

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5576
OFFERED BY MR. YOHO OF FLORIDA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Cyber Deterrence and
3 Response Act of 2018”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) On February 13, 2018, the Director of Na-
7 tional Intelligence stated in his testimony before the
8 Senate Select Committee on Intelligence that “Rus-
9 sia, China, Iran, and North Korea will pose the
10 greatest cyber threats to the United States during
11 the next year” through the use of cyber operations
12 as low-cost tools of statecraft, and assessed that
13 these states would “work to use cyber operations to
14 achieve strategic objectives unless they face clear re-
15 percussions for their cyber operations”.

16 (2) The 2017 Worldwide Threat Assessment of
17 the United States Intelligence Community stated
18 that “The potential for surprise in the cyber realm

1 will increase in the next year and beyond as billions
2 more digital devices are connected—with relatively
3 little built-in security—and both nation states and
4 malign actors become more emboldened and better
5 equipped in the use of increasingly widespread cyber
6 toolkits. The risk is growing that some adversaries
7 will conduct cyber attacks—such as data deletion or
8 localized and temporary disruptions of critical infra-
9 structure—against the United States in a crisis
10 short of war.”.

11 (3) On March 29, 2017, President Donald J.
12 Trump deemed it necessary to continue the national
13 emergency declared in Executive Order 13694 as
14 “Significant malicious cyber-enabled activities origi-
15 nating from, or directed by persons located, in whole
16 or in substantial part, outside the United States,
17 continue to pose an unusual and extraordinary
18 threat to the national security, foreign policy, and
19 economy of the United States.”.

20 (4) On January 5, 2017, former Director of
21 National Intelligence, James Clapper, former Under-
22 secretary of Defense for Intelligence, Marcel Lettre,
23 and the Commander of the United States Cyber
24 Command, Admiral Michael Rogers, submitted joint
25 testimony to the Committee on Armed Services of

1 the Senate that stated “As of late 2016 more than
2 30 nations are developing offensive cyber attack ca-
3 pabilities” and that “Protecting critical infrastruc-
4 ture, such as crucial energy, financial, manufac-
5 turing, transportation, communication, and health
6 systems, will become an increasingly complex na-
7 tional security challenge.”.

8 (5) There is significant evidence that hackers
9 affiliated with foreign governments have conducted
10 cyber operations targeting companies and critical in-
11 frastructure sectors in the United States as the De-
12 partment of Justice has announced that—

13 (A) on March 24, 2016, seven Iranians
14 working for Iran’s Revolutionary Guard Corps-
15 affiliated entities were indicted for conducting
16 distributed denial of service attacks against the
17 financial sector in the United States from 2012
18 to 2013; and

19 (B) on May 19, 2014, five Chinese military
20 hackers were charged for hacking United States
21 companies in the nuclear power, metals, and
22 solar products industries, and engaging in eco-
23 nomic espionage.

24 (6) In May 2017, North Korea released
25 “WannaCry” pseudo-ransomware, which posed a sig-

1 nificant risk to the economy, national security, and
2 the citizens of the United States and the world, as
3 it resulted in the infection of over 300,000 computer
4 systems in more than 150 countries, including in the
5 healthcare sector of the United Kingdom, dem-
6 onstrating the global reach and cost of cyber-enabled
7 malicious activity.

8 (7) In June 2017, Russia carried out the most
9 destructive cyber-enabled operation in history, re-
10 leasing the NotPetya malware that caused billions of
11 dollars' worth of damage within Ukraine and across
12 Europe, Asia, and the Americas.

13 (8) In May 2018, the Department of State,
14 pursuant to section 3(b) of Executive Order 13800,
15 prepared recommendations to the President on De-
16 terring Adversaries and Better Protecting the Amer-
17 ican People From Cyber Threats, which stated
18 “With respect to activities below the threshold of the
19 use of force, the United States should, working with
20 likeminded partners when possible, adopt an ap-
21 proach of imposing swift, costly, and transparent
22 consequences on foreign governments responsible for
23 significant malicious cyber activities aimed at harm-
24 ing U.S. national interests.”.

1 **SEC. 3. ACTIONS TO ADDRESS STATE-SPONSORED CYBER**
2 **ACTIVITIES AGAINST THE UNITED STATES.**

3 (a) DESIGNATION AS A CRITICAL CYBER THREAT
4 ACTOR.—

5 (1) IN GENERAL.—The President, acting
6 through the Secretary of State, and in coordination
7 with other relevant Federal agency heads, shall des-
8 ignate as a critical cyber threat actor—

9 (A) each foreign person and each agency
10 or instrumentality of a foreign state that the
11 President determines to be knowingly respon-
12 sible for or complicit in, or have engaged in, di-
13 rectly or indirectly, state-sponsored cyber activi-
14 ties that are reasonably likely to result in, or
15 have contributed to, a significant threat to the
16 national security, foreign policy, or economic
17 health or financial stability of the United States
18 and that have the purpose or effect of—

19 (i) causing a significant disruption to
20 the availability of a computer or network
21 of computers;

22 (ii) harming, or otherwise significantly
23 compromising the provision of service by, a
24 computer or network of computers that
25 support one or more entities in a critical
26 infrastructure sector;

1 (iii) significantly compromising the
2 provision of services by one or more enti-
3 ties in a critical infrastructure sector;

4 (iv) causing a significant misappro-
5 priation of funds or economic resources,
6 trade secrets, personal identifiers, or finan-
7 cial information for commercial or competi-
8 tive advantage or private financial gain;

9 (v) destabilizing the financial sector of
10 the United States by tampering with, alter-
11 ing, or causing a misappropriation of data;
12 or

13 (vi) interfering with or undermining
14 election processes or institutions by tam-
15 pering with, altering, or causing misappro-
16 priation of data;

17 (B) each foreign person that the President
18 has determined to have knowingly, significantly,
19 and materially assisted, sponsored, or provided
20 financial, material, or technological support for,
21 or goods or services to or in support of, any ac-
22 tivities described in subparagraph (A) by a for-
23 eign person or agency or instrumentality of a
24 foreign state designated as a critical cyber
25 threat actor under subparagraph (A); and

1 (C) each agency or instrumentality of a
2 foreign state that the President has determined
3 to have significantly and materially assisted,
4 sponsored, or provided financial, material, or
5 technological support for, or goods or services
6 to or in support of, any activities described in
7 subparagraph (A) by a foreign person or agency
8 or instrumentality of a foreign state designated
9 as a critical cyber threat actor under subpara-
10 graph (A).

11 (2) PUBLICATION IN FEDERAL REGISTER.—

12 (A) IN GENERAL.—The President shall—

13 (i) publish in the Federal Register a
14 list of each foreign person and each agency
15 or instrumentality of a foreign state des-
16 ignated as a critical cyber threat actor
17 under this subsection; and

18 (ii) regularly update such list not later
19 than seven days after making any changes
20 to such list, and publish in the Federal
21 Register such updates.

22 (B) EXCEPTION.—

23 (i) IN GENERAL.—The President may
24 withhold from publication in the Federal
25 Register under subparagraph (A) the iden-

1 tification of any foreign person or agency
2 or instrumentality of a foreign state des-
3 ignated as a critical cyber threat actor
4 under this subsection if the President de-
5 termines that withholding such identifica-
6 tion—

7 (I) is important to the national
8 security interests of the United
9 States; or

10 (II) is for an important law en-
11 forcement purpose.

12 (ii) TRANSMISSION.—If the President
13 exercises the authority under this subpara-
14 graph to withhold from publication in the
15 Federal Register the identification of a for-
16 eign person or agency or instrumentality of
17 a foreign state designated as a critical
18 cyber threat actor under this subsection,
19 the President shall transmit to the appro-
20 priate congressional committees in classi-
21 fied form a report containing any such
22 identification, together with the reasons for
23 such exercise.

24 (b) NON-TRAVEL-RELATED SANCTIONS.—

1 (1) IN GENERAL.—The President shall impose
2 one or more of the applicable sanctions described in
3 paragraph (2) with respect to each foreign person
4 and each agency or instrumentality of a foreign
5 state designated as a critical cyber threat actor
6 under subsection (a).

7 (2) SANCTIONS DESCRIBED.—The sanctions de-
8 scribed in this paragraph are the following:

9 (A) The President may provide for the
10 withdrawal, limitation, or suspension of non-hu-
11 manitarian United States development assist-
12 ance under chapter 1 of part I of the Foreign
13 Assistance Act of 1961.

14 (B) The President may provide for the
15 withdrawal, limitation, or suspension of United
16 States security assistance under part II of the
17 Foreign Assistance Act of 1961.

18 (C) The President may direct the United
19 States executive director to each international
20 financial institution to use the voice and vote of
21 the United States to oppose any loan from the
22 international financial institution that would
23 benefit the designated foreign person or the
24 designated agency or instrumentality of a for-
25 eign state.

1 (D) The President may direct the Overseas
2 Private Investment Corporation, or any other
3 United States Government agency not to ap-
4 prove the issuance of any (or a specified num-
5 ber of) guarantees, insurance, extensions of
6 credit, or participations in the extension of
7 credit.

8 (E) The President may, pursuant to such
9 regulations or guidelines as the President may
10 prescribe, prohibit any United States person
11 from investing in or purchasing significant
12 amounts of equity or debt instruments of the
13 designated foreign person.

14 (F) The President may, pursuant to such
15 regulations or guidelines as the President may
16 prescribe, prohibit any United States agency or
17 instrumentality from procuring, or entering into
18 any contract for the procurement of, any goods,
19 technology, or services, or classes of goods,
20 technology, or services, from the designated for-
21 eign person or the designated agency or instru-
22 mentality of a foreign state.

23 (G) The President may order the heads of
24 the appropriate United States agencies to not
25 issue any (or a specified number of) specific li-

1 censes, and to not grant any other specific au-
2 thority (or a specified number of authorities), to
3 export any goods or technology to the des-
4 ignated foreign person or the designated agency
5 or instrumentality of a foreign state under—

6 (i) the Export Administration Act of
7 1979 (as continued in effect pursuant the
8 International Emergency Economic Powers
9 Act);

10 (ii) the Arms Export Control Act;

11 (iii) the Atomic Energy Act of 1954;

12 or

13 (iv) any other statute that requires
14 the prior review and approval of the
15 United States Government as a condition
16 for the export or re-export of goods or
17 services.

18 (H)(i) The President may exercise all of
19 the powers granted to the President under the
20 International Emergency Economic Powers Act
21 (50 U.S.C. 1701 et seq.) (except that the re-
22 quirements of section 202 of such Act (50
23 U.S.C. 1701) shall not apply) to the extent nec-
24 essary to block and prohibit all transactions in
25 property and interests in property of the des-

1 ignated foreign person if such property and in-
2 terests in property are in the United States,
3 come within the United States, or are or come
4 within the possession or control of a United
5 States person.

6 (ii) The penalties provided for in sub-
7 sections (b) and (c) of section 206 of the Inter-
8 national Emergency Economic Powers Act (50
9 U.S.C. 1705) shall apply to a person that vio-
10 lates, attempts to violate, conspires to violate,
11 or causes a violation of regulations prescribed
12 under clause (i) to the same extent that such
13 penalties apply to a person that commits an un-
14 lawful act described in subsection (a) of such
15 section 206.

16 (I) The President may, pursuant to such
17 regulations as the President may prescribe, pro-
18 hibit any transfers of credit or payments be-
19 tween one or more financial institutions or by,
20 through, or to any financial institution, to the
21 extent that such transfers or payments are sub-
22 ject to the jurisdiction of the United States and
23 involve any interest of the designated foreign
24 person.

25 (c) TRAVEL-RELATED SANCTIONS.—

1 (1) ALIENS INELIGIBLE FOR VISAS, ADMISSION,
2 OR PAROLE.—An alien who is designated as a crit-
3 ical cyber threat actor under subsection (a) is—

4 (A) inadmissible to the United States;

5 (B) ineligible to receive a visa or other doc-
6 umentation to enter the United States; and

7 (C) otherwise ineligible to be admitted or
8 paroled into the United States or to receive any
9 other benefit under the Immigration and Na-
10 tionality Act (8 U.S.C. 1101 et seq.).

11 (2) CURRENT VISAS REVOKED.—The issuing
12 consular officer, the Secretary of State, or the Sec-
13 retary of Homeland Security (or a designee of either
14 such Secretaries) shall revoke any visa or other
15 entry documentation issued to the foreign person
16 designated as a critical cyber threat actor under sub-
17 section (a) regardless of when issued. A revocation
18 under this clause shall take effect immediately and
19 shall automatically cancel any other valid visa or
20 entry documentation that is in the possession of
21 such foreign person.

22 (d) ADDITIONAL SANCTIONS WITH RESPECT TO
23 FOREIGN STATES.—

24 (1) IN GENERAL.—The President may impose
25 any of the sanctions described in paragraph (2) with

1 respect to the government of each foreign state that
2 the President has determined aided, abetted, or di-
3 rected a foreign person or agency or instrumentality
4 of a foreign state designated as a critical cyber
5 threat actor under subsection (a).

6 (2) SANCTIONS DESCRIBED.—The sanctions re-
7 ferred to in paragraph (1) are the following:

8 (A) The President may provide for the
9 withdrawal, limitation, or suspension of non-hu-
10 manitarian or non-trade-related assistance
11 United States development assistance under
12 chapter 1 of part I of the Foreign Assistance
13 Act of 1961.

14 (B) The President may provide for the
15 withdrawal, limitation, or suspension of United
16 States security assistance under part II of the
17 Foreign Assistance Act of 1961.

18 (C) The President may instruct the United
19 States Executive Director to each appropriate
20 international financial institution to oppose, and
21 vote against the extension by such institution of
22 any loan or financial assistance to the govern-
23 ment of the foreign state.

24 (D) No item on the United States Muni-
25 tions List (established pursuant to section 38 of

1 the Arms Export Control Act (22 U.S.C.
2 2778)) or the Commerce Control List set forth
3 in Supplement No. 1 to part 774 of title 15,
4 Code of Federal Regulations, may be exported
5 to the government of the foreign state.

6 (e) IMPLEMENTATION.—The President may exercise
7 all authorities provided under sections 203 and 205 of the
8 International Emergency Economic Powers Act (50
9 U.S.C. 1702 and 1704) to carry out this section.

10 (f) EXEMPTIONS, WAIVERS, AND REMOVALS OF
11 SANCTIONS AND DESIGNATIONS.—

12 (1) EXEMPTIONS.—

13 (A) MANDATORY EXEMPTIONS.—The fol-
14 lowing activities shall be exempt from sanctions
15 under subsections (b), (c), and (d):

16 (i) Activities subject to the reporting
17 requirements of title V of the National Se-
18 curity Act of 1947 (50 U.S.C. 413 et seq.),
19 or to any authorized intelligence activities
20 of the United States.

21 (ii) Any transaction necessary to com-
22 ply with United States obligations under
23 the Agreement between the United Nations
24 and the United States of America regard-
25 ing the Headquarters of the United Na-

1 tions, signed June 26, 1947, and entered
2 into force on November 21, 1947, or under
3 the Vienna Convention on Consular Rela-
4 tions, signed April 24, 1963, and entered
5 into force on March 19, 1967, or under
6 other international agreements.

7 (2) WAIVER.—The President may waive the im-
8 position of sanctions described in this section for a
9 period of not more than one year, and may renew
10 such waiver for additional periods of not more than
11 one year, if the President transmits to the appro-
12 priate congressional committees a written determina-
13 tion that such waiver meets one or more of the fol-
14 lowing requirements:

15 (A) Such waiver is important to the eco-
16 nomic or national security interests of the
17 United States.

18 (B) Such waiver will further the enforce-
19 ment of this Act or is for an important law en-
20 forcement purpose.

21 (C) Such waiver is for an important hu-
22 manitarian purpose.

23 (3) REMOVALS OF SANCTIONS AND DESIGNA-
24 TIONS.—The President may prescribe rules and reg-
25 ulations for the removal of sanctions under sub-

1 sections (b), (c), and (d) and the removal of designa-
2 tions under subsection (a) if the President deter-
3 mines that a foreign person, agency or instrumen-
4 tality of a foreign state, or government of a foreign
5 state subject to such sanctions or such designations,
6 as the case may be, has verifiably ceased its partici-
7 pation in any of the conduct with respect to which
8 such foreign person, agency or instrumentality of a
9 foreign state, or government of a foreign state was
10 subject to such sanctions or designation, as the case
11 may be, under this section, and has given assurances
12 that such foreign person, agency or instrumentality
13 of a foreign state, or government of a foreign state,
14 as the case may be, will no longer participate in such
15 conduct.

16 (4) EXCEPTION TO COMPLY WITH UNITED NA-
17 TIONS HEADQUARTERS AGREEMENT.—Sanctions
18 under subsection (c) shall not apply to a foreign per-
19 son if admitting such foreign person into the United
20 States is necessary to permit the United States to
21 comply with the Agreement regarding the Head-
22 quarters of the United Nations, signed at Lake Suc-
23 cess June 26, 1947, and entered into force Novem-
24 ber 21, 1947, between the United Nations and the

1 United States, or other applicable international obli-
2 gations.

3 (g) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion may be construed to limit the authority of the Presi-
5 dent under the International Emergency Economic Powers
6 Act (50 U.S.C. 1701 et seq.) or any other provision of
7 law to impose sanctions to address critical cyber threat
8 actors and malicious state-sponsored cyber activities.

9 (h) DEFINITIONS.—In this section:

10 (1) ADMITTED; ALIEN.—The terms “admitted”
11 and “alien” have the meanings given such terms in
12 section 101 of the Immigration and Nationality Act
13 (8 U.S.C. 1101).

14 (2) APPROPRIATE CONGRESSIONAL COMMIT-
15 TEES.—The term “appropriate congressional com-
16 mittees” means—

17 (A) the Committee on Foreign Affairs, the
18 Committee on Financial Services, the Com-
19 mittee on the Judiciary, the Committee on
20 Oversight and Government Reform, and the
21 Committee on Homeland Security of the House
22 of Representatives; and

23 (B) the Committee on Foreign Relations,
24 the Committee on Banking, Housing, and
25 Urban Affairs, the Committee on the Judiciary,

1 and the Committee on Homeland Security and
2 Governmental Affairs of the Senate.

3 (3) AGENCY OR INSTRUMENTALITY OF A FOR-
4 EIGN STATE.—The term “agency or instrumentality
5 of a foreign state” has the meaning given such term
6 in section 1603(b) of title 28, United States Code.

7 (4) CRITICAL INFRASTRUCTURE SECTOR.—The
8 term “critical infrastructure sector” means any of
9 the designated critical infrastructure sectors identi-
10 fied in the Presidential Policy Directive entitled
11 “Critical Infrastructure Security and Resilience”,
12 numbered 21, and dated February 12, 2013.

13 (5) FOREIGN PERSON.—The term “foreign per-
14 son” means a person that is not a United States
15 person.

16 (6) FOREIGN STATE.—The term “foreign state”
17 has the meaning given such term in section 1603(a)
18 of title 28, United States Code.

19 (7) KNOWINGLY.—The term “knowingly”, with
20 respect to conduct, a circumstance, or a result,
21 means that a person has actual knowledge, or should
22 have known, of the conduct, the circumstance, or the
23 result.

24 (8) MISAPPROPRIATION.—The term “misappro-
25 priation” means taking or obtaining by improper

1 means, without permission or consent, or under false
2 pretenses.

3 (9) STATE-SPONSORED CYBER ACTIVITIES.—

4 The term “state-sponsored cyber activities” means
5 any malicious cyber-enabled activities that—

6 (A) are carried out by a government of a
7 foreign state or an agency or instrumentality of
8 a foreign state; or

9 (B) are carried out by a foreign person
10 that is aided, abetted, or directed by a govern-
11 ment of a foreign state or an agency or instru-
12 mentality of a foreign state.

13 (10) UNITED STATES PERSON.—The term
14 “United States person” means—

15 (A) a United States citizen or an alien law-
16 fully admitted for permanent residence to the
17 United States; or

18 (B) an entity organized under the laws of
19 the United States or of any jurisdiction within
20 the United States, including a foreign branch of
21 such an entity.

