

*This blog post was co-authored with Dave Owen, at UC Law SF. The draft article this blog post series is based is [here](#).*

This is the fourth in a series of blog posts on our proposal to reform wildfire law in the United States. The first post is [here](#). The second post is [here](#). The third post is [here](#).

The core of the Clean Air Act is a set of national ambient air quality standards that set minimum levels of air quality needed to protect human health. States must implement regulatory measures to meet those standards, such as regulating emissions from factories and power plants.

But this structure struggles to address wildfire. The Clean Air Act currently allows states to exclude smoke from “exceptional events” – including wildfires – when those states are determining whether they meet air quality standards. On the other hand, fires that were started by land managers to reduce fire risks – prescribed burns – are generally covered by air quality permitting requirements and may not fall within the scope of the “exceptional events” provision of the Clean Air Act. The result is that there are strong regulatory incentives to avoid allowing prescribed burns by land managers – even though most researchers agree that in the long run much more prescribed burning is essential to manage fire risks and to improve air quality. And the status quo allows states to ignore the impacts of their own management decisions – such as land-use regulation – on fires and the air quality impacts those fires produce.

We believe any solution to this problem must be legally solid, effective in encouraging much wider use of prescribed burns and other proactive fuels management techniques, and also provide real incentives for states to address the full range of fire issues, including land-use and forest management under state jurisdiction.

Legal stability is important because otherwise states may be wary of the investments required to build up prescribed fire programs. That in turn probably requires statutory revisions, since the current language is at best a problematic fit for the concept of prescribed burns being “exceptional events” outside of human control.

We propose creating a new exception for prescribed burns and wildfire smoke more generally – but one tethered to enforceable state commitments to address barriers

to prescribed burns in particular, and effective fire risk management more broadly. States currently must develop state implementation plans (SIPs) under federal law to demonstrate they will meet or maintain compliance with air quality standards. Our proposal would require states to develop new provisions of their current SIPs that encourage prescribed fire and address wildfire risks in order to be eligible for exceptions for wildfire emissions. As with current SIPs, states would have some flexibility as to how they would achieve those goals – states might choose to reduce liability risks for landowners who conduct prescribed burns or change regulations for private forestry operations to reduce fire risks.

Legal reforms that support prescribed burning would be one element of a broader package of requirements. Most importantly, states also would also be required to reform land-use regulations to address development in the WUI (which we will discuss shortly). As with other SIPs, plans would be reviewed by EPA for adequacy, and approved SIPs would be enforceable under federal law.

Our solution allows states flexibility to address different state economic, social, and ecological conditions, as well as different values. But that flexibility would not extend so far that it would allow states to ignore the ways their policies exacerbate wildfire risk and ultimately lead to more smoke in the air. Instead, our proposal requires states to take seriously that failure to address fire risks today simply produces larger long-term risks for air quality in the future. And it recognizes the connections between land-use regulation and fire.