

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 9087  
OFFERED BY MR. DAVIDSON OF OHIO**

At the appropriate place, insert the following:

1 **SECTION \_\_\_\_ . REQUIREMENT TO CONTROL THE EXPORT**  
2 **OF CERTAIN PERSONAL DATA OF UNITED**  
3 **STATES NATIONALS AND INDIVIDUALS IN**  
4 **THE UNITED STATES.**

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

8 **“SEC. 1758A. REQUIREMENT TO CONTROL THE EXPORT OF**  
9 **CERTAIN PERSONAL DATA OF UNITED**  
10 **STATES NATIONALS AND INDIVIDUALS IN**  
11 **THE UNITED STATES.**

12 “(a) IDENTIFICATION OF CATEGORIES OF PERSONAL  
13 DATA.—

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

18 “(A) be exploited by foreign governments  
19 or foreign adversaries; and

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

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

9           “(A) identify an initial list of such cat-  
10 egories not later than one year after the date  
11 of the enactment of the Protecting Americans’  
12 Data From Foreign Surveillance Act of 2023;  
13 and

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

18           “(3) ESTABLISHMENT OF THRESHOLD.—

19           “(A) ESTABLISHMENT.—Not later than  
20 one year after the date of the enactment of the  
21 Protecting Americans’ Data From Foreign Sur-  
22 veillance Act of 2023, the Secretary, in coordi-  
23 nation with the heads of the appropriate Fed-  
24 eral agencies, shall establish a threshold for de-  
25 termining when the export, reexport, or in-

1 country transfer (in the aggregate) of the per-  
2 sonal data of covered individuals by one person  
3 to or in a restricted country could harm the na-  
4 tional security of the United States.

5 “(B) NUMBER OF COVERED INDIVIDUALS  
6 AFFECTED.—

7 “(i) IN GENERAL.—Except as pro-  
8 vided by clause (ii), the Secretary shall es-  
9 tablish the threshold under subparagraph  
10 (A) so that the threshold is—

11 “(I) not lower than the export,  
12 reexport, or in-country transfer (in  
13 the aggregate) by one person to or in  
14 a restricted country during a calendar  
15 year of the personal data of 10,000  
16 covered individuals; and

17 “(II) not higher than the export,  
18 reexport, or in-country transfer (in  
19 the aggregate) by one person to or in  
20 a restricted country during a calendar  
21 year of the personal data of 1,000,000  
22 covered individuals.

23 “(ii) EXPORTS BY CERTAIN FOREIGN  
24 PERSONS.—In the case of a person that  
25 possesses the data of more than 1,000,000

1 covered individuals, the threshold estab-  
2 lished under subparagraph (A) shall be one  
3 export, reexport, or in-country transfer of  
4 personal data to or in a restricted country  
5 by that person during a calendar year if  
6 the export, reexport, or in-country transfer  
7 is to—

8 “(I) the government of a re-  
9 stricted country;

10 “(II) a foreign person that owns  
11 or controls the person conducting the  
12 export, reexport, or in-country trans-  
13 fer and that person knows, or should  
14 know, that the export, reexport, or in-  
15 country transfer of the personal data  
16 was requested by the foreign person  
17 to comply with a request from the  
18 government of a restricted country; or

19 “(III) an entity on the Entity  
20 List maintained by the Bureau of In-  
21 dustry and Security of the Depart-  
22 ment of Commerce and set forth in  
23 Supplement No. 4 to part 744 of the  
24 Export Administration Regulations.

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 (or combination of categories) of personal  
6           data identified under paragraph (1).

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

10                   “(i) may update a 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 and foreign  
10                  adversaries against the 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 (or combination of cat-  
22                  egories) of personal data identified under paragraph  
23                  (1), the period of time for which encryption tech-  
24                  nology described in subsection (b)(4)(A)(iii) is re-  
25                  quired to be able to protect that category (or com-

1        bination of categories) of data from decryption to  
2        prevent the exploitation of the data by a foreign gov-  
3        ernment or foreign adversary from harming the na-  
4        tional security of the United States.

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

10            “(A) use multiple sources of information,  
11        including—

12            “(i) publicly available information;

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

16            “(iii) information relating to reviews  
17        and investigations of transactions by the  
18        Committee on Foreign Investment in the  
19        United States under section 721 of the De-  
20        fense Production Act of 1950 (50 U.S.C.  
21        4565);

22            “(iv) the categories of sensitive per-  
23        sonal data described in paragraphs (1)(ii)  
24        and (2) of section 800.241(a) of title 31,  
25        Code of Federal Regulations, as in effect

1 on the day before the date of the enact-  
2 ment of the Protecting Americans' Data  
3 From Foreign Surveillance Act of 2023,  
4 and any categories of sensitive personal  
5 data added to such section after such date  
6 of enactment;

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

10 “(vi) the recommendations (which the  
11 Secretary shall request) of—

12 “(I) experts in privacy, civil  
13 rights, and civil liberties, identified by  
14 the National Academy of Sciences;  
15 and

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

20 “(B) take into account—

21 “(i) the significant quantity of per-  
22 sonal data of covered individuals that is  
23 publicly available by law or has already  
24 been stolen or acquired by foreign govern-  
25 ments or foreign adversaries;

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

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

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

11          “(v) the commercial availability of in-  
12          ferred and derived data; and

13          “(vi) the potential for especially sig-  
14          nificant harm from data and inferences re-  
15          lated to sensitive domains, such as health,  
16          work, education, criminal justice, and fi-  
17          nance.

18          “(6) NOTICE AND COMMENT PERIOD.—The  
19          Secretary shall provide for a public notice and com-  
20          ment period after the publication in the Federal  
21          Register of a proposed rule, and before the publica-  
22          tion of a final rule—

23                 “(A) identifying the initial list of cat-  
24                 egories of personal data under subparagraph  
25                 (A) of paragraph (2);

1           “(B) adding categories to, removing cat-  
2           egories from, or modifying categories on, that  
3           list under subparagraph (B) of that paragraph;

4           “(C) establishing or updating the threshold  
5           under paragraph (3); or

6           “(D) setting forth the period of time for  
7           which encryption technology described in sub-  
8           section (b)(4)(A)(iii) is required under para-  
9           graph (4) to be able to protect such a category  
10          of data from decryption.

11          “(7) ADVISORY COMMITTEE.—

12           “(A) IN GENERAL.—The Secretary shall  
13           establish an advisory committee to advise the  
14           Secretary with respect to privacy and sensitive  
15           personal data.

16           “(B) MEMBERSHIP.—The committee es-  
17           tablished pursuant to subparagraph (A) shall  
18           include the following members selected by the  
19           Secretary:

20                   “(i) Experts on privacy and cyberse-  
21                   curity.

22                   “(ii) Representatives of United States  
23                   private sector companies, industry associa-  
24                   tions, and scholarly societies.

1           “(iii) Representatives of civil society  
2           groups, including such groups focused on  
3           protecting civil rights and civil liberties.

4           “(C) APPLICABILITY OF FEDERAL ADVI-  
5           SORY COMMITTEE ACT.—Subsections (a)(1),  
6           (a)(3), and (b) of section 10 and sections 11,  
7           13, and 14 of the Federal Advisory Committee  
8           Act (5 U.S.C. App.) shall not apply to the advi-  
9           sory committee established pursuant to sub-  
10          paragraph (A).

11          “(8) TREATMENT OF ANONYMIZED PERSONAL  
12          DATA.—

13           “(A) IN GENERAL.—In carrying out this  
14           subsection, the Secretary may not treat  
15           anonymized personal data differently than iden-  
16           tifiable personal data unless the Secretary is  
17           confident, based on the method of  
18           anonymization used and the period of time de-  
19           termined under paragraph (4) for protection of  
20           the category of personal data involved, it will  
21           not be possible for well-resourced adversaries,  
22           including foreign governments, to re-identify  
23           the individuals to which the anonymized per-  
24           sonal data relates, such as by using other  
25           sources of data, including non-public data ob-

1           tained through hacking and espionage, and rea-  
2           sonably anticipated advances in technology.

3           “(B) GUIDANCE.—The Under Secretary of  
4           Commerce for Standards and Technology shall  
5           issue guidance to the public with respect to  
6           methods for anonymizing data and how to de-  
7           termine if individuals to which the anonymized  
8           personal data relates can be, or are likely in the  
9           future to be, reasonably identified, such as by  
10          using other sources of data.

11          “(9) SENSE OF CONGRESS ON IDENTIFICATION  
12          OF CATEGORIES OF PERSONAL DATA.—It is the  
13          sense of Congress that, in identifying categories of  
14          personal data of covered individuals under para-  
15          graph (1), the Secretary should, to the extent rea-  
16          sonably possible and in coordination with the Sec-  
17          retary of the Treasury and the Director of the Office  
18          of Management and Budget, harmonize those cat-  
19          egories with the categories of sensitive personal data  
20          described in paragraph (5)(A)(iv).

21          “(b) COMMERCE CONTROLS.—

22          “(1) CONTROLS REQUIRED.—Beginning 18  
23          months after the date of the enactment of the Pro-  
24          tecting Americans’ Data From Foreign Surveillance  
25          Act of 2023, the Secretary shall impose appropriate

1 controls under the Export Administration Regula-  
2 tions on the export or reexport to, or in-country  
3 transfer in, all countries (other than countries on  
4 the list required by paragraph (2)(D)) of covered  
5 personal data in a manner that exceeds the applica-  
6 ble threshold established under subsection (a)(3), in-  
7 cluding through interim controls (such as by inform-  
8 ing a person that a license is required for export, re-  
9 export, or in-country transfer of covered personal  
10 data), as appropriate, or by publishing additional  
11 regulations.

12 “(2) LEVELS OF CONTROL.—

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

15 “(i) require a license or other author-  
16 ization for the export, reexport, or in-coun-  
17 try transfer of covered personal data in a  
18 manner that exceeds the applicable thresh-  
19 old established under subsection (a)(3);

20 “(ii) determine whether that export,  
21 reexport, or in-country transfer is likely to  
22 harm the national security of the United  
23 States—

1                   “(I) after consideration of the  
2                   matters described in subparagraph  
3                   (B); and

4                   “(II) in coordination with the  
5                   heads of the appropriate Federal  
6                   agencies; and

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

14                  “(B) CONSIDERATIONS.—In determining  
15                  under clause (ii) of subparagraph (A) whether  
16                  an export, reexport, or in-country transfer of  
17                  covered personal data described in clause (i) of  
18                  that subparagraph is likely to harm the na-  
19                  tional security of the United States, the Sec-  
20                  retary, in coordination with the heads of the ap-  
21                  propriate Federal agencies, shall take into ac-  
22                  count—

23                  “(i) the adequacy and enforcement of  
24                  data protection, surveillance, and export  
25                  control laws in the foreign country to

1           which the covered personal data would be  
2           exported or reexported, or in which the  
3           covered personal data would be trans-  
4           ferred, in order to determine whether such  
5           laws, and the enforcement of such laws,  
6           are sufficient to—

7                       “(I) protect the covered personal  
8                       data from accidental loss, theft, and  
9                       unauthorized or unlawful processing;

10                      “(II) ensure that the covered per-  
11                      sonal data is not exploited for intel-  
12                      ligence purposes by foreign govern-  
13                      ments to the detriment of the national  
14                      security of the United States; and

15                      “(III) prevent the reexport of the  
16                      covered personal data to a third coun-  
17                      try for which a license would be re-  
18                      quired for such data to be exported  
19                      directly from the United States;

20                      “(ii) the circumstances under which  
21                      the government of the foreign country can  
22                      compel, coerce, or pay a person in or na-  
23                      tional of that country to disclose the cov-  
24                      ered personal data; and

1           “(iii) whether that government has  
2           conducted hostile foreign intelligence oper-  
3           ations, including information operations,  
4           against the United States.

5           “(C) LICENSE REQUIREMENT AND PRE-  
6           SUMPTION OF DENIAL FOR CERTAIN COUN-  
7           TRIES.—

8           “(i) IN GENERAL.—The Secretary  
9           shall—

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

17           “(II) deny an application for  
18           such a license or other authorization  
19           unless the person seeking the license  
20           or authorization demonstrates to the  
21           satisfaction of the Secretary that the  
22           export, reexport, or in-country trans-  
23           fer will not harm the national security  
24           of the United States.

25           “(ii) LIST REQUIRED.—

1           “(I) IN GENERAL.—Not later  
2 than one year after the date of the en-  
3 actment of the Protecting Americans’  
4 Data From Foreign Surveillance Act  
5 of 2023, the Secretary shall (subject  
6 to subclause (III)) establish a list of  
7 each country with respect to which the  
8 Secretary determines that the export  
9 or reexport to, or in-country transfer  
10 in, the country of covered personal  
11 data in a manner that exceeds the ap-  
12 plicable threshold established under  
13 subsection (a)(3) will be likely to  
14 harm the national security of the  
15 United States.

16           “(II) MODIFICATIONS TO LIST.—  
17 The Secretary (subject to subclause  
18 (III))—

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

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

1                   “(III) CONCURRENCE; CON-  
2                   SULTATIONS; CONSIDERATIONS.—The  
3                   Secretary shall establish the list re-  
4                   quired by subclause (I) and add a  
5                   country to or remove a country from  
6                   that list under subclause (II)—

7                               “(aa) with the concurrence  
8                               of the Secretary of State;

9                               “(bb) in consultation with  
10                              the heads of the appropriate Fed-  
11                              eral agencies; and

12                             “(cc) based on the consider-  
13                             ations described in subparagraph  
14                             (B).

15                   “(D) NO LICENSE REQUIREMENT FOR  
16                   CERTAIN COUNTRIES.—

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

25                             “(ii) LIST REQUIRED.—

1                   “(I) IN GENERAL.—Not later  
2 than one year after the date of the en-  
3 actment of the Protecting Americans’  
4 Data From Foreign Surveillance Act  
5 of 2023, the Secretary shall (subject  
6 to clause (iii) and subclause (III)), es-  
7 tablish a list of each country with re-  
8 spect to which the Secretary deter-  
9 mines that the export or reexport to,  
10 or in-country transfer in, the country  
11 of covered personal data (without re-  
12 gard to any threshold established  
13 under subsection (a)(3)) will not harm  
14 the national security of the United  
15 States.

16                   “(II) MODIFICATIONS TO LIST.—  
17 The Secretary (subject to clause (iii)  
18 and subclause (III))—

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

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

1                   “(III) CONCURRENCE; CON-  
2                   SULTATIONS; CONSIDERATIONS.—The  
3                   Secretary shall establish the list re-  
4                   quired by subclause (I) and add a  
5                   country to or remove a country from  
6                   that list under subclause (II)—

7                   “(aa) with the concurrence  
8                   of the Secretary of State;

9                   “(bb) in consultation with  
10                  the heads of the appropriate Fed-  
11                  eral agencies; and

12                  “(cc) based on the consider-  
13                  ations described in subparagraph  
14                  (B).

15                  “(iii) CONGRESSIONAL REVIEW.—

16                  “(I) IN GENERAL.—The list re-  
17                  quired by clause (ii) and any updates  
18                  to that list adding or removing coun-  
19                  tries shall take effect, for purposes of  
20                  clause (i), on the date that is 180  
21                  days after the Secretary submits to  
22                  the appropriate congressional commit-  
23                  tees a proposal for the list or update  
24                  unless there is enacted into law, be-  
25                  fore that date, a joint resolution of

1 disapproval pursuant to subclause  
2 (II).

3 “(II) JOINT RESOLUTION OF DIS-  
4 APPROVAL.—

5 “(aa) JOINT RESOLUTION  
6 OF DISAPPROVAL DEFINED.—In  
7 this clause, the term ‘joint reso-  
8 lution of disapproval’ means a  
9 joint resolution the matter after  
10 the resolving clause of which is  
11 as follows: ‘That Congress does  
12 not approve of the proposal of  
13 the Secretary with respect to the  
14 list required by section  
15 1758A(b)(2)(D)(ii) submitted to  
16 Congress on \_\_\_\_\_.’, with the  
17 blank space being filled with the  
18 appropriate date.

19 “(bb) PROCEDURES.—The  
20 procedures set forth in para-  
21 graphs (4)(C), (5), (6), and (7)  
22 of section 2523(d) of title 18,  
23 United States Code, apply with  
24 respect to a joint resolution of  
25 disapproval under this clause to

1 the same extent and in the same  
2 manner as such procedures apply  
3 to a joint resolution of dis-  
4 approval under such section  
5 2523(d), except that paragraph  
6 (6) of such section shall be ap-  
7 plied and administered by sub-  
8 stituting ‘the Committee on  
9 Banking, Housing, and Urban  
10 Affairs’ for ‘the Committee on  
11 the Judiciary’ each place it ap-  
12 pears.

13 “(III) RULES OF HOUSE OF REP-  
14 RESENTATIVES AND SENATE.—This  
15 clause is enacted by Congress—

16 “(aa) as an exercise of the  
17 rulemaking power of the Senate  
18 and the House of Representa-  
19 tives, respectively, and as such is  
20 deemed a part of the rules of  
21 each House, respectively, and su-  
22 persedes other rules only to the  
23 extent that it is inconsistent with  
24 such rules; and

1                   “(bb) with full recognition of  
2                   the constitutional right of either  
3                   House to change the rules (so far  
4                   as relating to the procedure of  
5                   that House) at any time, in the  
6                   same manner, and to the same  
7                   extent as in the case of any other  
8                   rule of that House.

9                   “(3) REVIEW OF LICENSE APPLICATIONS.—

10                   “(A) IN GENERAL.—The Secretary shall,  
11                   consistent with the provisions of section 1756  
12                   and in coordination with the heads of the ap-  
13                   propriate Federal agencies—

14                   “(i) review applications for a license  
15                   or other authorization for the export or re-  
16                   export to, or in-country transfer in, a re-  
17                   stricted country of covered personal data  
18                   in a manner that exceeds the applicable  
19                   threshold established under subsection  
20                   (a)(3); and

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

23                   “(B) DISCLOSURES RELATING TO COL-  
24                   LABORATIVE ARRANGEMENTS.—In the case of  
25                   an application for a license or other authoriza-

1           tion for an export, reexport, or in-country  
2           transfer described in subparagraph (A)(i) sub-  
3           mitted by or on behalf of a joint venture, joint  
4           development agreement, or similar collaborative  
5           arrangement, the Secretary may require the ap-  
6           plicant to identify, in addition to any foreign  
7           person participating in the arrangement, any  
8           foreign person with significant ownership inter-  
9           est in a foreign person participating in the ar-  
10          rangement.

11          “(4) EXCEPTIONS.—

12                 “(A) IN GENERAL.—The Secretary shall  
13                 not impose under paragraph (1) a requirement  
14                 for a license or other authorization with respect  
15                 to the export, reexport, or in-country transfer of  
16                 covered personal data pursuant to any of the  
17                 following transactions:

18                         “(i) The export, reexport, or in-coun-  
19                         try transfer by an individual of covered  
20                         personal data that specifically pertains to  
21                         that individual.

22                         “(ii) The export, reexport, or in-coun-  
23                         try transfer of the personal data of one or  
24                         more individuals by a person performing a  
25                         service for those individuals if the service

1           could not possibly be performed (as defined  
2           by the Secretary in regulations) without  
3           the export, reexport, or in-country transfer  
4           of that personal data.

5           “(iii) The export, reexport, or in-coun-  
6           try transfer of personal data that is  
7           encrypted if—

8                   “(I) the encryption key or other  
9                   information necessary to decrypt the  
10                  data is not, at the time of the export,  
11                  reexport, or in-country transfer of the  
12                  personal data or any other time, ex-  
13                  ported, reexported, or transferred to a  
14                  restricted country or (except as pro-  
15                  vided in subparagraph (B)) a national  
16                  of a restricted country; and

17                   “(II) the encryption technology  
18                   used to protect the data against  
19                   decryption is certified by the National  
20                   Institute of Standards and Tech-  
21                   nology as capable of protecting data  
22                   for the period of time determined  
23                   under subsection (a)(4) to be suffi-  
24                   cient to prevent the exploitation of the  
25                   data by a foreign government or for-

1                   eign adversary from harming the na-  
2                   tional security of the United States.

3                   “(iv) The export, reexport, or in-coun-  
4                   try transfer of personal data that is or-  
5                   dered by an appropriate court of the  
6                   United States.

7                   “(B) EXCEPTION FOR CERTAIN NATIONALS  
8                   OF RESTRICTED COUNTRIES.—Subparagraph  
9                   (A)(iii)(I) does not apply with respect to an in-  
10                  dividual who is a national of a restricted coun-  
11                  try if the individual is also a citizen of the  
12                  United States or a noncitizen described in sub-  
13                  section (l)(5)(C).

14                  “(c) REQUIREMENTS FOR IDENTIFICATION OF CAT-  
15                  EGORIES AND DETERMINATION OF APPROPRIATE CON-  
16                  TROLS.—In identifying categories of personal data under  
17                  subsection (a)(1) and imposing appropriate controls under  
18                  subsection (b), the Secretary, in coordination with the  
19                  heads of the appropriate Federal agencies, as appro-  
20                  priate—

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

23                  “(A) personal data that is a matter of pub-  
24                  lic record, such as a court record or other gov-  
25                  ernment record that is generally available to the

1 public, including information about an indi-  
2 vidual made public by that individual or by the  
3 news media;

4 “(B) information about a matter of public  
5 interest; or

6 “(C) any other information the publication  
7 or sharing of which is protected by the First  
8 Amendment to the Constitution of the United  
9 States; and

10 “(2) shall consult with the appropriate congres-  
11 sional committees.

12 “(d) PENALTIES.—

13 “(1) LIABLE PERSONS.—

14 “(A) IN GENERAL.—In addition to any  
15 person that commits an unlawful act described  
16 in subsection (a) of section 1760, an officer or  
17 employee of an organization has committed an  
18 unlawful act subject to penalties under that sec-  
19 tion if the officer or employee knew or should  
20 have known that another employee of the orga-  
21 nization who reports, directly or indirectly, to  
22 the officer or employee was directed to export,  
23 reexport, or in-country transfer covered per-  
24 sonal data in violation of this section and subse-

1           quently did export, reexport, or in-country  
2           transfer such data.

3           “(B) EXCEPTIONS AND CLARIFICATIONS.—

4           “(i) INTERMEDIARIES NOT LIABLE.—

5           An intermediate consignee (as defined in  
6           section 772.1 of the Export Administration  
7           Regulations (or any successor regulation))  
8           or other intermediary is not liable for the  
9           export, reexport, or in-country transfer of  
10          covered personal data in violation of this  
11          section when acting as an intermediate  
12          consignee or other intermediary for an-  
13          other person.

14          “(ii) SPECIAL RULE FOR CERTAIN AP-  
15          PLICATIONS.—In a case in which an appli-  
16          cation installed on an electronic device  
17          transmits or causes the transmission of  
18          covered personal data without being di-  
19          rected to do so by the owner or user of the  
20          device who installed the application, the  
21          developer of the application, and not the  
22          owner or user of the device, is liable for  
23          any violation of this section.

24          “(2) CRIMINAL PENALTIES.—In determining an  
25          appropriate term of imprisonment under section

1 1760(b)(2) with respect to a person for a violation  
2 of this section, the court shall consider—

3 “(A) how many covered individuals had  
4 their covered personal data exported, reex-  
5 ported, or in-country transferred in violation of  
6 this section;

7 “(B) any harm that resulted from the vio-  
8 lation; and

9 “(C) the intent of the person in commit-  
10 ting the violation.

11 “(e) REPORT TO CONGRESS.—

12 “(1) IN GENERAL.—Not less frequently than  
13 annually, the Secretary, in coordination with the  
14 heads of the appropriate Federal agencies, shall sub-  
15 mit to the appropriate congressional committees a  
16 report on the results of actions taken pursuant to  
17 this section.

18 “(2) INCLUSIONS.—Each report required by  
19 paragraph (1) shall include a description of the de-  
20 terminations made under subsection (b)(2)(A)(ii)  
21 during the preceding year.

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

1       “(f) DISCLOSURE OF CERTAIN LICENSE INFORMA-  
2 TION.—

3           “(1) IN GENERAL.—Not less frequently than  
4 every 90 days, the Secretary shall publish on a pub-  
5 licly accessible website of the Department of Com-  
6 merce, including in a machine-readable format, the  
7 information specified in paragraph (2), with respect  
8 to each application—

9           “(A) for a license for the export or reex-  
10 port to, or in-country transfer in, a restricted  
11 country of covered personal data in a manner  
12 that exceeds the applicable threshold established  
13 under subsection (a)(3); and

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

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

20           “(A) The name of the applicant.

21           “(B) The date of the application.

22           “(C) The name of the foreign party to  
23 which the applicant sought to export, reexport,  
24 or transfer the data.

1           “(D) The categories of covered personal  
2           data the applicant sought to export, reexport,  
3           or transfer.

4           “(E) The number of covered individuals  
5           whose information the applicant sought to ex-  
6           port, reexport, or transfer.

7           “(F) Whether the application was ap-  
8           proved or denied.

9           “(g) NEWS MEDIA PROTECTIONS.—A person that is  
10          engaged in journalism is not subject to restrictions im-  
11          posed under this section to the extent that those restric-  
12          tions directly infringe on the journalism practices of that  
13          person.

14          “(h) CITIZENSHIP DETERMINATIONS BY PERSONS  
15          PROVIDING SERVICES TO END-USERS NOT REQUIRED.—  
16          This section does not require a person that provides prod-  
17          ucts or services to an individual to determine the citizen-  
18          ship or immigration status of the individual, but once the  
19          person becomes aware that the individual is a covered indi-  
20          vidual, the person shall treat covered personal data of that  
21          individual as is required by this section.

22          “(i) FEES.—

23                 “(1) IN GENERAL.—Notwithstanding section  
24                 1756(c), the Secretary may, to the extent provided  
25                 in advance in appropriations Acts, assess and collect

1 a fee, in an amount determined by the Secretary in  
2 regulations, with respect to each application for a li-  
3 cense submitted under subsection (b).

4 “(2) DEPOSIT AND AVAILABILITY OF FEES.—  
5 Notwithstanding section 3302 of title 31, United  
6 States Code, fees collected under paragraph (1)  
7 shall—

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

11 “(B) be available, to the extent and in the  
12 amounts provided in advance in appropriations  
13 Acts, to the Secretary solely for use in carrying  
14 out activities under this section; and

15 “(C) remain available until expended.

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

18 “(k) AUTHORIZATION OF APPROPRIATIONS.—There  
19 are authorized to be appropriated to the Secretary and  
20 to the head of each of the appropriate Federal agencies  
21 participating in carrying out this section such sums as  
22 may be necessary to carry out this section, including to  
23 hire additional employees with expertise in privacy.

24 “(l) DEFINITIONS.—In this section:

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

4                   “(A) the Committee on Banking, Housing,  
5                   and Urban Affairs, the Committee on Foreign  
6                   Relations, the Committee on Finance, and the  
7                   Select Committee on Intelligence of the Senate;  
8                   and

9                   “(B) the Committee on Foreign Affairs,  
10                  the Committee on Ways and Means, and the  
11                  Permanent Select Committee on Intelligence of  
12                  the House of Representatives.

13           “(2) APPROPRIATE FEDERAL AGENCIES.—The  
14           term ‘appropriate Federal agencies’ means the fol-  
15           lowing:

16                   “(A) The Department of Defense.

17                   “(B) The Department of State.

18                   “(C) The Department of Justice.

19                   “(D) The Department of the Treasury.

20                   “(E) The Office of the Director of Na-  
21                  tional Intelligence.

22                   “(F) The Office of Science and Technology  
23                  Policy.

24                   “(G) The Department of Homeland Secu-  
25                  rity.

1           “(H) The Consumer Financial Protection  
2 Bureau.

3           “(I) The Federal Trade Commission.

4           “(J) The Federal Communications Com-  
5 mission.

6           “(K) The Department of Health and  
7 Human Services.

8           “(L) Such other Federal agencies as the  
9 Secretary considers appropriate.

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

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

15           “(B) is—

16               “(i) located outside the United States  
17 or whose location cannot be determined;  
18 and

19               “(ii) a citizen of the United States or  
20 a noncitizen lawfully admitted for perma-  
21 nent residence.

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

1           “(5) EXPORT.—

2                   “(A) IN GENERAL.—The term ‘export’,  
3 with respect to covered personal data, in-  
4 cludes—

5                           “(i) subject to subparagraph (D), the  
6 shipment or transmission of the data out  
7 of the United States, including the sending  
8 or taking of the data out of the United  
9 States, in any manner, if the shipment or  
10 transmission is intentional, without regard  
11 to whether the shipment or transmission  
12 was intended to go out of the United  
13 States; or

14                           “(ii) the release or transfer of the  
15 data to any noncitizen (other than a non-  
16 citizen described in subparagraph (C)), if  
17 the release or transfer is intentional, with-  
18 out regard to whether the release or trans-  
19 fer was intended to be to a noncitizen.

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

22                           “(i) the publication of covered per-  
23 sonal data on the internet in a manner  
24 that makes the data discoverable by and

1 accessible to any member of the general  
2 public; or

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

6 “(C) NONCITIZENS DESCRIBED.—A noncit-  
7 izen described in this subparagraph is a noncit-  
8 izen who is authorized to be employed in the  
9 United States.

10 “(D) TRANSMISSIONS THROUGH RE-  
11 STRICTED COUNTRIES.—

12 “(i) IN GENERAL.—On and after the  
13 date that is 5 years after the date of the  
14 enactment of the Protecting Americans’  
15 Data From Foreign Surveillance Act of  
16 2023, and except as provided in clause  
17 (iii), the term ‘export’ includes the trans-  
18 mission of data through a restricted coun-  
19 try, without regard to whether the person  
20 originating the transmission had knowl-  
21 edge of or control over the path of the  
22 transmission.

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

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

3                   “(II) the person that originated  
4                   the transmission received a represen-  
5                   tation from the party delivering the  
6                   data for the person stating that the  
7                   data will not transit through a re-  
8                   stricted country.

9                   “(iii) FALSE REPRESENTATIONS.—If  
10                  a party delivering covered personal data as  
11                  described in clause (ii)(II) transmits the  
12                  data directly or indirectly through a re-  
13                  stricted country despite making the rep-  
14                  resentation described in clause (ii)(II), that  
15                  party shall be liable for violating this sec-  
16                  tion.

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

21                  “(7) IN-COUNTRY TRANSFER; REEXPORT.—The  
22                  terms ‘in-country transfer’ and ‘reexport’, with re-  
23                  spect to personal data, shall have the meanings  
24                  given those terms in regulations prescribed by the  
25                  Secretary.

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

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

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

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

20           (1) in paragraph (1)—

21           (A) in subparagraph (A), by striking “;  
22           and” and inserting a semicolon;

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

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

1           “(C) to restrict, notwithstanding section  
2           203(b) of the International Emergency Eco-  
3           nomic Powers Act (50 U.S.C. 1702(b)), the ex-  
4           port of personal data of United States citizens  
5           and other covered individuals (as defined in sec-  
6           tion 1758A(l)) in a quantity and a manner that  
7           could harm the national security of the United  
8           States.”; and

9           (2) in paragraph (2), by adding at the end the  
10          following:

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

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

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

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

24           “(g) LIMITATION ON AUTHORITY TO MAKE EXCEP-  
25          TIONS TO LICENSING REQUIREMENTS.—The Secretary

1 may create under subsection (a)(14) exceptions to licens-  
2 ing requirements under section 1758A only for the export,  
3 reexport, or in-country transfer of covered personal data  
4 (as defined in subsection (l) of that section) by or for a  
5 Federal department or agency.”.

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

11 (e) SEVERABILITY.—If any provision of or any  
12 amendment made by this section, or the application of any  
13 such provision or amendment to any person or cir-  
14 cumstance, is held to be unconstitutional, the remainder  
15 of the provisions of and amendments made by this section,  
16 and the application of such provisions and amendments  
17 to any other person or circumstance, shall not be affected.

