

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

Legal Notice

Arkansas Department of Agriculture

The Arkansas Department of Agriculture is proposing to adopt a new Prescribed Burning Rule.

The new rule will, among other things, establish qualifications for a “qualified prescribed burner” in accordance with Act 695 of 2023. The rule will establish a review committee to design initial and ongoing training and review the qualifications of applicants from other jurisdictions.

Comments can be mailed to: Attn: Kyle Cunningham, Arkansas Department of Agriculture, 1 Natural Resources Drive, Little Rock, AR 72205, or emailed to kyle.cunningham@agriculture.arkansas.gov.

Comments will be accepted beginning October 29, 2023, until the close of business on November 27, 2023. Oral comments may be made in person at the Arkansas Department of Agriculture, 1 Natural Resources Drive, Little Rock, AR 72205 on November 28, 2023 at 1:30 p.m.

The proposed rules can be viewed on the website at www.agriculture.arkansas.gov


Cynthia Edwards, Deputy Secretary
Arkansas Department of Agriculture

From: [Cynthia Edwards](#)
To: [Linda Luebke](#); [Caitlin Bennett](#)
Subject: FW: Legal Notice - Prescribe Burning Rule
Date: Friday, October 27, 2023 11:53:52 AM
Attachments: [image002.png](#)

From: Legal Ads <legalads@arkansasonline.com>
Sent: Friday, October 27, 2023 10:23 AM
To: Cynthia Edwards <cynthia.edwards@agriculture.arkansas.gov>
Subject: Re: Legal Notice - Prescribe Burning Rule

Notice will run Sunday Oct 29, Monday Oct 30, and Tuesday Oct 31.

Thank you.
Cate Hubbard, filling in for
Gregg Sterne, Legal Advertising
Arkansas Democrat-Gazette
legalads@arkansasonline.com

From: "Cynthia Edwards" <cynthia.edwards@agriculture.arkansas.gov>
To: "legalads" <legalads@arkansasonline.com>
Cc: "Linda Luebke" <linda.luebke@agriculture.arkansas.gov>, "Caitlin Bennett" <Caitlin.Bennett@agriculture.arkansas.gov>, "Kyle Cunningham" <Kyle.Cunningham@agriculture.arkansas.gov>, "Robert Murphy (AFC)" <Robert.D.Murphy@agriculture.arkansas.gov>
Sent: Thursday, October 26, 2023 4:26:23 PM
Subject: FW: Legal Notice - Prescribe Burning Rule

Please run the attached legal notice October 29 – 31, 2023.

Sunday, October 29, 2023, statewide. Monday (10/30/23) and Tuesday (10/31/23) in all counties that still receive daily (Mon. – Sat.) delivery of the printed edition.

Thank you!

CYNTHIA EDWARDS

DEPUTY SECRETARY OF AGRICULTURE

Arkansas Department of Agriculture

1 Natural Resources Drive, Little Rock, AR 72205
(501) 219-6362 | agriculture.arkansas.gov
cynthia.edwards@agriculture.arkansas.gov



Prescribed Burning Rule

I. Eligibility for Qualification.

A. Initial Eligibility. Applicants may obtain qualification by satisfying the following requirements:

1. Attend the qualified prescribed burning training course provided by the Arkansas Department of Agriculture (Department), or the Arkansas Game and Fish Commission (AGFC), or their designees; and
2. Obtain a passing score on the qualified prescribed burning examination administered by the Department, the AGFC, or their designees.

B. Alternative Qualification methods. Applicants may obtain qualification through the following alternative methods:

1. Upon submission to the Department of proof of qualification or approval by another jurisdiction, applicants may be certified by the Department without further testing or training if the applicant's training and experience is substantially similar to experience and education required for qualification.
2. Upon submission to the Department proof of National Wildfire Coordinating Group training, the Department will consider whether the applicant's training and experience is substantially similar to experience and education required for qualification; and accept the applicant's training and experience in lieu of experience or education required for qualification if the Department determines the training and experience is a satisfactory substitute.
3. Individuals having completed the AGFC Learn to Burn I and II programs prior to the adoption of these rules shall be qualified once they have completed a supplemental training to be provided by the Department and the AGFC.
4. Completion of the Arkansas Prescribed Fire as a Management Tool Workshop shall be accepted as qualifications to become a Qualified Prescribed Burner.

II. Training courses.

A. The Department, and the AGFC, or their designees will periodically provide the training required to become a qualified prescribed burner.

B. The training course will be designed and agreed upon by the Department and the AGFC.

III. Maintaining Qualification. To maintain qualification, a qualified prescribed burner must:

A. Be in charge on site of at least one prescribed burn; and

B. Attend a refresher training every three years.

IV. Revocation of Qualification. Prescribed burner qualification may be revoked for:

A. Pleading guilty, entering a plea of nolo contendere, or being found guilty of Unlawful Burning as set forth in Arkansas Code 5-38-310, or similar offense; or

B. A finding of negligence in a civil proceeding as set forth in 15-30-104(b) on more than one occasion.

V. Review Committee

A. The Review Committee shall:

1. Review other states' requirements and determine if they satisfy the requirements to be recognized as a Qualified Prescribed Burner in Arkansas;
2. Develop the qualified prescribed burner training course to be taught by both the Department and the AGFC;
3. Develop any other training described above; and

4. Be chaired by the person who serves as the Assistant State Forester for Protection in the Department of Agriculture's Forestry Division.

B. The Secretary of Agriculture and the Director of the AGFC, or their designees, shall each appoint two qualified prescribed burners to serve on the committee.

Prescribed Burning Rule MARKUP

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**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT Agriculture
BOARD/COMMISSION _____
BOARD/COMMISSION DIRECTOR _____
CONTACT PERSON Caitlin Bennett
ADDRESS 1Natural Resurces Drive
PHONE NO. _____ EMAIL caitlin.bennett@agriculture.Arkansas.gov
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
Kyle Cunningham; Robert Murphy; Caitlin Bennett
PRESENTER EMAIL(S) kyle.cunningham@agriculture.arkansas.gov; robert.murphy@agriculture.arkansas.gov; caitli

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?
Prescribed Burning Rule
2. What is the subject of the proposed rule? To establish the qualifications ofr a "qualified prescribed burner."
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☒

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☐

4. Is this rule being filed for permanent promulgation? Yes ☒ No ☐

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☒

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes ☐ No ☒

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes ☒ No ☐

If yes, please provide the state statute and/or rule citation.

Ark. Code Ann. 15-30-107

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes ☐ No ☒

If yes, please list the rules being repealed.

If no, please explain.

Exception requested

8. Is this a new rule? Yes ☒ No ☐

Does this repeal an existing rule? Yes ☐ No ☒

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes ☐ No ☒

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

15-30-107

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes ☒ No ☐

If yes, please provide the year of the act(s) and act number(s).

Act 695 of 2023

11. What is the reason for this proposed rule? Why is it necessary?

Act 695 of 2023, codified at Ark. Code Ann. § 15-30-101 et seq., requires the Department to establish qualifications for a “qualified prescribed burner,” an individual who has successfully completed a prescribed burner training program approved by the Department or the Arkansas Game and Fish Commission (AGFC). The Department and AGFC also have authority to approve out of state training for qualification in Arkansas. Ark. Code Ann. § 15-30-107 directs the Department to promulgate rules on the requirements for becoming a qualified prescribed burner.

The proposed rule:

- Establishes requirements for becoming a qualified prescribed burner.
- Details requirements for both maintaining qualification and revocation of qualification.
- Establishes a Review Committee that will:
 - Design a qualified prescribed burner training.
 - Review training and experience requirements of applicants from other jurisdictions.
 - Develop required refresher training for maintaining qualification.
- Provides for membership of the Review Committee.

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

www.agriculture.arkansas.gov

13. Will a public hearing be held on this proposed rule? Yes ☐ No ☐

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? January 1, 2024 _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

Arkansas Forestry Association - in support.

19. Is the rule expected to be controversial? Yes ☐ No ☒

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Agriculture

BOARD/COMMISSION _____

PERSON COMPLETING THIS STATEMENT Wade Hodge

TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Prescribed Burning Rule

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.