



California Agricultural Commissioners and Sealers Association

Issue Fact Sheet

National Environmental Policy Act

BACKGROUND

On the 25th anniversary of the National Environmental Policy Act (NEPA), Kathleen McGinty, then Chair of the Council on Environmental Quality (CEQ), set out to examine NEPA's effectiveness. This culminated in the 1997 report, "NEPA: A Study of Its Effectiveness After Twenty-five Years." The report identified factors critical to ensuring success in the NEPA process, including, "Study participants stated that frequently NEPA takes too long and costs too much, agencies make decisions before hearing from the public, documents are too long and technical for many people to use, and training for agency officials at times is inadequate." Legislators on both sides of the aisle have known NEPA needs reform since 1997.

Today, although Environmental Assessment (EA) or Categorical Exclusion (CE) may meet NEPA requirements, detailed Environmental Impact Statement (EIS) are required by agencies for any activities on federal lands that, "significantly affects the quality of the human environment." These documents are time-consuming and costly. Since 1978, environmental advocates have filed over 4,000 federal lawsuits alleging violations of both NEPA and the White House Council on Environmental Quality (CEQ) regulations.¹ The December 2018 CEQ report found Environmental Impact Statement (EIS) completion time (from the Notice of Intent to the Record of Decision) across all federal agencies averaged 4.5 years. Time and costs of an EA and CE are significantly less, however; a completed EIS is estimated to cost in excess of \$2 million dollars.²

What are some unforeseen impacts? When quick action cannot be taken, non-native invasive weed species spread in our national forests and negatively impact ecosystems, decreasing recreational value, altering biodiversity, and changing fuel load properties, which drives the intensity of wildfires. In the last five years alone, seasonal climatic shifts in California have led to:

- **2020:** The largest³ wildfire season in California's modern history, 4,304,379 acres burned, 11,116 structures were damaged or destroyed, and a tragic 33 fatalities were recorded.
- **2021:** Amid an ongoing drought and historically low rainfall and reservoir levels, the wildfire season experienced an unusually early start. Exacerbated by drought, extreme heat, and reduced snowpack, by July, over three times the acres had burned compared to July of 2020. In August, unprecedented fire conditions fed multiple, large fires, including the Dixie Fire, McFarland Fire and Caldor Fire. Although parts of California received the first rain in over 200 days in October, by then, another 2.5 million acres and 3,846 structures had burned, and an additional three lives had been lost.
- **2022:** A slow fire season compared to the two previous years; nevertheless, 362,476 acres, 876 structures, and 9 lives were sadly lost to wildfire.
- **2023:** Nationally, the 2023 wildfire season was one of the quietest in decades. The National Interagency Fire Center estimated that 54,273 wildfires burned about 2.6 million acres. That's the lowest yearly U.S. acreage burned by wildfire since 1998, Annual acres burned for the US in 2023 is well below the 10-year average at just over 37%, with slightly below average number of fires as well, at 95%.
- **2024:** The 2024 wildfire year in California was marked by significant wildfire activity, with 8,024 wildfires burning a total of 1,050,012 acre and destroying 1,716 structures. One civilian fatality was reported.

Regulatory issues, legal issues, and lack of designated funding impeded deployment of the management activities desperately needed to combat non-native, invasive weed species on federal lands. Counties and private landowners are left managing these invaders at their own expense while untreated federal lands act as a seed bank, continually spreading and infesting adjacent lands.

CURRENT STATUS

2018: Congress passed historic legislation significantly reducing fund transferring from vital management work to instead pay for firefighting costs.

2020: Congress provided an ongoing \$4.3 billion per fiscal year to the USFS for wildland fire management. Then, on November 19th, The USFS revised its NEPA regulations. These revisions increase efficiency in environmental analysis while meeting NEPA's requirements and honouring environmental stewardship responsibilities.

2021: The Council on Environmental Quality (CEQ) proposed Phase I of a two-phase rule to restore regulations in effect for decades before being modified by the Trump administration in 2020; thus allowing reimplementation of the procedural provisions of NEPA to regulatory provisions.

2022: CEQ published a final rule restoring three basic elements of its NEPA regulations, including: 1. Agencies will consider the "direct," "indirect," and "cumulative" impacts of a proposed action by fully evaluating climate change impacts and assessing the consequences of releasing additional pollution in communities already overburdened by polluted air or water. 2. Agencies are granted the flexibility to determine a proposed project's "purpose and need" based on a variety of factors, work with project proponents and communities, and to mitigate or avoid environmental harms by analyzing common sense alternatives. 3. Consistent with the CEQ NEPA regulations, restores agencies abilities to tailor their NEPA procedures and help meet the specific needs of their agency, the public, and stakeholders.

2023: CEQ published a [Notice of Proposed Rulemaking](#) (NPRM) for its second phase of revisions to the 2020 National Environmental Policy Act (NEPA) amendments. In June, Phase 2 changes enacted the Fiscal Responsibility Act's (FRA's) amendments to NEPA, helping to ensure full and fair public involvement in the environmental review process; meeting the nation's environmental, climate change, and environmental justice challenges; provide regulatory certainty to stakeholders; and promote better decision-making consistent with NEPA's goals and requirements.

The FRA included amendments to NEPA, codifying longstanding principles that EISs should include:

- Discussion of reasonably foreseeable environmental effects of the proposed action,
- Reasonably foreseeable adverse environmental effects that cannot be avoided, and
- Reasonable range of alternatives to the proposed action.

The FRA also requires Federal agencies to:

- Ensure professional integrity of the discussion and analysis in an environmental document,
- Use reliable data and resources when carrying out NEPA, and
- Study, develop, and describe technically and economically feasible alternatives.

The FRA included provisions to help determine the appropriate NEPA review level; clarifying that an agency is only required to prepare an environmental document when an action is proposed that would constitute a final agency action. The FRA codifies existing regulations and caselaw. An agency is not required to prepare an environmental document when doing so would clearly and fundamentally conflict with the requirements of another law or a proposed action is non-discretionary. With respect to the use of categorical exclusions (CEs), environmental assessments (EAs), and EISs, current CEQ regulations and longstanding practices are codified into provisions that expressly permit agencies to adopt CEs from other agencies. Provisions in the FRA address timely and unified federal reviews and include provisions clarifying lead, joint-lead, and cooperating agency designation. Development of a single environmental document is generally required to direct agencies in developing

procedures for project sponsors to prepare EAs and EISs, prescribe page limits, deadlines, time lengths, and circumstances when agencies can rely on programmatic environmental documents without additional review.

Today: The implementation of the FRA has come under scrutiny because the most recent regulations by the CEQ conflicts with the FRA's intent to streamline environmental reviews and reduce permitting delays. The CEQ's regulations introduced new approaches that directed reviews toward climate change and environmental justice, which ran counter to the FRA's goal of cutting red tape and improving permitting efficiency. This misalignment led to a federal district court vacating these regulations (*Iowa v. Council on Env'tl. Quality*), highlighting the need for Congressional oversight to ensure that NEPA implementation aligns with the FRA's reforms and prevents future regulatory overreach.

The Supreme Court decision (*Loper Bright Enterprises v. Raimondo*, June 2024) overturning the Chevron doctrine impacts the implementation of all statutes, including the Fiscal Responsibility Act (FRA) by reducing the deference that courts give to federal agencies' interpretations of ambiguous statutes. Without Chevron deference, courts are more likely to scrutinize and potentially overturn agency regulations that do not align with the clear intent of Congress. This means that if federal agencies implement regulations that conflict with the FRA's intent to streamline environmental reviews and reduce permitting delays, those regulations are more likely to be challenged and invalidated in court.

The USFS final rule allows:

- Maintained scoping requirements for all USFS required actions, including categorically excluded documentation in an Environmental Assessment or Environmental Impact Statement.
- Determination of NEPA Adequacy (DNA), allowing the USFS to use previously completed NEPA analysis for newly proposed, substantially similar action, provided that some elements are maintained. The responsible USFS official must evaluate:
 - Similarity of Actions,
 - Adequacy of Alternatives,
 - Any new information or circumstances of environmental concerns, and
 - Adequacy of impacts analysis.
- Proposed actions must be posted on the Schedule of Proposed Actions (SOPA). New Decision Document must also be published.
- Maintains Adoption Provisions (available since 1978). In an action conducted by two federal agencies, one federal agency may adopt the others' NEPA analysis.
- Categorical Exclusions (CE) are created in three categories: 1. Special Uses, 2. Infrastructure and 3. Restoration & Resilience:
 - Under Restoration and Resilience for forest & grassland management activities with a primary purpose of meeting restoration objectives or increasing resilience (36 CFR 220.6(e)(25)), the CE rule: 1. Limits projects to 2,800 acres (accounts for outlier effect in the projects sampled by USFS as size aligns with specific activities in the average acres of the sampling of EAs). 2. If designed to meet ecological restoration objectives, allows vegetation thinning & commercial timber harvest. 3. Excludes timber salvage (as defined in USFS policy) but does not preclude removal of dead and dying trees.
 - Limits permanent road construction to 0.5 miles and temporary roads to 2.5 miles. Temporary roads must be decommissioned within 3 years of project completion.
 - Requires projects be developed or refined through a collaborative process.

This CE could be used for reducing overgrown areas around communities, reducing wildfire risks, and improving wildlife habitat through mechanical thinning and prescribed burning.

- One important policy not changing under the CEQ proposed rule is the time to complete NEPA assessments. CEQ is maintaining the two-year completion deadline for Environmental Impact Statements (EIS) and a one-year deadline for completion of Environmental Assessments (EA).

ACTION ITEMS

What can be done to help? Multiple management activities are available to reduce wildfire and other risks associated with reductions in biodiversity. For example, biological control, treatments such as mechanical thinning and prescribed fires, as well as herbicide treatments are all effective management strategies. The U.S. Forest Service (USFS) reports using these forest system advantages has increased biodiversity, reduced invasive populations, and reduced the severity of wildfires. You can help by:

1. Supporting the funding of federal agencies that partner with state and local programs. Collaborative programs, like Weed Management Areas, combat the spread of invasive and non-native species that negatively impact ecosystems and intensify wildfires due to biodiversity alteration and changed fuel load properties.
2. Supporting adequate funding for USDA Forest Health Management programs, including Integrated Pest Management activities to combat invasive noxious weed control, including proven biological control agents and targeted herbicide applications that are regulated and tracked.
3. Allowing federal agencies to glean potential efficiencies from other agency's historically used categorical exclusions. All categorical exclusions should be aggregated and streamlined.
4. Closely monitoring progress of the USFS and management of the budget cap adjustment for wildfire suppression costs. This helps enable the USFS to accomplish on the ground activities that improve forest health while reducing the intensity of wildfires.
5. Being increasingly clear in statutory language and Congressional oversight to ensure that the FRA's reforms to NEPA are implemented as intended.

*Sources: ¹ Regulatory Transparency Project

² 2003 Report to CEQ

³ California Department of Forestry and Fire Protection (CalFire)