

116TH CONGRESS
1ST SESSION

H. R. 3320

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2019

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

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 2019”.

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 the
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;

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,
5 subject to the requirements of the Controlled
6 Unclassified Information program of the De-
7 partment.

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 3(52) of the Commu-
12 nications Act of 1934 (47 U.S.C. 153(52)).

13 “(9) TELECOMMUNICATIONS SERVICE.—The
14 term ‘telecommunications service’ has the meaning
15 given such term in section 3(53) of the Communica-
16 tions Act of 1934 (47 U.S.C. 153(53)).

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.”.

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