

Prescribed Burning Regulations in Florida¹

Alan J. Long²

Prescribed burning is a precise tool for vegetation management that requires permits, proper training, care, caution and control. As defined in Florida Statutes (FS) Section 590.125, it is the controlled application of fire to vegetative fuels according to a written prescription and under specified environmental conditions. Appropriate precautionary measures must be followed to ensure that the fire accomplishes the specified land management objectives and is confined to the predetermined fire area.

When improperly managed, fire can kill or damage trees and small numbers of animals; it may also create smoke problems for people. Despite these potential problems, prescribed burning contributes significantly to wildland resource health and public safety. Properly managed, it:

- reduces the risk of wildfire by decreasing shrub and herbaceous vegetation and accumulated dead fuels,
- improves wildlife or grazing habitat,
- promotes successful forest regeneration,

- cycles nutrients for healthy ecosystems, and
- maintains fire-dependent species.



Figure 1. The controlled application of fire is an important tool for maintaining a healthy and safe forest. Photo by Bill Simpson, Florida Department of Agriculture and Consumer Services.

1. This document is FOR 67, one of a series of the School of Forest Resources and Conservation, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida. First published November 1999. Revisions: April 2002, and February 2011. Please visit the EDIS website at <http://edis.ifas.ufl.edu>.

2. Alan J. Long, Professor Emeritus, School of Forest Resources and Conservation, Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL, 32611-0410. This publication was produced by the University of Florida with assistance from a grant from the Advisory Council on Environmental Education of the Florida Fish and Wildlife Conservation Commission.

Prescribed burning is not "setting fire to the woods" to let them burn as our ancestors may have done decades or centuries ago, although they often did so for some of the same reasons we do today. Rather it is the planned and deliberate use of controlled fire to achieve land management objectives (Figure 1).

An important difference between today and the past is the enormous increase in human population in Florida. Protecting people from physical harm, smoke-filled air, and poor water quality is the basis for the regulations and standards that now govern prescribed burning. This fact sheet briefly describes the origins of burning regulations and summarizes the current regulatory environment.

History of State Fire Regulations

Regulations are basically in two formats: statutes derived from bills that pass the Florida Legislature and additional administrative rules written to clarify and implement the statutes. In both formats, the general objectives are to resolve state-wide concerns or opportunities or to provide state compliance with federal regulations such as the 1970 Clean Air Act and its revisions. Although fire-related regulations are mainly at the state level in Florida, additional rules have been imposed as local ordinances in both counties and cities.

Burning regulations in Florida are at least 70 years old. For example, the Forestry and Timber Laws of the State of Florida (Florida Forest Service Bulletin No. 10, March 1934) included the statement, "Whoever sets fire to or burns any wild forests, woods, lands or marshes, except between February 15 and March 31, of each year, or between the said dates without giving two days' previous notice to all persons living within one mile of the place intended to be fired, shall be punished by imprisonment not exceeding sixty days, or by fine not exceeding one hundred dollars." Other early laws banned burning at any time in Brevard, Indian River, and St. Lucie Counties (Laws of 1927), or allowed burning in Columbia County as long as it was on one's own property and was not allowed to spread elsewhere (Special Act of 1929).

For many years these rules focused on burning restrictions to prevent disastrous human-caused wildfires. The rules have been refined over the years and are currently summarized for landowners in the Florida Division of Forestry (DOF) pamphlet *Know the Law Before You Strike That Match in Florida*. These guidelines are available at all Division of Forestry and many county and municipal fire service offices.

The 1970 Federal Clean Air Act resulted in the establishment of specific air quality standards and the provision that each state would meet those standards through individual State Implementation Plans. A number of new burning regulations and rules in Florida in the last 40 years represent the state's response to the Clean Air Act, ensuring that smoke from prescribed burns will not affect compliance with air quality standards.

Similarly, in response to the 1972 Federal Clean Water Act, individual states are responsible for preventing the degradation of streams, rivers, and lakes. Protection of Florida waterways that are in or flow through forests is achieved by following guidelines described in the Silviculture Best Management Practices (BMPs). The BMPs were developed by representatives from many agencies and organizations and are monitored by the Florida DOF. Those that are relevant to prescribed burning are described later in this paper.

Recent Legislation

As the use of prescribed burning expanded throughout the Southeast in the last 40 to 50 years, so did the incidence of smoke-related accidents on highways and smoke intrusions in urban and metropolitan areas. Along with these unfortunate, unplanned events came real or potential liability issues. By the late 1980s, prescribed burning was often curtailed because of the substantial risks of some type of litigation. In 1990, the Florida Legislature passed the Florida Prescribed Burning Act that provided the definition cited at the beginning of this fact sheet. This act defined important standards for prescribed burning and reduced the liability for burners who were properly certified and abided by the new and existing regulations.

Despite the increased use of prescribed burning, a long history of wildfire control and the lack of prescribed burning in many forested ecosystems have substantially increased the amount of living and dead fuels on many of the state's forest lands. Long before the 1998 fires, which were often intensified by these accumulated fuels, people around the state recognized the potential disasters that were developing on rural lands and in wildland/urban interface areas where residential development was mixed with dense forest and brush lands. The Hawkins Bill (1977) gave the DOF the authority to conduct prescribed burns on private property in interface or other wildland areas to reduce dangerous fuel levels.

Against this background of rules, regulations and experience, the 1998 fires clearly demonstrated the need to promote and protect prescribed burning across the state as well as to increase cooperation among diverse agencies involved in fire suppression and prevention. With those objectives, the 1999 Florida Legislature passed a bill that combined and revised all previous statutes related to prescribed burning and fire control. Accompanying rules in the Florida Administrative Code (FAC) were similarly updated and revised. Some of the most important changes focused on the following:

- increased attention to fuel reduction in interface and other wildland areas,
- increased public education about fire and prescribed burning,
- much greater liability protection for certified burners, and
- expanded burn permit conditions.

The statutes and code have been through additional minor revisions since 1999. The following summary includes all the important rules and regulations with which individual prescribed burners and landowners should be familiar. However, successful prescribed burning requires much more information and experience than just this understanding of regulations. You are **strongly encouraged** to fully understand fire behavior and prescribed burning methods before striking a match!

Florida Statutes for Prescribed Burning

This summary does not intend to cover trash or other open burning in back yards. Refer to the DOF pamphlets *Know the Law Before You Strike That Match Florida*.

Whether or not prescribed burners have been certified (as defined below) by the Florida DOF, **all prescribed fires must** (according to FS 590.125) **fulfill the following:**

1. Be authorized by the local DOF office, or its designated agent before the fire is ignited. The permit must be in writing if the burn area is within an area of severe drought emergency (FS 590.081).
2. Have adequate fire breaks around the planned burn area, and sufficient personnel and firefighting equipment for controlling the fire must be on site.
3. Remain within the boundary of the authorized area.
4. Have someone present at the burn site until the fire is extinguished (which is defined as no spreading flame).
5. Have the specific consent of the landowner or his or her designee.

The DOF issues a burning authorization or permit once they determine that air quality and fire danger are favorable for safe burning. The DOF can cancel authorizations if those conditions change. Burning in a manner that violates any of these requirements is a second-degree misdemeanor.

Certified prescribed fires have additional requirements (FS 590.125.):

1. A written prescription must be prepared before a burning authorization is received from the DOF.
2. A certified prescribed burn manager must be on site with a copy of the written prescription from ignition of the burn to its completion.

A "certified prescribed burn manager" is an individual who satisfactorily completes the DOF certification program and possesses a valid certification number. The certification program includes either a correspondence course, classroom version of the correspondence course or one-week training course, direct experience managing or helping conduct at least three prescribed burns, and recertification every five years. Certification renewal requires a minimum eight hours of approved training or participation in approved Fire Council meetings and use of the certified burner's number on at least two burns or documented participation in five burns. See FAC 51-2.006 for additional rules about certification and prescribed burning (<https://www.firules.org/gateway/Chapter-home.asp?Chapter=51-2>).

A certified prescribed fire that meets all the requirements described in FS 590.125 is considered to be in the public interest and a right of the property owner. Under the 1999 legislation, "a property owner or his or her agent is neither liable for damage or injury caused by the fire or resulting smoke . . . for (certified) burns conducted in accordance with this subsection unless gross negligence is proven." The "gross negligence" condition provides substantially more protection to landowners and certified burners than under previous law. A certified burner who violates any of the requirements commits a second-degree misdemeanor.

Administrative Rules for Prescribed Burning

To comply with the 1999 statute changes, the Florida Administrative Code was also revised. Important rules (see Chapter 5I-2, F.A.C.) for prescribed burning include the following:

1. Daytime burning authorizations are issued for 9:00 a.m. to one hour before sunset for noncertified burners and to one hour after sunset for certified burners.
2. Nighttime authorizations are issued for one hour before sunset to 9:00 a.m., under dispersion indices of 8 or higher and 6 or higher for noncertified and certified burners, respectively.

3. Certified burners must present their number at the time of their permit request, and they must have a copy of the prescription on site for inspection.
4. Minimum requirements for the prescription include stand, site, and fuel description; map of the area to be burned; personnel and equipment to be used; desired weather factors; desired fire behavior; ignition technique; time and date the prescription was prepared; authorization date and time period; an evaluation and approval of the anticipated impact of the proposed burn on smoke-sensitive areas; and signature and number of the certified burn manager. (Prescriptions are not required for fires managed by non-certified burners but are highly recommended for planning and control purposes).
5. Piles or windrows must be at least 100 feet from paved, public highways; they must be attended at all times; and wind direction must carry smoke from them away from public roads.
6. Open burning is not allowed:
 - when the fire or smoke may pose a threat to public health, safety, and property protection;
 - in smoke-sensitive areas between one hour before sunset and 9:00 a.m.;
 - when visibility on public roads would be reduced to less than 1,000 feet;
 - if it reduces visibility at a public airport;
 - during air quality or stagnation advisories.

Local Ordinances

Local legislation (city or county) can be more restrictive than state and federal rules, but not in conflict with them. For example, you are required to obtain a permit from the Florida DOF to be legal for any prescribed fire or other open burning. However, you may also be required to obtain a permit from your local governing authority to be compliant with local ordinances. It is the responsibility of prescribed

burners to make themselves aware of any applicable local regulations regarding burning permits.

Silviculture Best Management Practices (BMPs)

The 2000 BMPs are intended for implementation on all silviculture operations (which may include prescribed burning) whether or not the operations are subject to other regulatory standards or permits. The primary goal of the BMPs is to prevent erosion and sedimentation in Florida's waterways. Several BMPs relate specifically to prescribed burning and are described in more detail in the BMP manual (which is available at Division of Forestry offices or on the DOF websites; see Sources Below):

1. Site preparation burning in either primary or secondary Special Management Zones (SMZs) will only be conducted on slopes less than 18%.
2. Existing barriers and alternative fire line methods (such as harrowed, wet, or foam lines) will be used as much as possible to minimize plowed firelines.
3. Fireline construction will minimize impacts in sensitive areas, avoid SMZs and stream crossings, follow contours, and not connect isolated wetlands or serve as drainage systems.

Summary

Prescribed burning is one important tool available to land owners and natural resource managers for maintaining healthy forests and range lands. Significant regulatory changes in the last decade have greatly enhanced the opportunities for responsible use of prescribed fire. Proper training, thorough prior planning, careful fire and smoke management, and practicing within the regulatory environment will assure wider use of prescribed fire and continued protection for land owners and managers.

Sources

- Florida Dept. of Agriculture and Consumer Services. *Know the Law Before You Strike That Match in Florida*. 2 p.

• Florida Dept. of Agriculture and Consumer Services. 2009. *Silviculture Best Management Practices*. 116 p.
(http://www.fl-dof.com/publications/silvicultural_bmp_manual2009.pdf)