

117TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on _____

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 2021”.

1 **SEC. 2. REQUIREMENT TO CONTROL THE EXPORT OF CER-**
2 **TAIN PERSONAL DATA OF UNITED STATES**
3 **NATIONALS AND INDIVIDUALS IN THE**
4 **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 President shall estab-
15 lish and, in coordination with the Secretary and the
16 heads of the appropriate Federal agencies, lead a
17 regular, ongoing interagency process to identify cat-
18 egories of personal data of covered individuals that
19 could—

20 **“(A) be exploited by foreign governments;**
21 **and**

22 **“(B) if exported in a quantity that exceeds**
23 **the threshold established under paragraph (3),**
24 **harm the national security of the United States.**

25 **“(2) LIST REQUIRED.—**The interagency process
26 established under paragraph (1)—

1 “(A) shall identify an initial list of cat-
2 egories of personal data under paragraph (1)
3 not later than one year after the date of the en-
4 actment of the Protecting Americans’ Data
5 From Foreign Surveillance Act of 2021; and

6 “(B) may, as appropriate thereafter, add
7 categories to, remove categories from, or modify
8 categories on, that list.

9 “(3) ESTABLISHMENT OF THRESHOLD.—

10 “(A) IN GENERAL.—Not later than one
11 year after the date of the enactment of the Pro-
12 tecting Americans’ Data From Foreign Surveil-
13 lance Act of 2021, the interagency process es-
14 tablished under paragraph (1) shall establish a
15 threshold for the quantity of personal data of
16 covered individuals the export of which by one
17 person could harm the national security of the
18 United States.

19 “(B) PARAMETERS.—The threshold estab-
20 lished under subparagraph (A) shall be the ex-
21 port by one person during a calendar year of
22 the personal data of not less than 10,000 cov-
23 ered individuals and not more than 1,000,000
24 covered individuals.

1 “(C) CONSIDERATIONS.—In establishing
2 the threshold under subparagraph (A), the
3 interagency process shall seek to balance the
4 need to protect personal data from exploitation
5 by foreign governments against the likelihood
6 of—

7 “(i) impacting legitimate business ac-
8 tivities and other activities that do not
9 harm the national security of the United
10 States; or

11 “(ii) chilling speech protected by the
12 First Amendment to the Constitution of
13 the United States.

14 “(4) DETERMINATION OF PERIOD FOR PROTEC-
15 TION.—The interagency process established under
16 paragraph (1) shall determine, for each category of
17 personal data identified under that paragraph, the
18 period of time for which encryption technology de-
19 scribed in subsection (b)(4)(C) is required to be able
20 to protect that category of data from decryption to
21 prevent the exploitation of the data by a foreign gov-
22 ernment from harming the national security of the
23 United States.

24 “(5) PROCESS.—The interagency process estab-
25 lished under paragraph (1) shall—

1 “(A) be informed by multiple sources of in-
2 formation, including—

3 “(i) publicly available information;

4 “(ii) classified information, including
5 relevant information provided by the Direc-
6 tor of National Intelligence;

7 “(iii) information relating to reviews
8 and investigations of transactions by the
9 Committee on Foreign Investment in the
10 United States under section 721 of the De-
11 fense Production Act of 1950 (50 U.S.C.
12 4565);

13 “(iv) the categories of sensitive per-
14 sonal data described in paragraphs (1)(ii)
15 and (2) of section 800.241(a) of title 31,
16 Code of Federal Regulations, as in effect
17 on the day before the date of the enact-
18 ment of the Protecting Americans’ Data
19 From Foreign Surveillance Act of 2021,
20 and any categories of sensitive personal
21 data added to such section after such date
22 of enactment;

23 “(v) information provided by the advi-
24 sory committee established pursuant to
25 paragraph (7); and

1 “(vi) the recommendations (which the
2 President shall request) of—

3 “(I) privacy experts identified by
4 the National Academy of Sciences;
5 and

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

10 “(B) take into account the significant
11 quantity of personal data of covered individuals
12 that has already been stolen or acquired by for-
13 eign governments, the harm to United States
14 national security caused by the theft of that
15 personal data, and the potential for further
16 harm to United States national security if that
17 personal data were combined with additional
18 sources of personal data.

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

1 “(A) identifying the initial list of cat-
2 egories of personal data under subparagraph
3 (A) of paragraph (2);

4 “(B) adding categories to, removing cat-
5 egories from, or modifying categories on, that
6 list under subparagraph (B) of that paragraph;

7 “(C) establishing the threshold under para-
8 graph (3); or

9 “(D) setting forth the period of time for
10 which encryption technology described in sub-
11 section (b)(4)(C) is required under paragraph
12 (4) to be able to protect such a category of data
13 from decryption.

14 “(7) ADVISORY COMMITTEE.—

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

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

1 “(8) TREATMENT OF ANONYMIZED PERSONAL
2 DATA.—The interagency process established under
3 paragraph (1) may not treat anonymized personal
4 data differently than identifiable personal data if the
5 persons to which the anonymized personal data re-
6 lates could reasonably be identified using other
7 sources of data.

8 “(b) COMMERCE CONTROLS.—

9 “(1) IN GENERAL.—Beginning 18 months after
10 the date of the enactment of the Protecting Ameri-
11 cans’ Data From Foreign Surveillance Act of 2021,
12 the Secretary shall impose appropriate controls
13 under the Export Administration Regulations on the
14 export, reexport, or in-country transfer of covered
15 personal data in a quantity that exceeds the thresh-
16 old established under subsection (a)(3), including
17 through interim controls (such as by informing a
18 person that a license is required for export), as ap-
19 propriate, or by publishing additional regulations.

20 “(2) LEVELS OF CONTROL.—

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

23 “(i) require a license or other author-
24 ization for the export, reexport, or in-coun-
25 try transfer of covered personal data in a

1 quantity that exceeds the threshold estab-
2 lished under subsection (a)(3);

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

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

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

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

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

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

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

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

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

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

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

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

5 “(ii) LIST REQUIRED.—

6 “(I) IN GENERAL.—Not later
7 than one year after the date of the en-
8 actment of the Protecting Americans’
9 Data From Foreign Surveillance Act
10 of 2021, the Secretary shall, in con-
11 sultation with the heads of the appro-
12 priate Federal agencies and based on
13 the considerations described in sub-
14 paragraph (B), establish a list of each
15 country with respect to which the Sec-
16 retary determines that the export or
17 reexport to, or in-country transfer in,
18 the country of covered personal data
19 in a quantity that exceeds the thresh-
20 old established under subsection
21 (a)(3) will be likely to harm the na-
22 tional security of the United States.

23 “(II) MODIFICATIONS TO LIST.—

24 The Secretary, in consultation with

1 the heads of the appropriate Federal
2 agencies—

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

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

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

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

19 “(ii) LIST REQUIRED.—

20 “(I) IN GENERAL.—Not later
21 than one year after the date of the en-
22 actment of the Protecting Americans’
23 Data From Foreign Surveillance Act
24 of 2021, the Secretary shall, in con-
25 sultation with the heads of the appro-

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

13 “(II) MODIFICATIONS TO LIST.—
14 The Secretary, in consultation with
15 the heads of the appropriate Federal
16 agencies—

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

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

24 “(iii) CONGRESSIONAL REVIEW.—

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

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

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

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

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

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

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

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

18 “(3) REVIEW OF LICENSE APPLICATIONS.—

19 “(A) IN GENERAL.—The Secretary shall
20 establish—

21 “(i) an interagency process, in which
22 the appropriate Federal agencies partici-
23 pate, to conduct review of applications for
24 a license or other authorization for the ex-
25 port, reexport, or in-country transfer of

1 covered personal data in a quantity that
2 exceeds the threshold established under
3 subsection (a)(3); and

4 “(ii) procedures for conducting the re-
5 view of such applications.

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

19 “(4) EXCEPTIONS.—The Secretary shall not
20 impose under paragraph (1) a requirement for a li-
21 cense or other authorization with respect to the ex-
22 port, reexport, or in-country transfer of covered per-
23 sonal data pursuant to any of the following trans-
24 actions:

1 “(A) The export, reexport, or in-country
2 transfer by an individual of the personal data of
3 the individual.

4 “(B) The export, reexport, or in-country
5 transfer of the personal data of an individual by
6 a person performing a service for the individual
7 if the export, reexport, or in-country transfer of
8 the personal data is strictly necessary to per-
9 form that service.

10 “(C) The export, reexport, or in-country
11 transfer of personal data that is encrypted if—

12 “(i) the encryption key or other infor-
13 mation necessary to decrypt the data is not
14 exported, reexported, or transferred; and

15 “(ii) the encryption technology used to
16 protect the data against decryption is cer-
17 tified by the National Institute of Stand-
18 ards and Technology as capable of pro-
19 tecting data for the period of time deter-
20 mined under subsection (a)(4) to be suffi-
21 cient to prevent the exploitation of the
22 data by a foreign government from harm-
23 ing the national security of the United
24 States.

1 “(D) The export, reexport, or in-country
2 transfer of personal data that is ordered by an
3 appropriate court of the United States.

4 “(c) REQUIREMENTS FOR IDENTIFICATION OF CAT-
5 EGORIES AND DETERMINATION OF APPROPRIATE CON-
6 TROLS.—In identifying categories of personal data under
7 subsection (a)(1) and imposing appropriate controls under
8 subsection (b), the interagency process established under
9 subsection (a)(1) or the Secretary, as appropriate—

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

12 “(A) a photograph or audio or video re-
13 cording in which no individual appearing had a
14 reasonable expectation of privacy;

15 “(B) personal data that is a matter of
16 public record, such as a court record or other
17 government record that is generally available to
18 the public, including information about an indi-
19 vidual made public by that individual or by the
20 news media;

21 “(C) information about a matter of public
22 interest; or

23 “(D) consistent with the goal of protecting
24 the national security of the United States, any
25 other information the publication of which is

1 protected by the First Amendment to the Con-
2 stitution of the United States; and

3 “(2) shall consult with the appropriate congress-
4 sional committees.

5 “(d) PENALTIES.—

6 “(1) LIABLE PERSONS.—

7 “(A) IN GENERAL.—A person violates this
8 section if the person—

9 “(i) exports, reexports, or in-country
10 transfers covered personal data in violation
11 of this section;

12 “(ii) directs or causes another person
13 to export, reexport, or in-country transfer
14 covered personal data in violation of this
15 section; or

16 “(iii) is an officer or employee of an
17 organization and knew or should have
18 known that another employee of the orga-
19 nization who reports, directly or indirectly,
20 to the officer or employee was directed to
21 export, reexport, or in-country transfer
22 covered personal data in violation of this
23 section.

24 “(B) EXCEPTIONS AND CLARIFICATIONS.—

1 “(i) INTERMEDIARIES NOT LIABLE.—
2 An intermediate consignee (as defined in
3 section 772.1 of the Export Administration
4 Regulations (or any successor regulation))
5 or other intermediary is not liable for the
6 export, reexport, or in-country transfer of
7 covered personal data in violation of this
8 section when acting as an intermediate
9 consignee or other intermediary for an-
10 other person.

11 “(ii) SPECIAL RULE FOR CERTAIN AP-
12 PLICATIONS.—In a case in which an appli-
13 cation installed on an electronic device
14 transmits or causes the transmission of
15 covered personal data without the knowl-
16 edge of the owner or user of the device
17 who installed the application, the developer
18 of the application, and not the owner or
19 user of the device, is liable for any viola-
20 tion of this section.

21 “(2) CRIMINAL PENALTIES.—In determining an
22 appropriate term of imprisonment under section
23 1760(b)(2) for a violation of this section, the court
24 shall consider—

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

5 “(B) any harm that resulted from the vio-
6 lation.

7 “(3) PRIVATE RIGHT OF ACTION.—

8 “(A) IN GENERAL.—An individual may
9 bring a civil action in an appropriate district
10 court of the United States if, as a result of an
11 export, reexport, or in-country transfer of cov-
12 ered personal data in violation of this section,
13 the individual is—

14 “(i) physically harmed; or

15 “(ii) detained or imprisoned in a for-
16 eign country.

17 “(B) RELIEF.—A court may award a pre-
18 vailing plaintiff in a civil action under subpara-
19 graph (A) appropriate relief, including actual
20 damages, punitive damages, or attorney’s fees.

21 “(e) REPORT TO CONGRESS.—

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

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

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

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

10 “(f) DISCLOSURE OF CERTAIN LICENSE INFORMA-
11 TION.—Not less frequently than every 90 days, the Sec-
12 retary shall publish on a publicly accessible website of the
13 Department of Commerce, including in a machine-read-
14 able format, the following information, with respect to
15 each application for a license for the export, reexport, or
16 in-country transfer of covered personal data in a quantity
17 that exceeds the threshold established under subsection
18 (a)(3):

19 “(1) The name of the applicant.

20 “(2) The date of the application.

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

24 “(4) The categories of covered personal data
25 the applicant sought to export, reexport, or transfer.

1 “(5) The number of covered individuals whose
2 information the applicant sought to export, reexport,
3 or transfer.

4 “(6) Whether the application was approved or
5 denied.

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

11 “(h) CITIZENSHIP DETERMINATIONS NOT RE-
12 QUIRED.—This section does not require a person to deter-
13 mine the citizenship or immigration status of the cus-
14 tomers of the person, but once the persons becomes aware
15 that data belongs to a covered individual, the person shall
16 treat that data as is required by this section.

17 “(i) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to the Secretary such
19 sums as may be necessary to carry out this section, includ-
20 ing to hire additional employees with expertise in privacy.

21 “(j) DEFINITIONS.—In this section:

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

1 “(A) the Committee on Banking, Housing,
2 and Urban Affairs, the Committee on Foreign
3 Relations, the Committee on Finance, and the
4 Select Committee on Intelligence of the Senate;
5 and

6 “(B) the Committee on Foreign Affairs,
7 the Committee on Financial Services, the Com-
8 mittee on Ways and Means, and the Permanent
9 Select Committee on Intelligence of the House
10 of Representatives.

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

14 “(A) The Department of Defense.

15 “(B) The Department of State.

16 “(C) The Department of Justice.

17 “(D) The Department of the Treasury.

18 “(E) The Office of the Director of Na-
19 tional Intelligence.

20 “(F) The Cybersecurity and Infrastructure
21 Security Agency.

22 “(G) The Consumer Financial Protection
23 Bureau.

24 “(H) The Federal Trade Commission.

1 “(I) The Federal Communications Com-
2 mission.

3 “(J) The Department of Health and
4 Human Services.

5 “(K) Such other Federal agencies as the
6 President or the Secretary of Commerce con-
7 siders appropriate.

8 “(3) COVERED INDIVIDUAL.—The term ‘cov-
9 ered individual’ means an individual—

10 “(A) who is located in the United States;

11 or

12 “(B) who is—

13 “(i) located outside the United States
14 or whose location cannot be determined;
15 and

16 “(ii) a citizen of the United States or
17 a noncitizen lawfully admitted for perma-
18 nent residence.

19 “(4) COVERED PERSONAL DATA.—The term
20 ‘covered personal data’ means the categories of per-
21 sonal data of covered individuals identified pursuant
22 to the interagency process under subsection (a).

23 “(5) EXPORT.—

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

4 “(i) subject to subparagraph (D), the
5 shipment or transmission of the data out
6 of the United States, including the sending
7 or taking of the data out of the United
8 States, in any manner; or

9 “(ii) the release or transfer of the
10 data to any noncitizen (other than a non-
11 citizen described in subparagraph (C)).

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

14 “(i) the publication of covered per-
15 sonal data on the internet in a manner
16 that makes the data accessible to any
17 member of the general 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—

24 “(i) who is lawfully admitted for per-
25 manent residence;

1 “(ii) to whom the Secretary of Home-
2 land Security has issued an employment
3 authorization document (Form I-766);

4 “(iii) who has been granted deferred
5 action pursuant to the memorandum of the
6 Department of Homeland Security entitled
7 ‘Exercising Prosecutorial Discretion with
8 Respect to Individuals Who Came to the
9 United States as Children’ issued on June
10 15, 2012; or

11 “(iv) who is present in the United
12 States pursuant to a valid, unexpired E-3,
13 H-1B, H-1B1, H-1B2, J-1, L-1, O-1A,
14 or TN-1 visa.

15 “(D) UNINTENTIONAL TRANSMISSIONS.—

16 “(i) IN GENERAL.—On and after the
17 date that is 5 years after the date of the
18 enactment of the Protecting Americans’
19 Data From Foreign Surveillance Act of
20 2021, and except as provided in clause
21 (iii), the term ‘export’ includes the trans-
22 mission of data through a country de-
23 scribed in clause (ii), without regard to
24 whether the person originating the trans-

1 mission had knowledge of or control over
2 the path of the transmission.

3 “(ii) COUNTRIES DESCRIBED.—A
4 country is described in this clause if a li-
5 cense would be required for the export or
6 reexport to, or in-country transfer in, that
7 country of covered personal data in a
8 quantity that exceeds the threshold estab-
9 lished under subsection (a)(3).

10 “(iii) EXCEPTIONS.—Clause (i) does
11 not apply with respect to a transmission of
12 data through a country described in clause
13 (ii) if—

14 “(I) the data is encrypted as de-
15 scribed in subsection (b)(4)(C); or

16 “(II) the person that originated
17 the transmission received a represen-
18 tation from the party delivering the
19 data for the person stating that the
20 data will not transit through a coun-
21 try described in clause (ii).

22 “(iv) FALSE REPRESENTATIONS.—If a
23 party delivering covered personal data as
24 described in clause (iii)(II) transmits the
25 data through a country described in clause

1 (ii) despite making the representation de-
2 scribed in clause (iii)(II), that party shall
3 be liable for violating this section.

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

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

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

16 (1) in paragraph (1)—

17 (A) in subparagraph (A), by striking “;
18 and” and inserting a semicolon;

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

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

22 “(C) to restrict the export of personal data
23 of United States citizens and other covered in-
24 dividuals (as defined in section 1758A(e)) in a

1 quantity and a manner that could harm the na-
2 tional security of the United 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(e)) in a quantity and a manner that
9 could harm the national security of the United
10 States.”.

11 (c) CONFORMING AMENDMENT.—Section
12 1742(13)(A) of the Export Control Reform Act of 2018
13 (50 U.S.C. 4801(13)(A)) is amended, in the matter pre-
14 ceding clause (i), by inserting “(except section 1758A)”
15 after “part I”.