

LOUISIANA DEPARTMENT OF AGRICULTURE AND FORESTRY
LEGISLATIVE OVERSIGHT REPORT

RE: FORESTRY COMMISSION—PRESCRIBED BURNING RULES
LAC 7:XXXIX.913-914

This report is submitted electronically to the President of the Senate, Speaker of the House of Representatives, and the Senate and House Committees on Agriculture, Forestry, Aquaculture and Rural Development, in accordance with R.S. 49:968 regarding the intent by the Department of Agriculture and Forestry, Forestry Commission, to take the proposed action with regard to the above cited rules and regulations.

I. THE PROPOSED ACTION

The proposed action will amend the above cited rules and regulations to establish a procedure for persons to file complaints regarding prescribed burns with the Department and a procedure for the Department to investigate and take action regarding the complaints, including the authority to suspend or revoke a prescribed burning certificate after an adjudicatory hearing conducted in accordance with the Administrative Procedure Act.

II. THE REASONS FOR THE PROPOSED ACTION

R.S. 3:17(F), enacted by Act No. 590 of the 2014 Regular Session, provides that “persons who wish to complain about certain prescribed burns shall issue their complaints to the commissioner. The commissioner shall investigate such complaints and have the authority to suspend or revoke his authorization for the prescribed burn for persons found to be in violation of the prescribed burn requirements or rules and regulations promulgated pursuant to this Section.” The proposed rule sets forth the procedure for the Department to receive and investigate complaints.

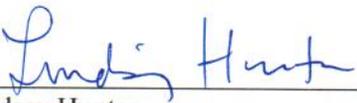
III. STATUTORY AUTHORITY

The proposed action is authorized by La. R.S. 3:17.

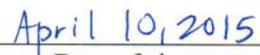
IV. ATTACHMENTS

A. The proposed action coded with any new rule or language underscored and with language to be deleted from an existing rule in struck-through type.

B. A copy of the fiscal and economic impact statements approved by the legislative fiscal office.



Lindsey Hunter
General Counsel



Date of signature

RESOLUTION FOR ADOPTION OF REGULATIONS

LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY FORESTRY COMMISSION

RE: LAC 7:XXXIX.913-914 (Prescribed Burning)

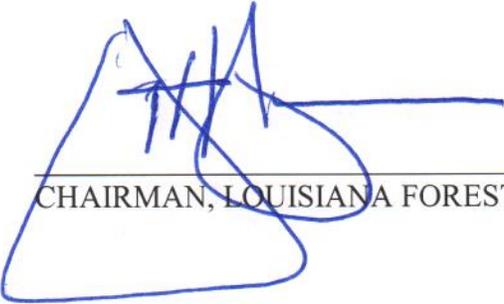
This administrative agency, by a majority of the members present and voting, hereby adopts the following resolution:

This agency is in the process of amending the above-cited rules and regulations. These rules and regulations are being enacted pursuant to La. R.S. 3:4274 and La. R.S. 3:17(F) and are to be promulgated in accordance with the Administrative Procedure Act (La. R.S. 49:950, *et seq.*).

The Commissioner of Agriculture and Forestry is hereby authorized to publish in the State Register a notice of this agency's intended action to make these permanent regulations, which shall include all information required to be in the Notice of Intent. The Commissioner is further authorized to take public comments, respond to the comments and to take all action and to file all necessary documents necessary to substantially comply with the Administrative Procedure Act.

If no substantive changes to these rules and regulations are required, and no oversight committee finds the proposed rules and regulations to be unacceptable, and the steps for promulgation of these rules and regulations have been substantially complied with except for final publication in the State Register, then the Commissioner is authorized to adopt these rules and regulations on behalf of this agency. His action in that regard shall be considered to be final adoption by this agency, pursuant to this Resolution. The Commissioner may sign the written act of adoption on behalf of this agency and cause the rules and regulations to be published as a final rule in the State Register.

Adopted in a public meeting on this 10th day of MARCH, 2015.



CHAIRMAN, LOUISIANA FORESTRY COMMISSION

NOTICE OF INTENT
Louisiana Department of Agriculture and Forestry
Office of Forestry

Prescribed Burning Complaints
(LAC 7:XXXIX.913, 914)

In accordance with the Administrative Procedure Act, R.S. 49:950, *et seq.*, notice is hereby given that pursuant to R.S. 3:17, the Department of Agriculture and Forestry ("Department") intends to amend its rules regarding prescribed burning. R.S. 3:17(F), enacted by Act No. 590 of the 2014 Regular Session, provides that "persons who wish to complain about certain prescribed burns shall issue their complaints to the commissioner. The commissioner shall investigate such complaints and have the authority to suspend or revoke his authorization for the prescribed burn for persons found to be in violation of the prescribed burn requirements or rules and regulations promulgated pursuant to this Section." The proposed Rule sets forth a procedure for persons to file complaints regarding prescribed burns with the Department and a procedure for the Department to investigate and take action regarding the complaints, including the authority to suspend or revoke a prescribed burning certificate after an adjudicatory hearing conducted in accordance with the Administrative Procedure Act.

Title 7
AGRICULTURE AND ANIMALS
Part XXXIX. Forestry

Chapter 9. Prescribed Burning
§913. Complaints and Investigation

~~A. In the event that any certified prescribed burn manager demonstrates that his practices and procedures during one or more of prescribed burns substantially deviates from accepted practices and procedures for prescribed burning in effect at the time of certification or at the time of the aforesaid prescribed burn or burns then, in that event, and upon such finding determined after an adjudicatory hearing conducted in accordance with the Administrative Procedure Act, the commissioner may suspend or revoke the certification of any such certified prescribed burn manager.~~

A. Any person who wishes to file a complaint regarding an agricultural burn may do so by telephone or in writing. In order to file a complaint by telephone, persons must contact the department via the department's 24-hour telephone hotline. Complaints may also be made by filling out a department-approved complaint form available on the department's website, by mailing a written complaint to the department, or by sending electronic mail to burncomplaints@daf.state.la.us.

B. A complaint shall, at a minimum, contain the following information:

1. the name, address and telephone number of the person making the complaint;
2. the address, location or geographic coordinates of the agricultural burn, including the name of the parish;
3. the date and time of the complaint; and
4. a detailed explanation of all conduct and/or conditions which form the basis of the complaint.

C. Upon receipt of a complaint, the department may:

1. conduct an investigation of the incident involved in the complaint; and
2. inform the burner against whom the complaint has been lodged of the complaint.

D. Upon completion of the investigation described in this section, the department shall notify the complainant and the burner of the results of the investigation.

E. The department, in its sole discretion, will determine whether educational materials should be provided to the burner or whether the actions complained of warrant referring the citizen's complaint to an adjudicatory hearing for the possible suspension or revocation of a prescribed burning certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:17.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 21:670 (July 1995), LR 41:

§914. Suspension and Revocation of Prescribed Burning Certificate

A. In the event that the department determines that the practices and procedures utilized by a certified prescribed burn manager during one or more prescribed burns substantially deviates from accepted practices and procedures for prescribed burning in effect at the time of certification or at the time of the aforesaid prescribed burn or burns, the department shall conduct an adjudicatory hearing in accordance with the Administrative Procedure Act in order to determine whether to suspend or revoke the prescribed burning certificate.

B. All hearings conducted pursuant to this section shall be heard by a three person hearing panel appointed by the commissioner. The commissioner may appoint a hearing officer to conduct the hearing.

C. At the conclusion of the administrative hearing, the hearing panel may recommend that the certified prescribed burn manager's certificate be suspended or revoked. If the panel recommends the certificate be suspended or revoked, it may also recommend that the prescribed burn manager be eligible to have his certificate reinstated after a certain period of time. The hearing panel's recommendation shall be submitted to the commissioner for his determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:17.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 41:

Family Impact Statement

The proposed Rule does not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

- (1) the stability of the family;
- (2) the authority and rights of persons regarding the education and supervision of their children;
- (3) the functioning of the family;
- (4) family earnings and family budget;
- (5) the behavior and personal responsibility of children;
- (6) the ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed Rule does not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

- (1) the effect on household income, assets, and financial security;
- (2) the effect on early childhood development and preschool through postsecondary education development;
- (3) the effect on employment and workforce development;
- (4) the effect on taxes and tax credits;
- (5) the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Statement

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

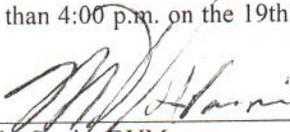
The proposed Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

- (1) the effect on the staffing level requirements or qualifications required to provide the same level of service;
- (2) the total direct and indirect effect on the cost to the providers to provide the same level of service; or
- (3) the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rule. Written submissions must be directed to Wade Dubea, State Forester, Department of Agriculture & Forestry, P.O.

Box 631, Baton Rouge, LA 70821 and must be received no later than 4:00 p.m. on the 19th day of June 2015. No preamble is available.



Mike Strain, DVM
Commissioner of Agriculture and Forestry

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person Preparing Statement: Wade Dubea Dept.: Agriculture and Forestry
Phone: (225)925-4500 Office: Forestry
Return Address: 5825 Florida Blvd. Rule Title: LAC 7:XXXIX.913, 914 (Prescribed Burning)
Baton Rouge, LA 70806
Date Rule Takes Effect: July 20, 2015

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is not anticipated to have a direct material effect on state or local governmental units as it clarifies existing rules. Pursuant to R.S. 3:17, as amended by Act No. 590 of the 2014 Regular Legislative Session, the proposed rule change clarifies the current procedure for citizens to file complaints with the department regarding prescribed burns. The commissioner shall investigate such complaints in order to determine whether the actions complained of warrant referring the citizen's complaint to an adjudicatory hearing for the possible suspension or revocation of a prescribed burning certificate. Upon the conclusion of an adjudicatory hearing, the commissioner may suspend or revoke a prescribed burning certificate for persons who are found to have conducted a prescribed burn which substantially deviates from accepted practices and procedures for prescribed burning in effect at the time of certification or at the time of the specific prescribed burn in question.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is not anticipated to have a direct material effect on revenue collections of state or local governmental units.

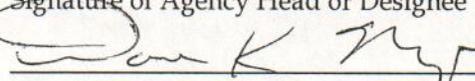
III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed rule change is not anticipated to have a direct material effect on economic costs and/or an economic benefit to directly affected persons or non-governmental groups.

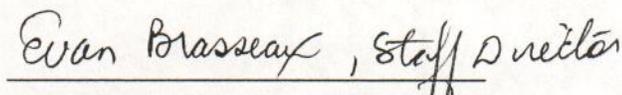
IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is not anticipated to have a direct material effect on competition and employment.


Signature of Agency Head or Designee


Dane Morgan, Assistant Commissioner
of Management and Finance, LDAF

4/7/15
Date of Signature


Evan Brasseaux, Staff Director
Legislative Fiscal Officer or Designee

4/8/15
Date of Signature

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

Pursuant to R.S. 3:17, as amended by Act No. 590 of the 2014 Regular Session, the proposed rule sets forth a procedure for persons to file complaints with the department regarding prescribed burns. The proposed rule sets forth what must be included in a complaint and what the department must do upon receipt of a complaint. The proposed rule gives the department the discretion to determine whether the actions complained of warrant referring the citizen's complaint to an adjudicatory hearing for the possible suspension or revocation of a prescribed burning certificate. The proposed rule provides that, upon the conclusion of an adjudicatory hearing conducted in accordance with the Administrative Procedure Act, the commissioner may suspend or revoke a prescribed burning certificate.

- B. Summarize the circumstances, which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

R.S. 3:17 was amended during the 2014 Regular Session by Act 590. Act 590 amended R.S. 3:17(B) to state that "[s]uch rules and regulations shall be adopted and promulgated by the commissioner pursuant to the provisions of the Administrative Procedure Act." Act 590 also added Paragraph (F) to R.S. 3:17, which provides, "persons who wish to complain about certain prescribed burns shall issue their complaints to the commissioner. The commissioner shall investigate such complaints and have the authority to suspend or revoke his authorization for the prescribed burn for persons found to be in violation of the prescribed burn requirements or rules and regulations promulgated pursuant to this Section." The proposed rule sets forth a procedure for persons to file complaints regarding prescribed burns with the department and a procedure for the department to investigate and take action regarding the complaints, including the authority to suspend or revoke a prescribed burning certificate after an adjudicatory hearing conducted in accordance with the Administrative Procedure Act.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

It is not anticipated that the proposed rule change will result in any increase in the expenditure of funds. Complaints will be received and investigations conducted by existing personnel.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase? Not applicable.

(a) _____ Yes. If yes, attach documentation.

(b) _____ NO. If no, provide justification as to why this rule change should be published at this time

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

It is not anticipated that implementation of the proposed rule will result in an increase or decrease of costs.

COSTS	FY 15	FY 16	FY 17
Personal Services	0	0	0
Operating Expenses	0	0	0
Professional Services	0	0	0
Other Charges	0	0	0
Equipment	0	0	0
Major Repairs & Constr.	0	0	0
TOTAL	0	0	0
POSITIONS (#)	0	0	0

2. Provide a narrative explanation of the costs or savings shown in "A. 1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The proposed rule change is not anticipated to have a direct material effect on state or local governmental units as it clarifies existing rules. Pursuant to R.S. 3:17, as amended by Act No. 590 of the 2014 Regular Legislative Session, the proposed rule change clarifies the current procedure for citizens to file complaints with the department regarding prescribed burns. The commissioner shall investigate such complaints in order to determine whether the actions complained of warrant referring the citizen's complaint to an adjudicatory hearing for the possible suspension or revocation of a prescribed burning certificate. Upon the conclusion of an adjudicatory hearing, the commissioner may suspend or revoke a prescribed burning certificate for persons who are found to have conducted a prescribed burn which substantially deviates from accepted practices and procedures for prescribed burning in effect at the time of certification or at the time of the specific prescribed burn in question.

3. Sources of funding for implementing the proposed rule or rule change.

It is not anticipated that the proposed rule will require any direct or indirect material funding.

SOURCE	FY 15	FY 16	FY 17
State General Fund	0	0	0
Agency Self-Generated	0	0	0
Dedicated	0	0	0
Federal Funds	0	0	0
Other (Specify)	0	0	0
TOTAL	0	0	0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The proposed rule will be administered using current personnel under the department's current budget.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

It is not anticipated that the proposed rule will have an impact on local governmental units.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

Not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

It is not anticipated that the proposed rule will result in an increase or decrease in state or local governmental revenues.

REVENUE INCREASE/DECREASE	FY 15	FY 16	FY 17
State General Fund	0	0	0
Agency Self-Generated	0	0	0
Dedicated Funds*	0	0	0
Federal Funds	0	0	0
Local Funds	0	0	0
TOTAL	0	0	0

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

It is not anticipated that the proposed rule will result in an increase or decrease in state or local governmental revenues.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

It is not anticipated that the proposed rule will affect any non-governmental group.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

It is not anticipated that the proposed rule will have a direct material effect on the revenues of any group.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment in either the public or private sector.