

# Prescribed Burning Laws, Rules, and Regulations in Texas

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## *Not Legal Advice*

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- A link to the actual law, rule, or regulation is found at the end of each item.

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## Prescribed Burning Laws

In 1999, two important laws were passed which defined prescribed burning in Texas. Prior to this, it was a felony to burn a pasture.

**House Bill 2599** amended the Natural Resources Code to add a new chapter on prescribed burning. The act creates the Prescribed Burning Board within the Texas Department of Agriculture and sets forth the board's composition and terms. The act requires the board to establish standards for prescribed burning, develop a comprehensive training curriculum and certification program for prescribed burn managers, set minimum education and professional requirements for instructors, and establish minimum insurance requirements for certified burn managers. Agriculture House Bill 2599 sets forth minimum standards for prescribed burning and for certification as a prescribed burn manager. The act also limits the liability of a landowner who uses a certified prescribed burn manager and provides that this legislation does not limit a landowner's right to burn and does not modify the landowner's liability for a burn not conducted according to the standards adopted by the Prescribed Burning Board.

Rep. McReynolds bill analysis stated that "Currently, a landowner in Texas has the right to use prescribed burning as a land management tool to reduce vegetative fuel that can flare up and cause wild fires. Wildfires pose a serious threat to the state, particularly to suburban areas, and prescribed burning can help to reduce this risk. property damage, personal injury, or death resulting from the burning of vegetative fuel."



Prescribed fire would have saved homes in 2011.

**House Bill 2620** amended the Local Government Code to authorize a county commissioners court to prohibit or restrict outdoor burning in general or outdoor burning of a particular substance in the unincorporated part of the county if drought conditions have been determined to exist and if the court finds that a public safety hazard would be exacerbated by outdoor burning. Upon request by the court, the Texas Forest Service is required to determine whether drought conditions exist using certain measurement index guidelines. The provisions of the act do not apply to outdoor burning activities related to public health and safety that are 1. authorized by the Texas Natural Resource Conservation Commission for firefighter training, for public utility, natural gas pipeline, or mining operations, or for the harvesting of agricultural crops. 2. That are conducted by a prescribed burn manager certified under Section 153.048, Natural Resources Code, and meet the standards of Sections 153.047 Natural Resources Code. The act entitles a person to injunctive relief to prevent a violation and makes violation of the act a Class C misdemeanor.

# Burning Rules and Regulations

There are many rules and regulations that apply to prescribed burning in Texas. Even though a landowner has the right to burn on his/her land, the laws, rules and regulations still apply. These regulations are not listed in only one place. All prescribed burning must first comply with the regulations of the Texas Commission on Environmental Quality (TCEQ). This applies whether you are burning trash, brush piles, or applying prescribed burning to the landscape. If you are a Certified and Insured Prescribed Burn Manager, there are other rules and regulations that apply when burning outside of a burn ban and additional regulations that apply

if the county is in a burn ban.

The rules and regulations from TCEQ are in place primarily for smoke pollution or other pollution sources of a prescribed burn. The County Government rules with the power of implementing a burn ban can be pro- or con-prescribed burn. Hopefully more and more counties will utilize the effectiveness of prescribed burning for public safety.

The Prescribed Burning Board (TDA) rules are in place to provide for a safe and prudent burn plan and execution.



## TCEQ Outdoor Burning Rules

1. Texas Forest Service must be notified prior to burning in a forest designated area.
2. Coastal salt-marsh burning in 14 counties also entails more specific notification requirements, which are stated in 30 TAC 111.211(2) (A) and (B).
3. Burn outside the corporate limits of a city or town unless the town has an ordinance allowing burning.
4. Only burn when wind is blowing such that smoke will not affect sensitive receptors and not closer than 300 feet unless you have written permission of occupant.
5. If smoke crosses a road or highway, you must post someone to hold a flag to warn traffic.
6. Begin burning no earlier than 1 hr after sunrise or later than 1 hr. prior to sunset. Residual fire must be extinguished if the smoke will cause a hazard.
7. Do not burn if an inversion is present that will not allow the smoke to dissipate.
8. Make sure that a responsible party is present while the burn is active and the fire is progressing.
9. Burn only with winds of at least 6 mph while still allowing the fire to be contained and controlled with winds no faster than 23 mph.
10. No hydrocarbon materials in the burn area.
11. the burning must not cause a nuisance or traffic hazard

<http://www.tceq.texas.gov/publications/rg/rg-049.html>

# Landowner Burning Requirements

## County not In a Burn Ban

1. If the location of the burn is in a forest designated area, you must contact TFS, and other notification requirements exist if the burn is located in one or more of the 14 counties designated as coastal salt-marsh burning
2. All TCEQ outdoor rules apply

Note: It would be prudent to contact the Sheriff's office dispatch prior to and after the prescribed burn. It is also a good idea to notify the volunteer fire department in your area.

## County in a burn ban

1. Same rules and regulations as if the county is not in a burn ban.
2. Check with the County Judge and/or Commissioners court to see if they have or will grant an exception to the ban for a prescribed burn.
3. Some Prescribed Burn Associations are exempt from a burn ban in some counties.
4. If there is no exception, then there should be no burning.

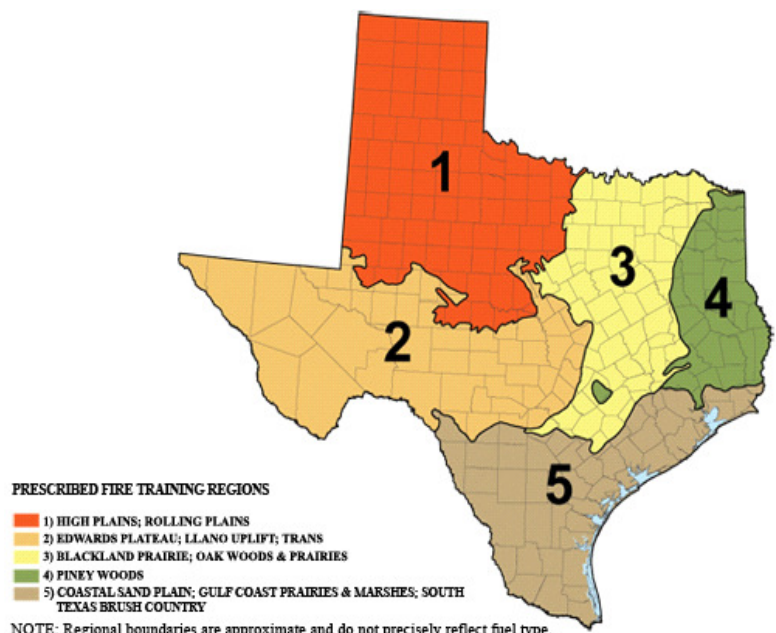
**NOTE:** Unless you are certified and hold a license from Texas Department of Agriculture you must adhere to county burn bans, even if you have taken prescribed burn classes or attended seminars on prescribed burning.

<http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.352.htm>

## CIPBM Rules for Prescribed Burning

There are currently two categories of certification for prescribed burning. The Commercial Certified and Insured Prescribed Burn Manager (CCIPBM) is licensed to burn on any property (with permission of course) within the approved eco-regions. The Private Certified and Insured Prescribed Burn Manager (PCIPBM) can only burn using the certification on land on which the insurance applies.

1. There are no law or rule differences between the CCIPBM and the PCIPBM except for the coverage area.
2. Both categories must adhere to all state burning laws and regulations.
3. You must burn only in the regions specified on your license.



# Are you a Certified and Insured Prescribed Burn Manager?

If you are Certified through the Texas Department of Agriculture's licensing division for prescribed burning, whether commercial, private or other classification, you must adhere to all TCEQ outdoor burning rules and regulations.

You must also adhere to TDA's administrative rules pertaining to record keeping, and any violations of prescribed burning rules.

The rules and regulations as set by the Prescribed Burning Board and TDA will be listed in the following sections.

Section 1: Minimum requirements

Section 2: Notification Rules

Section 3: Rules for bookkeeping

Section 4. Rules to maintain CIPBM

Section 5: TDA complaints and investigations

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=3&ti=4&pt=13](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=3&ti=4&pt=13)

*"All TCEQ outdoor burning laws apply"*

## Section I. Minimum Requirements

The written prescribed burn plan (PBB-604 or equivalent) must be completed before the prescribed burn, meet the minimum requirements established by the Prescribed Burning Board, and provide reasonable assurance that the prescribed burn will be confined to the predetermined area, minimize the effects of smoke emissions, and conducted in a manner that will accomplish the land management objectives. The presence of a certified prescribed burn manager with insurance coverage is required and enough people must be present to meet the personnel requirements of the written prescribed burn plan and provide adequate protection for the safety of persons and adjacent property.

1. Complete PBB-604 prescribed burn plan prior to the burn.
2. The CPBM must be present during the burn.
3. Personnel requirements depend on the burn size, fuels, and adjacent areas.

*"Burn/Do Not Burn Checklist should be completed prior to each burn"*

*PBB 603 must be filled out by a CPBM if burning during a county burn ban. However, filling out the form prior to any prescribed burn will go a long way toward showing that you are a prudent individual. (VERY IMPORTANT THAT THIS IS FOLLOWED, THIS SETS A STANDARD THAT IS PRESUMED REASONABLE AND ORDINARY)*

## Section 2: Notification Requirements

### Not in a Burn Ban

1. Proof of insurance provided to the landowner or agent.
2. Have insurance documentation on site during burn (Binder, Policy, and all endorsements).
3. CIPBM License must be on-person.
4. Possible other requirements may vary by county and may include local ordinances.
5. The County Sheriff's Office **should** be contacted prior to burning.
6. Local fire departments **should** be notified.

It is always a good idea to give the Sheriff's office a contact number and even a map showing where the burn will be conducted in case the fire escapes the planned area.

<http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.352.htm>

### In a County Wide Burn Ban

1. All TCEQ requirements shall apply including local permitting requirements.
2. No burning allowed if a current Governor's and/or Presidential Declaration of Emergency or Disaster for fire that expressly prohibits all outdoor burning.
3. The County commissioners court, county judge or designee must be notified **in writing** prior to the burn. The commissioners court and county judge must be provided with the name, address and emergency contact telephone numbers for the CPBM.
4. County Sheriff's office, TCEQ and TFS regional fire coordinator must be notified prior to the burn and when the burn is complete.
5. All necessary fire suppression entities serving the area must be notified prior to the burn and when the burn is complete.
6. You must fill out the Burn/Do Not Burn checklist prior to a burn in a county burn ban.

## Section 3: Rules for Bookkeeping

1. A certified prescribed burn manager shall timely respond to all requests for information from the Board regarding prescribed burning activities conducted by the certified and insured prescribed burn manager.
2. You must have a current certificate for all insurance maintained by the certified prescribed burn manager together with a complete copy of any applicable policy or policies, along with all endorsements, exclusions or limitations issued with respect to such policy or policies.
3. You must have a current certificate reflecting status as a certified prescribed burn manager.

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4. You must keep documentation of all training or experience obtained by the certified prescribed burn manager during the current certification period.
5. A certified prescribed burn manager must maintain a Prescribed Burn File for each prescribed burn conducted by the certified prescribed burn manager. The Prescribed Burn File must include:
  - (1) a written burn plan (TDA 604) or equivalent.
  - (2) documentation of notice to adjacent landowners, Sheriff's Office and local fire department.



## Record keeping continued.

ments.

(3) documentation of notices required when a county burn ban is in effect .

(4) a completed burn/do not burn checklist (PBB 603) when a county burn ban is in effect

5. Documentation of notice to the Texas Forest Service, where applicable and

6. Documentation of notice to TCEQ regarding coastal salt-marsh burning, where applicable.

7. The records required by subsections (a) and (b) of this section shall be made available to the Texas Department of Agriculture (TDA) for inspection at the place of location of such records upon reasonable notice by TDA.

8. Records required by subsections (a) and (b) of this section shall be kept for the longer of five years from the date of original issuance, or for so long as any complaint, litigation, or TDA investigation

is pending against the certified prescribed burn manager.

**NOTE:** It is suggested that you keep any copies of letters or faxes (with date and time sent) sent to any notification contacts or a user designed form that will show when the CIPBM contacted the entities prior to and after a prescribed burn in the file.

## Section 4: Rules to maintain CIPBM status

1. You must submit a Certified and Insured Prescribed Burn Manager Insurance Verification form prior to December 31 each year.

2. Currently, the certificate is good for two years. You will need to show proof of taking 6 CFTs (3 CFTs per year) and pay a \$500 fee.

3. Certified prescribed burn managers will recertify through the required recertification program. Each certified prescribed burn manager will be required to maintain certificates of completion of the number of CFTs necessary to renew a certificate.

4. A certified prescribed burn manager who loses certification in any certification period may not be recertified for 12 months unless all CFTs required for the last year of certification are completed.

5. Failure to comply with the continuing education requirement will:

(a) result in non-renewal of a certified prescribed burn manager's certification until the

necessary Continuing Fire Training credits for education or continuing education are attained; and

(b) require retraining of the certified prescribed burn manager for categories or sub-categories requiring special training, if the certified prescribed burn manager does not recertify and renew in one year following the expiration of the certification.

6. A certified prescribed burn manager may file a written request for an extension of time for compliance with any deadline in these rules. Such request for extension may be granted by the Board if the

applicant files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection.

**Good cause means extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the person seeking the extension.**

*You must remember to submit all requests and notifications to maintain your certification.*

# TDA complaints and investigations

- (a) Any person with cause to believe that any provision of the Act or PBB Rules have been violated may file a complaint with the department. The department will accept either oral or written notification, but all complainants must sign and date a complaint form prescribed by the department. The complaint must set forth in detail the facts of the alleged violation.
- (b) The department will prepare a written report for all complaints for which an investigation is conducted.
- (c) The department's report will be provided to interested parties upon written request to the extent provided by Chapter 552 of the Government Code.
- (d) The department will not estimate monetary losses sustained.
- (e) No finding of violation by the department will be premised solely upon uncorroborated statements, or upon the complaint of an anonymous or unidentified complainant.
- (f) The department will determine the extent of investigation that is appropriate to address each particular complaint.

**NOTE:** Significant fines can be levied by TDA against a CIPBM found to have violated a law, rule, or regulation. Fines for violations range from \$250 to \$5000. For example, failure to fill out a prescribed burn plan initial fine is \$5,000. You can find the fine schedule at:

<http://info.sos.state.tx.us/fids/201100155-1.html>

In addition to the enforcement powers of the department found in the Act, the department may enter the premises of a CIPBM during normal business hours to:

- (1) examine records; and
- (2) inspect any apparatus utilized by the CPBM for prescribed burning activities.

## Criminal and Civil Concerns

### Criminal Concerns

Violating the Clean Air Act, Burn Bans, Emergency Declarations, and a Burn Ban without following all the rules all have penalties.

**Arson:** A person commits an offense if the person intentionally starts a fire or causes an explosion and in so doing: recklessly damages or destroys a building belonging to another; or recklessly causes another person to suffer bodily injury or death. These constitute a state jail felony.

(c) A person acts **recklessly**, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

### Civil Concerns

Texas law follows the negligence standard to maintain a cause of action for damages resulting from a fire.

**Breach of Duty: Negligence:** Failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

**Negligence per se:** The unexcused violation of a legislative enactment or administrative regulation adopted by the Court as defining the standard of conduct of a reasonable person is negligence in itself.

The unexcused violation of a statute or ordinance constitutes negligence as a matter of law if such statute or ordinance was designed to prevent injuries.

*Texas Penal Code Chapter 28 Arson*