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:

SEC. 12. REQUIREMENTS TO IDENTIFY AND CONTROL
THE EXPORT OF ITEMS AND SERVICES FOR
USE IN TARGETED DIGITAL SURVEILLANCE.

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

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

“(a) IDENTIFICATION OF ITEMS AND SERVICES.—
“(1) IN GENERAL.—The President shall estab-
lish and, in coordination with the Secretary, the Sec-
retary of Defense, the Secretary of Energy, the Sec-
retary of State, and the heads of other Federal
agencies as appropriate, lead, a regular, ongoing
interagency process to identify items subject to the
jurisdiction of the United States, whether by United
States persons or by foreign persons, and the provi-
sion of services by any United States person that
have been used or reasonably could be used for tar-
geted digital surveillance in a manner contrary to
human rights.

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

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

“(i) publicly available information;

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

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

and

“(iv) information provided by the ad-
visory committees established by the Sec-
retary to advise the Under Secretary of
Commerce for Industry and Security on
controls under the Export Administration
Regulations, including the Emerging Tech-
nology and Research Advisory Committee;
“(B) be informed by and give great weight to information contained in the Department of State’s annual Country Reports on Human Rights Practices;

“(C) take into account—

“(i) how such items and services that have been used or reasonably could be used for targeted digital surveillance in a manner contrary to human rights; and

“(ii) the extent to which the imposition of unilateral export controls would sufficiently project United States values and commitments to oppose or stop the use of such items or services that support targeted digital surveillance in a manner contrary to basic human rights; and

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

“(b) COMMERCE CONTROLS.—

“(1) IN GENERAL.—The Secretary shall establish appropriate controls under the Export Administration Regulations on the export, reexport, or in-country transfer of items and services identified pursuant to subsection (a), including through interim controls (such as by informing a person that a li-
license is required for export), as appropriate, or by publishing additional regulations.

“(2) LEVELS OF CONTROL.—

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

“(B) CONSIDERATIONS.—In determining under subparagraph (A) the level of control appropriate for items and services identified pursuant to subsection (a), the Secretary shall take into account——

“(i) evidence regarding the types of items used and services provided, or for which there is a reasonable possibility could be used or provided, for targeted digital surveillance in a manner contrary to human rights; and

“(ii) end uses, end users, and destination countries that used such items or
services in targeted digital surveillance in a manner contrary to human rights.

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

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

“(ii) country, or any governmental unit thereof, entity, or other person determined by the Secretary of State in a notice published in the Federal Register to have used items or services for targeted digital surveillance in a manner contrary to human rights.

“(D) REVIEW AND UPDATE.—The Secretary of State shall, at a minimum, annually review and update as needed the list of countries, governmental units, entities, and other persons described in subparagraph (C)(ii).

“(3) REVIEW OF LICENSE APPLICATIONS.—

“(A) PROCEDURES.—The procedures set forth in Executive Order 12981 (50 U.S.C.
4603 note; relating to administration of export
controls) or a successor order shall apply to the
review of an application for a license or other
authorization for the export, reexport, or in-
country transfer of items and services identified
pursuant to subsection (a).

“(B) Consideration of information
relating to national security.—

“(i) In general.—In reviewing an
application for a license or other authoriza-
tion for the export, reexport, or in-country
transfer of an item, or the provision of a
service, identified pursuant to subsection
(a), the Secretary shall take into account
information provided by the Director of
National Intelligence regarding any threat
to the national security of the United
States posed by the proposed export, reex-
port, transfer of the item or provision of
the service.

“(ii) Additional requirement.—
The Director of National Intelligence shall
provide such information at the request of
the Secretary within the periods set forth
in Executive Order 12981 for the initial
interagency determination regarding a license application.

“(C) LICENSING POLICY.—

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

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

“(c) MANDATORY CONDITIONS.—

“(1) IN GENERAL.—The Secretary may issue a license or other authorization for the export, reexport, or in-country transfer of an item, or the provision of a service, identified pursuant to subsection (a) if the license meets, at a minimum, the following conditions:

“(A) The applicant certifies in the application for the license that a human rights due
diligence review had been completed for the pro-
posed export, reexport, or transfer of the item,
or the provision of the service, and that, as a
result of such review, it is highly unlikely that
such item or service will contribute the use of
targeted digital surveillance capabilities in a
manner contrary to basic human rights.

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

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

“(D) The license provides limitations on
how long any sensitive personally identifiable
information relating to the license may be
accessed or acquired.
“(2) Certification.—The Secretary may issue a license or other authorization for the export, reexport, or in-country transfer of an item, or the provision of a service, identified pursuant to subsection (a) if the Secretary certifies that the destination country of such item or service has an appropriate legal framework governing the use of such item or service, including—

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

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

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

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

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

“(d) Control of Items and Services.—

“(1) Multilateral Controls.—

“(A) In General.—The Secretary of State, in consultation with the Secretary and
the heads of other Federal agencies, as appro-
priate, shall propose that any item or service
identified pursuant to subsection (a) be added
to the lists of items and services controlled by
the relevant multilateral export control regimes.

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

“(C) OTHER NATO MEMBER STATES AND
CLOSE ALLIES.—Unless and until items and
services controlled pursuant to subsection (a)
are controlled in accordance with subparagraph
(B), the Secretary of State shall engage in robust efforts to urge the governments of other member states of the North Atlantic Treaty Organization (NATO) and other close allies of the United States to revise their domestic laws as necessary to unilaterally adopt similar controls with respect to such items and services.

“(2) UNILATERAL CONTROLS.—If the Secretary of State proposes to a multilateral export control regime under paragraph (1) to add an item or service identified pursuant to subsection (a) to the control list of that regime and that regime does not add the item or service to the control list during the 3-year period beginning on the date of the proposal, the Secretary of State, in coordination with the Secretary, shall determine whether the national security objectives of the United States of regulating such items or services warrants continued unilateral controls with respect to the item or service.

“(e) REPORT.—The Secretary, in coordination with the Secretary of Defense, the Secretary of State, and the heads of other Federal agencies, as appropriate, shall submit a report on an annual basis on the results of actions taken pursuant to this section to—
“(1) the Committee on Financial Services, the Committee on Foreign Affairs, the Committee on Armed Services, and the Permanent Select Committee on Intelligence of the House of Representatives; and

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

“(f) DEFINITIONS.—In this section:

“(1) TARGETED DIGITAL SURVEILLANCE.—The term ‘targeted digital surveillance’ means the use of technologies that enable an actor to gain surreptitious access to the digital communications, work product, browsing data, research, location history and online and offline activities of specific individuals.

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

“(A) in violation of basic human rights, including to silence dissent, sanction criticism, punish independent reporting (and sources for that reporting), manipulate or interfere with
democratic or electoral processes, or target opponents of the government of a country (including activists, journalists, artists, or opposition politicians); or

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

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

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

“(iii) oversight by independent bodies; involvement of the judiciary branch in authorizing its use; or

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

(b) Clerical Amendments.—

(1) Table of Contents.—The table of contents in section 2(b) of such Act is amended by inserting after the item relating 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.”.
(2) **TABLE OF SECTIONS.**—The table of sections at the beginning of title XVII of division A of such Act is amended by inserting after the item relating 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.”