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To establish a voluntary program to identify and promote Internet-connected products that meet industry-leading cybersecurity and data security standards, guidelines, best practices, methodologies, procedures, and processes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 2017

Mr. MARKEY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To establish a voluntary program to identify and promote Internet-connected products that meet industry-leading cybersecurity and data security standards, guidelines, best practices, methodologies, procedures, and processes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cyber Shield Act of
5 2017”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the term “Advisory Committee” means the
2 Cyber Shield Advisory Committee established under
3 section 3(a);

4 (2) the term “benchmarks” means standards,
5 guidelines, best practices, methodologies, procedures,
6 and processes;

7 (3) the term “covered product” means a con-
8 sumer-facing physical object that can—

9 (A) connect to the Internet; and

10 (B) collect, send, or receive data;

11 (4) the term “Cyber Shield program” means
12 the voluntary program established under section
13 4(a)(1); and

14 (5) the term “Secretary” means the Secretary
15 of Commerce.

16 **SEC. 3. CYBER SHIELD ADVISORY COMMITTEE.**

17 (a) ESTABLISHMENT.—Not later than 90 days after
18 the date of enactment of this Act, the Secretary shall es-
19 tablish a Cyber Shield Advisory Committee.

20 (b) DUTIES.—

21 (1) IN GENERAL.—Not later than 1 year after
22 the date of enactment of this Act, the Advisory
23 Committee shall provide recommendations to the
24 Secretary regarding—

1 (A) the format and content of the Cyber
2 Shield labels required to be established under
3 section 4; and

4 (B) the process for identifying, estab-
5 lishing, reporting on, adopting, maintaining,
6 and promoting compliance with the voluntary
7 cybersecurity and data security benchmarks re-
8 quired to be established under section 4.

9 (2) PUBLIC AVAILABILITY OF RECOMMENDA-
10 TIONS.—The Advisory Committee shall publish, and
11 provide the public with an opportunity to comment
12 on, the recommendations provided to the Secretary
13 under paragraph (1).

14 (c) MEMBERS, CHAIRMAN, AND DUTIES.—

15 (1) APPOINTMENT.—

16 (A) IN GENERAL.—The Advisory Com-
17 mittee shall be composed of members appointed
18 by the Secretary from among individuals who
19 are specially qualified to serve on the Advisory
20 Committee based on their education, training,
21 or experience.

22 (B) REPRESENTATION.—Members ap-
23 pointed under subparagraph (A) shall include—

- 1 (i) representatives of the covered
2 products industry, including small, me-
3 dium, and large businesses;
- 4 (ii) cybersecurity experts;
- 5 (iii) public interest advocates; and
- 6 (iv) Federal employees with expertise
7 in certification, covered devices, or cyberse-
8 curity, including employees of the Depart-
9 ment of Commerce, the Federal Trade
10 Commission, and the Federal Communica-
11 tions Commission.

12 (C) LIMITATION.—In appointing members
13 under subparagraph (A), the Secretary shall en-
14 sure that—

15 (i) each interest group described in
16 clauses (i) through (iv) of subparagraph
17 (B) is proportionally represented on the
18 Advisory Committee, including—

19 (I) businesses of each size de-
20 scribed in such clause (i);

21 (II) Federal employees with ex-
22 pertise in each subject described in
23 such clause (iv); and

1 (III) Federal employees from
2 each agency described in such clause
3 (iv); and

4 (ii) no single interest group is rep-
5 resented by a majority of the members of
6 the Advisory Committee.

7 (2) CHAIR.—The Secretary shall designate a
8 member of the Advisory Committee to serve as
9 Chair.

10 (3) PAY.—Members of the Advisory Committee
11 shall serve without pay, except that the Secretary
12 may allow a member, while attending meetings of
13 the Advisory Committee or a subcommittee of the
14 Advisory Committee, expenses authorized under sec-
15 tion 5703 of title 5, United States Code, relating to
16 per diem, travel, and transportation.

17 (d) SUPPORT STAFF; ADMINISTRATIVE SERVICES.—

18 (1) SUPPORT STAFF.—The Secretary shall pro-
19 vide support staff for the Advisory Committee.

20 (2) ADMINISTRATIVE SERVICES.—Upon request
21 by the Advisory Committee, the Secretary shall pro-
22 vide any information, administrative services, and
23 supplies that the Secretary considers necessary for
24 the Advisory Committee to carry out its duties and
25 powers.

1 (e) NO TERMINATION.—Section 14 of the Federal
2 Advisory Committee Act (5 U.S.C. App.) shall not apply
3 to the Advisory Committee.

4 **SEC. 4. CYBER SHIELD PROGRAM.**

5 (a) ESTABLISHMENT OF PROGRAM.—

6 (1) IN GENERAL.—The Secretary shall establish
7 a voluntary program to identify and certify covered
8 products with superior cybersecurity and data secu-
9 rity through voluntary certification and labeling of,
10 and other forms of communication about, covered
11 products and subsets of covered products that meet
12 industry-leading cybersecurity and data security
13 benchmarks to enhance cybersecurity and protect
14 data.

15 (2) GRADES.—Labels applied to products under
16 the Cyber Shield program—

17 (A) may be digital; and

18 (B) may be in the form of different grades
19 that display the extent to which a product
20 meets the industry-leading cybersecurity and
21 data security benchmarks.

22 (b) CONSULTATION.—Not later than 90 days after
23 the date of enactment of this Act, the Secretary shall es-
24 tablish a process for consulting interested parties, the Sec-
25 retary of Health and Human Services, the Commissioner

1 of Food and Drugs, the Secretary of Homeland Security,
2 and other Federal agencies in carrying out the Cyber
3 Shield program.

4 (c) DUTIES.—In carrying out the Cyber Shield pro-
5 gram, the Secretary—

6 (1) shall—

7 (A) establish and maintain cybersecurity
8 and data security benchmarks, by convening
9 and consulting interested parties and other
10 Federal agencies, for products with the Cyber
11 Shield label to ensure that those products per-
12 form better than their less secure counterparts;
13 and

14 (B) in carrying out subparagraph (A)—

15 (i) engage in an open public review
16 and comment process;

17 (ii) in consultation with the Advisory
18 Committee, identify and apply cybersecu-
19 rity and data security benchmarks to dif-
20 ferent subsets of covered products based
21 on—

22 (I) cybersecurity and data secu-
23 rity risk;

1 (II) the sensitivity of the infor-
2 mation collected, transmitted, or
3 stored by the product; and

4 (III) product functionality; and

5 (iii) to the extent possible, incorporate
6 existing benchmarks when establishing and
7 maintaining cybersecurity and data secu-
8 rity benchmarks;

9 (2) may not establish benchmarks under para-
10 graph (1) that are—

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

14 (B) unsupported by evidence;

15 (3) shall permit a manufacturer or distributor
16 of a covered product to display a Cyber Shield label
17 reflecting the extent to which the product meets the
18 industry-leading cybersecurity and data security
19 benchmarks established under paragraph (1);

20 (4) shall promote technologies that are compli-
21 ant with the cybersecurity and data security bench-
22 marks established by the Secretary as the preferred
23 technologies in the marketplace for—

24 (A) enhancing cybersecurity; and

25 (B) protecting data;

1 (5) shall work to enhance public awareness of
2 the Cyber Shield label, including through public out-
3 reach, education, research and development, and
4 other means;

5 (6) shall preserve the integrity of the Cyber
6 Shield label;

7 (7) if helpful in fulfilling the obligation under
8 paragraph (6), may elect to not treat a covered
9 product as a Cyber Shield-certified product until the
10 product meets appropriate conformity standards,
11 which may include—

12 (A) testing by an accredited third-party
13 certifying laboratory or other entity in accord-
14 ance with the Cyber Shield program; and

15 (B) certification by the laboratory or entity
16 described in subparagraph (A) as meeting the
17 applicable cybersecurity and data security
18 benchmarks established by the Secretary;

19 (8) not less frequently than once every 2 years
20 after establishing cybersecurity and data security
21 benchmarks for a product category under paragraph
22 (1), shall review and, if appropriate, update the cy-
23 bersecurity and data security benchmarks for that
24 product category;

1 (9) shall solicit comments from interested par-
2 ties and the Advisory Committee prior to estab-
3 lishing or revising a Cyber Shield product category
4 or benchmark (or prior to the effective date of the
5 establishment or revision of a product category or
6 benchmark);

7 (10) upon adoption of a new or revised product
8 category or benchmark, shall provide reasonable no-
9 tice to interested parties of any changes (including
10 effective dates) to product categories or benchmarks,
11 along with—

12 (A) an explanation of the changes; and

13 (B) as appropriate, responses to comments
14 submitted by interested parties; and

15 (11) shall provide appropriate lead time prior to
16 the applicable effective date for a new or a signifi-
17 cant revision to a product category or benchmark,
18 taking into account the timing requirements of the
19 manufacturing, product marketing, and distribution
20 process for the product or products addressed.

21 (d) DEADLINES.—Not later than 2 years after the
22 date of enactment of this Act, the Secretary shall establish
23 cybersecurity and data security benchmarks for covered
24 products under subsection (c)(1), which shall take effect

1 not later than 60 days after the date on which the bench-
2 marks are established.

3 (e) ADMINISTRATION.—The Secretary, in consulta-
4 tion with the Advisory Committee, may enter into a con-
5 tract with a third party to administer the Cyber Shield
6 program if—

7 (1) the third party is an impartial adminis-
8 trator; and

9 (2) entering into the contract improves the cy-
10 bersecurity and data security of covered products.

11 (f) PROGRAM EVALUATION.—

12 (1) IN GENERAL.—Not later than 4 years after
13 the date of enactment of this Act, and not less fre-
14 quently than every 2 years thereafter, the Inspector
15 General of the Department of Commerce shall evalu-
16 ate the Cyber Shield program.

17 (2) REQUIREMENTS.—In conducting an evalua-
18 tion under paragraph (1), the Inspector General of
19 the Department of Commerce shall—

20 (A) evaluate the extent to which the cyber-
21 security and data security benchmarks estab-
22 lished under the Cyber Shield program address
23 cybersecurity and data security threats;

1 (B) assess how the benchmarks have
2 evolved to meet emerging cybersecurity and
3 data security threats;

4 (C) conduct covert testing to evaluate the
5 integrity of certification testing; and

6 (D) assess the costs to businesses of par-
7 ticipating in the Cyber Shield program.

8 **SEC. 5. CYBER SHIELD DIGITAL PRODUCT PORTAL.**

9 (a) IN GENERAL.—The Secretary shall make publicly
10 available on the website of the Department of Commerce
11 in a searchable format—

12 (1) a web page providing information about the
13 Cyber Shield program; and

14 (2) a database of covered products certified
15 under the Cyber Shield program.

16 (b) REQUIREMENTS.—The database established
17 under subsection (a) shall include—

18 (1) the cybersecurity and data security bench-
19 marks for each product category; and

20 (2) for each covered product certified under the
21 Cyber Shield program—

22 (A) the certification for the product;

23 (B) the name and manufacturer of the
24 product;

1 (C) the contact information for the manu-
2 facturer;

3 (D) the functionality of the product;

4 (E) the location of any applicable privacy
5 policy; and

6 (F) any other information the Secretary
7 determines necessary and appropriate.

8 **SEC. 6. RULE OF CONSTRUCTION.**

9 The decision of a manufacturer of a covered product
10 not to participate in the Cyber Shield program shall not
11 affect the liability of the manufacturer for a cybersecurity
12 or data security breach of that covered product.

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