

Calendar No. 666115TH CONGRESS
2^D SESSION**S. 3085**

To establish a Federal Acquisition Security Council and to provide executive agencies with authorities relating to mitigating supply chain risks in the procurement of information technology, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 19, 2018

Mrs. MCCASKILL (for herself and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

NOVEMBER 26, 2018

Reported by Mr. JOHNSON, with an amendment

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

A BILL

To establish a Federal Acquisition Security Council and to provide executive agencies with authorities relating to mitigating supply chain risks in the procurement of information technology, 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 “Federal Acquisition
3 Supply Chain Security Act of 2018”.

4 **SEC. 2. FEDERAL ACQUISITION SECURITY COUNCIL.**

5 (a) **IN GENERAL.**—Chapter 13 of title 41, United
6 States Code, is amended by adding at the end the fol-
7 lowing new subchapter:

8 **“Subchapter III—Federal Acquisition**
9 **Security Council**

10 **“§ 1321. Definitions**

11 “In this subchapter:

12 “(1) **APPROPRIATE CONGRESSIONAL COMMIT-**
13 **TEES.**—The term ‘appropriate congressional com-
14 mittees’ means—

15 “(A) the Committee on Homeland Security
16 and Governmental Affairs, the Committee on
17 the Judiciary, the Committee on Armed Serv-
18 ices, the Committee on Appropriations, the Se-
19 lect Committee on Intelligence, and the major-
20 ity and minority leader of the Senate; and

21 “(B) the Committee on Oversight and Gov-
22 ernment Reform, the Committee on the Judici-
23 ary, the Committee on Armed Services, the
24 Committee on Appropriations, the Committee
25 on Homeland Security, the Permanent Select
26 Committee on Intelligence, and the Speaker and

1 minority leader of the House of Representa-
 2 tives.

3 ~~“(2) COUNCIL.—The term ‘Council’ means the~~
 4 ~~Federal Acquisition Security Council established~~
 5 ~~under section 1322(a).~~

6 ~~“(3) INFORMATION TECHNOLOGY.—The term~~
 7 ~~‘information technology’ has the meaning given that~~
 8 ~~term in section 11101 of title 40.~~

9 ~~“(4) SUPPLY CHAIN RISK.—The term ‘supply~~
 10 ~~chain risk’ has the meaning given that term in sec-~~
 11 ~~tion 4713.~~

12 **“§ 1322. Establishment and membership**

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

15 ~~“(b) MEMBERSHIP.—~~

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

18 ~~“(A) The Office of Management and~~
 19 ~~Budget.~~

20 ~~“(B) The General Services Administration.~~

21 ~~“(C) The Department of Homeland Secu-~~
 22 ~~rity.~~

23 ~~“(D) The Office of the Director of Na-~~
 24 ~~tional Intelligence.~~

25 ~~“(E) The Federal Bureau of Investigation.~~

1 “(F) The Department of Defense.

2 “(G) The National Institute of Standards
3 and Technology.

4 “(H) Such other executive agencies as de-
5 termined by the Chairperson of the Council.

6 ~~“(2) LEAD REPRESENTATIVES.—~~

7 ~~“(A) DESIGNATION.—~~

8 ~~“(i) IN GENERAL.—The head of each~~
9 ~~agency represented on the Council shall~~
10 ~~designate a representative of that agency~~
11 ~~as the lead representative of the agency on~~
12 ~~the Council not later than 90 days after~~
13 ~~the date of the enactment of the Federal~~
14 ~~Acquisition Supply Chain Security Act of~~
15 ~~2018.~~

16 ~~“(ii) REQUIREMENTS.—The rep-~~
17 ~~resentative of an agency designated under~~
18 ~~clause (i) shall have expertise in supply~~
19 ~~chain risk management, acquisitions, or in-~~
20 ~~formation technology.~~

21 ~~“(B) FUNCTIONS.—The lead representa-~~
22 ~~tive of an agency designated under subpara-~~
23 ~~graph (A) shall ensure that appropriate per-~~
24 ~~sonnel, including leadership and subject matter~~

1 experts of the agency, are aware of the business
2 of the Council.

3 “(e) CHAIRPERSON.—

4 “(1) DESIGNATION.—The Director of the Office
5 of Management and Budget shall designate a senior-
6 level official from the Office of Management and
7 Budget to serve as the Chairperson of the Council
8 not later than 90 days after the date of the enact-
9 ment of the Federal Acquisition Supply Chain Secu-
10 rity Act of 2018.

11 “(2) FUNCTIONS.—The Chairperson shall per-
12 form functions that include—

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

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

18 “(C) in consultation with the lead rep-
19 resentative of each agency represented on the
20 Council, developing a charter for the Council;
21 and

22 “(D) not later than 7 days after comple-
23 tion of the charter, submitting the charter to
24 the appropriate congressional committees.

1 “(d) MEETINGS.—The Council shall meet not later
2 than 180 days after the date of the enactment of the Fed-
3 eral Acquisition Supply Chain Security Act of 2018 and
4 not less frequently than quarterly thereafter.

5 **“§ 1323. Functions**

6 “(a) IN GENERAL.—The Council shall perform func-
7 tions that include the following:

8 “(1) Developing criteria and processes—

9 “(A) for assessing threats and
10 vulnerabilities relating to supply chain risk
11 posed by the acquisition of information tech-
12 nology to national security and the public inter-
13 est; and

14 “(B) for sharing information among execu-
15 tive agencies, including the intelligence commu-
16 nity, and the private sector where appropriate,
17 with respect to assessments of that risk.

18 “(2) Defining the responsibilities of executive
19 agencies, consistent with existing law, for manage-
20 ment of such assessments.

21 “(3) Issuing guidance to executive agencies for
22 incorporating information relating to supply chain
23 risks and other relevant information into procure-
24 ment decisions for the protection of national security
25 and the public interest.

1 “(4) Developing standards and measures for
2 supply chain risk management, including assess-
3 ments, evaluations, mitigation, and response that
4 take into consideration national security and other
5 factors relevant to the public interest.

6 “(5) Consulting, as appropriate, with the pri-
7 vate sector and other nongovernmental stakeholders
8 on issues relating to the management of supply
9 chain risks posed by the acquisition of information
10 technology.

11 “(6) Determining whether the exclusion of a
12 source made by one executive agency should apply to
13 all executive agencies upon receiving a notification
14 under section 4713 and carrying out such other ac-
15 tions as are agreed upon by the Council.

16 “(b) AUTHORITY TO REQUEST INFORMATION.—The
17 Council may request such information from executive
18 agencies as is necessary for the Council to carry out its
19 functions under subsection (a).

20 “(c) PROGRAM OFFICE.—The Council may establish
21 a program office to assist the Council in carrying out its
22 functions under subsection (a).

23 “(d) RELATIONSHIP TO OTHER COUNCILS.—The
24 Council shall consult and coordinate with other relevant
25 councils to the maximum extent practicable.

1 “(e) **RULE OF CONSTRUCTION.**—Nothing in this sec-
2 tion shall limit the authority of the Office of Federal Pro-
3 curement Policy to carry out the responsibilities of that
4 Office under any other provision of law.

5 **“§ 1324. Strategic plan**

6 “(a) **IN GENERAL.**—Not later than 180 days after
7 the date of the enactment of the Federal Acquisition Sup-
8 ply Chain Security Act of 2018, the Council shall develop
9 a strategic plan for addressing supply chain risks posed
10 by the acquisition of information technology and for man-
11 aging such risks that includes—

12 “(1) the criteria and processes required under
13 section 1323(a)(1), including a threshold and re-
14 quirements for sharing relevant information about
15 such risks with all executive agencies;

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

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

21 “(4) recommendations for any legislative, regu-
22 latory, or other policy changes to improve efforts to
23 address such risks;

1 “(5) an evaluation of the effect of implementing
2 new policies or procedures on existing contracts and
3 the procurement process;

4 “(6) a plan for engaging with executive agen-
5 cies, the private sector, and other nongovernmental
6 stakeholders to address such risks; and

7 “(7) plans to strengthen the capacity of all ex-
8 ecutive agencies to conduct assessments of—

9 “(A) the supply chain risk posed by the ac-
10 quisition of information technology; and

11 “(B) compliance with the requirements of
12 this subchapter.

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

17 **“§ 1325. Annual report**

18 “Not later than December 31 of each year, the Chair-
19 person of the Council shall submit to the appropriate con-
20 gressional committees a report on the activities of the
21 Council during the preceding 12-month period.

22 **“§ 1326. Requirements for executive agencies**

23 “(a) IN GENERAL.—The head of each executive agen-
24 cy shall—

1 “(1) be responsible for conducting assessments
2 of the supply chain risks posed by the acquisition of
3 information technology by that agency; developing
4 mitigation and response requirements; and ensuring
5 ongoing management of such risks;

6 “(2) share relevant information with other execu-
7 tive agencies as determined appropriate by the Ad-
8 ministrator in a manner consistent with section
9 1323; and

10 “(3) ensure that all relevant information, in-
11 cluding classified information; with respect to acqui-
12 sitions of information technology that may pose a
13 supply chain risk; consistent with section
14 1323(a)(1); is incorporated into existing processes of
15 the agency for conducting assessments described in
16 paragraph (1) and ongoing management of acquisi-
17 tion programs; including any identification; inves-
18 tigation; mitigation; or remediation needs.

19 “(b) INTERAGENCY ACQUISITIONS.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2); in the case of an interagency acquisition;
22 subsection (a) shall be carried out by the head of the
23 executive agency the funds of which are obligated or
24 expended to conduct the acquisition.

1 “(2) ASSISTED ACQUISITIONS.—In an assisted
2 acquisition, the parties to the acquisition shall deter-
3 mine, as part of the interagency agreement gov-
4 erning the acquisition, which agency is responsible
5 for carrying out subsection (a).

6 “(3) DEFINITIONS.—In this subsection, the
7 terms ‘assisted acquisition’ and ‘interagency acquisi-
8 tion’ have the meanings given those terms in section
9 2.101 of title 48, Code of Federal Regulations (or
10 any corresponding similar regulation or ruling).

11 **“§ 1327. Termination**

12 “‘This subchapter shall terminate on the date that is
13 5 years after the date of the enactment of the Federal
14 Acquisition Supply Chain Security Act of 2018.’”.

15 “(b) CLERICAL AMENDMENT.—The table of sections
16 at the beginning of chapter 13 of such title is amended
17 by adding at the end the following new items:

 “SUBCHAPTER III—FEDERAL ACQUISITION SECURITY COUNCIL

 “Sec.

 “1321. Definitions.

 “1322. Establishment and membership.

 “1323. Functions.

 “1324. Strategic plan.

 “1325. Annual report.

 “1326. Requirements for executive agencies.

 “1327. Termination.”.

18 “(c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on the date that is 90 days
20 after the date of the enactment of this Act.

1 **SEC. 3. RISK ASSESSMENTS FOR INFORMATION TECH-**
2 **NOLOGY MADE AVAILABLE TO OTHER AGEN-**
3 **CIES.**

4 (a) **IN GENERAL.**—Not later than one year after the
5 date of the enactment of this Act, the head of any execu-
6 tive agency that makes information technology available
7 for procurement by other executive agencies shall—

8 (1) identify information technology products
9 made available to other agencies that pose the great-
10 est risk to national security or the public interest;

11 (2) complete a risk assessment of information
12 technology products identified under paragraph (1);

13 (3) in each case in which the head of the execu-
14 tive agency identifies a significant supply chain risk
15 posed by information technology—

16 (A) make the risk assessment with respect
17 to that information technology available to all
18 executive agencies through the Federal Acquisi-
19 tion Security Council established under sub-
20 chapter III of chapter 13 of title 41, United
21 States Code, as added by section 2; and

22 (B) develop a plan to mitigate that risk;
23 and

24 (4) develop a vetting process for conducting
25 supply chain risk assessments with respect to pro-

1 spective providers of information technology and
 2 make the process available to all executive agencies.

3 (b) ASSISTANCE.—The Secretary of Homeland Secu-
 4 rity may—

5 (1) assist executive agencies in conducting risk
 6 assessments described in subsection (a) and imple-
 7 menting mitigation requirements for information
 8 technology; and

9 (2) provide such additional guidance or tools as
 10 are necessary to support actions taken by executive
 11 agencies under subsection (a).

12 (c) DEFINITIONS.—In this section:

13 (1) EXECUTIVE AGENCY.—The term “executive
 14 agency” has the meaning given that term in section
 15 133 of title 41, United States Code.

16 (2) INFORMATION TECHNOLOGY.—The term
 17 “information technology” has the meaning given
 18 that term in section 11101 of title 40, United States
 19 Code.

20 (3) SUPPLY CHAIN RISK.—The term “supply
 21 chain risk” has the meaning given that term in sec-
 22 tion 4713 of title 41, United States Code, as added
 23 by section 4.

1 **SEC. 4. AUTHORITIES OF EXECUTIVE AGENCIES RELATING**
 2 **TO MITIGATING SUPPLY CHAIN RISKS IN THE**
 3 **PROCUREMENT OF INFORMATION TECH-**
 4 **NOLOGY.**

5 (a) **IN GENERAL.**—Chapter 47 of title 41, United
 6 States Code, is amended by adding at the end the fol-
 7 lowing new section:

8 **“§ 4713. Authorities relating to mitigating supply**
 9 **chain risks in the procurement of infor-**
 10 **mation technology**

11 **“(a) AUTHORITY.**—Subject to subsection (b), the
 12 head of an executive agency may—

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

15 **“(2)** limit, notwithstanding any other provision
 16 of law, in whole or in part, the disclosure of informa-
 17 tion relating to the basis for carrying out a covered
 18 procurement action.

19 **“(b) DETERMINATION AND NOTIFICATION.**—The
 20 head of an executive agency may exercise the authority
 21 provided in subsection (a) only after—

22 **“(1)** obtaining a joint recommendation by the
 23 senior procurement executive and chief information
 24 officer of the agency, or such other officials of the
 25 agency as the head of the agency considers appro-

1 appropriate, that there is a significant supply chain risk
2 in a covered procurement;

3 ~~“(2) making a determination in writing, in un-~~
4 ~~classified or classified form, that—~~

5 ~~“(A) use of the authority under subsection~~
6 ~~(a)(1) is necessary to protect national security~~
7 ~~or the public interest by reducing supply chain~~
8 ~~risk; and~~

9 ~~“(B) in a case where the head of the agen-~~
10 ~~cy plans to limit disclosure of information under~~
11 ~~subsection (a)(2), the risk to national security~~
12 ~~due to the disclosure of such information out-~~
13 ~~weighs the risk due to not disclosing such infor-~~
14 ~~mation; and~~

15 ~~“(3) providing a classified or unclassified notice~~
16 ~~of the determination made under paragraph (2) not~~
17 ~~later than 30 days after making that determination~~
18 ~~to the Federal Acquisition Security Council that in-~~
19 ~~cludes—~~

20 ~~“(A) a summary of the information re-~~
21 ~~quired for the purchase of property or services~~
22 ~~under this title and any other applicable law re-~~
23 ~~lating to procurement; and~~

24 ~~“(B) a summary of the basis for the deter-~~
25 ~~mination, including a discussion of less intru-~~

1 sive measures that were considered and why
2 such measures were not reasonably available to
3 reduce supply chain risk.

4 “(c) **LIMITATION ON DISCLOSURE.**—If the head of an
5 executive agency has exercised the authority provided in
6 subsection (a)(2) to limit disclosure of information—

7 “(1) no procurement action undertaken by the
8 head of the agency under such authority shall be
9 subject to review in a bid protest before the Govern-
10 ment Accountability Office or in any Federal court;
11 and

12 “(2) the head of the agency shall—

13 “(A) notify appropriate parties of a cov-
14 ered procurement action and the basis for the
15 action only to the extent necessary to effectuate
16 the covered procurement action;

17 “(B) notify and follow notification proto-
18 cols as directed by the Federal Acquisition Se-
19 curity Council; and

20 “(C) ensure the confidentiality of any such
21 notifications.

22 “(d) **REGULATIONS.**—The Federal Acquisition Regu-
23 latory Council shall prescribe such regulations as may be
24 necessary to carry out this section.

1 “(e) **REPORTS REQUIRED.**—Not less frequently than
2 annually, the head of each executive agency shall submit
3 to the appropriate congressional committees a report sum-
4 marizing the actions taken by the agency under this sec-
5 tion during the preceding 12-month period.

6 “(f) **TERMINATION.**—The authority provided under
7 subsection (a) shall terminate on the date that is 5 years
8 after the date of the enactment of the Federal Acquisition
9 Supply Chain Security Act of 2018.

10 “(g) **DEFINITIONS.**—In this section:

11 “(1) **APPROPRIATE CONGRESSIONAL COMMIT-**
12 **TEES.**—The term ‘appropriate congressional com-

13 mittees’ means—
14 “(A) the Committee on Homeland Security
15 and Governmental Affairs, the Committee on
16 the Judiciary, the Committee on Appropria-
17 tions, the Select Committee on Intelligence, and
18 the majority and minority leader of the Senate;
19 and

20 “(B) the Committee on Oversight and Gov-
21 ernment Reform, the Committee on the Judici-
22 ary, the Committee on Appropriations, the
23 Committee on Homeland Security, the Perma-
24 nent Select Committee on Intelligence, and the

1 Speaker and minority leader of the House of
2 Representatives.

3 ~~“(2) COVERED PROCUREMENT.—~~The term ‘cov-
4 ered procurement’ means—

5 “(A) a source selection for information
6 technology involving either a performance speci-
7 fication, as provided in subsection (a)(3)(B) of
8 section 3306 of this title, or an evaluation fac-
9 tor, as provided in subsection (b)(1)(A) of that
10 section, relating to a supply chain risk;

11 “(B) the consideration of proposals for and
12 issuance of a task or delivery order for informa-
13 tion technology, as provided in section
14 4106(d)(3) of this title, where the task or deliv-
15 ery order contract includes a contract clause es-
16 tablishing a requirement relating to a supply
17 chain risk;

18 “(C) any contract action involving a con-
19 tract for information technology where the con-
20 tract includes a clause establishing require-
21 ments relating to a supply chain risk; or

22 “(D) any other procurement in a category
23 of procurements determined appropriate by the
24 Federal Acquisition Regulatory Council, with

1 the advice of the Federal Acquisition Security
2 Council.

3 ~~“(3) COVERED PROCUREMENT ACTION.—~~The
4 term ‘covered procurement action’ means any of the
5 following actions, if the action takes place in the
6 course of conducting a covered procurement:

7 ~~“(A) The exclusion of a source that fails to~~
8 ~~meet qualification requirements established~~
9 ~~under section 3311 of this title for the purpose~~
10 ~~of reducing supply chain risk in the acquisition~~
11 ~~of information technology.~~

12 ~~“(B) The exclusion of a source that fails to~~
13 ~~achieve an acceptable rating with regard to an~~
14 ~~evaluation factor providing for the consideration~~
15 ~~of supply chain risk in the evaluation of pro-~~
16 ~~posals for the award of a contract or the~~
17 ~~issuance of a task or delivery order.~~

18 ~~“(C) The decision to withhold consent for~~
19 ~~a contractor to subcontract with a particular~~
20 ~~source or to direct a contractor to exclude a~~
21 ~~particular source from consideration for a sub-~~
22 ~~contract under the contract.~~

23 ~~“(4) INFORMATION TECHNOLOGY.—~~The term
24 ‘information technology’ has the meaning given that
25 term in section 11101 of title 40.

1 “(5) **SUPPLY CHAIN RISK.**—The term ‘supply
 2 chain risk’ means the risk that any person may sab-
 3 otage, maliciously introduce unwanted function, ex-
 4 tract data, or otherwise manipulate the design, in-
 5 tegrity, manufacturing, production, distribution, in-
 6 stallation, operation, maintenance, disposition, or re-
 7 tirement of information technology so as to surveil,
 8 deny, disrupt, or otherwise manipulate the function,
 9 use, or operation of the information technology.”.

10 (b) **CLERICAL AMENDMENT.**—The table of sections
 11 at the beginning of chapter 47 of such title is amended
 12 by adding at the end the following new item:

“4713. Authorities relating to mitigating supply chain risks in the procurement
 of information technology.”.

13 (c) **EFFECTIVE DATE.**—The amendments made by
 14 this section shall take effect on the date that is 180 days
 15 after the date of the enactment of this Act and shall apply
 16 to contracts that are awarded before, on, or after that
 17 date.

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “Federal Acquisition*
 20 *Supply Chain Security Act of 2018”.*

21 **SEC. 2. FEDERAL ACQUISITION SUPPLY CHAIN SECURITY.**

22 (a) *IN GENERAL.*—Chapter 13 of title 41, United
 23 States Code, is amended by adding at the end the following
 24 new subchapter:

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

3 “(A) *The Office of Management and Budget.*

4 “(B) *The General Services Administration.*

5 “(C) *The Department of Homeland Secu-*
6 *rity.*

7 “(D) *The Office of the Director of National*
8 *Intelligence, including the National Counterintel-*
9 *ligence and Security Center.*

10 “(E) *The Department of Justice, including*
11 *the Federal Bureau of Investigation.*

12 “(F) *The Department of Defense, including*
13 *the National Security Agency.*

14 “(G) *The Department of Commerce, includ-*
15 *ing the National Institute of Standards and*
16 *Technology.*

17 “(H) *Such other executive agencies as deter-*
18 *mined by the Chairperson of the Council.*

19 “(2) *LEAD REPRESENTATIVES.*—

20 “(A) *DESIGNATION.*—

21 “(i) *IN GENERAL.*—*Not later than 90*
22 *days after the date of the enactment of the*
23 *Federal Acquisition Supply Chain Security*
24 *Act of 2018, the head of each agency rep-*
25 *resented on the Council shall designate a*

1 *representative of that agency as the lead*
2 *representative of the agency on the Council.*

3 “(ii) *REQUIREMENTS.—The represent-*
4 *ative of an agency designated under clause*
5 *(i) shall have expertise in supply chain risk*
6 *management, acquisitions, or information*
7 *and communications technology.*

8 “(B) *FUNCTIONS.—The lead representative*
9 *of an agency designated under subparagraph (A)*
10 *shall ensure that appropriate personnel, includ-*
11 *ing leadership and subject matter experts of the*
12 *agency, are aware of the business of the Council.*

13 “(c) *CHAIRPERSON.—*

14 “(1) *DESIGNATION.—Not later than 90 days*
15 *after the date of the enactment of the Federal Acquisi-*
16 *tion Supply Chain Security Act of 2018, the Director*
17 *of the Office of Management and Budget shall des-*
18 *ignate a senior-level official from the Office of Man-*
19 *agement and Budget to serve as the Chairperson of*
20 *the Council.*

21 “(2) *FUNCTIONS.—The Chairperson shall per-*
22 *form functions that include—*

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

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

4 “(C) in consultation with the lead rep-
5 resentative of each agency represented on the
6 Council, developing a charter for the Council;
7 and

8 “(D) not later than 7 days after completion
9 of the charter, submitting the charter to the ap-
10 propriate congressional committees and leader-
11 ship.

12 “(d) MEETINGS.—The Council shall meet not later
13 than 180 days after the date of the enactment of the Federal
14 Acquisition Supply Chain Security Act of 2018 and not
15 less frequently than quarterly thereafter.

16 **“§ 1323. Functions and authorities**

17 “(a) IN GENERAL.—The Council shall perform func-
18 tions that include the following:

19 “(1) Identifying and recommending development
20 by the National Institute of Standards and Tech-
21 nology of supply chain risk management standards,
22 guidelines, and practices for executive agencies to use
23 when assessing and developing mitigation strategies
24 to address supply chain risks, particularly in the ac-

1 *quisition and use of covered articles under section*
2 *1326(a) of this title.*

3 *“(2) Identifying or developing criteria for shar-*
4 *ing information with respect to supply chain risk, in-*
5 *cluding information related to the exercise of authori-*
6 *ties provided under this section and sections 1326 and*
7 *4713 of this title. At a minimum, such criteria shall*
8 *address—*

9 *“(A) the content to be shared;*

10 *“(B) the circumstances under which sharing*
11 *is mandated or voluntary; and*

12 *“(C) the circumstances under which it is*
13 *appropriate for an executive agency to rely on*
14 *information made available through such shar-*
15 *ing in exercising the responsibilities and au-*
16 *thorities provided under this section and section*
17 *4713 of this title.*

18 *“(3) Identifying an appropriate executive agency*
19 *to—*

20 *“(A) accept information submitted by exec-*
21 *utive agencies based on the criteria established*
22 *under paragraph (2);*

23 *“(B) facilitate the sharing of information*
24 *received under subparagraph (A) to support sup-*
25 *ply chain risk analyses under section 1326 of*

1 *this title, recommendations under this section,*
2 *and covered procurement actions under section*
3 *4713 of this title;*

4 “(C) *share with the Council information re-*
5 *garding covered procurement actions by executive*
6 *agencies taken under section 4713 of this title;*
7 *and*

8 “(D) *inform the Council of orders issued*
9 *under this section.*

10 “(4) *Identifying, as appropriate, executive agen-*
11 *cies to provide—*

12 “(A) *shared services, such as support for*
13 *making risk assessments, validation of products*
14 *that may be suitable for acquisition, and mitiga-*
15 *tion activities; and*

16 “(B) *common contract solutions to support*
17 *supply chain risk management activities, such as*
18 *subscription services or machine-learning-en-*
19 *hanced analysis applications to support in-*
20 *formed decision making.*

21 “(5) *Identifying and issuing guidance on addi-*
22 *tional steps that may be necessary to address supply*
23 *chain risks arising in the course of executive agencies*
24 *providing shared services, common contract solutions,*
25 *acquisitions vehicles, or assisted acquisitions.*

1 “(6) *Engaging, as appropriate, with the private*
2 *sector and other nongovernmental stakeholders on*
3 *issues relating to the management of supply chain*
4 *risks posed by the acquisition of covered articles.*

5 “(7) *Carrying out such other actions, as deter-*
6 *mined by the Council, that are necessary to reduce the*
7 *supply chain risks posed by acquisitions and use of*
8 *covered articles.*

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

14 “(c) *AUTHORITY FOR EXCLUSION OR REMOVAL OR-*
15 *DERS.—*

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

19 “(A) *recommending orders applicable to ex-*
20 *ecutive agencies requiring the exclusion of*
21 *sources or covered articles from executive agency*
22 *procurement actions (in this section referred to*
23 *as ‘exclusion orders’);*

24 “(B) *recommending orders applicable to ex-*
25 *ecutive agencies requiring the removal of covered*

1 *articles from executive agency information sys-*
2 *tems (in this section referred to as ‘removal or-*
3 *ders’);*

4 *“(C) requesting and approving exceptions to*
5 *an issued exclusion or removal order when war-*
6 *ranted by circumstances, including alternative*
7 *mitigation actions; and*

8 *“(D) ensuring that recommended orders do*
9 *not conflict with standards and guidelines issued*
10 *under section 11331 of title 40 and that the*
11 *Council consults with the Director of the Na-*
12 *tional Institute of Standards and Technology re-*
13 *garding any recommended orders that would im-*
14 *plement standards and guidelines developed by*
15 *the National Institute of Standards and Tech-*
16 *nology.*

17 *“(2) RECOMMENDATIONS.—The Council shall use*
18 *the criteria established under paragraph (1), informa-*
19 *tion made available under subsection (a)(3), and any*
20 *other information the Council determines appropriate*
21 *to issue recommendations, for application to executive*
22 *agencies or any subset thereof, regarding the exclusion*
23 *of sources or covered articles from any executive agen-*
24 *cy procurement action, including source selection and*
25 *consent for a contractor to subcontract, or the removal*

1 of covered articles from executive agency information
2 systems. Such recommendations shall include—

3 “(A) information necessary to positively
4 identify the sources or covered articles rec-
5 ommended for exclusion or removal;

6 “(B) information regarding the scope and
7 applicability of the recommended exclusion or re-
8 moval order;

9 “(C) a summary of any risk assessment re-
10 viewed or conducted in support of the rec-
11 ommended exclusion or removal order;

12 “(D) a summary of the basis for the rec-
13 ommendation, including a discussion of less in-
14 trusive measures that were considered and why
15 such measures were not reasonably available to
16 reduce supply chain risk;

17 “(E) a description of the actions necessary
18 to implement the recommended exclusion or re-
19 moval order; and

20 “(F) where practicable, in the Council’s sole
21 and unreviewable discretion, a description of
22 mitigation steps that could be taken by the
23 source that may result in the Council rescinding
24 a recommendation.

1 “(3) *NOTICE OF RECOMMENDATION AND RE-*
2 *VIEW.—A notice of the Council’s recommendation*
3 *under paragraph (2) shall be issued to any source*
4 *named in the recommendation advising—*

5 “(A) *that a recommendation has been made;*

6 “(B) *of the criteria the Council relied upon*
7 *under paragraph (1) and, to the extent con-*
8 *sistent with national security and law enforce-*
9 *ment interests, of information that forms the*
10 *basis for the recommendation;*

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

14 “(D) *of the procedures governing the review*
15 *and possible issuance of an exclusion or removal*
16 *order pursuant to paragraph (4); and*

17 “(E) *where practicable, in the Council’s sole*
18 *and unreviewable discretion, a description of*
19 *mitigation steps that could be taken by the*
20 *source that may result in the Council rescinding*
21 *the recommendation.*

22 “(4) *EXCLUSION AND REMOVAL ORDERS.—*

23 “(A) *ORDER ISSUANCE.—Recommendations*
24 *of the Council under paragraph (2), together*
25 *with any information submitted by a source*

1 *under paragraph (3) related to such a rec-*
2 *ommendation, shall be reviewed by the following*
3 *officials, who in their sole and unreviewable dis-*
4 *cretion may issue exclusion and removal orders*
5 *based upon such recommendations:*

6 *“(i) The Secretary of Homeland Secu-*
7 *rity, for exclusion and removal orders ap-*
8 *plicable to civilian agencies, to the extent*
9 *not covered by clause (ii) or (iii).*

10 *“(ii) The Secretary of Defense, for ex-*
11 *clusion and removal orders applicable to the*
12 *Department of Defense and national secu-*
13 *rity systems other than sensitive compart-*
14 *mented information systems.*

15 *“(iii) The Director of National Intel-*
16 *ligence, for exclusion and removal orders*
17 *applicable to the intelligence community*
18 *and sensitive compartmented information*
19 *systems, to the extent not covered by clause*
20 *(ii).*

21 *“(B) DELEGATION.—The officials identified*
22 *in subparagraph (A) may not delegate any au-*
23 *thority under this subparagraph to an official*
24 *below the level one level below the Deputy Sec-*
25 *retary or Principal Deputy Director, except that*

1 *the Secretary of Defense may delegate authority*
2 *for removal orders to the Commander of the*
3 *United States Cyber Command, who may not re-*
4 *delegate such authority to an official below the*
5 *level one level below the Deputy Commander.*

6 “(C) *FACILITATION OF EXCLUSION OR-*
7 *ORDERS.—If officials identified under this para-*
8 *graph from the Department of Homeland Secu-*
9 *rity, the Department of Defense, and the Office*
10 *of the Director of National Intelligence issue or-*
11 *ders collectively resulting in a governmentwide*
12 *exclusion, the Administrator for General Services*
13 *and officials at other executive agencies respon-*
14 *sible for management of the Federal Supply*
15 *Schedules, governmentwide acquisition contracts*
16 *and multi-agency contracts shall help facilitate*
17 *implementation of such orders by removing the*
18 *covered articles or sources identified in the orders*
19 *from such contracts.*

20 “(D) *REVIEW OF EXCLUSION AND REMOVAL*
21 *ORDERS.—The officials identified under this*
22 *paragraph shall review all exclusion and re-*
23 *moval orders issued under subparagraph (A) not*
24 *less frequently than annually pursuant to proce-*
25 *dures established by the Council.*

1 “(E) *RESCISSION.*—Orders issued pursuant
2 to subparagraph (A) may be rescinded by an au-
3 thorized official from the relevant issuing agency.

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

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

10 “(i) the exclusion or removal order;
11 and

12 “(ii) to the extent consistent with na-
13 tional security and law enforcement inter-
14 ests, information that forms the basis for the
15 order;

16 “(B) provide classified or unclassified notice
17 of the exclusion or removal order to the appro-
18 priate congressional committees and leadership;
19 and

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

22 “(6) *COMPLIANCE.*—Executive agencies shall
23 comply with exclusion and removal orders issued pur-
24 suant to paragraph (4).

1 “(d) *AUTHORITY TO REQUEST INFORMATION.*—The
2 *Council may request such information from executive agen-*
3 *cies as is necessary for the Council to carry out its func-*
4 *tions.*

5 “(e) *RELATIONSHIP TO OTHER COUNCILS.*—The
6 *Council shall consult and coordinate, as appropriate, with*
7 *other relevant councils, including the Chief Information Of-*
8 *ficers Council, the Chief Acquisition Officers Council, and*
9 *the Federal Acquisition Regulatory Council, with respect to*
10 *supply chain risks posed by the acquisition and use of cov-*
11 *ered articles.*

12 “(f) *RULE OF CONSTRUCTION.*—Nothing in this sec-
13 *tion shall limit the authority of the Office of Federal Pro-*
14 *curement Policy to carry out the responsibilities of that Of-*
15 *fice under any other provision of law.*

16 “**§ 1324. Strategic plan**

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

23 “(1) *the criteria and processes required under*
24 *section 1323(a) of this title, including a threshold and*

1 *requirements for sharing relevant information about*
2 *such risks with all executive agencies;*

3 *“(2) an identification of existing authorities for*
4 *addressing such risks;*

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

8 *“(4) recommendations for any legislative, regu-*
9 *latory, or other policy changes to improve efforts to*
10 *address such risks;*

11 *“(5) an evaluation of the effect of implementing*
12 *new policies or procedures on existing contracts and*
13 *the procurement process;*

14 *“(6) a plan for engaging with executive agencies,*
15 *the private sector, and other nongovernmental stake-*
16 *holders to address such risks;*

17 *“(7) a plan for identification, assessment, miti-*
18 *gation, and vetting of supply chain risks from exist-*
19 *ing and prospective information and communications*
20 *technology made available by executive agencies to*
21 *other executive agencies through common contract so-*
22 *lutions, shared services, acquisition vehicles, or other*
23 *assisted acquisition services; and*

24 *“(8) plans to strengthen the capacity of all exec-*
25 *utive agencies to conduct assessments of—*

1 “(A) the supply chain risk posed by the ac-
2 quisition of covered articles; and

3 “(B) compliance with the requirements of
4 this subchapter.

5 “(b) *SUBMISSION TO CONGRESS.*—Not later than 7
6 calendar days after completion of the strategic plan re-
7 quired by subsection (a), the Chairperson of the Council
8 shall submit the plan to the appropriate congressional com-
9 mittees and leadership.

10 **“§ 1325. Annual report**

11 “Not later than December 31 of each year, the Chair-
12 person of the Council shall submit to the appropriate con-
13 gressional committees and leadership a report on the activi-
14 ties of the Council during the preceding 12-month period.

15 **“§ 1326. Requirements for executive agencies**

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

18 “(1) assessing the supply chain risk posed by the
19 acquisition and use of covered articles and avoiding,
20 mitigating, accepting, or transferring that risk, as
21 appropriate and consistent with the standards, guide-
22 lines, and practices identified by the Council under
23 section 1323(a)(1); and

24 “(2) prioritizing supply chain risk assessments
25 conducted under paragraph (1) based on the criti-

1 *cality of the mission, system, component, service, or*
2 *asset.*

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

5 “(1) *developing an overall supply chain risk*
6 *management strategy and implementation plan and*
7 *policies and processes to guide and govern supply*
8 *chain risk management activities;*

9 “(2) *integrating supply chain risk management*
10 *practices throughout the life cycle of the system, com-*
11 *ponent, service, or asset;*

12 “(3) *limiting, avoiding, mitigating, accepting, or*
13 *transferring any identified risk;*

14 “(4) *sharing relevant information with other ex-*
15 *ecutive agencies as determined appropriate by the*
16 *Council in a manner consistent with section 1323(a)*
17 *of this title;*

18 “(5) *reporting on progress and effectiveness of*
19 *the agency’s supply chain risk management consistent*
20 *with guidance issued by the Office of Management*
21 *and Budget and the Council; and*

22 “(6) *ensuring that all relevant information, in-*
23 *cluding classified information, with respect to acqui-*
24 *sitions of covered articles that may pose a supply*
25 *chain risk, consistent with section 1323(a) of this*

1 *title, is incorporated into existing processes of the*
2 *agency for conducting assessments described in sub-*
3 *section (a) and ongoing management of acquisition*
4 *programs, including any identification, investigation,*
5 *mitigation, or remediation needs.*

6 “(c) *INTERAGENCY ACQUISITIONS.*—

7 “(1) *IN GENERAL.*—*Except as provided in para-*
8 *graph (2), in the case of an interagency acquisition,*
9 *subsection (a) shall be carried out by the head of the*
10 *executive agency whose funds are being used to pro-*
11 *cure the covered article.*

12 “(2) *ASSISTED ACQUISITIONS.*—*In an assisted*
13 *acquisition, the parties to the acquisition shall deter-*
14 *mine, as part of the interagency agreement governing*
15 *the acquisition, which agency is responsible for car-*
16 *rying out subsection (a).*

17 “(3) *DEFINITIONS.*—*In this subsection, the terms*
18 *‘assisted acquisition’ and ‘interagency acquisition’*
19 *have the meanings given those terms in section 2.101*
20 *of title 48, Code of Federal Regulations (or any cor-*
21 *responding similar regulation or ruling).*

22 “(d) *ASSISTANCE.*—*The Secretary of Homeland Secu-*
23 *urity may—*

24 “(1) *assist executive agencies in conducting risk*
25 *assessments described in subsection (a) and imple-*

1 *menting mitigation requirements for information and*
2 *communications technology; and*

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

6 **“§ 1327. Judicial review procedures**

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

15 *“(b) PETITIONS.—*

16 *“(1) IN GENERAL.—Not later than 60 days after*
17 *a party is notified of an exclusion or removal order*
18 *under section 1323(c)(5) of this title or a covered pro-*
19 *urement action under section 4713 of this title, the*
20 *party may file a petition for judicial review in the*
21 *United States Court of Appeals for the District of Co-*
22 *lumbia Circuit claiming that the issuance of the ex-*
23 *clusion or removal order or covered procurement ac-*
24 *tion is unlawful.*

1 “(2) *STANDARD OF REVIEW.*—*The Court shall*
2 *hold unlawful a covered action taken under sections*
3 *1323 or 4713 of this title, in response to a petition*
4 *that the court finds to be—*

5 “(A) *arbitrary, capricious, an abuse of dis-*
6 *cretion, or otherwise not in accordance with law;*

7 “(B) *contrary to constitutional right,*
8 *power, privilege, or immunity;*

9 “(C) *in excess of statutory jurisdiction, au-*
10 *thority, or limitation, or short of statutory right;*

11 “(D) *lacking substantial support in the ad-*
12 *ministrative record taken as a whole or in classi-*
13 *fied information submitted to the court under*
14 *paragraph (3); or*

15 “(E) *not in accord with procedures required*
16 *by law.*

17 “(3) *EXCLUSIVE JURISDICTION.*—*The United*
18 *States Court of Appeals for the District of Columbia*
19 *Circuit shall have exclusive jurisdiction over claims*
20 *arising under sections 1323(c)(4) or 4713 of this title*
21 *against the United States, any United States depart-*
22 *ment or agency, or any component or official of any*
23 *such department or agency, subject to review by the*
24 *Supreme Court of the United States under section*
25 *1254 of title 28.*

1 “(4) *ADMINISTRATIVE RECORD AND PROCE-*
2 *DURES.—*

3 “(A) *IN GENERAL.—The procedures de-*
4 *scribed in this paragraph shall apply to the re-*
5 *view of a petition under this section.*

6 “(B) *ADMINISTRATIVE RECORD.—*

7 “(i) *FILING OF RECORD.—The United*
8 *States shall file with the court an adminis-*
9 *trative record, which shall consist of the in-*
10 *formation that the appropriate official re-*
11 *lied upon in issuing an exclusion or re-*
12 *moval order under section 1323(c)(4) or a*
13 *covered procurement action under section*
14 *4713 of this title.*

15 “(ii) *UNCLASSIFIED, NONPRIVILEGED*
16 *INFORMATION.—All unclassified informa-*
17 *tion contained in the administrative record*
18 *that is not otherwise privileged or subject to*
19 *statutory protections shall be provided to*
20 *the petitioner with appropriate protections*
21 *for any privileged or confidential trade se-*
22 *crets and commercial or financial informa-*
23 *tion.*

24 “(iii) *IN CAMERA AND EX PARTE.—The*
25 *following information may be included in*

1 *the administrative record and shall be sub-*
2 *mitted only to the court ex parte and in*
3 *camera:*

4 “(I) *Classified information.*

5 “(II) *Sensitive security informa-*
6 *tion, as defined by section 1520.5 of*
7 *title 49, Code of Federal Regulations.*

8 “(III) *Privileged law enforcement*
9 *information.*

10 “(IV) *Information obtained or de-*
11 *rived from any activity authorized*
12 *under the Foreign Intelligence Surveil-*
13 *lance Act of 1978 (50 U.S.C. 1801 et*
14 *seq.), except that, with respect to such*
15 *information, subsections (c), (e), (f),*
16 *(g), and (h) of section 106 (50 U.S.C.*
17 *1806), subsections (d), (f), (g), (h), and*
18 *(i) of section 305 (50 U.S.C. 1825),*
19 *subsection (c), (e), (f), (g), and (h) of*
20 *section 405 (50 U.S.C. 1845), and sec-*
21 *tion 706 (50 U.S.C. 1881e) of that Act*
22 *shall not apply.*

23 “(V) *Information subject to privi-*
24 *lege or protections under any other*
25 *provision of law.*

1 “(iv) *UNDER SEAL.*—Any information
2 that is part of the administrative record
3 filed *ex parte* and *in camera* under clause
4 (iii), or cited by the court in any decision,
5 shall be treated by the court consistent with
6 the provisions of this subparagraph and
7 shall remain under seal and preserved in
8 the records of the court to be made available
9 consistent with the above provisions in the
10 event of further proceedings. In no event
11 shall such information be released to the pe-
12 titioner or as part of the public record.

13 “(v) *RETURN.*—After the expiration of
14 the time to seek further review, or the con-
15 clusion of further proceedings, the court
16 shall return the administrative record, in-
17 cluding any and all copies, to the United
18 States.

19 “(C) *EXCLUSIVE REMEDY.*—A determina-
20 tion by the court under this subsection shall be
21 the exclusive judicial remedy for any claim de-
22 scribed in this section against the United States,
23 any United States department or agency, or any
24 component or official of any such department or
25 agency.

1 “(D) *RULE OF CONSTRUCTION.*—*Nothing in*
 2 *this section shall be construed as limiting, super-*
 3 *seding, or preventing the invocation of, any*
 4 *privileges or defenses that are otherwise available*
 5 *at law or in equity to protect against the disclo-*
 6 *sure of information.*

7 “(c) *DEFINITION.*—*In this section, the term ‘classified*
 8 *information’—*

9 “(1) *has the meaning given that term in section*
 10 *1(a) of the Classified Information Procedures Act (18*
 11 *U.S.C. App.); and*

12 “(2) *includes—*

13 “(A) *any information or material that has*
 14 *been determined by the United States Govern-*
 15 *ment pursuant to an Executive order, statute, or*
 16 *regulation to require protection against unau-*
 17 *thorized disclosure for reasons of national secu-*
 18 *rity; and*

19 “(B) *any restricted data, as defined in sec-*
 20 *tion 11 of the Atomic Energy Act of 1954 (42*
 21 *U.S.C. 2014).*

22 **“§ 1328. Termination**

23 *“This subchapter shall terminate on the date that is*
 24 *5 years after the date of the enactment of the Federal Acqui-*
 25 *sition Supply Chain Security Act of 2018.”.*

1 (b) *CLERICAL AMENDMENT.*—*The table of sections at*
 2 *the beginning of chapter 13 of such title is amended by add-*
 3 *ing at the end the following new items:*

“SUBCHAPTER III—FEDERAL ACQUISITION SUPPLY CHAIN SECURITY

“Sec.

“1321. *Definitions.*

“1322. *Federal Acquisition Security Council establishment and membership.*

“1323. *Functions and authorities.*

“1324. *Strategic plan.*

“1325. *Annual report.*

“1326. *Requirements for executive agencies.*

“1327. *Judicial review procedures.*

“1328. *Termination.*”.

4 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 5 *section shall take effect on the date that is 90 days after*
 6 *the date of the enactment of this Act and shall apply to*
 7 *contracts that are awarded before, on, or after that date.*

8 (d) *IMPLEMENTATION.*—

9 (1) *INTERIM FINAL RULE.*—*Not later than one*
 10 *year after the date of the enactment of this Act, the*
 11 *Federal Acquisition Security Council shall prescribe*
 12 *an interim final rule to implement subchapter III of*
 13 *chapter 13 of title 41, United States Code, as added*
 14 *by subsection (a).*

15 (2) *FINAL RULE.*—*Not later than one year after*
 16 *prescribing the interim final rule under paragraph*
 17 *(1) and considering public comments with respect to*
 18 *such interim final rule, the Council shall prescribe a*
 19 *final rule to implement subchapter III of chapter 13*

1 of title 41, United States Code, as added by subsection
2 (a).

3 (3) *FAILURE TO ACT.*—

4 (A) *IN GENERAL.*—If the Council does not
5 issue a final rule in accordance with paragraph
6 (2) on or before the last day of the one-year pe-
7 riod referred to in that paragraph, the Council
8 shall submit to the appropriate congressional
9 committees and leadership, not later than 10
10 days after such last day and every 90 days there-
11 after until the final rule is issued, a report ex-
12 plaining why the final rule was not timely
13 issued and providing an estimate of the earliest
14 date on which the final rule will be issued.

15 (B) *APPROPRIATE CONGRESSIONAL COMMIT-*
16 *TEES AND LEADERSHIP DEFINED.*—In this para-
17 graph, the term “appropriate congressional com-
18 mittees and leadership” has the meaning given
19 that term in section 1321 of title 41, United
20 States Code, as added by subsection (a).

1 **SEC. 3. AUTHORITIES OF EXECUTIVE AGENCIES RELATING**
2 **TO MITIGATING SUPPLY CHAIN RISKS IN THE**
3 **PROCUREMENT OF COVERED ARTICLES.**

4 (a) *IN GENERAL.*—Chapter 47 of title 41, United
5 States Code, is amended by adding at the end the following
6 new section:

7 **“§4713. Authorities relating to mitigating supply**
8 **chain risks in the procurement of covered**
9 **articles**

10 “(a) *AUTHORITY.*—Subject to subsection (b), the head
11 of an executive agency may—

12 “(1) carry out a covered procurement action;
13 and

14 “(2) limit, notwithstanding any other provision
15 of law, in whole or in part, the disclosure of informa-
16 tion relating to the basis for carrying out a covered
17 procurement action.

18 “(b) *DETERMINATION AND NOTIFICATION.*—Except as
19 authorized by subsection (c) to address an urgent national
20 security interest, the head of an executive agency may exer-
21 cise the authority provided in subsection (a) only after—

22 “(1) obtaining a joint recommendation, in un-
23 classified or classified form, from the chief acquisition
24 officer and the chief information officer of the agency,
25 or officials performing similar functions in the case
26 of executive agencies that do not have such officials,

1 *which includes a review of any risk assessment made*
2 *available by the executive agency identified under sec-*
3 *tion 1323(a)(3) of this title, that there is a significant*
4 *supply chain risk in a covered procurement;*

5 “(2) *providing notice of the joint recommenda-*
6 *tion described in paragraph (1) to any source named*
7 *in the joint recommendation advising—*

8 “(A) *that a recommendation is being con-*
9 *sidered or has been obtained;*

10 “(B) *to the extent consistent with the na-*
11 *tional security and law enforcement interests, of*
12 *information that forms the basis for the rec-*
13 *ommendation;*

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

18 “(D) *of the procedures governing the consid-*
19 *eration of the submission and the possible exer-*
20 *cise of the authority provided in subsection (a);*

21 “(3) *making a determination in writing, in un-*
22 *classified or classified form, after considering any in-*
23 *formation submitted by a source under paragraph (2)*
24 *and in consultation with the chief information secu-*
25 *rity officer of the agency, that—*

1 “(A) use of the authority under subsection
2 (a)(1) is necessary to protect national security
3 by reducing supply chain risk;

4 “(B) less intrusive measures are not reason-
5 ably available to reduce such supply chain risk;

6 “(C) a decision to limit disclosure of infor-
7 mation under subsection (a)(2) is necessary to
8 protect an urgent national security interest; and

9 “(D) the use of such authorities will apply
10 to a single covered procurement or a class of cov-
11 ered procurements, and otherwise specifies the
12 scope of the determination; and

13 “(4) providing a classified or unclassified notice
14 of the determination made under paragraph (3) to the
15 appropriate congressional committees and leadership
16 that includes—

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

19 “(B) a summary of any risk assessment re-
20 viewed in support of the joint recommendation
21 required by paragraph (1); and

22 “(C) a summary of the basis for the deter-
23 mination, including a discussion of less intrusive
24 measures that were considered and why such

1 *measures were not reasonably available to reduce*
2 *supply chain risk.*

3 “(c) *PROCEDURES TO ADDRESS URGENT NATIONAL*
4 *SECURITY INTERESTS.—In any case in which the head of*
5 *an executive agency determines that an urgent national se-*
6 *curity interest requires the immediate exercise of the au-*
7 *thority provided in subsection (a), the head of the agency—*

8 “(1) *may, to the extent necessary to address such*
9 *national security interest, and subject to the condi-*
10 *tions in paragraph (2)—*

11 “(A) *temporarily delay the notice required*
12 *by subsection (b)(2);*

13 “(B) *make the determination required by*
14 *subsection (b)(3), regardless of whether the notice*
15 *required by subsection (b)(2) has been provided*
16 *or whether the notified source has submitted any*
17 *information in response to such notice;*

18 “(C) *temporarily delay the notice required*
19 *by subsection (b)(4); and*

20 “(D) *exercise the authority provided in sub-*
21 *section (a) in accordance with such determina-*
22 *tion within 60 calendar days after the day the*
23 *determination is made; and*

24 “(2) *shall take actions necessary to comply with*
25 *all requirements of subsection (b) as soon as prac-*

1 *licable after addressing the urgent national security*
2 *interest, including—*

3 *“(A) providing the notice required by sub-*
4 *section (b)(2);*

5 *“(B) promptly considering any information*
6 *submitted by the source in response to such no-*
7 *tice, and making any appropriate modifications*
8 *to the determination based on such information;*

9 *“(C) providing the notice required by sub-*
10 *section (b)(4), including a description of the ur-*
11 *gent national security interest, and any modi-*
12 *fications to the determination made in accord-*
13 *ance with subparagraph (B); and*

14 *“(D) providing notice to the appropriate*
15 *congressional committees and leadership within*
16 *7 calendar days of the covered procurement ac-*
17 *tions taken under this section.*

18 *“(d) DELEGATION.—The head of an executive agency*
19 *may not delegate the authority provided in subsection (a)*
20 *or the responsibility identified in subsection (f) to an offi-*
21 *cial below the level one level below the Deputy Secretary*
22 *or Principal Deputy Director.*

23 *“(e) LIMITATION ON DISCLOSURE.—If the head of an*
24 *executive agency has exercised the authority provided in*
25 *subsection (a)(2) to limit disclosure of information, the*

1 *agency head or a designee identified by the agency head*
2 *shall—*

3 “(1) *provide to the executive agency identified by*
4 *the Council under paragraph (3) of section 1323(a) of*
5 *this title information identified by the criteria under*
6 *paragraph (2) of that section, in a manner and to the*
7 *extent consistent with the requirements of national se-*
8 *curity and law enforcement interests; and*

9 “(2) *take steps to maintain the confidentiality of*
10 *any such notifications.*

11 “(f) *ANNUAL REVIEW OF DETERMINATIONS.—The*
12 *head of an executive agency shall conduct an annual review*
13 *of all determinations made by such head under subsection*
14 *(b) and promptly amend any covered procurement action*
15 *as appropriate.*

16 “(g) *REGULATIONS.—The Federal Acquisition Regu-*
17 *latory Council shall prescribe such regulations as may be*
18 *necessary to carry out this section.*

19 “(h) *REPORTS REQUIRED.—Not less frequently than*
20 *annually, the head of each executive agency that exercised*
21 *the authority provided in subsection (a) or (c) during the*
22 *preceding 12-month period shall submit to the appropriate*
23 *congressional committees and leadership a report summa-*
24 *rizing the actions taken by the agency under this section*
25 *during that 12-month period.*

1 “(i) *APPLICABILITY.*—*Notwithstanding section*
2 *3101(c)(1)(A) of this title, this section applies to the De-*
3 *partment of Defense, the Coast Guard, and the National*
4 *Aeronautics and Space Administration.*

5 “(j) *TERMINATION.*—*The authority provided under*
6 *subsection (a) shall terminate on the date that is 5 years*
7 *after the date of the enactment of the Federal Acquisition*
8 *Supply Chain Security Act of 2018.*

9 “(k) *DEFINITIONS.*—*In this section:*

10 “(1) *APPROPRIATE CONGRESSIONAL COMMITTEES*
11 *AND LEADERSHIP.*—*The term ‘appropriate congres-*
12 *sional committees and leadership’ means—*

13 “(A) *the Committee on Homeland Security*
14 *and Governmental Affairs, the Committee on the*
15 *Judiciary, the Committee on Appropriations, the*
16 *Select Committee on Intelligence, and the major-*
17 *ity and minority leader of the Senate; and*

18 “(B) *the Committee on Oversight and Gov-*
19 *ernment Reform, the Committee on the Judici-*
20 *ary, the Committee on Appropriations, the Com-*
21 *mittee on Homeland Security, the Permanent*
22 *Select Committee on Intelligence, and the Speak-*
23 *er and minority leader of the House of Rep-*
24 *resentatives.*

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

3 “(A) *information technology, as defined in*
4 *section 11101 of title 40, including cloud com-*
5 *puting services of all types;*

6 “(B) *telecommunications equipment or tele-*
7 *communications service, as those terms are de-*
8 *fined in section 3 of the Communications Act of*
9 *1934 (47 U.S.C. 153);*

10 “(C) *the processing of information on a*
11 *Federal or non-Federal information system, sub-*
12 *ject to the requirements of the Controlled Unclas-*
13 *sified Information program; or*

14 “(D) *hardware, systems, devices, software,*
15 *or services that include embedded or incidental*
16 *information technology.*

17 “(3) *COVERED PROCUREMENT*.—The term ‘cov-
18 *ered procurement*’ means—

19 “(A) *a source selection for a covered article*
20 *involving either a performance specification, as*
21 *provided in subsection (a)(3)(B) of section 3306*
22 *of this title, or an evaluation factor, as provided*
23 *in subsection (b)(1)(A) of such section, relating*
24 *to a supply chain risk, or where supply chain*
25 *risk considerations are included in the agency’s*

1 *determination of whether a source is a respon-*
2 *sible source as defined in section 113 of this 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 this*
6 *title, where the task or delivery order contract*
7 *includes a contract clause establishing a require-*
8 *ment relating to a supply chain risk;*

9 “(C) *any contract action involving a con-*
10 *tract for a covered article where the contract in-*
11 *cludes a clause establishing requirements relating*
12 *to a supply chain risk; or*

13 “(D) *any other procurement in a category*
14 *of procurements determined appropriate by the*
15 *Federal Acquisition Regulatory Council, with the*
16 *advice of the Federal Acquisition Security Coun-*
17 *cil.*

18 “(4) *COVERED PROCUREMENT ACTION.—The*
19 *term ‘covered procurement action’ means any of the*
20 *following actions, if the 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*
24 *under section 3311 of this title for the purpose*

1 *of reducing supply chain risk in the acquisition*
2 *or use of covered articles.*

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 as defined in section 113 of*
11 *this title based on considerations of supply chain*
12 *risk.*

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

18 “(5) *INFORMATION AND COMMUNICATIONS TECH-*
19 *NOLOGY.—The term ‘information and communica-*
20 *tions technology’ means—*

21 “(A) *information technology, as defined in*
22 *section 11101 of title 40;*

23 “(B) *information systems, as defined in sec-*
24 *tion 3502 of title 44; and*

1 “(C) *telecommunications equipment and*
2 *telecommunications services, as those terms are*
3 *defined in section 3 of the Communications Act*
4 *of 1934 (47 U.S.C. 153).*”

5 “(6) *SUPPLY CHAIN RISK.—The term ‘supply*
6 *chain risk’ means the risk that any person may sabo-*
7 *tage, maliciously introduce unwanted function, ex-*
8 *tract data, or otherwise manipulate the design, integ-*
9 *egrity, manufacturing, production, distribution, instal-*
10 *lation, operation, maintenance, disposition, or retire-*
11 *ment of covered articles so as to surveil, deny, dis-*
12 *rupt, or otherwise manipulate the function, use, or*
13 *operation of the covered articles or information stored*
14 *or transmitted on the covered articles.”.*”

15 “(b) *CLERICAL AMENDMENT.—The table of sections at*
16 *the beginning of chapter 47 of such title is amended by add-*
17 *ing at the end the following new item:*

*“4713. Authorities relating to mitigating supply chain risks in the procurement
of covered articles.”.*

18 “(c) *EFFECTIVE DATE.—The amendments made by this*
19 *section shall take effect on the date that is 90 days after*
20 *the date of the enactment of this Act and shall apply to*
21 *contracts that are awarded before, on, or after that date.*”

1 **SEC. 4. FEDERAL INFORMATION SECURITY MODERNIZA-**
2 **TION ACT.**

3 (a) *IN GENERAL.*—Title 44, United States Code, is
4 amended—

5 (1) in section 3553(a)(5), by inserting “and sec-
6 tion 1326 of title 41” after “compliance with the re-
7 quirements of this subchapter”; and

8 (2) in section 3554(a)(1)(B)—

9 (A) by inserting “, subchapter III of chap-
10 ter 13 of title 41,” after “complying with the re-
11 quirements of this subchapter”;

12 (B) in clause (iv), by striking “; and” and
13 inserting a semicolon; and

14 (C) by adding at the end the following new
15 clause:

16 “(vi) responsibilities relating to assess-
17 ing and avoiding, mitigating, transferring,
18 or accepting supply chain risks under sec-
19 tion 1326 of title 41, and complying with
20 exclusion and removal orders issued under
21 section 1323 of such title; and”.

22 (b) *RULE OF CONSTRUCTION.*—Nothing in this Act
23 shall be construed to alter or impede any authority or re-
24 sponsibility under section 3553 of title 44, United States
25 Code.

1 **SEC. 5. EFFECTIVE DATE.**

2 *This Act shall take effect on the date that is 90 days*

3 *after the date of the enactment of this Act.*

Calendar No. 666

115TH CONGRESS
2^D SESSION

S. 3085

A BILL

To establish a Federal Acquisition Security Council and to provide executive agencies with authorities relating to mitigating supply chain risks in the procurement of information technology, and for other purposes.

NOVEMBER 26, 2018

Reported with an amendment