

UNITED STATES SENATE COMMITTEE ON
BANKING
 HOUSING &
 URBAN AFFAIRS

The ICTS Supply Chain Security Act

Section 1. Short Title

Short Title: to be determined.

Section 2. Assistant Secretary of Commerce for Information and Communications Technology Supply Chains

This section amends the Export Control Reform Act (ECRA) of 2018 by:

- Creating an Assistant Secretary position for ICTS
 - The position is Senate-confirmed and is in addition to the existing Commerce Assistant Secretaries. The new Assistant Secretary reports to the Under Secretary of Commerce for Industry and Security (the head of BIS).
 - Tasks the new Assistant Secretary with overseeing the ICTS Office established in Section 3.

Section 3. Office of ICTS

Amends ECRA by:

- Establishing the Office of Information and Communications Technology and Services within the Bureau of Industry and Security
 - The head of the new Office reports directly to the ICTS Assistant Secretary created in Section 2.
 - Congressional access: any information the Office obtains in carrying out its duties must be made available to the committee or subcommittee of jurisdiction at the request of its chair or ranking member.

Section 4. Security of Information and Communications Technology and Services Supply Chains

• 1785. Definitions

- **Appropriate congressional committees:** Senate Banking, Housing, and Urban Affairs; and House Foreign Affairs.
- **Country of Concern:** China, Hong Kong and Macau, Cuba, Iran, North Korea, and Russia
- **Covered ICTS transaction:** the deals involving ICTS tied to a country of concern that Commerce may block. See 1785A below.
- **Information and Communications Technology or Services:** any hardware, software, connected software applications, or other product or service primarily intended to fulfill or enable the function of information or data processing, storage, retrieval, or communication by electronic means, including through transmission, storage, or display
- **Open-source software:** software for which the human-readable source code is available in its entirety for use, study, reuse, modification, enhancement, and redistribution by the users of the software.

• 1785A. Prohibition on transactions that threaten the security of ICTS supply chains

- Bans buying, importing, transferring, installing, dealing in, or using ICTS under U.S. jurisdiction if the Secretary of Commerce decides the deal is a security risk. Two things must be apply for the Secretary to prohibit this technology:
 - The "who": the technology is built or supplied by someone owned, controlled, or directed by a country of concern; AND
 - The "risk": the deal could be used to sabotage U.S. systems, threaten critical infrastructure or the digital economy, or otherwise endanger national security or Americans' safety.
- Free speech protection: Applies Berman language to ICTS authorities and includes an updated prong for exempted items, such as news and other informational materials (publications, films, streaming, podcasts, social media, etc.) or open-source software meant for public use.
- Applies even to deals already in place before the law passes.

- **1785B. Authorization to prescribe regulations with respect to covered ICTS transaction and persons and jurisdictions of concern**
 - Where the flat 1785A ban won't adequately handle the risk, Commerce can write rules instead.
 - Those rules can name specific transactions, persons, or jurisdictions of concern; impose mitigation measures and prohibitions; set categorical include/exclude criteria; and create a licensing process for otherwise-banned deals.
- **1785C. Administration**
 - The head of the ICTS Office, in consultation with the relevant agencies, may design, negotiate, and impose mitigation measures on a covered transaction and approve the transaction once those measures are implemented.
- **1785D. Judicial Review**
 - Challenges go only to the D.C. Circuit Court of Appeals (the D.C. district court can enforce subpoenas).
 - Classified and other sensitive info is reviewed privately (ex parte, in camera) and isn't shared with the challenger or made public.
 - This is the exclusive judicial remedy; and challenges must be brought within 180 days of the action or determination.
- **1785E. Penalties**
 - Makes it unlawful to violate, attempt, conspire, or cause a violation of any regulation, order, or directive issued under Section 4.
 - Criminal Penalties: a fine up to \$1,000,000; individuals may also be imprisoned up to 20 years.
 - Civil Penalties: Commerce may impose the greater of \$1,500,000 or five times the value of the transaction, plus revocation of authorizations and a bar from covered deals. Commerce sets penalty levels by rule based on seriousness, intent, and cooperation.
- **1785F. Relationship to other laws**
 - Does not displace any other federal authority, process, or review.
 - Exempts Section 4 actions (except civil penalties) from the APA's notice-and-comment and judicial-review rules and from the Paperwork Reduction Act. This is in like with ECRA's broader APA exemption.
 - Preserves the Committee on Foreign Investment in the U.S. (CFIUS) and the Defense Production Act (DPA) Section 721 authority by requiring OICTS to drop its review if a particular transaction is DPA-authorized or already being reviewed by CFIUS.
- **1785G. Authorization of other actions**
 - Allows the Commerce Department take other necessary or appropriate steps to carry out Section 4, including issuing or amending regulations, publishing Federal Register notices, issuing guidance, establishing procedures, and revoking or amending authorizations or determinations.
- **1785H. Annual Reports**
 - Within 180 days of enactment and every year after, the Office head reports to the Senate Banking and House Foreign Affairs Committees on actions taken under Section 4 during the prior year.
- **1785I. Termination**
 - The prohibition in 1785A and all Section 4 authorities sunset 5 years after enactment.