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(Original Signature of Member)

115TH CONGRESS
2D SESSION

H. R. _____

To required the Secretary of Homeland Security to establish a security vulnerability disclosure policy, to establish a bug bounty program for the Department of Homeland Security, to make certain improvements to the Border Patrol Agent Pay Reform Act of 2014, to amend title 41, United States Code, to provide for Federal acquisition supply chain security, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M____. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To required the Secretary of Homeland Security to establish a security vulnerability disclosure policy, to establish a bug bounty program for the Department of Homeland Security, to make certain improvements to the Border Patrol Agent Pay Reform Act of 2014, to amend title 41, United States Code, to provide for Federal acquisition supply chain security, 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; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Strengthening and Enhancing Cyber-capabilities by Uti-
4 lizing Risk Exposure Technology Act” or the “**SECURE**
5 **Technology Act**”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—DEPARTMENT OF HOMELAND SECURITY INFORMATION
SECURITY**

Sec. 101. Department of Homeland Security disclosure of security
vulnerabilities.

Sec. 102. Department of Homeland Security bug bounty pilot program.

TITLE II—BORDER PATROL AGENT PAY REFORM

Sec. 201. Amendments to the Border Patrol Agent Pay Reform Act of 2014.

TITLE III—FEDERAL ACQUISITION SUPPLY CHAIN SECURITY

Sec. 301. Short title.

Sec. 302. Federal acquisition supply chain security.

Sec. 303. Authorities of executive agencies relating to mitigating supply chain
risks in the procurement of covered articles.

Sec. 304. Federal Information Security Modernization Act.

Sec. 305. Effective date.

8 **TITLE I—DEPARTMENT OF**
9 **HOMELAND SECURITY INFOR-**
10 **MATION SECURITY**

11 **SEC. 101. DEPARTMENT OF HOMELAND SECURITY DISCLO-**
12 **SURE OF SECURITY VULNERABILITIES.**

13 (a) **VULNERABILITY DISCLOSURE POLICY.**—The Sec-
14 retary of Homeland Security shall establish a policy appli-
15 cable to individuals, organizations, and companies that re-
16 port security vulnerabilities on appropriate information

1 systems of Department of Homeland Security. Such policy
2 shall include each of the following:

3 (1) The appropriate information systems of the
4 Department that individuals, organizations, and
5 companies may use to discover and report security
6 vulnerabilities on appropriate information systems.

7 (2) The conditions and criteria under which in-
8 dividuals, organizations, and companies may operate
9 to discover and report security vulnerabilities.

10 (3) How individuals, organizations, and compa-
11 nies may disclose to the Department security
12 vulnerabilities discovered on appropriate information
13 systems of the Department.

14 (4) The ways in which the Department may
15 communicate with individuals, organizations, and
16 companies that report security vulnerabilities.

17 (5) The process the Department shall use for
18 public disclosure of reported security vulnerabilities.

19 (b) REMEDIATION PROCESS.—The Secretary of
20 Homeland Security shall develop a process for the Depart-
21 ment of Homeland Security to address the mitigation or
22 remediation of the security vulnerabilities reported
23 through the policy developed in subsection (a).

24 (c) CONSULTATION.—

1 (1) IN GENERAL.—In developing the security
2 vulnerability disclosure policy under subsection (a),
3 the Secretary of Homeland Security shall consult
4 with each of the following:

5 (A) The Attorney General regarding how
6 to ensure that individuals, organizations, and
7 companies that comply with the requirements of
8 the policy developed under subsection (a) are
9 protected from prosecution under section 1030
10 of title 18, United States Code, civil lawsuits,
11 and similar provisions of law with respect to
12 specific activities authorized under the policy.

13 (B) The Secretary of Defense and the Ad-
14 ministrator of General Services regarding les-
15 sons that may be applied from existing vulner-
16 ability disclosure policies.

17 (C) Non-governmental security researchers.

18 (2) NONAPPLICABILITY OF FACA.—The Federal
19 Advisory Committee Act (5 U.S.C. App.) shall not
20 apply to any consultation under this section.

21 (d) PUBLIC AVAILABILITY.—The Secretary of Home-
22 land Security shall make the policy developed under sub-
23 section (a) publicly available.

24 (e) SUBMISSION TO CONGRESS.—

1 (1) DISCLOSURE POLICY AND REMEDIATION
2 PROCESS.—Not later than 90 days after the date of
3 the enactment of this Act, the Secretary of Home-
4 land Security shall submit to Congress a copy of the
5 policy required under subsection (a) and the remedi-
6 ation process required under subsection (b).

7 (2) REPORT AND BRIEFING.—

8 (A) REPORT.—Not later than one year
9 after establishing the policy required under sub-
10 section (a), the Secretary of Homeland Security
11 shall submit to Congress a report on such pol-
12 icy and the remediation process required under
13 subsection (b).

14 (B) ANNUAL BRIEFINGS.—One year after
15 the date of the submission of the report under
16 subparagraph (A), and annually thereafter for
17 each of the next three years, the Secretary of
18 Homeland Security shall provide to Congress a
19 briefing on the policy required under subsection
20 (a) and the process required under subsection
21 (b).

22 (C) MATTERS FOR INCLUSION.—The re-
23 port required under subparagraph (A) and the
24 briefings required under subparagraph (B) shall
25 include each of the following with respect to the

1 policy required under subsection (a) and the
2 process required under subsection (b) for the
3 period covered by the report or briefing, as the
4 case may be:

5 (i) The number of unique security
6 vulnerabilities reported.

7 (ii) The number of previously un-
8 known security vulnerabilities mitigated or
9 remediated.

10 (iii) The number of unique individ-
11 uals, organizations, and companies that re-
12 ported security vulnerabilities.

13 (iv) The average length of time be-
14 tween the reporting of security
15 vulnerabilities and mitigation or remedi-
16 ation of such vulnerabilities.

17 (f) DEFINITIONS.—In this section:

18 (1) The term “security vulnerability” has the
19 meaning given that term in section 102(17) of the
20 Cybersecurity Information Sharing Act of 2015 (6
21 U.S.C. 1501(17)), in information technology.

22 (2) The term “information system” has the
23 meaning given that term by section 3502 of title 44,
24 United States Code.

1 (3) The term “appropriate information system”
2 means an information system that the Secretary of
3 Homeland Security selects for inclusion under the
4 vulnerability disclosure policy required by subsection
5 (a).

6 **SEC. 102. DEPARTMENT OF HOMELAND SECURITY BUG**
7 **BOUNTY PILOT PROGRAM.**

8 (a) In this section—

9 (1) the term “appropriate congressional com-
10 mittees” means—

11 (A) the Committee on Homeland Security
12 and Governmental Affairs of the Senate;

13 (B) the Select Committee on Intelligence
14 of the Senate;

15 (C) the Committee on Homeland Security
16 of the House of Representatives; and

17 (D) Permanent Select Committee on Intel-
18 ligence of the House of Representatives;

19 (2) the term “bug bounty program” means a
20 program under which—

21 (A) individuals, organizations, and compa-
22 nies are temporarily authorized to identify and
23 report vulnerabilities of appropriate information
24 systems of the Department; and

1 (B) eligible individuals, organizations, and
2 companies receive compensation in exchange for
3 such reports;

4 (3) the term “Department” means the Depart-
5 ment of Homeland Security;

6 (4) the term “eligible individual, organization,
7 or company” means an individual, organization, or
8 company that meets such criteria as the Secretary
9 determines in order to receive compensation in com-
10 pliance with Federal laws;

11 (5) the term “information system” has the
12 meaning given the term in section 3502 of title 44,
13 United States Code;

14 (6) the term “pilot program” means the bug
15 bounty pilot program required to be established
16 under subsection (b)(1); and

17 (7) the term “Secretary” means the Secretary
18 of Homeland Security.

19 (b)(1) Not later than 180 days after the date of en-
20 actment of this Act, the Secretary shall establish, within
21 the Office of the Chief Information Officer, a bug bounty
22 pilot program to minimize vulnerabilities of appropriate
23 information systems of the Department.

24 (2) In establishing and conducting the pilot program,
25 the Secretary shall—

1 (A) designate appropriate information systems
2 to be included in the pilot program;

3 (B) provide compensation to eligible individuals,
4 organizations, and companies for reports of pre-
5 viously unidentified security vulnerabilities within
6 the information systems designated under subpara-
7 graph (A);

8 (C) establish criteria for individuals, organiza-
9 tions, and companies to be considered eligible for
10 compensation under the pilot program in compliance
11 with Federal laws;

12 (D) consult with the Attorney General on how
13 to ensure that approved individuals, organizations,
14 or companies that comply with the requirements of
15 the pilot program are protected from prosecution
16 under section 1030 of title 18, United States Code,
17 and similar provisions of law, and civil lawsuits for
18 specific activities authorized under the pilot pro-
19 gram;

20 (E) consult with the Secretary of Defense and
21 the heads of other departments and agencies that
22 have implemented programs to provide compensation
23 for reports of previously undisclosed vulnerabilities
24 in information systems, regarding lessons that may
25 be applied from such programs; and

1 (F) develop an expeditious process by which an
2 individual, organization, or company can register
3 with the Department, submit to a background check
4 as determined by the Department, and receive a de-
5 termination as to eligibility; and

6 (G) engage qualified interested persons, includ-
7 ing non-government sector representatives, about the
8 structure of the pilot program as constructive and to
9 the extent practicable.

10 (3) In establishing the pilot program, the Secretary,
11 subject to the availability of appropriations, may award
12 1 or more competitive contracts to an entity, as necessary,
13 to manage the pilot program.

14 (c) Not later than 180 days after the date on which
15 the pilot program is completed, the Secretary shall submit
16 to the appropriate congressional committees a report on
17 the pilot program, which shall include—

18 (1) the number of individuals, organizations, or
19 companies that participated in the pilot program,
20 broken down by the number of individuals, organiza-
21 tions, or companies that—

22 (A) registered;

23 (B) were determined eligible;

24 (C) submitted security vulnerabilities; and

25 (D) received compensation;

1 (2) the number and severity of vulnerabilities
2 reported as part of the pilot program;

3 (3) the number of previously unidentified secu-
4 rity vulnerabilities remediated as a result of the pilot
5 program;

6 (4) the current number of outstanding pre-
7 viously unidentified security vulnerabilities and De-
8 partment remediation plans;

9 (5) the average length of time between the re-
10 porting of security vulnerabilities and remediation of
11 the vulnerabilities;

12 (6) the types of compensation provided under
13 the pilot program; and

14 (7) the lessons learned from the pilot program.

15 (d) There are authorized to be appropriated to the
16 Department \$250,000 for fiscal year 2019 to carry out
17 this section.

18 **TITLE II—BORDER PATROL**

19 **AGENT PAY REFORM**

20 **SEC. 201. AMENDMENTS TO THE BORDER PATROL AGENT** 21 **PAY REFORM ACT OF 2014.**

22 (a) BORDER PATROL AGENT PAY.—Section 5550 of
23 title 5, United States Code, is amended—

24 (1) in subsection (a)(1), by inserting “agent”
25 after “applicable border patrol”;

1 (2) in subsection (b)(1)—

2 (A) in subparagraph (A), by striking “Not
3 later than 30 days before the first day of each
4 year beginning after the date of enactment of
5 this section, a border patrol agent shall make
6 an election whether the border patrol agent
7 shall, for that year, be assigned to” and insert-
8 ing “Not later than December 1 of each year,
9 a border patrol agent shall make an election
10 whether the border patrol agent shall, for the
11 next annual period beginning on the first day of
12 the first pay period that commences on or after
13 January 1, be assigned to”;

14 (B) in subparagraph (C), by striking “Not
15 later than 60 days before the first day of each
16 year beginning after the date of enactment of
17 this section” and inserting in its place “Not
18 later than November 1 of each year”;

19 (C) in subparagraph (D)—

20 (i) by amending clause (iv) to read as
21 follows:

22 “(iv) a border patrol agent shall be
23 assigned a basic border patrol rate of pay
24 during the period of initial training (in-
25 cluding initial orientation sessions, basic

1 training, and other preparatory activities)
2 prior to the agent’s first regular work as-
3 signment; and”;

4 (ii) in clause (v), by striking “or the
5 level 2 border patrol rate of pay”;

6 (D) in subparagraph (E)—

7 (i) in clause (i), by striking “or the
8 level 2 border patrol rate of pay”;

9 (ii) in clause (ii), by striking “the
10 analysis conducted under section 2(e) of
11 the Border Patrol Agent Pay Reform Act
12 of 2014” and inserting in its place “a writ-
13 ten staffing analysis”; and

14 (iii) by adding at the end the fol-
15 lowing:

16 “(iv) EXCLUSION OF CERTAIN EM-
17 PLOYEES.—In applying any percentage
18 limit under clause (i) or (ii) to a location
19 population, U.S. Customs and Border Pro-
20 tection shall exclude from such population
21 any border patrol agent who is assigned a
22 basic border patrol rate of pay under sub-
23 paragraph (D)(iii) or (D)(iv) or who would
24 reach the premium pay cap under section

1 5547 if assigned a level 1 border patrol
2 rate of pay.

3 “(v) APPLICATION FREQUENCY.—The
4 10 percent limit under clause (i) or an al-
5 ternative percentage limit under a waiver
6 under clause (ii) shall be applied at the be-
7 ginning of the first pay period beginning
8 on or after January 1 each year.”;

9 (E) by striking subparagraph (G);

10 (3) in subsection (b)(2)—

11 (A) by amending subparagraph (C)(i) to
12 read as follows:

13 “(i) any compensation under this sec-
14 tion or any other provision of law in addi-
15 tion to the compensation provided under
16 subparagraph (B); or”;

17 (B) in subparagraph (E)—

18 (i) by striking “paid leave” and in-
19 serting “leave”; and

20 (ii) by striking “absent from work”
21 and inserting “excused from work”;

22 (C) in subparagraph (F)(ii), by striking
23 “and”;

24 (D) by amending subparagraph (G) to
25 read as follows:

1 “(G) if the border patrol agent participates
2 in a full day of advanced training but does not
3 perform the entire required amount of sched-
4 uled overtime work under subparagraph (A)(ii)
5 on that day, the border patrol agent shall be
6 deemed to have performed scheduled overtime
7 work during nonwork periods to the extent nec-
8 essary to reach the required amount, but such
9 deemed credit may be applied to no more than
10 180 hours in a calendar year; otherwise, the
11 agent shall accrue a debt of hours for scheduled
12 overtime not worked on such a day; and”;

13 (E) by adding at the end the following:

14 “(H) a border patrol agent may choose to
15 reduce any debt of obligated overtime hours
16 that the agent has incurred by applying any ac-
17 crued compensatory time off for travel pursuant
18 to section 5550b, and such compensatory time
19 off for travel may be applied towards such debt
20 only after other forms of overtime or earned
21 compensatory time credited to the border patrol
22 agent have been exhausted.”;

23 (4) in subsection (b)(3)—

24 (A) by amending subparagraph (C)(i) to
25 read as follows:

1 “(i) any compensation under this sec-
2 tion or any other provision of law in addi-
3 tion to the compensation provided under
4 subparagraph (B); or”;

5 (B) in subparagraph (E), by striking “paid
6 leave” and inserting “leave”;

7 (C) in subparagraph (F)(ii), by striking
8 “and”;

9 (D) by amending subparagraph (G) to
10 read as follows:

11 “(G) if the border patrol agent participates
12 in a full day of advanced training but does not
13 perform the entire required amount of sched-
14 uled overtime work under subparagraph (A)(ii)
15 on that day, the border patrol agent shall be
16 deemed to have performed scheduled overtime
17 work during nonwork periods to the extent nec-
18 essary to reach the required amount, but such
19 deemed credit may be applied to no more than
20 90 hours in a calendar year; otherwise, the
21 agent shall accrue a debt of hours for scheduled
22 overtime not worked on such a day; and”;

23 (E) by adding at the end the following:

24 “(H) a border patrol agent may choose to
25 reduce any debt of obligated overtime hours

1 that the agent has incurred by applying any ac-
2 crued compensatory time off for travel pursuant
3 to section 5550b; such compensatory time off
4 for travel may be applied towards such debt
5 only after other forms of overtime or earned
6 compensatory time credited to the border patrol
7 agent have been exhausted.”;

8 (5) by amending subsection (d) to read as fol-
9 lows:

10 “(d) TREATMENT AS BASIC PAY.—

11 “(1) IN GENERAL.—Any overtime supplement
12 in addition to the basic border patrol rate of pay for
13 a border patrol agent resulting from application of
14 the level 1 border patrol rate of pay or the level 2
15 border patrol rate of pay shall be treated as part of
16 basic pay only—

17 “(A) except as otherwise provided in para-
18 graph (3), for purposes of the definitions in sec-
19 tion 8331(3) and 8401(4) and the provisions in
20 chapters 83 and 84 that rely on those defini-
21 tions (consistent with section 8331(3)(I));

22 “(B) except as otherwise provided in para-
23 graph (3), for purposes of sections 5595(c) and
24 8704(c);

1 “(C) for the purpose of section 8114(e);
2 and

3 “(D) subject to paragraph (2) and any
4 limitation established under paragraph (3), any
5 other purpose that the Director of the Office of
6 Personnel Management may by regulation pre-
7 scribe.

8 “(2) EXCLUSIONS.—The overtime supplement
9 described in paragraph (1) shall not be treated as
10 part of basic pay for purposes not covered by that
11 paragraph, including the purposes of calculating—

12 “(A) overtime pay, night pay, Sunday pay,
13 or holiday pay under section 5542, 5545, or
14 5546;

15 “(B) locality-based comparability payments
16 under section 5304 or special rate supplements
17 under section 5305; or

18 “(C) cost-of-living allowances in nonforeign
19 areas under section 5941.

20 “(3) LIMITATIONS.—

21 “(A) IN GENERAL.—During the control pe-
22 riod described in subparagraph (B), the amount
23 of the overtime supplement that is considered
24 basic pay under paragraphs (1)(A) and (1)(B)
25 may not exceed the amount derived by multi-

1 plying the border patrol agent’s basic border
2 patrol rate of pay by the percentage rep-
3 resenting the agent’s career average of assigned
4 overtime supplement percentages (including 0
5 percent for periods of time during which no
6 overtime supplement was payable). That career
7 average percentage is computed without regard
8 to the effect of the limitation on premium pay
9 under section 5547, but the premium pay limi-
10 tation remains applicable in determining the
11 dollar amount of any overtime supplement com-
12 puted using the career average percentage.

13 “(B) CONTROL PERIOD.—For the purposes
14 of applying subparagraph (A), the control pe-
15 riod described in this subparagraph is the pe-
16 riod that begins 3 years before the date a bor-
17 der patrol agent will meet age and service re-
18 quirements associated with entitlement to an
19 immediate annuity and continues throughout
20 the remainder of the individual’s career as a
21 border patrol agent.

22 “(C) ASSIGNED OVERTIME SUPPLEMENT
23 PERCENTAGES.—For the purpose of applying
24 subparagraph (A), a border patrol agent’s ini-
25 tial career average of assigned overtime supple-

1 ment percentages is the average for the border
2 patrol agent's career (excluding any period of
3 initial training prior to the agent's first regular
4 work assignment) prior to the beginning of the
5 control period described in subparagraph (B).
6 During such control period, the career average
7 shall be recomputed at the end of each annual
8 period (as described in subsection (b)(1)(A)). In
9 computing such career average, any periods of
10 service as a border patrol agent prior to the
11 first day of the first pay period beginning on or
12 after January 1, 2016, shall be included, and
13 the agent's assigned overtime supplement dur-
14 ing such periods shall be deemed to be 25 per-
15 cent.

16 “(4) ANNUAL LEAVE PAYMENT.—For the pur-
17 pose of computing an agent's lump-sum annual leave
18 payment under section 5551 or 5552, the pay the
19 agent is projected to receive shall include a deemed
20 overtime supplement derived under this paragraph.
21 Such overtime supplement shall be based on the
22 lower of the agent's actual overtime supplement per-
23 centage in effect at separation or the average per-
24 centage of the agent's overtime supplement over the
25 26 full biweekly pay periods immediately preceding

1 that separation, and shall not exceed the amount
2 that is or would be payable under the premium pay
3 limitation in section 5547.”;

4 (6) in subsection (f)—

5 (A) in the heading of such subsection, by
6 striking “AND SUBSTITUTION OF HOURS” and
7 inserting “DURING REGULAR TIME; ABSENCES
8 DURING SCHEDULED OVERTIME”; and

9 (B) by adding at the end the following:

10 “(5) APPLICATION.—

11 “(A) LIMITATION ON SUBSTITUTION.—

12 Notwithstanding paragraph (1), scheduled over-
13 time (as described in paragraph (2)(A)(ii) or
14 (3)(A)(ii) of subsection (b)) may not be sub-
15 stituted for leave without pay on a day when a
16 border patrol agent has a full day of leave with-
17 out pay.

18 “(B) LEAVE WITHOUT PAY.—As provided
19 in paragraphs (2)(A)(ii) and (3)(A)(ii) of sub-
20 section (b), a border patrol agent shall incur no
21 scheduled overtime obligation on a day when
22 the agent has a full day of leave without pay.”;
23 and

24 (7) by adding at the end the following:

25 “(h) ALTERNATIVE WORK SCHEDULES.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision in this section or section 6101, U.S. Cus-
3 toms and Border Protection may assign a border pa-
4 trol agent an alternative work schedule as described
5 in this subsection, subject to any regulations pre-
6 scribed by the Director of the Office of Personnel
7 Management. No alternative work schedule may be
8 established under subchapter II of chapter 61.

9 “(2) LEVEL 2 BORDER PATROL AGENT.—A bor-
10 der patrol agent receiving a level 2 border patrol
11 rate of pay may, in lieu of the standard work sched-
12 ule described in subsection (b)(3)(A), be assigned to
13 an alternative work schedule under the following
14 terms and conditions:

15 “(A) The alternative work schedule shall
16 be a regular tour of duty consisting of 9 work-
17 days per biweekly pay period, with—

18 “(i) 8 workdays including 9 hours of
19 regular time per workday and 1 additional
20 hour of scheduled overtime for each day
21 the agent performs work during regular
22 time; and

23 “(ii) 1 workday including 8 hours of
24 regular time per workday and 2 additional
25 hours of scheduled overtime when the

1 agent performs work during such regular
2 time.

3 “(B) Subparagraphs (B) through (H) of
4 subsection (b)(3) shall continue to apply to an
5 agent assigned to an alternative work schedule
6 under this paragraph. References in this section
7 to regular time under subsection (b)(3)(A)(i)
8 and scheduled overtime under subsection
9 (b)(3)(A)(ii) shall be deemed to be references to
10 regular time and scheduled overtime described
11 in subparagraph (A), respectively.

12 “(3) BASIC BORDER PATROL AGENT.—A border
13 patrol agent receiving a basic border patrol rate of
14 pay may, in lieu of the standard work schedule de-
15 scribed in subsection (b)(4)(A), be assigned to an al-
16 ternative work schedule that is a regular tour of
17 duty consisting of 4 workdays per week with 10
18 hours of regular time per workday.

19 “(4) SUNDAY PAY; PREMIUM PAY.—A border
20 patrol agent assigned to an alternative work sched-
21 ule under this subsection, may receive, as applica-
22 ble—

23 “(A) Sunday pay for no more than 8 hours
24 of regular time associated with a given Sunday,
25 consistent with section 5546(a);

1 “(B) premium pay for work on a holiday
2 for no more than 8 hours of regular time asso-
3 ciated with a given holiday, consistent with sec-
4 tion 5546(b); and

5 “(C) basic pay for all regular time hours
6 that qualify for holiday time off pay when an
7 agent is relieved or prevented from working
8 during such regular time on a day designated
9 as a holiday by Federal statute or Executive
10 order.

11 “(5) APPLICATION.—For purposes of admin-
12 istering sections 6303(a), 6304, 6307(a) and (d),
13 6323, 6326, 6327, and 8339(m), in the case of an
14 employee assigned to an alternative work schedule
15 under this subsection, references to a day or work-
16 day (or to multiples or parts thereof) contained in
17 such sections shall be considered to be references to
18 8 hours (or to the respective multiples or parts
19 thereof).

20 “(i) REGULATIONS.—The Director of the Office of
21 Personnel Management shall promulgate regulations to
22 carry out this section, including regulations governing—

23 “(1) elections and assignments of a border pa-
24 trol rate of pay for newly hired border patrol agents

1 who complete initial training during an annual pe-
2 riod;

3 “(2) situations in which an agent receives more
4 than one type of border patrol rate of pay in a bi-
5 weekly pay period or is employed as a border patrol
6 agent for only part of a biweekly pay period; and

7 “(3) the treatment of hours that are substituted
8 for nonpay status hours during regular time.”.

9 (b) OVERTIME RATES.—Section 5542(g)(5) of title
10 5, United States Code, is amended—

11 (1) in subparagraph (A), by striking “leave
12 year” and inserting “an annual period, as described
13 in section 5550(b)(1)(A)”; and

14 (2) by amending subparagraph (E) to read as
15 follows:

16 “(E) shall not receive credit towards com-
17 putation of the border patrol agent’s annuity
18 based on unused compensatory time off; and”.

19 (c) PREMIUM PAY CAP.—Section 5547(c) of title 5,
20 United States Code, is amended by inserting after “duty,”
21 the following: “or to border patrol agents who receive an
22 overtime supplement for overtime hours within their reg-
23 ular tour of duty under section 5550,”.

24 (d) BASIC PAY FOR RETIREMENT.—Section
25 8331(3)(I) of title 5, United States Code, is amended by

1 adding before the semicolon at the end the following: “,
2 subject to the limitation prescribed in section 5550(d)(3)”.

3 (e) SCHEDULED OVERTIME WORK.—Section 2(c)(2)
4 of the Border Patrol Agent Pay Reform Act of 2014 (Pub-
5 lic Law 113–277) is amended by inserting after “sched-
6 uled overtime work” the following: “(other than scheduled
7 overtime work within the regular tour of duty)”.

8 (f) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect on the first day of the first
10 pay period beginning on or after the day that is 90 days
11 after the date of the enactment of this Act.

12 **TITLE III—FEDERAL ACQUISSI-**
13 **TION SUPPLY CHAIN SECUR-**
14 **RITY**

15 **SEC. 301. SHORT TITLE.**

16 This title may be cited as the “Federal Acquisition
17 Supply Chain Security Act of 2018”.

18 **SEC. 302. FEDERAL ACQUISITION SUPPLY CHAIN SECURITY.**

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

22 “SUBCHAPTER III—FEDERAL ACQUISITION
23 SUPPLY CHAIN SECURITY

24 “§ 1321. Definitions

25 “In this subchapter:

1 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES AND LEADERSHIP.—The term ‘appropriate
3 congressional committees and leadership’ means—

4 “(A) the Committee on Homeland Security
5 and Governmental Affairs, the Committee on
6 the Judiciary, the Committee on Appropria-
7 tions, the Committee on Armed Services, the
8 Committee on Commerce, Science, and Trans-
9 portation, the Select Committee on Intelligence,
10 and the majority and minority leader of the
11 Senate; and

12 “(B) the Committee on Oversight and Gov-
13 ernment Reform, the Committee on the Judici-
14 ary, the Committee on Appropriations, the
15 Committee on Homeland Security, the Com-
16 mittee on Armed Services, the Committee on
17 Energy and Commerce, the Permanent Select
18 Committee on Intelligence, and the Speaker and
19 minority leader of the House of Representa-
20 tives.

21 “(2) COUNCIL.—The term ‘Council’ means the
22 Federal Acquisition Security Council established
23 under section 1322(a) of this title.

1 “(3) COVERED ARTICLE.—The term ‘covered
2 article’ has the meaning given that term in section
3 4713 of this title.

4 “(4) COVERED PROCUREMENT ACTION.—The
5 term ‘covered procurement action’ has the meaning
6 given that term in section 4713 of this title.

7 “(5) INFORMATION AND COMMUNICATIONS
8 TECHNOLOGY.—The term ‘information and commu-
9 nications technology’ has the meaning given that
10 term in section 4713 of this title.

11 “(6) INTELLIGENCE COMMUNITY.—The term
12 ‘intelligence community’ has the meaning given that
13 term in section 3(4) of the National Security Act of
14 1947 (50 U.S.C. 3003(4)).

15 “(7) NATIONAL SECURITY SYSTEM.—The term
16 ‘national security system’ has the meaning given
17 that term in section 3552 of title 44.

18 “(8) SUPPLY CHAIN RISK.—The term ‘supply
19 chain risk’ has the meaning given that term in sec-
20 tion 4713 of this title.

21 **“§ 1322. Federal Acquisition Security Council estab-**
22 **lishment and membership**

23 “(a) ESTABLISHMENT.—There is established in the
24 executive branch a Federal Acquisition Security Council.

25 “(b) MEMBERSHIP.—

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

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

5 “(B) The General Services Administration.

6 “(C) The Department of Homeland Security,
7 including the Cybersecurity and Infrastructure Security Agency.
8

9 “(D) The Office of the Director of National
10 Intelligence, including the National Counterintelligence and Security Center.
11

12 “(E) The Department of Justice, including
13 the Federal Bureau of Investigation.

14 “(F) The Department of Defense, including
15 the National Security Agency.

16 “(G) The Department of Commerce, including
17 the National Institute of Standards and
18 Technology.

19 “(H) Such other executive agencies as determined
20 by the Chairperson of the Council.

21 “(2) LEAD REPRESENTATIVES.—

22 “(A) DESIGNATION.—

23 “(i) IN GENERAL.—Not later than 45
24 days after the date of the enactment of the
25 Federal Acquisition Supply Chain Security

1 Act of 2018, the head of each agency rep-
2 resented on the Council shall designate a
3 representative of that agency as the lead
4 representative of the agency on the Coun-
5 cil.

6 “(ii) REQUIREMENTS.—The rep-
7 resentative of an agency designated under
8 clause (i) shall have expertise in supply
9 chain risk management, acquisitions, or in-
10 formation and communications technology.

11 “(B) FUNCTIONS.—The lead representa-
12 tive of an agency designated under subpara-
13 graph (A) shall ensure that appropriate per-
14 sonnel, including leadership and subject matter
15 experts of the agency, are aware of the business
16 of the Council.

17 “(c) CHAIRPERSON.—

18 “(1) DESIGNATION.—Not later than 45 days
19 after the date of the enactment of the Federal Ac-
20 quisition Supply Chain Security Act of 2018, the Di-
21 rector of the Office of Management and Budget
22 shall designate a senior-level official from the Office
23 of Management and Budget to serve as the Chair-
24 person of the Council.

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

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

5 “(B) designating executive agencies to be
6 represented on the Council under subsection
7 (b)(1)(H);

8 “(C) in consultation with the lead rep-
9 resentative of each agency represented on the
10 Council, developing a charter for the Council;
11 and

12 “(D) not later than 7 days after comple-
13 tion of the charter, submitting the charter to
14 the appropriate congressional committees and
15 leadership.

16 “(d) MEETINGS.—The Council shall meet not later
17 than 60 days after the date of the enactment of the Fed-
18 eral Acquisition Supply Chain Security Act of 2018 and
19 not less frequently than quarterly thereafter.

20 **“§ 1323. Functions and authorities**

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

23 “(1) Identifying and recommending develop-
24 ment by the National Institute of Standards and
25 Technology of supply chain risk management stand-

1 ards, guidelines, and practices for executive agencies
2 to use when assessing and developing mitigation
3 strategies to address supply chain risks, particularly
4 in the acquisition and use of covered articles under
5 section 1326(a) of this title.

6 “(2) Identifying or developing criteria for shar-
7 ing information with executive agencies, other Fed-
8 eral entities, and non-Federal entities with respect to
9 supply chain risk, including information related to
10 the exercise of authorities provided under this sec-
11 tion and sections 1326 and 4713 of this title. At a
12 minimum, such criteria shall address—

13 “(A) the content to be shared;

14 “(B) the circumstances under which shar-
15 ing is mandated or voluntary; and

16 “(C) the circumstances under which it is
17 appropriate for an executive agency to rely on
18 information made available through such shar-
19 ing in exercising the responsibilities and au-
20 thorities provided under this section and section
21 4713 of this title.

22 “(3) Identifying an appropriate executive agen-
23 cy to—

1 “(A) accept information submitted by execu-
2 tive agencies based on the criteria established
3 under paragraph (2);

4 “(B) facilitate the sharing of information
5 received under subparagraph (A) to support
6 supply chain risk analyses under section 1326
7 of this title, recommendations under this sec-
8 tion, and covered procurement actions under
9 section 4713 of this title;

10 “(C) share with the Council information
11 regarding covered procurement actions by execu-
12 tive agencies taken under section 4713 of this
13 title; and

14 “(D) inform the Council of orders issued
15 under this section.

16 “(4) Identifying, as appropriate, executive agen-
17 cies to provide—

18 “(A) shared services, such as support for
19 making risk assessments, validation of products
20 that may be suitable for acquisition, and miti-
21 gation activities; and

22 “(B) common contract solutions to support
23 supply chain risk management activities, such
24 as subscription services or machine-learning-en-

1 hanced analysis applications to support in-
2 formed decision making.

3 “(5) Identifying and issuing guidance on addi-
4 tional steps that may be necessary to address supply
5 chain risks arising in the course of executive agen-
6 cies providing shared services, common contract so-
7 lutions, acquisitions vehicles, or assisted acquisitions.

8 “(6) Engaging with the private sector and other
9 nongovernmental stakeholders in performing the
10 functions described in paragraphs (1) and (2) and
11 on issues relating to the management of supply
12 chain risks posed by the acquisition of covered arti-
13 cles.

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

18 “(b) PROGRAM OFFICE AND COMMITTEES.—The
19 Council may establish a program office and any commit-
20 tees, working groups, or other constituent bodies the
21 Council deems appropriate, in its sole and unreviewable
22 discretion, to carry out its functions.

23 “(c) AUTHORITY FOR EXCLUSION OR REMOVAL OR-
24 DERS.—

1 “(1) CRITERIA.—To reduce supply chain risk,
2 the Council shall establish criteria and procedures
3 for—

4 “(A) recommending orders applicable to
5 executive agencies requiring the exclusion of
6 sources or covered articles from executive agen-
7 cy procurement actions (in this section referred
8 to as ‘exclusion orders’);

9 “(B) recommending orders applicable to
10 executive agencies requiring the removal of cov-
11 ered articles from executive agency information
12 systems (in this section referred to as ‘removal
13 orders’);

14 “(C) requesting and approving exceptions
15 to an issued exclusion or removal order when
16 warranted by circumstances, including alter-
17 native mitigation actions or other findings relat-
18 ing to the national interest, including national
19 security reviews, national security investiga-
20 tions, or national security agreements; and

21 “(D) ensuring that recommended orders do
22 not conflict with standards and guidelines
23 issued under section 11331 of title 40 and that
24 the Council consults with the Director of the
25 National Institute of Standards and Technology

1 regarding any recommended orders that would
2 implement standards and guidelines developed
3 by the National Institute of Standards and
4 Technology.

5 “(2) RECOMMENDATIONS.—The Council shall
6 use the criteria established under paragraph (1), in-
7 formation made available under subsection (a)(3),
8 and any other information the Council determines
9 appropriate to issue recommendations, for applica-
10 tion to executive agencies or any subset thereof, re-
11 garding the exclusion of sources or covered articles
12 from any executive agency procurement action, in-
13 cluding source selection and consent for a contractor
14 to subcontract, or the removal of covered articles
15 from executive agency information systems. Such
16 recommendations shall include—

17 “(A) information necessary to positively
18 identify the sources or covered articles rec-
19 ommended for exclusion or removal;

20 “(B) information regarding the scope and
21 applicability of the recommended exclusion or
22 removal order;

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

1 “(D) a summary of the basis for the rec-
2 ommendation, including a discussion of less in-
3 trusive measures that were considered and why
4 such measures were not reasonably available to
5 reduce supply chain risk;

6 “(E) a description of the actions necessary
7 to implement the recommended exclusion or re-
8 moval order; and

9 “(F) where practicable, in the Council’s
10 sole and unreviewable discretion, a description
11 of mitigation steps that could be taken by the
12 source that may result in the Council rescinding
13 a recommendation.

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

18 “(A) that a recommendation has been
19 made;

20 “(B) of the criteria the Council relied upon
21 under paragraph (1) and, to the extent con-
22 sistent with national security and law enforce-
23 ment interests, of information that forms the
24 basis for the recommendation;

1 “(C) that, within 30 days after receipt of
2 notice, the source may submit information and
3 argument in opposition to the recommendation;

4 “(D) of the procedures governing the re-
5 view and possible issuance of an exclusion or re-
6 moval order pursuant to paragraph (5); and

7 “(E) where practicable, in the Council’s
8 sole and unreviewable discretion, a description
9 of mitigation steps that could be taken by the
10 source that may result in the Council rescinding
11 the recommendation.

12 “(4) CONFIDENTIALITY.—Any notice issued to
13 a source under paragraph (3) shall be kept confiden-
14 tial until—

15 “(A) an exclusion or removal order is
16 issued pursuant to paragraph (5); and

17 “(B) the source has been notified pursuant
18 to paragraph (6).

19 “(5) EXCLUSION AND REMOVAL ORDERS.—

20 “(A) ORDER ISSUANCE.—Recommendations
21 of the Council under paragraph (2), together
22 with any information submitted by a
23 source under paragraph (3) related to such a
24 recommendation, shall be reviewed by the fol-
25 lowing officials, who may issue exclusion and

1 removal orders based upon such recommenda-
2 tions:

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

7 “(ii) The Secretary of Defense, for ex-
8 clusion and removal orders applicable to
9 the Department of Defense and national
10 security systems other than sensitive com-
11 partmented information systems.

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

18 “(B) DELEGATION.—The officials identi-
19 fied in subparagraph (A) may not delegate any
20 authority under this subparagraph to an official
21 below the level one level below the Deputy Sec-
22 retary or Principal Deputy Director, except that
23 the Secretary of Defense may delegate author-
24 ity for removal orders to the Commander of the
25 United States Cyber Command, who may not

1 redelegate such authority to an official below
2 the level one level below the Deputy Com-
3 mander.

4 “(C) FACILITATION OF EXCLUSION OR-
5 DERS.—If officials identified under this para-
6 graph from the Department of Homeland Secu-
7 rity, the Department of Defense, and the Office
8 of the Director of National Intelligence issue or-
9 ders collectively resulting in a governmentwide
10 exclusion, the Administrator for General Serv-
11 ices and officials at other executive agencies re-
12 sponsible for management of the Federal Sup-
13 ply Schedules, governmentwide acquisition con-
14 tracts and multi-agency contracts shall help fa-
15 cilitate implementation of such orders by re-
16 moving the covered articles or sources identified
17 in the orders from such contracts.

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

24 “(E) RESCISSION.—Orders issued pursu-
25 ant to subparagraph (A) may be rescinded by

1 an authorized official from the relevant issuing
2 agency.

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

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

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

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

15 “(B) provide classified or unclassified no-
16 tice of the exclusion or removal order to the ap-
17 propriate congressional committees and leader-
18 ship; and

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

22 “(7) COMPLIANCE.—Executive agencies shall
23 comply with exclusion and removal orders issued
24 pursuant to paragraph (5).

1 “(d) AUTHORITY TO REQUEST INFORMATION.—The
2 Council may request such information from executive
3 agencies as is necessary for the Council to carry out its
4 functions.

5 “(e) RELATIONSHIP TO OTHER COUNCILS.—The
6 Council shall consult and coordinate, as appropriate, with
7 other relevant councils and interagency committees, in-
8 cluding the Chief Information Officers Council, the Chief
9 Acquisition Officers Council, the Federal Acquisition Reg-
10 ulatory Council, and the Committee on Foreign Invest-
11 ment in the United States, with respect to supply chain
12 risks posed by the acquisition and use of covered articles.

13 “(f) RULES OF CONSTRUCTION.—Nothing in this
14 section shall be construed—

15 “(1) to limit the authority of the Office of Fed-
16 eral Procurement Policy to carry out the responsibil-
17 ities of that Office under any other provision of law;
18 or

19 “(2) to authorize the issuance of an exclusion
20 or removal order based solely on the fact of foreign
21 ownership of a potential procurement source that is
22 otherwise qualified to enter into procurement con-
23 tracts with the Federal Government.

1 **“§ 1324. Strategic plan**

2 “(a) IN GENERAL.—Not later than 180 days after
3 the date of the enactment of the Federal Acquisition Sup-
4 ply Chain Security Act of 2018, the Council shall develop
5 a strategic plan for addressing supply chain risks posed
6 by the acquisition of covered articles and for managing
7 such risks that includes—

8 “(1) the criteria and processes required under
9 section 1323(a) of this title, including a threshold
10 and requirements for sharing relevant information
11 about such risks with all executive agencies and, as
12 appropriate, with other Federal entities and non-
13 Federal entities;

14 “(2) an identification of existing authorities for
15 addressing such risks;

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

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

22 “(5) recommendations for any legislative, regu-
23 latory, or other policy changes to incentivize the
24 adoption of best practices for supply chain risk man-
25 agement by the private sector;

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

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

7 “(8) a plan for identification, assessment, miti-
8 gation, and vetting of supply chain risks from exist-
9 ing and prospective information and communications
10 technology made available by executive agencies to
11 other executive agencies through common contract
12 solutions, shared services, acquisition vehicles, or
13 other assisted acquisition services; and

14 “(9) plans to strengthen the capacity of all ex-
15 ecutive agencies to conduct assessments of—

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

18 “(B) compliance with the requirements of
19 this subchapter.

20 “(b) SUBMISSION TO CONGRESS.—Not later than 7
21 calendar days after completion of the strategic plan re-
22 quired by subsection (a), the Chairperson of the Council
23 shall submit the plan to the appropriate congressional
24 committees and leadership.

1 **“§ 1325. Annual report**

2 “Not later than December 31 of each year, the Chair-
3 person of the Council shall submit to the appropriate con-
4 gressional committees and leadership a report on the ac-
5 tivities of the Council during the preceding 12-month pe-
6 riod.

7 **“§ 1326. Requirements for executive agencies**

8 “(a) IN GENERAL.—The head of each executive agen-
9 cy shall be responsible for—

10 “(1) assessing the supply chain risk posed by
11 the acquisition and use of covered articles and avoid-
12 ing, mitigating, accepting, or transferring that risk,
13 as appropriate and consistent with the standards,
14 guidelines, and practices identified by the Council
15 under section 1323(a)(1); and

16 “(2) prioritizing supply chain risk assessments
17 conducted under paragraph (1) based on the criti-
18 cality of the mission, system, component, service, or
19 asset.

20 “(b) INCLUSIONS.—The responsibility for assessing
21 supply chain risk described in subsection (a) includes—

22 “(1) developing an overall supply chain risk
23 management strategy and implementation plan and
24 policies and processes to guide and govern supply
25 chain risk management activities;

1 “(2) integrating supply chain risk management
2 practices throughout the life cycle of the system,
3 component, service, or asset;

4 “(3) limiting, avoiding, mitigating, accepting, or
5 transferring any identified risk;

6 “(4) sharing relevant information with other ex-
7 ecutive agencies as determined appropriate by the
8 Council in a manner consistent with section 1323(a)
9 of this title;

10 “(5) reporting on progress and effectiveness of
11 the agency’s supply chain risk management con-
12 sistent with guidance issued by the Office of Man-
13 agement and Budget and the Council; and

14 “(6) ensuring that all relevant information, in-
15 cluding classified information, with respect to acqui-
16 sitions of covered articles that may pose a supply
17 chain risk, consistent with section 1323(a) of this
18 title, is incorporated into existing processes of the
19 agency for conducting assessments described in sub-
20 section (a) and ongoing management of acquisition
21 programs, including any identification, investigation,
22 mitigation, or remediation needs.

23 “(c) INTERAGENCY ACQUISITIONS.—

24 “(1) IN GENERAL.—Except as provided in para-
25 graph (2), in the case of an interagency acquisition,

1 subsection (a) shall be carried out by the head of the
2 executive agency whose funds are being used to pro-
3 cure the covered article.

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

9 “(3) DEFINITIONS.—In this subsection, the
10 terms ‘assisted acquisition’ and ‘interagency acqui-
11 sition’ have the meanings given those terms in section
12 2.101 of title 48, Code of Federal Regulations (or
13 any corresponding similar regulation or ruling).

14 “(d) ASSISTANCE.—The Secretary of Homeland Se-
15 curity may—

16 “(1) assist executive agencies in conducting risk
17 assessments described in subsection (a) and imple-
18 menting mitigation requirements for information
19 and communications technology; and

20 “(2) provide such additional guidance or tools
21 as are necessary to support actions taken by execu-
22 tive agencies.

23 **“§ 1327. Judicial review procedures**

24 “(a) IN GENERAL.—Except as provided in subsection
25 (b) and chapter 71 of this title, and notwithstanding any

1 other provision of law, an action taken under section 1323
2 or 4713 of this title, or any action taken by an executive
3 agency to implement such an action, shall not be subject
4 to administrative review or judicial review, including bid
5 protests before the Government Accountability Office or
6 in any Federal court.

7 “(b) PETITIONS.—

8 “(1) IN GENERAL.—Not later than 60 days
9 after a party is notified of an exclusion or removal
10 order under section 1323(c)(6) of this title or a cov-
11 ered procurement action under section 4713 of this
12 title, the party may file a petition for judicial review
13 in the United States Court of Appeals for the Dis-
14 trict of Columbia Circuit claiming that the issuance
15 of the exclusion or removal order or covered procure-
16 ment action is unlawful.

17 “(2) STANDARD OF REVIEW.—The Court shall
18 hold unlawful a covered action taken under sections
19 1323 or 4713 of this title, in response to a petition
20 that the court finds to be—

21 “(A) arbitrary, capricious, an abuse of dis-
22 cretion, or otherwise not in accordance with
23 law;

24 “(B) contrary to constitutional right,
25 power, privilege, or immunity;

1 “(C) in excess of statutory jurisdiction, au-
2 thority, or limitation, or short of statutory
3 right;

4 “(D) lacking substantial support in the ad-
5 ministrative record taken as a whole or in clas-
6 sified information submitted to the court under
7 paragraph (3); or

8 “(E) not in accord with procedures re-
9 quired by law.

10 “(3) EXCLUSIVE JURISDICTION.—The United
11 States Court of Appeals for the District of Columbia
12 Circuit shall have exclusive jurisdiction over claims
13 arising under sections 1323(c)(5) or 4713 of this
14 title against the United States, any United States
15 department or agency, or any component or official
16 of any such department or agency, subject to review
17 by the Supreme Court of the United States under
18 section 1254 of title 28.

19 “(4) ADMINISTRATIVE RECORD AND PROCE-
20 DURES.—

21 “(A) IN GENERAL.—The procedures de-
22 scribed in this paragraph shall apply to the re-
23 view of a petition under this section.

24 “(B) ADMINISTRATIVE RECORD.—

1 “(i) FILING OF RECORD.—The United
2 States shall file with the court an adminis-
3 trative record, which shall consist of the
4 information that the appropriate official
5 relied upon in issuing an exclusion or re-
6 moval order under section 1323(c)(5) or a
7 covered procurement action under section
8 4713 of this title.

9 “(ii) UNCLASSIFIED, NONPRIVILEGED
10 INFORMATION.—All unclassified informa-
11 tion contained in the administrative record
12 that is not otherwise privileged or subject
13 to statutory protections shall be provided
14 to the petitioner with appropriate protec-
15 tions for any privileged or confidential
16 trade secrets and commercial or financial
17 information.

18 “(iii) IN CAMERA AND EX PARTE.—
19 The following information may be included
20 in the administrative record and shall be
21 submitted only to the court ex parte and in
22 camera:

23 “(I) Classified information.

1 “(II) Sensitive security informa-
2 tion, as defined by section 1520.5 of
3 title 49, Code of Federal Regulations.

4 “(III) Privileged law enforcement
5 information.

6 “(IV) Information obtained or
7 derived from any activity authorized
8 under the Foreign Intelligence Sur-
9 veillance Act of 1978 (50 U.S.C. 1801
10 et seq.), except that, with respect to
11 such information, subsections (e), (e),
12 (f), (g), and (h) of section 106 (50
13 U.S.C. 1806), subsections (d), (f), (g),
14 (h), and (i) of section 305 (50 U.S.C.
15 1825), subsections (e), (e), (f), (g),
16 and (h) of section 405 (50 U.S.C.
17 1845), and section 706 (50 U.S.C.
18 1881e) of that Act shall not apply.

19 “(V) Information subject to privi-
20 lege or protections under any other
21 provision of law.

22 “(iv) UNDER SEAL.—Any information
23 that is part of the administrative record
24 filed ex parte and in camera under clause
25 (iii), or cited by the court in any decision,

1 shall be treated by the court consistent
2 with the provisions of this subparagraph
3 and shall remain under seal and preserved
4 in the records of the court to be made
5 available consistent with the above provi-
6 sions in the event of further proceedings.
7 In no event shall such information be re-
8 leased to the petitioner or as part of the
9 public record.

10 “(v) RETURN.—After the expiration
11 of the time to seek further review, or the
12 conclusion of further proceedings, the
13 court shall return the administrative
14 record, including any and all copies, to the
15 United States.

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

23 “(D) RULE OF CONSTRUCTION.—Nothing
24 in this section shall be construed as limiting,
25 superseding, or preventing the invocation of,

1 any privileges or defenses that are otherwise
2 available at law or in equity to protect against
3 the disclosure of information.

4 “(c) DEFINITION.—In this section, the term ‘classi-
5 fied information’—

6 “(1) has the meaning given that term in section
7 1(a) of the Classified Information Procedures Act
8 (18 U.S.C. App.); and

9 “(2) includes—

10 “(A) any information or material that has
11 been determined by the United States Govern-
12 ment pursuant to an Executive order, statute,
13 or regulation to require protection against un-
14 authorized disclosure for reasons of national se-
15 curity; and

16 “(B) any restricted data, as defined in sec-
17 tion 11 of the Atomic Energy Act of 1954 (42
18 U.S.C. 2014).

19 **“§ 1328. Termination**

20 “This subchapter shall terminate on the date that is
21 5 years after the date of the enactment of the Federal
22 Acquisition Supply Chain Security Act of 2018.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 at the beginning of chapter 13 of such title is amended
25 by adding 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.”.

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

6 (d) IMPLEMENTATION.—

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

13 (2) FINAL RULE.—Not later than one year
14 after prescribing the interim final rule under para-
15 graph (1) and considering public comments with re-
16 spect to such interim final rule, the Council shall
17 prescribe a final rule to implement subchapter III of
18 chapter 13 of title 41, United States Code, as added
19 by subsection (a).

20 (3) FAILURE TO ACT.—

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

12 (B) APPROPRIATE CONGRESSIONAL COM-
13 MITTEES AND LEADERSHIP DEFINED.—In this
14 paragraph, the term “appropriate congressional
15 committees and leadership” has the meaning
16 given that term in section 1321 of title 41,
17 United States Code, as added by subsection (a).

18 **SEC. 303. AUTHORITIES OF EXECUTIVE AGENCIES RELAT-**
19 **ING TO MITIGATING SUPPLY CHAIN RISKS IN**
20 **THE PROCUREMENT OF COVERED ARTICLES.**

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

1 **“§ 4713. Authorities relating to mitigating supply**
2 **chain risks in the procurement of cov-**
3 **ered articles**

4 “(a) AUTHORITY.—Subject to subsection (b), the
5 head of an executive agency may carry out a covered pro-
6 curement action.

7 “(b) DETERMINATION AND NOTIFICATION.—Except
8 as authorized by subsection (c) to address an urgent na-
9 tional security interest, the head of an executive agency
10 may exercise the authority provided in subsection (a) only
11 after—

12 “(1) obtaining a joint recommendation, in un-
13 classified or classified form, from the chief acquisi-
14 tion officer and the chief information officer of the
15 agency, or officials performing similar functions in
16 the case of executive agencies that do not have such
17 officials, which includes a review of any risk assess-
18 ment made available by the executive agency identi-
19 fied under section 1323(a)(3) of this title, that there
20 is a significant supply chain risk in a covered pro-
21 curement;

22 “(2) providing notice of the joint recommenda-
23 tion described in paragraph (1) to any source named
24 in the joint recommendation advising—

25 “(A) that a recommendation is being con-
26 sidered or has been obtained;

1 “(B) to the extent consistent with the na-
2 tional security and law enforcement interests, of
3 information that forms the basis for the rec-
4 ommendation;

5 “(C) that, within 30 days after receipt of
6 the notice, the source may submit information
7 and argument in opposition to the recommenda-
8 tion; and

9 “(D) of the procedures governing the con-
10 sideration of the submission and the possible
11 exercise of the authority provided in subsection
12 (a);

13 “(3) making a determination in writing, in un-
14 classified or classified form, after considering any in-
15 formation submitted by a source under paragraph
16 (2) and in consultation with the chief information
17 security officer of the agency, that—

18 “(A) use of the authority under subsection
19 (a) is necessary to protect national security by
20 reducing supply chain risk;

21 “(B) less intrusive measures are not rea-
22 sonably available to reduce such supply chain
23 risk; and

24 “(C) the use of such authorities will apply
25 to a single covered procurement or a class of

1 covered procurements, and otherwise specifies
2 the scope of the determination; and

3 “(4) providing a classified or unclassified notice
4 of the determination made under paragraph (3) to
5 the appropriate congressional committees and lead-
6 ership that includes—

7 “(A) the joint recommendation described
8 in paragraph (1);

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

12 “(C) a summary of the basis for the deter-
13 mination, including a discussion of less intru-
14 sive measures that were considered and why
15 such measures were not reasonably available to
16 reduce supply chain risk.

17 “(c) PROCEDURES TO ADDRESS URGENT NATIONAL
18 SECURITY INTERESTS.—In any case in which the head of
19 an executive agency determines that an urgent national
20 security interest requires the immediate exercise of the au-
21 thority provided in subsection (a), the head of the agen-
22 cy—

23 “(1) may, to the extent necessary to address
24 such national security interest, and subject to the
25 conditions in paragraph (2)—

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

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

9 “(C) temporarily delay the notice required
10 by subsection (b)(4); and

11 “(D) exercise the authority provided in
12 subsection (a) in accordance with such deter-
13 mination within 60 calendar days after the day
14 the determination is made; and

15 “(2) shall take actions necessary to comply with
16 all requirements of subsection (b) as soon as prac-
17 ticable after addressing the urgent national security
18 interest, including—

19 “(A) providing the notice required by sub-
20 section (b)(2);

21 “(B) promptly considering any information
22 submitted by the source in response to such no-
23 tice, and making any appropriate modifications
24 to the determination based on such information;

1 “(C) providing the notice required by sub-
2 section (b)(4), including a description of the ur-
3 gent national security interest, and any modi-
4 fications to the determination made in accord-
5 ance with subparagraph (B); and

6 “(D) providing notice to the appropriate
7 congressional committees and leadership within
8 7 calendar days of the covered procurement ac-
9 tions taken under this section.

10 “(d) CONFIDENTIALITY.—The notice required by
11 subsection (b)(2) shall be kept confidential until a deter-
12 mination with respect to a covered procurement action has
13 been made pursuant to subsection (b)(3).

14 “(e) DELEGATION.—The head of an executive agency
15 may not delegate the authority provided in subsection (a)
16 or the responsibility identified in subsection (f) to an offi-
17 cial below the level one level below the Deputy Secretary
18 or Principal Deputy Director.

19 “(f) ANNUAL REVIEW OF DETERMINATIONS.—The
20 head of an executive agency shall conduct an annual re-
21 view of all determinations made by such head under sub-
22 section (b) and promptly amend any covered procurement
23 action as appropriate.

1 “(g) REGULATIONS.—The Federal Acquisition Regu-
2 latory Council shall prescribe such regulations as may be
3 necessary to carry out this section.

4 “(h) REPORTS REQUIRED.—Not less frequently than
5 annually, the head of each executive agency that exercised
6 the authority provided in subsection (a) or (c) during the
7 preceding 12-month period shall submit to the appropriate
8 congressional committees and leadership a report summa-
9 rizing the actions taken by the agency under this section
10 during that 12-month period.

11 “(i) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion shall be construed to authorize the head of an execu-
13 tive agency to carry out a covered procurement action
14 based solely on the fact of foreign ownership of a potential
15 procurement source that is otherwise qualified to enter
16 into procurement contracts with the Federal Government.

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

21 “(k) DEFINITIONS.—In this section:

22 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
23 TEES AND LEADERSHIP.—The term ‘appropriate
24 congressional committees and leadership’ means—

1 “(A) the Committee on Homeland Security
2 and Governmental Affairs, the Committee on
3 the Judiciary, the Committee on Appropria-
4 tions, the Committee on Armed Services, the
5 Committee on Commerce, Science, and Trans-
6 portation, the Select Committee on Intelligence,
7 and the majority and minority leader of the
8 Senate; and

9 “(B) the Committee on Oversight and Gov-
10 ernment Reform, the Committee on the Judici-
11 ary, the Committee on Appropriations, the
12 Committee on Homeland Security, the Com-
13 mittee on Armed Services, the Committee on
14 Energy and Commerce, the Permanent Select
15 Committee on Intelligence, and the Speaker and
16 minority leader of the House of Representa-
17 tives.

18 “(2) COVERED ARTICLE.—The term ‘covered
19 article’ means—

20 “(A) information technology, as defined in
21 section 11101 of title 40, including cloud com-
22 puting services of all types;

23 “(B) telecommunications equipment or
24 telecommunications service, as those terms are

1 defined in section 3 of the Communications Act
2 of 1934 (47 U.S.C. 153);

3 “(C) 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; or

7 “(D) hardware, systems, devices, software,
8 or services that include embedded or incidental
9 information technology.

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

12 “(A) a source selection for a covered arti-
13 cle involving either a performance specification,
14 as provided in subsection (a)(3)(B) of section
15 3306 of this title, or an evaluation factor, as
16 provided in subsection (b)(1)(A) of such section,
17 relating to a supply chain risk, or where supply
18 chain risk considerations are included in the
19 agency’s determination of whether a source is a
20 responsible source as defined in section 113 of
21 this title;

22 “(B) the consideration of proposals for and
23 issuance of a task or delivery order for a cov-
24 ered article, as provided in section 4106(d)(3)
25 of this title, where the task or delivery order

1 contract includes a contract clause establishing
2 a requirement relating to a supply chain risk;

3 “(C) any contract action involving a con-
4 tract for a covered article where the contract in-
5 cludes a clause establishing requirements relat-
6 ing to a supply chain risk; or

7 “(D) any other procurement in a category
8 of procurements determined appropriate by the
9 Federal Acquisition Regulatory Council, with
10 the advice of the Federal Acquisition Security
11 Council.

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

16 “(A) The exclusion of a source that fails to
17 meet qualification requirements established
18 under section 3311 of this title for the purpose
19 of reducing supply chain risk in the acquisition
20 or use of covered articles.

21 “(B) The exclusion of a source that fails to
22 achieve an acceptable rating with regard to an
23 evaluation factor providing for the consideration
24 of supply chain risk in the evaluation of pro-

1 posals for the award of a contract or the
2 issuance of a task or delivery order.

3 “(C) The determination that a source is
4 not a responsible source as defined in section
5 113 of this title based on considerations of sup-
6 ply chain risk.

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

12 “(5) INFORMATION AND COMMUNICATIONS
13 TECHNOLOGY.—The term ‘information and commu-
14 nications technology’ means—

15 “(A) information technology, as defined in
16 section 11101 of title 40;

17 “(B) information systems, as defined in
18 section 3502 of title 44; and

19 “(C) telecommunications equipment and
20 telecommunications services, as those terms are
21 defined in section 3 of the Communications Act
22 of 1934 (47 U.S.C. 153).

23 “(6) SUPPLY CHAIN RISK.—The term ‘supply
24 chain risk’ means the risk that any person may sab-
25 otage, maliciously introduce unwanted function, ex-

1 (1) in section 3553(a)(5), by inserting “and
2 section 1326 of title 41” after “compliance with the
3 requirements of this subchapter”; and

4 (2) in section 3554(a)(1)(B)—

5 (A) by inserting “, subchapter III of chap-
6 ter 13 of title 41,” after “complying with the
7 requirements of this subchapter”;

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

10 (C) by adding at the end the following new
11 clause:

12 “(vi) responsibilities relating to as-
13 sessing and avoiding, mitigating, transfer-
14 ring, or accepting supply chain risks under
15 section 1326 of title 41, and complying
16 with exclusion and removal orders issued
17 under section 1323 of such title; and”.

18 (b) **RULE OF CONSTRUCTION.**—Nothing in this title
19 shall be construed to alter or impede any authority or re-
20 sponsibility under section 3553 of title 44, United States
21 Code.

22 **SEC. 305. EFFECTIVE DATE.**

23 This title shall take effect on the date that is 90 days
24 after the date of the enactment of this Act.