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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 629
DEPARTMENT OF FORESTRY

FILED

06/28/2024 8:23 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Prescribed Fire Liability Pilot Program and Certified Burn Manager updates.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/15/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Salem, OR 97310

Filed By:
Ryan Miller
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 07/30/2024

TIME: 10:00 AM - 11:00 AM

OFFICER: Jamie Paul

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 541-620-0341

CONFERENCE ID: 8829567607

SPECIAL INSTRUCTIONS:

Phone only option not available for the hearing.

NEED FOR THE RULE(S)

Senate Bill 80 of the 2023 Legislative session and HB 4016 of the 2024 Legislative session directed the development of the Prescribed Fire Liability Pilot Program.

<https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB80>

<https://olis.oregonlegislature.gov/liz/2024R1/Measures/Overview/hb4016>

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Documents and materials relied upon can be found on the Board of Forestry website under the June 6th, 2024 meeting.

<https://www.oregon.gov/odf/board/bof/20240605-bof-packet.pdf>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Both the Certified Burn Manager and Prescribe Fire Liability Pilot programs are and will be available to all prescribed fire practitioners. There are no known adverse consequences regarding racial equity.

FISCAL AND ECONOMIC IMPACT:

Amendments to the certified burn manager program rules do not substantially change the implementation of the program and no changes are expected in the fiscal and economic impact. The rules drafted in support of a prescribed fire liability pilot program are not anticipated to have a direct fiscal or economic impact.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

It is anticipated that there will be minor costs of compliance for the implementation and administration of the prescribed fire liability pilot program. Some costs will include receiving and processing of claims, information technology as related to records keeping, tracking, and website activities. Specific costs estimates are not available at this time, but are expected to be not significant.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses representation was present on the rule advisory committee and were consulted and involved in the development of the rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

629-042-1005, 629-042-1020, 629-042-1025, 629-042-1030, 629-042-1035, 629-042-1050, 629-042-1065, 629-042-2000, 629-042-2010, 629-042-2020, 629-042-2030, 629-042-2040, 629-042-2050, 629-042-2060

AMEND: 629-042-1005

RULE SUMMARY: Rules were amended to update the definitions for the "field certification book" and "prescribed fire".

CHANGES TO RULE:

629-042-1005

Definitions

(1) The definitions set forth in ORS 526.005, ORS 477.001, and OAR 629-041-0005 shall apply to OAR Chapter 629, Division 042.¶

(2) The following words and phrases, when used in OAR Chapter 629, Division 042, shall mean the following:¶

(a) "Accreditation" means approval from the Forester to conduct and document training required by OAR 629-042-1065.¶

(b) "Certificate" means a Certified Burn Manager certificate issued by the Oregon Department of Forestry pursuant to ORS 526.360(3) and OAR 629-042-1015.¶

(c) "Certification book" means a publication provided by the Forester in which successful training required by OAR 629-042-1025(2) is documented.¶

(d) "Certification period" means a period of five years, beginning on the date a certificate is issued.¶

(e) "Certified Burn Manager" means an individual who has a current and valid certificate.¶

(f) "Committee" means the Certified Burn Manager Advisory Committee.¶

(g) "Dangerous or adverse situation" means conditions that are a significant deviation from a prescribed burn plan and resulting or has the potential to result in negative consequences, as determined by the professional judgement of the Forester or a Certified Burn Manager.¶

(h) "Forestland" is defined by ORS 526.005(6) "field certification book" means a publication provided by the Forester in which successful operational field training required by OAR 629-042-1025(2) is documented.¶

(i) "Forester" means the State Forester or authorized representative.¶

(j) "Prescribed burn" and, "prescribed burning" means the controlled application of fire, in accordance with the

~~plan required by OAR 629-042-1040(1), and "prescribed fire" mean the planned application and the conditions of a permit issued pursuant to ORS 477.625, to vegetative fuels, under specified environmental conditions, and following appropriate precautionary measures, which is intended to cause the burning to be confined to a predetermined area and accomplish specific land management objectives confinement of fire to wildland, rangeland or other vegetative fuels on lands selected in advance of that application.~~¶

~~(k)~~ "Prescribed burn plan" is a plan prepared to conduct a prescribed burn, in accordance with OAR 629-042-1040(1).¶

~~(l)~~ "Successfully completed" and "successful performance" means completion of a training requirement of OAR 629-042-1025, or a test required by OAR 629-042-1030, and which has been properly documented.¶

~~(m)~~ "Training provider" means a certified instructor who is accredited to conduct and/or document training required by OAR 629-042-1065.

Statutory/Other Authority: ORS 526.360

Statutes/Other Implemented: ORS 526.016, 526.041

AMEND: 629-042-1020

RULE SUMMARY: Rule was amended to update the reference to a "field certification book".

CHANGES TO RULE:

629-042-1020

Certified Burn Manager certification requirements. Application procedures.

Individuals applying for a Certified Burn Manager certificate shall provide to the State Forester's Representative:¶

(1) A properly completed field certification book showing that the applicant has satisfactorily completed all training required by OAR 629-042-1025 and all tests required by OAR 629-042-1030; and¶

(2) All fees required by OAR 629-042-1070.

Statutory/Other Authority: ORS 526.360

Statutes/Other Implemented: ORS 526.016, 526.041

AMEND: 629-042-1025

RULE SUMMARY: Rules were amended to reflect the definition change from "certification book" to "field certification book".

CHANGES TO RULE:

629-042-1025

Certified Burn Manager certification requirements. Training.

(1) The Forester shall provide a field certification book. An applicant for a certificate must complete a field certification book prior to applying for an initial certificate, or applying for a new certificate if the applicant was issued a certificate which was not renewed pursuant to OAR 629-042-1015(7):¶

(a) Prior to receiving a field certification book, an individual shall submit documentation to the Forester of successful completion of:¶

(A) Educational training that is provided by an approved training provider or the Forester; and¶

(B) A test in accordance with OAR 629-042-1030 with a passing score.¶

(b) An applicant will not receive credit for educational training that was completed more than three years prior to the applicant's request for a field certification book. The Forester may waive this three-year limitation if the individual is applying for historical recognition.¶

(2) After verification of documentation required under 629-042-1025(1), the Forester shall issue the applicant a field certification book.¶

(a) The field certification book shall consist of field training that the applicant must complete, including:¶

(A) General proficiencies;¶

(B) Pile burning proficiencies; and¶

(C) Broadcast burning proficiencies.¶

(b) To apply for a certificate to conduct pile burns, field training described in Sections 2(a)(A) and 2(a)(B) of this rule must be completed.¶

(c) To apply for a certificate to conduct pile burns and broadcast burns, all the field training described in the field certification book must be verified of completion with a signature by a Certified Burn Manager, by the Forester, or by a training provider in a field certification book.¶

(d) The field certification book will be valid for three years after the date of issuance by the Forester.¶

(e) The Forester will not accept documentation of field training which was completed more than three years prior to the date of application for a certificate. The Forester may waive this three-year limitation if the individual is applying for historical recognition.¶

(3) The Forester may consider educational and field training requirements completed prior to January 1, 2023 through historical recognition. In lieu of the initial training requirements of (1) and (2) above, an individual may submit to the Forester:¶

(a) A copy of a Prescribed Fire Burn Boss Type 2 Task Book which is complete. The Task Book shall indicate successful performance in the planning and implementation of prescribed fire; or¶

(b) Documentation that the individual holds a valid Certified Burn Manager certification in a state with comparable requirements to the State of Oregon; or¶

(c) Such evidence of experience as the Forester determines is equivalent to the initial training requirements of (1) and (2) above. The testing requirements of OAR 629-042-1030 shall still be required.¶

(4) An individual shall complete the following actions, prior to applying for a renewal of their certificate:¶

(a) An individual shall successfully complete sixteen hours of continuing education within the certification period. The continuing education must be related to prescribed burning and approved in advance by the Forester. ¶

(A) The Forester may approve training presented in a classroom format, a conference format, a correspondence course format, or in another format the Forester determines is acceptable.¶

(B) The Forester will not accept educational training which was completed more than five years prior to the applicant's date of application for renewal of a certificate.¶

(b) An individual shall supervise one prescribed burn and participate in two additional prescribed burns during their certification period and prior to applying for a renewal.

Statutory/Other Authority: ORS 526.360

Statutes/Other Implemented: ORS 526.016, 526.041

AMEND: 629-042-1030

RULE SUMMARY: Rule update amends the appeal process for an individual who was unsuccessful in passing the test.

CHANGES TO RULE:

629-042-1030

Certified Burn Manager certification requirements. Tests.

(1) The Forester:¶

(a) Shall provide for the development and administration of all tests required by this rule;¶

(b) Shall establish a passing score for all tests required by this rule;¶

(c) May not administer the same test to an individual more frequently than once every 30 calendar days; and¶

(d) May not prohibit the use of written reference material by individuals taking tests.¶

(2) Individuals taking tests required by this rule:¶

(a) Shall display an approved government issued picture identification to the Forester or authorized Training Provider, prior to taking a test; and¶

(b) Shall comply with all test taking requirements established by the Forester or authorized Training Provider.¶

(3) Individuals shall successfully pass a test prior to requesting a field certification book from the Forester.¶

(4) An individual who was unsuccessful in passing the test may request that the Certified Burn Manager Advisory Committee review the decision, by submitting a request within 30 calendar days notification of the test result.¶

~~(a) The Certified Burn Manager Advisory Committee shall conduct the requested review at its next scheduled meeting after the receipt of a request for review.¶~~

~~(b) Following completion of the review requested, the Certified Burn Manager Advisory Committee shall either affirm or withdraw the test result by majority vote.¶~~

~~(c) The Forester or the individual may appeal the decision of the Certified Burn Manager Advisory Committee to the Board of Forestry, in the same manner as appeals under ORS 477.260(2).¶~~

~~(d) Any final resolution by the Board of the matter raised under section (3) of this rule shall be prepared as a final order, and any further appeal of the Board's final action shall be as prescribed by appeal in accordance with ORS 183.484.~~

Statutory/Other Authority: ORS 526.016, 526.041

Statutes/Other Implemented: ORS 526.360

AMEND: 629-042-1035

RULE SUMMARY: Rule amended to update "certification book" to "field certification book".

CHANGES TO RULE:

629-042-1035

Certified Burn Manager certificate investigation and revocation procedures

(1) The Forester may investigate any reported or observed dangerous or adverse situations for which a Certified Burn Manager has been alleged to be responsible.¶

(a) Upon the receipt of an allegation under this rule, the Forester may:¶

(A) Investigate and prepare a written report; or¶

(B) Direct that a certified wildfire investigator to investigate, prepare a written report and forward it to the Forester for review and approval.¶

(b) Upon receipt of the written report required in (1)(a) above, the Forester shall determine as to whether the Certified Burn Manager was responsible for the reported dangerous or adverse situation.¶

(c) If the Forester determines that the Certified Burn Manager was responsible for a dangerous or adverse situation, the Forester shall determine as to whether the actions of the Certified Burn Manager constitute grounds to revoke the certification of the Certified Burn Manager.¶

(2) The Forester may revoke a certificate if:¶

(a) A Certified Burn Manager has submitted false information pertaining to any aspect of the Burn Manager program, such as, but not limited to, the entry of false information into a field certification book submitted to the Forester pursuant to OAR 629-042-1020;¶

(b) A Certified Burn Manager has been found to have violated ORS 477.515, 477.625, 477.720, 477.740, or OAR 629-043-0026(4);¶

(c) A Certified Burn Manager fails to comply with the required actions and activities set forth in OAR 629-042-1040; or¶

(d) A Certified Burn Manager terminated their responsibility for supervision of a prescribed burn in violation of OAR 629-042-1045(2).¶

(3) The Forester shall provide written notice to the Certified Burn Manager of the intent to revoke a certificate. The Forester may not revoke the certificate until after 30 calendar days from the date of notice.¶

(4) Certificate revocation review and appeals procedures.¶

(a) A Certified Burn Manager may request that the Certified Burn Manager Advisory Committee review a decision to revoke a certificate, by submitting a request within 30 calendar days after service of the written notice required by subsection (3) of this rule. Service is completed at the earlier of actual notice or depositing a properly addressed written notice in first class mail or sending an email to an address established by the Certified Burn Manager.¶

(b) The Certified Burn Manager Advisory Committee shall conduct the requested review at its next scheduled meeting after the receipt of a request for review.¶

(c) Following completion of the review requested, the Certified Burn Manager Advisory Committee shall either affirm or withdraw the revocation by majority vote.¶

(d) The Forester or the Certified Burn Manager whose certificate has been revoked may appeal the decision of the Certified Burn Manager Advisory Committee to the Board of Forestry, in the same manner as appeals under ORS 477.260(2).¶

(e) Any final resolution by the Board of the matter raised under section (4)(d) of this rule shall be prepared as a final order, and any further appeal of the Board's final action shall be as prescribed by ORS 183.484.¶

(5) An individual who has had their certification revoked is ineligible to apply for another certification for a period of 3 years from the date of revocation unless waived by the committee.

Statutory/Other Authority: ORS 526.360

Statutes/Other Implemented: ORS 526.016, 526.041

AMEND: 629-042-1050

RULE SUMMARY: Rule was amended to clarify in (3) that burning be conducted within a forest protection district. Formerly limited to classified "forestland".

CHANGES TO RULE:

629-042-1050

Limitations on the use of Certified Burn Managers

A Certified Burn Manager shall only supervise:¶

(1) Prescribed burning activities as identified within an approved prescribed burn plan;¶

(2) Prescribed burning for which they are certified to conduct; and¶

(3) Prescribed burning ~~con forestland which is classified in accordance with ORS 526.328 or ORS 526.340~~ducted within a forest protection district, as identified in OAR 629-041-0500 to 629-041-0575.

Statutory/Other Authority: ORS 526.360

Statutes/Other Implemented: ORS 526.016, 526.041

AMEND: 629-042-1065

RULE SUMMARY: Rule amended to update experience requirements and minor wording corrections.

CHANGES TO RULE:

629-042-1065

Training Provider Accreditation, Suspension, and Revocation

- (1) A training provider shall obtain accreditation from the Forester prior to conducting or documenting training required by OAR 629-042-1025.¶
- (2) To request accreditation, prospective training providers shall make application to the Forester and sign an accreditation agreement.¶
- (3) Training providers will not be considered accredited until the Forester reviews and approves their application.¶
- (4) Applications shall include, but will not be limited to:¶
 - (a) A list of the specific training, either initial, renewal, or both to be provided or documented; and¶
 - (b) Evidence the person has had at least two years ~~total of~~ experience ~~either in~~ teaching adults ~~or working in the area of expertise covered by~~ and also two years of experience as a practitioner of the specific training to be provided or documented.¶
- (5) Accreditation agreements shall include, but will not be limited to:¶
 - (a) A requirement to provide training using only curricula or course manuals approved by the Forester;¶
 - (b) A requirement to send all training completion records to the Forester within the period of time required by the Forester;¶
 - (c) A requirement to maintain training completion records for a minimum of six years;¶
 - (d) A requirement to document successful completion of a training requirement of OAR 629-042-1025 or a test required by OAR 629-042-1030 only for which they are accredited and for which they have personal knowledge that the person has properly completed the task being documented; and¶
 - (e) A requirement that no entry of false information be made into a field certification book to be submitted to the Forester.¶
- (6) Temporary Suspension of documentation authority.¶
 - (a) The Forester may immediately suspend the documentation authority of a training provider at any time the Forester determines that the training provider has failed to comply with all requirements of the accreditation agreement. A training provider may appeal the temporary suspension of documentation authority in the same manner as section 7(c) of this rule.¶
 - (b) Within 30 calendar days of suspending the documentation authority of a training provider, the Forester must either initiate action to revoke the accreditation of the training provider or restore the documentation authority of the training provider.¶
- (7) Revocation of accreditation¶
 - (a) The Forester may revoke the accreditation of a training provider at any time the Forester determines that the training provider has failed to comply with all requirements of the accreditation agreement.¶
 - (b) The Forester shall provide written notice to the training provider of the intent to revoke an accreditation. The Forester may not revoke an accreditation until after 30 calendar days from the date of notice.¶
 - (c) Accreditation revocation review and appeals procedures:¶
 - (A) A training provider may request that the Certified Burn Manager Advisory Committee review a decision to revoke an accreditation, by submitting a request within 30 calendar days after service of the written notice required by subsection (b) above. Service is completed at the earlier of actual notice, or depositing a properly addressed written notice in first class mail, or sending an email to an address established by the training provider,¶
 - (B) The Certified Burn Manager Advisory Committee shall conduct the requested review at its next scheduled meeting after the receipt of a request for review.¶
 - (C) Following completion of the review requested, the Certified Burn Manager Advisory Committee shall either affirm or withdraw the revocation by majority vote.¶
 - (D) The Forester or the training provider whose accreditation has been revoked may appeal the decision of the Certified Burn Manager Advisory Committee to the Board of Forestry, in the same manner as appeals under ORS 477.260(2).¶
 - (E) Any final resolution by the Board of the matter raised under section (7)(c) of this rule shall be prepared as a final order, and any further appeal of the Board's final action shall be as prescribed by ORS 183.484.¶
 - (8) Nothing in these rules creates a right for review of revocation of training provider accreditation for employees of the Oregon Department of Forestry.

Statutory/Other Authority: ORS 526.360

Statutes/Other Implemented: ORS 526.016, 526.041

ADOPT: 629-042-2000

RULE SUMMARY: Prescribed Fire Liability Pilot Program purpose.

CHANGES TO RULE:

629-042-2000

Purpose

The purpose of OAR 629-042-2005 to 629-042-2040 is to set forth the standards, requirements, and procedures by which the Prescribed Fire Liability Program pilot program will be operated, pursuant to Chapter 611, Oregon Laws, Sections 14 through 17.

Statutory/Other Authority: ORS 526.016

Statutes/Other Implemented: Chapter 611 Oregon Laws, Sections 14 through 17

ADOPT: 629-042-2010

RULE SUMMARY: Prescribed Fire Liability Pilot Program definitions.

CHANGES TO RULE:

629-042-2010

Definitions

(1) "Claimant" means a party that:

(a) has incurred economic or property damages in accordance with ORS 477.069; or

(b) is the State Forester or forest protective association that has borne recoverable suppression expenses in accordance with ORS 477.068 or ORS 477.120.

(2) "Fund" means the Prescribed Fire Liability Fund established by Chapter 611, Section 15, Oregon Laws 2023.

(3) "Prescribed Fire" or "Prescribed burning" means the planned application and confinement of fire to wildland, rangeland or other vegetative fuels on lands selected in advance of that application.

Statutory/Other Authority: ORS 526.016

Statutes/Other Implemented: HB 4016 (2024)

ADOPT: 629-042-2020

RULE SUMMARY: Prescribed Fire Liability Pilot Program enrollment guidelines

CHANGES TO RULE:

629-042-2020

Enrollment

Prior to burning, Prescribed Fire or Cultural Burn liability coverage requests must be enrolled on the Oregon Prescribed Fire Liability website.¶

(1) Enrollment does not guarantee fund availability.¶

(2) Enrollment may be limited based on fund availability.¶

(3) The enrollment period begins on July 1 of each year and ends on June 30 of the following year. Projects not completed during the enrollment period must be re-enrolled as a new project on or after July 1 to be considered active.¶

(4) Prescribed Fire Liability website must be updated as "completed" no later than 7 calendar days after completion.

Statutory/Other Authority: ORS 526.016

Statutes/Other Implemented: HB 4016 (2024)

ADOPT: 629-042-2030

RULE SUMMARY: Prescribed Fire Liability Pilot Program guidelines for eligible and ineligible damages.

CHANGES TO RULE:

629-042-2030

Damages

(1) Damages eligible for a claim include:¶

(a) Economic and property damage that occurs outside of a planned burn unit;¶

(b) Property (real and personal) damage, personal injury and death, and some forms of smoke damages;¶

(c) Smoke damage to real property, other than to agricultural or natural resources, are eligible for coverage, as are damages, losses, physical injury, or death resulting from vehicle accidents solely caused by smoke; or¶

(d) recoverable suppression expenses incurred by the State Forester or forest protective association that in accordance with ORS 477.068 or ORS 477.120.¶

(2) Damages ineligible for a claim include:¶

(a) Smoke damage to agricultural crops or natural resources;¶

(b) Claims within the planned boundary for trees, carbon stocks or other assets that are within the burn unit boundary; or¶

(c) Damages resulting from a Prescribed fire or Cultural Burn activities not enrolled prior to burning.

Statutory/Other Authority: ORS 526.016

Statutes/Other Implemented: HB 4016 (2024)

ADOPT: 629-042-2040

RULE SUMMARY: Prescribed Fire Liability Pilot Program claim eligibility requirement guidelines.

CHANGES TO RULE:

629-042-2040

Claim Eligibility Requirements

(1) Prescribed Fire or Cultural Burn liability was reserved on the Oregon Prescribed Fire Liability website.

(2) Claims must be submitted within 14 days of discovery of damage.

(3) Discovery of damage must occur within the burn period for which the Prescribed Fire or Cultural Burn was enrolled, or within 45 days of burning; whichever is greater.

(4) The claim was submitted by an eligible claimant.

Statutory/Other Authority: ORS 526.016

Statutes/Other Implemented: HB 4016 (2024)

ADOPT: 629-042-2050

RULE SUMMARY: Prescribed Fire Liability Pilot Program claims consideration guidelines.

CHANGES TO RULE:

629-042-2050

Claim Considerations

(1) Claims must be submitted in the manner indicated on the Oregon Prescribed Fire Liability website.

(2) Claims may be denied based on criteria established pursuant to Chapter 611, 2023 Oregon Laws.

(3) Claims that have been denied may be resubmitted with corrected information provided it is still within the original 14-day submission deadline.

(4) Claims submitted after the 14-day deadline may not be considered for reimbursement.

Statutory/Other Authority: ORS 526.016

Statutes/Other Implemented: HB 4016 (2024)

ADOPT: 629-042-2060

RULE SUMMARY: Prescribed Fire Liability Pilot Program incident reporting requirements

CHANGES TO RULE:

629-042-2060

Incident Report Requirements

(1) Incident Report conducted by or on behalf of the Department must indicate that:¶

(a) Incident was not a result of willful, malicious, or negligent in the origin or subsequent spread.¶

(b) All necessary and appropriate burn plans, permits, and provisions were in place.¶

(2) Prescribed fire or Cultural burn criteria met pursuant to Chapter 611, 2023 Oregon Laws Sections 14 (5)(a), including confirmation of Certified Burn Manager status if that criterion is utilized to establish eligibility.

Statutory/Other Authority: ORS 526.016

Statutes/Other Implemented: HB 4016 (2024)