

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1586
OFFERED BY MR. LAMALFA OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Forest Protection and
3 Wildland Firefighter Safety Act of 2023”.

**4 SEC. 2. SAFE HARBOR FOR CERTAIN DISCHARGES OF
5 WILDLAND FIRE CHEMICALS.**

6 (a) IN GENERAL.—Subject to subsection (b), no
7 court may enjoin under the Federal Water Pollution Con-
8 trol Act (33 U.S.C. 1251 et seq.) a covered entity from
9 conducting an aerial application of a covered fire retardant
10 and water enhancer for wildfire suppression, control, or
11 prevention activities that results in a discharge, if such
12 aerial application is conducted in accordance with the re-
13 quirements of the Federal Facility Compliance Agreement
14 between the Environmental Protection Agency and the
15 U.S. Forest Service, as agreed to on February 16, 2023.

16 (b) PERIOD OF APPLICATION.—Subsection (a) shall
17 apply to any aerial application described in such sub-
18 section that is conducted before the effective date of a per-

1 mit issued by the Administrator of the Environmental
2 Protection Agency or a State, as applicable, under section
3 402 of the Federal Water Pollution Control Act (33
4 U.S.C. 1342) that authorizes the discharge, from such
5 aerial application, of a covered fire retardant and water
6 enhancer for wildfire suppression, control, or prevention
7 activities.

8 (c) EFFECT.—Nothing in this section affects the au-
9 thority of any court under the Federal Water Pollution
10 Control Act with respect to any discharge resulting from
11 an aerial application not conducted in accordance with the
12 requirements described in subsection (a).

13 (d) DEFINITIONS.—In this section:

14 (1) COVERED ENTITY.—The term “covered en-
15 tity” means—

16 (A) any Federal agency, agency of a State
17 or political subdivision thereof, or Tribal agen-
18 cy, authorized by law to conduct an aerial appli-
19 cation of fire retardants and water enhancers
20 for wildfire suppression, control, or prevention
21 activities; and

22 (B) any contractor, subcontractor, or other
23 agent of an agency described in subparagraph
24 (A).

1 (2) COVERED FIRE RETARDANT AND WATER
2 ENHANCER.—The term “covered fire retardant and
3 water enhancer” means a fire retardant and water
4 enhancer that—

5 (A) has been evaluated, qualified, and ap-
6 proved by the Secretary of Agriculture; and

7 (B) appears on the most current Forest
8 Service Qualified Products List.

9 (3) DISCHARGE; STATE.—The terms “dis-
10 charge” and “State” have the meanings given those
11 terms in section 502 of the Federal Water Pollution
12 Control Act (33 U.S.C. 1362).

13 (e) SUNSET.—This section shall cease to be effective
14 on the date that is 5 years after the date of enactment
15 of this section.

