

118TH CONGRESS
1ST SESSION

S. 1974

To amend the Export Control Reform Act of 2018 to require export controls with respect to certain personal data of United States nationals and individuals in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 14, 2023

Mr. WYDEN (for himself, Ms. LUMMIS, Mr. WHITEHOUSE, Mr. HAGERTY, Mr. HEINRICH, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Export Control Reform Act of 2018 to require export controls with respect to certain personal data of United States nationals and individuals in the United States, 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 “Protecting Americans’
5 Data From Foreign Surveillance Act of 2023”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

1 (1) accelerating technological trends have made
2 sensitive personal data an especially valuable input
3 to activities that foreign adversaries of the United
4 States undertake to threaten both the national secu-
5 rity of the United States and the privacy that the
6 people of the United States cherish;

7 (2) it is therefore essential to the safety of the
8 United States and the people of the United States
9 to ensure that the United States Government makes
10 every effort to prevent sensitive personal data from
11 falling into the hands of malign foreign actors; and

12 (3) because allies of the United States face
13 similar challenges, in implementing this Act, the
14 United States Government should explore the estab-
15 lishment of a shared zone of mutual trust with re-
16 spect to sensitive personal data.

17 **SEC. 3. REQUIREMENT TO CONTROL THE EXPORT OF CER-**
18 **TAIN PERSONAL DATA OF UNITED STATES**
19 **NATIONALS AND INDIVIDUALS IN THE**
20 **UNITED STATES.**

21 (a) IN GENERAL.—Part I of the Export Control Re-
22 form Act of 2018 (50 U.S.C. 4811 et seq.) is amended
23 by inserting after section 1758 the following:

1 **“SEC. 1758A. REQUIREMENT TO CONTROL THE EXPORT OF**
2 **CERTAIN PERSONAL DATA OF UNITED**
3 **STATES NATIONALS AND INDIVIDUALS IN**
4 **THE UNITED STATES.**

5 “(a) IDENTIFICATION OF CATEGORIES OF PERSONAL
6 DATA.—

7 “(1) IN GENERAL.—The Secretary shall, in co-
8 ordination with the heads of the appropriate Federal
9 agencies, identify categories of personal data of cov-
10 ered individuals that could—

11 “(A) be exploited by foreign governments
12 or foreign adversaries; and

13 “(B) if exported, reexported, or in-country
14 transferred in a quantity that exceeds the
15 threshold established under paragraph (3),
16 harm the national security of the United States.

17 “(2) LIST REQUIRED.—In identifying categories
18 of personal data of covered individuals under para-
19 graph (1), the Secretary, in coordination with the
20 heads of the appropriate Federal agencies, shall—

21 “(A) identify an initial list of such cat-
22 egories not later than one year after the date
23 of the enactment of the Protecting Americans’
24 Data From Foreign Surveillance Act of 2023;
25 and

“(B) as appropriate thereafter and not less frequently than every 5 years, add categories to, remove categories from, or modify categories on, that list.

“(3) ESTABLISHMENT OF THRESHOLD.—

“(A) ESTABLISHMENT.—Not later than one year after the date of the enactment of the Protecting Americans’ Data From Foreign Surveillance Act of 2023, the Secretary, in coordination with the heads of the appropriate Federal agencies, shall establish a threshold for determining when the export, reexport, or in-country transfer (in the aggregate) of the personal data of covered individuals by one person to or in a restricted country could harm the national security of the United States.

“(B) NUMBER OF COVERED INDIVIDUALS AFFECTED.—

“(i) IN GENERAL.—Except as provided by clause (ii), the Secretary shall establish the threshold under subparagraph (A) so that the threshold is—

“(I) not lower than the export, reexport, or in-country transfer (in the aggregate) by one person to or in

1 a restricted country during a calendar
2 year of the personal data of 10,000
3 covered individuals; and

4 “(II) not higher than the export,
5 reexport, or in-country transfer (in
6 the aggregate) by one person to or in
7 a restricted country during a calendar
8 year of the personal data of 1,000,000
9 covered individuals.

10 “(ii) EXPORTS BY CERTAIN FOREIGN
11 PERSONS.—In the case of a person that
12 possesses the data of more than 1,000,000
13 covered individuals, the threshold estab-
14 lished under subparagraph (A) shall be one
15 export, reexport, or in-country transfer of
16 personal data to or in a restricted country
17 by that person during a calendar year if
18 the export, reexport, or in-country transfer
19 is to—

20 “(I) the government of a re-
21 stricted country;

22 “(II) a foreign person that owns
23 or controls the person conducting the
24 export, reexport, or in-country trans-
25 fer and that person knows, or should

1 know, that the export, reexport, or in-
 2 country transfer of the personal data
 3 was requested by the foreign person
 4 to comply with a request from the
 5 government of a restricted country; or
 6 “(III) an entity on the Entity
 7 List maintained by the Bureau of In-
 8 dustry and Security of the Depart-
 9 ment of Commerce and set forth in
 10 Supplement No. 4 to part 744 of the
 11 Export Administration Regulations.

12 “(C) CATEGORY THRESHOLDS.—The Sec-
 13 retary, in coordination with the heads of the ap-
 14 propriate Federal agencies, may establish a
 15 threshold under subparagraph (A) for each cat-
 16 egory (or combination of categories) of personal
 17 data identified under paragraph (1).

18 “(D) UPDATES.—The Secretary, in coordi-
 19 nation with the heads of the appropriate Fed-
 20 eral agencies—

21 “(i) may update a threshold estab-
 22 lished under subparagraph (A) as appro-
 23 priate; and

24 “(ii) shall reevaluate the threshold not
 25 less frequently than every 5 years.

1 “(E) TREATMENT OF PERSONS UNDER
2 COMMON OWNERSHIP AS ONE PERSON.—For
3 purposes of determining whether a threshold es-
4 tablished under subparagraph (A) has been
5 met—

6 “(i) all exports, reexports, or in-coun-
7 try transfers involving personal data con-
8 ducted by persons under the ownership or
9 control of the same person shall be aggre-
10 gated to that person; and

11 “(ii) that person shall be liable for
12 any export, reexport, or in-country transfer
13 in violation of this section.

14 “(F) CONSIDERATIONS.—In establishing a
15 threshold under subparagraph (A), the Sec-
16 retary, in coordination with the heads of the ap-
17 propriate Federal agencies, shall seek to bal-
18 ance the need to protect personal data from ex-
19 ploitation by foreign governments and foreign
20 adversaries against the likelihood of—

21 “(i) impacting legitimate business ac-
22 tivities, research activities, and other ac-
23 tivities that do not harm the national secu-
24 rity of the United States; or

1 “(ii) chilling speech protected by the
 2 First Amendment to the Constitution of
 3 the United States.

4 “(4) DETERMINATION OF PERIOD FOR PROTEC-
 5 TION.—The Secretary, in coordination with the
 6 heads of the appropriate Federal agencies, shall de-
 7 termine, for each category (or combination of cat-
 8 egories) of personal data identified under paragraph
 9 (1), the period of time for which encryption tech-
 10 nology described in subsection (b)(4)(A)(iii) is re-
 11 quired to be able to protect that category (or com-
 12 bination of categories) of data from decryption to
 13 prevent the exploitation of the data by a foreign gov-
 14 ernment or foreign adversary from harming the na-
 15 tional security of the United States.

16 “(5) USE OF INFORMATION; CONSIDER-
 17 ATIONS.—In carrying out this subsection (including
 18 with respect to the list required under paragraph
 19 (2)), the Secretary, in coordination with the heads of
 20 the appropriate Federal agencies, shall—

21 “(A) use multiple sources of information,
 22 including—

23 “(i) publicly available information;

1 “(ii) classified information, including
2 relevant information provided by the Direc-
3 tor of National Intelligence;

4 “(iii) information relating to reviews
5 and investigations of transactions by the
6 Committee on Foreign Investment in the
7 United States under section 721 of the De-
8 fense Production Act of 1950 (50 U.S.C.
9 4565);

10 “(iv) the categories of sensitive per-
11 sonal data described in paragraphs (1)(ii)
12 and (2) of section 800.241(a) of title 31,
13 Code of Federal Regulations, as in effect
14 on the day before the date of the enact-
15 ment of the Protecting Americans’ Data
16 From Foreign Surveillance Act of 2023,
17 and any categories of sensitive personal
18 data added to such section after such date
19 of enactment;

20 “(v) information provided by the advi-
21 sory committee established pursuant to
22 paragraph (7); and

23 “(vi) the recommendations (which the
24 Secretary shall request) of—

1 “(I) experts in privacy, civil
2 rights, and civil liberties, identified by
3 the National Academy of Sciences;
4 and

5 “(II) experts on the First
6 Amendment to the Constitution of the
7 United States identified by the Amer-
8 ican Bar Association; and

9 “(B) take into account—

10 “(i) the significant quantity of per-
11 sonal data of covered individuals that is
12 publicly available by law or has already
13 been stolen or acquired by foreign govern-
14 ments or foreign adversaries;

15 “(ii) the harm to United States na-
16 tional security caused by the theft or ac-
17 quisition of that personal data;

18 “(iii) the potential for further harm to
19 United States national security if that per-
20 sonal data were combined with additional
21 sources of personal data;

22 “(iv) the fact that non-sensitive per-
23 sonal data, when analyzed in the aggre-
24 gate, can reveal sensitive personal data;

1 “(v) the commercial availability of in-
2 ferred and derived data; and

3 “(vi) the potential for especially sig-
4 nificant harm from data and inferences re-
5 lated to sensitive domains, such as health,
6 work, education, criminal justice, and fi-
7 nance.

8 “(6) NOTICE AND COMMENT PERIOD.—The
9 Secretary shall provide for a public notice and com-
10 ment period after the publication in the Federal
11 Register of a proposed rule, and before the publica-
12 tion of a final rule—

13 “(A) identifying the initial list of cat-
14 egories of personal data under subparagraph
15 (A) of paragraph (2);

16 “(B) adding categories to, removing cat-
17 egories from, or modifying categories on, that
18 list under subparagraph (B) of that paragraph;

19 “(C) establishing or updating the threshold
20 under paragraph (3); or

21 “(D) setting forth the period of time for
22 which encryption technology described in sub-
23 section (b)(4)(A)(iii) is required under para-
24 graph (4) to be able to protect such a category
25 of data from decryption.

1 “(7) ADVISORY COMMITTEE.—

2 “(A) IN GENERAL.—The Secretary shall
3 establish an advisory committee to advise the
4 Secretary with respect to privacy and sensitive
5 personal data.

6 “(B) MEMBERSHIP.—The committee es-
7 tablished pursuant to subparagraph (A) shall
8 include the following members selected by the
9 Secretary:

10 “(i) Experts on privacy and cyberse-
11 curity.

12 “(ii) Representatives of United States
13 private sector companies, industry associa-
14 tions, and scholarly societies.

15 “(iii) Representatives of civil society
16 groups, including such groups focused on
17 protecting civil rights and civil liberties.

18 “(C) APPLICABILITY OF FEDERAL ADVI-
19 SORY COMMITTEE ACT.—Subsections (a)(1),
20 (a)(3), and (b) of section 10 and sections 11,
21 13, and 14 of the Federal Advisory Committee
22 Act (5 U.S.C. App.) shall not apply to the advi-
23 sory committee established pursuant to sub-
24 paragraph (A).

1 “(8) TREATMENT OF ANONYMIZED PERSONAL
2 DATA.—

3 “(A) IN GENERAL.—In carrying out this
4 subsection, the Secretary may not treat
5 anonymized personal data differently than iden-
6 tifiable personal data unless the Secretary is
7 confident, based on the method of
8 anonymization used and the period of time de-
9 termined under paragraph (4) for protection of
10 the category of personal data involved, it will
11 not be possible for well-resourced adversaries,
12 including foreign governments, to re-identify
13 the individuals to which the anonymized per-
14 sonal data relates, such as by using other
15 sources of data, including non-public data ob-
16 tained through hacking and espionage, and rea-
17 sonably anticipated advances in technology.

18 “(B) GUIDANCE.—The Under Secretary of
19 Commerce for Standards and Technology shall
20 issue guidance to the public with respect to
21 methods for anonymizing data and how to de-
22 termine if individuals to which the anonymized
23 personal data relates can be, or are likely in the
24 future to be, reasonably identified, such as by
25 using other sources of data.

1 “(9) SENSE OF CONGRESS ON IDENTIFICATION
2 OF CATEGORIES OF PERSONAL DATA.—It is the
3 sense of Congress that, in identifying categories of
4 personal data of covered individuals under para-
5 graph (1), the Secretary should, to the extent rea-
6 sonably possible and in coordination with the Sec-
7 retary of the Treasury and the Director of the Office
8 of Management and Budget, harmonize those cat-
9 egories with the categories of sensitive personal data
10 described in paragraph (5)(A)(iv).

11 “(b) COMMERCE CONTROLS.—

12 “(1) CONTROLS REQUIRED.—Beginning 18
13 months after the date of the enactment of the Pro-
14 tecting Americans’ Data From Foreign Surveillance
15 Act of 2023, the Secretary shall impose appropriate
16 controls under the Export Administration Regula-
17 tions on the export or reexport to, or in-country
18 transfer in, all countries (other than countries on
19 the list required by paragraph (2)(D)) of covered
20 personal data in a manner that exceeds the applica-
21 ble threshold established under subsection (a)(3), in-
22 cluding through interim controls (such as by inform-
23 ing a person that a license is required for export, re-
24 export, or in-country transfer of covered personal

1 data), as appropriate, or by publishing additional
2 regulations.

3 “(2) LEVELS OF CONTROL.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (C) or (D), the Secretary shall—

6 “(i) require a license or other author-
7 ization for the export, reexport, or in-coun-
8 try transfer of covered personal data in a
9 manner that exceeds the applicable thresh-
10 old established under subsection (a)(3);

11 “(ii) determine whether that export,
12 reexport, or in-country transfer is likely to
13 harm the national security of the United
14 States—

15 “(I) after consideration of the
16 matters described in subparagraph
17 (B); and

18 “(II) in coordination with the
19 heads of the appropriate Federal
20 agencies; and

21 “(iii) if the Secretary determines
22 under clause (ii) that the export, reexport,
23 or in-country transfer is likely to harm the
24 national security of the United States,
25 deny the application for the license or

1 other authorization for the export, reex-
2 port, or in-country transfer.

3 “(B) CONSIDERATIONS.—In determining
4 under clause (ii) of subparagraph (A) whether
5 an export, reexport, or in-country transfer of
6 covered personal data described in clause (i) of
7 that subparagraph is likely to harm the na-
8 tional security of the United States, the Sec-
9 retary, in coordination with the heads of the ap-
10 propriate Federal agencies, shall take into ac-
11 count—

12 “(i) the adequacy and enforcement of
13 data protection, surveillance, and export
14 control laws in the foreign country to
15 which the covered personal data would be
16 exported or reexported, or in which the
17 covered personal data would be trans-
18 ferred, in order to determine whether such
19 laws, and the enforcement of such laws,
20 are sufficient to—

21 “(I) protect the covered personal
22 data from accidental loss, theft, and
23 unauthorized or unlawful processing;

24 “(II) ensure that the covered per-
25 sonal data is not exploited for intel-

1 ligence purposes by foreign govern-
 2 ments to the detriment of the national
 3 security of the United States; and

4 “(III) prevent the reexport of the
 5 covered personal data to a third coun-
 6 try for which a license would be re-
 7 quired for such data to be exported
 8 directly from the United States;

9 “(ii) the circumstances under which
 10 the government of the foreign country can
 11 compel, coerce, or pay a person in or na-
 12 tional of that country to disclose the cov-
 13 ered personal data; and

14 “(iii) whether that government has
 15 conducted hostile foreign intelligence oper-
 16 ations, including information operations,
 17 against the United States.

18 “(C) LICENSE REQUIREMENT AND PRE-
 19 SUMPTION OF DENIAL FOR CERTAIN COUN-
 20 TRIES.—

21 “(i) IN GENERAL.—The Secretary
 22 shall—

23 “(I) require a license or other au-
 24 thorization for the export or reexport
 25 to, or in-country transfer in, a coun-

1 try on the list required by clause (ii)
2 of covered personal data in a manner
3 that exceeds the threshold established
4 under subsection (a)(3); and

5 “(II) deny an application for
6 such a license or other authorization
7 unless the person seeking the license
8 or authorization demonstrates to the
9 satisfaction of the Secretary that the
10 export, reexport, or in-country trans-
11 fer will not harm the national security
12 of the United States.

13 “(ii) LIST REQUIRED.—

14 “(I) IN GENERAL.—Not later
15 than one year after the date of the en-
16 actment of the Protecting Americans’
17 Data From Foreign Surveillance Act
18 of 2023, the Secretary shall (subject
19 to subclause (III)) establish a list of
20 each country with respect to which the
21 Secretary determines that the export
22 or reexport to, or in-country transfer
23 in, the country of covered personal
24 data in a manner that exceeds the ap-
25 plicable threshold established under

1 subsection (a)(3) will be likely to
2 harm the national security of the
3 United States.

4 “(II) MODIFICATIONS TO LIST.—
5 The Secretary (subject to subclause
6 (III))—

7 “(aa) may add a country to
8 or remove a country from the list
9 required by subclause (I) at any
10 time; and

11 “(bb) shall review that list
12 not less frequently than every 5
13 years.

14 “(III) CONCURRENCE; CON-
15 SULTATIONS; CONSIDERATIONS.—The
16 Secretary shall establish the list re-
17 quired by subclause (I) and add a
18 country to or remove a country from
19 that list under subclause (II)—

20 “(aa) with the concurrence
21 of the Secretary of State;

22 “(bb) in consultation with
23 the heads of the appropriate Fed-
24 eral agencies; and

1 “(cc) based on the consider-
2 ations described in subparagraph
3 (B).

4 “(D) NO LICENSE REQUIREMENT FOR
5 CERTAIN COUNTRIES.—

6 “(i) IN GENERAL.—The Secretary
7 may not require a license or other author-
8 ization for the export or reexport to, or in-
9 country transfer in, a country on the list
10 required by clause (ii) of covered personal
11 data, without regard to the applicable
12 threshold established under subsection
13 (a)(3).

14 “(ii) LIST REQUIRED.—

15 “(I) IN GENERAL.—Not later
16 than one year after the date of the en-
17 actment of the Protecting Americans’
18 Data From Foreign Surveillance Act
19 of 2023, the Secretary shall (subject
20 to clause (iii) and subclause (III)), es-
21 tablish a list of each country with re-
22 spect to which the Secretary deter-
23 mines that the export or reexport to,
24 or in-country transfer in, the country
25 of covered personal data (without re-

1 gard to any threshold established
 2 under subsection (a)(3)) will not harm
 3 the national security of the United
 4 States.

5 “(II) MODIFICATIONS TO LIST.—
 6 The Secretary (subject to clause (iii)
 7 and subclause (III))—

8 “(aa) may add a country to
 9 or remove a country from the list
 10 required by subclause (I) at any
 11 time; and

12 “(bb) shall review that list
 13 not less frequently than every 5
 14 years.

15 “(III) CONCURRENCE; CON-
 16 SULTATIONS; CONSIDERATIONS.—The
 17 Secretary shall establish the list re-
 18 quired by subclause (I) and add a
 19 country to or remove a country from
 20 that list under subclause (II)—

21 “(aa) with the concurrence
 22 of the Secretary of State;

23 “(bb) in consultation with
 24 the heads of the appropriate Fed-
 25 eral agencies; and

1 “(cc) based on the consider-
 2 ations described in subparagraph
 3 (B).

4 “(iii) CONGRESSIONAL REVIEW.—

5 “(I) IN GENERAL.—The list re-
 6 quired by clause (ii) and any updates
 7 to that list adding or removing coun-
 8 tries shall take effect, for purposes of
 9 clause (i), on the date that is 180
 10 days after the Secretary submits to
 11 the appropriate congressional commit-
 12 tees a proposal for the list or update
 13 unless there is enacted into law, be-
 14 fore that date, a joint resolution of
 15 disapproval pursuant to subclause
 16 (II).

17 “(II) JOINT RESOLUTION OF DIS-
 18 APPROVAL.—

19 “(aa) JOINT RESOLUTION
 20 OF DISAPPROVAL DEFINED.—In
 21 this clause, the term ‘joint reso-
 22 lution of disapproval’ means a
 23 joint resolution the matter after
 24 the resolving clause of which is
 25 as follows: ‘That Congress does

1 not approve of the proposal of
2 the Secretary with respect to the
3 list required by section
4 1758A(b)(2)(D)(ii) submitted to
5 Congress on _____.’, with the
6 blank space being filled with the
7 appropriate date.

8 “(bb) PROCEDURES.—The
9 procedures set forth in para-
10 graphs (4)(C), (5), (6), and (7)
11 of section 2523(d) of title 18,
12 United States Code, apply with
13 respect to a joint resolution of
14 disapproval under this clause to
15 the same extent and in the same
16 manner as such procedures apply
17 to a joint resolution of dis-
18 approval under such section
19 2523(d), except that paragraph
20 (6) of such section shall be ap-
21 plied and administered by sub-
22 stituting ‘the Committee on
23 Banking, Housing, and Urban
24 Affairs’ for ‘the Committee on

1 the Judiciary' each place it ap-
 2 pears.

3 “(III) RULES OF HOUSE OF REP-
 4 REPRESENTATIVES AND SENATE.—This
 5 clause is enacted by Congress—

6 “(aa) as an exercise of the
 7 rulemaking power of the Senate
 8 and the House of Representa-
 9 tives, respectively, and as such is
 10 deemed a part of the rules of
 11 each House, respectively, and su-
 12 persedes other rules only to the
 13 extent that it is inconsistent with
 14 such rules; and

15 “(bb) with full recognition of
 16 the constitutional right of either
 17 House to change the rules (so far
 18 as relating to the procedure of
 19 that House) at any time, in the
 20 same manner, and to the same
 21 extent as in the case of any other
 22 rule of that House.

23 “(3) REVIEW OF LICENSE APPLICATIONS.—

24 “(A) IN GENERAL.—The Secretary shall,
 25 consistent with the provisions of section 1756

1 and in coordination with the heads of the ap-
2 propriate Federal agencies—

3 “(i) review applications for a license
4 or other authorization for the export or re-
5 export to, or in-country transfer in, a re-
6 stricted country of covered personal data
7 in a manner that exceeds the applicable
8 threshold established under subsection
9 (a)(3); and

10 “(ii) establish procedures for con-
11 ducting the review of such applications.

12 “(B) DISCLOSURES RELATING TO COL-
13 LABORATIVE ARRANGEMENTS.—In the case of
14 an application for a license or other authoriza-
15 tion for an export, reexport, or in-country
16 transfer described in subparagraph (A)(i) sub-
17 mitted by or on behalf of a joint venture, joint
18 development agreement, or similar collaborative
19 arrangement, the Secretary may require the ap-
20 plicant to identify, in addition to any foreign
21 person participating in the arrangement, any
22 foreign person with significant ownership inter-
23 est in a foreign person participating in the ar-
24 rangement.

25 “(4) EXCEPTIONS.—

1 “(A) IN GENERAL.—The Secretary shall
2 not impose under paragraph (1) a requirement
3 for a license or other authorization with respect
4 to the export, reexport, or in-country transfer of
5 covered personal data pursuant to any of the
6 following transactions:

7 “(i) The export, reexport, or in-coun-
8 try transfer by an individual of covered
9 personal data that specifically pertains to
10 that individual.

11 “(ii) The export, reexport, or in-coun-
12 try transfer of the personal data of one or
13 more individuals by a person performing a
14 service for those individuals if the service
15 could not possibly be performed (as defined
16 by the Secretary in regulations) without
17 the export, reexport, or in-country transfer
18 of that personal data.

19 “(iii) The export, reexport, or in-coun-
20 try transfer of personal data that is
21 encrypted if—

22 “(I) the encryption key or other
23 information necessary to decrypt the
24 data is not, at the time of the export,
25 reexport, or in-country transfer of the

1 personal data or any other time, ex-
2 ported, reexported, or transferred to a
3 restricted country or (except as pro-
4 vided in subparagraph (B)) a national
5 of a restricted country; and

6 “(II) the encryption technology
7 used to protect the data against
8 decryption is certified by the National
9 Institute of Standards and Tech-
10 nology as capable of protecting data
11 for the period of time determined
12 under subsection (a)(4) to be suffi-
13 cient to prevent the exploitation of the
14 data by a foreign government or for-
15 eign adversary from harming the na-
16 tional security of the United States.

17 “(iv) The export, reexport, or in-coun-
18 try transfer of personal data that is or-
19 dered by an appropriate court of the
20 United States.

21 “(B) EXCEPTION FOR CERTAIN NATIONALS
22 OF RESTRICTED COUNTRIES.—Subparagraph
23 (A)(iii)(I) does not apply with respect to an in-
24 dividual who is a national of a restricted coun-
25 try if the individual is also a citizen of the

1 United States or a noncitizen described in sub-
 2 section (l)(5)(C).

3 “(c) REQUIREMENTS FOR IDENTIFICATION OF CAT-
 4 EGORIES AND DETERMINATION OF APPROPRIATE CON-
 5 TROLS.—In identifying categories of personal data under
 6 subsection (a)(1) and imposing appropriate controls under
 7 subsection (b), the Secretary, in coordination with the
 8 heads of the appropriate Federal agencies, as appro-
 9 priate—

10 “(1) may not regulate or restrict the publica-
 11 tion or sharing of—

12 “(A) personal data that is a matter of pub-
 13 lic record, such as a court record or other gov-
 14 ernment record that is generally available to the
 15 public, including information about an indi-
 16 vidual made public by that individual or by the
 17 news media;

18 “(B) information about a matter of public
 19 interest; or

20 “(C) any other information the publication
 21 or sharing of which is protected by the First
 22 Amendment to the Constitution of the United
 23 States; and

24 “(2) shall consult with the appropriate congres-
 25 sional committees.

1 “(d) PENALTIES.—

2 “(1) LIABLE PERSONS.—

3 “(A) IN GENERAL.—In addition to any
 4 person that commits an unlawful act described
 5 in subsection (a) of section 1760, an officer or
 6 employee of an organization has committed an
 7 unlawful act subject to penalties under that sec-
 8 tion if the officer or employee knew or should
 9 have known that another employee of the orga-
 10 nization who reports, directly or indirectly, to
 11 the officer or employee was directed to export,
 12 reexport, or in-country transfer covered per-
 13 sonal data in violation of this section and subse-
 14 quently did export, reexport, or in-country
 15 transfer such data.

16 “(B) EXCEPTIONS AND CLARIFICATIONS.—

17 “(i) INTERMEDIARIES NOT LIABLE.—

18 An intermediate consignee (as defined in
 19 section 772.1 of the Export Administration
 20 Regulations (or any successor regulation))
 21 or other intermediary is not liable for the
 22 export, reexport, or in-country transfer of
 23 covered personal data in violation of this
 24 section when acting as an intermediate

1 consignee or other intermediary for an-
2 other person.

3 “(ii) SPECIAL RULE FOR CERTAIN AP-
4 PLICATIONS.—In a case in which an appli-
5 cation installed on an electronic device
6 transmits or causes the transmission of
7 covered personal data without being di-
8 rected to do so by the owner or user of the
9 device who installed the application, the
10 developer of the application, and not the
11 owner or user of the device, is liable for
12 any violation of this section.

13 “(2) CRIMINAL PENALTIES.—In determining an
14 appropriate term of imprisonment under section
15 1760(b)(2) with respect to a person for a violation
16 of this section, the court shall consider—

17 “(A) how many covered individuals had
18 their covered personal data exported, reex-
19 ported, or in-country transferred in violation of
20 this section;

21 “(B) any harm that resulted from the vio-
22 lation; and

23 “(C) the intent of the person in commit-
24 ting the violation.

25 “(e) REPORT TO CONGRESS.—

1 “(1) IN GENERAL.—Not less frequently than
2 annually, the Secretary, in coordination with the
3 heads of the appropriate Federal agencies, shall sub-
4 mit to the appropriate congressional committees a
5 report on the results of actions taken pursuant to
6 this section.

7 “(2) INCLUSIONS.—Each report required by
8 paragraph (1) shall include a description of the de-
9 terminations made under subsection (b)(2)(A)(ii)
10 during the preceding year.

11 “(3) FORM.—Each report required by para-
12 graph (1) shall be submitted in unclassified form but
13 may include a classified annex.

14 “(f) DISCLOSURE OF CERTAIN LICENSE INFORMA-
15 TION.—

16 “(1) IN GENERAL.—Not less frequently than
17 every 90 days, the Secretary shall publish on a pub-
18 licly accessible website of the Department of Com-
19 merce, including in a machine-readable format, the
20 information specified in paragraph (2), with respect
21 to each application—

22 “(A) for a license for the export or reex-
23 port to, or in-country transfer in, a restricted
24 country of covered personal data in a manner

1 that exceeds the applicable threshold established
2 under subsection (a)(3); and

3 “(B) with respect to which the Secretary
4 made a decision in the preceding 90-day period.

5 “(2) INFORMATION SPECIFIED.—The informa-
6 tion specified in this paragraph with respect to an
7 application described in paragraph (1) is the fol-
8 lowing:

9 “(A) The name of the applicant.

10 “(B) The date of the application.

11 “(C) The name of the foreign party to
12 which the applicant sought to export, reexport,
13 or transfer the data.

14 “(D) The categories of covered personal
15 data the applicant sought to export, reexport,
16 or transfer.

17 “(E) The number of covered individuals
18 whose information the applicant sought to ex-
19 port, reexport, or transfer.

20 “(F) Whether the application was ap-
21 proved or denied.

22 “(g) NEWS MEDIA PROTECTIONS.—A person that is
23 engaged in journalism is not subject to restrictions im-
24 posed under this section to the extent that those restric-

1 tions directly infringe on the journalism practices of that
2 person.

3 “(h) CITIZENSHIP DETERMINATIONS BY PERSONS
4 PROVIDING SERVICES TO END-USERS NOT REQUIRED.—
5 This section does not require a person that provides prod-
6 ucts or services to an individual to determine the citizen-
7 ship or immigration status of the individual, but once the
8 person becomes aware that the individual is a covered indi-
9 vidual, the person shall treat covered personal data of that
10 individual as is required by this section.

11 “(i) FEES.—

12 “(1) IN GENERAL.—Notwithstanding section
13 1756(c), the Secretary may, to the extent provided
14 in advance in appropriations Acts, assess and collect
15 a fee, in an amount determined by the Secretary in
16 regulations, with respect to each application for a li-
17 cense submitted under subsection (b).

18 “(2) DEPOSIT AND AVAILABILITY OF FEES.—
19 Notwithstanding section 3302 of title 31, United
20 States Code, fees collected under paragraph (1)
21 shall—

22 “(A) be credited as offsetting collections to
23 the account providing appropriations for activi-
24 ties carried out under this section;

1 “(B) be available, to the extent and in the
 2 amounts provided in advance in appropriations
 3 Acts, to the Secretary solely for use in carrying
 4 out activities under this section; and

5 “(C) remain available until expended.

6 “(j) REGULATIONS.—The Secretary may prescribe
 7 such regulations as are necessary to carry out this section.

8 “(k) AUTHORIZATION OF APPROPRIATIONS.—There
 9 are authorized to be appropriated to the Secretary and
 10 to the head of each of the appropriate Federal agencies
 11 participating in carrying out this section such sums as
 12 may be necessary to carry out this section, including to
 13 hire additional employees with expertise in privacy.

14 “(l) DEFINITIONS.—In this section:

15 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
 16 TEES.—The term ‘appropriate congressional com-
 17 mittees’ means—

18 “(A) the Committee on Banking, Housing,
 19 and Urban Affairs, the Committee on Foreign
 20 Relations, the Committee on Finance, and the
 21 Select Committee on Intelligence of the Senate;
 22 and

23 “(B) the Committee on Foreign Affairs,
 24 the Committee on Ways and Means, and the

1 Permanent Select Committee on Intelligence of
2 the House of Representatives.

3 “(2) APPROPRIATE FEDERAL AGENCIES.—The
4 term ‘appropriate Federal agencies’ means the fol-
5 lowing:

6 “(A) The Department of Defense.

7 “(B) The Department of State.

8 “(C) The Department of Justice.

9 “(D) The Department of the Treasury.

10 “(E) The Office of the Director of Na-
11 tional Intelligence.

12 “(F) The Office of Science and Technology
13 Policy.

14 “(G) The Department of Homeland Secu-
15 rity.

16 “(H) The Consumer Financial Protection
17 Bureau.

18 “(I) The Federal Trade Commission.

19 “(J) The Federal Communications Com-
20 mission.

21 “(K) The Department of Health and
22 Human Services.

23 “(L) Such other Federal agencies as the
24 Secretary considers appropriate.

1 “(3) COVERED INDIVIDUAL.—The term ‘cov-
 2 ered individual’, with respect to personal data,
 3 means an individual who, at the time the data is ac-
 4 quired—

5 “(A) is located in the United States; or

6 “(B) is—

7 “(i) located outside the United States
 8 or whose location cannot be determined;
 9 and

10 “(ii) a citizen of the United States or
 11 a noncitizen lawfully admitted for perma-
 12 nent residence.

13 “(4) COVERED PERSONAL DATA.—The term
 14 ‘covered personal data’ means the categories of per-
 15 sonal data of covered individuals identified pursuant
 16 to subsection (a).

17 “(5) EXPORT.—

18 “(A) IN GENERAL.—The term ‘export’,
 19 with respect to covered personal data, in-
 20 cludes—

21 “(i) subject to subparagraph (D), the
 22 shipment or transmission of the data out
 23 of the United States, including the sending
 24 or taking of the data out of the United
 25 States, in any manner, if the shipment or

transmission is intentional, without regard to whether the shipment or transmission was intended to go out of the United States; or

“(ii) the release or transfer of the data to any noncitizen (other than a noncitizen described in subparagraph (C)), if the release or transfer is intentional, without regard to whether the release or transfer was intended to be to a noncitizen.

“(B) EXCEPTIONS.—The term ‘export’ does not include—

“(i) the publication of covered personal data on the internet in a manner that makes the data discoverable by and accessible to any member of the general public; or

“(ii) any activity protected by the speech or debate clause of the Constitution of the United States.

“(C) NONCITIZENS DESCRIBED.—A noncitizen described in this subparagraph is a noncitizen who is authorized to be employed in the United States.

1 “(D) TRANSMISSIONS THROUGH RE-
2 STRICTED COUNTRIES.—

3 “(i) IN GENERAL.—On and after the
4 date that is 5 years after the date of the
5 enactment of the Protecting Americans’
6 Data From Foreign Surveillance Act of
7 2023, and except as provided in clause
8 (iii), the term ‘export’ includes the trans-
9 mission of data through a restricted coun-
10 try, without regard to whether the person
11 originating the transmission had knowl-
12 edge of or control over the path of the
13 transmission.

14 “(ii) EXCEPTIONS.—Clause (i) does
15 not apply with respect to a transmission of
16 data through a restricted country if—

17 “(I) the data is encrypted as de-
18 scribed in subsection (b)(4)(A)(iii); or

19 “(II) the person that originated
20 the transmission received a represen-
21 tation from the party delivering the
22 data for the person stating that the
23 data will not transit through a re-
24 stricted country.

1 “(iii) FALSE REPRESENTATIONS.—If
 2 a party delivering covered personal data as
 3 described in clause (ii)(II) transmits the
 4 data directly or indirectly through a re-
 5 stricted country despite making the rep-
 6 resentation described in clause (ii)(II), that
 7 party shall be liable for violating this sec-
 8 tion.

9 “(6) FOREIGN ADVERSARY.—The term ‘foreign
 10 adversary’ has the meaning given that term in sec-
 11 tion 8(c)(2) of the Secure and Trusted Communica-
 12 tions Networks Act of 2019 (47 U.S.C. 1607(c)(2)).

13 “(7) IN-COUNTRY TRANSFER; REEXPORT.—The
 14 terms ‘in-country transfer’ and ‘reexport’, with re-
 15 spect to personal data, shall have the meanings
 16 given those terms in regulations prescribed by the
 17 Secretary.

18 “(8) LAWFULLY ADMITTED FOR PERMANENT
 19 RESIDENCE; NATIONAL.—The terms ‘lawfully admit-
 20 ted for permanent residence’ and ‘national’ have the
 21 meanings given those terms in section 101(a) of the
 22 Immigration and Nationality Act (8 U.S.C.
 23 1101(a)).

1 “(9) NONCITIZEN.—The term ‘noncitizen’
 2 means an individual who is not a citizen or national
 3 of the United States.

4 “(10) RESTRICTED COUNTRY.—The term ‘re-
 5 stricted country’ means a country for which a license
 6 or other authorization is required under subsection
 7 (b) for the export or reexport to, or in-country
 8 transfer in, that country of covered personal data in
 9 a manner that exceeds the applicable threshold es-
 10 tablished under subsection (a)(3).”.

11 (b) STATEMENT OF POLICY.—Section 1752 of the
 12 Export Control Reform Act of 2018 (50 U.S.C. 4811) is
 13 amended—

14 (1) in paragraph (1)—

15 (A) in subparagraph (A), by striking “;
 16 and” and inserting a semicolon;

17 (B) in subparagraph (B), by striking the
 18 period at the end and inserting “; and”; and

19 (C) by adding at the end the following:

20 “(C) to restrict, notwithstanding section
 21 203(b) of the International Emergency Eco-
 22 nomic Powers Act (50 U.S.C. 1702(b)), the ex-
 23 port of personal data of United States citizens
 24 and other covered individuals (as defined in sec-
 25 tion 1758A(l)) in a quantity and a manner that

1 could harm the national security of the United
2 States.”; and

3 (2) in paragraph (2), by adding at the end the
4 following:

5 “(H) To prevent the exploitation of per-
6 sonal data of United States citizens and other
7 covered individuals (as defined in section
8 1758A(l)) in a quantity and a manner that
9 could harm the national security of the United
10 States.”.

11 (c) LIMITATION ON AUTHORITY TO MAKE EXCEP-
12 TIONS TO LICENSING REQUIREMENTS.—Section 1754 of
13 the Export Control Reform Act of 2018 (50 U.S.C. 4813)
14 is amended—

15 (1) in subsection (a)(14), by inserting “and
16 subject to subsection (g)” after “as warranted”; and

17 (2) by adding at the end the following:

18 “(g) LIMITATION ON AUTHORITY TO MAKE EXCEP-
19 TIONS TO LICENSING REQUIREMENTS.—The Secretary
20 may create under subsection (a)(14) exceptions to licens-
21 ing requirements under section 1758A only for the export,
22 reexport, or in-country transfer of covered personal data
23 (as defined in subsection (l) of that section) by or for a
24 Federal department or agency.”.

1 (d) RELATIONSHIP TO INTERNATIONAL EMERGENCY
2 ECONOMIC POWERS ACT.—Section 1754(b) of the Export
3 Control Reform Act of 2018 (50 U.S.C. 4813(b)) is
4 amended by inserting “(other than section 1758A)” after
5 “this part”.

6 **SEC. 4. SEVERABILITY.**

7 If any provision of or any amendment made by this
8 Act, or the application of any such provision or amend-
9 ment to any person or circumstance, is held to be uncon-
10 stitutional, the remainder of the provisions of and amend-
11 ments made by this Act, and the application of such provi-
12 sions and amendments to any other person or cir-
13 cumstance, shall not be affected.

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