

**From:** [Tiffany Rivera](#)  
**To:** [Mason, Wendy, EMNRD](#)  
**Subject:** [EXTERNAL] Prescribed Burner Certification Rule Commentary  
**Date:** Tuesday, November 30, 2021 9:22:44 AM  
**Attachments:** [image001.png](#)  
[prescribed burn comments Nov. 21.pdf](#)

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Good Morning Wendy,

Please find attached New Mexico Farm and Livestock Bureau's comments on the prescribed burner certification rule. We appreciate the opportunity to comment, if you need anything additional, please let me know.

Thank you,  
Tiff

Tiffany Rivera  
Director of Government Affairs  
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November 30, 2021

Wendy Mason  
EMNRD, Forestry Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

New Mexico Farm and Livestock Bureau is New Mexico's largest and oldest agriculture organization, representing members involved in all aspects of agriculture from dairy, livestock, fruits and vegetables. Our mission is to promote and protect agriculture in the great State of New Mexico. We are charged with the important task of representing our members' interests when it comes to impeding rules and regulations. NMFLB respectfully submits the following comments on the proposed prescribed burn manager certification program rule on behalf of our 20,000-member families. NMF&LB supports the use of prescribed burning as an integral part of land management policies.

HM 42 Prescribed fire working group was carried by Representative McQueen and signed during the 2019 legislative session. The memorial directed the energy, minerals, and natural resource department to convene a working group to study the expansion of prescribed fire in New Mexico. The memorial emphasized that many residents, scientists, and stakeholders agree that **the current level of prescribed fire use in New Mexico is insufficient to maintain or build upon restored landscapes**. Further, the memorial also states that **New Mexico needs to increase the use of prescribed fire as a management tool**. HM 42 and its accompanying report led to the enactment of HB 57 the Prescribed Burning Act.

The proposed rule lacks voices and input from an agriculture and landowner perspective, these vital participants must be considered during the development and establishment of this rule as they are some of the most predominant and frequent users of prescribed burning in the state. The HM 42 working group report states that, "the Division formed a 'core team' to lead the research and analysis and a 'full working group' with **additional participants** to provide feedback." HM 42 lists the following as work group representatives, "the forestry division of the energy, minerals and natural resources department, the state fire marshal, the department of game and fish, the state land office, the department of environment, the New Mexico department of agriculture, the office of the state engineer, the office of superintendent of insurance, the New Mexico prescribed fire council, the New Mexico acequia association, **agricultural and conservation groups**, New Mexico state university and the New Mexico Forest

and watershed restoration institute.” As mentioned previously, NMF&LB is New Mexico’s oldest and largest agriculture advocacy group, yet we were not considered for participation in the working group nor in the development of the certification requirements.

After reviewing the divisions draft rule, we feel that this proposal will not expand the use of prescribed fire in New Mexico, but rather will inhibit that option for many landowners. The draft rule as written places highly stringent and complex certification requirements in place, many of which will be out of reach for landowners. The HM 42 report states, “A new training requirement must function as a tool to reduce barriers to implementation, not create new requirements that do not specifically address the liability, insurance, and training access challenges discussed above. **A new training requirement could itself become a barrier if not thoughtfully designed, implemented, funded, and established specifically for the purpose of reducing other existing barriers to implementation.**” As written, the current proposal will serve as a barrier preventing landowner’s and others from achieving certification while reducing their liability. Further, the proposal will lead to burning without certification. It seems that there has been no consideration of the extreme burden that the certification requirements will place on those looking to become certified. We are additionally concerned about the time, cost, and overall practicality of the listed requirements. We would like the division to provide an estimate on how long it would take an individual to achieve the certification requirements they have outlined in the proposal. Does that estimate support timely increased use of prescribed fire in New Mexico or further hinder the practice?

Additionally, the HM 42 report under recommendations for training in New Mexico suggests, “An appropriately rigorous state-specific curriculum that is independent of NWCG courses (curriculum option four) is recommended to expand the use of prescribed fire on private lands...The curriculum would also engage private landowners and indigenous and traditional communities to recognize the state’s unique social and cultural history, including centuries of fire use in agriculture and land management.” Currently, a large portion of the training requirements are tied to NWCG courses which is contradictory of the working group recommendations. We suggest the division remove these requirements and work with NMSU, landowners, and the agricultural community to find a more suitable approach. We would also like the division to address how frequently and in what capacity private landowners and indigenous and traditional communities were engaged in this process. If substantial and meaningful engagement was not afforded, the division should immediately halt the rulemaking process and meet with private landowners, indigenous, and traditional communities to gather input.

Lastly, HB 57 establishes a requirement for the forestry division to create a prescribed burn manager certification program accessible to private landowners and private landowner’ agents, contractors, or legally authorized designees who conduct prescribed burns. Further the act requires that the certification including a training component which shall be provided by **the extension service on ALL relevant aspects of prescribed burning**, including legal requirements, safety, weather, fire behavior, smoke management prescribed burn techniques, public relations, planning and contingencies. As written, it appears that the extension service will only be responsible for a minor component of the training as compared to the multiple hours of National Wildfire Coordinating Group coursework, burn plan writing, and other additional curriculum the division has the right to develop. The intent of the legislation was to have the extension service

provide the training required for certification. As written, the proposal contradicts that intent and we request the division amend the training requirements so that the assigned responsibility aligns with the legislation.

We thank you for the opportunity to review and comment on the proposed rule. The increased use of prescribed fire in New Mexico has great potential to assist in building resilient forests, rangelands, and watersheds, while also working to reduce out of control and heavy fuel loads that threaten our very way of life. The legislature has spoken through the passage of the prescribed burn act to support efforts that work to increase prescribed burning in New Mexico while working to reduce an individual's liability when executing a burn. The division must work to support the will of the legislature by creating a certification program that increases and promotes the use of prescribed fire in the state. The certification must be practical, easily accessible, user friendly, and must meet the needs of those utilizing prescribed burns while considering cultural, historical, and traditional uses and practices. We urge the division to amend the proposed rule to better fit the needs of its intended users.

Respectfully,

A handwritten signature in black ink, appearing to read "C. Smith". The signature is fluid and cursive, with a large initial "C" and a stylized "S" and "M".

Chad Smith  
CEO