

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.

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## 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

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## 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

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

5           “(3) ESTABLISHMENT OF THRESHOLD.—

6           “(A) ESTABLISHMENT.—Not later than  
7 one year after the date of the enactment of the  
8 Protecting Americans’ Data From Foreign Sur-  
9 veillance Act of 2023, the Secretary, in coordi-  
10 nation with the heads of the appropriate Fed-  
11 eral agencies, shall establish a threshold for de-  
12 termining when the export, reexport, or in-  
13 country transfer (in the aggregate) of the per-  
14 sonal data of covered individuals by one person  
15 to or in a restricted country could harm the na-  
16 tional security of the United States.

17           “(B) NUMBER OF COVERED INDIVIDUALS  
18 AFFECTED.—

19           “(i) IN GENERAL.—Except as pro-  
20 vided by clause (ii), the Secretary shall es-  
21 tablish the threshold under subparagraph  
22 (A) so that the threshold is—

23                   “(I) not lower than the export,  
24 reexport, or in-country transfer (in  
25 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(e), 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

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

5 “(ii) the release or transfer of the  
6 data to any noncitizen (other than a non-  
7 citizen described in subparagraph (C)), if  
8 the release or transfer is intentional, with-  
9 out regard to whether the release or trans-  
10 fer was intended to be to a noncitizen.

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

13 “(i) the publication of covered per-  
14 sonal data on the internet in a manner  
15 that makes the data discoverable by and  
16 accessible to any member of the general  
17 public; or

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

21 “(C) NONCITIZENS DESCRIBED.—A noncit-  
22 izen described in this subparagraph is a noncit-  
23 izen who is authorized to be employed in the  
24 United States.

1                   “(D) TRANSMISSIONS THROUGH RE-  
2                   STRICED 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(e)(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.

○