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(Original Signature of Member)

115TH CONGRESS
2D SESSION

H. R. _____

To require 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 require 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 AND OTHER MATTERS**

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

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

Sec. 103. Congressional submittal of reports relating to certain special access
programs and similar programs.

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 AND**
11 **OTHER MATTERS**

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

14 (a) **VULNERABILITY DISCLOSURE POLICY.**—The Sec-
15 retary of Homeland Security shall establish a policy appli-

1 cable to individuals, organizations, and companies that re-
2 port security vulnerabilities on appropriate information
3 systems of Department of Homeland Security. Such policy
4 shall include each of the following:

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

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

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

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

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

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

1 (c) CONSULTATION.—

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

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

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

18 (C) Non-governmental security researchers.

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

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

25 (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 the appropriate con-
5 gressional committees a copy of the policy required
6 under subsection (a) and the remediation process re-
7 quired under subsection (b).

8 (2) REPORT AND BRIEFING.—

9 (A) REPORT.—Not later than one year
10 after establishing the policy required under sub-
11 section (a), the Secretary of Homeland Security
12 shall submit to the appropriate congressional
13 committees a report on such policy and the re-
14 mediation process required under subsection
15 (b).

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

24 (C) MATTERS FOR INCLUSION.—The re-
25 port required under subparagraph (A) and the

1 briefings required under subparagraph (B) shall
2 include each of the following with respect to the
3 policy required under subsection (a) and the
4 process required under subsection (b) for the
5 period covered by the report or briefing, as the
6 case may be:

7 (i) The number of unique security
8 vulnerabilities reported.

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

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

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

19 (f) DEFINITIONS.—In this section:

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

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

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

9 (4) The term “appropriate congressional com-
10 mittees” means—

11 (A) the Committee on Homeland Security,
12 the Committee on Armed Services, the Com-
13 mittee on Energy and Commerce, and the Per-
14 manent Select Committee on Intelligence of the
15 House of Representatives; and

16 (B) the Committee on Homeland Security
17 and Governmental Affairs, the Committee on
18 Armed Services, the Committee on Commerce,
19 Science, and Transportation, and the Select
20 Committee on Intelligence of the Senate.

21 **SEC. 102. DEPARTMENT OF HOMELAND SECURITY BUG**
22 **BOUNTY PILOT PROGRAM.**

23 (a) DEFINITIONS.—In this section:

24 (1) The term “appropriate congressional com-
25 mittees” means—

1 (A) the Committee on Homeland Security
2 and Governmental Affairs of the Senate;

3 (B) the Select Committee on Intelligence
4 of the Senate;

5 (C) the Committee on Homeland Security
6 of the House of Representatives; and

7 (D) Permanent Select Committee on Intel-
8 ligence of the House of Representatives.

9 (2) The term “bug bounty program” means a
10 program under which—

11 (A) individuals, organizations, and compa-
12 nies are temporarily authorized to identify and
13 report vulnerabilities of appropriate information
14 systems of the Department; and

15 (B) eligible individuals, organizations, and
16 companies receive compensation in exchange for
17 such reports.

18 (3) The term “Department” means the Depart-
19 ment of Homeland Security.

20 (4) The term “eligible individual, organization,
21 or company” means an individual, organization, or
22 company that meets such criteria as the Secretary
23 determines in order to receive compensation in com-
24 pliance with Federal laws.

1 (5) The term “information system” has the
2 meaning given the term in section 3502 of title 44,
3 United States Code.

4 (6) The term “pilot program” means the bug
5 bounty pilot program required to be established
6 under subsection (b)(1).

7 (7) The term “Secretary” means the Secretary
8 of Homeland Security.

9 (b) BUG BOUNTY PILOT PROGRAM.—

10 (1) ESTABLISHMENT.—Not later than 180 days
11 after the date of enactment of this Act, the Sec-
12 retary shall establish, within the Office of the Chief
13 Information Officer, a bug bounty pilot program to
14 minimize vulnerabilities of appropriate information
15 systems of the Department.

16 (2) RESPONSIBILITIES OF SECRETARY.—In es-
17 tablishing and conducting the pilot program, the
18 Secretary shall—

19 (A) designate appropriate information sys-
20 tems to be included in the pilot program;

21 (B) provide compensation to eligible indi-
22 viduals, organizations, and companies for re-
23 ports of previously unidentified security
24 vulnerabilities within the information systems
25 designated under subparagraph (A);

1 (C) establish criteria for individuals, orga-
2 nizations, and companies to be considered eligi-
3 ble for compensation under the pilot program in
4 compliance with Federal laws;

5 (D) consult with the Attorney General on
6 how to ensure that approved individuals, orga-
7 nizations, or companies that comply with the
8 requirements of the pilot program are protected
9 from prosecution under section 1030 of title 18,
10 United States Code, and similar provisions of
11 law, and civil lawsuits for specific activities au-
12 thorized under the pilot program;

13 (E) consult with the Secretary of Defense
14 and the heads of other departments and agen-
15 cies that have implemented programs to provide
16 compensation for reports of previously undis-
17 closed vulnerabilities in information systems, re-
18 garding lessons that may be applied from such
19 programs; and

20 (F) develop an expeditious process by
21 which an individual, organization, or company
22 can register with the Department, submit to a
23 background check as determined by the Depart-
24 ment, and receive a determination as to eligi-
25 bility; and

1 (G) engage qualified interested persons, in-
2 cluding non-government sector representatives,
3 about the structure of the pilot program as con-
4 structive and to the extent practicable.

5 (3) CONTRACT AUTHORITY.—In establishing
6 the pilot program, the Secretary, subject to the
7 availability of appropriations, may award 1 or more
8 competitive contracts to an entity, as necessary, to
9 manage the pilot program.

10 (c) REPORT TO CONGRESS.—Not later than 180 days
11 after the date on which the pilot program is completed,
12 the Secretary shall submit to the appropriate congres-
13 sional committees a report on the pilot program, which
14 shall include—

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

19 (A) registered;

20 (B) were determined eligible;

21 (C) submitted security vulnerabilities; and

22 (D) received compensation;

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

1 (2) in subsection (f)(1), by striking “appro-
2 priate oversight committees” and inserting “congres-
3 sional oversight committees”; and

4 (3) in subsection (g)—

5 (A) by redesignating paragraphs (1) and
6 (2) as paragraphs (2) and (3), respectively; and

7 (B) by inserting before paragraph (2), as
8 so redesignated, the following:

9 “(1) CONGRESSIONAL OVERSIGHT COMMIT-
10 TEES.—The term ‘congressional oversight commit-
11 tees’ means—

12 “(A) congressional leadership and author-
13 izing and appropriations congressional commit-
14 tees with jurisdiction or shared jurisdiction over
15 a department or agency;

16 “(B) the Committee on Homeland Security
17 and Governmental Affairs of the Senate; and

18 “(C) the Committee on Oversight and Gov-
19 ernment Reform of the House of Representa-
20 tives.”.

1 **TITLE II—BORDER PATROL**
2 **AGENT PAY REFORM**

3 **SEC. 201. AMENDMENTS TO THE BORDER PATROL AGENT**
4 **PAY REFORM ACT OF 2014.**

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

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

9 (2) in subsection (b)(1)—

10 (A) in subparagraph (A), by striking “Not
11 later than 30 days before the first day of each
12 year beginning after the date of enactment of
13 this section, a border patrol agent shall make
14 an election whether the border patrol agent
15 shall, for that year, be assigned to” and insert-
16 ing “Not later than December 1 of each year,
17 a border patrol agent shall make an election
18 whether the border patrol agent shall, for the
19 next annual period beginning on the first day of
20 the first pay period that commences on or after
21 January 1, be assigned to”;

22 (B) in subparagraph (C), by striking “Not
23 later than 60 days before the first day of each
24 year beginning after the date of enactment of

1 this section” and inserting in its place “Not
2 later than November 1 of each year”;

3 (C) in subparagraph (D)—

4 (i) by amending clause (iv) to read as
5 follows:

6 “(iv) a border patrol agent shall be
7 assigned a basic border patrol rate of pay
8 during the period of initial training (in-
9 cluding initial orientation sessions, basic
10 training, and other preparatory activities)
11 prior to the agent’s first regular work as-
12 signment; and”;

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

15 (D) in subparagraph (E)—

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

18 (ii) in clause (ii), by striking “the
19 analysis conducted under section 2(e) of
20 the Border Patrol Agent Pay Reform Act
21 of 2014” and inserting in its place “a writ-
22 ten staffing analysis”; and

23 (iii) by adding at the end the fol-
24 lowing:

1 “(iv) EXCLUSION OF CERTAIN EM-
2 PLOYEES.—In applying any percentage
3 limit under clause (i) or (ii) to a location
4 population, U.S. Customs and Border Pro-
5 tection shall exclude from such population
6 any border patrol agent who is assigned a
7 basic border patrol rate of pay under sub-
8 paragraph (D)(iii) or (D)(iv) or who would
9 reach the premium pay cap under section
10 5547 if assigned a level 1 border patrol
11 rate of pay.

12 “(v) APPLICATION FREQUENCY.—The
13 10 percent limit under clause (i) or an al-
14 ternative percentage limit under a waiver
15 under clause (ii) shall be applied at the be-
16 ginning of the first pay period beginning
17 on or after January 1 each year.”;

18 (E) by striking subparagraph (G);

19 (3) in subsection (b)(2)—

20 (A) by amending subparagraph (C)(i) to
21 read as follows:

22 “(i) any compensation under this sec-
23 tion or any other provision of law in addi-
24 tion to the compensation provided under
25 subparagraph (B); or”;

1 (B) in subparagraph (E)—

2 (i) by striking “paid leave” and in-
3 serting “leave”; and

4 (ii) by striking “absent from work”
5 and inserting “excused from work”;

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

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

10 “(G) if the border patrol agent participates
11 in a full day of advanced training but does not
12 perform the entire required amount of sched-
13 uled overtime work under subparagraph (A)(ii)
14 on that day, the border patrol agent shall be
15 deemed to have performed scheduled overtime
16 work during nonwork periods to the extent nec-
17 essary to reach the required amount, but such
18 deemed credit may be applied to no more than
19 180 hours in a calendar year; otherwise, the
20 agent shall accrue a debt of hours for scheduled
21 overtime not worked on such a day; and”;

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

23 “(H) a border patrol agent may choose to
24 reduce any debt of obligated overtime hours
25 that the agent has incurred by applying any ac-

1 erued compensatory time off for travel pursuant
2 to section 5550b, and such compensatory time
3 off for travel may be applied towards such debt
4 only after other forms of overtime or earned
5 compensatory time credited to the border patrol
6 agent have been exhausted.”;

7 (4) in subsection (b)(3)—

8 (A) by amending subparagraph (C)(i) to
9 read as follows:

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

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

16 (C) in subparagraph (F)(ii), by striking
17 “and”;

18 (D) by amending subparagraph (G) to
19 read as follows:

20 “(G) if the border patrol agent participates
21 in a full day of advanced training but does not
22 perform the entire required amount of sched-
23 uled overtime work under subparagraph (A)(ii)
24 on that day, the border patrol agent shall be
25 deemed to have performed scheduled overtime

1 work during nonwork periods to the extent nec-
2 essary to reach the required amount, but such
3 deemed credit may be applied to no more than
4 90 hours in a calendar year; otherwise, the
5 agent shall accrue a debt of hours for scheduled
6 overtime not worked on such a day; and”;

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

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

17 (5) by amending subsection (d) to read as fol-
18 lows:

19 “(d) TREATMENT AS BASIC PAY.—

20 “(1) IN GENERAL.—Any overtime supplement
21 in addition to the basic border patrol rate of pay for
22 a border patrol agent resulting from application of
23 the level 1 border patrol rate of pay or the level 2
24 border patrol rate of pay shall be treated as part of
25 basic pay only—

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

6 “(B) except as otherwise provided in para-
7 graph (3), for purposes of sections 5595(c) and
8 8704(c);

9 “(C) for the purpose of section 8114(e);
10 and

11 “(D) subject to paragraph (2) and any
12 limitation established under paragraph (3), any
13 other purpose that the Director of the Office of
14 Personnel Management may by regulation pre-
15 scribe.

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

20 “(A) overtime pay, night pay, Sunday pay,
21 or holiday pay under section 5542, 5545, or
22 5546;

23 “(B) locality-based comparability payments
24 under section 5304 or special rate supplements
25 under section 5305; or

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

3 “(3) LIMITATIONS.—

4 “(A) IN GENERAL.—During the control pe-
5 riod described in subparagraph (B), the amount
6 of the overtime supplement that is considered
7 basic pay under paragraphs (1)(A) and (1)(B)
8 may not exceed the amount derived by multi-
9 plying the border patrol agent’s basic border
10 patrol rate of pay by the percentage rep-
11 resenting the agent’s career average of assigned
12 overtime supplement percentages (including 0
13 percent for periods of time during which no
14 overtime supplement was payable). That career
15 average percentage is computed without regard
16 to the effect of the limitation on premium pay
17 under section 5547, but the premium pay limi-
18 tation remains applicable in determining the
19 dollar amount of any overtime supplement com-
20 puted using the career average percentage.

21 “(B) CONTROL PERIOD.—For the purposes
22 of applying subparagraph (A), the control pe-
23 riod described in this subparagraph is the pe-
24 riod that begins 3 years before the date a bor-
25 der patrol agent will meet age and service re-

1 quirements associated with entitlement to an
2 immediate annuity and continues throughout
3 the remainder of the individual's career as a
4 border patrol agent.

5 “(C) ASSIGNED OVERTIME SUPPLEMENT
6 PERCENTAGES.—For the purpose of applying
7 subparagraph (A), a border patrol agent's ini-
8 tial career average of assigned overtime supple-
9 ment percentages is the average for the border
10 patrol agent's career (excluding any period of
11 initial training prior to the agent's first regular
12 work assignment) prior to the beginning of the
13 control period described in subparagraph (B).
14 During such control period, the career average
15 shall be recomputed at the end of each annual
16 period (as described in subsection (b)(1)(A)). In
17 computing such career average, any periods of
18 service as a border patrol agent prior to the
19 first day of the first pay period beginning on or
20 after January 1, 2016, shall be included, and
21 the agent's assigned overtime supplement dur-
22 ing such periods shall be deemed to be 25 per-
23 cent.

24 “(4) ANNUAL LEAVE PAYMENT.—For the pur-
25 pose of computing an agent's lump-sum annual leave

1 payment under section 5551 or 5552, the pay the
2 agent is projected to receive shall include a deemed
3 overtime supplement derived under this paragraph.
4 Such overtime supplement shall be based on the
5 lower of the agent's actual overtime supplement per-
6 centage in effect at separation or the average per-
7 centage of the agent's overtime supplement over the
8 26 full biweekly pay periods immediately preceding
9 that separation, and shall not exceed the amount
10 that is or would be payable under the premium pay
11 limitation in section 5547.”;

12 (6) in subsection (f)—

13 (A) in the heading of such subsection, by
14 striking “AND SUBSTITUTION OF HOURS” and
15 inserting “DURING REGULAR TIME; ABSENCES
16 DURING SCHEDULED OVERTIME”; and

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

18 “(5) APPLICATION.—

19 “(A) LIMITATION ON SUBSTITUTION.—

20 Notwithstanding paragraph (1), scheduled over-
21 time (as described in paragraph (2)(A)(ii) or
22 (3)(A)(ii) of subsection (b)) may not be sub-
23 stituted for leave without pay on a day when a
24 border patrol agent has a full day of leave with-
25 out pay.

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

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

8 “(h) ALTERNATIVE WORK SCHEDULES.—

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

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

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

1 “(i) 8 workdays including 9 hours of
2 regular time per workday and 1 additional
3 hour of scheduled overtime for each day
4 the agent performs work during regular
5 time; and

6 “(ii) 1 workday including 8 hours of
7 regular time per workday and 2 additional
8 hours of scheduled overtime when the
9 agent performs work during such regular
10 time.

11 “(B) Subparagraphs (B) through (H) of
12 subsection (b)(3) shall continue to apply to an
13 agent assigned to an alternative work schedule
14 under this paragraph. References in this section
15 to regular time under subsection (b)(3)(A)(i)
16 and scheduled overtime under subsection
17 (b)(3)(A)(ii) shall be deemed to be references to
18 regular time and scheduled overtime described
19 in subparagraph (A), respectively.

20 “(3) BASIC BORDER PATROL AGENT.—A border
21 patrol agent receiving a basic border patrol rate of
22 pay may, in lieu of the standard work schedule de-
23 scribed in subsection (b)(4)(A), be assigned to an al-
24 ternative work schedule that is a regular tour of

1 duty consisting of 4 workdays per week with 10
2 hours of regular time per workday.

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

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

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

14 “(C) basic pay for all regular time hours
15 that qualify for holiday time off pay when an
16 agent is relieved or prevented from working
17 during such regular time on a day designated
18 as a holiday by Federal statute or Executive
19 order.

20 “(5) APPLICATION.—For purposes of admin-
21 istering sections 6303(a), 6304, 6307(a) and (d),
22 6323, 6326, 6327, and 8339(m), in the case of an
23 employee assigned to an alternative work schedule
24 under this subsection, references to a day or work-
25 day (or to multiples or parts thereof) contained in

1 such sections shall be considered to be references to
2 8 hours (or to the respective multiples or parts
3 thereof).

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

7 “(1) elections and assignments of a border pa-
8 trol rate of pay for newly hired border patrol agents
9 who complete initial training during an annual pe-
10 riod;

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

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

17 (b) OVERTIME RATES.—Section 5542(g)(5) of title
18 5, United States Code, is amended—

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

22 (2) by amending subparagraph (E) to read as
23 follows:

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

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

9 (d) BASIC PAY FOR RETIREMENT.—Section
10 8331(3)(I) of title 5, United States Code, is amended by
11 adding before the semicolon at the end the following: “,
12 subject to the limitation prescribed in section 5550(d)(3)”.

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

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

1 **TITLE III—FEDERAL ACQUI-**
2 **SION SUPPLY CHAIN SEC-**
3 **RITY**

4 **SEC. 301. SHORT TITLE.**

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

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

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

11 “SUBCHAPTER III—FEDERAL ACQUISITION
12 SUPPLY CHAIN SECURITY

13 “§ 1321. Definitions

14 “In this subchapter:

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

18 “(A) the Committee on Homeland Security
19 and Governmental Affairs, the Committee on
20 the Judiciary, the Committee on Appropria-
21 tions, the Committee on Armed Services, the
22 Committee on Commerce, Science, and Trans-
23 portation, the Select Committee on Intelligence,
24 and the majority and minority leader of the
25 Senate; and

1 “(B) the Committee on Oversight and Gov-
2 ernment Reform, the Committee on the Judici-
3 ary, the Committee on Appropriations, the
4 Committee on Homeland Security, the Com-
5 mittee on Armed Services, the Committee on
6 Energy and Commerce, the Permanent Select
7 Committee on Intelligence, and the Speaker and
8 minority leader of the House of Representa-
9 tives.

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

13 “(3) COVERED ARTICLE.—The term ‘covered
14 article’ has the meaning given that term in section
15 4713 of this title.

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

19 “(5) INFORMATION AND COMMUNICATIONS
20 TECHNOLOGY.—The term ‘information and commu-
21 nications technology’ has the meaning given that
22 term in section 4713 of this title.

23 “(6) INTELLIGENCE COMMUNITY.—The term
24 ‘intelligence community’ has the meaning given that

1 term in section 3(4) of the National Security Act of
2 1947 (50 U.S.C. 3003(4)).

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

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

9 **“§ 1322. Federal Acquisition Security Council estab-**
10 **lishment and membership**

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

13 “(b) MEMBERSHIP.—

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

16 “(A) The Office of Management and
17 Budget.

18 “(B) The General Services Administration.

19 “(C) The Department of Homeland Secu-
20 rity, including the Cybersecurity and Infra-
21 structure Security Agency.

22 “(D) The Office of the Director of Na-
23 tional Intelligence, including the National Coun-
24 terintelligence and Security Center.

1 “(E) The Department of Justice, including
2 the Federal Bureau of Investigation.

3 “(F) The Department of Defense, includ-
4 ing the National Security Agency.

5 “(G) The Department of Commerce, in-
6 cluding the National Institute of Standards and
7 Technology.

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

10 “(2) LEAD REPRESENTATIVES.—

11 “(A) DESIGNATION.—

12 “(i) IN GENERAL.—Not later than 45
13 days after the date of the enactment of the
14 Federal Acquisition Supply Chain Security
15 Act of 2018, the head of each agency rep-
16 resented on the Council shall designate a
17 representative of that agency as the lead
18 representative of the agency on the Coun-
19 cil.

20 “(ii) REQUIREMENTS.—The rep-
21 resentative of an agency designated under
22 clause (i) shall have expertise in supply
23 chain risk management, acquisitions, or in-
24 formation and communications technology.

1 “(B) FUNCTIONS.—The lead representa-
2 tive of an agency designated under subpara-
3 graph (A) shall ensure that appropriate per-
4 sonnel, including leadership and subject matter
5 experts of the agency, are aware of the business
6 of the Council.

7 “(c) CHAIRPERSON.—

8 “(1) DESIGNATION.—Not later than 45 days
9 after the date of the enactment of the Federal Ac-
10 quisition Supply Chain Security Act of 2018, the Di-
11 rector of the Office of Management and Budget
12 shall designate a senior-level official from the Office
13 of Management and Budget to serve as the Chair-
14 person of the Council.

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

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

19 “(B) designating executive agencies to be
20 represented on the Council under subsection
21 (b)(1)(H);

22 “(C) in consultation with the lead rep-
23 resentative of each agency represented on the
24 Council, developing a charter for the Council;
25 and

1 “(D) not later than 7 days after comple-
2 tion of the charter, submitting the charter to
3 the appropriate congressional committees and
4 leadership.

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

9 **“§ 1323. Functions and authorities**

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

12 “(1) Identifying and recommending develop-
13 ment by the National Institute of Standards and
14 Technology of supply chain risk management stand-
15 ards, guidelines, and practices for executive agencies
16 to use when assessing and developing mitigation
17 strategies to address supply chain risks, particularly
18 in the acquisition and use of covered articles under
19 section 1326(a) of this title.

20 “(2) Identifying or developing criteria for shar-
21 ing information with executive agencies, other Fed-
22 eral entities, and non-Federal entities with respect to
23 supply chain risk, including information related to
24 the exercise of authorities provided under this sec-

1 tion and sections 1326 and 4713 of this title. At a
2 minimum, such criteria shall address—

3 “(A) the content to be shared;

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

6 “(C) the circumstances under which it is
7 appropriate for an executive agency to rely on
8 information made available through such shar-
9 ing in exercising the responsibilities and au-
10 thorities provided under this section and section
11 4713 of this title.

12 “(3) Identifying an appropriate executive agen-
13 cy to—

14 “(A) accept information submitted by exec-
15 utive agencies based on the criteria established
16 under paragraph (2);

17 “(B) facilitate the sharing of information
18 received under subparagraph (A) to support
19 supply chain risk analyses under section 1326
20 of this title, recommendations under this sec-
21 tion, and covered procurement actions under
22 section 4713 of this title;

23 “(C) share with the Council information
24 regarding covered procurement actions by exec-

1 utive agencies taken under section 4713 of this
2 title; and

3 “(D) inform the Council of orders issued
4 under this section.

5 “(4) Identifying, as appropriate, executive agen-
6 cies to provide—

7 “(A) shared services, such as support for
8 making risk assessments, validation of products
9 that may be suitable for acquisition, and miti-
10 gation activities; and

11 “(B) common contract solutions to support
12 supply chain risk management activities, such
13 as subscription services or machine-learning-en-
14 hanced analysis applications to support in-
15 formed decision making.

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

21 “(6) Engaging with the private sector and other
22 nongovernmental stakeholders in performing the
23 functions described in paragraphs (1) and (2) and
24 on issues relating to the management of supply

1 chain risks posed by the acquisition of covered arti-
2 cles.

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

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

12 “(c) AUTHORITY FOR EXCLUSION OR REMOVAL OR-
13 DERS.—

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

17 “(A) recommending orders applicable to
18 executive agencies requiring the exclusion of
19 sources or covered articles from executive agen-
20 cy procurement actions (in this section referred
21 to as ‘exclusion orders’);

22 “(B) recommending orders applicable to
23 executive agencies requiring the removal of cov-
24 ered articles from executive agency information

1 systems (in this section referred to as ‘removal
2 orders’);

3 “(C) requesting and approving exceptions
4 to an issued exclusion or removal order when
5 warranted by circumstances, including alter-
6 native mitigation actions or other findings relat-
7 ing to the national interest, including national
8 security reviews, national security investiga-
9 tions, or national security agreements; and

10 “(D) ensuring that recommended orders do
11 not conflict with standards and guidelines
12 issued under section 11331 of title 40 and that
13 the Council consults with the Director of the
14 National Institute of Standards and Technology
15 regarding any recommended orders that would
16 implement standards and guidelines developed
17 by the National Institute of Standards and
18 Technology.

19 “(2) RECOMMENDATIONS.—The Council shall
20 use the criteria established under paragraph (1), in-
21 formation made available under subsection (a)(3),
22 and any other information the Council determines
23 appropriate to issue recommendations, for applica-
24 tion to executive agencies or any subset thereof, re-
25 garding the exclusion of sources or covered articles

1 from any executive agency procurement action, in-
2 cluding source selection and consent for a contractor
3 to subcontract, or the removal of covered articles
4 from executive agency information systems. Such
5 recommendations shall include—

6 “(A) information necessary to positively
7 identify the sources or covered articles rec-
8 ommended for exclusion or removal;

9 “(B) information regarding the scope and
10 applicability of the recommended exclusion or
11 removal order;

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

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

20 “(E) a description of the actions necessary
21 to implement the recommended exclusion or re-
22 moval order; and

23 “(F) where practicable, in the Council’s
24 sole and unreviewable discretion, a description
25 of mitigation steps that could be taken by the

1 source that may result in the Council rescinding
2 a recommendation.

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

7 “(A) that a recommendation has been
8 made;

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

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

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

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

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

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

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

8 “(5) EXCLUSION AND REMOVAL ORDERS.—

9 “(A) ORDER ISSUANCE.—Recommendations
10 of the Council under paragraph (2), together with any information submitted by a
11 source under paragraph (3) related to such a
12 recommendation, shall be reviewed by the following
13 officials, who may issue exclusion and
14 removal orders based upon such recommenda-
15 tions:
16

17 “(i) The Secretary of Homeland Security,
18 for exclusion and removal orders applicable to civilian agencies, to the extent
19 not covered by clause (ii) or (iii).
20

21 “(ii) The Secretary of Defense, for exclusion and removal orders applicable to
22 the Department of Defense and national
23 security systems other than sensitive com-
24 partmented information systems.
25

1 “(iii) The Director of National Intel-
2 ligence, for exclusion and removal orders
3 applicable to the intelligence community
4 and sensitive compartmented information
5 systems, to the extent not covered by
6 clause (ii).

7 “(B) DELEGATION.—The officials identi-
8 fied in subparagraph (A) may not delegate any
9 authority under this subparagraph to an official
10 below the level one level below the Deputy Sec-
11 retary or Principal Deputy Director, except that
12 the Secretary of Defense may delegate author-
13 ity for removal orders to the Commander of the
14 United States Cyber Command, who may not
15 redelegate such authority to an official below
16 the level one level below the Deputy Com-
17 mander.

18 “(C) FACILITATION OF EXCLUSION OR-
19 DERS.—If officials identified under this para-
20 graph from the Department of Homeland Secu-
21 rity, the Department of Defense, and the Office
22 of the Director of National Intelligence issue or-
23 ders collectively resulting in a governmentwide
24 exclusion, the Administrator for General Serv-
25 ices and officials at other executive agencies re-

1 sponsible for management of the Federal Sup-
2 ply Schedules, governmentwide acquisition con-
3 tracts and multi-agency contracts shall help fa-
4 cilitate implementation of such orders by re-
5 moving the covered articles or sources identified
6 in the orders from such contracts.

7 “(D) REVIEW OF EXCLUSION AND RE-
8 MOVAL ORDERS.—The officials identified under
9 this paragraph shall review all exclusion and re-
10 moval orders issued under subparagraph (A)
11 not less frequently than annually pursuant to
12 procedures established by the Council.

13 “(E) RESCISSION.—Orders issued pursu-
14 ant to subparagraph (A) may be rescinded by
15 an authorized official from the relevant issuing
16 agency.

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

21 “(A) notify any source named in the order
22 of—

23 “(i) the exclusion or removal order;
24 and

1 “(ii) to the extent consistent with na-
2 tional security and law enforcement inter-
3 ests, information that forms the basis for
4 the order;

5 “(B) provide classified or unclassified no-
6 tice of the exclusion or removal order to the ap-
7 propriate congressional committees and leader-
8 ship; and

9 “(C) provide the exclusion or removal
10 order to the agency identified in subsection
11 (a)(3).

12 “(7) COMPLIANCE.—Executive agencies shall
13 comply with exclusion and removal orders issued
14 pursuant to paragraph (5).

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

19 “(e) RELATIONSHIP TO OTHER COUNCILS.—The
20 Council shall consult and coordinate, as appropriate, with
21 other relevant councils and interagency committees, in-
22 cluding the Chief Information Officers Council, the Chief
23 Acquisition Officers Council, the Federal Acquisition Reg-
24 ulatory Council, and the Committee on Foreign Invest-

1 ment in the United States, with respect to supply chain
2 risks posed by the acquisition and use of covered articles.

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

5 “(1) to limit the authority of the Office of Fed-
6 eral Procurement Policy to carry out the responsibil-
7 ities of that Office under any other provision of law;
8 or

9 “(2) to authorize the issuance of an exclusion
10 or removal order based solely on the fact of foreign
11 ownership of a potential procurement source that is
12 otherwise qualified to enter into procurement con-
13 tracts with the Federal Government.

14 **“§ 1324. Strategic plan**

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

21 “(1) the criteria and processes required under
22 section 1323(a) of this title, including a threshold
23 and requirements for sharing relevant information
24 about such risks with all executive agencies and, as

1 appropriate, with other Federal entities and non-
2 Federal entities;

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

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

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

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

15 “(6) an evaluation of the effect of implementing
16 new policies or procedures on existing contracts and
17 the procurement process;

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

21 “(8) a plan for identification, assessment, miti-
22 gation, and vetting of supply chain risks from exist-
23 ing and prospective information and communications
24 technology made available by executive agencies to
25 other executive agencies through common contract

1 solutions, shared services, acquisition vehicles, or
2 other assisted acquisition services; and

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

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

7 “(B) compliance with the requirements of
8 this subchapter.

9 “(b) SUBMISSION TO CONGRESS.—Not later than 7
10 calendar days after completion of the strategic plan re-
11 quired by subsection (a), the Chairperson of the Council
12 shall submit the plan to the appropriate congressional
13 committees and leadership.

14 **“§ 1325. Annual report**

15 “Not later than December 31 of each year, the Chair-
16 person of the Council shall submit to the appropriate con-
17 gressional committees and leadership a report on the ac-
18 tivities of the Council during the preceding 12-month pe-
19 riod.

20 **“§ 1326. Requirements for executive agencies**

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

23 “(1) assessing the supply chain risk posed by
24 the acquisition and use of covered articles and avoid-
25 ing, mitigating, accepting, or transferring that risk,

1 as appropriate and consistent with the standards,
2 guidelines, and practices identified by the Council
3 under section 1323(a)(1); and

4 “(2) prioritizing supply chain risk assessments
5 conducted under paragraph (1) based on the criti-
6 cality of the mission, system, component, service, or
7 asset.

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

10 “(1) developing an overall supply chain risk
11 management strategy and implementation plan and
12 policies and processes to guide and govern supply
13 chain risk management activities;

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

17 “(3) limiting, avoiding, mitigating, accepting, or
18 transferring any identified risk;

19 “(4) sharing relevant information with other ex-
20 ecutive agencies as determined appropriate by the
21 Council in a manner consistent with section 1323(a)
22 of this title;

23 “(5) reporting on progress and effectiveness of
24 the agency’s supply chain risk management con-

1 sistent with guidance issued by the Office of Man-
2 agement and Budget and the Council; and

3 “(6) ensuring that all relevant information, in-
4 cluding classified information, with respect to acqui-
5 sitions of covered articles that may pose a supply
6 chain risk, consistent with section 1323(a) of this
7 title, is incorporated into existing processes of the
8 agency for conducting assessments described in sub-
9 section (a) and ongoing management of acquisition
10 programs, including any identification, investigation,
11 mitigation, or remediation needs.

12 “(c) INTERAGENCY ACQUISITIONS.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), in the case of an interagency acquisition,
15 subsection (a) shall be carried out by the head of the
16 executive agency whose funds are being used to pro-
17 cure the covered article.

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

23 “(3) DEFINITIONS.—In this subsection, the
24 terms ‘assisted acquisition’ and ‘interagency acquisi-
25 tion’ have the meanings given those terms in section

1 2.101 of title 48, Code of Federal Regulations (or
2 any corresponding similar regulation or ruling).

3 “(d) ASSISTANCE.—The Secretary of Homeland Se-
4 curity may—

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

9 “(2) provide such additional guidance or tools
10 as are necessary to support actions taken by execu-
11 tive agencies.

12 **“§ 1327. Judicial review procedures**

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

21 “(b) PETITIONS.—

22 “(1) IN GENERAL.—Not later than 60 days
23 after a party is notified of an exclusion or removal
24 order under section 1323(c)(6) of this title or a cov-
25 ered procurement action under section 4713 of this

1 title, the party may file a petition for judicial review
2 in the United States Court of Appeals for the Dis-
3 trict of Columbia Circuit claiming that the issuance
4 of the exclusion or removal order or covered procure-
5 ment action is unlawful.

6 “(2) STANDARD OF REVIEW.—The Court shall
7 hold unlawful a covered action taken under sections
8 1323 or 4713 of this title, in response to a petition
9 that the court finds to be—

10 “(A) arbitrary, capricious, an abuse of dis-
11 cretion, or otherwise not in accordance with
12 law;

13 “(B) contrary to constitutional right,
14 power, privilege, or immunity;

15 “(C) in excess of statutory jurisdiction, au-
16 thority, or limitation, or short of statutory
17 right;

18 “(D) lacking substantial support in the ad-
19 ministrative record taken as a whole or in clas-
20 sified information submitted to the court under
21 paragraph (3); or

22 “(E) not in accord with procedures re-
23 quired by law.

24 “(3) EXCLUSIVE JURISDICTION.—The United
25 States Court of Appeals for the District of Columbia

1 Circuit shall have exclusive jurisdiction over claims
2 arising under sections 1323(c)(5) or 4713 of this
3 title against the United States, any United States
4 department or agency, or any component or official
5 of any such department or agency, subject to review
6 by the Supreme Court of the United States under
7 section 1254 of title 28.

8 “(4) ADMINISTRATIVE RECORD AND PROCE-
9 DURES.—

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

13 “(B) ADMINISTRATIVE RECORD.—

14 “(i) FILING OF RECORD.—The United
15 States shall file with the court an adminis-
16 trative record, which shall consist of the
17 information that the appropriate official
18 relied upon in issuing an exclusion or re-
19 moval order under section 1323(c)(5) or a
20 covered procurement action under section
21 4713 of this title.

22 “(ii) UNCLASSIFIED, NONPRIVILEGED
23 INFORMATION.—All unclassified informa-
24 tion contained in the administrative record
25 that is not otherwise privileged or subject

1 to statutory protections shall be provided
2 to the petitioner with appropriate protec-
3 tions for any privileged or confidential
4 trade secrets and commercial or financial
5 information.

6 “(iii) IN CAMERA AND EX PARTE.—
7 The following information may be included
8 in the administrative record and shall be
9 submitted only to the court ex parte and in
10 camera:

11 “(I) Classified information.

12 “(II) Sensitive security informa-
13 tion, as defined by section 1520.5 of
14 title 49, Code of Federal Regulations.

15 “(III) Privileged law enforcement
16 information.

17 “(IV) Information obtained or
18 derived from any activity authorized
19 under the Foreign Intelligence Sur-
20 veillance Act of 1978 (50 U.S.C. 1801
21 et seq.), except that, with respect to
22 such information, subsections (e), (e),
23 (f), (g), and (h) of section 106 (50
24 U.S.C. 1806), subsections (d), (f), (g),
25 (h), and (i) of section 305 (50 U.S.C.

1 1825), subsections (c), (e), (f), (g),
2 and (h) of section 405 (50 U.S.C.
3 1845), and section 706 (50 U.S.C.
4 1881e) of that Act shall not apply.

5 “(V) Information subject to privi-
6 lege or protections under any other
7 provision of law.

8 “(iv) UNDER SEAL.—Any information
9 that is part of the administrative record
10 filed ex parte and in camera under clause
11 (iii), or cited by the court in any decision,
12 shall be treated by the court consistent
13 with the provisions of this subparagraph
14 and shall remain under seal and preserved
15 in the records of the court to be made
16 available consistent with the above provi-
17 sions in the event of further proceedings.
18 In no event shall such information be re-
19 leased to the petitioner or as part of the
20 public record.

21 “(v) RETURN.—After the expiration
22 of the time to seek further review, or the
23 conclusion of further proceedings, the
24 court shall return the administrative

1 record, including any and all copies, to the
2 United States.

3 “(C) EXCLUSIVE REMEDY.—A determina-
4 tion by the court under this subsection shall be
5 the exclusive judicial remedy for any claim de-
6 scribed in this section against the United
7 States, any United States department or agen-
8 cy, or any component or official of any such de-
9 partment or agency.

10 “(D) RULE OF CONSTRUCTION.—Nothing
11 in this section shall be construed as limiting,
12 superseding, or preventing the invocation of,
13 any privileges or defenses that are otherwise
14 available at law or in equity to protect against
15 the disclosure of information.

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

18 “(1) has the meaning given that term in section
19 1(a) of the Classified Information Procedures Act
20 (18 U.S.C. App.); and

21 “(2) includes—

22 “(A) any information or material that has
23 been determined by the United States Govern-
24 ment pursuant to an Executive order, statute,
25 or regulation to require protection against un-

1 authorized disclosure for reasons of national se-
2 curity; and

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

6 **“§ 1328. Termination**

7 “This subchapter shall terminate on the date that is
8 5 years after the date of the enactment of the Federal
9 Acquisition Supply Chain Security Act of 2018.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of chapter 13 of such title is amended
12 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.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the date that is 90 days
15 after the date of the enactment of this Act and shall apply
16 to contracts that are awarded before, on, or after that
17 date.

18 (d) IMPLEMENTATION.—

19 (1) INTERIM FINAL RULE.—Not later than one
20 year after the date of the enactment of this Act, the

1 Federal Acquisition Security Council shall prescribe
2 an interim final rule to implement subchapter III of
3 chapter 13 of title 41, United States Code, as added
4 by subsection (a).

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

12 (3) FAILURE TO ACT.—

13 (A) IN GENERAL.—If the Council does not
14 issue a final rule in accordance with paragraph
15 (2) on or before the last day of the one-year pe-
16 riod referred to in that paragraph, the Council
17 shall submit to the appropriate congressional
18 committees and leadership, not later than 10
19 days after such last day and every 90 days
20 thereafter until the final rule is issued, a report
21 explaining why the final rule was not timely
22 issued and providing an estimate of the earliest
23 date on which the final rule will be issued.

24 (B) APPROPRIATE CONGRESSIONAL COM-
25 MITTEES AND LEADERSHIP DEFINED.—In this

1 paragraph, the term “appropriate congressional
2 committees and leadership” has the meaning
3 given that term in section 1321 of title 41,
4 United States Code, as added by subsection (a).

5 **SEC. 303. AUTHORITIES OF EXECUTIVE AGENCIES RELAT-**
6 **ING TO MITIGATING SUPPLY CHAIN RISKS IN**
7 **THE PROCUREMENT OF COVERED ARTICLES.**

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

11 **“§ 4713. Authorities relating to mitigating supply**
12 **chain risks in the procurement of cov-**
13 **ered articles**

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

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

22 “(1) obtaining a joint recommendation, in un-
23 classified or classified form, from the chief acquisi-
24 tion officer and the chief information officer of the
25 agency, or officials performing similar functions in

1 the case of executive agencies that do not have such
2 officials, which includes a review of any risk assess-
3 ment made available by the executive agency identi-
4 fied under section 1323(a)(3) of this title, that there
5 is a significant supply chain risk in a covered pro-
6 curement;

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

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

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

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

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

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

1 formation submitted by a source under paragraph
2 (2) and in consultation with the chief information
3 security officer of the agency, that—

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

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

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

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

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

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

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

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

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

9 “(1) may, to the extent necessary to address
10 such national security interest, and subject to the
11 conditions in paragraph (2)—

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

14 “(B) make the determination required by
15 subsection (b)(3), regardless of whether the no-
16 tice required by subsection (b)(2) has been pro-
17 vided or whether the notified source has sub-
18 mitted any information in response to such no-
19 tice;

20 “(C) temporarily delay the notice required
21 by subsection (b)(4); and

22 “(D) exercise the authority provided in
23 subsection (a) in accordance with such deter-
24 mination within 60 calendar days after the day
25 the determination is made; and

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

5 “(A) providing the notice required by sub-
6 section (b)(2);

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

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

16 “(D) providing notice to the appropriate
17 congressional committees and leadership within
18 7 calendar days of the covered procurement ac-
19 tions taken under this section.

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

24 “(e) DELEGATION.—The head of an executive agency
25 may not delegate the authority provided in subsection (a)

1 or the responsibility identified in subsection (f) to an offi-
2 cial below the level one level below the Deputy Secretary
3 or Principal Deputy Director.

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

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

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

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

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

5 “(k) DEFINITIONS.—In this section:

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

9 “(A) the Committee on Homeland Security
10 and Governmental Affairs, the Committee on
11 the Judiciary, the Committee on Appropria-
12 tions, the Committee on Armed Services, the
13 Committee on Commerce, Science, and Trans-
14 portation, the Select Committee on Intelligence,
15 and the majority and minority leader of the
16 Senate; and

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

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

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

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

10 “(C) the processing of information on a
11 Federal or non-Federal information system,
12 subject to the requirements of the Controlled
13 Unclassified Information program; or

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

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

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

1 agency's determination of whether a source is a
2 responsible source as defined in section 113 of
3 this 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 this title, where the task or delivery order
8 contract includes a contract clause establishing
9 a requirement relating to a supply chain risk;

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

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

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

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

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

9 “(C) The determination that a source is
10 not a responsible source as defined in section
11 113 of this title based on considerations of sup-
12 ply 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 under the contract.

18 “(5) INFORMATION AND COMMUNICATIONS
19 TECHNOLOGY.—The term ‘information and commu-
20 nications technology’ means—

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

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

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

5 “(6) SUPPLY CHAIN RISK.—The term ‘supply
6 chain risk’ means the risk that any person may sab-
7 otage, maliciously introduce unwanted function, ex-
8 tract data, or otherwise manipulate the design, in-
9 tegrity, manufacturing, production, distribution, in-
10 stallation, operation, maintenance, disposition, or re-
11 tirement of covered articles so as to surveil, deny,
12 disrupt, or otherwise manipulate the function, use,
13 or operation of the covered articles or information
14 stored or transmitted on the covered articles.

15 “(7) EXECUTIVE AGENCY.—Notwithstanding
16 section 3101(c)(1), this section applies to the De-
17 partment of Defense, the Coast Guard, and the Na-
18 tional Aeronautics and Space Administration.”.

19 (b) CLERICAL AMENDMENT.—The table of sections
20 at the beginning of chapter 47 of such title is amended
21 by adding at the end the following new item:

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

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on the date that is 90 days
24 after the date of the enactment of this Act and shall apply

1 to contracts that are awarded before, on, or after that
2 date.

3 **SEC. 304. FEDERAL INFORMATION SECURITY MODERNIZA-**
4 **TION ACT.**

5 (a) IN GENERAL.—Title 44, United States Code, is
6 amended—

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

10 (2) in section 3554(a)(1)(B)—

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

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

16 (C) by adding at the end the following new
17 clause:

18 “(vi) responsibilities relating to as-
19 sessing and avoiding, mitigating, transfer-
20 ring, or accepting supply chain risks under
21 section 1326 of title 41, and complying
22 with exclusion and removal orders issued
23 under section 1323 of such title; and”.

24 (b) RULE OF CONSTRUCTION.—Nothing in this title
25 shall be construed to alter or impede any authority or re-

1 sponsibility under section 3553 of title 44, United States

2 Code.

3 **SEC. 305. EFFECTIVE DATE.**

4 This title shall take effect on the date that is 90 days

5 after the date of the enactment of this Act.