

WSR 19-17-049
EXPEDITED RULES
DEPARTMENT OF
NATURAL RESOURCES
 [Filed August 16, 2019, 10:52 a.m.]

Title of Rule and Other Identifying Information: 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 rule making sought to align the department of natural resources' (DNR) 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 2SHB 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.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Jonathan Guzzo, 1111 Washington Street S.E., Olympia, WA 98504, 360-292-5921; Implementation: Vaughn Cork, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1318; and Enforcement: George Geissler, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1318.

This notice meets the following criteria to use the expedited adoption process for these rules:

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.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited rule making 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 Rochelle Goss, DNR, 1111 Washington Street S.E., P.O. Box 47015, Olympia, WA 98504, phone 360-902-2117, fax 360-902-1789, email Rochelle.goss@dnr.wa.gov, AND RECEIVED BY October 22, 2019.

August 8, 2019
 George Geissler
 Washington State Forester
 Deputy Supervisor
 Wildlife and Forest Health

AMENDATORY SECTION (Amending WSR 98-11-047, filed 5/18/98, effective 6/18/98)

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.