

AMENDMENT TO RULES COMM. PRINT 117-54
OFFERED BY MR. MALINOWSKI OF NEW JERSEY

At the end of division E, add the following:

1 **TITLE LIX—REGULATIONS RE-**
2 **LATING TO THE EXPORT OF**
3 **CERTAIN DEFENSE SERVICES**
4 **RELATED TO TARGETED DIG-**
5 **ITAL SURVEILLANCE OR IN-**
6 **VOLVING FORMER INTEL-**
7 **LIGENCE PERSONNEL OF THE**
8 **UNITED STATES**

9 **SEC. 5901. REGULATIONS RELATING TO THE EXPORT OF**
10 **CERTAIN DEFENSE SERVICES RELATED TO**
11 **TARGETED DIGITAL SURVEILLANCE.**

12 (a) DRAFT RULE FOR EXPORTS OF SURVEILLANCE
13 RELATED DEFENSE SERVICES.—Not later than one year
14 after the date of the enactment of this Act, the Secretary
15 of State, in consultation with the Secretary of Commerce,
16 shall propose a draft rule subject to interagency review
17 and comment by external stakeholders governing the li-
18 cense application for the export, reexport, in-country
19 transfer of defense services under the jurisdiction of the

1 Department of State related to targeted digital surveil-
2 lance.

3 (b) PRESUMPTION OF DENIAL.—In drafting the rule
4 pursuant to subsection (a), the Secretary of State shall
5 consider the inclusion of a policy of presumption of denial
6 for export destinations the government of which is listed
7 in the annual human rights report required under section
8 116(d) of the Foreign Assistance Act of 1961 (22 U.S.C.
9 2151n(d)) for acts of political repression, including arbi-
10 trary arrest or detention, torture, extrajudicial or politi-
11 cally motivated killing, or other violations of human rights.

12 (c) MINIMUM CONDITIONS ON APPROVED LICENSE
13 APPLICATIONS.—In drafting the rule pursuant to sub-
14 section (a), the Secretary of State shall consider the inclu-
15 sion of license application conditions requiring, at a min-
16 imum, that—

17 (1) the applicant has certified in its application
18 that an independently-verified human rights due dili-
19 gence review has been completed for the proposed
20 export, reexport, or in-country transfer, and that a
21 copy of such review had been provided to the Sec-
22 retary prior to the approval of the license, and fur-
23 ther that, as a result of such review, it is was deter-
24 mined that it is unlikely that such services will con-

1 tribute to the use of targeted digital surveillance ca-
2 pabilities in a manner contrary to human rights;

3 (2) the license shall cease to be effective if the
4 United States Government determines and the De-
5 partment of State informs the parties in writing that
6 such services have, in fact, likely contributed to the
7 use of targeted digital surveillance items or services
8 in a manner contrary to basic human rights; and

9 (3) the parties to the license shall notify the
10 Department of State if they have knowledge or
11 grounds to suspect that such services may have con-
12 tributed to the use of targeted digital surveillance
13 items or services in a manner contrary to human
14 rights.

15 **SEC. 5902. REGULATIONS RELATING TO THE EXPORT OF**
16 **CERTAIN DEFENSE SERVICES INVOLVING**
17 **FORMER INTELLIGENCE PERSONNEL OF THE**
18 **UNITED STATES.**

19 (a) DRAFT RULE ON EXPORTS OF DEFENSE SERV-
20 ICES INVOLVING FORMER UNITED STATES INTEL-
21 LIGENCE PERSONNEL.—Not later than one year after the
22 date of the enactment of this Act, the Secretary of State,
23 in consultation with the Secretary of Commerce, the Di-
24 rector of National Intelligence, and the heads of other
25 Federal agencies as appropriate, shall propose a draft rule

1 subject to interagency review and comment by external
2 stakeholders governing the license application for the ex-
3 port, reexport, in-country transfer of defense services
4 under the jurisdiction of the Department of State that will
5 employ one or more persons in a position of trust.

6 (b) PRESUMPTION OF DENIAL.—In drafting the rule
7 pursuant to subsection (a), the Secretary of State shall
8 consider the inclusion of a policy of presumption of denial
9 for export destinations the government of which is listed
10 in the annual human rights report required under section
11 116(d) of the Foreign Assistance Act of 1961 (22 U.S.C.
12 2151n(d)) for acts of political repression, including arbi-
13 trary arrest or detention, torture, extrajudicial or politi-
14 cally motivated killing, or other violations of human rights.

15 (c) MINIMUM CONDITIONS ON APPROVED LICENSE
16 APPLICATIONS.—In drafting the rule pursuant to sub-
17 section (a), the Secretary of State shall consider the inclu-
18 sion of license application conditions requiring, at a min-
19 imum, that—

20 (1) the applicant has certified in the application
21 the number of persons in a position of trust whose
22 employment would be involved by the export of such
23 services;

24 (2) the applicant has certified in its application
25 that an independently-verified human rights due dili-

1 gence review has been completed for the proposed
2 export, reexport, or in-country transfer, and that a
3 copy of such review has been provided to the Sec-
4 retary prior to the approval of the license, and fur-
5 ther that, as a result of such review, it is was deter-
6 mined that it is unlikely that such services will con-
7 tribute to the use of targeted digital surveillance ca-
8 pabilities in a manner contrary to human rights;

9 (3) the license shall cease to be effective if the
10 United States Government determines and the De-
11 partment of State informs the parties in writing that
12 such services have, in fact, likely contributed to vio-
13 lation of internationally recognized human rights;
14 and

15 (4) the parties to the license agree as a condi-
16 tion of using the license to notify the Department of
17 State if they have knowledge or grounds to suspect
18 that such services may have contributed violations of
19 internationally recognized human rights.

20 (d) ANNUAL REPORT.—The draft rule pursuant to
21 subsection (a) shall require the Secretary of State to sub-
22 mit an annual report to the Committee on Foreign Affairs
23 and the Permanent Select Committee on Intelligence of
24 the House of Representatives and the Committee on For-
25 eign Relations, the Select Committee on Intelligence, and

1 the Committee on Banking, Housing, and Urban Affairs
2 of the Senate on applications for export licenses subject
3 to the additional conditions described in subsection (a)
4 that lists—

5 (1) the number of such licenses issued during
6 the prior year, disaggregated by country and value
7 of contract, and the number of persons in a position
8 of trust employed as a result of such licenses; and

9 (2) the number of licenses cancelled as a result
10 of credible information that the service exported pur-
11 suant to such license has contributed to the violation
12 of human rights, disaggregated by the type of viola-
13 tion and by country.

14 **SEC. 5903. DEFINITIONS.**

15 In this title:

16 (1) **TARGETED DIGITAL SURVEILLANCE.**—The
17 term “targeted digital surveillance” means the use
18 of items or services that enable an individual or enti-
19 ty to detect, monitor, intercept, collect, exploit, pre-
20 serve, protect, transmit, retain, or otherwise gain ac-
21 cess to the communications, protected information,
22 work product, browsing data, research, identifying
23 information, location history, or online and offline
24 activities of other individuals, organizations, or enti-

1 ties, with or without the explicit authorization of
2 such individuals, organizations, or entities.

3 (2) PROTECTED INFORMATION.—The term
4 “protected information”, with respect to an indi-
5 vidual, means information that—

6 (A) includes, reflects, arises from, or is
7 about the individual’s communications; and

8 (B) is not readily available and easily ac-
9 cessible to the general public.

10 (3) IN A MANNER CONTRARY TO HUMAN
11 RIGHTS.—The term “in a manner contrary to
12 human rights”, with respect to targeted digital sur-
13 veillance, means engaging in targeted digital surveil-
14 lance—

15 (A) in violation of basic human rights, in-
16 cluding to silence dissent, sanction criticism,
17 punish independent reporting (and sources for
18 that reporting), manipulate or interfere with
19 democratic or electoral processes, persecute mi-
20 norities or vulnerable groups, or target advo-
21 cates or practitioners of human rights and
22 democratic rights (including activists, journal-
23 ists, artists, minority communities, or opposi-
24 tion politicians); or

1 (B) in a country in which there is lacking
2 a minimum legal framework governing its use,
3 including established—

4 (i) authorization under laws that are
5 accessible, precise, and available to the
6 public;

7 (ii) constraints limiting its use under
8 principles of necessity, proportionality, and
9 legitimacy;

10 (iii) oversight by bodies independent
11 of the government's executive agencies;

12 (iv) involvement of an independent
13 and impartial judiciary branch in author-
14 izing its use; or

15 (v) legal remedies in case of abuse.

16 (4) PERSON IN A POSITION OF TRUST.—The
17 term “person in a position of trust” means a United
18 States citizen or lawful permanent resident who has
19 previously been, as of the date of the submission of
20 the application for a license described in section
21 5901 or 5902—

22 (A) an employee, contractor, or subcon-
23 tractor at any tier of any element of the intel-
24 ligence community (as such term is defined in

1 section 3 of the National Security Act of 1947
2 (50 U.S.C. 3003)); or

3 (B) an individual with regular access to
4 United States intelligence products and report-
5 ing.

