

DOJ Notes on the May 29 Consultation with the Software and Information Industry Association (“SIIA”) Regarding Bulk Thresholds

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On May 29, 2024, representatives from the Department of Justice (“DOJ”) and the Commerce Department (“Commerce”) consulted with representatives from SIIA regarding SIIA’s comments on DOJ’s March 5, 2024 Advanced Notice of Proposed Rulemaking (“ANPRM”) entitled “Provisions Regarding Access to Americans’ Bulk Sensitive Personal Data and Government-Related Data by Countries of Concern.”

The consultation specifically focused on SIIA’s comments on the proposed bulk thresholds set forth in the ANPRM. During the consultation, representatives from DOJ and Commerce asked SIIA questions about the bulk thresholds proposed in the ANPRM and listened to SIIA’s responses.

The notes that follow are DOJ’s brief summary of the input shared by SIIA.*

- **Participants:** Representatives from the National Security Division of the Department of Justice, the International Trade Administration of Department of Commerce, and SIIA.
- **SIIA members’ concerns:**
 - SIIA is unsure whether its members currently conduct transactions that would fall under the proposed rule but anticipates that there is very little activity that would be regulated.
 - SIIA’s customers have not communicated any specific concerns about their data being located in foreign databases, but SIIA anticipates this as a reasonable concern.
 - SIIA is most concerned about the thresholds set for precise geolocation data and U.S. devices. Specifically, SIIA recommends setting the bulk threshold for personal device locators to a minimum of 1,000.
 - SIIA is also concerned about chain of custody issues – what liability attaches when data is not directly transferred to a country of concern?
- **Other suggestions and feedback:**
 - SIIA recommends limiting the definition of data brokerage to conform with existing U.S. and international norms.
 - SIIA specifically recommends raising the bulk threshold for covered personal identifiers to a minimum of one million. They reiterated concerns that the current definition of covered personal identifiers captures identifiers that state privacy laws do not consider to be sensitive by themselves.
 - SIIA recommends exempting publicly available data from the proposed rule.

*These notes are a summary of the consultation; they are not a transcript. The Department of Justice has not shared these notes with meeting participants to confirm their accuracy.