

115TH CONGRESS
2D SESSION

S. 3085

To establish a Federal Acquisition Security Council and to provide executive agencies with authorities relating to mitigating supply chain risks in the procurement of information technology, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 19, 2018

Mrs. McCASKILL (for herself and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish a Federal Acquisition Security Council and to provide executive agencies with authorities relating to mitigating supply chain risks in the procurement of information technology, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. FEDERAL ACQUISITION SECURITY COUNCIL.**

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

5 **“Subchapter III—Federal Acquisition**
6 **Security Council**

7 **“§ 1321. Definitions**

8 “In this subchapter:

9 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
10 TEES.—The term ‘appropriate congressional com-
11 mittees’ means—

12 “(A) the Committee on Homeland Security
13 and Governmental Affairs, the Committee on
14 the Judiciary, the Committee on Armed Serv-
15 ices, the Committee on Appropriations, the Se-
16 lect Committee on Intelligence, and the major-
17 ity and minority leader of the Senate; and

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

1 “(2) COUNCIL.—The term ‘Council’ means the
2 Federal Acquisition Security Council established
3 under section 1322(a).

4 “(3) INFORMATION TECHNOLOGY.—The term
5 ‘information technology’ has the meaning given that
6 term in section 11101 of title 40.

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

10 **“§ 1322. Establishment 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.

21 “(D) The Office of the Director of Na-
22 tional Intelligence.

23 “(E) The Federal Bureau of Investigation.

24 “(F) The Department of Defense.

1 “(G) The National Institute of Standards
2 and Technology.

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

5 “(2) LEAD REPRESENTATIVES.—

6 “(A) DESIGNATION.—

7 “(i) IN GENERAL.—The head of each
8 agency represented on the Council shall
9 designate a representative of that agency
10 as the lead representative of the agency on
11 the Council not later than 90 days after
12 the date of the enactment of the Federal
13 Acquisition Supply Chain Security Act of
14 2018.

15 “(ii) REQUIREMENTS.—The rep-
16 resentative of an agency designated under
17 clause (i) shall have expertise in supply
18 chain risk management, acquisitions, or in-
19 formation technology.

20 “(B) FUNCTIONS.—The lead representa-
21 tive of an agency designated under subpara-
22 graph (A) shall ensure that appropriate per-
23 sonnel, including leadership and subject matter
24 experts of the agency, are aware of the business
25 of the Council.

1 “(c) CHAIRPERSON.—

2 “(1) DESIGNATION.—The Director of the Office
3 of Management and Budget shall designate a senior-
4 level official from the Office of Management and
5 Budget to serve as the Chairperson of the Council
6 not later than 90 days after the date of the enact-
7 ment of the Federal Acquisition Supply Chain Secu-
8 rity Act of 2018.

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

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

13 “(B) designating executive agencies to be
14 represented on the Council under subsection
15 (b)(1)(H);

16 “(C) in consultation with the lead rep-
17 resentative of each agency represented on the
18 Council, developing a charter for the Council;
19 and

20 “(D) not later than 7 days after comple-
21 tion of the charter, submitting the charter to
22 the appropriate congressional committees.

23 “(d) MEETINGS.—The Council shall meet not later
24 than 180 days after the date of the enactment of the Fed-

1 eral Acquisition Supply Chain Security Act of 2018 and
 2 not less frequently than quarterly thereafter.

3 **“§ 1323. Functions**

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

6 “(1) Developing criteria and processes—

7 “(A) for assessing threats and
 8 vulnerabilities relating to supply chain risk
 9 posed by the acquisition of information tech-
 10 nology to national security and the public inter-
 11 est; and

12 “(B) for sharing information among execu-
 13 tive agencies, including the intelligence commu-
 14 nity, and the private sector where appropriate,
 15 with respect to assessments of that risk.

16 “(2) Defining the responsibilities of executive
 17 agencies, consistent with existing law, for manage-
 18 ment of such assessments.

19 “(3) Issuing guidance to executive agencies for
 20 incorporating information relating to supply chain
 21 risks and other relevant information into procure-
 22 ment decisions for the protection of national security
 23 and the public interest.

24 “(4) Developing standards and measures for
 25 supply chain risk management, including assess-

1 ments, evaluations, mitigation, and response that
2 take into consideration national security and other
3 factors relevant to the public interest.

4 “(5) Consulting, as appropriate, with the pri-
5 vate sector and other nongovernmental stakeholders
6 on issues relating to the management of supply
7 chain risks posed by the acquisition of information
8 technology.

9 “(6) Determining whether the exclusion of a
10 source made by one executive agency should apply to
11 all executive agencies upon receiving a notification
12 under section 4713 and carrying out such other ac-
13 tions as are agreed upon by the Council.

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

18 “(c) PROGRAM OFFICE.—The Council may establish
19 a program office to assist the Council in carrying out its
20 functions under subsection (a).

21 “(d) RELATIONSHIP TO OTHER COUNCILS.—The
22 Council shall consult and coordinate with other relevant
23 councils to the maximum extent practicable.

24 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion shall limit the authority of the Office of Federal Pro-

1 curement Policy to carry out the responsibilities of that
 2 Office under any other provision of law.

3 **“§ 1324. Strategic plan**

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

10 “(1) the criteria and processes required under
 11 section 1323(a)(1), including a threshold and re-
 12 quirements for sharing relevant information about
 13 such risks with all executive agencies;

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

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

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

22 “(5) an evaluation of the effect of implementing
 23 new policies or procedures on existing contracts and
 24 the procurement process;

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

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

6 “(A) the supply chain risk posed by the ac-
 7 quisition of information technology; and

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

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

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 a report on the activities of the
 18 Council during the preceding 12-month period.

19 **“§ 1326. Requirements for executive agencies**

20 “(a) IN GENERAL.—The head of each executive agen-
 21 cy shall—

22 “(1) be responsible for conducting assessments
 23 of the supply chain risks posed by the acquisition of
 24 information technology by that agency, developing

1 mitigation and response requirements, and ensuring
2 ongoing management of such risks;

3 “(2) share relevant information with other execu-
4 tive agencies as determined appropriate by the Ad-
5 ministrator in a manner consistent with section
6 1323; and

7 “(3) ensure that all relevant information, in-
8 cluding classified information, with respect to acqui-
9 sitions of information technology that may pose a
10 supply chain risk, consistent with section
11 1323(a)(1), is incorporated into existing processes of
12 the agency for conducting assessments described in
13 paragraph (1) and ongoing management of acquisi-
14 tion programs, including any identification, inves-
15 tigation, mitigation, or remediation needs.

16 “(b) INTERAGENCY ACQUISITIONS.—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2), in the case of an interagency acquisition,
19 subsection (a) shall be carried out by the head of the
20 executive agency the funds of which are obligated or
21 expended to conduct the acquisition.

22 “(2) ASSISTED ACQUISITIONS.—In an assisted
23 acquisition, the parties to the acquisition shall deter-
24 mine, as part of the interagency agreement gov-

1 erning the acquisition, which agency is responsible
2 for carrying out subsection (a).

3 “(3) DEFINITIONS.—In this subsection, the
4 terms ‘assisted acquisition’ and ‘interagency acqui-
5 sition’ have the meanings given those terms in section
6 2.101 of title 48, Code of Federal Regulations (or
7 any corresponding similar regulation or ruling).

8 **“§ 1327. Termination**

9 ““This subchapter shall terminate on the date that is
10 5 years after the date of the enactment of the Federal
11 Acquisition Supply Chain Security Act of 2018.”.

12 (b) CLERICAL AMENDMENT.—The table of sections
13 at the beginning of chapter 13 of such title is amended
14 by adding at the end the following new items:

“SUBCHAPTER III—FEDERAL ACQUISITION SECURITY COUNCIL

“Sec.

“1321. Definitions.

“1322. Establishment and membership.

“1323. Functions.

“1324. Strategic plan.

“1325. Annual report.

“1326. Requirements for executive agencies.

“1327. Termination.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the date that is 90 days
17 after the date of the enactment of this Act.

1 **SEC. 3. RISK ASSESSMENTS FOR INFORMATION TECH-**
2 **NOLOGY MADE AVAILABLE TO OTHER AGEN-**
3 **CIES.**

4 (a) IN GENERAL.—Not later than one year after the
5 date of the enactment of this Act, the head of any execu-
6 tive agency that makes information technology available
7 for procurement by other executive agencies shall—

8 (1) identify information technology products
9 made available to other agencies that pose the great-
10 est risk to national security or the public interest;

11 (2) complete a risk assessment of information
12 technology products identified under paragraph (1);

13 (3) in each case in which the head of the execu-
14 tive agency identifies a significant supply chain risk
15 posed by information technology—

16 (A) make the risk assessment with respect
17 to that information technology available to all
18 executive agencies through the Federal Acquisi-
19 tion Security Council established under sub-
20 chapter III of chapter 13 of title 41, United
21 States Code, as added by section 2; and

22 (B) develop a plan to mitigate that risk;
23 and

24 (4) develop a vetting process for conducting
25 supply chain risk assessments with respect to pro-

1 spective providers of information technology and
2 make the process available to all executive agencies.

3 (b) ASSISTANCE.—The Secretary of Homeland Secu-
4 rity may—

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

9 (2) provide such additional guidance or tools as
10 are necessary to support actions taken by executive
11 agencies under subsection (a).

12 (c) DEFINITIONS.—In this section:

13 (1) EXECUTIVE AGENCY.—The term “executive
14 agency” has the meaning given that term in section
15 133 of title 41, United States Code.

16 (2) INFORMATION TECHNOLOGY.—The term
17 “information technology” has the meaning given
18 that term in section 11101 of title 40, United States
19 Code.

20 (3) SUPPLY CHAIN RISK.—The term “supply
21 chain risk” has the meaning given that term in sec-
22 tion 4713 of title 41, United States Code, as added
23 by section 4.

1 **SEC. 4. AUTHORITIES OF EXECUTIVE AGENCIES RELATING**
 2 **TO MITIGATING SUPPLY CHAIN RISKS IN THE**
 3 **PROCUREMENT OF INFORMATION TECH-**
 4 **NOLOGY.**

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

8 **“§ 4713. Authorities relating to mitigating supply**
 9 **chain risks in the procurement of infor-**
 10 **mation technology**

11 “(a) AUTHORITY.—Subject to subsection (b), the
 12 head of an executive agency may—

13 “(1) carry out a covered procurement action;
 14 and

15 “(2) limit, notwithstanding any other provision
 16 of law, in whole or in part, the disclosure of informa-
 17 tion relating to the basis for carrying out a covered
 18 procurement action.

19 “(b) DETERMINATION AND NOTIFICATION.—The
 20 head of an executive agency may exercise the authority
 21 provided in subsection (a) only after—

22 “(1) obtaining a joint recommendation by the
 23 senior procurement executive and chief information
 24 officer of the agency, or such other officials of the
 25 agency as the head of the agency considers appro-

1 priate, that there is a significant supply chain risk
2 in a covered procurement;

3 “(2) making a determination in writing, in un-
4 classified or classified form, that—

5 “(A) use of the authority under subsection
6 (a)(1) is necessary to protect national security
7 or the public interest by reducing supply chain
8 risk; and

9 “(B) in a case where the head of the agen-
10 cy plans to limit disclosure of information under
11 subsection (a)(2), the risk to national security
12 due to the disclosure of such information out-
13 weighs the risk due to not disclosing such infor-
14 mation; and

15 “(3) providing a classified or unclassified notice
16 of the determination made under paragraph (2) not
17 later than 30 days after making that determination
18 to the Federal Acquisition Security Council that in-
19 cludes—

20 “(A) a summary of the information re-
21 quired for the purchase of property or services
22 under this title and any other applicable law re-
23 lating to procurement; and

24 “(B) a summary of the basis for the deter-
25 mination, including a discussion of less intru-

1 sive measures that were considered and why
2 such measures were not reasonably available to
3 reduce supply chain risk.

4 “(c) LIMITATION ON DISCLOSURE.—If the head of an
5 executive agency has exercised the authority provided in
6 subsection (a)(2) to limit disclosure of information—

7 “(1) no procurement action undertaken by the
8 head of the agency under such authority shall be
9 subject to review in a bid protest before the Govern-
10 ment Accountability Office or in any Federal court;
11 and

12 “(2) the head of the agency shall—

13 “(A) notify appropriate parties of a cov-
14 ered procurement action and the basis for the
15 action only to the extent necessary to effectuate
16 the covered procurement action;

17 “(B) notify and follow notification proto-
18 cols as directed by the Federal Acquisition Se-
19 curity Council; and

20 “(C) ensure the confidentiality of any such
21 notifications.

22 “(d) REGULATIONS.—The Federal Acquisition Regu-
23 latory Council shall prescribe such regulations as may be
24 necessary to carry out this section.

1 “(e) REPORTS REQUIRED.—Not less frequently than
2 annually, the head of each executive agency shall submit
3 to the appropriate congressional committees a report sum-
4 marizing the actions taken by the agency under this sec-
5 tion during the preceding 12-month period.

6 “(f) TERMINATION.—The authority provided under
7 subsection (a) shall terminate on the date that is 5 years
8 after the date of the enactment of the Federal Acquisition
9 Supply Chain Security Act of 2018.

10 “(g) DEFINITIONS.—In this section:

11 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
12 TEES.—The term ‘appropriate congressional com-
13 mittees’ means—

14 “(A) the Committee on Homeland Security
15 and Governmental Affairs, the Committee on
16 the Judiciary, the Committee on Appropria-
17 tions, the Select Committee on Intelligence, and
18 the majority and minority leader of the Senate;
19 and

20 “(B) the Committee on Oversight and Gov-
21 ernment Reform, the Committee on the Judici-
22 ary, the Committee on Appropriations, the
23 Committee on Homeland Security, the Perma-
24 nent Select Committee on Intelligence, and the

1 Speaker and minority leader of the House of
2 Representatives.

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

5 “(A) a source selection for information
6 technology involving either a performance speci-
7 fication, as provided in subsection (a)(3)(B) of
8 section 3306 of this title, or an evaluation fac-
9 tor, as provided in subsection (b)(1)(A) of that
10 section, relating to a supply chain risk;

11 “(B) the consideration of proposals for and
12 issuance of a task or delivery order for informa-
13 tion technology, as provided in section
14 4106(d)(3) of this title, where the task or deliv-
15 ery order contract includes a contract clause es-
16 tablishing a requirement relating to a supply
17 chain risk;

18 “(C) any contract action involving a con-
19 tract for information technology where the con-
20 tract includes a clause establishing require-
21 ments relating to a supply chain risk; or

22 “(D) any other procurement in a category
23 of procurements determined appropriate by the
24 Federal Acquisition Regulatory Council, with

1 the advice of the Federal Acquisition Security
2 Council.

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

7 “(A) The exclusion of a source that fails to
8 meet qualification requirements established
9 under section 3311 of this title for the purpose
10 of reducing supply chain risk in the acquisition
11 of information technology.

12 “(B) The exclusion of a source that fails to
13 achieve an acceptable rating with regard to an
14 evaluation factor providing for the consideration
15 of supply chain risk in the evaluation of pro-
16 posals for the award of a contract or the
17 issuance of a task or delivery order.

18 “(C) The decision to withhold consent for
19 a contractor to subcontract with a particular
20 source or to direct a contractor to exclude a
21 particular source from consideration for a sub-
22 contract under the contract.

23 “(4) INFORMATION TECHNOLOGY.—The term
24 ‘information technology’ has the meaning given that
25 term in section 11101 of title 40.

1 “(5) SUPPLY CHAIN RISK.—The term ‘supply
2 chain risk’ means the risk that any person may sab-
3 otage, maliciously introduce unwanted function, ex-
4 tract data, or otherwise manipulate the design, in-
5 tegrity, manufacturing, production, distribution, in-
6 stallation, operation, maintenance, disposition, or re-
7 tirement of information technology so as to surveil,
8 deny, disrupt, or otherwise manipulate the function,
9 use, or operation of the information technology.”.

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

“4713. Authorities relating to mitigating supply chain risks in the procurement
of information technology.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the date that is 180 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.

