

AMENDMENT TO RULES COMMITTEE PRINT 118-

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OFFERED BY MRS. KIGGANS OF VIRGINIA

At the end of subtitle C of title XVIII, add the following:

1 SEC. 1859. ENVIRONMENTAL REVIEWS FOR CERTAIN SEMI-
2 CONDUCTOR ACTIVITIES.

3 Section 9909 of the William M. (Mac) Thornberry
4 National Defense Authorization Act for Fiscal Year 2021
5 (15 U.S.C. 4659) is amended by adding at the end the
6 following:

7 “(c) AUTHORITY RELATING TO ENVIRONMENTAL
8 REVIEW.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of law, none of the following shall be con-
11 sidered to be a major Federal action under NEPA
12 or an undertaking for the purposes of division A of
13 subtitle III of title 54, United States Code:

14 “(A) The provision by the Secretary of any
15 Federal financial assistance for a project de-
16 scribed in section 9902, if—

17 “(i) the covered activity described in
18 the application for that project has com-

1 menced before the date on which the Sec-
2 retary provides that assistance;

3 “(ii) the facility that is the subject of
4 the project is on or adjacent to a site—

5 “(I) that is owned or leased by
6 the covered entity to which Federal fi-
7 nancial assistance is provided for that
8 project; and

9 “(II) on which the covered entity
10 described in subclause (I) has carried
11 out substantially similar construction,
12 expansion, or modernization such that
13 the facility would not more than dou-
14 ble existing developed acreage or sup-
15 porting infrastructure;

16 “(iii) the Secretary determines, in the
17 sole discretion of the Secretary, that the
18 laws and regulations governing environ-
19 mental reviews in the State in which the
20 facility that is the subject of the project is
21 or will be located are functionally equiva-
22 lent to the requirements under NEPA;

23 “(iv) the Federal financial assistance
24 provided is in the form of a loan or loan
25 guarantee; or

1 “(v) the Federal financial assistance
2 provided, excluding any loan or loan guar-
3 antee, comprises less than 15 percent of
4 the total estimated cost of the project.

5 “(B) The provision by the Secretary of De-
6 fense of any Federal financial assistance relat-
7 ing to—

8 “(i) the creation, expansion, or mod-
9 ernization of one or more facilities de-
10 scribed in the second sentence of section
11 9903(a)(1); or

12 “(ii) carrying out section 9903(b).

13 “(C) Any activity relating to carrying out
14 section 9906.

15 “(2) SAVINGS CLAUSE.—Nothing in this sub-
16 section may be construed as altering whether an ac-
17 tivity described in subparagraph (A), (B), or (C) of
18 paragraph (1) is considered to be a major Federal
19 action under NEPA, or an undertaking under divi-
20 sion A of subtitle III of title 54, United States Code,
21 for a reason other than that the activity is eligible
22 for funding provided under this title.

23 “(d) LEAD FEDERAL AGENCY AND COOPERATING
24 AGENCIES.—

1 “(1) DEFINITION.—In this subsection, the term
2 ‘lead agency’ has the meaning given the term in sec-
3 tion 111 of NEPA.

4 “(2) OPTION TO SERVE AS LEAD AGENCY.—
5 With respect to a covered activity that is a major
6 Federal action under NEPA, the Department of
7 Commerce shall have the first right to serve as the
8 lead agency with respect to that covered activity
9 under NEPA.

10 “(3) COOPERATING AGENCY.—The Secretary
11 may designate any Federal, State, Tribal, or local
12 agency as a cooperating agency with respect to a
13 covered activity for which the Department of Com-
14 merce serves as the lead agency under paragraph
15 (1), if the applicable agency has—

16 “(A) the jurisdiction to issue an authoriza-
17 tion or take action for or relating to that cov-
18 ered activity; or

19 “(B) special expertise with respect to that
20 covered activity.

21 “(4) ENVIRONMENTAL DOCUMENTS.—

22 “(A) SINGLE DOCUMENT.—All authoriza-
23 tions relating to a covered activity shall rely on
24 a single environmental document and joint
25 record of decision prepared by the lead agency

1 with respect to that covered activity for the pur-
2 poses of NEPA.

3 “(B) INCLUSION.—An environmental docu-
4 ment and joint record of decision described in
5 subparagraph (A) shall—

6 “(i) rely on any comments, analysis,
7 proposals, or documentation developed by
8 cooperating agencies designated under
9 paragraph (3); and

10 “(ii) provide all authorizations nec-
11 essary for the applicable covered activity as
12 if any cooperating agency designated under
13 paragraph (3) had issued an environmental
14 document and joint record of decision.

15 “(e) ADOPTION OF CATEGORICAL EXCLUSIONS.—

16 “(1) ESTABLISHMENT OF CATEGORICAL EXCLU-
17 SIONS.—Each of the following categorical exclusions
18 is established for the National Institute of Standards
19 and Technology and, beginning on the date of enact-
20 ment of this subsection, is available for use by the
21 Director of the National Institute of Standards and
22 Technology (referred to in this subsection as the ‘Di-
23 rector’):

24 “(A) Categorical exclusion 17.04.d (relat-
25 ing to the acquisition of machinery and equip-

1 ment) in the document entitled ‘EDA Program
2 to Implement the National Environmental Pol-
3 icy Act of 1969 and Other Federal Environ-
4 mental Mandates As Required’ (Directive No.
5 17.02–2; effective date October 14, 1992).

6 “(B) Categorical exclusion A9 in Appendix
7 A to subpart D of part 1021 of title 10, Code
8 of Federal Regulations, or any successor regula-
9 tion.

10 “(C) Categorical exclusions B1.24, B1.31,
11 B2.5, and B5.1 in Appendix B to subpart D of
12 part 1021 of title 10, Code of Federal Regula-
13 tions, or any successor regulation.

14 “(D) The categorical exclusions described
15 in paragraphs (4) and (13) of section 50.19(b)
16 of title 24, Code of Federal Regulations, or any
17 successor regulation.

18 “(E) Categorical exclusion (c)(1) in Appen-
19 dix B to part 651 of title 32, Code of Federal
20 Regulations, or any successor regulation.

21 “(F) Categorical exclusions A2.3.8 and
22 A2.3.14 in Appendix B to part 989 of title 32,
23 Code of Federal Regulations, or any successor
24 regulation.

1 “(G) Any other categorical exclusion
2 adopted by another Federal agency that the
3 Secretary determines would accelerate the com-
4 pletion of a covered activity if the categorical
5 exclusion were available to the Director.

6 “(2) SUBSEQUENT CHANGES.—In any proce-
7 dure implementing NEPA on or after the date of en-
8 actment of this subsection, the Director may update,
9 amend, revise, or remove any categorical exclusion
10 established under paragraph (1).

11 “(3) SCOPE OF REVIEW.—The application of
12 any categorical exclusion established under para-
13 graph (1), as the categorical exclusion may be up-
14 dated, amended, or revised under paragraph (2),
15 shall not be subject to evaluation for extraordinary
16 circumstances under section 1501.4(b) of title 40,
17 Code of Federal Regulations, or any successor regu-
18 lation.

19 “(f) INCORPORATION OF PRIOR PLANNING DECI-
20 SIONS.—

21 “(1) DEFINITION.—In this subsection, the term
22 ‘prior studies and decisions’ means baseline data,
23 planning documents, studies, analyses, decisions,
24 and documentation that a Federal agency has com-
25 pleted for a project (or that have been completed

1 under the laws and procedures of a State or Indian
2 Tribe), including for determining the reasonable
3 range of alternatives for that project.

4 “(2) RELIANCE ON PRIOR STUDIES AND DECI-
5 SIONS.—In completing an environmental review
6 under NEPA for a covered activity, the Secretary
7 may consider and, as appropriate, rely on or adopt
8 prior studies and decisions, if the Secretary deter-
9 mines that—

10 “(A) those prior studies and decisions meet
11 the standards for an adequate statement, as-
12 sessment, or determination under applicable
13 procedures of the Department of Commerce im-
14 plementing the requirements of NEPA;

15 “(B) in the case of prior studies and deci-
16 sions completed under the laws and procedures
17 of a State or Indian Tribe, those laws and pro-
18 cedures are of equal or greater rigor than those
19 of each applicable Federal law, including
20 NEPA, implementing procedures of the Depart-
21 ment of Commerce; or

22 “(C) if applicable, the prior studies and de-
23 cisions are informed by other analysis or docu-
24 mentation that would have been prepared if the

1 prior studies and decisions were prepared by
2 the Secretary under NEPA.

3 “(g) NEPA ASSIGNMENT.—

4 “(1) ASSUMPTION OF RESPONSIBILITY.—

5 “(A) WRITTEN AGREEMENT.—

6 “(i) IN GENERAL.—Subject to the
7 other provisions of this section, with the
8 written agreement of the Secretary and a
9 State, which may be in the form of a
10 memorandum of understanding, the Sec-
11 retary may assign, and the State may as-
12 sume, the responsibilities of the Secretary
13 with respect to 1 or more covered activities
14 within the State under NEPA.

15 “(ii) REQUIREMENTS.—A written
16 agreement between the Secretary and a
17 State under clause (i) shall—

18 “(I) be executed by the governor
19 of the State;

20 “(II) provide that the State—

21 “(aa) agrees to assume all
22 or part of the responsibilities of
23 the Secretary described in that
24 clause;

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“(bb) expressly consents, on behalf of the State, to accept the jurisdiction of the courts of the United States with respect to compliance with, the discharge of, and the enforcement of any responsibility of the Secretary assumed by the State;

“(cc) certifies that there are laws of the State, including regulations, in effect that—

“(AA) authorize the State to take the actions necessary to carry out the responsibilities being assumed by the State; and

“(BB) are comparable to section 552 of title 5, United States Code, including by providing that any decision regarding the public availability of a document under those laws of the State may be reviewed by a

1 court of competent jurisdic-
2 tion; and

3 “(dd) agrees to make avail-
4 able the financial resources nec-
5 essary to carry out the respon-
6 sibilities being assumed by the
7 State;

8 “(III) require the State to pro-
9 vide to the Secretary any information
10 that the Secretary reasonably con-
11 siders necessary to ensure that the
12 State is adequately carrying out the
13 responsibilities being assumed by the
14 State; and

15 “(IV) be renewable.

16 “(B) ADDITIONAL RESPONSIBILITY.—If a
17 State assumes responsibility under subpara-
18 graph (A), the Secretary may assign to the
19 State, and the State may assume, all or part of
20 the responsibilities of the Secretary for environ-
21 mental review, consultation, or other action re-
22 quired under any Federal environmental law
23 pertaining to the review or approval of a cov-
24 ered activity.

1 “(C) PROCEDURAL AND SUBSTANTIVE RE-
2 QUIREMENTS.—A State shall assume responsi-
3 bility under this subsection subject to the same
4 procedural and substantive requirements as
5 would apply if that responsibility were carried
6 out by the Secretary.

7 “(D) FEDERAL RESPONSIBILITY.—Any re-
8 sponsibility of the Secretary not explicitly as-
9 sumed by a State by written agreement under
10 this subsection shall remain the responsibility of
11 the Secretary.

12 “(E) NO EFFECT ON AUTHORITY.—Noth-
13 ing in this subsection preempts or interferes
14 with any power, jurisdiction, responsibility, or
15 authority of an agency, other than the Depart-
16 ment of Commerce, under applicable law (in-
17 cluding regulations) with respect to a project.

18 “(2) STATE PARTICIPATION.—The Secretary
19 may develop an application for a State to assume re-
20 sponsibility under paragraph (1), at such a time and
21 containing such information as the Secretary deter-
22 mines appropriate.

23 “(3) SELECTION CRITERIA.—The Secretary
24 may approve the application of a State to assume re-
25 sponsibility under this subsection only if—

1 “(A) the Secretary determines that the
2 State has the capability, including financial and
3 with respect to personnel, to assume the respon-
4 sibility; and

5 “(B) the governor of the State has entered
6 into the written agreement with the Secretary
7 required under paragraph (1)(A).

8 “(4) LIMITATIONS ON AGREEMENTS.—Nothing
9 in this subsection permits a State to assume any
10 rulemaking authority of the Secretary under any
11 Federal law.

12 “(5) AUDITS.—To ensure compliance by a
13 State (including compliance by the State with all
14 Federal laws for which responsibility is assumed
15 under paragraph (1)(B)), for each State partici-
16 pating in the program under this subsection, the
17 Secretary shall—

18 “(A) conduct annual audits for each year
19 of State participation;

20 “(B) not later than 180 days after the
21 date on which the agreement between the Sec-
22 retary and the State is executed, meet with the
23 State to review implementation of the agree-
24 ment and discuss plans for the first annual
25 audit required under subparagraph (A); and

1 “(C) ensure that the time period for com-
2 pleting an audit under subparagraph (A), from
3 initiation to completion, does not exceed 180
4 days.

5 “(h) JUDICIAL REVIEW.—

6 “(1) IN GENERAL.—Subject to paragraph (2),
7 nothing in this section shall affect whether any final
8 Federal agency action may be reviewed in a court of
9 the United States or of any State.

10 “(2) EFFICIENCY OF CLAIMS.—

11 “(A) STATUTE OF LIMITATIONS.—Not-
12 withstanding any other provision of law, and ex-
13 cept as provided in subparagraph (B), a claim
14 arising under Federal law seeking judicial re-
15 view of Federal financial assistance provided
16 under this title, or with respect to any author-
17 ization issued or denied under NEPA by the
18 Secretary for a covered activity, shall be barred
19 unless the claim is filed not later than 150 days
20 after the date on which the Secretary publishes
21 a notice in the Federal Register announcing
22 that, as applicable—

23 “(i) the Secretary has approved the
24 application for such Federal financial as-
25 sistance;

1 “(ii) the Secretary has issued that au-
2 thorization; or

3 “(iii) the Secretary has denied that
4 authorization.

5 “(B) EXCEPTION.—Subparagraph (A)
6 shall not apply if a shorter deadline than the
7 applicable deadline under that subparagraph is
8 specified in the Federal law under which judi-
9 cial review is allowed.

10 “(i) USE OF APPROPRIATED FUNDS.—To carry out
11 the activities under subsections (e) through (g), the Sec-
12 retary may use amounts made available to the Secretary
13 under section 102(a)(2)(B)(ii) of the CHIPS Act of 2022
14 (15 U.S.C. 4651 note).

15 “(j) DEFINITIONS.—In this section:

16 “(1) COVERED ACTIVITY.—The term ‘covered
17 activity’ means any activity relating to the construc-
18 tion, expansion, or modernization of a facility, the
19 investment in which is eligible for Federal financial
20 assistance under section 9902, 9903, or 9906.

21 “(2) NEPA.—The term ‘NEPA’ means the Na-
22 tional Environmental Policy Act of 1969 (42 U.S.C.
23 4321 et seq.).”.

