

**AMENDMENT TO RULES COMMITTEE PRINT FOR  
H.R. 6395  
OFFERED BY MR. MALINOWSKI OF NEW JERSEY**

At the end of subtitle G of title XII, add the following:

1 **SEC. 12\_\_.** **REQUIREMENTS TO IDENTIFY AND CONTROL**  
2 **THE EXPORT OF ITEMS AND SERVICES FOR**  
3 **USE IN TARGETED DIGITAL SURVEILLANCE.**

4 (a) **IN GENERAL.**—Part I of the Export Control Re-  
5 form Act of 2018 (50 U.S.C. 4811 et seq.) is amended  
6 by inserting after section 1759 the following:

7 **“SEC. 1759A.** **REQUIREMENTS TO IDENTIFY AND CONTROL**  
8 **THE EXPORT OF ITEMS AND SERVICES FOR**  
9 **USE IN TARGETED DIGITAL SURVEILLANCE.**

10 “(a) **IDENTIFICATION OF ITEMS AND SERVICES.**—

11 “(1) **IN GENERAL.**—The President shall estab-  
12 lish and, in coordination with the Secretary, the Sec-  
13 retary of Defense, the Secretary of Energy, the Sec-  
14 retary of State, and the heads of other Federal  
15 agencies as appropriate, lead, a regular, ongoing  
16 interagency process to identify items subject to the  
17 jurisdiction of the United States, whether by United  
18 States persons or by foreign persons, and the provi-

1        sion of services by any United States person that  
2        have been used or reasonably could be used for tar-  
3        geted digital surveillance in a manner contrary to  
4        human rights.

5            “(2) PROCESS.—The interagency process estab-  
6        lished under subsection (a) shall—

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

9            “(i) publicly available information;

10           “(ii) classified information, including  
11        relevant information provided by the Direc-  
12        tor of National Intelligence;

13           “(iii) information provided by the De-  
14        partment of State’s Bureau of Democracy,  
15        Human Rights, and Labor’s Internet Free-  
16        dom, Business and Human Rights section;  
17        and

18           “(iv) information provided by the ad-  
19        visory committees established by the Sec-  
20        retary to advise the Under Secretary of  
21        Commerce for Industry and Security on  
22        controls under the Export Administration  
23        Regulations, including the Emerging Tech-  
24        nology and Research Advisory Committee;

1           “(B) be informed by and give great weight  
2           to information contained in the Department of  
3           State’s annual Country Reports on Human  
4           Rights Practices;

5           “(C) take into account—

6                   “(i) how such items and services that  
7                   have been used or reasonably could be used  
8                   for targeted digital surveillance in a man-  
9                   ner contrary to human rights; and

10                   “(ii) the extent to which the imposi-  
11                   tion of unilateral export controls would  
12                   sufficiently project United States values  
13                   and commitments to oppose or stop the  
14                   use of such items or services that support  
15                   targeted digital surveillance in a manner  
16                   contrary to basic human rights; and

17           “(D) include a notice and comment period  
18           before a final rule is published.

19           “(b) COMMERCE CONTROLS.—

20                   “(1) IN GENERAL.—The Secretary shall estab-  
21                   lish appropriate controls under the Export Adminis-  
22                   tration Regulations on the export, reexport, or in-  
23                   country transfer of items and services identified pur-  
24                   suant to subsection (a), including through interim  
25                   controls (such as by informing a person that a li-

1       cense is required for export), as appropriate, or by  
2       publishing additional regulations.

3               “(2) LEVELS OF CONTROL.—

4               “(A) IN GENERAL.—The Secretary shall  
5       amend the Export Administration Regulations  
6       to identify end uses, end users, and destination  
7       countries to which the export, reexport, or in-  
8       country transfer of items and services identified  
9       pursuant to subsection (a) require a license to  
10      be issued by the Secretary, acting through the  
11      Bureau of Industry and Security.

12              “(B) CONSIDERATIONS.—In determining  
13      under subparagraph (A) the level of control ap-  
14      propriate for items and services identified pur-  
15      suant to subsection (a), the Secretary shall take  
16      into account—

17              “(i) evidence regarding the types of  
18      items used and services provided, or for  
19      which there is a reasonable possibility  
20      could be used or provided, for targeted dig-  
21      ital surveillance in a manner contrary to  
22      human rights; and

23              “(ii) end uses, end users, and destina-  
24      tion countries that used such items or

1 services in targeted digital surveillance in a  
2 manner contrary to human rights.

3 “(C) MINIMUM REQUIREMENTS.—At a  
4 minimum, the Secretary shall require a license  
5 for the export, reexport, or in-country transfer  
6 of items and services identified pursuant to sub-  
7 section (a) to or in a—

8 “(i) country subject to an embargo,  
9 including an arms embargo, imposed by  
10 the United States; or

11 “(ii) country, or any governmental  
12 unit thereof, entity, or other person deter-  
13 mined by the Secretary of State in a notice  
14 published in the Federal Register to have  
15 used items or services for targeted digital  
16 surveillance in a manner contrary to  
17 human rights.

18 “(D) REVIEW AND UPDATE.—The Sec-  
19 retary of State shall, at a minimum, annually  
20 review and update as needed the list of coun-  
21 tries, governmental units, entities, and other  
22 persons described in subparagraph (C)(ii).

23 “(3) REVIEW OF LICENSE APPLICATIONS.—

24 “(A) PROCEDURES.—The procedures set  
25 forth in Executive Order 12981 (50 U.S.C.

1 4603 note; relating to administration of export  
2 controls) or a successor order shall apply to the  
3 review of an application for a license or other  
4 authorization for the export, reexport, or in-  
5 country transfer of items and services identified  
6 pursuant to subsection (a).

7 “(B) CONSIDERATION OF INFORMATION  
8 RELATING TO NATIONAL SECURITY.—

9 “(i) IN GENERAL.—In reviewing an  
10 application for a license or other authoriza-  
11 tion for the export, reexport, or in-country  
12 transfer of an item, or the provision of a  
13 service, identified pursuant to subsection  
14 (a), the Secretary shall take into account  
15 information provided by the Director of  
16 National Intelligence regarding any threat  
17 to the national security of the United  
18 States posed by the proposed export, reex-  
19 port, transfer of the item or provision of  
20 the service.

21 “(ii) ADDITIONAL REQUIREMENT.—  
22 The Director of National Intelligence shall  
23 provide such information at the request of  
24 the Secretary within the periods set forth  
25 in Executive Order 12981 for the initial

1 interagency determination regarding a li-  
2 cense application.

3 “(C) LICENSING POLICY.—

4 “(i) IN GENERAL.—The policy for an  
5 application for a license or other authoriza-  
6 tion for the export, reexport, or in-country  
7 transfer of an item, or the provision of a  
8 service, identified pursuant to subsection  
9 (a), shall be a policy of presumptive denial.

10 “(ii) EXCEPTION.—A license described  
11 in clause (i) may be issued only if the Sec-  
12 retary determines, in coordination with the  
13 Secretary of Defense and the Secretary of  
14 State, that denial of the license would be  
15 contrary to the national security or foreign  
16 policy interests of the United States.

17 “(c) MANDATORY CONDITIONS.—

18 “(1) IN GENERAL.—The Secretary may issue a  
19 license or other authorization for the export, reex-  
20 port, or in-country transfer of an item, or the provi-  
21 sion of a service, identified pursuant to subsection  
22 (a) if the license meets, at a minimum, the following  
23 conditions:

24 “(A) The applicant certifies in the applica-  
25 tion for the license that a human rights due

1 diligence review had been completed for the pro-  
2 posed export, reexport, or transfer of the item,  
3 or the provision of the service, and that, as a  
4 result of such review, it is highly unlikely that  
5 such item or service will contribute the use of  
6 targeted digital surveillance capabilities in a  
7 manner contrary to basic human rights.

8 “(B) The license shall cease to be effective  
9 if the United States Government determines  
10 and the Secretary informs the parties to the li-  
11 cense in writing that such item or service has,  
12 in fact, contributed to the targeted digital sur-  
13 veillance capabilities in a manner contrary to  
14 basic human rights.

15 “(C) The parties to the license will notify  
16 the Secretary and the Secretary of State if they  
17 have knowledge that such item or service has  
18 contributed to the targeted digital surveillance  
19 capabilities in a manner contrary to basic  
20 human rights.

21 “(D) The license provides limitations on  
22 how long any sensitive personally identifiable  
23 information relating to the license may be  
24 accessed or acquired.



1           “(2) CERTIFICATION.—The Secretary may issue  
2 a license or other authorization for the export, reex-  
3 port, or in-country transfer of an item, or the provi-  
4 sion of a service, identified pursuant to subsection  
5 (a) if the Secretary certifies that the destination  
6 country of such item or service has an appropriate  
7 legal framework governing the use of such item or  
8 service, including—

9           “(A) authorization for use of such item or  
10 service under domestic laws that is accessible,  
11 precise, and available to the public;

12           “(B) constraints limiting the use of such  
13 item or service under principles of necessity,  
14 proportionality, and legitimacy;

15           “(C) oversight of such item or service by  
16 independent bodies;

17           “(D) involvement of the judiciary branch  
18 in authorizing the use of such item or service;  
19 and

20           “(E) effective legal remedies in case of  
21 abuse.

22           “(d) CONTROL OF ITEMS AND SERVICES.—

23           “(1) MULTILATERAL CONTROLS.—

24           “(A) IN GENERAL.—The Secretary of  
25 State, in consultation with the Secretary and

1 the heads of other Federal agencies, as appro-  
2 priate, shall propose that any item or service  
3 identified pursuant to subsection (a) be added  
4 to the lists of items and services controlled by  
5 the relevant multilateral export control regimes.

6 “(B) WASSENAAR ARRANGEMENT.—If the  
7 Secretary of State proposes to a multilateral ex-  
8 port control regime under subparagraph (A) to  
9 add an item or service identified pursuant to  
10 subsection (a) to the control list of that regime  
11 and the item or service is not within the charter  
12 or other organizing document of the regime, the  
13 Secretary of State shall engage in robust efforts  
14 to seek to convince the members and leadership  
15 of the Wassenaar Arrangement to modify the  
16 Wassenaar Arrangement’s charter so that the  
17 item or service is identified on the Wassenaar  
18 Arrangement’s List of Dual-Use Goods and  
19 Technologies and Munitions List, agreed to on  
20 July 12, 1996, or any subsequent revision of  
21 those Lists.

22 “(C) OTHER NATO MEMBER STATES AND  
23 CLOSE ALLIES.—Unless and until items and  
24 services controlled pursuant to subsection (a)  
25 are controlled in accordance with subparagraph

1 (B), the Secretary of State shall engage in ro-  
2 bust efforts to urge the governments of other  
3 member states of the North Atlantic Treaty Or-  
4 ganization (NATO) and other close allies of the  
5 United States to revise their domestic laws as  
6 necessary to unilaterally adopt similar controls  
7 with respect to such items and services.

8 “(2) UNILATERAL CONTROLS.—If the Secretary  
9 of State proposes to a multilateral export control re-  
10 gime under paragraph (1) to add an item or service  
11 identified pursuant to subsection (a) to the control  
12 list of that regime and that regime does not add the  
13 item or service to the control list during the 3-year  
14 period beginning on the date of the proposal, the  
15 Secretary of State, in coordination with the Sec-  
16 retary, shall determine whether the national security  
17 objectives of the United States of regulating such  
18 items or services warrants continued unilateral con-  
19 trols with respect to the item or service.

20 “(e) REPORT.—The Secretary, in coordination with  
21 the Secretary of Defense, the Secretary of State, and the  
22 heads of other Federal agencies, as appropriate, shall sub-  
23 mit a report on an annual basis on the results of actions  
24 taken pursuant to this section to—

1           “(1) the Committee on Financial Services, the  
2           Committee on Foreign Affairs, the Committee on  
3           Armed Services, and the Permanent Select Com-  
4           mittee on Intelligence of the House of Representa-  
5           tives; and

6           “(2) the Committee on Banking, Housing, and  
7           Urban Affairs, the Committee on Foreign Relations,  
8           the Committee on Armed Services, and the Select  
9           Committee on Intelligence of the Senate.

10          “(f) DEFINITIONS.—In this section:

11           “(1) TARGETED DIGITAL SURVEILLANCE.—The  
12           term ‘targeted digital surveillance’ means the use of  
13           technologies that enable an actor to gain surrep-  
14           titious access to the digital communications, work  
15           product, browsing data, research, location history  
16           and online and offline activities of specific individ-  
17           uals.

18           “(2) IN A MANNER CONTRARY TO HUMAN  
19           RIGHTS.—The term ‘in a manner contrary to human  
20           rights’, with respect to targeted digital surveillance,  
21           means engaging in targeted digital surveillance—

22           “(A) in violation of basic human rights, in-  
23           cluding to silence dissent, sanction criticism,  
24           punish independent reporting (and sources for  
25           that reporting), manipulate or interfere with

1 democratic or electoral processes, or target op-  
2 ponents of the government of a country (includ-  
3 ing activists, journalists, artists, or opposition  
4 politicians); or

5 “(B) in a country in which there is lacking  
6 a minimum legal framework governing its use,  
7 including established—

8 “(i) authorization under laws that are  
9 accessible, precise, and available to the  
10 public;

11 “(ii) constraints limiting its use under  
12 principles of necessity, proportionality, and  
13 legitimacy;

14 “(iii) oversight by independent bodies;  
15 involvement of the judiciary branch in au-  
16 thorizing its use; or

17 “(iv) legal remedies in case of  
18 abuse.”.

19 (b) CLERICAL AMENDMENTS.—

20 (1) TABLE OF CONTENTS.—The table of con-  
21 tents in section 2(b) of such Act is amended by in-  
22 serting after the item relating to section 1759 the  
23 following new item:

“Sec. 1759A. Requirements to identify and control the export of items and  
services for use in targeted digital surveillance.”.

1           (2) TABLE OF SECTIONS.—The table of sections  
2           at the beginning of title XVII of division A of such  
3           Act is amended by inserting after the item relating  
4           to section 1759 the following new item:

“Sec. 1759A. Requirements to identify and control the export of items and  
          services for use in targeted digital surveillance.”.

