

Federal Information Technology Supply Chain Risk Management Improvement Act of 2018

A BILL

To establish a Federal Information Technology Acquisition Security Council and a Critical Information Technology Supply Chain Risk Evaluation Board and to provide executive agencies with authorities relating to mitigating supply chain risks in the procurement of information technology, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America In Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the “Federal Information Technology Supply Chain Risk Management Improvement Act of 2018”.

SEC 2. FEDERAL INFORMATION TECHNOLOGY ACQUISITION SECURITY COUNCIL.

Chapter 13 of title 41, United States Code, is amended by adding at the end the following new subchapter:

“Subchapter III—Federal Information Technology Acquisition Security

“§ 1321. Definitions.

“In this subchapter:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means –

“(A) the Committee on Homeland Security and Governmental Affairs, the Committee on Armed Services, and the Select Committee on Intelligence of the Senate; and

“(B) the Committee on Oversight and Government Reform, the Committee on Armed Services, and the Permanent Select Committee on Intelligence of the House of Representatives.

“(2) BOARD.—The term ‘Board’ means the Critical Information Technology Supply Chain Risk Evaluation Board established under section 1325(a) of this title.

“(3) COUNCIL.—The term ‘Council’ means the Federal Information Technology Acquisition Security Council established under section 1322(a) of this title.

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

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

“(6) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given that term in section 133 of this title.

“(7) INFORMATION SYSTEM. —The term ‘information system’ has the meaning given that term in section 3502 of title 44, United States Code.

“(8) INFORMATION TECHNOLOGY.—The term ‘information technology’ has the meaning given that term in section 11101 of title 40, United States Code.

“(9) NATIONAL SECURITY SYSTEM. —The term ‘national security system’ has the meaning given that term in section 3552 of title 44, United States Code.

“(10) SUPPLY CHAIN RISK.—The term ‘supply chain risk’ has the meaning given that term in section 4713 of this title.

“(11) TELECOMMUNICATIONS EQUIPMENT. – The term ‘telecommunications equipment’ has the meaning given that term in section 153 of title 47, United States Code.

“(12) TELECOMMUNICATIONS SERVICE. —The term ‘telecommunications service’ has the meaning given that term in section 153 of title 47, United States Code.

“§ 1322. Establishment and Membership

“(a) ESTABLISHMENT.—There is in the executive branch a Federal Information Technology Acquisition Security Council.

“(b) MEMBERSHIP.—

“(1) The following agencies shall be represented on the Council:

“(A) The Office of Management and Budget.

“(B) The General Services Administration.

“(C) The Department of Homeland Security.

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

“(E) The Department of Justice.

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

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

“(H) Such other executive agencies as are designated by the Chairperson of the Council.

“(2) Each member agency shall ensure that appropriate personnel, including leadership and subject matter experts of the agency, are aware of the business of the Council.

“(c) CHAIR. –(1) The Office of Management and Budget shall chair the Council.

“(2) The Director of the Office of Management and Budget shall designate a senior-level representative from the Office of Management and Budget to serve as the Chairperson of the Council.

“Sec. 1323. Functions.

“(a) In General. – The functions of the Council shall include:

“(1) Identifying and recommending development by the National Institute of Standards and Technology of supply chain risk management standards, guidelines and practices that executive branch agencies shall use when assessing and developing mitigation strategies to address supply chain risks, particularly in the acquisition and use of covered articles under section 1324(a) of this title.

“(2) Identifying or developing criteria for sharing information with respect to supply chain risk, including information related to the exercise of authorities provided under sections 1324, 1325 and 4713 of this title. At a minimum, the criteria shall address—

“(A) the content to be shared;

“(B) the circumstances under which sharing is mandated or voluntary; and

“(C) the circumstances under which it is appropriate for an agency to rely on information made available through such sharing in exercising the responsibilities and authorities provided in section 1324 and 4713 of this title.

“(3) Identifying an appropriate agency to—

“(A) accept information submitted by executive agencies based on the criteria established under section 1323(a)(2) of this title;

“(B) facilitate the sharing of information received under paragraph (3)(A) to support supply chain risk analyses under section 1324 of this title, recommendations under section 1325 of this title, and covered procurement actions under section 4713 of this title;

“(C) share with the Critical Information Technology Supply Chain Risk Evaluation Board established under section 1325 information regarding covered

procurement actions by executive agencies taken under section 4713 of this title;
and

“(D) inform the Council of orders issued under section 1325 of this title.

“(4) Identifying, as appropriate, agencies to provide—

“(A) shared services, such as support for making risk assessments, validation of products that may be suitable for acquisition, and mitigation activities; and

“(B) common contract solutions to support supply chain risk management activities, such as subscription services or machine-learning-enhanced analysis applications to support informed decision making.

“(5) Identifying additional steps, if any, that may be necessary to address supply chain risks arising in the course of agencies providing shared services, common contract solutions, acquisition vehicles or assisted acquisition services.

“(6) Engaging, as appropriate, with the private sector and other nongovernmental stakeholders on issues related to supply chain risks posed by acquisitions and use of covered articles.

“(7) Carrying out such other actions, as determined by the Council, that are necessary to reduce the supply chain risks posed by acquisitions and use of covered articles.

“(b) Program Office. – The Council may establish a program office to assist the Council in carrying out its functions.

“(c) Relationship to Other Councils.—The Council shall consult, as appropriate, with other councils, including the Chief Information Officers Council, the Chief Acquisition Officers Council, and the Federal Acquisition Regulatory Council, with respect to supply chain risks posed by the acquisition and use of covered articles.”.

SEC. 3. RESPONSIBILITIES FOR EXECUTIVE AGENCIES

Subchapter III of Chapter 13 of title 41, United States Code, as added by section 2, is further amended by adding at the end the following new section:

“Sec. 1324. Requirements for Executive Agencies.

“(a) The head of each executive agency shall be responsible for assessing the supply chain risk posed by the acquisition and use of covered articles and avoiding, mitigating, accepting or transferring that risk, as appropriate and consistent with the standards, guidelines and practices identified by the Council under section 1323(a)(1). Supply chain risk assessments shall be prioritized based on the criticality of the mission, system, component, service or asset. This responsibility includes—

“(1) developing the organization’s overall supply chain risk management strategy and implementation plan;

“(2) developing policies and processes to guide and govern the organization’s supply chain risk management activities;

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

“(4) reporting on progress and effectiveness of the organization's supply chain risk management in accordance with guidance issued by the Office of Management and Budget;

“(5) ensuring that information made available by the agency identified in section 1323(a)(3) of this title is incorporated into existing processes for conducting risk assessments;

“(6) avoiding, mitigating, accepting, or transferring any identified risks;

“(7) sharing information with the agency identified in section 1323(a)(3) of this title pursuant to the criteria developed under section 1323(a)(2) of this title and guidance issued by the Office of Management and Budget; and

“(8) ensuring that risk assessments and subsequent actions are consistent with applicable standards, guidelines and practices prescribed by law and as directed by the President.

“(b)(1) Except as provided in paragraph (2), in the case of an interagency acquisition, the responsibilities enumerated in subsection (a) shall be carried out by the head of the executive agency whose funds are being used to procure the covered article.

“(2) In assisted acquisitions, the parties to the acquisition shall determine as part of the interagency agreement which agency is responsible for performance of the responsibility in subsection (a).”.

SEC. 4. CRITICAL INFORMATION TECHNOLOGY SUPPLY CHAIN RISK EVALUATION BOARD

Subchapter III of Chapter 13 of title 41, United States Code, is further amended by adding at the end the following new section:

“Sec. 1325. Critical Information Technology Supply Chain Risk Evaluation Board.

“(a) “ESTABLISHMENT.—There is in the executive branch a Critical Information Technology Supply Chain Risk Evaluation Board.

“(b) MEMBERSHIP.—

“(1)The following agencies shall be represented on the Board:

“(A) The Department of Homeland Security.

“(B) The General Services Administration.

“(C) The Office of the Director of National Intelligence, including the National Counterintelligence and Security Center.

“(D) The Department of Justice.

“(E) The Department of Defense, including the National Security Agency.

“(F) The Office of Management and Budget.

“(G) Such other executive agencies as are designated by the Chairperson of the Board.

“(2) Each member agency shall ensure that appropriate personnel, including leadership and subject matter experts of the agency, are aware of the business of the Board.

“(c) CHAIR. – (1) The Department of Homeland Security shall chair the Board.

“(2) The Secretary of Homeland Security shall designate a representative to serve as the Chairperson of the Board.

“(3) The Secretary of Homeland Security shall issue operating procedures for the functions of the Board, if necessary, to implement this section.

“(d) CRITERIA. – To reduce supply chain risk, the Board shall establish criteria for—

“(1) recommending orders applicable to executive agencies requiring the exclusion of sources or covered articles from executive agency procurement actions;

“(2) recommending orders applicable to executive agencies requiring the removal of covered articles from executive agency information systems;

“(3) requesting and approving exceptions to an issued exclusion or removal order when warranted by circumstances, including alternative mitigation actions; and

(4) ensuring that recommended orders do not conflict with standards and guidelines issued under section 11331 of title 40 and that the Board consults with the Director of the National Institute of Standards and Technology regarding any recommended orders that would implement standards and guidelines developed by the National Institute of Standards and Technology.

“(e) RECOMMENDATIONS.—The Board shall use the criteria established in subsection (d), information made available under section 1323(a)(3) of this title, and any other information the Board determines appropriate to issue recommendations, for application to executive agencies or any subset thereof, regarding the exclusion of sources or covered articles from any executive agency procurement action, including source selection and consent for a contractor to

subcontract, or the removal of covered articles from executive agency information systems. Such recommendations shall include—

“(1) information necessary to positively identify the sources or covered articles recommended for exclusion or removal;

“(2) information regarding the scope and applicability of the recommended exclusion or removal order;

“(3) a summary of any risk assessment reviewed or conducted in support of the recommended exclusion or removal order;

“(4) a summary of the basis for the recommendation, including a discussion of less intrusive measures that were considered and why such measures were not reasonably available to reduce supply chain risk; and

“(5) a description of the actions necessary to implement the recommended exclusion or removal order.

“(f) NOTICE OF RECOMMENDATION AND REVIEW. – A notice of the Board’s recommendation shall be issued to any source named in the recommendation advising—

“(1) that a recommendation has been made;

“(2) of the criteria the Board relied upon under section 1325(d) and, to the extent consistent with national security and law enforcement interests, of information that forms the basis for the recommendation;

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

“(4) of the procedures governing the review and possible issuance of an exclusion or removal order pursuant to subsection (g).

“(g) EXCLUSION AND REMOVAL ORDERS. –

“(1) ORDER ISSUANCE.— Recommendations of the Board, together with any information submitted by a source under subsection (f), shall be reviewed by the following officials, who in their sole and unreviewable discretion may issue exclusion and removal orders based upon such recommendations:

“(A) the Secretary of Homeland Security, for exclusion and removal orders applicable to civilian agencies, to the extent not covered by paragraph (B) or (C).

“(B) the Secretary of Defense, for exclusion and removal orders applicable to the Department of Defense and national security systems other than sensitive compartmented information systems.

“(C) the Director of National Intelligence, for exclusion and removal orders applicable to the intelligence community and sensitive compartmented information systems, to the extent not covered by paragraph (B).

“(2) DELEGATION. – The officials identified in paragraph (1) may not delegate any authority in this subsection to an official below the level one level below the Deputy Secretary or Principal Deputy Director, except that the Secretary of Defense may delegate authority for removal orders to the Commander, U.S. Cyber Command, who may not redelegate such authority to an official below the level one level below the Deputy Commander.

“(3) FACILITATION OF EXCLUSION ORDERS. – If officials identified in this subsection from the Department of Homeland Security, the Department of Defense and the Office of the Director of National Intelligence issue orders collectively resulting in a government-wide exclusion, the Administrator for General Services and officials at other agencies responsible for management of the Federal Supply Schedules, government-wide acquisition contracts and multi-agency contracts shall help facilitate implementation of such orders by removing the covered articles or sources identified in the orders from such contracts.

“(4) REVIEW OF EXCLUSION AND REMOVAL ORDERS.— The officials identified in this subsection shall review all exclusion and removal orders issued under paragraph (1) not less than annually pursuant to procedures established by the Board.

“(5) RESCISSION.—Orders issued pursuant to paragraph (1) may be rescinded by an authorized official from the relevant issuing agency.

“(h) Upon issuance of an exclusion or removal order pursuant to paragraph (1) of subsection (g), the official identified in such subsection shall—

“(1) notify any source named in the order of—
 (A) the exclusion or removal order; and
 (B) to the extent consistent with national security and law enforcement interests, the basis for the order;

“(2) provide classified or unclassified notice of the exclusion or removal order to the appropriate Congressional committees; and

“(3) provide the exclusion or removal order to the entity identified in section 1323(a)(3) of this title.

“(i) Executive agencies shall comply with exclusion and removal orders issued pursuant to subsection (g).”.

SEC. 5. AUTHORITIES OF EXECUTIVE AGENCIES RELATING TO MITIGATING SUPPLY CHAIN RISKS IN THE PROCUREMENT OF INFORMATION TECHNOLOGY AND OTHER COVERED ARTICLES

Chapter 47 of title 41, United States Code, is amended by adding at the end the following new section:

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

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

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

“(2) limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action.

“(b) DETERMINATION AND NOTIFICATION.— Except as authorized by subsection (c) to address urgent national security interest, the head of an executive agency may exercise the authority provided in subsection (a) only after—

“(1) obtaining a joint recommendation, in unclassified or classified form, from the chief acquisition officer and the chief information officer of the agency, or officials performing these functions in the case of agencies that do not have such officials, which includes a review of any risk assessment made available by the agency identified in section 1323(a)(3) of this title, that there is a significant supply chain risk in a covered procurement;

“(2) providing notice of the joint recommendation described in paragraph (1) of subsection (b) to any source named in the joint recommendation advising—

“(A) that a recommendation is being considered or has been obtained;

“(B) to the extent consistent with the national security and law enforcement interests, the basis for the recommendation;

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

“(D) of the procedures governing the consideration of the submission and the possible exercise of the authority provided in subsection (a);

“(3) making a determination in writing, in unclassified or classified form, after considering any information submitted by a source under paragraph (2) of subsection (b) and in consultation with the chief information security officer of the agency, that—

“(A) use of the authority under subsection (a)(1) is necessary to protect national security by reducing supply chain risk;

“(B) less intrusive measures are not reasonably available to reduce such supply chain risk;

“(C) a decision to limit disclosure of information under subsection (a)(2) is necessary to protect national security interest; and

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

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

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

“(B) a summary of any risk assessment reviewed in support of the joint recommendation required by paragraph (1); and

“(C) a summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why such measures were not reasonably available to reduce supply chain risk.

“(c) PROCEDURES TO ADDRESS URGENT NATIONAL SECURITY INTERESTS. In any case in which the head of the agency determines that national security interest require the immediate exercise of the authorities of subsection (a), the head of the agency --

“(1) may, to the extent necessary to address such national security, and subject to the conditions in paragraph (2)--

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

“(B) make the determination required by subsection (b)(3), regardless of whether the notice required by subsection (b)(2) has been provided or whether the notified source has submitted any information in response to such notice;

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

“(D) exercise the authority provided in subsection (a) in accordance with such determination; and

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

“(A) providing the notice required by subsection (b)(2);

“(B) promptly considering any information submitted by the source in response to such notice, and making any appropriate modifications to the determination based on such information; and

“(C) providing the notice required by subsection (b)(4), including a description of the urgent national security, and any modifications to the determination made in accordance with subparagraph (B).

“(d) DELEGATION. – The head of an executive agency may not delegate the authority provided in subsection (a) or the responsibility identified in subsection (f) to an official below the level one level below the Deputy Secretary or Principal Deputy Director.

“(e) LIMITATION ON DISCLOSURE.—If the head of an executive agency has exercised the authority provided in subsection (a)(2) to limit disclosure of information, the agency head or a designee identified by the agency head shall—

“(1) provide to the agency identified by the Council under section 1323(a)(3) of this title information identified by the criteria in section 1323(a)(2) of this title, in a manner and to the extent consistent with the requirements of national security and law enforcement interests; and

“(2) take steps to maintain the confidentiality of any such notifications.

“(f) ANNUAL REVIEW OF DETERMINATIONS.— The head of an executive agency shall annually review all determinations made by such head under subsection (b).

“(g) DEFINITIONS.—In this section:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Homeland Security and Governmental Affairs, the Armed Services Committee, and the Select Committee on Intelligence of the Senate; and

“(B) the Committee on Oversight and Government Reform, the Armed Services Committee, and the Permanent Select Committee on Intelligence of the House of Representatives.

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

- “(A) information technology, including cloud computing services of all types;
- “(B) telecommunications equipment;
- “(C) telecommunications service;
- “(D) the processing of information on a federal- or non-federal information system subject to the requirements of the Controlled Unclassified Information program; or
- “(E) hardware, systems, devices, software or services that include embedded or incidental information technology.

“(3) COVERED PROCUREMENT.—The term ‘covered procurement’ means—

“(A) a source selection for a covered article involving either a performance specification, as provided in subsection (a)(3)(B) of section 3306 of this title, or an evaluation factor, as provided in subsection (b)(1)(A) of such section, relating to a supply chain risk, or where supply chain risk considerations are included in the agency’s determination of whether a source is a responsible source as defined in section 113 of this title;

“(B) the consideration of proposals for and issuance of a task or delivery order for a covered article, as provided in section 4106(d)(3) of this title, where the task or delivery order contract includes a contract clause establishing a requirement relating to a supply chain risk; or

“(C) any contract action involving a contract for a covered article where the contract includes a clause establishing requirements relating to a supply chain risk.

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

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

“(B) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order.

“(C) The determination that a source is not a responsible source as defined in section 113 of this title based on considerations of supply chain risk.

“(D) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor to exclude a particular source from consideration for a subcontract under the contract.

“(5) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given that term in section 133 of this title.

“(6) INFORMATION TECHNOLOGY.—The term ‘information technology’ has the meaning given that term in section 11101 of title 40, United States Code.

“(7) SUPPLY CHAIN RISK.—The term ‘supply chain risk’ means the risk that an malicious actor may sabotage, maliciously introduce unwanted function, extract or modify data, or otherwise manipulate the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of covered articles so as to surveil, deny, disrupt, or otherwise manipulate the function, use, or operation of the information technology or information stored or transmitted on the covered articles.”.

“(8) TELECOMMUNICATIONS EQUIPMENT. —The term ‘telecommunications equipment’ has the meaning given that term in section 153 of title 47, United States Code.

“(9) TELECOMMUNICATIONS SERVICE. —The term ‘telecommunications service’ has the meaning given that term in section 153 of title 47, United States Code.”.

SEC. 6. JUDICIAL REVIEW PROCEDURES

Subchapter III of Chapter 13 of title 41, United States Code, is further amended by adding at the end the following new section:

“ Sec. 1326. Judicial Review Procedures.

“(a) In General.—Except as provided in subsection (b), and notwithstanding any other provision of law, actions under sections 1325 or 4713 of this title, as well as any action taken by an executive agency to implement an action under section 1325 of this title, shall not be subject to administrative review, including bid protests before the Government Accountability Office pursuant to sections 3551-3557 of title 31, United States Code, or to judicial review, including claims under chapter 7 of title 5, United States Code, protests to the Court of Federal Claims pursuant to section 1491(b)(1) of title 28, or claims asserted under chapter 71 of title 41, United States Code.

“(b) Petitions.—

“(1) Definition.—In this section, the term ‘classified information’ means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

“(2) Petition.—Not later than 60 days after the date on which a party is notified of an exclusion or removal order under section 1325(g)(1) of this title or a covered procurement action under section 4713 of this title, it may file a petition under this subsection claiming that the issuance of the exclusion or removal order or covered procurement action violates a constitutional right, power, privilege, or immunity.

“(3) Exclusive Jurisdiction.—

“(A) In General.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over claims arising under sections 1325 or 4713 of this title against the United States, any United States department or agency, or any component or official of any such department or agency, subject to review by the Supreme Court of the United States under section 1254 of title 28, United States Code.

“(B) Standard of Review.—The court shall uphold an action challenged under this section unless the court finds that the action was contrary to a constitutional right, power, privilege, or immunity.

“(4) Administrative Record and Procedures.—

“(A) In General.—Notwithstanding any other provision of law, the procedures described in this paragraph shall apply to the review of a petition under this section.

“(B) Administrative Record.—

“(i) Filing of Record.—The United States shall file with the court an administrative record, which shall consist of the information that the official(s) relied upon in issuing an exclusion or removal order under section 1325(g) or a covered procurement action under section 4713 of this title.

“(ii) Unclassified, nonprivileged information.—All unclassified information contained in the administrative record that is not otherwise privileged or subject to statutory protections shall be provided to the petitioner with appropriate protections for any privileged or confidential trade secrets and commercial or financial information.

“(iii) Discovery bar.—Other than the provision of information in the administrative record described in this subparagraph, no discovery shall be permitted.

“(iv) In Camera and Ex Parte.—The following information may be included in the administrative record and shall be submitted only to the court ex parte and in camera:

“(aa) Unclassified information subject to privilege or statutory protections, or otherwise protected unclassified information.

“(bb) Classified information.

“(cc) Sensitive security information.

“(dd) Sensitive law enforcement information.

“(ee) Information obtained or derived from any activity authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), except that, with respect to such information, subsections (c), (e), (f), (g), and (h) of section 106 (50 U.S.C. 1806), subsections (d), (f), (g), (h), and (i) of section 305 (50 U.S.C. 1825), subsections (c), (e), (f), (g), and (h) of section 405 (50 U.S.C. 1845), and section 706 (50 U.S.C. 1881e) of that Act shall not apply.

“(v) Under Seal.—Any information that is part of the administrative record filed ex parte and in camera under clause (iv), or cited by the court in any decision, shall be treated by the court consistent with the provisions of this subparagraph and shall remain under seal and preserved in the records of the court to be made available consistent with the above provisions in the event of further proceedings. In no event shall such information be released to the petitioner or as part of the public record.

“(vi) Return.—After the expiration of the time to seek further review, or the conclusion of further proceedings, the court shall return the administrative record, including any and all copies, to the United States.

“(vii) Consideration of Claim without Information in the Administrative Record.—If, on motion or sua sponte, the court determines that the claim may be considered without any information in the administrative record, the court shall require that only the necessary information, if any, from the record be provided to the parties.

“(C) Exclusive Remedy.—A determination by the court under this subsection shall be the exclusive judicial remedy for any claim described in this section against the United States, any United States department or agency, or any component or official of any such department or agency.

“(D) Rule of Construction.—Nothing in this section shall be construed as limiting, superseding, or preventing the invocation of, any privileges or defenses that are otherwise available at law or in equity to protect against the disclosure of information.”.

SEC 7. RULEMAKING

In carrying out the authorities and responsibilities under this Act, the Council, Board, and executive agencies shall not be subject to section 553 of title 5, United States Code or section 1707 of title 41, United States Code.

SEC 8. FISMA.

(a) Title 44, United States Code, is amended—

(1) in section 3553(a)(5), by inserting “and section 1324 of title 41, United States Code,” after “complying with the requirements of this subchapter”; and

(2) in section 3554(a)(1)(B), by—

(A) inserting “, subchapter III of Chapter 13 of title 41,” after “complying with the requirements of this subchapter”;

(B) in clause (iv), by striking “; and” and inserting “;”; and

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

“(vi) responsibilities relating to assessing and avoiding, mitigating, transferring or accepting supply chain risks under section 1324 of title 41, United States Code, and complying with exclusion and removal orders issued under section 1325 of title 41, United States Code; and”.

(b) Nothing in this Act shall be construed to alter or impede any authority or responsibility under section 3553 of title 44, United States Code.

SEC 9. EFFECTIVE DATE

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