

**Negotiated Rule Draft No. 3  
Docket No. 58-0101-1901, Dated September 15, 2020**

This draft includes revisions based on negotiated rulemaking meeting discussions, stakeholder meetings, and review of written comments received.

The revisions in Section 006 are highlighted in yellow. Sections 627 through 633 were redrafted, reorganized, and inserted as clean text with no formatting or highlighting.

**Written comment deadlines for this draft:**

Comment Deadline	Date of Meeting Discussion	Subject Matter
10/15/20	9/29/20	Short Duration prescribed fire related rule sections, definitions, and the general conditions sections that apply
10/15/20	10/1/20	Minor prescribed fire related rule sections, definitions, and the general conditions sections that apply
10/20/10	10/6/20	Major and Recognized Smoke Management Group prescribed fire related rule sections, definitions, and the general conditions sections that apply

**Rules for the Control of Air Pollution in Idaho  
IDAPA 58.01.01**

**006. GENERAL DEFINITIONS.**

**(BREAK IN CONTINUITY)**

**XX. Burn Manager. The individual responsible for a prescribed burn from ignition through completion. The term burn manager includes a designee, wherein both burn manager and designee are responsible for the prescribed burn.**

**XX. Broadcast Burning. A prescribed burn where fire is applied to wildland fuels within well-defined boundaries for the purpose of fuel hazard reduction and/or resource management. Prescribed burning activity where fire is applied generally to most or all of an area within well-defined boundaries for reduction of fuel hazard, as a resource management treatment, or both.**

**XX. Pile Burning. A prescribed burn used to dispose of wildland and forestland fuels that result from fuel and/or resource management resulted from logging, forest practices, resource management, or any combination of activities which were piled by hand or machine.**

**XX. Recognized Smoke Management Group. A membership group of prescribed burners created to accomplish wildland fuel and resource management objective burning while protecting public health and welfare. The group implements smoke management principles and meets the requirements of Sections 628 and 632.02 – 632.03.**

**XX. Smoke Sensitive Area. Area identified by the Department where smoke can impact public health and welfare, such as nonattainment areas, PM advance areas, roadways, airports, and Class I areas.**

**XX. Institutions with Sensitive Populations. Institutions such as schools while in session; hospitals; residential health care facilities for children, the elderly or infirm; and other institutions as approved by the Department.**

91. Prescribed ~~Fire Fire Management Burning~~. The controlled application of fire to wildland fuels in either their natural or modified state under such conditions of weather, fuel moisture, soil moisture, etc., as will allow the fire to be confined to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish planned objectives, including: ~~(5-1-94)~~

- a. Fire hazard reduction; (5-1-94)
- b. The control of pests, insects, or diseases; (5-1-94)
- c. The promotion of range forage improvements; (5-1-94)
- d. The perpetuation of natural ecosystems; (5-1-94)
- e. The disposal of ~~slash and~~ woody debris resulting from ~~any land management activity such as;~~ a logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system; ~~(5-1-94)~~
- f. The preparation of planting and seeding sites for forest regeneration; and (5-1-94)
- g. Other accepted natural resource management purposes. (5-1-94)

(BREAK IN CONTINUITY)

~~112. Smoke Management Plan. A document issued by the Director to implement Sections 606 through 616, Categories of Allowable Burning. (5-1-94)~~

113. **Smoke Management Program.** A program whereby ~~wherein~~ meteorological weather information, fuel conditions, fire behavior, ~~and~~ smoke ~~movement and atmospheric dispersal~~ dispersion conditions are used ~~as a basis for scheduling the~~ to schedule location, amount and timing of ~~all~~ open burning ~~operations so as,~~ including prescribed burning, to ~~reduce emissions and~~ minimize the smoke impacts ~~to human health and the environment and to reduce the visibility impairment in mandatory Class I Federal Areas in accordance with the regional haze long-term strategy referenced at Section 667. of such burning on identified smoke sensitive areas and populations and to ensure smoke impacts do not cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) in order to protect public health.~~

(BREAK IN CONTINUITY)

~~614. PRESCRIBED BURNING.~~

~~The use of open outdoor fires to obtain the objectives of prescribed fire management burning is an allowable form of open burning when the provisions of Section 614 are met. (5-1-94)~~

~~01. Burning Permits or Prescribed Fire Plans. (5-1-94)~~

~~a. Whenever a burning permit or prescribed fire plan is required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, any person who conducts or allows prescribed burning shall meet all permit and/or plan conditions and terms which control smoke. (5-1-94)~~

~~b. The Department will seek interagency agreements to assure permits or plans issued by agencies referred to in Subsection 614.01.a. provide adequate consideration for controlling smoke from prescribed burning. (5-1-94)~~

~~02. Smoke Management Plans for Prescribed Burning. (5-1-94)~~

~~a. Whenever a permit or plan is not required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, any person who conducts or allows prescribed burning shall meet all conditions set forth in a Smoke Management Plan for Prescribed Burning. (5-1-94)~~

~~b. The Department will develop and put into effect a Smoke Management Plan for Prescribed Burning consistent with the purpose of Sections 600 through 616. (5-1-94)~~

~~03. Rights-of-Way Fires. The open burning of woody debris generated during the clearing of rights of way shall be open burned according to Sections 38-101 and 38-401, Idaho Code, IDAPA 20 Title 16 and Sections 606 through 616 of these rules. (5-1-94)~~

**(BREAK IN CONTINUITY)**

The following sections were redrafted, reorganized, and inserted to replace those sections from the Negotiated Rule Draft No. 2.

**627. PRESCRIBED FIRE.**

The use of open outdoor fires to obtain the objectives of prescribed fire is an allowable form of open burning when the provisions of Sections 627-632 are met.

**628. RECOGNIZED SMOKE MANAGEMENT GROUP BURNING.**

Recognized smoke management group burning is any use of prescribed fire to burn slash and natural fuels by any person, as defined in Section 006, that is a member in good standing of a recognized smoke management group.

**01. Certification of Recognized Smoke Management Group.** To become a recognized smoke management group, the group must annually demonstrate to the Department, through a current operating guide, that their policies and operating procedures meet or exceed the requirements identified in Sections 628, and 632.02 – 632.03.

**a. Notification.** The Department will notify the group and post on the Department’s website a list of recognized smoke management groups, the rule section(s) satisfied by the group’s policies and operating procedures, and any limitations.

**b. Collaboration.** To satisfy Subsection 628.02.d and 632.02, the final burn decision for members of the recognized smoke management group will be determined through collaboration with the recognized smoke management group representative and the Department.

**02. Requirements for Members of a Recognized Smoke Management Group.** Members must:

**a. Annual Coordination.** On an annual basis, provide a representative to discuss projected burn projects with the Department;

**b. Registration.** Prior to conducting any prescribed fire, register any planned burns in accordance with the recognized smoke management group’s current operating guide;

**c. Request to Burn.** Submit a request to burn to the group’s burn management system in accordance with the group’s current annual operating guide; and

**d. Burn Decision.** Prior to conducting a burn the burn managers will have received notification of the final burn decision, burn approval, and any specific conditions under which burning is allowed through their group notification process in accordance with its current annual operating guide.

**03. Smoke Management Practices.** Burn managers must:

**a. Smoke Dispersion Forecast.** On the morning of the burn, obtain and review a smoke dispersion forecast specific to the burn location and ignition time that includes smoke dispersion conditions such as transport and surface wind speed and direction, mixing height, and ventilation. The

burn manager will evaluate whether the forecasted weather conditions will support conducting the burn;

**b. Weather Observations and Wind Direction.** Prior to ignition at the project location, confirm that the wind direction and other atmospheric conditions such as humidity are consistent with the smoke dispersion forecast, will support adequate smoke ventilation in accordance with the smoke management group's annual operating guide requirements, and will avoid impacting smoke sensitive areas and locations with institutions with sensitive populations;

**c. Fuel Conditions.** Prior to ignition at the project location, confirm fuel conditions will support adequate combustion;

**d. Test Burn.** If conducting broadcast burning or burning multiple piles, conduct a test burn to confirm adequate vertical and horizontal smoke dispersion and adequate fuel burning rate that promotes consumption of fuel by flaming phase or meets specific prescription needed for successful treatment; and

**e. Recordkeeping and Reporting.**

i. Burn managers must:

(1) Report the completed burn activity in accordance with the recognized smoke management group's current operating guide;

(2) Record on-site weather conditions during the day of ignition. Records will include observations before, during, and after the ignition and the time of day the observations were made;

(3) Record smoke conditions observed during and after the burn and any known smoke impacts on any smoke sensitive area and institution with sensitive populations as a result of the burn; and

(4) Record the condition of the fuels being burned and the results of any test burn if conducted.

ii. The member of a recognized smoke management group must retain and provide to the Department upon request all records created in accordance with Subsections 628.03.e.i.2-4. for a minimum of one hundred twenty (120) days from the completion of the burn.

**629. MAJOR BURNING**

Major burning is any use of prescribed fire to burn slash by any person in quantity greater than thirty-four thousand (34,000) cubic feet of material, or thirty (30) tons slash material per day, or any amount of broadcast type burning of natural or activity fuels.

**01. Annual Coordination.** On an annual basis, all persons conducting major burning must provide a representative, preferably the burn manager of the project, to discuss projected burn projects with the Department.

**02. Registration.** Prior to conducting any prescribed fire, all burn managers who will be conducting major burning, must register any planned burns in accordance with the following:

a. No later than thirty (30) days before the first anticipated ignition date of the year, all persons conducting major burning must submit a registration to burn using forms provided by the Department. Forms will be submitted through the Department's web-based data portal, by mail service, fax, or hand delivered to the Department. The registration will include the following information for each burn project:

- i. Burn manager name and contact information including phone number and email address;
- ii. Project name or unique project identifier;
- iii. Burn type;
- iv. Burn location;
- v. Land owner name;
- vi. Project details including: acreage to be burned for broadcast burns, size and number of piles, and method of construction for pile burns (such as hand pile, dozer, or grapples); and
- vii. Fuel characteristics expected such as estimated fuel loading and moisture content.

b. Modifications to burn project registrations can be made at any time prior to submitting a request to burn as applicable in Subsection 629.03.

**03. Request to Burn.** Burn managers must:

a. On forms provided by the Department, submit a request to burn to the Department by noon local time one (1) business day before proposed ignition. For weekend or holiday burning, the request to burn must be received by the Department by noon local time the last business day of the week (i.e., Sunday and Monday burning will need to be requested Friday by noon); and

b. Provide any updates to the burn plan or burn manager's name if changed since initial registration. Reference the burn's unique identifier established in the registration process completed in Subsection 629.02. Update any details of the burn such as fuel loading and acreage when submitting request to burn, if known at the time, and if the burner believes the updated information will be relevant to smoke management and air quality considerations. Relevant information may include pile sizes and quantity, estimated moisture content of fuel, timing of ignition, duration of burn, and others.

**04. Burn Decision.** Burn managers will be notified of the daily burn decision and burn approval by the Department via its website. The Department will post the daily burn decision, any burn restrictions or specific conditions under which burning is limited, and any burn projects that have been approved by 5pm local time each business day for the following day. Burn decisions and burn approvals for weekend and holidays will be posted by 5pm local time the last business day prior to the weekend or holiday.

**05. Smoke Management Practices.** Burn managers must:

**a. Smoke Dispersion Forecast.** On the morning of the burn, obtain and review a smoke dispersion forecast specific to the burn location and ignition time that includes smoke dispersion conditions such as transport and surface wind speed and direction, mixing height, and ventilation. The burn manager will evaluate whether the forecasted weather conditions will support conducting the burn;

**b. Weather Observations and Wind Direction.** Prior to ignition at the project location, confirm that the wind direction and other atmospheric conditions such as humidity are consistent with the smoke dispersion forecast, will support adequate smoke ventilation, and will avoid impacting smoke sensitive areas and locations with institutions with sensitive populations as defined in Section 006;

**c. Fuel Conditions.** Prior to ignition at the project location, confirm fuel conditions will support thorough combustion;

**d. Test Burn.** If conducting broadcast burning or burning multiple piles, conduct a test burn to confirm adequate vertical and horizontal smoke dispersion and adequate fuel burning rate that promotes consumption of fuel by flaming phase or meets specific prescription needed for successful treatment; and

**e. Recordkeeping and Reporting.**

i. Burn managers must:

(1) Using forms provided by the Department, report to the Department total acres burned by noon local time the first business day after the burn project was approved to burn;

(2) Record on-site weather conditions during the day of ignition. Records will include observations before, during, and after the ignition and the time of day the observations were made;

(3) Record smoke conditions observed during and after the burn and any known smoke impacts on any smoke sensitive area and institution with sensitive populations as a result of the burn; and

(4) Record the condition of the fuels being burned and the results of any test burn if conducted.

ii. Persons conducting major burning must retain and provide to the Department upon request all records created in accordance with Subsections 629.05.e.i.2-4. for a minimum of one hundred twenty (120) days from the completion of the burn.

**630. MINOR BURNING**

Minor Burning is any use of prescribed fire to burn piled slash or woody debris by any person in quantities greater than three thousand (3,000) cubic feet of slash material, or two point five (2.5) tons of slash material per day and less than thirty four thousand (34,000) cubic feet slash material, or thirty (30) tons slash material per day.

**01. Registration.**

**a.** Prior to conducting any prescribed fire, all burn managers who will be conducting minor burning must register each planned burn project in accordance with Subsections 630.01.a.i. or ii.

i. Register each burn project by submitting the Forest Practice Act Notification or Certification of Compliance Form with the Idaho Department of Lands. The Department of Environmental Quality will receive the information from this submittal and process as the registration or;

ii. No later than thirty (30) days before the anticipated ignition date, submit the following information to the Department using the forms provided by the Department:

(a) Burn manager name and contact information including phone number and email address;

(b) Project name or unique project identifier;

(c) Burn location;

(d) Land owner name;

(e) Project details including: size and number of piles, and method of pile construction (such as hand pile, dozer, or grapppler); and

(f) Fuel characteristics expected such as moisture content.

**b.** The Department may request additional information such as planned time of ignition and expected burn duration from the burn manager within fourteen (14) days of receipt of a registration if the Department determines that the information is needed to ensure that the burn approval will not cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) or adversely impact a smoke sensitive area or institution with sensitive populations.

**02. Notice of Intent to Burn.** Burn managers must submit a notice of intent to burn to the Department, using forms provided by the Department, by noon local time a minimum of one (1) business day prior, but no more than ten (10) business days prior to anticipated burn date. For weekend or holiday submissions, the notice of intent to burn must be received by the Department by noon local time the last business day of the week.

**a.** Burn managers may submit additional information deemed relevant to the burn decision to the Department. The Department will include this information when making the burn decision. Additional information may include but is not limited to:

i. Pile sizes and quantity;

ii. Estimated moisture content of fuel;

iii. Estimated time of ignition;

iv. Duration of burn; and

- v. Idaho Department of Lands hazard fuel abatement deadlines.
- b. The Department will acknowledge receipt of intent to burn notification.
- c. The Department will issue a burn decision for each notice of intent to burn for each day until the burn is reported as complete or for ten (10) days, whichever comes first.

**03. Burn Decision.** The Department will post on its website the daily burn decision, and any burn restrictions or specific conditions under which minor burning is limited by 5pm local time each business day for the following day. Burn decisions for weekend and holidays will be posted by 5pm local time the last business day prior to the weekend or holiday.

**04. Smoke Management Practices.** Burn managers must:

**a. Burn Day Confirmation.** Prior to ignition:

- i. Ensure the intent to burn notification required by Section 631.02 was completed;
- ii. Ensure the ignition is occurring within the ten (10) day period of the intent to burn notification; and
- iii. Confirm that no restrictions or limitations are in place that would prohibit or limit the burn project. Confirmation of the burn day designation may be made prior to arriving at the project location to ensure the burn decision is accessible and current;

**b. Wind Direction Confirmation.** Prior to ignition, at the project location, confirm that the wind direction will avoid impacting smoke sensitive areas and institutions with sensitive population locations as defined in Section 006;

**c. Fuel Conditions.** Prior to ignition, at the project location confirm fuel conditions will support adequate combustion; and

**d. Test Burn.** If burning multiple piles, conduct a test burn to confirm adequate vertical and horizontal smoke dispersion and adequate fuel burning rate that promotes consumption of fuel by flaming phase before proceeding with additional burning.

### **631. SHORT DURATION PILE BURNING.**

Short duration pile burning is any use of prescribed fire to burn piled slash or woody debris material by any person in quantities of three thousand (3,000) cubic feet of slash material, or two point five (2.5) tons of slash material, or less per day. Short duration pile burning contains natural vegetative material that would reasonably be assumed to have been created by hand piling. Each hand pile is expected to be fully consumed within twenty-four (24) hours.

**01. Registration.** Prior to conducting any prescribed fire, as defined in 006, all burn managers who will be conducting short duration pile burning must register each planned burn projects in accordance with 631.01.a or b.:

a. Register each burn project by submitting the Forest Practice Act Notification or Certification of Compliance Form with the Idaho Department of Lands. The Department of Environmental Quality will receive the information from this submittal and process as the registration; or;

b. No later than thirty (30) days before the registrants anticipated ignition date, submit the following information to the Department, using the forms provided by the Department:

i. Burn manager name and contact information including phone number and email address;

ii. Project name or unique project identifier;

iii. Burn location;

iv. Land owner name; and

v. Number of piles.

**02. Burn Decision.** The Department will post on its website the daily burn decision, any burn restrictions, and specific conditions under which short duration pile burning is limited by 5pm local time each business day for the following day. Burn decisions for weekend and holidays will be posted by 5pm local time the last business day prior to the weekend or holiday.

**03. Smoke Management Practices.** Burn managers must:

a. **Burn Day Confirmation.** Prior to ignition, confirm that no restrictions or limitations are in place that would prohibit or limit the burn project. Confirmation of the burn day designation may be made prior to arriving at the project location to ensure the burn decision is accessible and current;

b. **Wind Direction Confirmation.** Prior to ignition at the project location, confirm the wind direction will avoid impacting smoke sensitive areas and institutions with sensitive population locations;

c. Prior to ignition at the project location, confirm fuel conditions will support adequate combustion; and

d. **Test Burn.** If burning multiple piles, conduct a test burn to confirm adequate vertical and horizontal smoke dispersion and adequate fuel burning rate that promotes consumption of fuel by flaming phase before proceeding with additional burning.

## **632. GENERAL PROVISIONS.**

**01. Burn Decision – All Burning.** The Department will evaluate the following before issuing a burn decision under Sections 627 through 632:

a. The forecasted meteorological and ambient air quality conditions, during the expected burning (flaming and smoldering) phase, to ensure the proposed burns will not cause or contribute to an exceedance of any NAAQS. The following parameters are considered when evaluating forecast meteorological and ambient air quality conditions:

- i. Current air quality;
  - ii. Expected emissions from all emission sources on the date of burning;
  - iii. Proximity of other burns within the area of the proposed burn; and
  - iv. Characteristics of proposed burn including moisture content of fuel, size of burn, and fuel loading;
- b.** The proximity and potential smoke impacts of the proposed burns to smoke sensitive areas and institutions with sensitive populations; and
- c.** Additional smoke management factors such as wildfire activity, activation of the Air Pollution Emergency Rule in Section 550, or local air quality ordinances that address open burning.

**02. Designated Burn Day.**

**a.** The Department will designate each day a burn day or no burn day. Prescribed fire will be allowed unless weather conditions, air quality levels, and the intensity of expected emissions are such that the Department must limit or prohibit prescribed fire in a specific geographical area to protect public health.

**b.** The Department will issue a separate burn decision for each type of burning conducted in accordance with Sections 628-631.

**03. Limitations on Burning.** Burn managers must:

**a.** When required by the conditions of the burn decision, cease new ignitions such that the fire burns down if smoke is adversely impacting smoke sensitive areas or institutions with sensitive populations; and

**b.** When contacted by the Department with a burn cessation decision, cease new ignitions such that the fire burns down.

**04. Smoke Dispersion Forecast and Public Notification of Burn Day.**

**a.** The Department will post on its website a smoke dispersion forecast for each day during the spring and fall burn seasons. The smoke dispersion forecast is intended to assist burn managers in making decisions that support good smoke management practices. The forecast will include a general weather discussion, expected wind conditions, anticipated ventilation conditions, smoke mixing height potential, and any burning tips.

**b.** A map depicting the location of all burns registered with the Department will be provided.

**c.** Each day, the Department will post on its website whether a given day is a burn day and any specific conditions under which burning may be limited.

i. This burn day information will be specific to minor burning and short duration pile burning conducted in accordance with Sections 630 and 631.

- ii. The location of each major burning project approved for each day will also be provided.
- iii. The Department will also provide a link for information to all approved recognized smoke management group burning projects each day.

d. The Department will provide an opportunity for interested persons to sign up to receive automatic e-mail updates for information regarding prescribed fire decisions.

**05. Advisory Committee.** The Department will assemble an advisory committee to meet annually, or as needed, to discuss prescribed fire smoke management plan implementation and recommended improvements. The committee will consist of representatives from Idaho prescribed fire stakeholder groups including:

- a. Forest owners;
- b. Logging contractors;
- c. State and Federal land management agencies;
- d. Idaho Department of Lands;
- e. Idaho Department of Environmental Quality;
- f. Environmental and Health organizations;
- g. Prescribed fire advocacy associations;
- h. Regional county or city representatives; and
- i. Others as recognized.

**633. UNPLANNED FIRE EVENT.**

To identify and coordinate management action strategies based on the level of smoke impacts on public health and welfare, all federal, state, associations, and local governmental entities managing a wildfire of more than one hundred (100) acres must notify the Department within forty-eight (48) hours of the decision to manage any portion of a wildfire under a strategy other than full suppression.