

**AMENDMENT TO RULES COMM. PRINT 119–33**

**OFFERED BY MR. KEAN OF NEW JERSEY**

At the end of title XVII of division A, add the following:

1       **Subtitle C—Stop Stealing Our**  
2                                   **Chips Act**

3 **SEC. 17\_. SHORT TITLE.**

4       This subtitle may be cited as the “Stop Stealing our  
5 Chips Act”.

6 **SEC. 17\_. FINDINGS.**

7       Congress finds the following:

8           (1) Violations of the export control laws of the  
9       United States, especially the diversion of leading-  
10      edge artificial intelligence chips into countries that  
11      are adversaries of the United States, threaten the  
12      national security of the United States.

13          (2) Individuals who proactively and accurately  
14      report violations of United States export control  
15      laws play a significant role in helping authorities  
16      identify and mitigate such threats.

17          (3) An incentive program that rewards whistle-  
18      blowers can significantly enhance enforcement ef-  
19      forts by encouraging individuals to provide high-

1 value information on potential violations across all  
2 sectors.

3 (4) Such a program may also encourage strong-  
4 er self-policing and internal compliance by firms,  
5 preventing violations before they occur.

6 **SEC. 17\_\_ . ESTABLISHMENT OF WHISTLEBLOWER INCEN-**  
7 **TIVE PROGRAM AND WHISTLEBLOWER PRO-**  
8 **TECTIONS.**

9 (a) IN GENERAL.—The Export Control Reform Act  
10 of 2018 (50 U.S.C. 4801 et seq.) is amended by inserting  
11 after section 1761 the following:

12 **“SEC. 1761A. WHISTLEBLOWER INCENTIVES AND PROTEC-**  
13 **TIONS.**

14 “(a) DEFINITIONS.—In this section:

15 “(1) ORIGINAL INFORMATION.—The term  
16 ‘original information’ means information that is—

17 “(A) derived from the independent knowl-  
18 edge or analysis of a whistleblower;

19 “(B) not known to the Secretary from any  
20 other source unless the whistleblower is the  
21 original source of the information;

22 “(C) not exclusively derived from an alle-  
23 gation made in a judicial or administrative  
24 hearing, a governmental report, hearing, audit,  
25 or investigation, or from news media, unless the

1           whistleblower is the source of such allegation;  
2           and

3           “(D) provided to the Secretary voluntarily,  
4           without any request from the Secretary or any  
5           other government official.

6           “(2) WHISTLEBLOWER.—

7           “(A) IN GENERAL.—The term ‘whistle-  
8           blower’ means, except as provided by subpara-  
9           graph (B), any individual (including an indi-  
10          vidual who is not a United States citizen) who  
11          provides, or 2 or more such individuals acting  
12          jointly who provide, to the Secretary informa-  
13          tion relating to a possible violation of this part  
14          or of any regulation, order, license, or other au-  
15          thorization issued under this part.

16          “(B) EXCLUSIONS.—The term ‘whistle-  
17          blower’ does not include—

18                  “(i) a Federal employee acting within  
19                  the scope of the duties of the employee; or

20                  “(ii) an individual on any of the fol-  
21                  lowing lists:

22                          “(I) The list of specially des-  
23                          ignated nationals and blocked persons  
24                          maintained by the Office of Foreign

1 Assets Control of the Department of  
2 the Treasury; or

3 “(II) The Denied Persons List  
4 maintained pursuant to section  
5 764.3(a)(2) of the Export Administra-  
6 tion Regulations.

7 “(3) RELATED ACTION.—The term ‘related ac-  
8 tion’, when used with respect to any judicial or ad-  
9 ministrative action brought by the Department  
10 under the Export Administration Regulations,  
11 means any judicial or administrative action brought  
12 by a United States government entity that is based  
13 upon the original information provided by a whistle-  
14 blower pursuant to this section that led to a success-  
15 ful export control enforcement action.

16 “(b) WHISTLEBLOWER INCENTIVE PROGRAM.—

17 “(1) ESTABLISHMENT.—Not later than 180  
18 days after the date of the enactment of this section,  
19 the Secretary shall establish a whistleblower incen-  
20 tive program to reward individuals who provide  
21 original information that leads to—

22 “(A) the imposition of fines under this  
23 part on persons that violate, attempt to violate,  
24 conspire to violate, or cause a violation of this

1 part or any regulation, order, license, or other  
2 authorization issued under this part; or

3 “(B) the forfeiture of any property under  
4 section 1761(j) if such forfeiture results in net  
5 proceeds to the Export Compliance Account-  
6 ability Fund.

7 “(2) WHISTLEBLOWER REPORTS.—

8 “(A) ONLINE PORTAL.—Not later than  
9 120 days after the date of the enactment of this  
10 section, the Secretary shall establish and main-  
11 tain a secure portal, or update and maintain an  
12 existing secure portal, on a website accessible to  
13 the public, for the reporting of original informa-  
14 tion relating to—

15 “(i) persons that violate, attempt to  
16 violate, conspire to violate, or cause a vio-  
17 lation of this part or any regulation, order,  
18 license, or other authorization issued under  
19 this part; and

20 “(ii) items that have been, are being,  
21 or are about to be exported, reexported, or  
22 in-country transferred in violation of this  
23 part or any regulation, order, license, or  
24 other authorization issued under this part.

25 “(B) ANONYMITY.—

1           “(i) IN GENERAL.—As an alternative  
2 to submission through the portal required  
3 by subparagraph (A), an individual may  
4 submit a report of original information  
5 under this subsection anonymously, includ-  
6 ing through an attorney.

7           “(ii) EXCEPTION.—The Secretary  
8 may require that the identity of an indi-  
9 vidual be disclosed for the individual to re-  
10 ceive an award under paragraph (3).

11           “(C) EXPEDITED REVIEW.—

12           “(i) INITIAL REVIEW.—Not later than  
13 60 days after the date of receipt of a re-  
14 port from a whistleblower, the Secretary  
15 shall—

16                   “(I) determine whether the re-  
17 port is credible; and

18                   “(II) if credible, initiate a formal  
19 investigation of the allegations con-  
20 tained in the report.

21           “(ii) INVESTIGATION.—The Secretary  
22 shall pursue any formal investigation  
23 under clause (i)(II) with urgency and con-  
24 clude the investigation within a reasonable  
25 amount of time.

1 “(iii) NOTIFICATION.—

2 “(I) IN GENERAL.—Subject to  
3 the confidentiality requirements of  
4 section 1761(h), the Secretary shall  
5 update the whistleblower on the status  
6 of a report and, if applicable, the re-  
7 lated investigation not later than 60  
8 days after the date on which the whis-  
9 tleblower submitted the report and  
10 not less frequently than every 180  
11 days thereafter.

12 “(II) SENSITIVE INFORMA-  
13 TION.—The Secretary may omit from  
14 the updates required by subclause (I)  
15 any information that could com-  
16 promise an ongoing investigation.

17 “(D) AVOIDANCE OF FRIVOLOUS RE-  
18 PORTS.—The Secretary may prohibit an indi-  
19 vidual from making reports under this sub-  
20 section if the individual has previously sub-  
21 mitted multiple reports under this subsection  
22 that the Secretary determined under subpara-  
23 graph (C)(i) were not credible.

24 “(3) AWARDS.—

1           “(A) ELIGIBILITY.—Subject to subpara-  
2 graph (B), the Secretary shall pay an award or  
3 awards to any whistleblower who provided origi-  
4 nal information that led to the imposition of a  
5 fine greater than \$1,000,000 under this part on  
6 a person or persons that violated, attempted to  
7 violate, conspired to violate, or caused a viola-  
8 tion of this part or any regulation, order, li-  
9 cense, or other authorization issued under this  
10 part or a related action, including when the un-  
11 derlying violation occurred before the date of  
12 the enactment of this section, so long as the  
13 whistleblower’s report is submitted after such  
14 date of enactment.

15           “(B) DISQUALIFICATION.—

16           “(i) IN GENERAL.—Subject to clause  
17 (ii), the Secretary may not pay an award  
18 or awards to any whistleblower who pro-  
19 vides original information with respect to a  
20 person or persons that violated, attempted  
21 to violate, conspired to violate, or caused a  
22 violation of this part or any regulation,  
23 order, license, or other authorization issued  
24 under this part, if such information was  
25 obtained through—

1 “(I) the role of the whistleblower  
2 as—

3 “(aa) an officer, director,  
4 trustee, or partner of an entity  
5 that handles internal processes  
6 for legal violations for the person  
7 or persons;

8 “(bb) an employee of an en-  
9 tity that conducts compliance or  
10 internal audits for the person or  
11 persons; or

12 “(cc) an employee of a pub-  
13 lic accounting firm if the infor-  
14 mation was obtained while work-  
15 ing on an engagement required  
16 by Federal law; or

17 “(II) any means that violates  
18 Federal or State criminal law.

19 “(ii) EXCEPTIONS.—Clause (i) shall  
20 not apply if—

21 “(I) the whistleblower had a rea-  
22 sonable basis to believe that disclosing  
23 the original information to the Sec-  
24 retary was necessary to stop conduct

1 likely to cause significant financial  
2 harm;

3 “(II) the whistleblower had a rea-  
4 sonable basis to believe that the rel-  
5 evant entity was obstructing an inves-  
6 tigation into the misconduct; or

7 “(III) not less than 120 days  
8 have elapsed since the whistleblower  
9 provided the information to the audit  
10 committee, chief legal officer, chief  
11 compliance officer (or their equiva-  
12 lent) of the relevant entity or the su-  
13 pervisor of the whistleblower.

14 “(C) AMOUNT.—

15 “(i) IN GENERAL.—The sum total of  
16 the awards issued for a particular action  
17 under subparagraph (A) shall be—

18 “(I) not less than 10 percent, in  
19 total, of the amount collected of the  
20 fine imposed under this part; and

21 “(II) not more than 30 percent,  
22 in total, of the amount collected of  
23 that fine.

24 “(ii) JOINTLY SUBMITTED REPORT.—

25 In the case of a report that was submitted

1 jointly by 2 or more individuals, or sepa-  
2 rate reports related to the same action,  
3 any award issued under subparagraph (A)  
4 shall be split among the individuals at the  
5 Secretary's discretion.

6 “(D) DETERMINATION.—The Secretary  
7 shall determine the amount of an award made  
8 under subparagraph (A) taking into account,  
9 with respect to the information provided—

10 “(i) accuracy;

11 “(ii) relevance;

12 “(iii) timeliness;

13 “(iv) usefulness; and

14 “(v) such additional factors that the  
15 Secretary considers relevant, on a case-by-  
16 case basis.

17 “(E) Awards for related actions shall be  
18 paid at the discretion of the Secretary.

19 “(4) PUBLICATION.—

20 “(A) IN GENERAL.—Not later than the  
21 date on which the online portal required by  
22 paragraph (2)(A) is complete, the Secretary  
23 shall develop and implement a plan to publicize  
24 the whistleblower incentive program established  
25 by paragraph (1).

1           “(B) FUNDING.—The Secretary shall pay  
2           any expenses incurred under subparagraph (A)  
3           from amounts authorized to be appropriated to  
4           the Bureau of Industry and Security.

5           “(c) PROTECTION OF WHISTLEBLOWERS.—

6           “(1) PROHIBITION AGAINST IMPENDING COM-  
7           MUNICATION AND RETALIATION.—

8           “(A) IN GENERAL.—Except as provided in  
9           subparagraph (B), no employer may—

10           “(i) impede or attempt to impede an  
11           individual from communicating directly  
12           with the Department of Commerce regard-  
13           ing a possible violation of export control or  
14           related laws; or

15           “(ii) discharge, demote, suspend,  
16           threaten, harass, directly or indirectly, or  
17           in any other manner discriminate against a  
18           whistleblower in the terms and conditions  
19           of employment because of a lawful act  
20           done by the whistleblower—

21           “(I) in reporting violations to the  
22           employer or to a law enforcement  
23           agency;

1                   “(II) in providing information to  
2                   the Secretary in accordance with this  
3                   section; or

4                   “(III) in initiating, testifying in,  
5                   or assisting in any investigation or ju-  
6                   dicial or administrative action based  
7                   upon or related to such information.

8                   “(B) EXCEPTION.—The protection against  
9                   retaliation established by subparagraph (A)  
10                  shall not apply to any individual who reports in-  
11                  formation under this section knowing that such  
12                  information is false.

13                  “(C) ENFORCEMENT.—

14                  “(i) CAUSE OF ACTION.—An indi-  
15                  vidual who alleges discharge or other dis-  
16                  crimination in violation of subparagraph  
17                  (A) may bring an action under this para-  
18                  graph in the appropriate district court of  
19                  the United States for the relief provided in  
20                  subparagraph (D).

21                  “(ii) SUBPOENAS.—A subpoena re-  
22                  quiring the attendance of a witness at a  
23                  trial or hearing conducted under this sub-  
24                  paragraph may be served at any place in  
25                  the United States.

1 “(iii) STATUTE OF LIMITATIONS.—

2 “(I) IN GENERAL.—An action  
3 under this subparagraph shall not be  
4 entertained if commenced more  
5 than—

6 “(aa) 6 years after the date  
7 of the violation of subparagraph  
8 (A) occurred; or

9 “(bb) 3 years after the date  
10 when facts material to the right  
11 of action are known or reason-  
12 ably should have been known by  
13 the employee alleging a violation  
14 of subparagraph (A).

15 “(II) REQUIRED ACTION WITHIN  
16 10 YEARS.—Notwithstanding sub-  
17 clause (I), an action under this sub-  
18 paragraph may not in any cir-  
19 cumstance be brought more than 10  
20 years after the date on which the vio-  
21 lation occurs.

22 “(D) RELIEF.—Relief for an individual  
23 prevailing in an action brought under subpara-  
24 graph (C) shall include—

1           “(i) reinstatement with the same se-  
2           niority status that the individual would  
3           have had, but for the discrimination;

4           “(ii) 2 times the amount of back pay  
5           otherwise owed to the individual, with in-  
6           terest; and

7           “(iii) compensation for litigation  
8           costs, expert witness fees, and reasonable  
9           attorneys’ fees.

10          “(E) SCOPE OF PROTECTION.—The protec-  
11          tions under this subsection shall apply to any  
12          individual who engages in an act described in  
13          subparagraph (A), including reporting a poten-  
14          tial violation internally to an employer or to a  
15          law enforcement agency, regardless of whether  
16          the individual has, at the time of the alleged re-  
17          taliation, provided information to the Secretary  
18          under this section. Such protections shall also  
19          apply if the retaliation occurs before, or in the  
20          absence of, a formal report to the Department  
21          of Commerce.

22          “(2) CONFIDENTIALITY.—

23          “(A) IN GENERAL.—Except as provided in  
24          subparagraphs (B) and (C), the Secretary and  
25          any officer or employee of the Department of

1 Commerce shall not disclose any information,  
2 including information provided by a whistle-  
3 blower to the Secretary, that could reasonably  
4 be expected to reveal the identity of the whistle-  
5 blower, except in accordance with the provisions  
6 of section 552a of title 5, United States Code,  
7 unless and until required to be disclosed to a  
8 defendant or respondent in connection with a  
9 public proceeding instituted by the Secretary or  
10 any entity described in subparagraph (D).

11 “(B) EXEMPTED STATUTE.—For purposes  
12 of section 552 of title 5, United States Code,  
13 this paragraph shall be considered a statute de-  
14 scribed in subsection (b)(3)(B) of such section.

15 “(C) RULE OF CONSTRUCTION.—Nothing  
16 in this section is intended to limit, or shall be  
17 construed to limit, the ability of the Attorney  
18 General to present such evidence to a grand  
19 jury or to share such evidence with potential  
20 witnesses or defendants in the course of an on-  
21 going criminal investigation.

22 “(D) AVAILABILITY TO GOVERNMENT  
23 AGENCIES.—

24 “(i) IN GENERAL.—Without the loss  
25 of its status as confidential in the hands of

1 the Secretary, all information referred to  
2 in subparagraph (A) may, in the discretion  
3 of the Secretary, when determined by the  
4 Secretary to be necessary to accomplish  
5 the purposes of this part or any regulation,  
6 order, license, or other authorization issued  
7 under this part, be made available to—

8 “(I) a Federal law enforcement  
9 agency;

10 “(II) a national security agency;

11 “(III) an appropriate Federal or  
12 State regulatory authority or Federal  
13 investigative agency; and

14 “(IV) a foreign law enforcement  
15 authority.

16 “(ii) CONFIDENTIALITY.—

17 “(I) IN GENERAL.—Each of the  
18 entities described in subclauses (I)  
19 through (III) of clause (i) shall main-  
20 tain such information as confidential  
21 in accordance with the requirements  
22 established under subparagraph (A).

23 “(II) FOREIGN AUTHORITIES.—  
24 Each of the entities described in  
25 clause (i)(IV) shall maintain such in-

1                   formation in accordance with such as-  
2                   surances of confidentiality as the Sec-  
3                   retary determines appropriate.

4           “(d)   EXPORT   COMPLIANCE   ACCOUNTABILITY  
5 FUND.—

6                   “(1) ESTABLISHMENT.—Not later than 90 days  
7                   after the date of the enactment of this section, there  
8                   shall be established in the Treasury of the United  
9                   States a fund to be known as the ‘Export Compli-  
10                  ance Accountability Fund’ (in this subsection re-  
11                  ferred to as the ‘Fund’).

12                  “(2) AVAILABILITY.—At the end of each fiscal  
13                  year, any amounts deposited into the Fund under  
14                  paragraph (3) that remain in the Fund after the  
15                  payment, for that fiscal year, of all expenses under  
16                  paragraph (3) shall be transferred to the general  
17                  fund of the Treasury. The Fund shall retain an  
18                  amount equivalent to \$100,000,000 (adjusted for in-  
19                  flation) or the total amount necessary to satisfy any  
20                  pending whistleblower award determinations, which-  
21                  ever is greater.

22                  “(3) USE OF FUND.—The Fund shall be avail-  
23                  able to the Secretary, without further appropriation  
24                  or fiscal year limitation, for—

1           “(A) paying awards to whistleblowers as  
2           provided in subsection (b)(3);

3           “(B) funding activities that support the  
4           whistleblower incentive program and whistle-  
5           blower protections, including—

6                   “(i) reviewing and investigating whis-  
7                   tleblower reports;

8                   “(ii) providing training and education  
9                   on compliance with the confidentiality re-  
10                  quirement under subsection (c)(2); and

11                  “(iii) record keeping, IT expenses, and  
12                  other expenses to maintain or update the  
13                  portal as considered necessary by the Sec-  
14                  retary; and

15           “(C) if all outstanding awards under sub-  
16           section (b)(3) have been paid, expenses related  
17           to enforcement of this part or any regulation,  
18           order, license, or other authorization issued  
19           under this part.

20           “(4) DEPOSITS AND CREDITS.—There shall be  
21           deposited into or credited to the Fund an amount  
22           equal to any fine collected by the Secretary on or  
23           after the date of the enactment of this section in any  
24           judicial or administrative action brought by the Sec-

1       retary that depends on or was initiated because of  
2       original information submitted by a whistleblower.

3               “(5) RULEMAKING AUTHORITY.—The Secretary  
4       may issue such rules and regulations as may be nec-  
5       essary or appropriate to implement this section in a  
6       manner consistent with the purposes of this section.

7               “(6) RULE OF CONSTRUCTION.—Nothing in  
8       this section may be construed to diminish the rights,  
9       privileges, or remedies of any whistleblower under  
10      any Federal or State law or under any collective bar-  
11      gaining agreement.”.

12 **SEC. 17\_. RULE OF CONSTRUCTION.**

13      Nothing in this subtitle, or any amendment made by  
14      this subtitle, may be construed to affect, reduce, or divert  
15      any amounts required by law to be deposited into the  
16      Crime Victims Fund (34 U.S.C. 20101) or the U.S. Vic-  
17      tims of State Sponsored Terrorism Fund (34 U.S.C.  
18      20144).

