

117TH CONGRESS  
2D SESSION

# H. R. 9241

To provide for the transfer of export control authorities from the Department of Commerce to the Department of Defense, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 28, 2022

Mr. BANKS (for himself, Mr. WITTMAN, and Mr. STEUBE) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on Armed Services, and Appropriations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for the transfer of export control authorities from the Department of Commerce to the Department of Defense, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prioritizing National  
5 Security in Export Controls Act of 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1           (1) In 2018 Congress on an overwhelming bi-  
2           partisan basis passed the Export Control Reform  
3           Act of 2018 requiring the Department of Commerce  
4           to tighten restrictions on transfers of emerging and  
5           foundational technologies to high risk countries, es-  
6           pecially China, but there has been little progress  
7           ever since.

8           (2) The Department of Commerce has shown  
9           itself inept to reconcile its mission to protect United  
10          States national security with its objective of pro-  
11          moting United States exports to high-risk countries,  
12          especially China.

13          (3) By August 2022, a Department of Com-  
14          merce-led process that reviews United States tech-  
15          nology exports to China has approved almost all re-  
16          quests and has overseen an increase in sales of some  
17          particularly important technologies.

18          (4) There are only 70 Chinese entities on the  
19          Department of Commerce's current entity list, de-  
20          spite that tens of thousands of Chinese entities may  
21          meet the United States criteria for military end-user  
22          export restrictions.

23          (5) The Bureau of Industry and Security, re-  
24          sponsible for enforcing export control under the De-  
25          partment of Commerce, has not taken a single ac-

1       tion since the passing of the Export Control Reform  
2       Act of 2018 to restrict foundational technology from  
3       being transferred to China.

4           (6) In May 2022, the Bureau of Industry and  
5       Security dropped foundational technology as a cri-  
6       terion, culminating its defiance of Congress.

7       **SEC. 3. SENSE OF CONGRESS.**

8       It is the sense of Congress that export control author-  
9       ity should be taken away from the Bureau of Industry and  
10      Security of the Department of Commerce since the Bu-  
11      reau has manifestly been unable to resolve the conflict of  
12      interest between promoting trade and protecting United  
13      States national security through enforcing restrictions on  
14      technology transfer to high-risk countries, especially  
15      China.

16      **SEC. 4. TRANSFER OF EXPORT CONTROL AUTHORITIES**  
17                           **FROM THE DEPARTMENT OF COMMERCE TO**  
18                           **THE DEPARTMENT OF DEFENSE.**

19      (a) TRANSFER OF EXPORT CONTROL AUTHORI-  
20      TIES.—

21           (1) IN GENERAL.—Notwithstanding any provi-  
22      sion of the Export Control Reform Act of 2018 or  
23      any other provision of law, all authorities provided  
24      to the Department of Commerce, including the Bu-  
25      reau of Industry and Security, regarding implemen-

1       tation and enforcement of matters relating to export  
2       control shall be transferred to and carried out by the  
3       Defense Technology and Security Administration of  
4       the Department of Defense.

5           (2) IMPLEMENTATION.—The Secretary of Com-  
6       merce and the Secretary of Defense shall take such  
7       actions, including the promulgation of regulations,  
8       as may be necessary to implement or otherwise carry  
9       out this subsection.

10       (b) TRANSFER OF AMOUNTS.—Twenty percent of the  
11       unobligated balances, as of the date of the enactment of  
12       this Act, of amounts made available for “DEPARTMENT OF  
13       COMMERCE—BUREAU OF INDUSTRY AND SECURITY—OP-  
14       ERATIONS AND ADMINISTRATION” account for fiscal year  
15       2022 shall be transferred to and merged with amounts  
16       otherwise made available to the Defense Technology and  
17       Security Administration for such fiscal year to carry out  
18       subsection (a).

19       (c) PROHIBITION ON TRANSFER OF CERTAIN SENIOR  
20       EXECUTIVE SERVICE POSITIONS.—

21           (1) IN GENERAL.—Notwithstanding any other  
22       provision of law, beginning on the date of the enact-  
23       ment of this Act, no individual employed in a Senior  
24       Executive Service position related to export control  
25       in Department of Commerce, including the Bureau

1 of Industry and Security, may be permitted to trans-  
2 fer from such position to a position in the Defense  
3 Technology and Security Administration of the De-  
4 partment of Defense.

5 (2) SENIOR EXECUTIVE SERVICE POSITION DE-  
6 FINED.—In this subsection, the term “Senior Execu-  
7 tive Service position” has the meaning given that  
8 term in section 3132(a)(2) of title 5, United States  
9 Code.

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