

**AMENDMENT TO H.R. 8070**  
**OFFERED BY MRS. KIGGANS OF VIRGINIA**

At the appropriate place in title XVII, insert the following:

1 **SEC. \_\_\_\_ . SEMICONDUCTOR PROGRAM.**

2 Title XCIX of division H of the William M. (Mac)  
3 Thornberry National Defense Authorization Act for Fiscal  
4 Year 2021 (15 U.S.C. 4651 et seq.) is amended—

5 (1) in section 9902 (15 U.S.C. 4652)—

6 (A) by redesignating subsections (h) and  
7 (i) as subsections (i) and (j), respectively; and

8 (B) by inserting after subsection (g) the  
9 following:

10 “(h) AUTHORITY RELATING TO ENVIRONMENTAL  
11 REVIEW.—

12 “(1) IN GENERAL.—Notwithstanding any other  
13 provision of law, the provision by the Secretary of  
14 Federal financial assistance for a project described  
15 in this section that satisfies the requirements under  
16 subsection (a)(2)(C)(i) of this section shall not be  
17 considered to be a major Federal action under the  
18 National Environmental Policy Act of 1969 (42  
19 U.S.C. 4321 et seq.) (referred to in this subsection

1 as ‘NEPA’) or an undertaking for the purposes of  
2 division A of subtitle III of title 54, United States  
3 Code, if—

4 “(A) the activity described in the applica-  
5 tion for that project has commenced not later  
6 than December 31, 2024;

7 “(B) the Federal financial assistance pro-  
8 vided is in the form of a loan or loan guarantee;  
9 or

10 “(C) the Federal financial assistance pro-  
11 vided, excluding any loan or loan guarantee,  
12 comprises not more than 10 percent of the total  
13 estimated cost of the project.

14 “(2) EFFECTIVE DATE.—This subsection is ef-  
15 fective upon enactment of this Act and shall apply  
16 to any pending, ongoing, or completed review under  
17 NEPA to any activity described in subparagraph  
18 (A), (B), or (C) of paragraph (1).

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

1 for Federal financial assistance provided under this  
2 section.”; and

3 (2) in section 9909 (15 U.S.C. 4659), by add-  
4 ing at the end the following:

5 “(c) LEAD FEDERAL AGENCY AND COOPERATING  
6 AGENCIES.—

7 “(1) DEFINITION.—In this subsection, the term  
8 ‘lead agency’ has the meaning given the term in sec-  
9 tion 111 of NEPA (42 U.S.C. 4336e).

10 “(2) OPTION TO SERVE AS LEAD AGENCY.—  
11 With respect to a covered activity that is a major  
12 Federal action under NEPA, and with respect to  
13 which the Department of Commerce is authorized or  
14 required by law to issue an authorization or take ac-  
15 tion for or relating to that covered activity, the De-  
16 partment of Commerce shall have the first right to  
17 serve as the lead agency with respect to that covered  
18 activity under NEPA.

19 “(d) CATEGORICAL EXCLUSIONS.—

20 “(1) ESTABLISHMENT OF CATEGORICAL EXCLU-  
21 SIONS.—Each of the following categorical exclusions  
22 is established for the National Institute of Standards  
23 and Technology with respect to a covered activity  
24 and, beginning on the date of enactment of this sub-

1 section, is available for use by the Secretary with re-  
2 spect to a covered activity:

3 “(A) Categorical exclusion 17.04.d (relat-  
4 ing to the acquisition of machinery and equip-  
5 ment) in the document entitled ‘EDA Program  
6 to Implement the National Environmental Pol-  
7 icy Act of 1969 and Other Federal Environ-  
8 mental Mandates As Required’ (Directive No.  
9 17.02–2; effective date October 14, 1992).

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

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

18 “(D) The categorical exclusions described  
19 in paragraphs (4) and (13) of section 50.19(b)  
20 of title 24, Code of Federal Regulations, or any  
21 successor regulation.

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

1           “(F) Categorical exclusions A2.3.8 and  
2           A2.3.14 in Appendix B to part 989 of title 32,  
3           Code of Federal Regulations, or any successor  
4           regulation.

5           “(2) ADDITIONAL CATEGORICAL EXCLU-  
6           SIONS.—Notwithstanding any other provision of law,  
7           each of the following shall be treated as a category  
8           of action categorically excluded from the require-  
9           ments relating to environmental assessments and en-  
10          vironmental impact statements under section 1501.4  
11          of title 40, Code of Federal Regulations, or any suc-  
12          cessor regulation:

13           “(A) The provision by the Secretary of any  
14          Federal financial assistance for a project de-  
15          scribed in section 9902, if the facility that is  
16          the subject of the project is on or adjacent to  
17          a site—

18           “(i) that is owned or leased by the  
19          covered entity to which Federal financial  
20          assistance is provided for that project; and

21           “(ii) on which, as of the date on which  
22          the Secretary provides that Federal finan-  
23          cial assistance, substantially similar con-  
24          struction, expansion, or modernization is  
25          being or has been carried out, such that

1 the facility would not more than double ex-  
2 isting developed acreage or on-site sup-  
3 porting infrastructure.

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

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

11 “(ii) carrying out section 9903(b), as  
12 in effect on the date of enactment of this  
13 subsection.

14 “(C) Any activity undertaken by the Sec-  
15 retary relating to carrying out section 9906, as  
16 in effect on the date of enactment of this sub-  
17 section.

18 “(e) INCORPORATION OF PRIOR PLANNING DECI-  
19 SIONS.—

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

1 Tribe), including for determining the reasonable  
2 range of alternatives for that project.

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

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

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

21 “(C) if applicable, the prior studies and de-  
22 cisions are informed by other analysis or docu-  
23 mentation that would have been prepared if the  
24 prior studies and decisions were prepared by  
25 the Secretary under NEPA.

1 “(f) DEFINITIONS.—In this section:

2 “(1) COVERED ACTIVITY.—The term ‘covered  
3 activity’ means any activity relating to the construc-  
4 tion, expansion, or modernization of a facility, the  
5 investment in which is eligible for Federal financial  
6 assistance under section 9902 or 9906.

7 “(2) NEPA.—The term ‘NEPA’ means the Na-  
8 tional Environmental Policy Act of 1969 (42 U.S.C.  
9 4321 et seq.).”.

