

**Section-by-Section  
Amendment in the Nature  
Of a Substitute to H.R. 4200**

**FOREST EMERGENCY RECOVERY AND RESEARCH ACT**

**SECTION BY SECTION ANALYSIS**

**Sec. 1: Short Title and Table of Contents.**

**Sec. 2: Findings.**

**Sec. 3: Definitions.**

(Includes key definitions only.)

**(1) Burned area emergency response**—process used by Secretary to plan and implement emergency stabilization actions on Federal land.

**(2) Catastrophic Event**—any natural disaster that the Secretary determines caused or will cause significant damage on Federal or non-Federal land (Title II).

**(3) Catastrophic Event Recovery**—

(A) for fire on Federal land—rehabilitation and restoration, other than emergency stabilization.

(B) if not fire—emergency stabilization, rehabilitation, restoration undertaken on Federal land.

(C) Reforestation or revegetation of damaged Federal land in response to catastrophic event (consistent with applicable management plan). Calls for use of native or beneficial plants to avoid creation of plantation forests.

**(4) Catastrophic Event Recovery Evaluation**—evaluation of damaged Federal land damaged by a catastrophic event conducted in accordance with Sec. 102.

**(5) Catastrophic Event Recovery Proposal**—list and brief description of catastrophic event recovery projects, catastrophic research projects, and pre-approved management practices that—

(A) are identified as part of an evaluation (Federal land); and

(B) proposed to be undertaken for a recovery (Federal land) or evaluate the effects of such recovery efforts.

**(6) Catastrophic Event Recovery Project**—on Federal land. Activity(ies) identified in a proposal and proposed to be taken in response to an event to promote recovery.

**(7) Catastrophic Event Research Project**—scientifically designed study of the effects and effectiveness of—

- (A) any recovery projects (Federal land) undertaken in an area of land damaged by an event; and
- (B) emergency stabilization treatments undertaken as part of a burned area emergency response in an area of a catastrophic event.

**(10) Federal Land**—National Forest System and Bureau of Land Management Land. Excludes Wilderness areas and National Monuments.

**(14) Landscape assessment**—assessment describing catastrophic event conditions and recovery needs and opportunities on non-Federal land. Includes a list of proposed special recovery projects to address those needs and opportunities.

**(16) Pre-approved Management Practice**—practice identified under Sec 104(a) that may be immediately implemented as part of a catastrophic event recovery project or catastrophic event research project to facilitate the catastrophic event recovery of an area of Federal land.

**(18) Special Recovery Project**—activity(ies) proposed to be undertaken to rehabilitate, repair, and restore non-Federal lands.

## **TITLE I—RESPONSE TO CATASTROPHIC EVENTS ON FEDERAL LANDS**

### **Sec. 101: Development of Research Protocols and Use in Catastrophic Event Research Projects.**

- (a) Directs the Secretary to develop research protocols in order to conduct catastrophic event recovery and emergency stabilization treatments. The objective of the protocols is to increase the long-term benefits of management activities and decrease short-term impacts of the catastrophic event.
- (b) Requires independent third-party peer review of protocols under subsection (a).
- (c) Provides that research protocols be submitted to Congress 180 days after the date of enactment.
- (d) Authorizes the Secretary to conduct catastrophic event research project(s) on land damaged by a catastrophic event.
- (e) Requires the Secretary to make the protocols and the resulting research available to the public.
- (f) Directs the Secretary to enter into cooperative agreements with land-grant colleges and other institutions to form forest heath partnerships to address catastrophic event recovery on forested land.

### **Sec. 102: Catastrophic Event Recovery Evaluations.**

- (a) Catastrophic events over 1,000 acres—Sec. 102 requires a catastrophic event recovery evaluation (evaluation). Catastrophic events of more than 250 acres but less than 1,000 acres—Sec. 102 authorizes, but does not require an evaluation.

- (b) Directs the Secretary to commence evaluation as soon as practicable, but no later than 30 days after the conclusion of a catastrophic event on more than 1,000 A. The Secretary has 30 days to make a final decision to make an evaluation and to commence the evaluation after the conclusion of a catastrophic event that affects between 250 A and 1,000 A.
- (c) Requires the completion of an evaluation not later than 30 days after the date on which the Secretary commenced the evaluation. Permits the Secretary to extend the completion date a single time for not longer than 60 days.
- (d) Lists the required elements of an evaluation.
- (e) In addition to the required list, directs the Secretary to make a determination in the evaluation of whether or not to use any pre-approved management practices under Sec. 104 or the emergency procedures under Sec. 105. The Secretary has sole discretion for the determination, but is required to notify and may consult with the Council on Environmental Quality.
- (f) Requires the Secretary to use an interdisciplinary approach ensuring the use of both natural and social sciences.
- (g) Permits the Secretary to coordinate an evaluation with the preparation of landscape assessments for non-Federal land in the vicinity of the Federal land.
- (h) Directs the Secretary to facilitate public collaboration among State and local governments, Indian tribes, land-grants, and interested persons during preparation of an evaluation.
- (i) Directs the Secretary to provide public notice of each evaluation, including the catastrophic event recovery proposal prepared as part of the evaluation. The Secretary shall also provide notice of public meetings.

**Sec. 103: Compliance with the National Environmental Policy Act.**

- (a) Requires Secretary to comply with the National Environmental Policy Act (NEPA), except as provided in subsection (b).
  - (b) Deems the preparation and use of pre-approved management practices under Sec. 104 and the use of emergency procedures under Sec. 105 to satisfy NEPA.
- (NOTE: The decision documents required in Section 104 and 105 must have an analysis of the environmental effects and how these effects would be mitigated or minimized.)

**Sec. 104: Availability and Use of Pre-Approved Management Practices.**

- (a) Directs the Secretary to prepare a list of management practices that may be immediately implemented as part of a catastrophic event recovery project or catastrophic event research project to rehabilitate the affected land. (Note: The list shall be prepared using the APA.)
- (b) Requires that pre-approved management practices be subject to by an independent, third party peer review.
- (c) Permits the Secretary to amend or revise the list as necessary, under the requirements of subsections (a) and (b).
- (d) Lists practices that may not be used as pre-approved management practices. The list includes permanent road construction and certain timber harvesting.

- (e) For compliance with consultation under the Endangered Species Act, the Secretary may use emergency procedures as provided under ESA regulations. Consultation required under other laws (such as the National Historic Preservation Act or the Federal Water Pollution Control Act) may proceed simultaneously with the implementation of the pre-approved management practice. Results of the consultation must be immediately incorporated into the project. No laws are exempted.
- (f) Requires the Secretary to issue a decision document within 30 days from the date the Secretary makes the determination to use pre-approved management practice in an evaluation.
- (g) Requires the Secretary to implement a pre-approved management practice immediately after the issuance of a decision document. This requirement is subject only to the availability of funds for the practice.
- (h) Authorizes the Secretary to establish a third-party group to monitor implementation of the pre-approved management practice.

#### **Sec. 105. Availability and Use of Emergency Procedures.**

- (a) Provides that the Secretary is not required to study, develop, or describe more than the proposed agency action and the alternative of no action in designing the project that emergency procedures are required. Note: This is, of course, linked to a determination by Secretary in the evaluation to use emergency procedures.
- (b) Lists practices for which emergency procedures may not be used. The list includes permanent road construction and certain timber harvesting.
- (c) Provides for the same ESA consultation as Sec. 104.
- (d) Requires the Secretary to complete the emergency procedures for a project and issue a decision document within 90 days from the date the Secretary makes the determination to use emergency procedures in an evaluation.
- (e) Requires the Secretary to implement the project for which the emergency procedures are used immediately after the issuance of the decision document under subsection (d).
- (f) Authorizes the Secretary to establish a third-party group to monitor recovery projects or research projects for which emergency procedures were used.

#### **Sec. 106. Administrative and Judicial Review.**

- (a) Provides that except as provided for in Section 106 (b), nothing in this title affects APA procedures.
- (b) Requires the Secretary of Agriculture to promulgate interim final regulations to establish a pre-decisional administrative review process to serve as the sole means for notice and comment for proposed use of pre-approved management practice and projects using emergency procedures. Provides that a person may seek administrative review of the propose use of pre-approved management practices and project for which emergency procedures were used.
- (c) Provides that HFRA shall apply for judicial review process after administrative review has been exhausted.

### **Sec. 107. Guidance Regarding Reforestation in Response to Catastrophic Events.**

Requires the Secretary to standardize the collection and reporting of reforestation needs in response to catastrophic events through guidance consistent with agency goals and budget. Also, this section requires the Secretary to clarify agency wide guidance regarding reforestation and recovery objectives. Such standardization and clarification shall be done within 180 days.

### **Sec. 108. Effect of Title.**

- (a) Provides that nothing in Title I affects the Secretary's use of other statutory or administrative authorities, including categorical exclusions under NEPA, to conduct a catastrophic event recovery project or catastrophic event research project, that is not conducted under emergency procedures (Section 105).
- (b) Authorizes the Secretary may give preference to local operators for projects/contracts authorized in this bill.
- (c) Provides that the Federal Advisory Committee Act shall not apply to the peer review (Section 101 (b)), the monitoring process (Section 104(h) or 105 (f)) or the preparation of a catastrophic event recovery or research evaluation.

### **Sec. 109. Standards for Tree Retention.**

- (a) Directs the Secretary to ensure that guidelines in the applicable land and resource management plans are applied in planning and conducting recovery and research projects. Further directs Secretary to ensure that standing dead trees and down wood are retained when the management plan does not provide guidelines for their retention.
- (b) Subsection (a) does not apply when science from land-grants or Forest Service Research Stations provides more appropriate guidelines for a particular project.
- (c) Authorizes the Secretary to amend land and resource management plans to incorporate dead trees and wood retention guidelines.

## **TITLE II—RESTORING LANDSCAPES AND COMMUNITIES IMPACTED BY CATASTROPHIC EVENTS**

### **Subtitle A—Cooperative Forestry Assistance Act of 1978**

#### **Sec. 201. Assistance Under Cooperative Forestry Assistance Act of 1978 to Restore Landscapes and Communities Affected by Catastrophic Events.**

- (a) Amends the Cooperative Forestry Assistance Act of 1978 to authorize the Secretary of Agriculture to cooperate with an eligible entity at its request on a landscape assessment on non-federal land affected by a catastrophic event or for a community wildfire protection plan. The Secretary must make a decision within 30 days of receiving the request. The Secretary may provide both technical and financial cost-share assistance as

well as assistance for community wildfire protection plans, landscape assessments and special recovery projects.

#### **Subtitle B—Department of the Interior Assistance**

##### **Sec. 211. Restoring Landscapes.**

(a) Authorizes the Secretary of the Interior to cooperate with an eligible entity at its request on a landscape assessment on non-federal land affected by a catastrophic event or for a community wildfire protection plan. The Secretary must make a decision within 30 days of receiving the request. The Secretary may provide both technical and financial cost-share assistance as well as assistance for community wildfire protection plans, landscape assessments and special recovery projects.

#### **TITLE III—EXPERIMENTAL FORESTS**

##### **Sec. 301. Findings.**

##### **Sec. 302. Availability and Use of Pre-Approved Management Practices on National Forest Experimental Forests.**

Authorizes the use of pre-approved management practices on experimental forests.

##### **Sec. 303. Availability and Use of Emergency Procedures for Projects on National Forest Experimental Forests.**

Authorizes the use of emergency procedures in experimental forests.

#### **TITLE IV—GENERAL PROVISIONS**

##### **Sec. 401. Regulations.**

Except as provides in section 106(b) (pre-decisional appeals process), the Secretary is not required to promulgate regulations to implement this Act.

##### **Sec. 402. Dedicated Source of Funds for Research and Monitoring.**

- (a) Directs the Secretary of the Treasury to establish a special account for both the Secretary of Agriculture and the Secretary of the Interior.
- (b) Provides that ten percent of the gross proceeds from recovery projects and research projects shall be deposited in the special accounts and remain available.
- (c) Provides that funds from the special accounts shall be used to develop research protocols under Sec. 101, prepare and implement research projects, and to provide monitoring under sections 104 and 105.
- (d) Provides that funds in the special accounts are in addition to other amounts available to each Secretary for these purposes.

**Sec. 403. Other Funding Sources.**

Additionally, the Knutson-Vandenberg Fund the Forest Service Salvage Fund, and the BLM's Revolving Fund Derived from Disposal of Salvage Timber are amended to allow the agencies the flexibility to use those funds for pre-approved management practices and post catastrophic event recovery and research projects.

**Sec. 404. Effect of Declaration of Major Disaster or Emergency.**

Authorizes the Director of FEMA to use funds from the Stafford Act to reimburse the Secretary for activities carried out under Title II.