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(Original Signature of Member)

115TH CONGRESS  
2D SESSION

**H. R. 6430**

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.

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IN THE HOUSE OF REPRESENTATIVES

Mr. KING of New York introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**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 Home-  
5 land Security Supply Chain Act of 2018”.

1 **SEC. 2. DEPARTMENT OF HOMELAND SECURITY REQUIRE-**  
2 **MENTS FOR INFORMATION RELATING TO**  
3 **SUPPLY CHAIN RISK.**

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

7 **“SEC. 836. REQUIREMENTS FOR INFORMATION RELATING**  
8 **TO SUPPLY CHAIN RISK.**

9 “(a) AUTHORITY.—Subject to subsection (b), the  
10 Secretary may—

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

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

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

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

23 “(1) obtaining a joint recommendation, in un-  
24 classified or classified form, from the Chief Acquisi-  
25 tion Officer and the Chief Information Officer of  
26 Department, including a review of any risk assess-

1       ment made available by an appropriate person or en-  
2       tity, that there is a significant supply chain risk in  
3       a covered procurement;

4               “(2) notifying any source named in the joint  
5       recommendation described in paragraph (1) advis-  
6       ing—

7                       “(A) that a recommendation has been ob-  
8       tained;

9                       “(B) to the extent consistent with the na-  
10      tional security and law enforcement interests,  
11      the basis for such recommendation;

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

16                      “(D) of the procedures governing the con-  
17      sideration of such submission and the possible  
18      exercise of the authority provided in subsection  
19      (a);

20               “(3) notifying the relevant components of the  
21      Department that such risk assessment has dem-  
22      onstrated significant supply chain risk to a covered  
23      procurement; and

24               “(4) making a determination in writing, in un-  
25      classified or classified form, that after considering

1 any information submitted by a source under para-  
2 graph (2), and in consultation with the Chief Infor-  
3 mation Officer of the Department, that—

4 “(A) use of authority under subsection  
5 (a)(1) is necessary to protect national security  
6 by reducing supply chain risk;

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

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

12 “(D) the use of such authorities will apply  
13 to a single covered procurement or a class of  
14 covered procurements, and otherwise specifies  
15 the scope of such determination;

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

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

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

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

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

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

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

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

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

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

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

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

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

17                 “(A) providing the notice required by sub-  
18                 section (b)(2);

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

24                 “(C) providing the notice required by sub-  
25                 sections (b)(5) and (b)(6), including a descrip-

1           tion of such urgent national security, and any  
2           modifications to such determination made in ac-  
3           cordance with subparagraph (B).

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

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

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

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

21          “(h) DEFINITIONS.—In this section:

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

24                       “(A) Information technology, including  
25 cloud computing services of all types.

1 “(B) Telecommunications equipment.

2 “(C) Telecommunications services.

3 “(D) The processing of information on a  
4 Federal or non-federal information system, sub-  
5 ject to the requirements of the Controlled Un-  
6 classified Information program of the Depart-  
7 ment.

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

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

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

24 “(B) the consideration of proposals for and  
25 issuance of a task or delivery order for a cov-



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

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

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

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

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

24           “(B) The exclusion of a source that fails to  
25           achieve an acceptable rating with regard to an

1 evaluation factor providing for the consideration  
2 of supply chain risk in the evaluation of pro-  
3 posals for the award of a contract or the  
4 issuance of a task or delivery order.

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

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

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

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

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

23 “(7) SUPPLY CHAIN RISK.—The term ‘supply  
24 chain risk’ means the risk that a malicious actor  
25 may sabotage, maliciously introduce an unwanted

1 function, extract or modify data, or otherwise ma-  
2 nipulate the design, integrity, manufacturing, pro-  
3 duction, distribution, installation, operation, or  
4 maintenance of a covered article so as to surveil,  
5 deny, disrupt, or otherwise manipulate the function,  
6 use, or operation of the information technology or  
7 information stored or transmitted on the covered ar-  
8 ticles.

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

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

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

20 “(1) contracts awarded on or after such date;  
21 and

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

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

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

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