To improve cybersecurity in the United States through enhanced sharing of information about cybersecurity threats, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2015

Mr. BURR, from the Select Committee on Intelligence, reported the following original bill; which was read twice and placed on the calendar

A BILL

To improve cybersecurity in the United States through enhanced sharing of information about cybersecurity threats, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Cybersecurity Information Sharing Act of 2015”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Sharing of information by the Federal Government.
Sec. 4. Authorizations for preventing, detecting, analyzing, and mitigating cybersecurity threats.
Sec. 5. Sharing of cyber threat indicators and defensive measures with the Federal Government.
Sec. 6. Protection from liability.
Sec. 7. Oversight of Government activities.
Sec. 8. Construction and preemption.
Sec. 9. Report on cybersecurity threats.
Sec. 10. Conforming amendments.

SEC. 2. DEFINITIONS.

In this Act:

(1) AGENCY.—The term “agency” has the meaning given the term in section 3502 of title 44, United States Code.

(2) ANTITRUST LAWS.—The term “antitrust laws”—

(A) has the meaning given the term in section 1 of the Clayton Act (15 U.S.C. 12);

(B) includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 of that Act applies to unfair methods of competition; and

(C) includes any State law that has the same intent and effect as the laws under subparagraphs (A) and (B).

(3) APPROPRIATE FEDERAL ENTITIES.—The term “appropriate Federal entities” means the following:

(A) The Department of Commerce.
(B) The Department of Defense.

(C) The Department of Energy.

(D) The Department of Homeland Security.

(E) The Department of Justice.

(F) The Department of the Treasury.

(G) The Office of the Director of National Intelligence.

(4) CYBERSECURITY PURPOSE.—The term “cybersecurity purpose” means the purpose of protecting an information system or information that is stored on, processed by, or transiting an information system from a cybersecurity threat or security vulnerability.

(5) CYBERSECURITY THREAT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “cybersecurity threat” means an action, not protected by the First Amendment to the Constitution of the United States, on or through an information system that may result in an unauthorized effort to adversely impact the security, availability, confidentiality, or integrity of an information system or information that is stored on,
processed by, or transiting an information system.

(B) Exclusion.—The term “cybersecurity threat” does not include any action that solely involves a violation of a consumer term of service or a consumer licensing agreement.

(6) Cyber threat indicator.—The term “cyber threat indicator” means information that is necessary to describe or identify—

(A) malicious reconnaissance, including anomalous patterns of communications that appear to be transmitted for the purpose of gathering technical information related to a cybersecurity threat or security vulnerability;

(B) a method of defeating a security control or exploitation of a security vulnerability;

(C) a security vulnerability, including anomalous activity that appears to indicate the existence of a security vulnerability;

(D) a method of causing a user with legitimate access to an information system or information that is stored on, processed by, or transiting an information system to unwittingly enable the defeat of a security control or exploitation of a security vulnerability;
(E) malicious cyber command and control;

(F) the actual or potential harm caused by
an incident, including a description of the inform-
ation exfiltrated as a result of a particular cy-
bersecurity threat;

(G) any other attribute of a cybersecurity
threat, if disclosure of such attribute is not oth-
erwise prohibited by law; or

(H) any combination thereof.

(7) **DEFENSIVE MEASURE.—**

(A) **IN GENERAL.—** Except as provided in
subsection (B), the term “defensive meas-
ure” means an action, device, procedure, signa-
ture, technique, or other measure applied to an
information system or information that is
stored on, processed by, or transiting an inform-
ation system that detects, prevents, or miti-
gates a known or suspected cybersecurity threat
or security vulnerability.

(B) **EXCLUSION.—** The term “defensive
measure” does not include a measure that de-
strroys, renders unusable, or substantially harms
an information system or data on an informa-
tion system not belonging to—
(i) the private entity operating the
measure; or

(ii) another entity or Federal entity
that is authorized to provide consent and
has provided consent to that private entity
for operation of such measure.

(8) ENTITY.—

(A) IN GENERAL.—Except as otherwise
provided in this paragraph, the term “entity”
means any private entity, non-Federal govern-
ment agency or department, or State, tribal, or
local government (including a political subdivi-
sion, department, or component thereof).

(B) INCLUSIONS.—The term “entity” in-
cludes a government agency or department of
the District of Columbia, the Commonwealth of
Puerto Rico, the Virgin Islands, Guam, Amer-
ican Samoa, the Northern Mariana Islands, and
any other territory or possession of the United
States.

(C) EXCLUSION.—The term “entity” does
not include a foreign power as defined in sec-
tion 101 of the Foreign Intelligence Surveil-
(9) Federal Entity.—The term “Federal entity” means a department or agency of the United States or any component of such department or agency.

(10) Information System.—The term “information system”—

(A) has the meaning given the term in section 3502 of title 44, United States Code; and

(B) includes industrial control systems, such as supervisory control and data acquisition systems, distributed control systems, and programmable logic controllers.

(11) Local Government.—The term “local government” means any borough, city, county, parish, town, township, village, or other political subdivision of a State.

(12) Malicious Cyber Command and Control.—The term “malicious cyber command and control” means a method for unauthorized remote identification of, access to, or use of, an information system or information that is stored on, processed by, or transiting an information system.

(13) Malicious Reconnaissance.—The term “malicious reconnaissance” means a method for actively probing or passively monitoring an information
system for the purpose of discerning security
vulnerabilities of the information system, if such
method is associated with a known or suspected cy-
bersecurity threat.

(14) MONITOR.—The term “monitor” means to
acquire, identify, or scan, or to possess, information
that is stored on, processed by, or transiting an in-
formation system.

(15) PRIVATE ENTITY.—

(A) IN GENERAL.—Except as otherwise
provided in this paragraph, the term “private
entity” means any person or private group, or-
ganization, proprietorship, partnership, trust,
cooperative, corporation, or other commercial or
nonprofit entity, including an officer, employee,
or agent thereof.

(B) INCLUSION.—The term “private enti-
ity” includes a State, tribal, or local government
performing electric utility services.

(C) EXCLUSION.—The term “private enti-
ty” does not include a foreign power as defined
in section 101 of the Foreign Intelligence Sur-

(16) SECURITY CONTROL.—The term “security
control” means the management, operational, and
technical controls used to protect against an unauthorized effort to adversely affect the confidentiality, integrity, and availability of an information system or its information.

(17) SECURITY VULNERABILITY.—The term “security vulnerability” means any attribute of hardware, software, process, or procedure that could enable or facilitate the defeat of a security control.

(18) TRIBAL.—The term “tribal” has the meaning given the term “Indian tribe” in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 3. SHARING OF INFORMATION BY THE FEDERAL GOVERNMENT.

(a) IN GENERAL.—Consistent with the protection of classified information, intelligence sources and methods, and privacy and civil liberties, the Director of National Intelligence, the Secretary of Homeland Security, the Secretary of Defense, and the Attorney General, in consultation with the heads of the appropriate Federal entities, shall develop and promulgate procedures to facilitate and promote—

(1) the timely sharing of classified cyber threat indicators in the possession of the Federal Govern-
ment with cleared representatives of relevant enti-

ties;

(2) the timely sharing with relevant entities of
cyber threat indicators or information in the posses-
sion of the Federal Government that may be declas-
sified and shared at an unclassified level;

(3) the sharing with relevant entities, or the
public if appropriate, of unclassified, including con-
trolled unclassified, cyber threat indicators in the
possession of the Federal Government; and

(4) the sharing with entities, if appropriate, of
information in the possession of the Federal Govern-
ment about cybersecurity threats to such entities to
prevent or mitigate adverse effects from such cyber-
security threats.

(b) DEVELOPMENT OF PROCEDURES.—

(1) IN GENERAL.—The procedures developed
and promulgated under subsection (a) shall—

(A) ensure the Federal Government has
and maintains the capability to share cyber
threat indicators in real time consistent with
the protection of classified information;

(B) incorporate, to the greatest extent
practicable, existing processes and existing roles
and responsibilities of Federal and non-Federal
entities for information sharing by the Federal Government, including sector specific information sharing and analysis centers;

(C) include procedures for notifying entities that have received a cyber threat indicator from a Federal entity under this Act that is known or determined to be in error or in contravention of the requirements of this Act or another provision of Federal law or policy of such error or contravention;

(D) include requirements for Federal entities receiving cyber threat indicators or defensive measures to implement and utilize security controls to protect against unauthorized access to or acquisition of such cyber threat indicators or defensive measures; and

(E) include procedures that require a Federal entity, prior to the sharing of a cyber threat indicator—

(i) to review such cyber threat indicator to assess whether such cyber threat indicator contains any information that such Federal entity knows at the time of sharing to be personal information of or identifying a specific person not directly
related to a cybersecurity threat and remove such information; or

(ii) to implement and utilize a technical capability configured to remove any personal information of or identifying a specific person not directly related to a cybersecurity threat.

(2) COORDINATION.—In developing the procedures required under this section, the Director of National Intelligence, the Secretary of Homeland Security, the Secretary of Defense, and the Attorney General shall coordinate with appropriate Federal entities, including the National Laboratories (as defined in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801)), to ensure that effective protocols are implemented that will facilitate and promote the sharing of cyber threat indicators by the Federal Government in a timely manner.

(c) SUBMITTAL TO CONGRESS.—Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the heads of the appropriate Federal entities, shall submit to Congress the procedures required by subsection (a).
SEC. 4. AUTHORIZATIONS FOR PREVENTING, DETECTING, ANALYZING, AND MITIGATING CYBERSECURITY THREATS.

(a) AUTHORIZATION FOR MONITORING.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a private entity may, for cybersecurity purposes, monitor—

(A) an information system of such private entity;

(B) an information system of another entity, upon the authorization and written consent of such other entity;

(C) an information system of a Federal entity, upon the authorization and written consent of an authorized representative of the Federal entity; and

(D) information that is stored on, processed by, or transiting an information system monitored by the private entity under this paragraph.

(2) CONSTRUCTION.—Nothing in this subsection shall be construed—

(A) to authorize the monitoring of an information system, or the use of any information obtained through such monitoring, other than as provided in this Act; or
(B) to limit otherwise lawful activity.

(b) Authorization for Operation of Defensive Measures.—

(1) In general.—Notwithstanding any other provision of law, a private entity may, for cybersecurity purposes, operate a defensive measure that is applied to—

(A) an information system of such private entity in order to protect the rights or property of the private entity;

(B) an information system of another entity upon written consent of such entity for operation of such defensive measure to protect the rights or property of such entity; and

(C) an information system of a Federal entity upon written consent of an authorized representative of such Federal entity for operation of such defensive measure to protect the rights or property of the Federal Government.

(2) Construction.—Nothing in this subsection shall be construed—

(A) to authorize the use of a defensive measure other than as provided in this subsection; or

(B) to limit otherwise lawful activity.
(c) Authorization for Sharing or Receiving Cyber Threat Indicators or Defensive Measures.—

(1) In general.—Except as provided in paragraph (2) and notwithstanding any other provision of law, an entity may, for the purposes permitted under this Act and consistent with the protection of classified information, share with, or receive from, any other entity or the Federal Government a cyber threat indicator or defensive measure.

(2) Lawful restriction.—An entity receiving a cyber threat indicator or defensive measure from another entity or Federal entity shall comply with otherwise lawful restrictions placed on the sharing or use of such cyber threat indicator or defensive measure by the sharing entity or Federal entity.

(3) Construction.—Nothing in this subsection shall be construed—

(A) to authorize the sharing or receiving of a cyber threat indicator or defensive measure other than as provided in this subsection; or

(B) to limit otherwise lawful activity.

(d) Protection and Use of Information.—

(1) Security of information.—An entity monitoring an information system, operating a de-
fensive measure, or providing or receiving a cyber
threat indicator or defensive measure under this sec-
tion shall implement and utilize a security control to
protect against unauthorized access to or acquisition
of such cyber threat indicator or defensive measure.

(2) REMOVAL OF CERTAIN PERSONAL INFORMATION.—An entity sharing a cyber threat indicator
pursuant to this Act shall, prior to such sharing—

(A) review such cyber threat indicator to
assess whether such cyber threat indicator con-
tains any information that the entity knows at
the time of sharing to be personal information
of or identifying a specific person not directly
related to a cybersecurity threat and remove
such information; or

(B) implement and utilize a technical capa-
bility configured to remove any information
contained within such indicator that the entity
knows at the time of sharing to be personal in-
formation of or identifying a specific person not
directly related to a cybersecurity threat.

(3) USE OF CYBER THREAT INDICATORS AND
DEFENSIVE MEASURES BY ENTITIES.—

(A) IN GENERAL.—Consistent with this
Act, a cyber threat indicator or defensive meas-
ure shared or received under this section may, for cybersecurity purposes—

(i) be used by an entity to monitor or operate a defensive measure on—

(I) an information system of the entity; or

(II) an information system of another entity or a Federal entity upon the written consent of that other entity or that Federal entity; and

(ii) be otherwise used, retained, and further shared by an entity subject to—

(I) an otherwise lawful restriction placed by the sharing entity or Federal entity on such cyber threat indicator or defensive measure; or

(II) an otherwise applicable provision of law.

(B) Construction.—Nothing in this paragraph shall be construed to authorize the use of a cyber threat indicator or defensive measure other than as provided in this section.

(4) Use of Cyber Threat Indicators by State, Tribal, or Local Government.—

(A) Law Enforcement Use.—
(i) Prior written consent.—Except as provided in clause (ii), a cyber threat indicator shared with a State, tribal, or local government under this section may, with the prior written consent of the entity sharing such indicator, be used by a State, tribal, or local government for the purpose of preventing, investigating, or prosecuting any of the offenses described in section 5(d)(5)(A)(vi).

(ii) Oral consent.—If exigent circumstances prevent obtaining written consent under clause (i), such consent may be provided orally with subsequent documentation of the consent.

(B) Exemption from disclosure.—A cyber threat indicator shared with a State, tribal, or local government under this section shall be—

(i) deemed voluntarily shared information; and

(ii) exempt from disclosure under any State, tribal, or local law requiring disclosure of information or records.
(C) **State, Tribal, and Local Regulatory Authority.**—

(i) **In General.**—Except as provided in clause (ii), a cyber threat indicator or defensive measure shared with a State, tribal, or local government under this Act shall not be directly used by any State, tribal, or local government to regulate, including an enforcement action, the lawful activity of any entity, including an activity relating to monitoring, operating a defensive measure, or sharing of a cyber threat indicator.

(ii) **Regulatory Authority Specifically Relating to Prevention or Mitigation of Cybersecurity Threats.**—A cyber threat indicator or defensive measures shared as described in clause (i) may, consistent with a State, tribal, or local government regulatory authority specifically relating to the prevention or mitigation of cybersecurity threats to information systems, inform the development or implementation of a regulation relating to such information systems.
(e) ANTITRUST EXEMPTION.—

(1) IN GENERAL.—Except as provided in section 8(e), it shall not be considered a violation of any provision of antitrust laws for 2 or more private entities to exchange or provide a cyber threat indicator, or assistance relating to the prevention, investigation, or mitigation of a cybersecurity threat, for cybersecurity purposes under this Act.

(2) APPLICABILITY.—Paragraph (1) shall apply only to information that is exchanged or assistance provided in order to assist with—

(A) facilitating the prevention, investigation, or mitigation of a cybersecurity threat to an information system or information that is stored on, processed by, or transiting an information system; or

(B) communicating or disclosing a cyber threat indicator to help prevent, investigate, or mitigate the effect of a cybersecurity threat to an information system or information that is stored on, processed by, or transiting an information system.

(f) NO RIGHT OR BENEFIT.—The sharing of a cyber threat indicator with an entity under this Act shall not
create a right or benefit to similar information by such
entity or any other entity.

SEC. 5. SHARING OF CYBER THREAT INDICATORS AND DE-
FENSIVE MEASURES WITH THE FEDERAL
GOVERNMENT.

(a) REQUIREMENT FOR POLICIES AND PROCEDURE-
S.—

(1) INTERIM POLICIES AND PROCEDURES.—Not
later than 60 days after the date of the enactment
of this Act, the Attorney General, in coordination
with the heads of the appropriate Federal entities,
shall develop and submit to Congress interim policies
and procedures relating to the receipt of cyber
threat indicators and defensive measures by the
Federal Government.

(2) FINAL POLICIES AND PROCEDURES.—Not
later than 180 days after the date of the enactment
of this Act, the Attorney General shall, in coordina-
tion with the heads of the appropriate Federal enti-
ties, promulgate final policies and procedures relat-
ing to the receipt of cyber threat indicators and de-
fensive measures by the Federal Government.

(3) REQUIREMENTS CONCERNING POLICIES AND
PROCEDURES.—Consistent with the guidelines re-
quired by subsection (b), the policies and procedures
developed and promulgated under this subsection shall—

(A) ensure that cyber threat indicators are shared with the Federal Government by any entity pursuant to section 4(c) through the real-time process described in subsection (c) of this section—

(i) are shared in an automated manner with all of the appropriate Federal entities;

(ii) are not subject to any delay, modification, or any other action that could impede real-time receipt by all of the appropriate Federal entities; and

(iii) may be provided to other Federal entities;

(B) ensure that cyber threat indicators shared with the Federal Government by any entity pursuant to section 4 in a manner other than the real-time process described in subsection (c) of this section—

(i) are shared as quickly as operationally practicable with all of the appropriate Federal entities;
(ii) are not subject to any unnecessary delay, interference, or any other action that could impede receipt by all of the appropriate Federal entities; and

(iii) may be provided to other Federal entities;

(C) consistent with this Act, any other applicable provisions of law, and the fair information practice principles set forth in appendix A of the document entitled “National Strategy for Trusted Identities in Cyberspace” and published by the President in April 2011, govern the retention, use, and dissemination by the Federal Government of cyber threat indicators shared with the Federal Government under this Act, including the extent, if any, to which such cyber threat indicators may be used by the Federal Government; and

(D) ensure there is—

(i) an audit capability; and

(ii) appropriate sanctions in place for officers, employees, or agents of a Federal entity who knowingly and willfully conduct activities under this Act in an unauthorized manner.
(4) Guidelines for entities sharing cyber threat indicators with federal government.—

(A) In general.—Not later than 60 days after the date of the enactment of this Act, the Attorney General shall develop and make publicly available guidance to assist entities and promote sharing of cyber threat indicators with Federal entities under this Act.

(B) Contents.—The guidelines developed and made publicly available under subparagraph (A) shall include guidance on the following:

(i) Identification of types of information that would qualify as a cyber threat indicator under this Act that would be unlikely to include personal information of or identifying a specific person not directly related to a cyber security threat.

(ii) Identification of types of information protected under otherwise applicable privacy laws that are unlikely to be directly related to a cybersecurity threat.

(iii) Such other matters as the Attorney General considers appropriate for enti-
ties sharing cyber threat indicators with Federal entities under this Act.

(b) Privacy and Civil Liberties.—

(1) Guidelines of Attorney General.—Not later than 60 days after the date of the enactment of this Act, the Attorney General shall, in coordination with heads of the appropriate Federal entities and in consultation with officers designated under section 1062 of the National Security Intelligence Reform Act of 2004 (42 U.S.C. 2000ee–1), develop, submit to Congress, and make available to the public interim guidelines relating to privacy and civil liberties which shall govern the receipt, retention, use, and dissemination of cyber threat indicators by a Federal entity obtained in connection with activities authorized in this Act.

(2) Final Guidelines.—

(A) In general.—Not later than 180 days after the date of the enactment of this Act, the Attorney General shall, in coordination with heads of the appropriate Federal entities and in consultation with officers designated under section 1062 of the National Security Intelligence Reform Act of 2004 (42 U.S.C. 2000ee–1) and such private entities with indus-
try expertise as the Attorney General considers relevant, promulgate final guidelines relating to privacy and civil liberties which shall govern the receipt, retention, use, and dissemination of cyber threat indicators by a Federal entity obtained in connection with activities authorized in this Act.

(B) PERIODIC REVIEW.—The Attorney General shall, in coordination with heads of the appropriate Federal entities and in consultation with officers and private entities described in subparagraph (A), periodically review the guidelines promulgated under subparagraph (A).

(3) CONTENT.—The guidelines required by paragraphs (1) and (2) shall, consistent with the need to protect information systems from cybersecurity threats and mitigate cybersecurity threats—

(A) limit the impact on privacy and civil liberties of activities by the Federal Government under this Act;

(B) limit the receipt, retention, use, and dissemination of cyber threat indicators containing personal information of or identifying specific persons, including by establishing—
(i) a process for the timely destruction
of such information that is known not to
be directly related to uses authorized under
this Act; and

(ii) specific limitations on the length
of any period in which a cyber threat indi-
cator may be retained;

(C) include requirements to safeguard
cyber threat indicators containing personal in-
formation of or identifying specific persons
from unauthorized access or acquisition, includ-
ing appropriate sanctions for activities by offi-
cers, employees, or agents of the Federal Gov-
ernment in contravention of such guidelines;

(D) include procedures for notifying enti-
ties and Federal entities if information received
pursuant to this section is known or determined
by a Federal entity receiving such information
not to constitute a cyber threat indicator;

(E) protect the confidentiality of cyber
threat indicators containing personal informa-
tion of or identifying specific persons to the
greatest extent practicable and require recipi-
ents to be informed that such indicators may
only be used for purposes authorized under this Act; and

(F) include steps that may be needed so that dissemination of cyber threat indicators is consistent with the protection of classified and other sensitive national security information.

(c) Capability and Process Within the Department of Homeland Security.—

(1) In General.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security, in coordination with the heads of the appropriate Federal entities, shall develop and implement a capability and process within the Department of Homeland Security that—

(A) shall accept from any entity in real time cyber threat indicators and defensive measures, pursuant to this section;

(B) shall, upon submittal of the certification under paragraph (2) that such capability and process fully and effectively operates as described in such paragraph, be the process by which the Federal Government receives cyber threat indicators and defensive measures under this Act that are shared by a private entity with the Federal Government through electronic mail
or media, an interactive form on an Internet website, or a real time, automated process between information systems except—

(i) communications between a Federal entity and a private entity regarding a previously shared cyber threat indicator; and

(ii) communications by a regulated entity with such entity’s Federal regulatory authority regarding a cybersecurity threat;

(C) ensures that all of the appropriate Federal entities receive in an automated manner such cyber threat indicators shared through the real-time process within the Department of Homeland Security;

(D) is in compliance with the policies, procedures, and guidelines required by this section; and

(E) does not limit or prohibit otherwise lawful disclosures of communications, records, or other information, including—

(i) reporting of known or suspected criminal activity, by an entity to any other entity or a Federal entity;

(ii) voluntary or legally compelled participation in a Federal investigation; and
(iii) providing cyber threat indicators
or defensive measures as part of a statu-
tory or authorized contractual requirement.

(2) CERTIFICATION.—Not later than 10 days
prior to the implementation of the capability and
process required by paragraph (1), the Secretary of
Homeland Security shall, in consultation with the
heads of the appropriate Federal entities, certify to
Congress whether such capability and process fully
and effectively operates—

(A) as the process by which the Federal
Government receives from any entity a cyber
threat indicator or defensive measure under this
Act; and

(B) in accordance with the policies, proce-
dures, and guidelines developed under this sec-
tion.

(3) PUBLIC NOTICE AND ACCESS.—The Sec-
retary of Homeland Security shall ensure there is
public notice of, and access to, the capability and
process developed and implemented under paragraph
(1) so that—

(A) any entity may share cyber threat indi-
cators and defensive measures through such
process with the Federal Government; and
(B) all of the appropriate Federal entities receive such cyber threat indicators and defensive measures in real time with receipt through the process within the Department of Homeland Security.

(4) OTHER FEDERAL ENTITIES.—The process developed and implemented under paragraph (1) shall ensure that other Federal entities receive in a timely manner any cyber threat indicators and defensive measures shared with the Federal Government through such process.

(5) REPORT ON DEVELOPMENT AND IMPLEMENTATION.—

(A) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report on the development and implementation of the capability and process required by paragraph (1), including a description of such capability and process and the public notice of, and access to, such process.

(B) CLASSIFIED ANNEX.—The report required by subparagraph (A) shall be submitted in unclassified form, but may include a classified annex.
(d) **Information Shared With or Provided to the Federal Government.**

(1) **No Waiver of Privilege or Protection.**—The provision of cyber threat indicators and defensive measures to the Federal Government under this Act shall not constitute a waiver of any applicable privilege or protection provided by law, including trade secret protection.

(2) **Proprietary Information.**—Consistent with section 4(c)(2), a cyber threat indicator or defensive measure provided by an entity to the Federal Government under this Act shall be considered the commercial, financial, and proprietary information of such entity when so designated by the originating entity or a third party acting in accordance with the written authorization of the originating entity.

(3) **Exemption from Disclosure.**—Cyber threat indicators and defensive measures provided to the Federal Government under this Act shall be—

(A) deemed voluntarily shared information and exempt from disclosure under section 552 of title 5, United States Code, and any State, tribal, or local law requiring disclosure of information or records; and
(B) withheld, without discretion, from the public under section 552(b)(3)(B) of title 5, United States Code, and any State, tribal, or local provision of law requiring disclosure of information or records.

(4) EX PARTE COMMUNICATIONS.—The provision of a cyber threat indicator or defensive measure to the Federal Government under this Act shall not be subject to a rule of any Federal agency or department or any judicial doctrine regarding ex parte communications with a decisionmaking official.

(5) DISCLOSURE, RETENTION, AND USE.—

(A) AUTHORIZED ACTIVITIES.—Cyber threat indicators and defensive measures provided to the Federal Government under this Act may be disclosed to, retained by, and used by, consistent with otherwise applicable provisions of Federal law, any Federal agency or department, component, officer, employee, or agent of the Federal Government solely for—

(i) a cybersecurity purpose;

(ii) the purpose of identifying a cybersecurity threat, including the source of such cybersecurity threat, or a security vulnerability;
(iii) the purpose of identifying a cybersecurity threat involving the use of an information system by a foreign adversary or terrorist;

(iv) the purpose of responding to, or otherwise preventing or mitigating, an imminent threat of death, serious bodily harm, or serious economic harm, including a terrorist act or a use of a weapon of mass destruction;

(v) the purpose of responding to, or otherwise preventing or mitigating, a serious threat to a minor, including sexual exploitation and threats to physical safety; or

(vi) the purpose of preventing, investigating, disrupting, or prosecuting an offense arising out of a threat described in clause (iv) or any of the offenses listed in—

(I) section 3559(c)(2)(F) of title 18, United States Code (relating to serious violent felonies);

(II) sections 1028 through 1030 of such title (relating to fraud and identity theft);
(III) chapter 37 of such title (relating to espionage and censorship);
and

(IV) chapter 90 of such title (relating to protection of trade secrets).

(B) PROHIBITED ACTIVITIES.—Cyber threat indicators and defensive measures provided to the Federal Government under this Act shall not be disclosed to, retained by, or used by any Federal agency or department for any use not permitted under subparagraph (A).

(C) PRIVACY AND CIVIL LIBERTIES.—Cyber threat indicators and defensive measures provided to the Federal Government under this Act shall be retained, used, and disseminated by the Federal Government—

(i) in accordance with the policies, procedures, and guidelines required by subsections (a) and (b);

(ii) in a manner that protects from unauthorized use or disclosure any cyber threat indicators that may contain personal information of or identifying specific persons; and
(iii) in a manner that protects the confidentiality of cyber threat indicators containing personal information of or identifying a specific person.

(D) FEDERAL REGULATORY AUTHORITY.—

(i) IN GENERAL.—Except as provided in clause (ii), cyber threat indicators and defensive measures provided to the Federal Government under this Act shall not be directly used by any Federal, State, tribal, or local government to regulate, including an enforcement action, the lawful activities of any entity, including activities relating to monitoring, operating defensive measures, or sharing cyber threat indicators.

(ii) EXCEPTIONS.—

(I) REGULATORY AUTHORITY SPECIFICALLY RELATING TO PREVENTION OR MITIGATION OF CYBERSECURITY THREATS.—Cyber threat indicators and defensive measures provided to the Federal Government under this Act may, consistent with Federal or State regulatory authority specifically relating to the prevention or mitiga-
tion of cybersecurity threats to information systems, inform the development or implementation of regulations relating to such information systems.

(II) Procedures developed and implemented under this Act.—Clause (i) shall not apply to procedures developed and implemented under this Act.

SEC. 6. PROTECTION FROM LIABILITY.

(a) Monitoring of Information Systems.—No cause of action shall lie or be maintained in any court against any private entity, and such action shall be promptly dismissed, for the monitoring of information systems and information under section 4(a) that is conducted in accordance with this Act.

(b) Sharing or Receipt of Cyber Threat Indicators.—No cause of action shall lie or be maintained in any court against any entity, and such action shall be promptly dismissed, for the sharing or receipt of cyber threat indicators or defensive measures under section 4(c) if—

(1) such sharing or receipt is conducted in accordance with this Act; and
(2) in a case in which a cyber threat indicator or defensive measure is shared with the Federal Government, the cyber threat indicator or defensive measure is shared in a manner that is consistent with section 5(e)(1)(B) and the sharing or receipt, as the case may be, occurs after the earlier of—

(A) the date on which the interim policies and procedures are submitted to Congress under section 5(a)(1); or

(B) the date that is 60 days after the date of the enactment of this Act.

(c) Construction.—Nothing in this section shall be construed—

(1) to require dismissal of a cause of action against an entity that has engaged in gross negligence or willful misconduct in the course of conducting activities authorized by this Act; or

(2) to undermine or limit the availability of otherwise applicable common law or statutory defenses.

SEC. 7. OVERSIGHT OF GOVERNMENT ACTIVITIES.

(a) Biennial Report on Implementation.—

(1) In general.—Not later than 1 year after the date of the enactment of this Act, and not less frequently than once every 2 years thereafter, the heads of the appropriate Federal entities shall joint-

(2) CONTENTS.—Each report submitted under paragraph (1) shall include the following:

(A) An assessment of the sufficiency of the policies, procedures, and guidelines required by section 5 in ensuring that cyber threat indicators are shared effectively and responsibly within the Federal Government.

(B) An evaluation of the effectiveness of real-time information sharing through the capability and process developed under section 5(c), including any impediments to such real-time sharing.

(C) An assessment of the sufficiency of the procedures developed under section 3 in ensuring that cyber threat indicators in the posses-
sion of the Federal Government are shared in a timely and adequate manner with appropriate entities, or, if appropriate, are made publicly available.

(D) An assessment of whether cyber threat indicators have been properly classified and an accounting of the number of security clearances authorized by the Federal Government for the purposes of this Act.

(E) A review of the type of cyber threat indicators shared with the Federal Government under this Act, including the following:

(i) The degree to which such information may impact the privacy and civil liberties of specific persons.

(ii) A quantitative and qualitative assessment of the impact of the sharing of such cyber threat indicators with the Federal Government on privacy and civil liberties of specific persons.

(iii) The adequacy of any steps taken by the Federal Government to reduce such impact.

(F) A review of actions taken by the Federal Government based on cyber threat indica-
tors shared with the Federal Government under this Act, including the appropriateness of any subsequent use or dissemination of such cyber threat indicators by a Federal entity under section 5.

(G) A description of any significant violations of the requirements of this Act by the Federal Government.

(H) A summary of the number and type of entities that received classified cyber threat indicators from the Federal Government under this Act and an evaluation of the risks and benefits of sharing such cyber threat indicators.

(3) RECOMMENDATIONS.—Each report submitted under paragraph (1) may include recommendations for improvements or modifications to the authorities and processes under this Act.

(4) FORM OF REPORT.—Each report required by paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(b) Reports on Privacy and Civil Liberties.—

(1) Biennial report from privacy and civil liberties oversight board.—Not later than 2 years after the date of the enactment of this Act and not less frequently than once every 2 years
thereafter, the Privacy and Civil Liberties Oversight Board shall submit to Congress and the President a report providing—

(A) an assessment of the effect on privacy and civil liberties by the type of activities carried out under this Act; and

(B) an assessment of the sufficiency of the policies, procedures, and guidelines established pursuant to section 5 in addressing concerns relating to privacy and civil liberties.

(2) Biennial report of inspectors general.—

(A) In general.—Not later than 2 years after the date of the enactment of this Act and not less frequently than once every 2 years thereafter, the Inspector General of the Department of Homeland Security, the Inspector General of the Intelligence Community, the Inspector General of the Department of Justice, the Inspector General of the Department of Defense, and the Inspector General of the Department of Energy shall, in consultation with the Council of Inspectors General on Financial Oversight, jointly submit to Congress a report on the receipt, use, and dissemination of cyber
threat indicators and defensive measures that
have been shared with Federal entities under
this Act.

(B) CONTENTS.—Each report submitted
under subparagraph (A) shall include the fol-
lowing:

(i) A review of the types of cyber
threat indicators shared with Federal enti-
ties.

(ii) A review of the actions taken by
Federal entities as a result of the receipt
of such cyber threat indicators.

(iii) A list of Federal entities receiving
such cyber threat indicators.

(iv) A review of the sharing of such
cyber threat indicators among Federal en-
tities to identify inappropriate barriers to
sharing information.

(3) RECOMMENDATIONS.—Each report sub-
mitted under this subsection may include such rec-
ommendations as the Privacy and Civil Liberties
Oversight Board, with respect to a report submitted
under paragraph (1), or the Inspectors General re-
ferred to in paragraph (2)(A), with respect to a re-
port submitted under paragraph (2), may have for
improvements or modifications to the authorities under this Act.

(4) **FORM.**—Each report required under this subsection shall be submitted in unclassified form, but may include a classified annex.

**SEC. 8. CONSTRUCTION AND PREEMPTION.**

(a) **OTHERWISE LAWFUL DISCLOSURES.**—Nothing in this Act shall be construed—

(1) to limit or prohibit otherwise lawful disclosures of communications, records, or other information, including reporting of known or suspected criminal activity, by an entity to any other entity or the Federal Government under this Act; or

(2) to limit or prohibit otherwise lawful use of such disclosures by any Federal entity, even when such otherwise lawful disclosures duplicate or replicate disclosures made under this Act.

(b) **WHISTLE BLOWER PROTECTIONS.**—Nothing in this Act shall be construed to prohibit or limit the disclosure of information protected under section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats), section 7211 of title 5, United States Code (governing disclosures to Congress), section 1034 of title 10, United States Code (governing disclosure to Congress by
members of the military), section 1104 of the National Security Act of 1947 (50 U.S.C. 3234) (governing disclosure by employees of elements of the intelligence community), or any similar provision of Federal or State law.

(c) PROTECTION OF SOURCES AND METHODS.—Nothing in this Act shall be construed—

(1) as creating any immunity against, or otherwise affecting, any action brought by the Federal Government, or any agency or department thereof, to enforce any law, executive order, or procedure governing the appropriate handling, disclosure, or use of classified information;

(2) to affect the conduct of authorized law enforcement or intelligence activities; or

(3) to modify the authority of a department or agency of the Federal Government to protect classified information and sources and methods and the national security of the United States.

(d) RELATIONSHIP TO OTHER LAWS.—Nothing in this Act shall be construed to affect any requirement under any other provision of law for an entity to provide information to the Federal Government.

(e) PROHIBITED CONDUCT.—Nothing in this Act shall be construed to permit price-fixing, allocating a market between competitors, monopolizing or attempting to
monopolize a market, boycotting, or exchanges of price or
cost information, customer lists, or information regarding
future competitive planning.

(f) INFORMATION SHARING RELATIONSHIPS.—Nothing in this Act shall be construed—

(1) to limit or modify an existing information
sharing relationship;

(2) to prohibit a new information sharing relationship;

(3) to require a new information sharing relationship between any entity and the Federal Government; or

(4) to require the use of the capability and
process within the Department of Homeland Secu-
rity developed under section 5(c).

(g) PRESERVATION OF CONTRACTUAL OBLIGATIONS
AND RIGHTS.—Nothing in this Act shall be construed—

(1) to amend, repeal, or supersede any current
or future contractual agreement, terms of service
agreement, or other contractual relationship between
any entities, or between any entity and a Federal en-
tity; or

(2) to abrogate trade secret or intellectual prop-
erty rights of any entity or Federal entity.
(h) Anti-Tasking Restriction.—Nothing in this Act shall be construed to permit the Federal Government—

(1) to require an entity to provide information to the Federal Government;

(2) to condition the sharing of cyber threat indicators with an entity on such entity’s provision of cyber threat indicators to the Federal Government; or

(3) to condition the award of any Federal grant, contract, or purchase on the provision of a cyber threat indicator to a Federal entity.

(i) No Liability for Non-Participation.—Nothing in this Act shall be construed to subject any entity to liability for choosing not to engage in the voluntary activities authorized in this Act.

(j) Use and Retention of Information.—Nothing in this Act shall be construed to authorize, or to modify any existing authority of, a department or agency of the Federal Government to retain or use any information shared under this Act for any use other than permitted in this Act.

(k) Federal Preemption.—

(1) In General.—This Act supersedes any statute or other provision of law of a State or polit-
ica subdivision of a State that restricts or otherwise expressly regulates an activity authorized under this Act.

(2) **State Law Enforcement.**—Nothing in this Act shall be construed to supersede any statute or other provision of law of a State or political subdivision of a State concerning the use of authorized law enforcement practices and procedures.

(l) **Regulatory Authority.**—Nothing in this Act shall be construed—

(1) to authorize the promulgation of any regulations not specifically authorized by this Act;

(2) to establish or limit any regulatory authority not specifically established or limited under this Act; or

(3) to authorize regulatory actions that would duplicate or conflict with regulatory requirements, mandatory standards, or related processes under another provision of Federal law.

(m) **Authority of Secretary of Defense To Respond to Cyber Attacks.**—Nothing in this Act shall be construed to limit the authority of the Secretary of Defense to develop, prepare, coordinate, or, when authorized by the President to do so, conduct a military cyber operation in response to a malicious cyber activity carried out
against the United States or a United States person by
a foreign government or an organization sponsored by a
foreign government or a terrorist organization.

SEC. 9. REPORT ON CYBERSECURITY THREATS.

(a) REPORT REQUIRED.—Not later than 180 days
after the date of the enactment of this Act, the Director
of National Intelligence, in coordination with the heads of
other appropriate elements of the intelligence community,
shall submit to the Select Committee on Intelligence of
the Senate and the Permanent Select Committee on Intel-
ligence of the House of Representatives a report on cyber-
security threats, including cyber attacks, theft, and data
breaches.

(b) CONTENTS.—The report required by subsection
(a) shall include the following:

(1) An assessment of the current intelligence
sharing and cooperation relationships of the United
States with other countries regarding cybersecurity
threats, including cyber attacks, theft, and data
breaches, directed against the United States and
which threaten the United States national security
interests and economy and intellectual property, spe-
cifically identifying the relative utility of such rela-
tionships, which elements of the intelligence commu-
nity participate in such relationships, and whether
and how such relationships could be improved.

(2) A list and an assessment of the countries
and nonstate actors that are the primary threats of
carrying out a cybersecurity threat, including a
cyber attack, theft, or data breach, against the
United States and which threaten the United States
national security, economy, and intellectual property.

(3) A description of the extent to which the ca-
pabilities of the United States Government to re-
respond to or prevent cybersecurity threats, including
cyber attacks, theft, or data breaches, directed
against the United States private sector are de-
graded by a delay in the prompt notification by pri-
vate entities of such threats or cyber attacks, theft,
and breaches.

(4) An assessment of additional technologies or
capabilities that would enhance the ability of the
United States to prevent and to respond to cyberse-
curity threats, including cyber attacks, theft, and
data breaches.

(5) An assessment of any technologies or prac-
tices utilized by the private sector that could be rap-
idly fielded to assist the intelligence community in
preventing and responding to cybersecurity threats.
(c) FORM OF REPORT.—The report required by subsection (a) shall be made available in classified and unclassified forms.

(d) INTELLIGENCE COMMUNITY DEFINED.—In this section, the term “intelligence community” has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

SEC. 10. CONFORMING AMENDMENTS.

(a) PUBLIC INFORMATION.—Section 552(b) of title 5, United States Code, is amended—

(1) in paragraph (8), by striking “or” at the end;

(2) in paragraph (9), by striking “wells.” and inserting “wells; or”; and

(3) by inserting after paragraph (9) the following:

“(10) information shared with or provided to the Federal Government pursuant to the Cybersecurity Information Sharing Act of 2015.”.

(b) MODIFICATION OF LIMITATION ON DISSEMINATION OF CERTAIN INFORMATION CONCERNING PENETRATIONS OF DEFENSE CONTRACTOR NETWORKS.—Section 941(c)(3) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 10 U.S.C. 2224 note) is amended by inserting at the end the following:
“The Secretary may share such information with other Federal entities if such information consists of cyber threat indicators and defensive measures and such information is shared consistent with the policies and procedures promulgated by the Attorney General under section 5 of the Cybersecurity Information Sharing Act of 2015.”.
A BILL

S. 754

114TH CONGRESS

MARCH 17, 2015

To improve cybersecurity in the United States through enhanced sharing of information about cybersecurity threats, and for other purposes.