

# Prescribed burning Laws and Regulations



*Greg Pleasant Region IV Fire  
Coordinator*

TEXAS  
PARKS &  
WILDLIFE

TEXAS  
PARKS &  
WILDLIFE

# Early Laws

- A law passed by the legislature in 1848 made it illegal to fire the prairies between July 1 and February 15<sup>th</sup>, except on land belonging to the person doing the firing.
- In 1884 Texas passed a law making the burning of grass a felony.

# Who Regulates Burning in Texas?



# Outdoor Burning in Texas

- Regulated by the Texas Commission on Environmental Quality (TCEQ) under the Air Quality Act
- Created by legislation in 1993.
- Adopted outdoor burning rules in 1996.

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# Why Should You Care?





		Impact →				
		Negligible	Minor	Moderate	Significant	Severe
Likelihood ↑	Very Likely	Low Med	Medium	Med Hi	High	High
	Likely	Low	Low Med	Medium	Med Hi	High
	Possible	Low	Low Med	Medium	Med Hi	Med Hi
	Unlikely	Low	Low Med	Low Med	Medium	Med Hi
	Very Unlikely	Low	Low	Low Med	Medium	Medium

- A Prescribed Burning Bill (HB 2599) was enacted in 1999 which guarantees the right of every landowner in the state the right to burn on his own property. The law also provided for a Certified Prescribed Burn Manager (CPBM) program to limit the liability of a landowner utilizing a CPBM unless the CPBM is the owner or an individual employed by the owner.

# Legislation - *continued*

- HB 2599 passed 1999
  - Gave landowners the right to burn.
  - Purpose:
    - Reduce hazardous fuel loads to reduce wildfires.
    - Uses as a land management tool.
- Set up the Certified Prescribed Burn Manager program
  - Costly for small landowners.

# Rules and Regulations of CIPBM

- Rules set by the Prescribed Burn Board.
- Regulated and licensed by Texas Department of Agriculture (TDA).
- Infractions Investigated by TDA.

# Legislation

- Local Government Code 152.081 passed 1999.
  - Gave County Government power to stop outdoor burning.
  - Burn Bans.
- Except for burns conducted by Certified Prescribed Burn Managers.
  - Unless the President, Governor, or County Judge Issues a proclamation specifically saying that there will be no burning.

# Changes to Laws Cont.

- 2015 H.B. 2119 Included liability limitation to PBA's
- 2019 H.B. 2053 Only CIPBM's can burn during a declared disaster
- 2021 H.B. 222: Defines a Burn Boss as an individual responsible for directing a RX burn under a written prescription plan
- 2021 H.B. 2004: CIPBM not liable for smoke > 300' from burn

# Helps anyone Who meets the Training, Experience and Insurance standards of a CIPBM.

- **H.B. 222** amends the Natural Resources Code to exempt a burn boss from liability for property damage, personal injury, or death caused by or resulting from an applicable prescribed burn in excess of the insurance requirements established by the Prescribed Burning Board for certified and insured prescribed burn managers if the burn boss meets the following conditions:
- has completed an accredited, board-approved prescribed burning training course and satisfied the board-prescribed minimum experience requirements; and
- has liability insurance coverage equal to or in excess of the amount required to qualify for the applicable limitation on liability.
- The exemption does not apply to a burn boss who commits gross negligence or intentionally causes property damage, personal injury, or death.

Sec. 153.083. LIABILITY REGARDING CERTAIN PRESCRIBED BURNS. (a) In this section, "burn boss" means an individual responsible for directing a prescribed burn under a written prescription plan described by Section 153.047.

(b) Except as provided by Subsection (c), if a prescribed burn is conducted in accordance with a written prescription plan described by Subsection (d) and Section 153.047, a person may be held liable for property damage, personal injury, or death caused by or resulting from the burn **only if the person:**

- (1) is the burn boss; and
- (2) is otherwise liable under other law.

# H.B. 222

- (c) Subject to Sections 153.081 and 153.082, **a person other than the burn boss**, including a person assisting or acting under the direction of the burn boss, may be held liable for property damage, personal injury, or death caused by or resulting from the burn **only if the person:**
- (1) **commits gross negligence or intentionally causes** the property damage, personal injury, or death; and
  - (2) is otherwise liable under other law.

# H.B. 2004

- Amends the Natural Resources Code to exempt a burn boss who is a certified and insured prescribed burn manager from liability for property damage, personal injury, or death caused by or resulting from the smoke that occurs more than 300 feet from the prescribed burn.
- The exemption does not apply to a burn boss who commits gross negligence or intentionally causes property damage, personal injury, or death.

# H.B. 2004

Prohibits the Department of Agriculture or another state agency from taking disciplinary action against a certified and insured prescribed burn manager in relation to a prescribed burn conducted in accordance with applicable statutory provisions on the basis that the burn resulted in emissions or is a nuisance.



## Prescribed Burn Program



Prescribed burning is a management tool widely used by foresters, parks departments, range and wildlife managers, ranchers and other landowners to manage excessive natural fuels under very specific and safe conditions. Many states across the United States have a large percentage of public land, making statewide coordinated prescribed burn plans feasible. However, 98 percent of Texas' land is privately held, which makes having a statewide plan more difficult. In Texas, better utilization of prescribed burning as a management tool will require state, local and landowner collaboration to ensure we are managing over resources in a way that will actually reduce wildfires, rejuvenate wildlife habitat, provide control of invasive brush and improve watersheds.

The Prescribed Burning Board (PBB) regulates certified and insured prescribed burn managers who work to control vegetative fuels that can contribute to wildfires. Certified and insured prescribed burn managers help to manage, maintain and restore valuable ecosystems in Texas.

Please see the modules below for information about the Board, the Prescribed Burn Program, and resources for prescribed burning.

### I am interested in:

- ⑤ [Becoming a Certified and Insured Prescribed Burn Manager](#)
- ⑤ [Becoming a Prescribed Burn Lead Instructor](#)
- ⑤ [Finding a Certified and Insured Burn Manager or Instructor](#)
- ⑤ [Prescribed Burn Training](#)

### Information & Resources

- ⑤ [Prescribed Burn Templates](#)
- ⑤ [Legislation and Rules](#)
- ⑤ [Prescribed Burning Board Forms](#)
- ⑤ [Prescribed Burn Training Regions](#)
- ⑤ [Information for Counties During a Burn Ban](#)

### Helpful Links

- ⑤ [Texas Prescribed Burn Associations](#)
- ⑤ [State Agency Links](#)
- ⑤ [Federal Agency and National Resources](#)
- ⑤ [Insurance Carriers Approved for Certified and Insured Prescribed Burn Managers Within the Past 12 Months](#)

### Contact Information

#### For Questions, Call

Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations  
(512) 787-9966  
[Patrick.Dudley@TexasAgriculture.gov](mailto:Patrick.Dudley@TexasAgriculture.gov)  
[Prescribed.Burn@TexasAgriculture.gov](mailto:Prescribed.Burn@TexasAgriculture.gov)

### About the Board

The PBB certifies commercial, private, and not-for-profit prescribed burn managers to ensure that they have the proper training, experience and insurance responsibility to protect themselves and those they serve.

Next Prescribed Burning Board Meeting:

To be announced.

- ⑤ [Responsibilities of the Board](#)
- ⑤ [Membership on the Board](#)

## Requirements for Certification

All certified and insured prescribed burn categories must meet the following minimum requirements for certification:

### REQUIRED TRAINING.

Applicants for certification as a CIPBM must complete a course approved by the Board and pass the exam. The course consists of general fire training and specialized training for the region in which the person is seeking certification, using training materials developed by the Board. The course will contain formal classroom lectures and practical field sessions, including a prescribed burn. Other training courses may be considered by the Board to meet the required training necessary for certification.

### MINIMUM EXPERIENCE REQUIRED.

Applicants must be able to document a minimum of:

1. Three years of prescribed burning within a specific region.
2. Thirty days of prescribed burning not limited by region.
3. Five days of prescribed burning as the responsible individual.

### INSURANCE REQUIRED.

To be certified, at all times a CIPBM must carry:

- (a) at least \$1 million of liability insurance coverage for each single occurrence of bodily injury to or destruction of property,
- (b) with a policy period minimum aggregate limit of at least \$2 million.

### FEES.

Certification and renewal fees are \$500.00 for a two-year license, contingent upon annual proof of insurance and continuing fire training requirements.



# Prescribed Burn Alliance of Texas

## Prescribed Fire Portal

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## Training

The nine PowerPoint Presentations provided herein are designed to provide Learners with the information, knowledge, and skills regarding prescribed burning standards, policy, law, fire behavior, weather, burning techniques, and safety. The presentation titled *Historic and Current Role of Fire in Burn Region 1* covers information that is specific to Burn Region 1.

**Please note that in order to qualify for the Prescribed Burning Board Burn Manager Certification training, Learners must attend a Burn School.**

The Texas Department of Agriculture provides a list of the [certified instructors](#).

The Prescribed Burn Board Training Requirements are as follows. However, please note that the presentations provide herein **do not** address the required information for ALL 30 required contact hours.

Lectures	Minimum Number of Hours	Field Training	Minimum Number of Hours
Fire History and Use; Ecological Effects	1	Equipment and Safety	1
Fire Behavior	2	Evaluation of pre burn area(s)	1
Fire Weather	4	Evaluation of fuels	2
Fuel Moisture/Characteristics	2	Burn and post burn activities	5
Topographic Influences	1	<b>Subtotal</b>	9 hours
Fire Effects	2	<b>Total Contact Hours: 30</b>	
Planning the Burn	4		
Equipment and Safety	1		
Firing Techniques	1		
Smoke Management	1		
Laws and Regulations	2		
<b>Subtotal</b>	21 hours		

## Certified and Insured Prescribed Burn Managers

A Certified and Insured Prescribed Burn Manager (CIPBM) is licensed by the Texas Department of Agriculture and approved by the Prescribed Burning Board. A CIPBM has the ultimate authority and responsibility when conducting a prescribed burn. A CIPBM must meet the minimum standards of training and experience and maintain required insurance. A CIPBM must provide reasonable assurance that a prescribed burn will be confined to a predetermined area, that the effects of smoke emissions are minimized, and that a prescribed burn will be conducted in a manner that will accomplish land management objectives.

### PRESCRIBED BURN MANAGER CATEGORIES.

There are four types of certified and insured prescribed burn managers:

- (a) Private;
- (b) Commercial;
- (c) Government; and
- (d) Not-for-Profit.

# CFT's

- Continuing Fire Training Units: (6 hours)  
Continuing Fire Training unit requirement for CIPBMs every 2 years, but specifically designate 1 hour for Laws and Regulations, 1 hour for Smoke Management, and the remaining 4 hours to be in the remaining categories: i.e. General Safety, Burning Techniques, Environmental Consequences, Equipment Characteristics, Advanced Technology and/or Other (Wildland Firefighting).



# **Outdoor Burning in Texas**

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*Field Operations*

Texas Commission on Environmental Quality

**SUBCHAPTER B: OUTDOOR BURNING**

**§§111.201, 111.203, 111.205, 111.207, 111.209, 111.211, 111.213,  
111.215, 111.217, 111.219, 111.221  
Effective August 3, 2017**

**§111.201. General Prohibition.**

No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the commission. Outdoor disposal or deposition of any material capable of igniting spontaneously, with the exception of the storage of solid fossil fuels, shall not be allowed without written permission of the executive director. The term "executive director," as defined in Chapter 3 of this title (relating to Definitions), includes authorized staff representatives.

Adopted August 21, 1996

Effective September 16, 1996

**§111.203. Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Commission on Environmental Quality (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Certified and Insured Prescribed Burn Manager--A person with ultimate authority and responsibility for a prescribed burn, who has been certified by the Prescribed Burning Board of the Texas Department of Agriculture. The certification issued by the Prescribed Burning Board must be considered effective

# **§111.219. General Requirements for Allowable Outdoor Burning.**

- Basically 7 Rules
- 1. Prior to prescribed or controlled burning for forest management purposes, the Texas Forest Service shall be notified.
- 2. Burning must be outside the corporate limits of a city or town except where the incorporated city or town has enacted ordinances which permit burning

# **§111.219. General Requirements for Allowable Outdoor Burning.**

3. Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s).

## **§111.219**

4. If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post flag-persons on affected roads.

## §111.219

5. Burning must be conducted downwind of or at least 300 feet (90 meters) from any structure containing sensitive receptors located on adjacent properties unless prior written approval is obtained from the adjacent occupant with possessory control.

6. Burning shall be conducted in compliance with the following meteorological and timing considerations:

- (A) 1 hour after sunrise and completed on the same day not later than one hour before sunset,
- (B) Burning shall not be commenced when **surface** wind speed is **predicted** to be less than six mph or greater than 23 mph during the burn period.

# §111.219

7. Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber must not be burned.

- (2) **Coastal salt-marsh management burning** conducted in Aransas, Brazoria, Calhoun, Chambers, Galveston, Harris, Jackson, Jefferson, Kleberg, Matagorda, Nueces, Orange, Refugio, and San Patricio Counties. Coastal salt-marsh burning in these counties shall be subject to the following requirements:
  - (A) All land on which burning is to be conducted shall be **registered** with the appropriate commission regional office using a United States Geological Survey map or equivalent upon which are identified significant points such as roads, canals, lakes, and streams, and the method by which access is made to the site. For large acreage, the map should be divided into manageable blocks with identification for each defined block. The information must be received for review **at least 15 working days before** the burning takes place.

## Coastal salt-marsh Continued

- (B) Prior to any burning, notification, either verbal or written, **must** be made to, and **authorization must be received** from the appropriate commission regional office. Notification must identify the specific area and/or block to be burned, approximate start and end time, and a responsible party who can be contacted during the burn period.
- (C) Such burning shall be subject to the requirements of §111.219 of this title

# §111.217. Requirements for Certified and Insured Prescribed Burn Managers.

## August 2017

- Prescribed burning shall be authorized when conducted under the direction of a Certified and Insured Prescribed Burn Manager, as defined in §111.203 of this title (relating to Definitions), for forest, range and wildland/wildlife management and wildfire hazard mitigation purposes, **with the exception of coastal salt-marsh management burning**. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required. Such burning shall be **subject to the following requirements, and not the requirements in §111.219** of this title (relating to General Requirements for Allowable Outdoor Burning).

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- (1) 4 TAC Chapter 227 (relating to Requirements for Certified and Insured Prescribed Burn Managers) and Chapter 228 (relating to Procedures for Certified and Insured Prescribed Burn Managers).
- (2) Prior to prescribed or controlled burning for forest management purposes, the Texas Forest Service shall be notified.
- (3) Burning must be outside the corporate limits of a city or town except where the incorporated city or town has enacted ordinances which permit burning consistent with the Texas Clean Air Act, Subchapter E, Authority of Local Governments.

# §111.217

- (4) Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s).

# §111.217

- (5) Burning shall be conducted in compliance with the following meteorological and timing considerations:
- (A) The initiation of burning shall commence **no earlier than sunrise**. Burning shall be completed on the same day not later than one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering objects continue to emit smoke after this time,

## **§111.217**

such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard condition. In no case shall the extent of the burn area be allowed to increase after this time.

# §111.217

- (B) Burning shall not be commenced when surface wind speed is predicted to be less than **five miles per hour** (mph) (four knots) or greater than 23 mph (20 knots) during the burn period.
- (C) Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.
- (6) Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive materials,

# WHAT DOES ALL THIS MEAN?

- There are different rules and liability protections depending on Training, Certification and Insurance.
- One for CIPBM's (The least liability)
- One for those that meet the training, experience and have insurance. (Limited Liability)
- And One for everyone else. (Unlimited Liability)

# HAZARD

VS

# RISK

A **HAZARD** is something that has the potential to harm you



**RISK** is the likelihood of a hazard causing harm



# Reduce Liability

- Hire or become a certified prescribed burn manager.
- Join a prescribed burn association.
- Develop and follow a prescribed burn plan.
- Meet “reasonable prudent person” standard.
- Attend a certified prescribed burn school.
- Have appropriate insurance

- Farm Liability Coverage Primary source of liability protection for most land owners but may be ineffective for Prescribed Fire
- Only designated premises are covered- the policy does not travel with the land owner for a prescribed fire. (What happens if you volunteer for your neighbor to assist in a burn and your policy does not cover you?)
- Policies are “silent” on defining prescribed fire. Not included by definition but also not excluded. Insurers generally believe the notion if the exposure is not excluded coverage is included.
- Fire suppression expenses may be limited. There is no trigger for fire suppression expense per se in the farm liability policy.
- Smoke as a pollutant (except from a hostile fire) is not defined. • Volunteers are not defined as a “named insured.”
- Policy excludes liability when a permit is required and not requested.
- Policy normally excludes coverage for criminal acts.

# Insurance Policy Issues

- Never presume insurance “exists” unless you have verified with a professional insurance broker or company rep., IN WRITING.
- Prescribed fire risks will continue to evolve as claims develop and legal precedents are made. (You do not want to be a part of that process!) • Talk to your insurance company and make sure your specific insurance needs are being met.
- Talk to your attorney and make sure you understand your liability in your specific situation



**FARM  
BUREAU**

TOM GREEN COUNTY

## **Controlled Agricultural Burning**

Texas Farm Bureau Insurance Companies  
Farm Coverages within Texas AgAdvantage and Farm Liability policies

The Texas Farm Bureau Insurance Companies are familiar with and support the concept of controlled burning as an agricultural management practice that has been used for many years to burn crop stubble or other vegetation on agricultural use land.

Our company's position is to provide liability coverage for a controlled burn conducted by the individual farmer or rancher on property he or she owns or leases, and is an insured location under a Farm Liability policy or Texas AgAdvantage for Farm and Ranch Owners policy. Each of these policies provides Personal Liability coverage and Medical Payments to Others coverage for bodily injury or property damage caused by heat, smoke or fumes from a fire, if the fire:

1. Is set by the Insured on the Insured location; and
2. is set for the purpose of burning off crop stubble or other vegetation and is consistent with normal and usual agricultural practice; and
3. is not set in violation of an ordinance law; or

Additionally, each of these policies provide the same coverage for bodily injury or property damage when the insured is acting as a volunteer on a prescribed burn at a location that is not owned, leased or controlled by the insured, and the insured:

1. has successfully completed the Academy for Ranch Management or Prescribed Burn Course, or
2. has successfully completed a state qualified Certified Prescribed Burn Manager (CPBM) course.

The insured's liability coverage for participation as a volunteer on prescribed burns is limited under this coverage to a maximum of five (5) prescribed burns per policy period.

The Farm Liability and Texas AgAdvantage policies also provides bodily injury and property damage coverage caused by heat, smoke or fumes from a hostile fire. As used here, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

Our company's position is not to provide liability coverage for an insured acting as an independent contractor or who is otherwise being compensated as a Prescribed Burn Manager, nor for a Prescribed Burn Association. These type exposures require a professional liability policy for which Texas Farm Bureau Insurance companies do not have a market or reinsurance capacity to accommodate.

# In Conclusion

- Texas falls under Simple Negligence rule which require the plaintiff to prove harm, causation and breach of a duty (i.e..fault). The standard for measuring whether or not a person is simply negligent is the **reasonable prudent person**. In general, the law imposes a duty on every person to behave as carefully as a reasonable, ordinary, prudent person would behave in a similar situation.

# Good Resources

- Prescribed Burn Alliance of Texas  
[pbatexas.org](http://pbatexas.org)
- Texas Interagency Coordination Center  
[Ticc.tamu.edu](http://Ticc.tamu.edu)
- Texas Department of Agriculture  
[texasagriculture.gov](http://texasagriculture.gov)
- Texas Commission on Environmental Quality  
[tceq.state.tx.us](http://tceq.state.tx.us)
- Texas Prescribed Burn Handbook  
[agralife.org/rxburn](http://agralife.org/rxburn)

**Any Questions?**

