adopted under paragraph (1), from—

“(i) examining the necessity of review or revocation of any equipment authorization on the basis of the equipment being on the list described in paragraph (2); or

“(ii) adopting rules providing for any such review or revocation.

“(b) DEFINITION.—In this section, the term ‘Commission’ means the Federal Communications Commission.”

§ 1602. Prohibition on use of certain Federal subsidies**(a) In general****(1) Prohibition**

A Federal subsidy that is made available through a program administered by the Com-

mission and that provides funds to be used for the capital expenditures necessary for the provision of advanced communications service may not be used to—

(A) purchase, rent, lease, or otherwise obtain any covered communications equipment or service; or

(B) maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained.

(2) Timing

Paragraph (1) shall apply with respect to any covered communications equipment or service beginning on the date that is 60 days after the date on which the Commission places such equipment or service on the list required by section 1601(a) of this title. In the case of any covered communications equipment or service that is on the initial list published under such section, such equipment or service shall be treated as being placed on the list on the date on which such list is published.

(b) Completion of proceeding

Not later than 180 days after March 12, 2020, the Commission shall adopt a Report and Order to implement subsection (a). If the Commission has, before March 12, 2020, taken action that in whole or in part implements subsection (a), the Commission is not required to revisit such action, but only to the extent such action is consistent with this section.

(Pub. L. 116-124, §3, Mar. 12, 2020, 134 Stat. 159.)

§ 1603. Secure and Trusted Communications Networks Reimbursement Program**(a) In general**

The Commission shall establish a reimbursement program, to be known as the “Secure and Trusted Communications Networks Reimbursement Program”, to make reimbursements to providers of advanced communications service to replace covered communications equipment or services.

(b) Eligibility

The Commission may not make a reimbursement under the Program to a provider of advanced communications service unless the provider—

(1) has 10,000,000 or fewer customers; and

(2) makes all of the certifications required by subsection (d)(4).

(c) Use of funds**(1) In general**

A recipient of a reimbursement under the Program shall use reimbursement funds solely for the purposes of—

(A) permanently removing covered communications equipment or services purchased, rented, leased, or otherwise obtained—

(i) as defined in the Report and Order of the Commission in the matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs (FCC 19-121; WC Docket No. 18-89; adopted November 22, 2019) (in this section referred to as the “Report and Order”); or

(ii) as determined to be covered by both the process of the Report and Order and the Designation Orders of the Commission on June 30, 2020 (DA 20-690; PS Docket No. 19-351; adopted June 30, 2020) (DA 20-691; PS Docket No. 19-352; adopted June 30, 2020) (in this section collectively referred to as the “Designation Orders”);

(B) replacing the covered communications equipment or services removed as described in subparagraph (A) with communications equipment or services that are not covered communications equipment or services; and

(C) disposing of the covered communications equipment or services removed as described in subparagraph (A) in accordance with the requirements under subsection (d)(7).

(2) Limitations

A recipient of a reimbursement under the Program may not—

(A) use reimbursement funds to remove, replace, or dispose of any covered communications equipment or service purchased, rented, leased, or otherwise obtained on or after—

(i) publication of the Report and Order; or

(ii) in the case of covered communications equipment that only became covered pursuant to the Designation Orders, June 30, 2020; or

(B) purchase, rent, lease, or otherwise obtain any covered communications equipment or service, using reimbursement funds or any other funds (including funds derived from private sources).

(d) Implementation

(1) Suggested replacements

(A) Development of list

The Commission shall develop a list of suggested replacements of both physical and virtual communications equipment, application and management software, and services or categories of replacements of both physical and virtual communications equipment, application and management software and services.

(B) Neutrality

The list developed under subparagraph (A) shall be technology neutral and may not advantage the use of reimbursement funds for capital expenditures over operational expenditures, to the extent that the Commission determines that communications services can serve as an adequate substitute for the installation of communications equipment.

(2) Application process

(A) In general

The Commission shall develop an application process and related forms and materials for the Program.

(B) Cost estimate

(i) Initial estimate

The Commission shall require an applicant to provide an initial reimbursement

cost estimate at the time of application, with supporting materials substantiating the costs.

(ii) Updates

During and after the application review process, the Commission may require an applicant to—

(I) update the initial reimbursement cost estimate submitted under clause (i); and

(II) submit additional supporting materials substantiating an updated cost estimate submitted under subclause (I).

(C) Mitigation of burden

In developing the application process under this paragraph, the Commission shall take reasonable steps to mitigate the administrative burdens and costs associated with the application process, while taking into account the need to avoid waste, fraud, and abuse in the Program.

(3) Application review process

(A) Deadline

(i) In general

Except as provided in clause (ii) and subparagraph (B), the Commission shall approve or deny an application for a reimbursement under the Program not later than 90 days after the date of the submission of the application.

(ii) Additional time needed by Commission

If the Commission determines that, because an excessive number of applications have been filed at one time, the Commission needs additional time for employees of the Commission to process the applications, the Commission may extend the deadline described in clause (i) for not more than 45 days.

(B) Opportunity for applicant to cure deficiency

If the Commission determines that an application is materially deficient (including by lacking an adequate cost estimate or adequate supporting materials), the Commission shall provide the applicant a 15-day period to cure the defect before denying the application. If such period would extend beyond the deadline under subparagraph (A) for approving or denying the application, such deadline shall be extended through the end of such period.

(C) Effect of denial

Denial of an application for a reimbursement under the Program shall not preclude the applicant from resubmitting the application or submitting a new application for a reimbursement under the Program at a later date.

(4) Certifications

An applicant for a reimbursement under the Program shall, in the application of the applicant, certify to the Commission that—

(A) as of the date of the submission of the application, the applicant—

(i) has developed a plan for—

(I) the permanent removal and replacement of any covered communications equipment or services that are in the communications network of the applicant as of such date; and

(II) the disposal of the equipment or services removed as described in subclause (I) in accordance with the requirements under paragraph (7); and

(ii) has developed a specific timeline (subject to paragraph (6)) for the permanent removal, replacement, and disposal of the covered communications equipment or services identified under clause (i), which timeline shall be submitted to the Commission as part of the application; and

(B) beginning on the date of the approval of the application, the applicant—

(i) will not purchase, rent, lease, or otherwise obtain covered communications equipment or services, using reimbursement funds or any other funds (including funds derived from private sources); and

(ii) in developing and tailoring the risk management practices of the applicant, will consult and consider the standards, guidelines, and best practices set forth in the cybersecurity framework developed by the National Institute of Standards and Technology.

(5) Distribution of reimbursement funds

(A) In general

Subject to subparagraph (C), the Commission shall make reasonable efforts to ensure that reimbursement funds are distributed equitably among all applicants for reimbursements under the Program according to the needs of the applicants, as identified by the applications of the applicants.

(B) Notification

If, at any time during the implementation of the Program, the Commission determines that \$1,000,000,000 will not be sufficient to fully fund all approved applications for reimbursements under the Program, the Commission shall immediately notify—

(i) the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives; and

(ii) the Committee on Commerce, Science, and Transportation and the Committee on Appropriations of the Senate.

(C) Priority for allocation

On and after December 27, 2020, the Commission shall allocate sufficient reimbursement funds—

(i) first, to approved applicants that have 2,000,000 or fewer customers, for removal and replacement of covered communications equipment, as defined in section 1608 of this title or as designated by the process set forth in the Report and Order;

(ii) after funds have been allocated to all applicants described in clause (i), to approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service, as

defined in section 27.4 of title 47, Code of Federal Regulations, or any successor regulation, for removal and replacement of covered communications equipment, as defined in section 1608 of this title or as designated by the process set forth in the Report and Order; and

(iii) after funds have been allocated to all applicants described in clause (ii), to any remaining approved applicants determined to be eligible for reimbursement under the Program.

(6) Removal, replacement, and disposal term

(A) Deadline

Except as provided in subparagraphs (B) and (C), the permanent removal, replacement, and disposal of any covered communications equipment or services identified under paragraph (4)(A)(i) shall be completed not later than 1 year after the date on which the Commission distributes reimbursement funds to the recipient.

(B) General extension

The Commission may grant an extension of the deadline described in subparagraph (A) for 6 months to all recipients of reimbursements under the Program if the Commission—

(i) finds that the supply of replacement communications equipment or services needed by the recipients to achieve the purposes of the Program is inadequate to meet the needs of the recipients; and

(ii) provides notice and a detailed justification for granting the extension to—

(I) the Committee on Energy and Commerce of the House of Representatives; and

(II) the Committee on Commerce, Science, and Transportation of the Senate.

(C) Individual extension

(i) Petition

A recipient of a reimbursement under the Program may petition the Commission for an extension for such recipient of the deadline described in subparagraph (A) or, if the Commission has granted an extension of such deadline under subparagraph (B), such deadline as so extended.

(ii) Grant

The Commission may grant a petition filed under clause (i) by extending, for the recipient that filed the petition, the deadline described in subparagraph (A) or, if the Commission has granted an extension of such deadline under subparagraph (B), such deadline as so extended, for a period of not more than 6 months if the Commission finds that, due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal described in subparagraph (A).

(7) Disposal of covered communications equipment or services

The Commission shall include in the regulations promulgated under subsection (g) re-

quirements for the disposal by a recipient of a reimbursement under the Program of covered communications equipment or services identified under paragraph (4)(A)(i) and removed from the network of the recipient in order to prevent such equipment or services from being used in the networks of providers of advanced communications service.

(8) Status updates

(A) In general

Not less frequently than once every 90 days beginning on the date on which the Commission approves an application for a reimbursement under the Program, the recipient of the reimbursement shall submit to the Commission a status update on the work of the recipient to permanently remove, replace, and dispose of the covered communications equipment or services identified under paragraph (4)(A)(i).

(B) Public posting

Not earlier than 30 days after the date on which the Commission receives a status update under subparagraph (A), the Commission shall make such status update public on the website of the Commission.

(C) Reports to Congress

Not less frequently than once every 180 days beginning on the date on which the Commission first makes funds available to a recipient of a reimbursement under the Program, the Commission shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on—

- (i) the implementation of the Program by the Commission; and
- (ii) the work by recipients of reimbursements under the Program to permanently remove, replace, and dispose of covered communications equipment or services identified under paragraph (4)(A)(i).

(e) Measures to avoid waste, fraud, and abuse

(1) In general

The Commission shall take all necessary steps to avoid waste, fraud, and abuse with respect to the Program.

(2) Spending reports

The Commission shall require recipients of reimbursements under the Program to submit to the Commission on a regular basis reports regarding how reimbursement funds have been spent, including detailed accounting of the covered communications equipment or services permanently removed and disposed of, and the replacement equipment or services purchased, rented, leased, or otherwise obtained, using reimbursement funds.

(3) Audits, reviews, and field investigations

The Commission shall conduct—

- (A) regular audits and reviews of reimbursements under the Program to confirm that recipients of such reimbursements are complying with this chapter; and
- (B) random field investigations to ensure that recipients of reimbursements under the

Program are performing the work such recipients are required to perform under the commitments made in the applications of such recipients for reimbursements under the Program, including the permanent removal, replacement, and disposal of the covered communications equipment or services identified under subsection (d)(4)(A)(i).

(4) Final certification

(A) In general

The Commission shall require a recipient of a reimbursement under the Program to submit to the Commission, in a form and at an appropriate time to be determined by the Commission, a certification stating that the recipient—

- (i) has fully complied with (or is in the process of complying with) all terms and conditions of the Program;
- (ii) has fully complied with (or is in the process of complying with) the commitments made in the application of the recipient for the reimbursement;
- (iii) has permanently removed from the communications network of the recipient, replaced, and disposed of (or is in the process of permanently removing, replacing, and disposing of) all covered communications equipment or services that were in the network of the recipient as of the date of the submission of the application of the recipient for the reimbursement; and
- (iv) has fully complied with (or is in the process of complying with) the timeline submitted by the recipient under subparagraph (A)(ii) of paragraph (4) of subsection (d) and the other requirements of such paragraph.

(B) Updated certification

If, at the time when a recipient of a reimbursement under the Program submits a certification under subparagraph (A), the recipient has not fully complied as described in clause (i), (ii), or (iv) of such subparagraph or has not completed the permanent removal, replacement, and disposal described in clause (iii) of such subparagraph, the Commission shall require the recipient to file an updated certification when the recipient has fully complied as described in such clause (i), (ii), or (iv) or completed such permanent removal, replacement, and disposal.

(f) Effect of removal of equipment or service from list

(1) In general

If, after the date on which a recipient of a reimbursement under the Program submits the application for the reimbursement, any covered communications equipment or service that is in the network of the recipient as of such date is removed from the list published under section 1601(a) of this title, the recipient may—

- (A) return to the Commission any reimbursement funds received for the removal, replacement, and disposal of such equipment or service and be released from any require-

ment under this section to remove, replace, or dispose of such equipment or service; or

(B) retain any reimbursement funds received for the removal, replacement, and disposal of such equipment or service and remain subject to the requirements of this section to remove, replace, and dispose of such equipment or service as if such equipment or service continued to be on the list published under section 1601(a) of this title.

(2) Assurances

In the case of an assurance relating to the removal, replacement, or disposal of any equipment or service with respect to which the recipient returns to the Commission reimbursement funds under paragraph (1)(A), such assurance may be satisfied by making an assurance that such funds have been returned.

(g) Rulemaking

(1) Commencement

Not later than 90 days after March 12, 2020, the Commission shall commence a rulemaking to implement this section.

(2) Completion

The Commission shall complete the rulemaking under paragraph (1) not later than 1 year after March 12, 2020.

(h) Rule of construction regarding timing of reimbursement

Nothing in this section shall be construed to prohibit the Commission from making a reimbursement under the Program to a provider of advanced communications service before the provider incurs the cost of the permanent removal, replacement, and disposal of the covered communications equipment or service for which the application of the provider has been approved under this section.

(i) Education efforts

The Commission shall engage in education efforts with providers of advanced communications service to—

- (1) encourage such providers to participate in the Program; and
- (2) assist such providers in submitting applications for the Program.

(j) Separate from Federal universal service programs

The Program shall be separate from any Federal universal service program established under section 254 of this title.

(k) Limitation

In carrying out this section, the Commission may not expend more than \$1,900,000,000.

(Pub. L. 116–124, § 4, Mar. 12, 2020, 134 Stat. 160; Pub. L. 116–260, div. N, title IX, § 901(1), Dec. 27, 2020, 134 Stat. 2120.)

Editorial Notes

AMENDMENTS

2020—Subsec. (b)(1). Pub. L. 116–260, § 901(1)(A), substituted “10,000,000” for “2,000,000”.

Subsec. (c)(1)(A). Pub. L. 116–260, § 901(1)(B)(i)(I), struck out “before” after “otherwise obtained” in introductory provisions.

Subsec. (c)(1)(A)(i). Pub. L. 116–260, § 901(1)(B)(i)(II), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “in the case of any covered communications equipment or services that are on the initial list published under section 1601(a) of this title, August 14, 2018; or”.

Subsec. (c)(1)(A)(ii). Pub. L. 116–260, § 901(1)(B)(i)(III), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “in the case of any covered communications equipment or services that are not on the initial list published under section 1601(a) of this title, the date that is 60 days after the date on which the Commission places such equipment or services on the list required by such section;”.

Subsec. (c)(2)(A)(i), (ii). Pub. L. 116–260, § 901(1)(B)(ii), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

“(i) in the case of any covered communications equipment or service that is on the initial list published under section 1601(a) of this title, August 14, 2018; or

“(ii) in the case of any covered communications equipment or service that is not on the initial list published under section 1601(a) of this title, the date that is 60 days after the date on which the Commission places such equipment or service on the list required by such section; or”.

Subsec. (d)(5)(A). Pub. L. 116–260, § 901(1)(C)(i), substituted “Subject to subparagraph (C), the Commission” for “The Commission”.

Subsec. (d)(5)(C). Pub. L. 116–260, § 901(1)(C)(ii), added subpar. (C).

Subsec. (k). Pub. L. 116–260, § 901(1)(D), added subsec. (k).

§ 1604. Reports on covered communications equipment or services

(a) In general

Each provider of advanced communications service shall submit an annual report to the Commission, in a form to be determined by the Commission, regarding whether such provider has purchased, rented, leased, or otherwise obtained any covered communications equipment or service on or after—

(1) in the case of any covered communications equipment or service that is on the initial list published under section 1601(a) of this title, August 14, 2018; or

(2) in the case of any covered communications equipment or service that is not on the initial list published under section 1601(a) of this title, the date that is 60 days after the date on which the Commission places such equipment or service on the list required by such section.

(b) Rule of construction

If a provider of advanced communications service certifies to the Commission that such provider does not have any covered communications equipment or service in the network of such provider, such provider is not required to submit a report under subsection (a) after making such certification, unless such provider later purchases, rents, leases, or otherwise obtains any covered communications equipment or service.

(c) Justification

If a provider of advanced communications service indicates in a report under subsection (a) that such provider has purchased, rented, leased, or otherwise obtained any covered communications equipment or service as described in such subsection, such provider shall include in such report—