

US Department of Justice Data Security Program (DSP) Rule on Bulk Transfers of US Sensitive Data – Application Flowchart

Step 1 – Could the DOJ’s bulk sensitive data rule (rule) apply to the transaction?

The rule only applies if the answer to each of these questions is “yes.” Answer questions by the order of ease.

Is there a US person engaged in the transaction?	Is the transaction one of these four types?	Is government-related ⁶ or bulk US sensitive personal data involved?	Will the transaction provide “access” to the data to a covered country or entity?
<ul style="list-style-type: none"> Is any individual or entity engaged a “US person”?¹ 	<ul style="list-style-type: none"> Data brokerage² Investment agreement³ (excluding passive investments) Vendor agreement⁴ Employment agreement⁵ 	Bulk US sensitive personal data includes: <ul style="list-style-type: none"> Human genomic data on > 100 US persons Other human ‘omic data on > 1,000 US persons Biometric identifiers on > 1,000 US persons Precise geolocation data on > 1,000 US devices Personal health and finance data on > 10,000 US persons Covered personal identifiers⁷ on > 100,000 US persons 	Is the entity a “country of concern” or a “covered person”? ⁸ Countries of concern include: <ul style="list-style-type: none"> China (including Hong Kong and Macau) Cuba Iran North Korea Russia Venezuela

If the rule may apply



Step 2 – Exemptions

Check whether the transaction falls under one of the rule’s exemptions (and check related limitations). This list is nonexhaustive.

<ul style="list-style-type: none"> Personal communications Travel information Certain financial services Corporate group transactions 	<ul style="list-style-type: none"> Import or export of expressive materials Official US government activities Transactions authorized by federal law Passive investment agreement 	<ul style="list-style-type: none"> Certain transactions involving drug, biological product, device or combination product approvals Certain other clinical investigations Metadata necessary to transmit expressive materials
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If no exemptions



Step 3 – Impact on the transaction

If the rule applies and the transaction is not within the exemptions, would the rule prohibit or restrict the transaction?

Is my transaction restricted?	Is my transaction prohibited?
The following covered data transactions are permitted (unless they involve bulk human ‘omic data or human biospecimens from which human ‘omic data can be derived) subject to certain specific security and other requirements being met: <ul style="list-style-type: none"> Vendor agreements Employment agreements Investment agreements 	<ul style="list-style-type: none"> Data brokerage activities Covered data transactions involving access to bulk human ‘omic data or human biospecimens from which human ‘omic data can be derived by a covered country of concern or covered entity/ person <p>Note: Transactions intended to evade, avoid or violate the above prohibited transactions or knowingly directing any of the above prohibited or restricted transactions are prohibited by the rule.</p>

¹ "US person" means "any United States citizen, national, or lawful permanent resident; any individual admitted to the United States as a refugee under 8 U.S.C. 1157 or granted asylum under 8 U.S.C. 1158; any entity organized solely under the laws of the United States or any jurisdiction within the United States (including foreign branches); or any person in the United States." § 202.256(a).

² "Data brokerage" means "the sale of data, licensing of access to data, or similar commercial transactions, excluding an employment agreement, investment agreement, or a vendor agreement, involving the transfer of data from any person (the provider) to any other person (the recipient), where the recipient did not collect or process the data directly from the individuals linked or linkable to the collected or processed data." § 202.214(a).

³ "Investment agreement" means "an agreement or arrangement in which any person, in exchange for payment or other consideration, obtains direct or indirect ownership interests in or rights in relation to: (1) Real estate located in the United States; or (2) A U.S. legal entity." § 202.228(a).

⁴ "Vendor agreement" means "any agreement or arrangement, other than an employment agreement, in which any person provides goods or services to another person, including cloud-computing services, in exchange for payment or other consideration." § 202.258(a).

⁵ "Employment agreement" means "any agreement or arrangement in which an individual, other than as an independent contractor, performs work or performs job functions directly for a person in exchange for payment or other consideration, including employment on a board or committee, executive-level arrangements or services, and employment services at an operational level." § 202.217(a).

⁶ "Government-related data" means

"(1) Any precise geolocation data, regardless of volume, for any location within any area enumerated on the Government- Related Location Data List in § 202.1401 which the Attorney General has determined poses a heightened risk of being exploited by a country of concern to reveal insights about locations controlled by the Federal Government, including insights about facilities, activities, or populations in those locations, to the detriment of national security, because of the nature of those locations or the personnel who work there. Such locations may include:

- (i) The worksite or duty station of Federal Government employees or contractors who occupy a national security position as that term is defined in 5 CFR 1400.102(a)(4);
- (ii) A military installation as that term is defined in 10 U.S.C. 2801(c)(4); or
- (iii) Facilities or locations that otherwise support the Federal Government's national security, defense, intelligence, law enforcement, or foreign policy missions.

(2) Any sensitive personal data, regardless of volume, that a transacting party markets as linked or linkable to current or recent former employees or contractors, or former senior officials, of the United States Government, including the military and Intelligence Community." § 202.222(a).

⁷ "Covered personal identifiers" means "any listed identifier: (1) In combination with any other listed identifier; or (2) In combination with other data that is disclosed by a transacting party pursuant to the transaction such that the listed identifier is linked or linkable to other listed identifiers or to other sensitive personal data." § 202.212(a). For a list of listed identifiers, see § 202.234.

⁸ "Covered person" means:

"(1) A foreign person that is an entity that is 50% or more owned, directly or indirectly, individually or in the aggregate, by one or more countries of concern or persons described in paragraph (a)(2) of this section; or that is organized or chartered under the laws of, or has its principal place of business in, a country of concern;

(2) A foreign person that is an entity that is 50% or more owned, directly or indirectly, individually or in the aggregate, by one or more persons described in paragraphs (a)(1), (3), (4), or (5) of this section;

(3) A foreign person that is an individual who is an employee or contractor of a country of concern or of an entity described in paragraphs (a)(1), (2), or (5) of this section;

(4) A foreign person that is an individual who is primarily a resident in the territorial jurisdiction of a country of concern; or

(5) Any person, wherever located, determined by the Attorney General:

(i) To be, to have been, or to be likely to become owned or controlled by or subject to the jurisdiction or direction of a country of concern or covered person;

(ii) To act, to have acted or purported to act, or to be likely to act for or on behalf of a country of concern or covered person; or

(iii) To have knowingly caused or directed, or to be likely to knowingly cause or direct a violation of this part."

§ 202.211(a).