

AMENDMENT TO RULES COMM. PRINT 119-33
OFFERED BY MR. OGLES OF TENNESSEE

In title XV, subtitle B, add at the end the following:

1 **SEC. 15 ____ . REQUIREMENT FOR MEMORANDA OF AGREE-**
2 **MENT REGARDING VULNERABILITY DISCLO-**
3 **SURE AND PROHIBITION ON PROCUREMENT**
4 **FROM IT PROVIDERS WHO SHARE CYBER**
5 **VULNERABILITIES WITH COUNTRIES OF CON-**
6 **CERN.**

7 (a) REQUIREMENT.—On and after the date that is
8 270 days after the date of the enactment of this Act, the
9 Secretary of Defense shall not enter into or renew a con-
10 tract for the procurement of information technology with
11 any entity that makes such technology commercially avail-
12 able to customers in a country of concern or has oper-
13 ations, subsidiaries, or personnel located in a country of
14 concern unless such entity has entered into a memo-
15 randum of agreement with the Department of Defense in
16 accordance with subsection (b).

17 (b) MEMORANDUM OF AGREEMENT.—The Secretary
18 of Defense shall require an entity covered under sub-
19 section (a) to agree to a memorandum of agreement under
20 which the entity shall—

1 (1) disclose to the Department of Defense, prior
2 to any advance disclosure to any other entity, all se-
3 curity vulnerabilities affecting the information tech-
4 nology procured under the contract; and

5 (2) not provide advance disclosure of such
6 vulnerabilities to any covered company.

7 (c) DEFINITIONS.—In this section:

8 (1) The term “advance disclosure” means any
9 action that preemptively and privately discloses in-
10 formation pertaining to security vulnerabilities to a
11 select number of entities before publicly making such
12 information available to the general public, including
13 through a trusted partners program.

14 (2) The term “control” means the power, direct
15 or indirect, whether or not exercised, to determine,
16 direct, dictate, or decide important matters affecting
17 an entity, including through—

18 (A) the ownership of at least 20 percent of
19 the total outstanding voting interest in an enti-
20 ty;

21 (B) board representation;

22 (C) the ability to appoint or discharge any
23 board members, officers, directors, employees,
24 or contractors;

1 (D) proxy voting, a special share, contrac-
2 tual arrangements, legal obligations, formal or
3 informal arrangements to act in concert; or

4 (E) other means.

5 (3) The term “country of concern” has the
6 meaning given the term “covered nation” in section
7 4872(f) of title 10, United States Code.

8 (4) The term “covered company” means—

9 (A) any entity owned or operated in whole
10 or in part by a country of concern, or subject
11 to the control of such country of concern, and
12 any subsidiary or parent of such entity; or

13 (B) any entity organized under the laws of
14 a country of concern, or having its principal
15 place of business in a country of concern, and
16 any subsidiary of any such entity.

17 (5) The term “information technology” has the
18 meaning given the term in section 11101 of title 40,
19 United States Code.

20 (6) The term “owned or operated in whole or
21 in part” means that a country of concern—

22 (A) for an entity that is a publicly traded
23 company, has the ability to control the com-
24 pany, has access to any material nonpublic
25 technical information in the possession of the

1 company, or has any other rights or involve-
2 ment in directing, dictating, controlling, or par-
3 ticipating in the decision-making of the com-
4 pany beyond those available to a retail investor
5 holding an equivalent share of ownership; and

6 (B) for an entity that is a privately held
7 company, has any share of ownership of such
8 company.

9 (7) The term “security vulnerability” has the
10 meaning given the term in section 2200 of the
11 Homeland Security Act of 2002 (6 U.S.C. 650).

12 (8) The term “trusted partners program”
13 means any initiative or program run by an informa-
14 tion technology provider to provide advanced warn-
15 ings of security vulnerabilities to defensive security
16 providers for the purpose of helping such providers
17 proactively develop defenses against such
18 vulnerabilities.

19 (d) WAIVER.—The Secretary of Defense may waive
20 the requirement in subsection (a) on a case-by-case basis
21 if the Secretary certifies, in writing, to the congressional
22 defense committees that the procurement action is re-
23 quired in the national interest of the United States.

