

NOTICE OF PROPOSED RULEMAKING

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division hereby gives notice of a second hearing regarding the following proposed rulemaking. EMNRD proposes to adopt rule, 19.20.5 NMAC, Prescribed Burn Manager Certification Program. EMNRD began this rulemaking in 2021 in response to legislation adopted during the 2021 legislative session. Our first public hearing on the rule was held on December 14, 2021, and EMNRD has completed the review and response to public comments provided during that public hearing session. Even though EMNRD was a position to move forward with rule finalization, it has determined, given the severity of the most recent fire season and the fact it was two United States Department of Agriculture, Forest Service's prescribed burns that caused the Calf Canyon and Hermits Peak Fires, it is necessary and appropriate to hold a second comment period and hearing to provide the public an additional opportunity to participate in EMNRD's proposed rulemaking to create the prescribed burn manager certification program for private landowners and private landowners' agents, contractors, or legally authorized designees who conduct prescribed burns. EMNRD has reviewed the proposed rule and it is not proposing any additional changes to the proposed prescribed burn manager program in the rule, as the proposed rule already addresses the circumstances that contributed to this season's fire activity.

Purpose of Rule. EMNRD proposes the rule to create the prescribed burn manager certification program for private landowners and private landowners' agents, contractors, or legally authorized designees who conduct prescribed burns as directed by NMSA 1978, Section 68-5-7. The rule establishes two types of prescribed burn manager certifications: certified pile burn managers and certified broadcast burn managers, and the requirements for certification of pile burn managers and broadcast burn managers, including measures that ensure certified burn managers undertake those activities safely. It also establishes the training requirements for both types of certifications, the application process, the requirements for renewal, and a committee to evaluate applications.

Legal Authority. EMNRD proposes this rule under the authority of the Prescribed Burning Act, NMSA 1978, Section 68-5-7 and NMSA 1978, Section 9-1-5(E).

The full text of the proposed rule is available from Rachael Foe at Rachael.Foe@emnrn.dnm.gov or (505) 490-0824 or can be viewed on the EMNRD, Forestry Division's website at <https://www.emnrn.dnm.gov/sfd/public-meetings/> or at the Forestry Division's offices in Santa Fe, Chama, Cimarron, Las Vegas, Rio Rancho, Socorro, Capitan, and Silver City.

Public Hearing and Comment. EMNRD will hold a hybrid in-person and virtual public hearing on the proposed rule at 5:00 p.m. on Wednesday, December 14, 2022.

The public may attend the public hearing at the State Capitol, Room 322, 490 Old Santa Fe Trail, Santa Fe, NM 87501. The East Entrance to the State Capitol will be open.

The public may join the hearing virtually through WebEx using one of the following:

Meeting Link:

<https://nmemnrn.dnm.webex.com/nmemnrn.dnm/j.php?MTID=mbf249e7a9c579599f1189edd5c423db6>

Meeting Number: 2490 550 9367

Password: mpPZPPtM356

Join by Phone: +1-408-418-9388

Access Code: 2490 550 9367

Those wishing to comment on the proposed rule may make oral comments or submit information at the hearing or may submit written comments by Wednesday, December 14, 2022, by 5:00 p.m. by mail or email. Please mail written comments to Rachael Foe, EMNRD, Forestry Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit comments by email to Rachael.Foe@emnrn.dnm.gov.

Technical Information that served as a basis for the proposed rule includes:

Copies of the technical information can be obtained from Rachael Foe at (505) 490-0824 or rachael.foe@emnrd.nm.gov or can be viewed on the EMNRD, Forestry Division's website at <https://www.emnrd.nm.gov/sfd/public-meetings/>.

CAL FIRE Prescribed Fire Working Group, California Department of Forestry and Fire Protection. CAL FIRE Prescribed Fire Guidebook. September 2019. <https://www.fire.ca.gov/media/2qlel0gn/cal-fire-prescribed-fire-guidebook.pdf>.

California Department of Forestry and Fire Protection Forest Health Webpage. What are Prescribed Fires and How are they Helpful? <https://www.readyforwildfire.org/forest-health/prescribed-fires/>.

California Department of Forestry and Fire Protection. Fuels Reduction Guide.

<https://www.fire.ca.gov/media/4jgerfjh/fuels-reduction-guide-final-2021-interactive.pdf>.

California Department of Forestry and Fire Protection Prescribed Fire Program Webpage.

<https://www.fire.ca.gov/programs/resource-management/resource-protection-improvement/vegetation-management-program/prescribed-fire/>.

California Department of Forestry and Fire Protection Vegetation Management Program Webpage.

<https://www.fire.ca.gov/programs/resource-management/resource-protection-improvement/vegetation-management-program/>.

California Smoke Management Guidelines for Agricultural and Prescribed Burning, Title 17 of the California Code of Regulations, Subchapter 2. <https://www.arb.ca.gov/smp/regs/revfinregwtoc.pdf>.

Colorado Department of Public Safety, Division of Fire Prevention and Control Webpage. What is Prescribed Fire? <https://dfpc.colorado.gov/prescribed-fire-management>.

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<https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=6104&fileName=8%20CCR%201507-32>.

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Colorado Prescribed Fire Planning and Implementation Policy Guide. Colorado Department of Public Safety, Division of Fire Prevention and Control. January 2019. https://csfs.colostate.edu/media/sites/22/2019/12/2019_3-20_2019_DFPC_RX_Fire_Implementation_Planning_Guide.pdf#:~:text=Colorado%20Prescribed%20Fire%20Planning%20and%20Implementation%20Policy%20Guide,with%20the%20planning%20and%20implementation%20of%20prescribed%20fire.

Georgia Department of Natural Resources. Basic Smoke Management Plan. April 16, 2008. <https://gatrees.org/wp-content/uploads/2019/10/Smoke-Management-Plan.pdf>.

Georgia Forestry Commission. Lawful Presence Affidavit. <https://gatrees.org/wp-content/uploads/2020/12/Lawful-Presence-Affidavit.pdf>.

Georgia Forestry Commission. Prescribed Fire Program Documents Webpage. <https://gatrees.org/fire-prevention-suppression/prescribed-burn/>.

Georgia Forestry Commission. Prescribed Burning Unit Plan. September 16, 2021. <https://gatrees.org/fire-prevention-suppression/prescribed-burn-certification/>.

Georgia Forestry Commission. Georgia Prescribed Fire Manager Certification Flyer. <https://gatrees.org/wp-content/uploads/2021/04/Prescribed-Fire-Manager-Certification-Flyer21.04.19.pdf>.

Georgia Forestry Commission. Prescribed Fire Certification Training Course Flyer. <https://gatrees.org/wp-content/uploads/2021/10/SRTC-prescribed-fire-flyer-1.pdf>.

Georgia Forestry Commission. Prescribed Fire in Georgia A Strategic Plan 2008-2020. <https://gatrees.org/wp-content/uploads/2019/10/PrescribedFireinGAstrategicPlan2008-20.pdf>.

Georgia Forestry Commission. Prescribed Burn Certification Affidavit. <https://gatrees.org/wp-content/uploads/2021/10/Affidavit.pdf>.

Georgia Forestry Commission. Prescribed Burning Using Fire Wisely. <https://gatrees.org/wp-content/uploads/2019/10/PrescribedBurning08.pdf>.

Georgia Prescribed Burning Act, O.G.C.A 12-6-145 *et seq.*

<https://advance.lexis.com/container?config=00JAAzZDgzNzU2ZC05MDA0LTRmMDItYjkzMS0xOGY3MjE3OWNIODIKAFBvZENhdGFsb2fcIFfJnJ2IC8XZi1AYM4Ne&crd=9dd738c1-e55f-4ea9-abab-a6ba315dbad0&prid=fd4ae929-5f05-4e74-8f7b-e8d348c6f00b>.

Illinois Department of Natural Resources. Certified Prescribed Manager Application. https://www.illinoisprescribedfirecouncil.org/uploads/1/0/5/8/105892833/prescribedburnmanager_application.pdf.

Illinois Department of Natural Resources, Division of Natural Heritage. Illinois Prescribed Burn Manager Certification Webpage. <https://www.illinoisprescribedfirecouncil.org/illinois-prescribed-burn-manager-certification.html>.

Illinois Department of Natural Resources, Division of Natural Heritage. Prescribed Fire Webpage. <https://www2.illinois.gov/sites/naturalheritage/LandStewardship/PrescribedFire/Pages/default.aspx>.

Illinois Prescribed Fire Burn Manager Apprentice Task Book. <https://www2.illinois.gov/dnr/conservation/Forestry/Documents/CPBM%20APPRENTICE%20TASK%20BOOK.pdf>.

Introduction to Prescribed Fire in Southern Ecosystems. United States Department of Agriculture. Forest Service. Research & Development. Southern Research Station. August 2012. Slightly revised 2015. Reprinted 2016. Slightly revised 2018. https://www.srs.fs.usda.gov/pubs/su/su_srs054.pdf.

Illinois Prescribed Burning Act, 525 ILCS 37. [https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2904&ChapterID=44#:~:text=\(a\)%20%22Prescribed%20burning%22,the%20planned%20land%20management%20objectives](https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2904&ChapterID=44#:~:text=(a)%20%22Prescribed%20burning%22,the%20planned%20land%20management%20objectives).

Illinois Prescribed Burning Act Rules, 17 Ill. Adm. Code, Ch. I, Sec. 1565. <https://www.ilga.gov/commission/jcar/admincode/017/01701565sections.html>.

Matonis, Megan S. Insights and Suggestions for Certified Prescribed Burn Manager Programs. Forest Stewards Guild, February 2020. <https://foreststewardsguild.org/wp-content/uploads/2020/03/InsightsRecommendationsCPMBprograms.pdf>.

Mattos, Brian. CAL FIRE Prescribed Fire Planning and Permitting. California Department of Forestry and Fire Protection. <https://ucanr.edu/sites/Mariposa/files/325909.pdf>.

National Wildfire Coordinating Group (NWCG) Standards for Wildland Fire Position Qualifications, PMS 310-1 <https://www.nwcg.gov/publications/pms310-1#:~:text=PMS%20310%2D1-.NWCG%20Standards%20for%20Wildland%20Fire%20Position%20Qualifications%2C%20PMS%20310%2D1,mobilization%20to%20wildland%20fire%20incidents>.

NWCG Position Catalog. <https://www.nwcg.gov/positions>.

NWCG Training Catalog. <https://www.nwcg.gov/publications/training-courses>.

National Fire Protection Association 1001 Standard for Fire Fighter Professional Qualifications.

Southern Regional Technical College Registration Form. <https://gatrees.org/wp-content/uploads/2021/10/Prescribed-Fire-SRTC-registration-2021.pdf>.

Supplemental Agreement for Cooperative Use of Prescribed Fire to the California Master Cooperative Wildland Fire Management Agreement and Stafford Act Response Agreement. <https://gacc.nifc.gov/oscc/cwgc/docs/2013cfma/!2018%20-%202023%20CFMA%20FINAL%20SIGNED.pdf>.

Texas Department of Agriculture. Certified and Insured Prescribed Burn Managers Webpage. <https://www.texasagriculture.gov/Home/ProductionAgriculture/PrescribedBurnProgram/CommercialCertifiedPrescribedBurnManager.aspx>.

Texas Department of Agriculture. Prescribed Burn Lead Instructor Webpage. <https://www.texasagriculture.gov/Home/ProductionAgriculture/PrescribedBurnProgram/PrescribedBurnLeadInstructor.aspx>.

Texas Department of Agriculture. Prescribed Burn Plans Webpage. <https://www.texasagriculture.gov/Home/ProductionAgriculture/PrescribedBurnProgram/SampleBurningPlanDocuments.aspx>.

Texas Department of Agriculture. Prescribed Burn Program Webpage. <https://www.texasagriculture.gov/Home/ProductionAgriculture/PrescribedBurnProgram.aspx>.

Texas Department of Agriculture, Texas Prescribed Burning Board. Application for Certified and Insured Prescribed Burn Manager. PBB-601. https://www.texasagriculture.gov/Portals/0/forms/PEST/Burn/pbb_600_application_burn_board_instructor.pdf.

Texas Department of Agriculture, Texas Prescribed Burning Board. Application for Certified Prescribed Burn Lead Instructor. PBB-600. https://www.texasagriculture.gov/Portals/0/forms/PEST/Burn/pbb_601_application_burn_board_manager.pdf.

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Texas Department of Agriculture, Texas Prescribed Burning Board. Instructions for Texas Prescribed Burning Board Training Verification Form PBB-602.

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https://www.texasagriculture.gov/Portals/0/forms/PEST/Burn/pbb_600S_supplemental.pdf.

Texas Department of Agriculture, Texas Prescribed Burning Board. Training Verification. PBB-602.

https://www.texasagriculture.gov/Portals/0/forms/PEST/Burn/pbb_602_burn_board_training_verification.pdf.

Texas Natural Resources Code. Title 6, Chapter 153. <https://statutes.capitol.texas.gov/docs/NR/htm/NR.153.htm>.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Rachael Foe at (505) 490-0824 or through the New Mexico Relay Network at 1-800-659-1779 at least two weeks prior to the hearing. Public documents can be provided in various accessible formats. Please contact Rachael Foe at (505) 490-2954 or Rachael.foe@emnrd.nm.gov if a summary or other type of accessible format is needed.