

## Union Calendar No.

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6430

[Report No. 115-]

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

JULY 18, 2018

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

SEPTEMBER --, 2018

Committed to the Committee of the Whole House on the State of the Union,  
and ordered to be printed

# **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”.

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

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

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

14 “(a) AUTHORITY.—Subject to subsection (b), the  
15 Secretary may—

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

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

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

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

1 tional security interest, the Secretary may exercise the au-  
2 thority provided in subsection (a) only after—

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

10 “(2) notifying any source named in the joint  
11 recommendation described in paragraph (1) advis-  
12 ing—

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

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

18 “(C) that, within 30 days after receipt of  
19 notice, such source may submit information and  
20 argument in opposition to such recommenda-  
21 tion; and

22 “(D) of the procedures governing the con-  
23 sideration of such submission and the possible  
24 exercise of the authority provided in subsection  
25 (a);

1           “(3) notifying the relevant components of the  
2 Department that such risk assessment has dem-  
3 onstrated significant supply chain risk to a covered  
4 procurement; and

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

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

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

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

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

22           “(5) providing to the Committee on Homeland  
23 Security of the House of Representatives and the  
24 Committee on Homeland Security and Governmental  
25 Affairs of the Senate a classified or unclassified no-

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

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

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

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

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

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

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

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

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

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

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

14           “(D) exercise the authority provided in  
15 subsection (a) in accordance with such deter-  
16 mination; and

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

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

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

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

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

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

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

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

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



1 “(h) DEFINITIONS.—In this section:

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

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

6 “(B) Telecommunications equipment.

7 “(C) Telecommunications services.

8 “(D) The processing of information on a  
9 Federal or non-Federal information system,  
10 subject to the requirements of the Controlled  
11 Unclassified Information program of the De-  
12 partment.

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

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

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

1 Department's determination of whether a  
2 source is a responsible source as defined in sec-  
3 tion 113 of such title;

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

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

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

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

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

1 Code, for the purpose of reducing supply chain  
2 risk in the acquisition or use of a covered arti-  
3 cle.

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

10 “(C) The determination that a source is  
11 not a responsible source based on consider-  
12 ations of supply chain risk.

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

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

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

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

4           “(7) SUPPLY CHAIN RISK.—The term ‘supply  
5           chain risk’ means the risk that a malicious actor  
6           may sabotage, maliciously introduce an unwanted  
7           function, extract or modify data, or otherwise ma-  
8           nipulate the design, integrity, manufacturing, pro-  
9           duction, distribution, installation, operation, or  
10          maintenance of a covered article so as to surveil,  
11          deny, disrupt, or otherwise manipulate the function,  
12          use, or operation of the information technology or  
13          information stored or transmitted on the covered ar-  
14          ticles.

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

19          “(9) TELECOMMUNICATIONS SERVICE.—The  
20          term ‘telecommunications service’ has the meaning  
21          given such term in section 153(53) of title 47,  
22          United States Code.

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

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

3           “(2) task and delivery orders issued on or after  
4           such date pursuant to contracts awarded before, on,  
5           or after such date.”.

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

12           (c) CLERICAL AMENDMENT.—The table of contents  
13 in section 1(b) of the Homeland Security Act of 2002 is  
14 amended by inserting after the item relating to section  
15 835 the following new item:

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