



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: August 16, 2019

TIME: 10:52 AM

WSR 19-17-049

Agency: Department of Natural Resources

Title of rule and other identifying information: (describe subject) WAC 332-24-205-General Rules-Minimum Requirements for all Burning.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Expedited rulemaking sought to align DNR's rules regarding silvicultural burning in Urban Growth Areas with legislation passed in 2019. Until the 2019 legislative session, burning regulated by the department was prohibited in Urban Growth Areas. The legislature adopted Second Substitute House Bill 1784, which amends RCW 70.94.6514 to allow "...outdoor burning that reduces the risk of a wildfire, or is normal, necessary, and customary to ongoing silvicultural activities consistent with silvicultural burning authorized under RCW 70.94.6534(1)...".

Reasons supporting proposal: Rule must be amended to be compliant with RCW 70.94.6514.

Statutory authority for adoption: RCW 70.94.6542

Statute being implemented: RCW 70.94.6514

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Name of proponent: (person or organization) Department of Natural Resources

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Jonathan Guzzo	1111 Washington St SE, Olympia, WA 98504	360.292.5921
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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): Expedited rulemaking is appropriate for the proposed revisions, since DNR is aligning WAC with RCW by adopting Washington state statute without material change.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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Agency: Department of Natural Resources

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AND RECEIVED BY (date) October 22, 2019

Date: 8/8/19

Name: George Geissler

Title: Washington State Forester, Deputy Supervisor,
Wildfire & Forest Health

Signature:

Place signature here


WAC 332-24-205 General rules—Minimum requirements for all burning. The following rules apply to all burning regulated by the department:

(1) The department reserves the right to restrict, regulate, refuse, revoke or postpone outdoor fires under RCW 76.04.205 and 76.04.315, and chapter 70.94 RCW due to adverse fire weather or to prevent restriction of visibility, excessive air pollution or a nuisance.

(2) Burning shall not be allowed within nonattainment areas of the state as established by Washington department of ecology for particulate matter ten microns or less or carbon monoxide, except for:

(a) Fires for improving and maintaining fire dependent ecosystems; or

(b) Fires for training wildland firefighters; or

(c) Fires set for a defined research project; or

(d) Military training exercises; or

(e) The exclusive purpose of managing storm or flood-related debris; or

(f) Where exempted by local or state air pollution control agencies.

(3) Burning shall not be allowed inside urban growth areas as designated under growth management plans, or in cities of greater than ten thousand population as follows:

(a) In urban growth areas where reasonable alternatives exist.

(b) In cities with a population of ten thousand or more as established by the office of financial management:

(i) That exceed or threaten to exceed federal or state ambient air quality standards; and

(ii) Where reasonable alternatives to outdoor burning exist, in accordance with WAC 173-425-090.

(c) (~~After December 31, 2000, burning shall not be allowed in urban growth areas or cities with a population of ten thousand or more.~~) Outdoor burning that reduces the risk of a wildfire, or is normal, necessary, and customary to ongoing silvicultural activities consistent with silvicultural burning authorized under RCW 70.94.6534(1), is allowed within the urban growth area in accordance with RCW 70.94.6534. Before issuing a burn permit within the urban growth area for any burn that exceeds one hundred tons of material, the department of natural resources shall consult with department of ecology.

(4) No fires shall be ignited when:

(a) The department of ecology has declared an air pollution episode for the geographic area pursuant to chapter 173-435 WAC; or

(b) The department of ecology or a local air pollution control authority has declared impaired air quality for the geographic area in which the burning is to be done.

(5) A person responsible for a burn at the time an episode or impaired air quality is called pursuant to chapter 173-425 WAC, shall extinguish the fire by:

(a) Withholding fuel from the burn;

(b) Allowing the fire to burn down; and

(c) Aggressively putting out the fire until there is no visible smoke, unless otherwise allowed by the department.

(6) Prior to lighting, the person doing the burning must telephone the department, and obtain any special instructions for the day and location of the proposed burn. Those instructions thereupon become part of the conditions of burning.

(7) The fire must not include rubber products, plastic products, asphalt, garbage, dead animals, petroleum products, paints, or any similar prohibited materials that emit dense smoke or create offensive odors when burned, pursuant to RCW 70.94.775(1).

(8) If the fire creates a nuisance from smoke or flying ash, it must be extinguished. For purposes of this section, a nuisance exists when emissions from any open fire cause physical discomfort or health problems to people residing in the vicinity of the burning or physical damage to property.

(9) Burning within the department's fire protection areas shall not:

(a) Cause visibility to be obscured on public roads and highways by the smoke from such fires; or

(b) Endanger life or property through negligent spread of fire or pollutants.

(10) A person capable of extinguishing the fire must attend the fire at all times and the fire must be completely extinguished before being left unattended.

(11) No fires are to be within fifty feet of structures, or within five hundred feet of forest slash without a written burning permit.

(12) The landowner or landowner's designated representative's written permission must be obtained before kindling a fire on the land of another.

(13) The department reserves the authority to provide waivers, exceptions, and/or to impose additional requirements through the use of written burning permits and the smoke management plan.