

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

S. 4651

To require agencies to use information and communications technology products obtained from original equipment manufacturers or authorized resellers, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. PETERS

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing America’s
5 Federal Equipment Supply Chains Act” or the “SAFE
6 Supply Chains Act”.

7 **SEC. 2. AGENCY USE OF IT PRODUCTS.**

8 (a) DEFINITIONS.—In this section:

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

1 (I) in which there is embedded
2 information and communications tech-
3 nology; and

4 (II) the principal function of
5 which is not the creation, manipula-
6 tion, storage, display, receipt, or
7 transmission of electronic data and in-
8 formation.

9 (5) END-USE PRODUCT.—The term “end-use
10 product” means a product ready for use by the
11 maintainer, integrator, or end user of the product.

12 (6) INFORMATION AND COMMUNICATIONS
13 TECHNOLOGY.—The term “information and commu-
14 nications technology”—

15 (A) has the meaning given the term in sec-
16 tion 4713 of title 41, United States Code; and

17 (B) includes information and communica-
18 tions technologies covered by definitions con-
19 tained in the Federal Acquisition Regulation,
20 including definitions added after the date of the
21 enactment of this Act by the Federal Acquisi-
22 tion Regulatory Council pursuant to notice and
23 comment.

24 (7) ORIGINAL EQUIPMENT MANUFACTURER.—
25 The term “original equipment manufacturer” means

1 a company that manufactures a covered product
2 that the company—

3 (A) designed from self-sourced or pur-
4 chased components; and

5 (B) sells under the name of the company.

6 (b) PROHIBITION ON PROCUREMENT AND USE.—

7 Subject to subsection (c) and notwithstanding sections
8 1905 through 1907 of title 41, United States Code, the
9 head of an agency may not procure or obtain, renew a
10 contract to procure or obtain, or use a covered product
11 that is procured from an entity other than—

12 (1) an original equipment manufacturer; or

13 (2) an authorized reseller.

14 (c) WAIVER.—

15 (1) IN GENERAL.—Upon written notice to the
16 Director of the Office of Management and Budget,
17 the head of an agency may waive the prohibition
18 under subsection (b) with respect to a covered prod-
19 uct if the head of the agency determines that pro-
20 curing, obtaining, or using the covered product is
21 necessary—

22 (A) for the purpose of scientifically valid
23 research (as defined in section 102 the Edu-
24 cation Sciences Reform Act of 2002 (20 U.S.C.
25 9501)); or

1 (B) to avoid jeopardizing the performance
2 of mission critical functions.

3 (2) NOTICE.—The notice described in para-
4 graph (1)—

5 (A) shall—

6 (i) specify, with respect to the waiver
7 under paragraph (1)—

8 (I) the justification for the waiv-
9 er;

10 (II) any security mitigations that
11 have been implemented; and

12 (III) with respect to a waiver
13 that necessitates a security mitigation,
14 the plan of action and milestones to
15 avoid future waivers for subsequent
16 similar purchases; and

17 (ii) be submitted in an unclassified
18 form; and

19 (B) may include a classified annex.

20 (3) DURATION.—With respect to a waiver for
21 the purpose of research, as described in paragraph
22 (1)(A), the waiver shall be effective for the duration
23 of the research identified in the waiver.

24 (d) **VENDOR TECHNICAL ASSISTANCE.**—The head of
25 each agency shall establish procurement guidance to pro-

1 vide assistance to entities that are not eligible for procure-
2 ments of covered products due to the prohibition under
3 subsection (b) on the process of becoming an authorized
4 reseller for covered products.

5 (e) REPORTS TO CONGRESS.—

6 (1) IN GENERAL.—Not later than 1 year after
7 the date of enactment of this Act, and annually
8 thereafter until the date that is 6 years after the
9 date of enactment of this Act, the Director of the
10 Office of Management and Budget shall submit to
11 the appropriate congressional committees a report
12 that provides—

13 (A) the number and types of covered prod-
14 ucts for which a waiver under subsection (e)(1)
15 was granted during the 1-year period preceding
16 the date of the submission of the report;

17 (B) the legal authority under which each
18 waiver described in subparagraph (A) was
19 granted, such as whether the waiver was grant-
20 ed pursuant to subparagraph (A) or (B) of sub-
21 section (e)(1); and

22 (C) any actions taken by the head of an
23 agency to reduce the number of waivers issued
24 by the agency under subsection (e)(1) with the

1 goal of achieving full compliance with the prohi-
2 bition under subsection (b).

3 (2) CLASSIFICATION OF REPORT.—Each report
4 submitted under this subsection—

5 (A) shall be submitted in unclassified form;
6 and

7 (B) may include a classified annex that
8 contains the information described in paragraph
9 (1)(B).

10 (f) NO NEW FUNDS.—No additional amounts are au-
11 thorized to be appropriated for the purpose of carrying
12 out this Act.

13 (g) EFFECTIVE DATE.—This section shall take effect
14 on the date that is 1 year after the date of enactment
15 of this Act.