



**Department of Consumer
and Business Services**

**Prescribed Fire Liability Insurance Study
As Required by House Bill 2571 (2021)**

July 1, 2022

About DCBS: The Department of Consumer and Business Services is Oregon's largest business regulatory and consumer protection agency. For more information, visit: dcbs.oregon.gov.

About Oregon DFR:

The Division of Financial Regulation protects consumers and regulates insurance, depository institutions, trust companies, securities, and consumer financial products and services and is part of the Department of Consumer and Business Services. Visit: dfr.oregon.gov.

This report is based on information and data collected by DFR from insurance companies, state agencies, and consumers through June 2022.

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Executive Summary

House Bill 2571 was enacted during the 2021 legislative session along with several other wildfire-related measures in response to Oregon's historic 2020 Labor Day wildfires. The bill directed the Department of Consumer and Business Services (DCBS) to conduct a study on the affordability and accessibility of insurance for prescribed fires and examine the liability standard used for insurance.

Prescribed burning is defined as the use of fire ignited as a planned management activity on land to meet specific objectives involving the reduction or removal of forest fuels. Prescribed fires are burned on public, private, and tribal lands. The average number of acres burned per year is highest for public lands with an average of 97,000 acres. In Oregon, nine reports have been issued on prescribed fire escapes over the last 20 years indicating that significant prescribed fire escapes happen infrequently compared to the average number of prescribed fires that occur in Oregon.

The Division of Financial Regulation (DFR), the state's insurance regulator housed within DCBS, sent surveys to insurance companies, state agencies, and consumers such as private landowners and tribal governments to understand the dynamics of insurance regarding prescribed fire particularly around accessibility and affordability. Issues identified were:

- **Lack of insurers providing coverage for prescribed fire** - Several consumers responded that obtaining quotes is difficult due to the small number of insurers providing general liability or Loggers Broad Form endorsements covering prescribed fires.
- **Costs associated with the insurance premium or purchase of a standalone endorsement** – Consumers indicated that their insurance costs have increased significantly over the last several years. Since coverage is often purchased through general liability policies, it is difficult to evaluate the affordability of prescribed fire liability coverage when this coverage is not priced separately.
- **Gaps in insured population** - Based on information from insurers, there may be a gap in the types of insureds who are purchasing policies that would cover prescribed fire. Some consumers indicated they were unaware of this type of coverage existing.
- **Education about prescribed fire regulations** - Only six insurers responded indicating they were aware of Oregon's regulatory programs related to prescribed burning. This seems to indicate that the division along with other state agencies could improve education around prescribed fire regulations.

Besides accessibility and affordability of prescribed fire insurance, DFR evaluated the state liability standard used and how this looks in other states. Insurers were asked if the state liability standard was a consideration in issuing a prescribed fire policy. The majority of insurers answered no, that the state liability standard was not a consideration for determining whether to issue a policy.

Only one state has changed the liability standard for prescribed fires since 2018. California enacted Senate Bill 332 which stated that, “no person shall be liable for any fire suppression or other costs otherwise recoverable for a prescribed burn if specified conditions are met,” and established a gross negligence standard for meeting those conditions.¹ When asked about whether the liability change has also resulted in changes to the number of prescribed fires, California responded that it is too soon to understand the effect of the standard change. The division plans to continue communication with the California Department of Insurance to further understand their experience with the changes made to the liability standard and any impacts to prescribed fire insurance coverage.

Along with maintaining information sharing with California, the division is committed to continuing to work alongside insurers, consumers, and other state agencies to improve availability and affordability of insurance covering prescribed fires. The information gathered during this study has provided an initial understanding of the market for prescribed fire liability insurance and the issues various stakeholders are encountering. DFR will continue to engage with insurers to improve the mutual understanding around prescribed fires and the need for affordable insurance products for nonprofit organizations, private landowners, tribal governments, and others.

¹ [CA SB-332](#) Civil liability: prescribed burning operations: gross negligence. 2021.

Background

Wildfires in Oregon result in the loss of life and property, create imminent health and safety risks, and cause widespread disruption to the normal course of business in many areas across the state. The historic 2020 Labor Day wildfires resulted in over one million acres burned and over 40,000 Oregonians evacuating their homes.² It is estimated that over 4,000 homes were destroyed, which has resulted in over \$380 million in damages.³ Over 13,000 claims were reported and insurers paid over \$1 billion in losses.⁴ Recovery efforts are still ongoing as individuals and communities continue to rebuild following the wildfires. In 2021, the majority of the wildfires occurred in eastern and southern Oregon. The Bootleg fire was the largest burning over 400,000 acres and sustaining significant property damage. Because of the increased severity of wildfires, action was taken to implement and improve prevention activities to reduce severe wildfires.

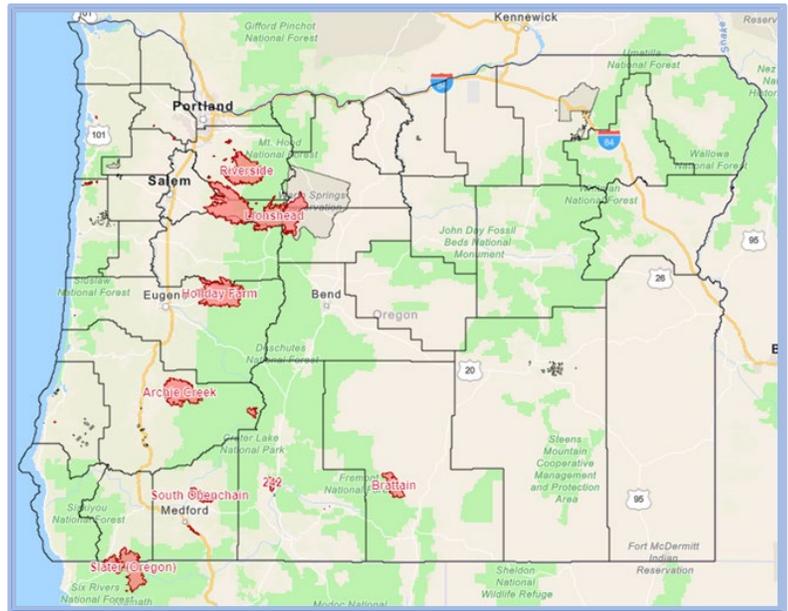


Figure 1. Map of Wildfires After September 7, 2020. Oregon Office of Emergency Management

Overview of prescribed fire

There are several actions and techniques that can create defensible spaces, aid in forestry management, and reduce the risk of severe wildfires. One approach is to engage in a prescribed fire or prescribed burn. Prescribed fire is the controlled application of fire, under specified environmental conditions, and following appropriate precautionary measures, which should result in the burning to be confined to a predetermined area and accomplish specific land management objectives.⁵ These objectives could consist of reducing vegetation that would fuel a wildfire to promoting a healthy ecology. Research and recent events, such as the Bootleg fire in Oregon, have shown that prescribed burning can decrease wildfire intensity and severity.⁶

² Oregon Office of Emergency Management. "[2020 Oregon Wildfire Spotlight](#)." Accessed May 31, 2022.

³ Ibid.

⁴ Oregon Division of Financial Regulation. "[2020 Wildfire Homeowner Claims Data Call Results](#)." Last revised as of March 16, 2022.

⁵ U.S. Forest Service. "[Prescribed Fire](#)." Accessed May 28, 2022.

⁶ U.S. Department of Agriculture. "[Prescribed Fire in the Northwest](#)." Accessed May 28, 2022.

The practice of using fire to steward ecological systems has been used by indigenous people across the U.S. for centuries.⁷ This is known as cultural burning or cultural fire management. Cultural burning is used to reduce the intensity and severity of wildfires alongside other spiritual, cultural, and ecological uses important to indigenous tribes. Today, indigenous fire management and knowledge contribute to the understanding of how to facilitate prescribed burns.



Figure 2. Prescribed burn conducted by the Confederated Tribes of the Grande Ronde. Photo by Andy Neill, Institute of Applied Ecology.

In Oregon, prescribed burning is defined as “the use of fire ignited as a planned management activity on land to meet specific objectives involving the reduction or removal of forest fuels”. Prescribed burning does not include impromptu fires ignited for purposes such as warming fires, burn-out or backfire operations used in wildfire suppression, or lightning ignited ‘wildland fire use’ as practiced by federal land management agencies.”⁸ Oregon law specifies that the “preservation of forests... through the prevention and suppression of forest fires” is public policy for the state and that “prescribed

burning is an important tool to reduce forest fuels.”⁹ Any burn boss, an authorized individual leading the prescribed fire, who wants to engage in a prescribed fire on land classified as forestland is required to register the burn and receive a permit from Oregon Department of Forestry. Before any prescribed burning begins, the burn boss should have a plan accounting for:

- (a) How weather will be monitored and changes in conditions will be communicated;
- (b) Resources needed and actions taken to reduce pre-burn fuel loadings to minimize emissions;
- (c) Resources necessary to accomplish ignition and ignition sequences;
- (d) Resources and methodology necessary to contain and control the fire and prevent its escape, including communications to access additional resources, if necessary; and
- (e) The Smoke Management forecast and how the burn will be conducted to minimize smoke entering smoke sensitive receptor areas, other areas sensitive to smoke, and other communities.¹⁰

⁷ Long, Jonathan W., Frank K. Lake, and Ron W. Goode. “The importance of Indigenous cultural burning in forested regions of the Pacific West, USA. *Forest Ecology and Management*, volume 500 (2021). Accessed May 28, 2022. https://www.fs.fed.us/psw/publications/jwlong/psw_2021_long003.pdf.

⁸ See OAR 629-048-0005.

⁹ See ORS 477.005 and OAR 629-048-0020.

¹⁰ See OAR 629-048-0230.

These regulations collectively help the process for engaging in prescribed fires, reduce risks, and provide a tool for decreasing forest fuels that may contribute to a wildfire.

Legislative action

In response to increasing wildfire severity, the Oregon Legislature passed several bills to respond to the wildfire disaster and develop solutions to prevent severe wildfires. Senate Bill 762 (2021) enacted several comprehensive wildfire preparedness and resiliency provisions.¹¹ Two additional bills enacted in 2021 addressed insurance issues related to wildfires. House Bill 3272, which extends insurance coverage for properties damaged from any declared emergency, and House Bill 2571, which directed DCBS to conduct a study on the insurance liability for prescribed fires.¹²

House Bill 2571 specifically required DCBS in consultation with the Oregon Department of Forestry, Oregon State University, Oregon Forest and Industries Council, Oregon Small Woodlands Association, Oregon Prescribed Fire Council, and the insurance industry to study:

Accessibility of insurance coverage – The accessibility of insurance coverage for prescribed fires, including insurance premium costs, the number of companies that offer the coverage, and whether companies that offer the coverage impose minimum equipment requirements;

Barriers to accessibility – Any barriers to increasing the accessibility of insurance coverage for prescribed fires, including whether a liability standard of negligence or gross negligence for prescribed fires makes the coverage more or less affordable;

Scope of frequency and damages from escapes – How often escaped prescribed fires occur, how many acres escaped prescribed fires consume, costs associated with suppressing escaped prescribed fires, costs associated with property damage caused by escaped prescribed fires and how states pay for suppression of escaped prescribed fires; and

Other state standards for liability – Which states have adopted liability standards of negligence and gross negligence for prescribed fires and whether states that have changed their liability standard from negligence to gross negligence observed a difference in the number of prescribed fires conducted, the acres burned by prescribed fires, or the number of escaped prescribed fires.

¹¹ Or. 2021 Laws, Chap. 592 ([enacted Senate Bill 762](#)) and Office of the Governor. “[Wildfire Programs Advisory Council](#).” Accessed May 28, 2022.

¹² Or. 2021 Laws, Chap. 262 (enacted [House Bill 3272](#)) and Or. 2021 Laws, Chap. 230 ([enacted House Bill 2571](#)).

The study objectives outlined above are further described in this report to understand the frequency of prescribed fires in Oregon and the access and affordability of prescribed fire liability insurance.

Scope and frequency of prescribed fires in Oregon

Types of prescribed fires

There are several types of prescribed fires that can occur in Oregon. These prescribed fires vary in terms of the size and the techniques used for the burn. Besides indigenous cultural burning, other common prescribed burns in Oregon include:

Pile Burning: A prescribed fire used to ignite hand or machine piles of cut vegetation resulting from vegetation or fuel management activities. Piles are generally burned during the wet season to reduce damage to the residual trees and to confine the fire to the footprint of the pile. Pile burning allows time for the vegetative material to dry out and will produce less overall smoke by burning hot and clean.

Broadcast burning: A prescribed fire ignited in areas with little or no forest canopy present. Broadcast burning is used in grasslands, shrublands, and oak woodlands for habitat restoration and fuels reduction purposes. This burning can be beneficial for protecting and enhancing sage grouse habitat and mule deer and elk winter ranges.

Underburning: A prescribed fire ignited under the forest canopy that focuses on the consumption of surface fuels but not the overstory vegetation. Underburning is generally used following a pre-treatment such as thinning and /or pile burning to further reduce the surface fuels, help maintain the desired vegetation conditions and enhance the overall health and resiliency of the stand.¹³

According to information collected by the Oregon Department of Forestry, pile burning has been the most common prescribed fire in Oregon over the last 10 years.¹⁴ In recent years, underburning has been done more frequently than broadcast burning. Several land jurisdictions may utilize these types of prescribed fires depending on the goals and desired outcome of the burn.

Frequency of prescribed fires

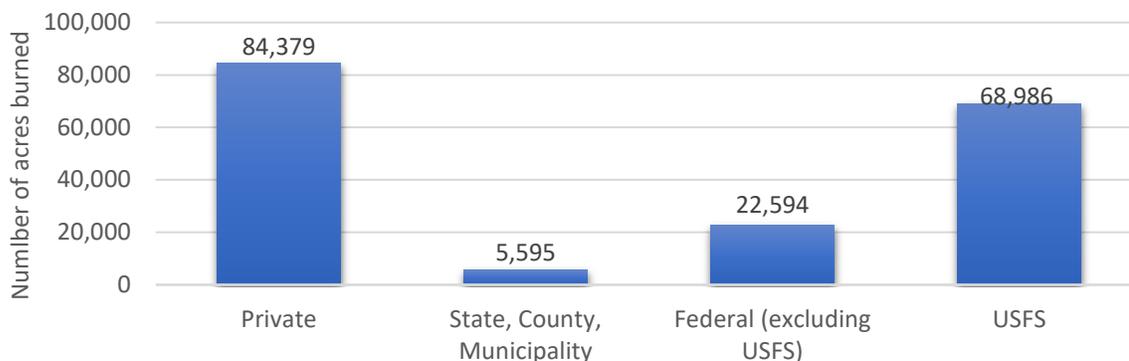
Prescribed fires are burned on public, private, and tribal lands. The average number of acres burned is highest for public lands with an average of 97,000 acres per year. When public lands are separated by jurisdiction, the U.S. Forest Service (USFS) burns the largest and the state, cities, and

¹³ U.S. Department of the Interior – Bureau of Land Management. "[Prescribed Burn Terminology](#)." Accessed May 15, 2022.

¹⁴ Oregon Department of Forestry. "[Oregon Smoke Management Annual Report 2020](#)." Accessed June 3, 2022.

municipalities burn the smallest number of acres. Private lands burn on average 84,000 acres each year.

Figure 3. Average number of acres burned annually by land jurisdiction from 2014 to 2020.



Data accessed from the Oregon Department of Forestry (2020).

Close to 173,000 acres are on average burned each year in Oregon. The lowest number of acres burned in the last ten years occurred in 2020 due to the COVID-19 pandemic with approximately 131,000 acres burned. In 2019, over 200,000 acres were burned because of prescribed burns conducted across the state.¹⁵ The number of escaped prescribed fires remains difficult to understand despite the several thousands of acres that are burned on average each year.

Incidence and characteristics of prescribed fire escapes

Different types of prescribed fire incidents could cause issues or damage. These are smoke incidents, spotfires, and escaped fires. Oregon law defines a smoke incident as the “verified entrance of smoke from prescribed burning into a smoke sensitive receptor area,” which typically are where communities are located.¹⁶ A spotfire is a smaller incident where a fire crosses a designated perimeter due to flying sparks and embers, whereas an escaped fire exceeds the expected initial prescribed boundaries.¹⁷

Information and data on prescribed fire escapes are limited due to how infrequently escape occurs and limited reporting from public and private land burning. The majority of prescribed fires in Oregon occur on public land. According to the USFS, on average 4,500 prescribed fires are conducted annually by USFS throughout the country with about six escapes per year which equates to approximately 99.84 percent of prescribed fires occur without incident.¹⁸ When incidents occur, the government entity typically reviews the entire case to determine what went

¹⁵ Ibid.

¹⁶ See OAR 629-048-0005.

¹⁷ U.S. Forest Service - National Park Service. “[Fire Terminology](#).” Accessed June 3, 2022.

¹⁸ Moore, Randy. “[From the Chief’s Desk: Reviewing our prescribed fire program](#).” May 2022. U.S. Forest Service.

wrong, an analysis of how to prevent in the future, and recommendations to reduce escape based on the specific incident.

Figure 4. Prescribed fire escape reports that occurred in Oregon from government entities between 2002 to 2021.

Year	Name	Location	Acres burned in escape
2002	Metolius RNA	Metolius	167
2005	Black Ridge Rx	Burns	160
2005	Pine Stub	Prineville	721
2008	Wizard Fire	Sisters	1,840
2015	Bone Point	Umatilla	80
2016	East Maury	Crook County	1112
2018	Drum Fire	Mt. Hood NF	Not specified
2021	Becker FFR Pile	Malheur	5.75
2021	North II	Fremont-Winema NF	832

Data accessed from [Wildland Fire Lessons Learning Center](#) in the linked reports as of June 4, 2022.

In Oregon, nine reports have been issued by government entities on prescribed fire escapes over the last 20 years. This number does not necessarily include all of the prescribed fire escapes that have occurred and probably understates the frequency of prescribed fire escape. However, these reports indicate that the number of prescribed fire escapes that merit analysis and reporting happen infrequently compared to the number of prescribed fires conducted in Oregon. While escape from a prescribed fire is infrequent, the risks of costs and damages from an escape are important to understanding the impact of prescribed fires.

Costs associated with prescribed fires

Limited information exists on the costs associated with prescribed fire escape both related to suppression cost and property damage. For example, the Wizard fire was the largest in terms of acres burned at 1,840 acres and cost approximately \$4 million to contain.¹⁹ Costs associated with prescribed fires are largely related to suppression costs or property damage usually incurred by the resources used in the prescribed fire, such as vehicles.

Wildfire suppression costs

Costs for fire suppression of all fires have generally increased significantly in the last decade. Limited information exists related to suppression costs specific to prescribed fire escapes in

¹⁹ Wildfire Today. "[Oregon: report issued about escaped Rx fire.](#)" December 2008.

Oregon, however information on wildfire suppression that can provide some context. It has been reported that federal suppression costs for wildfires have increased to \$1.6 billion.²⁰ These suppression costs are not specific to prescribed fire escapes rather for wildfires. However, this does provide information relevant to understanding the scope of wildfire suppression costs. Oregon does have information on wildfire suppression costs as it related to emergency fire suppression that fall within the statutory requirements of the Oregon Forest Land Protection Fund and the State general fund.²¹ This funding mix covers more fire situations than just prescribed fire escape. Wildfire suppression costs funded by the Oregon Forest Land Protection Fund and the general fund have on average been \$70 million each year. Since 1976, Oregon purchases each year emergency fire suppression cost insurance.²² This insurance product is unique to Oregon and no other state purchases this type of insurance.

Property damage

Similar to our understanding of the suppression costs related to prescribed fire escapes, the property damage costs of prescribed fire escape are very limited due to lack of credible data. An example of property damage that occurs in Oregon from a prescribed fire that did not escape is heat damage to an engine on site. The heat damage required several repairs such as replacing the front passenger door and passenger side mirror.²³ Another instance of property damage from an Oregon prescribed fire is heat damage from a stuck vehicle. It was reported that no injuries or catastrophic damage occurred in this incident.²⁴

Most of the information on damage that is known comes from larger prescribed fire escapes which happen infrequently. The limited information that is currently available related to prescribed fire escapes and the costs that can occur make it difficult to analyze what costs would be part of an insurance claim. Therefore, it is difficult to understand how the behavior of prescribed fires and escapes may affect how access and accessibility of insurance coverage occur in Oregon's market.

Accessibility and affordability of prescribed fire liability insurance

Overview of insurance coverage and underwriting

An important aspect of wildfire preparedness and resiliency is the role that insurance plays in providing for the financial recovery following damage or loss. Insurance coverage for fire most

²⁰ Roman, Jesse, Angelo Verzeni, and Scott Sutherland. "[Greetings from the 2020 Wildfire Season.](#)" *National Fire Protection Association Journal*. November-December 2020.

²¹ See ORS 477.750

²² ORS 477.775

²³ Burn Boss from incident. "[Rapid Lesson Sharing - Type 6 Engine Damage from Heat on a Prescribed Fire.](#)" March 2019.

²⁴ Module/Crew Overhead. "[Rapid Lesson Sharing – Pile Burning.](#)" December 2019.

frequently comes under homeowners and commercial property policies.²⁵ The Oregon Insurance Code requires coverage for losses due to wildfire in all applicable property and casualty insurance policies.²⁶ Homeowners policies may provide coverage for the dwelling, other detached structures, and the contents to cover personal property within a dwelling, whether that fire was caused by a wildfire or a kitchen fire.

Coverage for engaging in prescribed fire is generally provided by different insurance products such as farm or ranch policies. Prescribed fire liability may also be covered under a commercial general liability policy or an endorsement to an existing policy, such as a Loggers Broad Form.²⁷ Insurance agents can help compare plans, explain coverage, advise and explain exclusions, and assist in the application process. An insurance company will review the application to purchase a policy by evaluating the underwriting risks to determine the premium for the policy. The application typically contains questions to help assess the risk of providing coverage to the individual, entity, or activity.

Survey to insurers on prescribed fire liability

The division issued a data call in October 2021 to all insurers providing property and casualty insurance in Oregon to determine which insurers provide products offering prescribed fire coverage.²⁸ From this data call, 56 insurers responded as offering products with prescribed fire coverage. On February 2, 2022, the division hosted a meeting with insurers to brief them on the survey to further understand prescribed fire liability insurance. This meeting provided insurers the opportunity to discuss any issues or questions related to the survey.

The survey outlined 29 questions that addressed coverage of prescribed fires, underwriting considerations, the pricing of coverage, and market dynamics.²⁹ These questions were reviewed by division staff and the prescribed fire liability working group. Quantitative and qualitative

²⁵ All insurance products offered in Oregon, with the exception of surplus lines products, must be filed and approved by the division before the product is sold. The division prepares checklists, known as product standards, for insurance companies to use to prepare for filing a product with the state. The product standards help provide the relevant regulatory references and explanations about filing requirements. Additionally, all rates for insurance products sold by admitted insurers must be filed with the division.

²⁶ See ORS 742.202 and 742.206.

²⁷ Loggers Broad Form is a type of endorsement or addendum to an insurance policy that provides coverage for risks that may be typically excluded in a general liability policy including fire suppression costs.

²⁸ See [Appendix A](#) for the October 2021 data call sent to 820 property and casualty companies.

²⁹ The survey was sent on February 28 and gave insurers a month to respond with a deadline of March 31. (See Appendix B). The survey was initially sent to 56 insurers of which 16 requested and were granted an exemption from the survey due to clarifying that they do not offer prescribed fire liability insurance. Several of these insurers mentioned that the products offered would cover damage caused by a prescribed fire on the property insured if that occurred but would not cover the activity of prescribed fire. The survey received responses from 40 companies with variation in the responses provided. Some insurers did not provide information and only submitted “N/A” to several questions asked. Approximately 20 companies provided nearly complete or complete surveys containing detailed responses to the division.

questions were asked, several of which allowed insurers to provide more than one answer. All questions provided an opportunity for insurers to elaborate or provide additional information to supplement their responses.

Coverage for engaging in prescribed fire

Insurers were asked if prescribed fire liability coverage is provided to enrollees.³⁰ Based on the responses provided, prescribed fire liability coverage is either included as part of the base policy purchased for farming, logging, small business, or under a commercial liability policy (56.5 percent) or through an endorsement added onto an existing policy (47.8 percent). No insurers described offering a separate product specific to prescribed fire liability coverage or making a separate product available only in limited circumstances such as a new business seeking the policy or upon renewal. Insurers who responded describing the products offering coverage often stated that the policies they offer do not have specific exclusions for prescribed fire or controlled burn activities. The number of insurers that provide prescribed fire liability insurance in Oregon is approximately seven parent or sister companies representing 17 subordinate companies that offer a product.

Coverage for prescribed burning in Oregon is generally offered annually with year-round coverage. No insurers indicated that coverage is provided per event. This aligns with the information provided regarding coverage through an annual base policy. One insurer responded “Other” and clarified that they currently have no active policies in Oregon. Several insurers responded that the products offered provide coverage for suppression costs, smoke damage, and other provisions provided under the policy.

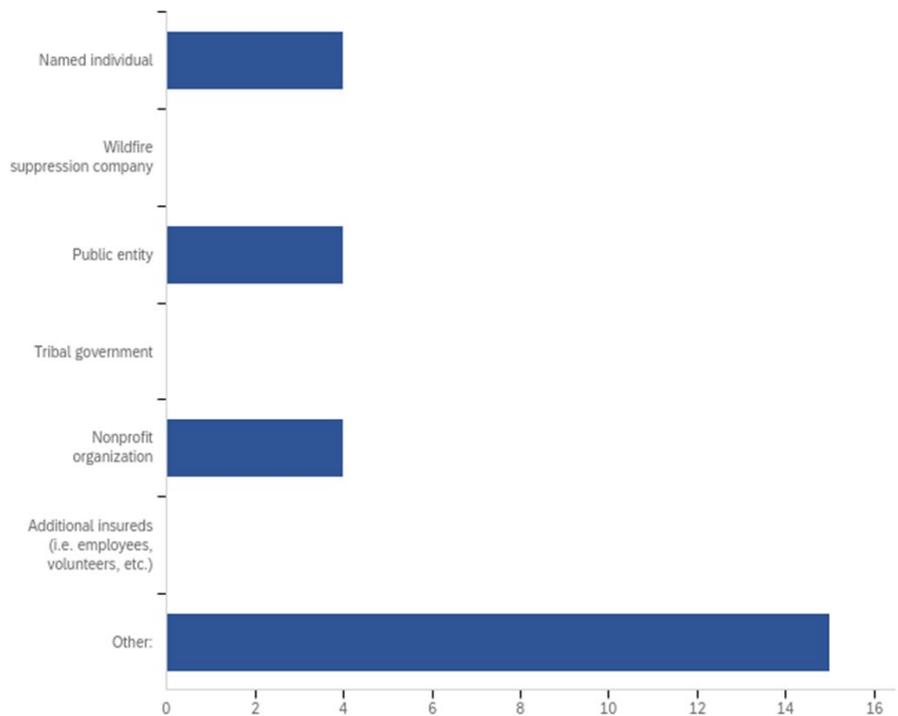
Surplus lines insurance is another type of product that may provide coverage for unique risks.³¹ The division reached out separate from the survey to understand if they have products that provide coverage for prescribed. Most surplus lines insurance products in Oregon do not cover prescribed fires and if they do coverage limits are low offering little protection.

³⁰ When insurers are referred to below, it is referring to the insurers who provided responses to the survey sent out and is not representative of all insurers in Oregon. The companies who responded are likely the majority of the market that provides some coverage for prescribed fire liability in Oregon or in other states. Results of the survey on prescribed fire liability insurance are summarized below.

³¹ The surplus lines market ensures that Oregonians can obtain coverage if they are turned down for insurance in the regular market. Oregon Revised Statutes (ORS) [735.400-735.495](#) govern surplus lines.

Finally, 23 insurers provided information on the types of consumers who purchase prescribed burn liability coverage. The named individual, public entity, and nonprofit organization all received the same response count (17.4 percent) with the majority of responses selecting “Other.” The “Other” type of insured was described by respondents as public and private corporations, company, and a specified industry. Notably, no insurers selected wildfire suppression company, tribal government, or additional insureds such as employees or volunteers. These consumers could be included in the responses provided in the “Other” given the descriptions. Since the division received few responses, it is difficult to infer from the data. However it could indicate a gap for coverage available to these insureds. It is worth further investigation to understand whether this is an insurance gap for these insureds or if there are other reasons affecting the insureds seeking coverage.

Figure 5. Types of consumers that purchase the prescribed burn liability insurance offered (n=23 with multiple selections).



Data collected by DFR in 2022.

Underwriting considerations

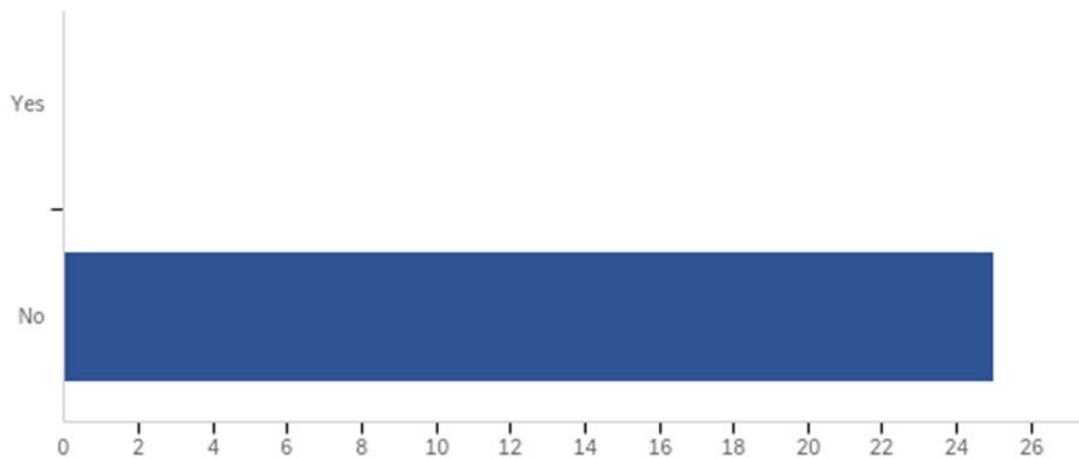
The survey asked insurers to identify if any stated underwriting considerations are evaluated to determine eligibility and if these factors are used for rating. The factors surveyed were: credentials and qualifications (e.g. certified burn manager); experience with prescribed burns; forestry services available in Oregon; types of fire suppression equipment used; review of the burn or risk mitigation plan; membership in an affiliated organization; or other. Insurers responded overwhelmingly with “Other” and provided limited information to understand how an applicant is underwritten.

One insurer responded that the number of controlled burns the entity engages in each year is one question in a new application. Another insurer indicated that experience, qualifications, and policies or procedures for engaging in controlled burns are part of the underwriting process. The

majority of insurers responded that policies do not require notice when planning to or engaging in a prescribed fire.

One of the primary objectives of the study was to determine whether a liability standard of negligence or gross negligence for prescribed fires makes the coverage more or less affordable. Insurers were asked if the state liability standard is a consideration in issuing a prescribed fire policy. All insurers answered no, that the state liability standard is not a consideration for determining whether to issue a policy.

Figure 6. Whether the state liability standard (e.g. simple negligence or gross negligence) was a consideration for issuing a prescribed fire policy (n=25).

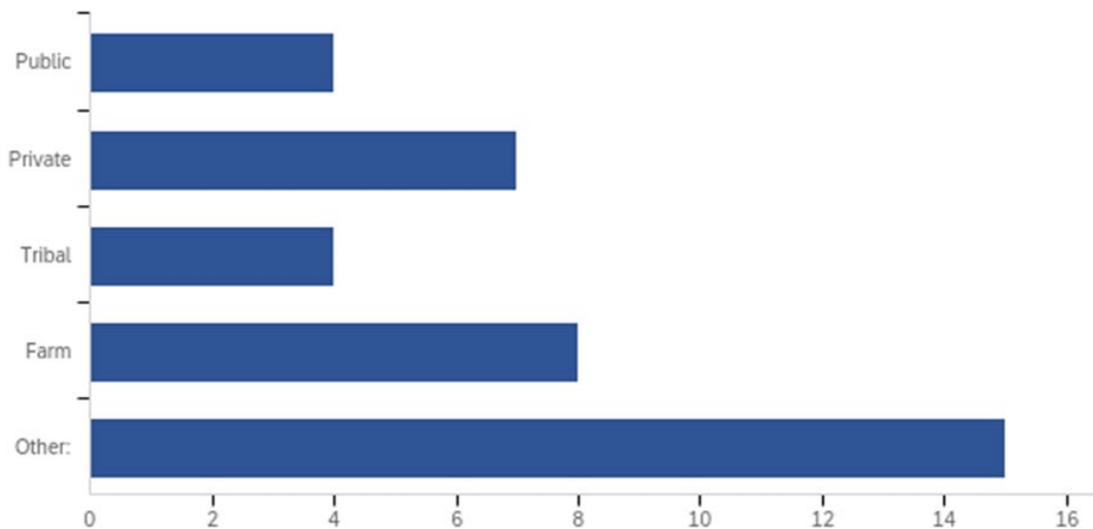


Data collected by DFR in 2022.

As a follow-up to that question, insurers were asked to describe whether a different state liability standard for prescribed burns would affect eligibility for prescribed burn liability policies. The information received was fairly general. A few responses stated in comments that the liability standard will not have an impact or be considered in underwriting. Similar to other answers received, it is difficult to make any inferences from the data. However, the liability standard may not affect availability to prescribed fire liability insurance from the perspective of the insurers.

When insurers were asked about whether they offer coverage for different land jurisdictions, insurers indicated that coverage was available for many land jurisdictions including logging properties.

Figure 7. Number of insurance companies offering coverage for public, private, tribal, or farm lands (n=24 with multiple selections).



Data collected by DFR in 2022.

In terms of access, there may be coverage available for several types of land jurisdictions in Oregon. However, insurers did indicate there are some Oregon specific characteristics that may limit coverage such as terrain and climate. These factors could have impacts on access if specific jurisdictions exhibit these characteristics related to terrain and climate that limit coverage. Interestingly, a couple of insurers responded that there are not currently any specific exposures (e.g. terrain, vegetation, time of year) where they would not offer prescribed fire liability coverage. How these intersect with each other and ultimately affect access for different jurisdictions is something the division will need to further investigate.

Finally, insurers were asked about the reasons a policyholder would be cancelled or nonrenewed for a prescribed fire liability policy. Several insurers provided general responses such as reasons permissible by state law or adverse underwriting characteristics. A couple insurers stated that excessive losses due to uncontrolled burns, frequency of controlled burn loss, or negligence involving burn losses could cause a policy cancellation or non-renewal.

Pricing of prescribed fire liability coverage

Insurers

Underwriting factors determine the risk level and are often factors that are used to determine the premium for the policy. Additionally, each policy will have certain policy limits of coverage. The

average annual premium for base policy that covers prescribed burn liability coverage was reported by only three companies which was \$2,052.95. The minimum premium reported was \$21.12 and the maximum premium was \$67,789.34. There are limitations in evaluating affordability due to the limited responses and the wide margin between the smallest minimum and largest premium.

Based on the information from the survey, no insurance company offers a stand alone prescribed fire liability insurance policy in Oregon. This creates difficulty in evaluating the affordability of prescribed fire liability coverage. These insurance products would provide coverage for many other types of liability and not just prescribed fire liability. Therefore, it is difficult to understand the effect prescribed fires on the premium of a general insurance product.

Consumers – private landowners and tribal governments

The cost of pricing of prescribed fire liability coverage is an important part of understanding the market participation, availability, and affordability in Oregon. Consumers who may want to purchase this coverage include private landowners, business owners, and tribal governments. A survey conducted by the division found that many consumers of prescribed fire liability coverage purchase it through a general liability product which may include an endorsement for a Loggers Broad Form. It was described that due to the broader nature of the general liability policy, it was difficult to know the true price of prescribed fire coverage. The experiences that private landowners and Tribes face with prescribed fire coverage are further described below in the “Barriers to access and affordability” section of the report.

Market dynamics in Oregon

Oregon’s market for products that provide coverage for prescribed fire liability is small as compared to the number of companies offering other insurance products. The number of policies for products that include prescribed fire liability coverage is one measure for understanding the market in Oregon. Based on the responses received by insurers, the number of policies similarly indicates that the market is small. Five insurers reported policy count information. These represent policies general in nature and are not specific to prescribed fire liability. The average overall number of policies issued within the past year was 228 as reported by five insurers. The minimum number of policies issued was one and the maximum number of policies issued was 695.

Figure 7. Average number of policies written in Oregon that covered prescribed burn liability coverage.

	Within the past year (n=5)	Within the past 5 years (n=4)	Within the past 10 (n=3)
Average policies written in Oregon	228 (min = 1, max = 695)	1,176	2,344

Data collected by DFR in 2022.

Note: Since there is an insufficient number of responses to perform a full analysis, the division may need to assess the market dynamics for prescribed fires through other means. In addition, the number of policies providing coverage for prescribed fire does not mean that those enrolled in these policies are actually engaging in the prescribed fires. Therefore, more work is required to understand the market dynamics and how it could be impacted access and affordability of this insurance coverage.

Barriers to increasing access and affordability

Consumers – private landowners and tribal government

To assess the barriers that individuals, private landowners, and tribal governments face in purchasing insurance, the division conducted a six question survey to understand these perspectives.³² A few responses were received by the division either from the survey or discussion during stakeholder meetings – eleven private landowners and four tribal natural resource representatives in total. Additional time was scheduled in June 2022 for private landowners and tribal natural resource representatives to discuss their experiences with the division. This helped provide additional information to perspectives on the barriers to access and affordability of prescribed fire insurance.

Lack of insurers

Access to prescribed fire insurance was described by both private landowners and tribal representatives to fall somewhere between satisfactory and difficult based on survey responses. A couple of consumers described having the ability to obtain general liability insurance but pointed out that there are a small number of insurers in the market. This sentiment was echoed in other responses from private entities and the tribal representative who stated that obtaining quotes is difficult. One response mentioned that it has gotten much more difficult to obtain quotes and that the reason given is the pandemic. A few consumers mentioned they were

³² See [Appendix D](#) for the survey sent to individuals, private entities, and tribal governments.

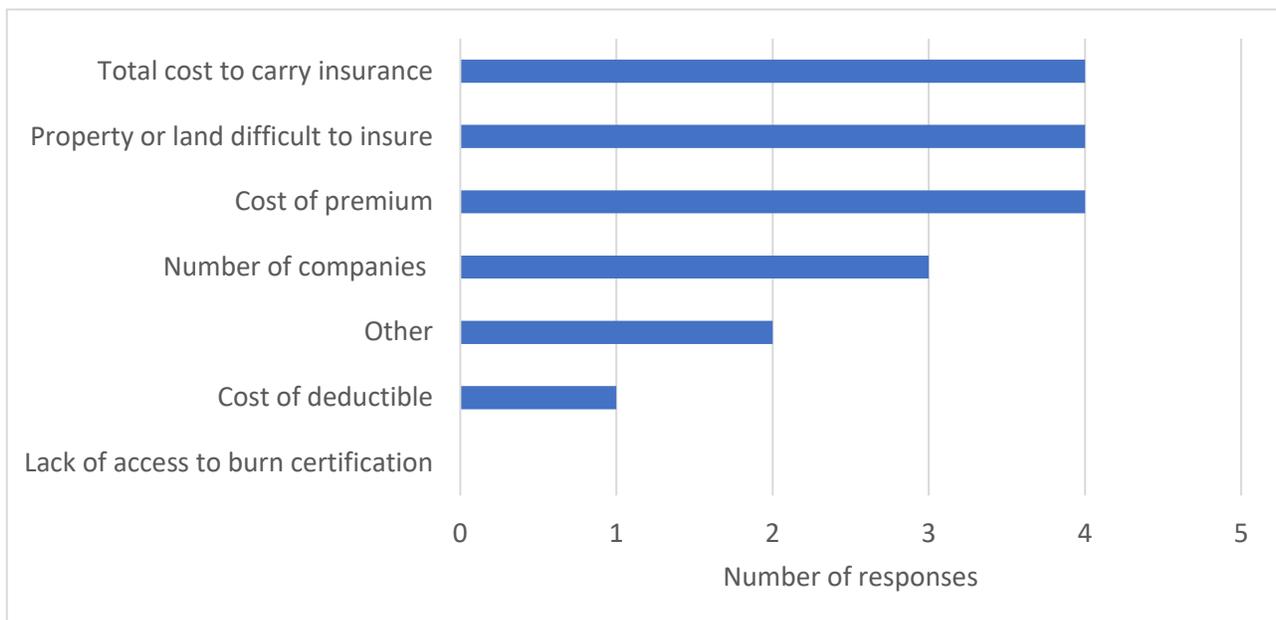
unaware of insurance providing coverage for prescribed fires or were in the initial stages of soliciting quotes.

When this question was discussed meeting with consumers, similar themes came up. A couple of consumers said that finding general liability insurance with Loggers Broad Form endorsement is difficult because many companies exclude the Loggers Broad Form endorsement from the general liability policy. Excess coverage for prescribed fire was also stated to be limited with only two excess carriers willing to cover above the Loggers Broad Form endorsement. Other comments mentioned that many are shifting to self-insure for risk due to the complications with obtaining, the low costs associated with minor escapes, and the claims experience with insurance.

Barriers to access

The barriers that consumers face trying to obtain prescribed fire insurance generally falls into three categories – costs, number of companies offering coverage, and difficulties insuring the property or land. Multiple selections of barriers were allowed in response to this question. For the “Other” selection, it was described that the barriers were unknown due to not having solicited insurance bids yet and from another respondent that the barriers are all of the above, specifically commenting that costs have significantly increased over the last several years.

Figure 8. Consumer responses when asked about what other barriers they experience in obtaining or attempting to obtain prescribed fire coverage.



Data collected by DFR in 2022.

The results obtained in the survey mirror responses provided during stakeholder discussions with private landowners and tribal representatives. Cost to carry insurance and the cost of the premium both were repeated in the survey and discussions. It is difficult to discern whether these costs are a result of insuring prescribed fires or other liabilities covered by these policies.

Affordability challenges

Outside of the limitations in finding an insurer that provides coverage, other challenges around affordability were identified by the private landowners and tribal representatives. Several comments from both private landowners and tribal representatives mentioned that the increase in premiums for general liability coverage, which may include prescribed fire among other coverages, have been significant year over year. One of the tribal representatives described the risk of their operations around prescribed fires have not changed but external factors, such as the pandemic, climate change, and long-term drought conditions, may be playing a role affecting premiums. Another consumer mentioned that purchasing a standalone Loggers Broad Form can be priced more than \$25,000 per \$1 million in coverage. Additional comments from private landowners signaled that challenges can be different between larger landowners versus smaller landowners or sub-contractors who do the prescribed fire work. This is due to the large expense it can be for smaller businesses to absorb within their business practices.

Other barriers to increasing prescribed fires

Several other barriers were identified in discussing prescribed fire liability coverage. These barriers were not necessarily related to insurance coverage but other issues that may be affecting the decision to engage in a prescribed fire. Listed below are some of the other challenges described around increasing the use of prescribed fire:

- Climate change and ongoing drought conditions;
- Dynamics between burning near federal land (i.e. risk of liability from federal government);
- Short burn windows;
- Air quality regulations with private lands located close to towns; and
- Lack of public understanding about prescribed fires.

A couple private landowners commented that these other barriers need to be addressed even if the insurance market changes to increase prescribed fires. Other comments received included an acknowledgement of the need to continue working on trying to improve information sharing and collaboration by increasing access to prescribed fire insurance options.

Insurers

Small insurance market

There are several considerations regarding insurers that may affect access and affordability. The first is the small market providing products that cover prescribed fires and no standalone prescribed fire liability products. This is not uncommon among other states. Many other states indicate that the market for prescribed fire liability is small, including in southern states where more prescribed burning occurs. Responses from a couple of states on a survey sent in May 2022 by the division indicate that they are not aware of prescribed fire liability products or have less

than five products approved. For example, North Carolina State University surveyed insurance companies and found only seven companies provide coverage in the Southeast.³³

Difficult to assess affordability

Oregon's market for prescribed fire liability coverage is provided through the general insurance products that an individual or entity may purchase to cover their property or their business (i.e. farmowners, commercial generally liability). Since coverage is provided under a general insurance product, it is difficult to assess the affordability of prescribed fire liability coverage specifically.

Population purchasing insurance

Based on information from insurers, there may be a gap in the types of insureds who are purchasing policies that would cover prescribed fire. This could indicate an issue with these types of potential insureds in purchasing a policy or a lack of understanding how prescribed fire insurance is covered under a general policy. The information collected during this study indicates this is an area for further investigation to identify how coverage can be improved for wildfire suppression company, tribal government, or additional insureds such as employees or volunteers.

Education about prescribed fire regulations

Finally, one of the survey questions asked insurers if their company has reviewed several of the state regulations around prescribed fires. The options included Oregon's Smoke Management Program, permitting required for prescribed burns, permits for open burning, and other regulatory measures such as developing Oregon's Certified Burn Management Program. Only six insurers responded that they have reviewed Oregon's regulatory programs related to prescribed burning. This seems to indicate that the division along with other state agencies could improve education around prescribed fire regulations.

State standards for prescribed fire liability

Most states' laws regulate controlled fires including prescribed fire. Many of these laws relate to air quality and smoke management, including Oregon's laws around prescribed fires. States also have varying regulations regarding liability associated with prescribed fires. Some regulations clearly state the standard for evaluating liability when damages result from a prescribed fire. Other regulations are less clear and require interpretation to understand the liability standard. The relevant liability standard and state regulations will be utilized by courts to evaluate the specific situation and any damages. Liability for prescribed fires generally falls into three legal standards of care: strict liability, simple negligence, and gross negligence.

- **Strict liability** refers to a standard in which an individual or entity could be held liable for committing an action and any resulting damages regardless of fault or intent.³⁴ Eleven states have enacted a strict liability standard as of 2018.

³³ Evans, Jennifer and Jennifer Busam. "[Prescribed Fire Liability Coverage: 2015 through 2016 Insurance Options for Landowners and Consultants in the Southeast](#)." North Carolina State University. 2015.

³⁴ Cornell Law School – Legal Information Institute. "[Strict Liability](#)". Accessed June 10, 2022.

- **Simple negligence** is a standard where an individual or entity could be held liable if failure to behave with the level of care that an individual or entity would have reasonably done under similar circumstances. The majority of states have a simple negligence standard as it relates to prescribed fires as of 2018. Oregon operates with a simple negligence standard.
- **Gross negligence** is a higher standard than simple negligence. An individual or entity is not held liable unless a higher level of misconduct was demonstrated. For example, some statutes require that reckless disregard occurred related to the safety or lives of others. Eight states have enacted a gross negligence standard with California most recently changing to gross negligence in 2021.

The division sent out a survey to 30 states' insurance agencies and forestry agencies to understand the dynamics of the liability standard and experience with prescribed fires.³⁵ A few responses were received that provided information around the liability standard and how it potentially affects the number of prescribed fires. Many responses indicated that it was unknown whether the liability standard affects prescribed fire behavior. Based on this, the division cannot conclude at this time what may occur if the liability standard changed.

While limited information was provided in the division's survey about the liability standard used for prescribed fire insurance, other organizations have studied the topic and provide information on prescribed fires. A 2018 study conducted by the Coalition of Prescribed Fire Councils and the National Association of State Foresters surveyed all 50 forestry agencies on several questions related to prescribed fire use including identification of the liability standard in state law.³⁶ The number of states that reported using a specific standard are described above.

Only one state has changed the liability standard for prescribed fires since 2018. California enacted Senate Bill 332 which provided that, "no person shall be liable for any fire suppression or other costs otherwise recoverable for a prescribed burn if specified conditions are met," and established a gross negligence standard for those meeting the specified conditions.³⁷ When asked about whether the liability change has also resulted in changes to the number of prescribed fires, California responded that it is too soon to understand the effect of the standard change. The division plans to continue communication with the California Department of Insurance to further understand their experience with the changes made to the liability standard and any impacts to prescribed fire insurance coverage.

Additional research is being done related to liability standards and the effect it has on prescribed fire around the U.S. One of the most recent studies reviewed the liability standards for southern states. This report comprehensively looked at the laws enacted and any case law that interprets

³⁵ See Appendix C for more information on the survey questions sent to state agencies.

³⁶ Coalition of Prescribed Fire Councils, Inc. "[2018 National Prescribed Fire Use Survey Report](#)." 2018.

³⁷ [CA SB-332](#) Civil liability: prescribed burning operations: gross negligence. 2021.

those standards.³⁸ The report surveys the Southern states for the requirements within state law for prescribed burning such as providing notice, obtaining permits, certification requirements, and other precautions necessary to comply with state law. The liability standard in each state is examined both in the context of criminal and civil liabilities. Any relevant case law is included as it relates to the interpretation of the state's liability standard. Southern states have higher rates of prescribed burning than any other region of the U.S. and this study contributes to further understanding the legal impacts.

Another recent report reviews specific legal and policy proposals to increase prescribed fire use on small private lands in Oregon.³⁹ It recommends that Oregon amend the liability standard from simple to gross negligence, “to provide landowners clear guidance as to their responsibilities during prescribed fire operations....” The author also recommends that clearer statutory requirements for conducting prescribed fires would help define the landowner's responsibilities. Regarding insurance, the paper discusses increasing access through options such as a per burn policy, group purchase of a policy to cover landowners, or a government-sponsored insurance market similar to California. The division plans to continue communication with the California Department of Insurance and other states to further understand their experience with the changes made to the prescribed fire insurance market.

Conclusion

The information gathered during this study has provided an initial understanding of the market for prescribed fire liability insurance and the issues various stakeholders are encountering. Many of the barriers identified within the study indicate areas for the division and prescribed fire stakeholders to further understand and develop potential solutions to address these barriers to insurance.

Insurance products covering prescribed fires are offered by seven companies in Oregon. The number of policies currently in effect indicates that the market is small. This is further emphasized with several consumers responded that obtaining quotes is difficult due to the small number of insurers providing general liability or Loggers Broad Form endorsements covering prescribed fires.

Cost for coverage seems to be one of the biggest barriers described by consumers. Consumers indicated that their insurance costs have increased significantly over the last several years. Since coverage is often purchased through general liability policies, it is difficult to evaluate the affordability of prescribed fire liability coverage when this coverage is not priced separately.

One of the largest gaps identified through this study is the limited amount of information available around both prescribed fire escapes and the insurance products providing coverage. The

³⁸ Cary, Bill and Jamey Lowdermilk. “[Prescribed Fire Liability Report for the Southern United States: A Summary of Statutes and Cases.](#)” April 2022. *Brooks, Pierce, McLendon, Humphery & Leonard, L.L.P.*

³⁹ Neu, Leslie. “[Prescribed Fire Liability: Legal and Policy Proposals for the Promotion of Prescribed Fire Use on Small Non-Industrial Private Lands in the State of Oregon.](#)” Oct. 2021.

lack of information seems to indicate that the field of prescribed fire liability is small. Consumers indicated this in some circumstance with a lack of awareness this coverage exists. Additionally, only six insurers responded that they have reviewed Oregon's regulatory programs related to prescribed burning. This seems to indicate that the division along with other state agencies could improve education around prescribed fire regulations.

Another area of limited information is regarding the liability standards for prescribed fires. It is uncertain whether changing the liability standard would provide greater access and affordability to insurance for prescribed fires. The experience of states, such as California, will help inform the impact of changing the liability standard on incidence of prescribed fires and insurance products covering prescribed fires.

The division is committed to continuing to work alongside insurers, consumers, tribal representatives, and other state agencies to improve availability and affordability of insurance covering prescribed fires. DFR will continue to engage with insurers to improve the mutual understanding around prescribed fire insurance and the need for affordable insurance products for nonprofit organizations, private landowners, tribal governments, and others.

Appendix

Appendix A: Data call issued to insurance companies on October 26, 2021.

Oct. 26, 2021

To: All P&C Companies Licensed in Oregon

Re: Prescribed Fire Coverage Data Call

General Information

Oregon's Division of Financial Regulation (DFR) is seeking information regarding prescribed fire coverage. This data call is focused on identifying companies that offer this coverage in the state of Oregon, as well as companies offering this coverage in any other state.

For the purpose of this data call, prescribed fire coverage is defined as coverage for liability caused by or resulting from prescribed fires.

Prescribed fires are defined as planned fires. They are also sometimes called controlled burns or prescribed burns. Prescribed fires may be used as a tool for reducing amounts of vegetation (fuels) that contribute to extreme wildfire situations.

Please note: DFR will accept submissions that include multiple company responses. Each company included must have complete information in the reporting template. Submissions with incomplete information, or not using the provided reporting template, will be rejected.

All companies must submit completed reporting templates by end of day Friday, Nov. 5, 2021. Extension requests will not be granted.

All questions and report submissions must be sent to <DFR.DataTeam@oregon.gov>.

Template fields to be reported

Submitted By Information – Include the name, title, phone number, and email address for the person submitting this data call on behalf of the company, or companies, included.

Company Name – Provide the full name for each insurance company included.

Company NAIC Code – Provide the five-digit NAIC company code for each insurance company included.

Does this company offer prescribed fire coverage in the state of Oregon? (Yes or No) – If the company does offer prescribed fire coverage in the state of Oregon, based on the definition provided, respond with Yes. If the company does not, respond with No.

Does this company offer prescribed fire coverage in any other state? (Yes or No) – If the company does offer prescribed fire coverage in any state other than Oregon, based on the definition provided, respond with Yes. If the company does not, respond with No.

Primary and Secondary Contact Information – This information is required only if the company answers yes to either question regarding the offering of prescribed fire coverage. A primary and secondary contact must be provided. At least one contact must be a direct email and not a general or team inbox.

Statutory authority

All information outlined in this data call is required under ORS 731.296. All information submitted in response to this request will be confidential and will not be disclosed, except as provided in ORS 705.137. Failure to respond or delay in responding or incompletely responding to this letter within the time allowed is in violation of ORS 731.296 and may be subject to enforcement action.

Sincerely,

Brian J. Fordham

Insurance Product Regulation P&C Manager

Division of Financial Regulation

Appendix B: Prescribed fire liability insurance data call and survey issued to insurance companies on February 28, 2022.



Oregon
Kate Brown, Governor

Department of Consumer and Business Services
Division of Financial Regulation
350 Winter St. NE, Room 410
P.O. Box 14480
Salem, OR 97309-0405

February 28, 2022

To: Insurers listed in Appendix A

Re: Prescribed Fire Survey Data Call

General Information

Oregon's Division of Financial Regulation (DFR) is seeking information regarding prescribed fires to carry out the requirements of House Bill 2571 enacted in 2021. The bill requires the department to study liability for prescribed fires specifically in four key areas:

- Accessibility of insurance coverage - The accessibility of insurance coverage for prescribed fires, including insurance premium costs, the number of companies that offer the coverage and whether companies that offer the coverage impose minimum equipment requirements;
- Barriers to accessibility - Any barriers to increasing the accessibility of insurance coverage for prescribed fires, including whether a liability standard of negligence or gross negligence for prescribed fires makes the coverage more or less affordable;
- Scope of frequency and damages from escapes - How often escaped prescribed fires occur, how many acres escaped prescribed fires consume, costs associated with suppressing escaped prescribed fires, costs associated with property damage caused by escaped prescribed fires and how states pay for suppression of escaped prescribed fires; and
- Other state standards for liability - Which states have adopted liability standards of negligence and gross negligence for prescribed fires and whether states that have shifted a liability standard from negligence to gross negligence have subsequently observed differences in numbers of prescribed fires conducted, of acres burned in prescribed fires or of escaped prescribed fires.

For the purpose of this data call, prescribed fire coverage is defined as coverage for liability caused by or resulting from prescribed fires.

Insurers required to report have been listed in Appendix A. Each company must submit an individual survey response. Exemptions may be offered in limited circumstances by contacting the division.

Please note: **Your email acknowledgement of this call letter is due by end of day on March 7, 2022.**
Please submit your acknowledgment to DFR.DataTeam@dcbs.oregon.gov.

This survey is required to be submitted through Qualtrics. The survey text has been attached and included in Appendix B for your reference. Qualtrics surveys must be completed in a single session. The survey can be accessed at the following link:

https://dcbs.az1.qualtrics.com/jfe/form/SV_eQV1jQm1WzUX1si

Completed survey responses are due by end of day March 31, 2022.

Please send all content questions to Cassie Soucy Cassandra.SOUCY@dcbs.oregon.gov. Please send any technical Qualtrics questions to DFR.DataTeam@dcbs.oregon.gov.

Definitions

“Prescribed burning” means the use of fire ignited as a planned management activity on land to meet specific objectives involving the reduction or removal of forest fuels. Prescribed burning does not include impromptu fires ignited for purposes such as warming fires, burn-out or backfire operations used in wildfire suppression, or lightning ignited “wildland fire use” as practiced by federal land management agencies. (OAR 629-048-0005)

Statutory authority

All information outlined in this data call is required under ORS 731.296. All information submitted in response to this request will be confidential and will not be disclosed, except as provided in ORS 705.137. Failure to respond or delay in responding or incompletely responding to this letter within the time allowed is in violation of ORS 731.296 and may be subject to enforcement action.

Sincerely,



Brian J. Fordham
Insurance Product Regulation P&C Manager
Division of Financial Regulation

Appendix A: Companies Required to Report

Company Name	Company NAIC Code
Acadia Insurance Company	31325
Acceptance Indemnity Insurance Company	20010
Accredited Surety and Casualty Company, Inc.	26379
Agri General Insurance Company	42757
AIG Assurance Company	40258
AIG Property Casualty Company	19402
AIU Insurance Company	19399
American Bankers Insurance Company	10111
American Home Assurance Company	19380
American Reliable Insurance Company	19615
American Security Insurance Company	42978
American Strategic Insurance Corp	10872
Armed Forces Insurance Exchange	41459
Atlantic Specialty Insurance Company	27154
Brotherhood Mutual Insurance Company	13528
Commerce and Industry Insurance Company	19410
Continental Western Insurance Company	10804
COUNTRY Casualty Insurance Company	20982
COUNTRY Mutual Insurance Company	20990
COUNTRY Preferred Insurance Company	21008
Dakota Truck Underwriters	34924
Eagles West Insurance Company	12890

Farmers Alliance Mutual Insurance Company	19194
Federal Insurance Company	20281
Federated Rural Electric Insurance Exchange	11118
Firemen's Insurance Company of Washington, D.C.	21784
Granite State Insurance Company	23809
Great Northern Insurance Company	20303
Guarantee Co Of N Amer USA	36650
Harco National Insurance Company	26433
Illinois National Insurance Co.	23817
Monterey Insurance Company	23540
National Union Fire Insurance Company of Pittsburgh, Pa.	19445
New Hampshire Insurance Company	23841
OBI America Insurance Company	15645
Occidental Fire and Casualty Company of NC	23248
Pacific Indemnity Insurance Company	20346
Pennsylvania Lumbermens Mutual Insurance Company	14974
Pharmacists Mutual Insurance Company	13714
Progressive Classic Insurance Company	42994
Radnor Specialty Insurance Company	15756
Safeport Insurance Company	36560
Sentruity Casualty Company	12870
Southern Pioneer Property and Casualty Insurance Company	16047
Standard Casualty Company	12645
Standard Guaranty Insurance Company	42986

The Insurance Company of the State of Pennsylvania	19429
Transguard Insurance Company of America, Inc.	28886
Union Insurance Company	25844
United States Liability Insurance Company	25895
Universal Surety Company	25933
Vigilant Insurance Company	20397
Wawanesa General Insurance Company	10683
Westfield Insurance	24112
Wilshire Insurance Company	13234
XL Insurance America, Inc.	24554

Appendix B: Insurance Survey Questions

Coverage

Describe in several sentences the products that you offer that provide coverage for liability from prescribed burns and how these products are being utilized by enrollees. This can include the base policy, an endorsement, separate policy, or other product.

Does your company provide coverage for liability from prescribed burns for individuals or entities (i.e. public entity, wildfire suppression company, nonprofit organization, etc) that engage in prescribed burning?

- Yes
- No
- Unsure

Please provide any additional comments for clarification for Question 2 above:

Select all that apply. Is prescribed burning liability coverage:

- Included in the base policy (i.e. general liability, commercial liability, etc.)? If so, please identify the program or policy in the comment box below.

Purchased through an endorsement? If so, please identify the program or policies to which this endorsement applies in the comment box below.

Purchased as a separate policy? If so, please describe the market (e.g. small farmers, commercial ranches, hobby farms, etc.) in the comment box below.

Available as new business or renewal only?

Please provide any additional information for Question 3 above:

Are the products listed in Question 3 sold and available in Oregon's admitted market?

Yes

No

Select all that apply. Coverage is offered on a(n):

Annual basis, year-round coverage

Per burn coverage

Other: _

Please provide any additional comments for clarification for Question 5 above:

Select all that apply. The following insureds can purchase the prescribed burn liability coverage in the products listed above:

Named individual

Wildfire suppression company

Public entity

Tribal government

Nonprofit organization

Additional insureds (i.e. employees, volunteers, etc.)

Other: _

Please provide any additional comments for clarification for Question 6 above:

List any other states, tribal lands, or geographic areas where your company provides any coverage for prescribed burn liability.

- States: _____
- Tribal lands: _____
- Other geographic areas: _____

Select any of the coverage limits that are applicable in the prescribed burn liability coverage offered:

- Aggregate limit
- Property damage
- Bodily injury
- Other: _

Please provide any additional comments for clarification for Question 8 above:

Select all additional items that are covered under the products and policies you offer for prescribed burn liability coverage:

Suppression costs from local firefighters

Smoke damage

Other: _

Please provide any additional comments for clarification for Question 9 above:

Underwriting Considerations

Select all that apply. What are the company's underwriting considerations when determining coverage for prescribed burn liability identified above?

- Credentials and qualifications (certified burn manager, etc.)
- Experience with prescribed burns
- Forestry services available in Oregon
- Types of fire suppression equipment used
- Review of the burn or risk mitigation plan
- Membership in an affiliated organization
- Other: _

Please provide any additional comments for clarification for Question 10 above:

Are there significant gaps in understanding the exposure and risks associated with prescribed fires that impact your ability to underwrite coverage?

Yes

No

If yes, please identify these gaps and what would be needed to resolve these gaps:

What type of notice to the insurer is the insured required to provide when they are conducting a prescribed fire? What does this notice look like and what information do you require (land area, risk mitigation, etc.)?

Is the state liability standard (e.g. simple negligence or gross negligence) a consideration for issuing a policy?

Yes

No

Please provide any additional comments for clarification for Question 13 above:

Describe how a specified liability standard (e.g. simple or gross negligence) would impact your considerations for issuing a prescribed burn liability policy:

Does land ownership limit the availability of coverage? Does your company offer coverage for private, tribal, and farm land? Select all that apply.

Public

Private

Tribal

Farm

Other: _

Are there any Oregon specific characteristics that limit the availability of coverage?

Terrain

Climate

Liability standard

Regulatory considerations

State or federal environmental and pollution laws

Other: _

Please provide any additional comments for clarification for Question 16 above:

What are reasons why an applicant or enrollee would be cancelled or non renewed?

Are there specific exposures (e.g. terrain, vegetation, time of year) for which you do not offer prescribed fire liability coverage?

Pricing of Coverage

What is the average premium for prescribed burn liability coverage identified in the coverage section when covered under? Include the minimum and maximum price.

	Average	Minimum	Maximum
Base policy:			
Endorsement:			
Separate policy:			
Other:			

Please provide any additional comments for clarification for Question 19 above:

Select all that apply. For rating of prescribed burn liability coverage, do you use:

Tiers

Individual risk factors

Other: _

Please provide any additional comments for clarification for Question 20 above:

What types of rating factors are considered in the pricing of prescribed burn liability coverage?

For tier rating:

For individual risk premium modification factors:

Market Dynamics

What is the premium volume for all products and policies that provide coverage for prescribed burn liability in Oregon?

23-27) To indicate that information is Not Available, leave the other fields in the row blank and input "NA" in the Not Available field.

	Within the past year:	Within the past 5 years:	Within the past 10+ years:	Not available:
23) What total number of policies have you written in Oregon that covered prescribed burn liability coverage?				
24) What is the total number of prescribed burn liability claims reported in Oregon?				
25) From question 24, what is the total number of denied prescribed burn liability claims in Oregon?				
26a) What is the average paid prescribed burn liability claims in Oregon?				
26b) What is the minimum paid prescribed burn liability claims in Oregon?				
26c) What is the maximum paid prescribed burn liability claims in Oregon?				
27) What is the number of prescribed burn liability claims paid out at the coverage limits in Oregon?				

Please provide any additional comments for clarification for Questions 23-27 above:



What is the loss ratio for the policies or programs that provide coverage for prescribed fires or controlled burns? How does this compare to the company's target loss ratio?

Select all that apply. Has your company reviewed:

- a. Oregon Smoke management program (ORS 477.013)
- b. Permitting for prescribed burns (ORS 477.625)
- c. Permits for open burning (ORS 468A.575)
- d. Other regulatory measures in development such as Oregon's certified burn management program (2021 Senate Bill 762)

Appendix C: Survey questions sent to insurance and forestry state agencies in other states on prescribed fire liability insurance.

1. Confirm the liability standard has your state established for damages caused by prescribed fires?
 - a. Simple negligence standard
 - b. Gross negligence standard
 - c. Strict liability standard
 - d. No liability standard has been established
2. If no liability standard, does your state have any regulations in place related to prescribed fire liability or risk mitigation required by specific entities to engage in prescribed fires?
3. Do you know how many insurers provide products that cover liability for prescribed fire?
 - a. If yes, please specify the number of companies and products offered in your state:
4. If your state has established a gross negligence standard:
 - a. When was the regulatory standard implemented?
 - b. What was the time period for using a:
 - i. Simple negligence standard –
 - ii. Gross negligence standard -
 - c. What was the legislative history around defining or changing the standard by regulation?
 - d. What was the effect of adopting or changing a prescribed fire liability standard?
 - i. More specifically, please detail for:
 1. Under the simple negligence standard
 - a. The number of years or timeframe the standard was in place
 - b. Number of prescribed fires conducted
 - c. Amount of acres burned
 - d. Number of escape fire
 2. Under the gross negligence standard
 - a. The number of years or timeframe the standard was in place
 - b. Number of prescribed fires conducted
 - c. Amount of acres burned
 - d. Number of escape fire

5. How does your state maintain data regarding the number and nature of instances where prescribed fires have escaped (i.e., caused damage beyond the scope of the planned burn)? If your state does not maintain data on this, are there conversations about how to track this information?
6. Please provide the following information prescribed fires in your state.
 - a. The losses incurred from escaped fires:
 - i. On public land
 - ii. On private land
 - iii. On tribal land
 - iv. In rural areas
 - v. In urban areas
 - b. The time period for the escaped fires
7. What is the process for another state agency to request this data?

Appendix D: Survey questions sent to consumers and Tribes on prescribed fire liability insurance.

Oregon's [Division of Financial Regulation](#) (DFR) is seeking information regarding prescribed fires to carry out the requirements of [House Bill 2571](#) enacted in 2021. The bill requires the department to study liability for prescribed fires specifically in four key areas:

- Accessibility of insurance coverage
- Barriers to accessibility and availability of insurance for prescribed fires
- Scope of frequency and damages from prescribed fire escapes
- Other state standards for liability (i.e. simple or gross negligence)

DFR has five questions for you to provide information on and your perspective related to the accessibility and availability of insurance coverage for prescribed burns. The survey should take between 10 to 15 minutes to complete.

Any information received will be aggregated and de-identified for the purposes of the study. The results of this study are required to be reported to the legislature by July 1, 2022.

If you have any questions about the prescribed fire liability study, please contact: Cassie Soucy at Cassandra.soucy@dcbs.oregon.gov or 503-983-3895.

Definitions

“Prescribed burning” means the use of fire ignited as a planned management activity on land to meet specific objectives involving the reduction or removal of forest fuels. Prescribed burning does not include impromptu fires ignited for purposes such as warming fires, burn-out or backfire operations used in wildfire suppression, or lightning ignited “wildland fire use” as practiced by federal land management agencies. (OAR 629-048-0005)

Types of prescribed burns:

“Pile Burning”: A prescribed fire used to ignite hand or machine piles of cut vegetation resulting from vegetation or fuel management activities. Piles are generally burned during the wet season to reduce damage to the residual trees and to confine the fire to the footprint of the pile. Pile burning allows time for the vegetative material to dry out and will produce less overall smoke by burning hot and clean..

“Understory burning/Underburning”: A prescribed fire ignited under the forest canopy that focuses on the consumption of surface fuels but not the overstory vegetation. Underburning is generally used following a pre-treatment such as thinning and /or pile burning to further reduce the surface fuels, help maintain the desired vegetation conditions and enhance the overall health and resiliency of the stand.

“Broadcast burning”: A prescribed fire ignited in areas with little or no forest canopy present. Broadcast burning is used in grasslands, shrublands, and oak woodlands for habitat restoration and fuels reduction purposes. This type of burning can be beneficial for protecting and enhancing sage grouse habitat and mule deer and elk winter ranges.

“Jackpot burning”: A modified form of underburn or broadcast burn where the target fuels to be ignited are the concentrations (or jackpots) of vegetative fuel. The result is a mosaic burn pattern. This technique works well when surface fuels loading is very high following vegetation treatments such as juniper encroachment removal used to improve rangeland ecosystems.

Definitions from U.S. Bureau of Land Management
(https://www.blm.gov/or/resources/fire/prescribedburns/burn_terminology.php)

1. Do you carry insurance that covers liability from prescribed fires or burns that you do on your property?
 - a. Yes
 - b. No – if no, then why not?
 - c. Unsure

2. How would you characterize the accessibility of prescribed fire insurance coverage?
 - a. Easy – quotes from a couple companies and chose the best policy
 - b. Satisfactory – aspects about obtaining quotes were difficult from at least one or more companies, still had a choice to pick the best policy
 - c. Difficult – obtaining quotes was difficult, several companies would not offer coverage, took a lot of work to find coverage
 - d. Unable to obtain prescribed fire insurance
 - e. Unaware of need for prescribed fire insurance
 - f. Other: _____

3. What other barriers have you experienced in obtaining or attempting to obtain prescribed fire insurance coverage?

Choose as many as apply:

- a. Number of companies offering prescribed fire insurance coverage
 - b. Cost of premium
 - c. Cost of deductible
 - d. Total cost to carry insurance
 - e. Property or land difficult to insure
 - f. Lack of access to burn certification
 - g. Other: _____
4. Provide information on why the barriers contribute to affordability or availability challenges to obtaining prescribed fire insurance coverage?

 5. If you have fire liability coverage **separate** from other coverage - What has been the average cost of your premium for prescribed fire insurance coverage?
 - a. Over the year? \$ _____
 - b. Five years? \$ _____
 - c. Ten? \$ _____
 - d. Don't have prescribed fire insurance coverage

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6. Any other information you would like to provide relating to the accessibility and availability of insurance for prescribed burns or other topics relevant to the prescribed burn liability study: