

SECTION-BY-SECTION ANALYSIS OF AMENDMENT IN THE NATURE OF A SUBSTITUTE
H.R. 2936, THE RESILIENT FEDERAL FORESTS ACT OF 2017

Section 1. Short title; Table of contents.

Section 1 is the short title – the Resilient Federal Forests Act of 2017 – and the table of contents.

Section 2. Definitions.

Section 2 provides the relevant definitions for the bill.

Section 3. Rule of application for National Forest System Lands and Public Lands.

Section 3 is a rule of application, limiting the application of the bill’s provision to National Forest or public lands that are not in the National Wilderness Preservation System, within an inventoried roadless area (unless the forest management activity is consistent with the applicable forest plan or allowed under the applicable roadless rule, or land on which timber harvest is prohibited by Federal law.

Title I—Expedited Environmental Analysis and Availability of Categorical Exclusions to Expedite Forest Management Activities

Subtitle A—Analysis of Proposed Collaborative Forest Management Activities

Section 101. Analysis of only two alternatives (action versus no action) in proposed collaborative forest management activities.

Section 101 provides that whenever the Secretary prepares an environmental assessment (EA) or environmental impact statement (EIS) under NEPA for a proposed management activity that was developed through a collaborative process or resource advisory committee (RAC) and which will occur on lands identified as suitable for timber production, lands designated as part of an insect and disease treatment program, or lands covered by a community wildfire protection, the Secretary may only analyze two alternatives.

The first of the alternatives is a forest management activity or “action alternative”; which is the project proposed by a collaborative process, or RAC on lands designated as suitable for timber production, or as part of a Community Wildfire Protection Act (CWPP). The second is the “no action” alternative”; in which the Secretary must consider the effect of no action on matters such as forest health, habitat diversity, the potential of increased wildfires, or insect and disease infestation, and timber production as well socioeconomic factors.

Subtitle B—Categorical Exclusions (CE)

Section 111. Categorical exclusion to expedite certain critical response actions.

Subsections (a) and (b) of section 111 authorizes use of CEs for addressing insect and disease infestation, reducing hazardous fuel loads, protecting municipal water sources, improving or enhancing critical habitat, increasing water yield, and producing timber.

Subsection (d) limits the size of the CEs to 10,000 acres. The subsection also allows for treatment units to exceed 10,000, but not more than 30,000, acres if the activity is developed through a collaborative process, proposed by a RAC, or covered by a CWPP.

Section 112. Categorical exclusion to expedite salvage operations in response to catastrophic events.

Subsection (a) of section 112 authorizes the use of CEs for salvage operations carried out by the Secretary.

Subsection (c) limits the size of the CE to 10,000 acres.

Subsection (d) requires that salvage projects protect streams and stream buffers as provided in the forest plan. The subsection further requires the development of a reforestation plan as part of the salvage operation.

Section 113. Categorical exclusion to meet forest plan goals for early successional forests.

Subsections (a) and (b) of section 113 authorize the use of CEs for the modification, improvement, enhancement, or creation of early successional forests for wildlife habitat improvement.

Subsection (d) directs the Secretary to maximize production and regeneration of priority species in the development of a forest management activity conducted under this section.

Subsection (e) limits the size of the CEs to 10,000 acres.

Section 114. Categorical exclusion for road side projects.

Subsection (a) of section 113 authorizes the use of CEs in order to remove hazardous trees and salvage timber to protect public safety, water supply, or public infrastructure.

Subsection (c) clarifies that this section does not apply to lands that are part of the National Preservation System, Federal lands where vegetation removal has been prohibited by Congress, land in a congressionally designated wilderness study area, or activity where the forest management activity would not be consistent with the applicable land management plan. Projects are required to be consistent with applicable land management plans. The subsection further requires public notice and scoping.

Section 115. Categorical exclusion to improve or restore National Forest System lands or public land or reduce the risk of wildfire.

Subsections (a) and (b) of section 115 authorize the use of CEs for certain activities when the purpose of those activities is to improve, restore, or reduce the risk of wildfire on Forest System or public lands.

Subsection (d) limits the size of the CEs to 10,000 acres.

Subsection (e) provides the pertinent definitions.

Subtitle C—General Provisions for Forest Management Activities

Section 121. Compliance with Forest Plans.

Section 121 requires that forest management activities covered by a CE must be consistent with guidance in the Forest Plan.

Section 122. Consultation under the National Historic Preservation Act.

Subsection (a) of section 122 authorizes the Secretary when considering the impacts of a project implemented under a CE provided in the bill, to conduct a phased evaluation of the project and its impacts on historic property without consultation with outside state or Federal agencies.

Subsection (b) provides in cases when consultation with an outside agency under Section 106 of the National Historic Preservation Act is required, the consultation is considered completed and the project may proceed after 90 days.

Section 123. Consultation under the Endangered Species Act.

Subsection (a) of section 123 amends the ESA to remove the requirement for consultation under Section 7 for a project carried out by the FS if the project is found not likely to adversely affect a listed species.

Subsection (b) allows for an expedited consultation where the projects conducted under a CE for which a Section 7 consultation is required, the action is deemed to have complied with the requirements of Section 7 after 90 days.

Section 124. Forest management activities considered non-discretionary actions.

Section 124 declares forest management activities carried out under this Act as non-discretionary for the purposes of implementing the Endangered Species Act.

Title II—Salvage and Reforestation in Response to Catastrophic Events

Section 201. Expedited salvage operations and reforestation activities following large-scale catastrophic events.

Subsection (a) of section 201 requires that EAs for salvage operations or reforestation activities be completed within two months.

Subsection (b) requires at least 75% of the impacted area should be reforested within 5 years, to the maximum extent practicable.

Subsection (c) makes monies available from the Knuston-Vandenberg Fund.

Subsection (d) limits the time available for public input to 30 days for public scoping, 15 days for filing an objection, and 15 days for an agency to respond to an objection. The subsection further directs the Secretary to immediately implement the project upon expiration of the time limits.

Section 202. Compliance with Forest Plan.

Section 202 requires that all projects authorized under this title comply with forest plans.

Section 203. Prohibition of restraining orders, preliminary injunctions, and injunctions pending appeal.

Section 203 prohibits courts from issuing restraining orders, preliminary injunctions, or injunctions pending appeal for activities related to salvage operations or reforestation activities in response to large-scale catastrophic events.

Title III—Forest Management Litigation

Subtitle A—General Litigation Provisions

Section 301. No attorney fees for forest management activity challenges.

Section 301 prohibits awards for fees or expenses paid from the Claims and Judgement Fund established under the Equal Access to Justice Act to any plaintiff challenging a forest management activity carried out under this Act.

Section 302. Injunctive relief.

Subsection (a) of section 302 provides that any court reviewing a Forest Service action must weigh the benefits of taking short-term action against the potential long-term harm of inaction (fire, etc.).

Subsection (b) limits the time period of a preliminary injunction to 60 days. The Subsection further allows injunctions to be renewed an unlimited number of times following updated information provided to the court by the parties in the action.

Subtitle B—Forest Management Activity Arbitration Program

Section 311. Use of arbitration instead of litigation to address challenges to forest management activities.

Subsection (a) of section 311 directs the Secretaries to establish a pilot program to resolve lawsuits filed against a forest management activity. The subsection further provides that a project may be settled through arbitration at the sole discretion of the Secretary. It also limits the maximum number of projects that may be arbitrated to 10 per Forest Service Region.

Subsection (b) requires that a demand for arbitration to be filed within 30 days after the forest management activity was initiated and requires the demand to include a proposed alternative to the forest management activity. The subsection further requires that an intervening party endorse either the forest management activity put forward by the Secretary concerned, the alternative proposal put forward in the demand for arbitration, or their own proposal and allows multiple interveners to join together to submit a joint proposal.

Subsection (c) directs the Secretary concerned to develop a list of 20 or more individuals to serve as arbitrators under this program. It further requires arbitrators under this section be certified by the American Arbitration Association. The subsection directs the Secretary concerned and the objector to agree on a mutually acceptable arbitrator for the case within 14 days. If an agreement is not reached within 14 days, the Secretary concerned may appoint an arbitrator from the list.

Subsection (d) prohibits an appointed arbitrator from modifying proposals. The subsection requires the arbitrator to select the forest management activity proposed by the Forest Service or an alternative proposal submitted with the demand for arbitration of an intervening party taking into account the effects of each option on forest health, habitat diversity, wildfire potential, insect and disease potential, and timber production, among other considerations. It clarifies that the decision of the arbitrator shall not be considered a major Federal action, is binding, and is not subject to further judicial review. The subsection also requires that the arbitration be completed within 90 days after the demand for arbitration is filed.

Title IV—Secure Rural Schools and Community Self-Determination Act Amendments

Section 401. Use of reserved funds for Title II projects on Federal land and certain non-Federal land.

Subsection (a) amends section 204(e) of the Secure Rural Schools and Community Self-Determination Act of 2000 to eliminate the ‘sorting yard’ requirement.

Subsection (b) amends section 204 of the Secure Rural Schools and Community Self-Determination Act of 2000 to require 50% of Title II funds be spent on projects which include sale of forest products and meet land management objectives.

Section 402. Resource Advisory Committees.

Subsection (a) amends section 205(a)(4) of the Secure Rural Schools and Community Self-Determination Act of 2000 to extend Title II Resource Advisory Committee (RAC) functions, membership through FY 2022.

Subsection (b) requires new members to be appointed from within RAC geographic area or charters and allows RAC's to function with reduced membership. RAC's are required to have balanced representation from environmental, industry, and government interests.

Subsection (c) is a conforming amendment.

Subsection (d) adds a requirement for members of the RAC to reside in the county or adjacent county where the RAC has jurisdiction. It further allows for a designee of the Secretary to perform certain functions.

Sec. 403. Program for Title II Self-Sustaining Resource Advisory Committee projects.

Subsection (a) amends Title II of the Secure Rural Schools and Community Self-Determination Act of 2000 by authorizing the Chief of the Forest Service to choose ten RAC's that may retain revenue from projects to fund future projects that accomplish forest management objectives.

Sec. 404. Additional authorized use of Reserved Funds for Title III County Projects.

Section 404 amends section 302(a) of the Secure Rural Schools and Community Self-Determination Act of 2000 to allow search and rescue funding to also be spent on patrols, training, and equipment purchases.

Sec. 405. Treatment as Supplemental Funding.

Subsection (a) of section 405 amends section 102 of the Secure Rural Schools and Community Self-Determination Act of 2000 by adding a new subsection that prohibits funds made available to a beneficiary county or other political subdivision to be used in lieu of or offset State funding sources for local schools, facilities, or educational purposes.

Subsection (b) clarifies that payments shall continue to be made as direct payments.

Title V—Stewardship End Result Contracting

Sec. 501. Cancellation ceilings for stewardship end result contracting projects.

Subsection (a) amends section 604 of the Healthy Forest Restoration Act of 2003—the Stewardship Contracting Authority—so the Forest Service is no longer required to set aside money in the event a stewardship contract is cancelled.

Sec. 502. Excess offset value.

Section 502 amends section 604(g)(2) of the Healthy Forests Restoration Act of 2003 to dictate the use of excess funds in instances in which the value of forest products exceeds the value of the resource improvement treatments to satisfy any outstanding liabilities or other authorized stewardship projects.

Sec. 503. Payment of portion of Stewardship Project revenues to county in which Stewardship Project occurs.

Section 503 amends section 604(e) of the Healthy Forest Restoration Act of 2003. The Forest Service is currently required to cover potential losses in capital expenditures by a contractor in rare cases (such as if there is a significantly extended government shutdown and the contractor cannot operate as a result). This would allow the Forest Service to use funds that were deposited in these accounts for additional project work.

Sec. 504. Submission of existing annual report.

Section 504 amends section 604(j) of the Healthy Forests Restoration Act of 2003 by amending a report required under stewardship contracting authorities.

Sec. 505. Fire liability provision.

Section 505 amends section 604(d) of the Healthy Forest Restoration Act of 2003 to allow a contractor to request a stewardship contract be modified to include fire liability provisions as otherwise provided for in integrated resources timber contracts or timber sale contracts pursuant to NFMA.

Sec. 506. Extension of stewardship contracting maximum term limits.

Section 506 amends section 604

Title VI—Additional Funding Sources for Forest Management Activities

Sec. 601. Definitions.

Section 601 is the definitions section for the purposes of the title.

Sec. 602. Availability of Stewardship Project revenues and Collaborative Forest Landscape Restoration Fund to cover forest management activity planning costs.

Subsection (a) amends section 604 of the Healthy Forests Restoration Act of 2003 to allow the Forest Service to use up to 25% of Stewardship Contracting funds for planning projects. Currently law prohibits the use of funds for planning.

Subsection (b) is a conforming amendment in the Omnibus Public Land Management Act of 2009.

Sec. 603. State-Supported planning of forest management activities.

Subsection (a) establishes the “State-Supported Forest Management Fund,” which allows for state or other entities to contribute funds for forest management activities.

Subsection (b) allows the Fund to consist of amounts that are contributed by an eligible entity, appropriated to the Fund, or generated by forest management activities.

Subsection (c) allows an eligible entity to specify and limit the types of forest management activities for which the contribution may be expended.

Subsection (d) authorizes expenditures from the Fund to plan, carry out, or monitor a forest management activity developed through a collaborative process, proposed by a RAC, on lands identified as suitable.

Subsection (e) allows for the Fund to be used to carry out a project through Stewardship Contracting, good neighbor authority, a timber sale, or other authority available. Revenues generated by the forest management activity shall be used to reimburse the Fund for planning costs covered by the Fund.

Subsection (f) provides that revenue sharing with counties shall apply to revenues generated by activities carried out by the fund. The provisions of Knutson-Vandenberg shall apply to projects carried out using the Fund.

Subsection (g) terminates the Fund’s authority on September 30, 2025. Any unobligated contributions remaining in the fund at termination will be returned to the eligible entity that made the contribution.

Title VII—Tribal Forestry Participation and Protection

Sec. 701. Protection of Tribal forest assets through use of Stewardship End Result Contracting and other authorities.

Subsection (a) amends section 2(b) of the Tribal Forest Protection Act of 2004. Federal land management agencies would have 120 days to respond to Tribal request for forest management on agency lands and two years to complete the analysis.

Subsection (b) includes conforming amendments.

Sec. 702. Management of Indian forest land authorized to include related National Forest System lands and public lands.

Section 702 amends section 305 of the National Indian Forest Resources Management Act to give authority to Indian Tribes to request to conduct forest management activities on Federal lands where they have a Tribal interest. The authority to conduct those activities would come from authorities on Indian lands.

Sec. 703. Tribal Forest Management Demonstration Project.

Section 703 authorizes demonstration projects through which Tribes may contract to perform administrative, management, and other functions of the Tribal Forest Protection Act.

Sec. 704. Rule of Application.

Section 704 clarifies that nothing in this title diminishes or interferes with the authorities or responsibilities of any state to manage fish and wildlife.

Title VIII—Expediting Interagency Consultation

Subtitle A—Forest Plans Not Considered Major Federal Actions

Sec. 801. Forest plans not considered major Federal actions.

Section 801 dictates that the development, maintenance, amendment, or revision of a forest plan is not subject to NEPA.

Subtitle B—Agency Consultation

Sec. 811. Consultation under Forest and Rangeland Renewable Resources Planning Act of 1974.

Subsection (a) amends section 6(d) of the Forest and Rangeland Renewable Resources Planning Act of 1974 to clarify that: (1) Consultation under Section 7 of the Endangered Species Act is not required for an adopted land management plan for species listed, or critical habitat designated, after the adoption of the plan; (2) Consultation under Section 7 of the ESA is still required for projects conducted pursuant to a management plan, and for modifications to a land management plan that would result in a significant change; and (3) for the purposes of implementing ESA a forest management activity carried out pursuant to this Act shall be considered non-discretionary.

Subsection (b) updates the definition of Secretary for the purposes of the Forest and Rangeland Renewable Resources Planning Act of 1974.

Sec. 812. Consultation under Federal Land Policy and Management Act of 1976.

Section 812 amends the Federal Land Policy and Management Act of 1976 to clarify that: (1) Consultation under Section 7 of the Endangered Species Act is not required for an adopted land management plan for species listed, or critical habitat designated, after the adoption of the plan; and (2) Consultation under Section 7 of the ESA is still required for projects conducted pursuant to a management plan, and for modifications to a land management plan that would result in a significant change.

Title IX—Miscellaneous

Subtitle A—Forest Management Provisions

Sec. 901. Clarification of existing Categorical Exclusion authority related to insect and disease infestation.

Section 901 builds upon amendments the Agricultural Act of 2014 made to the Healthy Forests Restoration Act to include Fire Regime IV (Lodgepole pine) in the Insect & Disease Categorical Exclusion included in the Farm Bill. This was inadvertently left out of the original legislation even though Fire Regime I, II, and III were included.

Sec. 902. Revision of alternate consultation agreement regulations.

Section 901 directs the Secretary of the Interior and Secretary of Commerce to promulgate a rule authorizing Federal agencies to enter into alternate consultation agreements that would not require formal or informal consultation under Section 7 of the ESA if an agency action is found not likely to adversely affect a listed species or critical habitat.

Sec. 903. Revision of extraordinary circumstances regulations.

Subsection (a) and (b) direct the Secretary to initiate a rulemaking to clarify that the following project characteristics do not need to be examined as part of determining whether extraordinary circumstances preclude a CE under NEPA: whether a project is within a proposed wilderness area; whether a project impacts a FS sensitive species; the cumulative impact of a project when added to other past, present, and reasonably foreseeable future actions; whether a project may affect, but is not likely to adversely affect, a listed species or designated critical habitat; and whether a project may affect, and is likely to adversely affect, a listed species or designated critical habitat, if the project is in compliance with the applicable provisions of the biological opinion.

Subsection (c) eliminates the requirement to perform an environmental impact statement for all projects that would substantially alter a potential wilderness area.

Subsection (d) requires that the rulemaking be complete within 120 days of enactment.

Sec. 904. Conditions on Forest Service road decommissioning.

Subsection (a) requires that when the Forest Service is considering decommissioning a road in a fire-prone area, the Forest Service shall consult with the local government and consider alternatives before taking final action.

Subsection (b) requires advance approval by the Regional Forester before any road is decommissioned.

Sec. 905. Prohibition on application of Eastside Screens requirements on National Forest System lands.

Subsection (a) eliminates the restriction of the Northwest Forest plan interim management direction that no trees over 21 inches could be cut east of the Cascades in Oregon and Washington states.

Subsection (b) applies the effect of subsection (a) to all National Forest System lands.

Sec. 906. Use of site-specific forest plan amendments for certain projects and activities.

Section 906 allows the Forest Service to amend forest plans as nonsignificant plan amendments in certain instances.

Sec. 907. Knutson-Vandenberg Act modifications.

Subsection (a) amends section 3(a) of the Act of June 9, 1930 to require the Forest Service to use Knutson-Vandenberg authorities for certain purchases.

Subsection (b) allows the use of Knutson-Vandenberg funds on any National Forest within the Forest Service Region. The subsection further prohibits the Secretary to charge Knutson-Vandenberg with overhead costs for forest management projects.

Sec. 908. Application of Northwest Forest Plan Survey and Manage Mitigation Measure Standard and Guidelines.

Section 908 dictates that Northwest Forest Plan Survey and Manage Mitigation Measure Standard and Guidelines shall not apply to any National Forest System lands or public lands.

Sec. 909. Reconstruction and repair included in good neighbor agreements.

Section 909 amends the Agricultural Act of 2014's good neighbor authority to include the construction, reconstruction, repair or restoration of paved or permanent roads, parking areas, public buildings, or public works as allowable services in good neighbor agreements.

Sec. 910. Logging and mechanized operations.

Section 910 amends the Fair Labor Standards Act of 1938 to allow 16 and 17 year olds to participate in a family run mechanized logging operation.

Subtitle B—Oregon and California Railroad Grant Lands and Coos Bay Wagon Road Grant Lands

Sec. 911. Amendments to the Act of August 28, 1937.

The section amends the Act of August 28, 1937 to clarify that the timber produced from Oregon and California and Coos Bay Wagon Roads grant lands should be the greater of 500,000,000 board feet or the annual sustained yield of the lands.

Sec. 912. Oregon and California Railroad grant lands and Coos Bay Wagon Road grant lands permanent rights of access.

Subsection (a) makes rights-of-way established by the Secretary of the Interior on Coos Bay Wagon Road lands permanent and recordable.

Subsection (b) directs the Secretary of the Interior to record the rights-of-way made permanent under part (a) with the county in which they are located within 60 days of the enactment of this Act.

Sec. 913. Management of Bureau of Land Management lands in western Oregon.

Subsection (a) requires certain Oregon BLM lands in the Northwest District, Roseburg District, Coos Bay District, Medford District, and the Klamath Resource Area of the Lakeview District to be managed pursuant to the laws governing the management of the Oregon and California and Coos Bay Wagon Roads grant lands.

Subtitle C—Timber Innovation

Sec. 921. Definitions.

Section 921 provides the relevant definitions for the purposes of the subtitle.

Sec. 922. Clarification of research and development program for wood building construction.

Subsection (a) of section 922 directs the Secretary to conduct performance driven research and development, education, and technical assistance for the purpose of facilitating the use of innovative wood products in wood building construction.

Subsection (b) requires the Secretary to collaborate with the wood products industry, conservation organizations, and institutions of higher education to meet these objectives at the Forest Products Laboratory or through the State and Private Forestry deputy area to achieve

measurable performance goals. The subsection further requires the Secretary to make competitive grants to institutions of higher education to meet these measurable performance goals.

Subsection (c) identifies key priorities that are to be the focus of the research and development, education, and technical assistance to be conducted under the bill, including; commercialization, safety, life cycle environmental footprint, implications on wildlife, and other research areas.

Subsection (d) calls for a timeframe of 5-years to achieve the measurable performance goals called for under the bill.

Title X—Major Disaster for Wildfire on Federal Land

Sec. 1001. Wildfire on Federal lands.

Section 1001 amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act to define a major disaster for wildfire on Federal lands.

Sec. 1002. Declaration of a major disaster for wildfire on Federal lands.

Section 1002 amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act to establish the procedure for requesting a declaration of a major disaster for wildfire on Federal lands and provides for monetary assistance.

Sec. 1003. Prohibition on transfers.

Section 1003 prohibits the transfer of funds between wildfire suppression accounts and other accounts not used to cover the cost of wildfire suppression operations.