

117TH CONGRESS
2D SESSION

S. 4495

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 23, 2022

Mr. WYDEN (for himself, Ms. LUMMIS, Mr. WHITEHOUSE, Mr. RUBIO, and Mr. HAGERTY) 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 2022”.

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 adversaries of the United States
4 undertake to threaten both the national security of
5 the United States and the individual 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 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 2022;
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 2022, 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.—The threshold established under subparagraph (A) shall be the export, reexport, or in-country transfer (in the aggregate) by one person to or in a restricted country during a calendar year of the personal data of not less than 10,000 covered individuals and not more than 1,000,000 covered individuals.

1 “(C) CATEGORY THRESHOLDS.—The Sec-
2 retary, in coordination with the heads of the ap-
3 propriate Federal agencies, may establish a
4 threshold under subparagraph (A) for each cat-
5 egory of personal data identified under para-
6 graph (1).

7 “(D) UPDATES.—The Secretary, in coordi-
8 nation with the heads of the appropriate Fed-
9 eral agencies—

10 “(i) may update the threshold estab-
11 lished under subparagraph (A) as appro-
12 priate; and

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

15 “(E) TREATMENT OF PERSONS UNDER
16 COMMON OWNERSHIP AS ONE PERSON.—For
17 purposes of determining whether a threshold es-
18 tablished under subparagraph (A) has been
19 met—

20 “(i) all exports, reexports, or in-coun-
21 try transfers involving personal data con-
22 ducted by persons under the ownership or
23 control of the same person shall be aggre-
24 gated to that person; and

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

4 “(F) CONSIDERATIONS.—In establishing a
 5 threshold under subparagraph (A), the Sec-
 6 retary, in coordination with the heads of the ap-
 7 propriate Federal agencies, shall seek to bal-
 8 ance the need to protect personal data from ex-
 9 ploitation by foreign governments against the
 10 likelihood of—

11 “(i) impacting legitimate business ac-
 12 tivities, research activities, and other ac-
 13 tivities that do not harm the national secu-
 14 rity of the United States; or

15 “(ii) chilling speech protected by the
 16 First Amendment to the Constitution of
 17 the United States.

18 “(4) DETERMINATION OF PERIOD FOR PROTEC-
 19 TION.—The Secretary, in coordination with the
 20 heads of the appropriate Federal agencies, shall de-
 21 termine, for each category of personal data identified
 22 under paragraph (1), the period of time for which
 23 encryption technology described in subsection
 24 (b)(4)(A)(iii) is required to be able to protect that
 25 category of data from decryption to prevent the ex-

1 exploitation of the data by a foreign government from
2 harming the national security of the United States.

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

8 “(A) use multiple sources of information,
9 including—

10 “(i) publicly available information;

11 “(ii) classified information, including
12 relevant information provided by the Direc-
13 tor of National Intelligence;

14 “(iii) information relating to reviews
15 and investigations of transactions by the
16 Committee on Foreign Investment in the
17 United States under section 721 of the De-
18 fense Production Act of 1950 (50 U.S.C.
19 4565);

20 “(iv) the categories of sensitive per-
21 sonal data described in paragraphs (1)(ii)
22 and (2) of section 800.241(a) of title 31,
23 Code of Federal Regulations, as in effect
24 on the day before the date of the enact-
25 ment of the Protecting Americans’ Data

1 From Foreign Surveillance Act of 2022,
2 and any categories of sensitive personal
3 data added to such section after such date
4 of enactment;

5 “(v) information provided by the advi-
6 sory committee established pursuant to
7 paragraph (7); and

8 “(vi) the recommendations (which the
9 Secretary shall request) of—

10 “(I) privacy experts identified by
11 the National Academy of Sciences;
12 and

13 “(II) experts on the First
14 Amendment to the Constitution of the
15 United States identified by the Amer-
16 ican Bar Association; and

17 “(B) take into account—

18 “(i) the significant quantity of per-
19 sonal data of covered individuals that has
20 already been stolen or acquired by foreign
21 governments;

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

1 “(iii) the potential for further harm to
2 United States national security if that per-
3 sonal data were combined with additional
4 sources of personal data;

5 “(iv) the fact that non-sensitive per-
6 sonal data, when analyzed in the aggre-
7 gate, can reveal sensitive personal data;
8 and

9 “(v) the commercial availability of in-
10 ferred and derived data.

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

16 “(A) identifying the initial list of cat-
17 egories of personal data under subparagraph
18 (A) of paragraph (2);

19 “(B) adding categories to, removing cat-
20 egories from, or modifying categories on, that
21 list under subparagraph (B) of that paragraph;

22 “(C) establishing or updating the threshold
23 under paragraph (3); or

24 “(D) setting forth the period of time for
25 which encryption technology described in sub-

1 section (b)(4)(A)(iii) is required under para-
2 graph (4) to be able to protect such a category
3 of data from decryption.

4 “(7) ADVISORY COMMITTEE.—

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

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

13 “(i) Experts on privacy and cyberse-
14 curity.

15 “(ii) Representatives of private sector
16 companies and industry associations.

17 “(iii) Representatives of civil society
18 groups.

19 “(C) APPLICABILITY OF FEDERAL ADVI-
20 SORY COMMITTEE ACT.—Subsections (a)(1),
21 (a)(3), and (b) of section 10 and sections 11,
22 13, and 14 of the Federal Advisory Committee
23 Act (5 U.S.C. App.) shall not apply to the advi-
24 sory committee established pursuant to sub-
25 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 if the individuals to which
7 the anonymized personal data relates could rea-
8 sonably be identified using other sources of
9 data.

10 “(B) GUIDANCE.—The Under Secretary of
11 Commerce for Standards and Technology shall
12 issue guidance to the public with respect to
13 methods for anonymizing data and how to de-
14 termine if individuals to which the anonymized
15 personal data relates can be reasonably identi-
16 fied using other sources of data.

17 “(9) SENSE OF CONGRESS ON IDENTIFICATION
18 OF CATEGORIES OF PERSONAL DATA.—It is the
19 sense of Congress that, in identifying categories of
20 personal data of covered individuals under para-
21 graph (1), the Secretary should, to the extent rea-
22 sonably possible and in coordination with the Sec-
23 retary of the Treasury, harmonize those categories
24 with the categories of sensitive personal data de-
25 scribed in paragraph (5)(A)(iv).

1 “(b) COMMERCE CONTROLS.—

2 “(1) CONTROLS REQUIRED.—Beginning 18
3 months after the date of the enactment of the Pro-
4 tecting Americans’ Data From Foreign Surveillance
5 Act of 2022, the Secretary shall impose appropriate
6 controls under the Export Administration Regula-
7 tions on the export or reexport to, or in-country
8 transfer in, all countries (other than countries on
9 the list required by paragraph (2)(D)) of covered
10 personal data in a manner that exceeds the applica-
11 ble threshold established under subsection (a)(3), in-
12 cluding through interim controls (such as by inform-
13 ing a person that a license is required for export, re-
14 export, or in-country transfer of covered personal
15 data), as appropriate, or by publishing additional
16 regulations.

17 “(2) LEVELS OF CONTROL.—

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

20 “(i) require a license or other author-
21 ization for the export, reexport, or in-coun-
22 try transfer of covered personal data in a
23 manner that exceeds the applicable thresh-
24 old established under subsection (a)(3);

1 “(ii) determine whether that export,
2 reexport, or in-country transfer is likely to
3 harm the national security of the United
4 States—

5 “(I) after consideration of the
6 matters described in subparagraph
7 (B); and

8 “(II) in coordination with the
9 heads of the appropriate Federal
10 agencies; and

11 “(iii) if the Secretary determines
12 under clause (ii) that the export, reexport,
13 or in-country transfer is likely to harm the
14 national security of the United States,
15 deny the application for the license or
16 other authorization for the export, reex-
17 port, or in-country transfer.

18 “(B) CONSIDERATIONS.—In determining
19 under clause (ii) of subparagraph (A) whether
20 an export, reexport, or in-country transfer of
21 covered personal data described in clause (i) of
22 that subparagraph is likely to harm the na-
23 tional security of the United States, the Sec-
24 retary, in coordination with the heads of the ap-

1 appropriate Federal agencies, shall take into ac-
2 count—

3 “(i) the adequacy and enforcement of
4 data protection, surveillance, and export
5 control laws in the foreign country to
6 which the covered personal data would be
7 exported or reexported, or in which the
8 covered personal data would be trans-
9 ferred, in order to determine whether such
10 laws, and the enforcement of such laws,
11 are sufficient to—

12 “(I) protect the covered personal
13 data from accidental loss, theft, and
14 unauthorized or unlawful processing;

15 “(II) ensure that the covered per-
16 sonal data is not exploited for intel-
17 ligence purposes by foreign govern-
18 ments to the detriment of the national
19 security of the United States; and

20 “(III) prevent the reexport of the
21 covered personal data to a third coun-
22 try for which a license would be re-
23 quired for such data to be exported
24 directly from the United States;

1 “(ii) the circumstances under which
 2 the government of the foreign country can
 3 compel, coerce, or pay a person in or na-
 4 tional of that country to disclose the cov-
 5 ered personal data; and

6 “(iii) whether that government has
 7 conducted hostile foreign intelligence oper-
 8 ations, including information operations,
 9 against the United States.

10 “(C) LICENSE REQUIREMENT AND PRE-
 11 SUMPTION OF DENIAL FOR CERTAIN COUN-
 12 TRIES.—

13 “(i) IN GENERAL.—The Secretary
 14 shall—

15 “(I) require a license or other au-
 16 thorization for the export or reexport
 17 to, or in-country transfer in, a coun-
 18 try on the list required by clause (ii)
 19 of covered personal data in a manner
 20 that exceeds the threshold established
 21 under subsection (a)(3); and

22 “(II) deny an application for
 23 such a license or other authorization
 24 unless the person seeking the license
 25 or authorization demonstrates to the

1 satisfaction of the Secretary that the
2 export, reexport, or in-country trans-
3 fer will not harm the national security
4 of the United States.

5 “(ii) LIST REQUIRED.—

6 “(I) IN GENERAL.—Not later
7 than one year after the date of the en-
8 actment of the Protecting Americans’
9 Data From Foreign Surveillance Act
10 of 2022, the Secretary shall, in con-
11 sultation with the heads of the appro-
12 priate Federal agencies and based on
13 the considerations described in sub-
14 paragraph (B), establish a list of each
15 country with respect to which the Sec-
16 retary determines that the export or
17 reexport to, or in-country transfer in,
18 the country of covered personal data
19 in a manner that exceeds the applica-
20 ble threshold established under sub-
21 section (a)(3) will be likely to harm
22 the national security of the United
23 States.

24 “(II) MODIFICATIONS TO LIST.—

25 The Secretary, in consultation with

1 the heads of the appropriate Federal
2 agencies—

3 “(aa) may add a country to
4 or remove a country from the list
5 required by subclause (I) at any
6 time; and

7 “(bb) shall review that list
8 not less frequently than every 5
9 years.

10 “(D) NO LICENSE REQUIREMENT FOR
11 CERTAIN COUNTRIES.—

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

20 “(ii) LIST REQUIRED.—

21 “(I) IN GENERAL.—Not later
22 than one year after the date of the en-
23 actment of the Protecting Americans’
24 Data From Foreign Surveillance Act
25 of 2022, the Secretary shall, in con-

1 sultation with the heads of the appro-
2 priate Federal agencies and based on
3 the considerations described in sub-
4 paragraph (B) and subject to clause
5 (iii), establish a list of each country
6 with respect to which the Secretary
7 determines that the export or reexport
8 to, or in-country transfer in, the coun-
9 try of covered personal data (without
10 regard to any threshold established
11 under subsection (a)(3)) will not harm
12 the national security of the United
13 States.

14 “(II) MODIFICATIONS TO LIST.—

15 The Secretary, in consultation with
16 the heads of the appropriate Federal
17 agencies—

18 “(aa) may add a country to
19 or remove a country from the list
20 required by subclause (I) at any
21 time; and

22 “(bb) shall review that list
23 not less frequently than every 5
24 years.

25 “(iii) CONGRESSIONAL REVIEW.—

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

13 “(II) JOINT RESOLUTION OF DIS-
 14 APPROVAL.—

15 “(aa) JOINT RESOLUTION
 16 OF DISAPPROVAL DEFINED.—In
 17 this clause, the term ‘joint reso-
 18 lution of disapproval’ means a
 19 joint resolution the matter after
 20 the resolving clause of which is
 21 as follows: ‘That Congress does
 22 not approve of the proposal of
 23 the Secretary with respect to the
 24 list required by section
 25 1758A(b)(2)(D)(ii) submitted to

1 Congress on _____.’, with the
2 blank space being filled with the
3 appropriate date.

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

23 “(III) RULES OF HOUSE OF REP-
24 RESENTATIVES AND SENATE.—This
25 clause is enacted by Congress—

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

10 “(bb) with full recognition of
 11 the constitutional right of either
 12 House to change the rules (so far
 13 as relating to the procedure of
 14 that House) at any time, in the
 15 same manner, and to the same
 16 extent as in the case of any other
 17 rule of that House.

18 “(3) REVIEW OF LICENSE APPLICATIONS.—

19 “(A) IN GENERAL.—The Secretary shall,
 20 consistent with the provisions of section 1756
 21 and in coordination with the heads of the ap-
 22 propriate Federal agencies—

23 “(i) review applications for a license
 24 or other authorization for the export or re-
 25 export to, or in-country transfer in, a re-

1 stricted country of covered personal data
2 in a manner that exceeds the applicable
3 threshold established under subsection
4 (a)(3); and

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

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

20 “(4) EXCEPTIONS.—

21 “(A) IN GENERAL.—The Secretary shall
22 not impose under paragraph (1) a requirement
23 for a license or other authorization with respect
24 to the export, reexport, or in-country transfer of

1 covered personal data pursuant to any of the
2 following transactions:

3 “(i) The export, reexport, or in-coun-
4 try transfer by an individual of covered
5 personal data that specifically pertains to
6 that individual.

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

15 “(iii) The export, reexport, or in-coun-
16 try transfer of personal data that is
17 encrypted if—

18 “(I) the encryption key or other
19 information necessary to decrypt the
20 data is not exported, reexported, or
21 transferred to a restricted country or
22 (except as provided in subparagraph
23 (B)) a national of a restricted coun-
24 try; and

1 “(II) the encryption technology
2 used to protect the data against
3 decryption is certified by the National
4 Institute of Standards and Tech-
5 nology as capable of protecting data
6 for the period of time determined
7 under subsection (a)(4) to be suffi-
8 cient to prevent the exploitation of the
9 data by a foreign government from
10 harming the national security of the
11 United States.

12 “(iv) The export, reexport, or in-coun-
13 try transfer of personal data that is or-
14 dered by an appropriate court of the
15 United States.

16 “(B) EXCEPTION FOR CERTAIN NATIONALS
17 OF RESTRICTED COUNTRIES.—Subparagraph
18 (A)(iii)(I) does not apply with respect to an in-
19 dividual who is a national of a restricted coun-
20 try if the individual is also a citizen of the
21 United States or a noncitizen described in sub-
22 section (k)(5)(C).

23 “(c) REQUIREMENTS FOR IDENTIFICATION OF CAT-
24 EGORIES AND DETERMINATION OF APPROPRIATE CON-
25 TROLS.—In identifying categories of personal data under

1 subsection (a)(1) and imposing appropriate controls under
 2 subsection (b), the Secretary, in coordination with the
 3 heads of the appropriate Federal agencies, as appro-
 4 priate—

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

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

13 “(B) information about a matter of public
 14 interest; or

15 “(C) consistent with the goal of protecting
 16 the national security of the United States, any
 17 other information the publication of which is
 18 protected by the First Amendment to the Con-
 19 stitution of the United States; and

20 “(2) shall consult with the appropriate congres-
 21 sional committees.

22 “(d) PENALTIES.—

23 “(1) LIABLE PERSONS.—

24 “(A) IN GENERAL.—In addition to any
 25 person that commits an unlawful act described

1 in subsection (a) of section 1760, an officer or
2 employee of an organization has committed an
3 unlawful act subject to penalties under that sec-
4 tion if the officer or employee knew or should
5 have known that another employee of the orga-
6 nization who reports, directly or indirectly, to
7 the officer or employee was directed to export,
8 reexport, or in-country transfer covered per-
9 sonal data in violation of this section and subse-
10 quently did export, reexport, or in-country
11 transfer such data.

12 “(B) EXCEPTIONS AND CLARIFICATIONS.—

13 “(i) INTERMEDIARIES NOT LIABLE.—

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

23 “(ii) SPECIAL RULE FOR CERTAIN AP-

24 PPLICATIONS.—In a case in which an appli-
25 cation installed on an electronic device

1 transmits or causes the transmission of
2 covered personal data without being di-
3 rected to do so by the owner or user of the
4 device who installed the application, the
5 developer of the application, and not the
6 owner or user of the device, is liable for
7 any violation of this section.

8 “(2) CRIMINAL PENALTIES.—In determining an
9 appropriate term of imprisonment under section
10 1760(b)(2) with respect to a person for a violation
11 of this section, the court shall consider—

12 “(A) how many covered individuals had
13 their covered personal data exported, reex-
14 ported, or in-country transferred in violation of
15 this section;

16 “(B) any harm that resulted from the vio-
17 lation; and

18 “(C) the intent of the person in commit-
19 ting the violation.

20 “(e) REPORT TO CONGRESS.—

21 “(1) IN GENERAL.—Not less frequently than
22 annually, the Secretary, in coordination with the
23 heads of the appropriate Federal agencies, shall sub-
24 mit to the appropriate congressional committees a

1 report on the results of actions taken pursuant to
2 this section.

3 “(2) INCLUSIONS.—Each report required by
4 paragraph (1) shall include a description of the de-
5 terminations made under subsection (b)(2)(A)(ii)
6 during the preceding year.

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

10 “(f) DISCLOSURE OF CERTAIN LICENSE INFORMA-
11 TION.—

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

18 “(A) for a license for the export or reex-
19 port to, or in-country transfer in, a restricted
20 country of covered personal data in a manner
21 that exceeds the applicable threshold established
22 under subsection (a)(3); and

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

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

5 “(A) The name of the applicant.

6 “(B) The date of the application.

7 “(C) The name of the foreign party to
8 which the applicant sought to export, reexport,
9 or transfer the data.

10 “(D) The categories of covered personal
11 data the applicant sought to export, reexport,
12 or transfer.

13 “(E) The number of covered individuals
14 whose information the applicant sought to ex-
15 port, reexport, or transfer.

16 “(F) Whether the application was ap-
17 proved or denied.

18 “(g) NEWS MEDIA PROTECTIONS.—A person that is
19 engaged in journalism is not subject to restrictions im-
20 posed under this section to the extent that those restric-
21 tions directly infringe on the journalism practices of that
22 person.

23 “(h) CITIZENSHIP DETERMINATIONS BY PERSONS
24 PROVIDING SERVICES TO END-USERS NOT REQUIRED.—
25 This section does not require a person that provides prod-

1 ucts or services to an individual to determine the citizen-
 2 ship or immigration status of the individual, but once the
 3 person becomes aware that the individual is a covered indi-
 4 vidual, the person shall treat covered personal data of that
 5 individual as is required by this section.

6 “(i) FEES.—

7 “(1) IN GENERAL.—Notwithstanding section
 8 1756(c), the Secretary may, to the extent provided
 9 in advance in appropriations Acts, assess and collect
 10 a fee, in an amount determined by the Secretary in
 11 regulations, with respect to each application for a li-
 12 cense submitted under subsection (b).

13 “(2) DEPOSIT AND AVAILABILITY OF FEES.—
 14 Notwithstanding section 3302 of title 31, United
 15 States Code, fees collected under paragraph (1)
 16 shall—

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

20 “(B) be available, to the extent and in the
 21 amounts provided in advance in appropriations
 22 Acts, to the Secretary solely for use in carrying
 23 out activities under this section; and

24 “(C) remain available until expended.

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

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

9 “(l) DEFINITIONS.—In this section:

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

13 “(A) the Committee on Banking, Housing,
14 and Urban Affairs, the Committee on Foreign
15 Relations, the Committee on Finance, and the
16 Select Committee on Intelligence of the Senate;
17 and

18 “(B) the Committee on Foreign Affairs,
19 the Committee on Ways and Means, and the
20 Permanent Select Committee on Intelligence of
21 the House of Representatives.

22 “(2) APPROPRIATE FEDERAL AGENCIES.—The
23 term ‘appropriate Federal agencies’ means the fol-
24 lowing:

25 “(A) The Department of Defense.

1 “(B) The Department of State.

2 “(C) The Department of Justice.

3 “(D) The Department of the Treasury.

4 “(E) The Office of the Director of Na-
5 tional Intelligence.

6 “(F) The Cybersecurity and Infrastructure
7 Security Agency.

8 “(G) The Consumer Financial Protection
9 Bureau.

10 “(H) The Federal Trade Commission.

11 “(I) The Federal Communications Com-
12 mission.

13 “(J) The Department of Health and
14 Human Services.

15 “(K) Such other Federal agencies as the
16 Secretary considers appropriate.

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

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

22 “(B) is—

23 “(i) located outside the United States
24 or whose location cannot be determined;
25 and

1 “(ii) a citizen of the United States or
2 a noncitizen lawfully admitted for perma-
3 nent residence.

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

8 “(5) EXPORT.—

9 “(A) IN GENERAL.—The term ‘export’,
10 with respect to covered personal data, in-
11 cludes—

12 “(i) subject to subparagraph (D), the
13 shipment or transmission of the data out
14 of the United States, including the sending
15 or taking of the data out of the United
16 States, in any manner, if the shipment or
17 transmission is intentional, without regard
18 to whether the shipment or transmission
19 was intended to go out of the United
20 States; or

21 “(ii) the release or transfer of the
22 data to any noncitizen (other than a non-
23 citizen described in subparagraph (C)), if
24 the release or transfer is intentional, with-

1 out regard to whether the release or trans-
2 fer was intended to be to a noncitizen.

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

5 “(i) the publication of covered per-
6 sonal data on the internet in a manner
7 that makes the data discoverable by and
8 accessible to any member of the general
9 public; or

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

13 “(C) NONCITIZENS DESCRIBED.—A noncit-
14 izen described in this subparagraph is a noncit-
15 izen who is authorized to be employed in the
16 United States.

17 “(D) TRANSMISSIONS THROUGH RE-
18 STRICTED COUNTRIES.—

19 “(i) IN GENERAL.—On and after the
20 date that is 5 years after the date of the
21 enactment of the Protecting Americans’
22 Data From Foreign Surveillance Act of
23 2022, and except as provided in clause
24 (iii), the term ‘export’ includes the trans-
25 mission of data through a restricted coun-

try, without regard to whether the person originating the transmission had knowledge of or control over the path of the transmission.

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

“(I) the data is encrypted as described in subsection (b)(4)(A)(iii); or

“(II) the person that originated the transmission received a representation from the party delivering the data for the person stating that the data will not transit through a restricted country.

“(iii) FALSE REPRESENTATIONS.—If a party delivering covered personal data as described in clause (ii)(II) transmits the data directly or indirectly through a restricted country despite making the representation described in clause (ii)(II), that party shall be liable for violating this section.

“(6) IN-COUNTRY TRANSFER; REEXPORT.—The terms ‘in-country transfer’ and ‘reexport’, with re-

1 spect to personal data, shall have the meanings
 2 given those terms in regulations prescribed by the
 3 Secretary.

4 “(7) **LAWFULLY ADMITTED FOR PERMANENT**
 5 **RESIDENCE; NATIONAL.**—The terms ‘lawfully admit-
 6 ted for permanent residence’ and ‘national’ have the
 7 meanings given those terms in section 101(a) of the
 8 Immigration and Nationality Act (8 U.S.C.
 9 1101(a)).

10 “(8) **NONCITIZEN.**—The term ‘noncitizen’
 11 means an individual who is not a citizen or national
 12 of the United States.

13 “(9) **RESTRICTED COUNTRY.**—The term ‘re-
 14 stricted country’ means a country for which a license
 15 or other authorization is required under subsection
 16 (b) for the export or reexport to, or in-country
 17 transfer in, that country of covered personal data in
 18 a manner that exceeds the applicable threshold es-
 19 tablished under subsection (a)(3).”.

20 (b) **STATEMENT OF POLICY.**—Section 1752 of the
 21 Export Control Reform Act of 2018 (50 U.S.C. 4811) is
 22 amended—

23 (1) in paragraph (1)—

24 (A) in subparagraph (A), by striking “;
 25 and” and inserting a semicolon;

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

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

4 “(C) to restrict, notwithstanding section
 5 203(b) of the International Emergency Eco-
 6 nomic Powers Act (50 U.S.C. 1702(b)), the ex-
 7 port of personal data of United States citizens
 8 and other covered individuals (as defined in sec-
 9 tion 1758A(l)) in a quantity and a manner that
 10 could harm the national security of the United
 11 States.”; and

12 (2) in paragraph (2), by adding at the end the
 13 following:

14 “(H) To prevent the exploitation of per-
 15 sonal data of United States citizens and other
 16 covered individuals (as defined in section
 17 1758A(l)) in a quantity and a manner that
 18 could harm the national security of the United
 19 States.”.

20 (c) LIMITATION ON AUTHORITY TO MAKE EXCEP-
 21 TIONS TO LICENSING REQUIREMENTS.—Section 1754 of
 22 the Export Control Reform Act of 2018 (50 U.S.C. 4813)
 23 is amended—

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

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

2 “(g) LIMITATION ON AUTHORITY TO MAKE EXCEP-
3 TIONS TO LICENSING REQUIREMENTS.—The Secretary
4 may create under subsection (a)(14) exceptions to licens-
5 ing requirements under section 1758A only for the export,
6 reexport, or in-country transfer of covered personal data
7 (as defined in subsection (l) of that section) by a Federal
8 department or agency.”.

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

○