

Chapter 173-430 WAC

AGRICULTURAL BURNING

WAC

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WAC 173-430-010 Purpose of the regulation. Chapter 70.94 RCW, the Washington Clean Air Act, declares it is the intent of the state to protect public health and it is the policy of the state that the responsibilities and costs of protecting the air resource and operating state and local air pollution control programs be shared as equitably as possible among all sources whose emissions cause air pollution. Some of the sources whose emissions contribute to air pollution in the state include industrial sources (large and small), mobile sources such as vehicles, and area sources such as woodstoves, general outdoor burning, and agricultural burning. A variety of strategies to control and reduce the impact of emissions are described throughout chapter 70.94 RCW, including controls on emissions created from agricultural burning. The act intends that public health be protected and also allows for agricultural burning that is reasonably necessary. The act also requires that burning be restricted and regulated to address the potentially competing goals of both limiting air pollution and allowing agricultural burning. Chapter 70.94 RCW authorizes the Washington state department of ecology (ecology) and local air authorities to implement the provisions of that act related to agricultural burning. This rule establishes control strategies for agricultural burning in the state to minimize adverse health and the environmental effects from agricultural burning in accord with the most reasonable procedures to follow in safeguarding life and property under all circumstances or is reasonably necessary to carry out the enterprise or both. These strategies include:

- (1) Establishing a permit program with minimum state-wide requirements and specific burn authorizations.
- (2) Providing for implementation of a research program to explore and identify economical and practical alternatives to agricultural burning.
- (3) Encouraging and developing economically feasible alternative methods to agricultural burning.
- (4) Limiting the scope of the rule to agricultural burning and distinguishing between agricultural burning and other types of burning.

(5) Providing for local administration of the permitting program through delegation.

(6) Assessing air quality within a region and incorporating this data into an evaluation tailored to emissions from agricultural burning.

(7) Making use of metering as a component of the agricultural burning permit program. Metering is a technique of limiting emissions from agricultural burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality.

(8) Using improved and proven technology in evaluating the conditions under which burning is authorized, including those related to meteorology, emissions, and air pollution.

(9) Providing for education and communication.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. WSR 10-23-049 (Order 10-05), § 173-430-010, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. WSR 06-16-052 (Order 04-10), § 173-430-010, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650. WSR 95-03-083 (Order 94-17), § 173-430-010, filed 1/17/95, effective 2/17/95; WSR 93-14-022 (Order 92-58), § 173-430-010, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. WSR 90-19-062 (Order 90-10), § 173-430-010, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-010, filed 11/9/77. Formerly WAC 18-16-010.]

WAC 173-430-020 General applicability and conditions. (1) This regulation applies to burning related to agricultural activities. It does not apply to silvicultural burning or outdoor burning. For these requirements refer to:

- Chapter 173-425 WAC for outdoor burning.
- Chapter 332-24 WAC for silvicultural burning.

(2) Burning of organic debris related to agricultural activities is allowed when it is reasonably necessary to carry out the enterprise. Agricultural burning is reasonably necessary to carry out the enterprise when it meets the criteria of the best management practices and no practical alternative is reasonably available.

(3) Anyone conducting burning related to agricultural activities must comply with local fire safety laws and rules, and burn when wind takes the smoke away from roads, homes, population centers, or other public areas.

(4) Burning related to agricultural activities must not occur during an air pollution episode or any stage of impaired air quality. Definitions of air pollution episode and impaired air quality are found in WAC 173-430-030.

(5) Burning of organic debris related to agricultural activities requires a permit and fee, except for agricultural burning that is incidental to commercial agricultural activities (RCW 70.94.6524). An agricultural operation burning under the incidental agricultural burning exception must still notify the local fire department within the area and not burn during an air pollution episode or any stage of impaired air quality.

The specific types of burning that qualify as exceptions to the permit requirement are:

(a) Orchard prunings. An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, assist with tree canopy training and improve the management of plant and disease, and pest infestations;

(b) Organic debris along fencelines. A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field;

(c) Organic debris along or in irrigation or drainage ditches. An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field;

(d) Organic debris blown by wind. The primary example is tumbleweeds.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. WSR 10-23-049 (Order 10-05), § 173-430-020, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. WSR 06-16-052 (Order 04-10), § 173-430-020, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650. WSR 95-03-083 (Order 94-17), § 173-430-020, filed 1/17/95, effective 2/17/95; WSR 93-14-022 (Order 92-58), § 173-430-020, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. WSR 90-19-062 (Order 90-10), § 173-430-020, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-020, filed 11/9/77. Formerly WAC 18-16-020.]

WAC 173-430-030 Definition of terms. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the meanings of the following words and phrases used in this chapter are listed below.

(1) **Agricultural burning:** Means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.6528(6) or other authoritative source on agricultural practices. Propane flaming for the purpose of vegetative debris removal is considered commercial agricultural burning.

(2) **Agricultural operation:** Means a farmer who can substantiate that the operation is commercial agriculture by showing the most recent year's IRS schedule F form or its corporate equivalent. It also includes burning conducted by irrigation district or drainage district personnel as part of water system management.

(3) **Air pollution episode:** Means a period when a forecast, alert, warning, or emergency air pollution stage is declared as described in RCW 70.94.715.

(4) **Best management practice:** Means the criteria established by the agricultural burning practices and research task force (task force).

(5) **Certify:** Means to declare in writing, based on belief after reasonable inquiry, that the statements and information provided are true, accurate, and complete.

(6) **Ecology:** Means the Washington state department of ecology.

(7) **Farmer:** Means any person engaged in the business of growing or producing for sale any agricultural product upon their own lands, or upon the land in which they have a present right of possession, any agricultural product. Farmer does not mean persons growing or producing products primarily for their own consumption.

(8) **Field burning:** Agricultural burning of vegetative residue on an area of land used in an agricultural operation. Field burning does not include pile burning.

(9) **Impaired air quality:** Means an impaired air quality condition declared by ecology or a local air authority with jurisdiction in accordance with RCW 70.94.473.

(10) **Outdoor burning:** Means all forms of burning except those listed as exempt in WAC 173-425-020.

(11) **Permitting authority:** Means ecology or its delegate or a local air authority with jurisdiction or its delegate. Conservation districts, counties, fire districts, or fire protection agencies may receive delegation for all or portions of the agricultural burning permit program as identified in a delegation agreement. The permitting authority will issue agricultural burning permits for a given locale.

(12) **Pile burning:** Agricultural burning of stacked vegetative residue from an agricultural operation. Burning of windrows does not qualify as pile burning.

(13) **Silvicultural burning:** Means burning on any land the department of natural resources protects per RCW 70.94.-030(13), 70.94.6534, 70.94.6540, and under chapter 76.04 RCW.

(14) **Spot burn:** Agricultural burning of an unforeseen and unpredicted small area where burning is reasonably necessary and no practical alternative to burning exists. Examples of spot burns include small weed patches, spots of heavy residue, equipment plugs, and harrow dumps. Burning of windrows does not qualify as a spot burn.

(15) **Task force:** Means the agricultural burning practices and research task force.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. WSR 10-23-049 (Order 10-05), § 173-430-030, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. WSR 06-16-052 (Order 04-10), § 173-430-030, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.656. WSR 98-12-016 (Order 97-45), § 173-430-030, filed 5/26/98, effective 6/26/98. Statutory Authority: RCW 70.94.650. WSR 95-03-083 (Order 94-17), § 173-430-030, filed 1/17/95, effective 2/17/95; WSR 93-14-022 (Order 92-58), § 173-430-030, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. WSR 90-19-062 (Order 90-10), § 173-430-030, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-030, filed 11/9/77. Formerly WAC 18-16-030.]

WAC 173-430-040 Agricultural burning requirements. (1) Agricultural burning is allowed when it is reasonably necessary to carry out the enterprise. A farmer can show it is reasonably necessary when it meets the criteria of the best management practices and no practical alternative is reasonably available. In certain circumstances, ecology may certify an alternative to burning. Where the certified alternative is reasonably available, burning is not allowed. Certified alternatives are described in WAC 173-430-045.

(2) For allowed agricultural burning, ecology or local air authorities with jurisdiction will make daily or specific fire burn calls (during times of anticipated burning) and use metering when necessary to minimize the potential for

adverse air quality impacts. Metering is a technique of limiting emission from burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality. The burn decision process will consider: The potential number of burns and their expected size(s) and duration(s); recent and current ambient concentrations of pollutants; other potential emissions sources; and evaluations and judgments about how foreseeable meteorological conditions will affect concentrations of pollutants in the air sheds.

(a) For the purposes of this section: The smoke management index is a set of conditions that guide the production of certain reports as described in (c) of this subsection and evaluations as described in (d) of this subsection. The smoke management index is not an air quality standard as defined in RCW 70.94.030(4) and further identified in RCW 70.94.331. The smoke management index is not an emission standard as defined in RCW 70.94.030(9) and further identified in RCW 70.94.331. The smoke management index is not an air pollution episode as described in RCW 70.94.710.

(b) Ecology and local air authorities making daily or specific fire burn calls in areas where PM_{2.5} concentrations are regularly monitored will follow the procedures in (c) of this subsection when making the burn decision whenever either of the following smoke management index conditions exist:

(i) A most recent daily average (twenty-four-hour) PM_{2.5} concentration was equal to or greater than 16 micrograms per cubic meter. This is based on the division between the "good" and "moderate" classifications of the 2009 U.S. Environmental Protection Agency's Air Quality Index (AQI) for (twenty-four hours average PM_{2.5}) particulate matter.

(ii) A two-hour rolling average PM_{2.5} concentration, during the most recent twenty-four to thirty hours was equal to or greater than the regional seasonal average PM_{2.5} concentration plus 15 micrograms per cubic meter.

(c) In authorizing additional burning, a determination will be documented explaining that the decision to allow additional burning is not expected to result in a further significant deterioration of air quality. The determination will be entered on a standard form noting the date, time, the location of the additional burning, the size of the burn(s), and a brief explanation of the opinion as to why the additional burning is not expected to result in a further, significant reduction of air quality. The purpose of the determination and recordkeeping requirements of this section is to enhance agency and public understanding of the effectiveness of the daily burn and metering decision-making process, and to improve its application over time. A notice of the determinations will be made by ecology or a local air authority with jurisdiction at the time the daily burn decision is communicated. Ecology or a local air authority with jurisdiction will also periodically make the determination forms conveniently available to the public.

(d) Following a determination described in (c) of this subsection and a deterioration of air quality to levels equal to or greater than a two-hour rolling average concentration of the regional seasonal average PM_{2.5} concentration plus 25 micrograms per cubic meter in the specific area during the twenty hours following such determination, ecology or the local air authority with jurisdiction will evaluate the deterioration and document any findings and opinions regarding why the deterioration occurred. Ecology or the local air

authority with jurisdiction will make evaluations under this subsection conveniently available to the public.

(e) Ecology or a local air authority with jurisdiction may evaluate emission dispersion impacts in the regular course of business. In addition, ecology or the local air authority with jurisdiction will produce an annual report summarizing determinations and evaluations under the smoke management index.

(f) Under RCW 70.94.473 and 70.94.6512, no burning is authorized when an air quality alert, warning, emergency or impaired air quality condition has been issued.

(g) For purposes of protecting public health (not eliminating agricultural burning), if an area exceeds or threatens to exceed unhealthy air pollution levels, the permitting authority may limit the number of acres, on a pro rata basis as provided by RCW 70.94.6532 or by 70.94.6528.

(3) Except as described in WAC 173-430-020(5), all agricultural burning requires a permit.

(a) Ecology or local air authorities with jurisdiction will provide agricultural burning application forms for agricultural burning.

(b) To qualify for an agricultural burning permit the farmer must be an agricultural operation or government entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards.

(c) Application information. A farmer must fill out the information requested on a permit application, pay the permitting fee, and submit it to the permitting authority for review and approval before burning.

(i) The application must describe the reason for burning and include at least the following information: Name and address of the person or corporation responsible for the burn, the specific location (county; legal description: Section, township, range, block and unit number), the crop type, the type or size of the burn, driving directions to the burn, specific reason for the burn, the target date for burning, a map, signature of the responsible party, and any additional information required by the permitting authority. Each permitting authority may require additional information on the application.

(ii) All applications must comply with other state or local rules.

(d) The permitting authority must evaluate the application, and approve the permit before burning.

(e) Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out the burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(f) Ecology or its delegate, or a local air authority with jurisdiction, or its delegate must approve or deny the permit in part or in whole based on information in the application.

(g) Ecology and its delegate or a local air authority with jurisdiction or its delegate may issue permits for appropriate agricultural burning activities in nonattainment areas, maintenance areas, and urban growth areas as described in RCW 70.94.6514.

(4) All agricultural burning permits require a fee.

The applicant must include the fee when submitting the application. The permitting authority will charge fees as described under WAC 173-430-041.

(5) All agricultural burning permits must include conditions intended to minimize air pollution.

(a) A farmer must comply with the conditions on the agricultural burning permit.

(b) Permits must be conditioned to minimize emissions and impacts insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. When necessary as determined by ecology or the local air authorities to ensure compliance with the act, permit conditions will include at least one of the following:

- The use of a daily burn decision.
- Permit specific decisions.
- Metering.

(c) The permitting authority must:

(i) Act on a complete application (as determined by the permitting authority) within seven days of receipt.

(ii) Evaluate the application and approve or deny all or part of it.

(iii) Evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(iv) If the permitting authority denies the application, they must state the reason for the denial.

(6) Other laws. A farmer must obtain any local permits, licenses, or other approvals required by any other laws, rules, or ordinances. The farmer must also honor other agreements entered into with any federal, state, or local agency.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. WSR 10-23-049 (Order 10-05), § 173-430-040, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. WSR 06-16-052 (Order 04-10), § 173-430-040, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.656. WSR 98-12-016 (Order 97-45), § 173-430-040, filed 5/26/98, effective 6/26/98. Statutory Authority: RCW 70.94.656(4). WSR 97-03-021 (Order 96-05), § 173-430-040, filed 1/7/97, effective 2/7/97. Statutory Authority: RCW 70.94.650. WSR 95-03-083 (Order 94-17), § 173-430-040, filed 1/17/95, effective 2/17/95; WSR 93-14-022 (Order 92-58), § 173-430-040, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. WSR 90-19-062 (Order 90-10), § 173-430-040, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-040, filed 11/9/77. Formerly WAC 18-16-040.]

WAC 173-430-041 Agricultural burning fees. (1) RCW 70.94.6528 provides the following maximum fees for agricultural burning:

Field burning	\$3.75 per acre
Pile burning	\$1.00 per ton

(2) RCW 70.94.6528(5) authorizes the agricultural burning practices and research task force (task force) to determine the level of the fee.

(a) **2011 fee schedule.** Fees starting in the calendar year 2011 are found in subsection (5) of this section.

(b) **Establishing new fee schedules.** Ecology and the task force will examine the fee schedule using the process in WAC 173-430-042.

(3) **Calculating the fee.** The fee consists of a minimum fee plus any applicable variable fee.

(a) **Minimum fee.** The minimum fee includes burning of the base number of acres or tons published in the fee schedule.

(b) **Variable fee.** Field burning and pile burning permits allowing the farmer to burn more acres or tons than the base included in the minimum fee require an additional per acre or per ton fee.

(c) The following table shows which types of burning have a variable fee.

Type of Burning	Variable Fee
Field Burning	Fee applied for each additional acre.
Spot Burning	None - Spot burn permits must not exceed the base amount of acres published in the fee schedule.
Pile Burning	Fee applied for each additional ton.

(4) **Fee components.** The permit fee helps off-set the cost of administering and enforcing the agricultural burning permit program. The fee consists of three components:

- Permitting program administration;
- Smoke management administration; and
- Research.

(a) **Permitting program administration.** The permitting authority may set the fee as an amount no more than the amount published in the fee schedule.

(i) The local air authority or delegated permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution.

(ii) In areas of the state where ecology has permitting authority and has not delegated that authority, ecology will charge the following for local permitting program administration:

(A) Starting in 2011, the amount listed in subsection (6) of this section.

(B) For subsequent fee changes, the amount published in the fee schedule. Ecology will publish the fee schedule using the process in WAC 173-430-042.

(b) **Smoke management administration.** This portion of the fee will:

(i) Help off-set the statewide or regionwide costs of the agricultural burning program.

(ii) Help fund the education and smoke management activities of ecology or the local air authority.

(c) **Research fund.** The task force will determine the research portion of the fee based on applied research needs, regional needs, and the research fund budget.

(5) **Permit fee schedule.** Table 1 shows the permit fee schedule, starting in the calendar year 2011. This fee schedule will remain in place until ecology and the task force adjust it using the process in WAC 173-430-042. Please see <http://www.ecy.wa.gov>, contact ecology, or contact your local air authority for the most current fee schedule or fee distribution.

**Table 1
Agricultural Burning Fee Schedule, Starting Calendar
Year 2011**

Fee	Minimum Fee	Variable Fee
Field Burning	\$30 for the first 10 acres	\$3.00 for each additional acre
Spot Burning	\$30 for 10 acres or less	None
Pile Burning	\$80 for the first 100 tons	\$0.50 for each additional ton

**Table 2
Agricultural Burning Fee Distribution**

Fee	Permitting Authority Administration	Research	Smoke Management
Field Burning Minimum Fee	\$15.00	\$0	\$15.00
Field Burning Variable Fee	\$1.25 per acre	\$0.50 per acre	\$1.25 per acre
Spot Burning Fee	\$15.00	\$0	\$15.00
Pile Burning Minimum Fee	\$16.00	\$16.00	\$48.00
Pile Burning Variable Fee	\$0.10 per ton	\$0.10 per ton	\$0.30 per ton

(7) **Refunds.** The farmer may receive a refund. The farmer may only receive a refund for the portion of the variable fee paid for the acres or tons not burned.

(a) The permitting authority may keep the minimum fee as reimbursement for the costs of processing the permit application.

(b) The permitting authority will not issue refunds of less than twenty-five dollars due to the cost of processing refunds.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III, WSR 10-23-049 (Order 10-05), § 173-430-041, filed 11/10/10, effective 12/11/10.]

WAC 173-430-042 Adjusting agricultural burning fees. (1) RCW 70.94.6528 provides the following maximum fees for agricultural burning:

Field burning	\$3.75 per acre
Pile burning	\$1.00 per ton

(2) RCW 70.94.6528(5) authorizes the agricultural burning practices and research task force (task force) to determine the level of the fee.

(3) **Process for adjusting the fee schedule for agricultural burning.** The process for adjusting the fee schedule requires the following two steps:

- The task force must determine the fee schedule using the process established in subsection (4) of this section;
- If the task force decides to adjust the fee schedule, ecology will finalize the new fee schedule through the process established in subsection (6) of this section.

(4) **Task force process to determine agricultural burning fees.** The task force may examine the agricultural burning fee schedule once a year using the process outlined in this section. However, the task force must examine the agricultural burning fee schedule at least every two years. The

(6) **Permit fee distribution.** Table 2 shows the permit fee distribution, starting in the calendar year 2011. This distribution will remain in place until ecology and the task force adjust it using the process in WAC 173-430-042. Please see <http://www.ecy.wa.gov>, contact ecology, or contact your local air authority for the most current fee schedule or fee distribution.

task force process for examining the agricultural burning fee schedule must include the following:

(a) Ecology will submit, to the task force, a summary of the costs of the permit and smoke management programs before the first task force meeting of the year.

(b) The agenda for the first task force meeting of the year must include examining the current fee schedule.

(c) Ecology will notify stakeholders and permit holders of time, date, location, and agenda for the task force meeting.

(d) Based on the information provided by ecology, under (a) of this subsection, the task force will decide if they need to adjust the agricultural burning fee schedule.

(e) If the task force decides to adjust the agricultural burning fee schedule, they must determine the new fee schedule at a regularly scheduled meeting.

(5) **Examining the fee schedule more frequently.** The task force may examine the agricultural burning fee schedule more frequently than every two years, if all of the following occurs:

(a) The task force determines the fee schedule during one of their regularly scheduled meetings.

(b) Ecology finalizes the fee schedule using the process in subsection (6) of this section.

(6) **Ecology process to finalize fees set by the task force.** After the task force determines a new fee schedule, ecology will:

(a) Post the proposed fee schedule on the agency web site for public review and comment.

(b) Publish a notice of a public hearing.

(i) The notice will include all of the following:

- Time;
- Date;
- Location;
- Last day ecology will accept written comments.

(ii) At a minimum, ecology will publish the notice in the following locations:

(A) *Washington State Register*.

(B) Ecology web site.

(c) Hold a public hearing at least twenty days after completing the actions in (a) and (b) of this subsection.

(d) Accept written comments on the proposed fee schedule. Ecology must receive comments by the time and date specified in the hearing notice, or a later time and date established at the hearing.

(e) Consider comments received and provide a written response to comments to the task force and anyone who commented.

(f) Ecology will finalize the fee schedule by December 1st of the calendar year before it becomes effective.

(g) Ecology will publish the fee schedule by:

(i) Notifying stakeholders and permit holders of the new fees.

(ii) Posting a response to comments on the ecology web site.

(7) **Effective date of the new fee schedule.** The new fee schedule becomes effective January 1st of the calendar year after it is finalized.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III, WSR 10-23-049 (Order 10-05), § 173-430-042, filed 11/10/10, effective 12/11/10.]

WAC 173-430-044 Additional requirements for burning field or turf grasses grown for seed. Ecology will proceed with the process to certify alternatives to burning as identified in RCW 70.94.6532(3). In addition to the certification process, ecology is also limiting the number of acres allowed to be burned as specified in RCW 70.94.6532(4).

(1) Beginning in 1997 and until approved alternatives become available, each farmer is limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

Without regard to any previous burn permit history, in 1996, each farmer shall be limited to burning the greater of:

(a) Two-thirds of the number of acres the farmer burned under a valid permit issued in 1995; or

(b) Two-thirds of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

(2) Exemptions to the requirements for burning of field and turf grasses grown for seed (subsection (1) of this section). A farmer may request an exemption for extraordinary circumstances, such as property where a portion(s) of the field is oddly shaped or where the slope is extremely steep. This provision does not apply to WAC 173-430-045, Alternatives to burning field or turf grasses grown for seed. Under this subsection, relief from the acreage/emissions reduction requirements of subsection (1) of this section is limited to no more than five percent of the acreage in production on May 1, 1996, and is also subject to the following provisions:

(a) The exemption request must be certified by an agronomic professional;

(b) The farmer must be able to show full compliance with the emissions reductions in subsection (1) of this section for the acreage not exempted; and

(c) The farmer must be in full compliance with permit requirements for other crops under WAC 173-430-040.

(3) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by RCW 70.94.6532, until another method(s) is shown to be better and meets with the intent of RCW 70.94.6532(4). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and meets the criteria, it may certify this method using an administrative order.

(4) Ecology or the local air authority may provide for trading of permits using the method described in this subsection. This trading system uses a straight transfer of acres, a transfer requiring mandatory compensation, or a combination of both. If ecology or the local air authority finds that emissions resulting from trading are creating a health impact, as defined by ecology or the local air authority, the trading system, once created, may be dissolved. This provision does not apply to WAC 173-430-045, Alternatives to burning field or turf grasses grown for seed.

(a) Ecology or the local air authority may develop a system that allows the trading of permits by:

(i) Adding a signed transfer line to the written permit that provides for a signature for the current holder of the permit;

(ii) Providing a tracking system that identifies the current holder of the permit, that identifies when the permit was last used to allow burning of acreage, and that allows the name of the holder to be changed if the transfer line is signed by the current holder;

(iii) Requiring that the new holder of the permit must turn in the permit with the signed transfer line at least sixty days before the new holder plans to burn; and

(iv) Assuring that the permits are used only once in a calendar year.

(b) By signing the transfer line on the permit the permit holder must indicate that he or she understands that the acres transferred may no longer be burned, that a permit for the acres transferred will not be issued to the signing permit holder in future years, and that the acres being transferred were not already burned during the calendar year during which the transfer takes place.

(c) Ecology and the local air authorities may add restrictions to the transfer of permits closer to areas with higher population densities.

(d) Only permits for acreage which has not yet been burned may be transferred or traded. The seller of the permit is responsible for permanently reducing the acreage burned by the amount of acreage transferred from January 1st of the year during which the transaction takes place.

(e) Acreage that is exempted under subsection (5) of this section is not eligible for the trading system.

(f) The authorities are encouraged to work together to use the same system and to allow trading between authority jurisdictions so as to allow the grass seed growers to adjust to the two-thirds overall reduction in acres permitted for burning as easily as possible.

(5) Alternate open burning practices for field and turf grass grown for seed. Ecology acknowledges that there may be practices that involve some burning, but which produce emissions quantifiably below those of open field burning. If

ecology finds that a practice involves open burning and still substantially reduces emissions below open field burning, ecology may certify the alternate burning practice(s) by administrative order. Any certified practice may be used to satisfy the acreage/emissions reduction requirements of subsection (1) of this section provided:

(a) The acreage application of the practice is adjusted to reflect effectiveness in reducing emissions so as to meet or exceed the emissions reduction required by subsection (1) of this section; and

(b) In no case will the emission reduction requirement for the field and turf grass grown for seed be less than that required in subsection (1) of this section.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III, WSR 10-23-049 (Order 10-05), § 173-430-044, filed 11/10/10, effective 12/11/10.]

WAC 173-430-045 Alternatives to burning field or turf grasses grown for seed. (1) When is open burning of field and turf grasses grown for seed prohibited?

The Washington Clean Air Act prohibits open burning of field and turf grasses grown for seed whenever ecology has concluded, through a process spelled out in the act, that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to open burning, and that alternate is reasonably available.

(2) Has ecology certified practical alternatives to open burning of field or turf grasses grown for seed?

Yes. Ecology concludes that mechanical residue management constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed. Mechanical residue management means removing, including arranging for removal of, the residue using nonthermal, mechanical techniques including, but not limited to: Tilling, swathing, chopping, baling, flailing, mowing, raking, and other substantially similar nonthermal, mechanical techniques. Ecology further concludes that mechanical residue management is practical throughout all phases of seed production including:

(a) When the field is planted (establishment);

(b) When the field is producing seed (harvest years);

(c) When the field is prepared for replanting (tear-out).

(3) Are the alternatives to open burning that have been certified by ecology reasonably available?

Ecology concludes that mechanical residue management is reasonably available throughout the state wherever baling can be used. Baling is the process of gathering the residue and moving it off the field. Typically, a machine known as a "baler" is used to gather and bundle residue that is already cut.

Based on this conclusion, the open burning of field or turf grasses grown for seed is prohibited except as described in subsection (4) of this section. This rule does not require the use of any particular practice or technique. A farmer may use any alternate practice that does not involve field burning.

(4) Under what circumstances may open burning of field or turf grasses grown for seed be allowed?

(a) Where a farmer establishes that mechanical residue management is not reasonably available on specific portions of a field under specific production conditions due to slope.

In a request for a waiver, a farmer must certify in writing to ecology or local air authority the following:

(i) Baling is not reasonably available due to slope. A farmer must explain why baling is not reasonably available, referring to specific facts supporting this belief. Unacceptable facts include, but are not limited to, general statements about burning as a tool for the routine control of weed and disease, for seed propagation purposes, or as a less costly alternative to mechanical residue management. A farmer may use statements from three separate businesses providing baling services as part of their commercial operation to support the belief that baling is not reasonably available due to slope. In the statements, the businesses must certify that they are independent from the farmer and have no financial interest in the farmer's operation;

(ii) Current harvest practices have not diminished the ability to use mechanical residue management;

(iii) The ground or portions of the field have not been burned three years in a row in the three years preceding the request for a waiver;

(iv) The ground or portions of the field will remain, without replanting, in grass production at least through the next harvest season following burning;

(v) Residue from any neighboring fields or portions of fields under the control of the farmer will be removed before burning and reasonable precautions will be taken to prevent fire from spreading to areas where burning is not allowed; and

(vi) Adjustments in field rotations and locations cannot be made at any time during the rotational cycle and could not have been made when planted to allow the use of mechanical residue management techniques.

(b) Where a farmer establishes that extreme conditions exist. Ecology or a local air authority, at their discretion, may grant a request for a waiver for extreme conditions. The farmer must certify in writing the following:

(i) Why mechanical residue management is not reasonably available, referring to specific facts supporting this belief. Unacceptable facts include, but are not limited to, general statements about burning as a tool for the routine control of weed and disease, for seed propagation purposes, or as a less costly alternative to mechanical residue management;

(ii) He/she did not cause or create the condition to purposefully avoid using mechanical residue management techniques;

(iii) The ground or portions of the field have not been burned three years in a row in the three years preceding the request for a waiver;

(iv) The field will remain, without replanting, in grass production at least through the next harvest season following burning;

(v) Residue from any neighboring fields or portions of fields under the control of the farmer will be removed prior to burning and that reasonable precautions will be taken to prevent fire from spreading to areas where burning is not allowed; and

(vi) Adjustments in field rotations and locations cannot be made at any time during the rotational cycle, and could not have been made when planted to allow the use of mechanical residue management techniques.

(c) Where a farmer demonstrates to ecology or local air authority that his/her small agricultural operation is eligible for mitigation.

For 1998 only, ecology or a local air authority may allow burning on a small agricultural operation. A small agricultural operation owner has a gross 1997 revenue from all agricultural operations of less than \$300,000. A farmer must show information of sufficient quantity and quality to ecology or a local air authority to establish gross revenue from agricultural operations. A small farm owner may burn current acreage up to 25% of 1997 acreage burned under a valid permit. Fields taken out of production after the 1997 harvest season and in 1998 cannot be counted in the determination of 1997 acreage burned for the purpose of eligible burn acreage.

(d) Where a request for a waiver is approved under (a), (b), and (c) of this subsection, the following additional limitations also apply:

Total burn acreage must not exceed 1/3 of a farmer's acreage in production on May 1, 1996. Permits issued under (a), (b), or (c) of this subsection are not eligible for the permit trading program identified in WAC 173-430-040.

(5) What is the process for a farmer to request a waiver for circumstances described in subsection (4) of this section?

(a) A farmer submits a request for a waiver.

Sixty days before the planned burn date, a farmer must submit in writing a request to ecology or a local air authority. In the request, the farmer must identify the circumstances and meet the specific requirements of subsection (4)(a), (b), or (c) of this section. Ecology or the local air authority may require the request to be submitted on a form or in a format provided by ecology or the local air authority.

(b) Ecology or local air authority evaluates the request for a waiver.

Upon receiving a request for a waiver, ecology or the local air authority will determine if the necessary documents and information provided is complete enough to evaluate the request. If incomplete, ecology or local air authority will advise the farmer and suspend further evaluation until the request for a waiver is complete. The documents and information identified as necessary to complete the request must be delivered to ecology or the local air authority at least thirty days before burning. Once a request for a waiver is deemed complete, ecology or the local air authority will evaluate the request and decide whether the burning waiver is appropriate. As part of the evaluation, ecology or the local air may conduct an on-site inspection.

If ecology or local air authority denies a request for a waiver, the reasons will be provided to the farmer in writing. If approved, ecology or the local air authority will notify the farmer by convenient means. Ecology will also notify the appropriate delegated authority.

(c) The farmer applies for an agricultural burning permit.

If ecology or local air authority approves a request for a waiver, the farmer must complete a permit application and pay the fee as described in WAC 173-430-040. A delegated authority must receive written authorization from ecology that a waiver has been approved before processing a permit application.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. WSR 10-23-049 (Order 10-05), § 173-430-045, filed 11/10/10,

effective 12/11/10. Statutory Authority: RCW 70.94.656. WSR 98-12-016 (Order 97-45), § 173-430-045, filed 5/26/98, effective 6/26/98.]

WAC 173-430-050 Best management practices. (1)

The task force must identify best management practices for agricultural burning that are economically feasible and socially acceptable. Practical alternative production methods and controls which would reduce or eliminate agricultural burning must be used when reasonably available.

(2) The task force may establish an agricultural burning general best management practice and crop-specific best management practices as appropriate. The task force will work in conjunction with conservation districts and extension agents or other local entities in developing best management practices. The task force may review and approve crop-specific best management practices which have been developed or recommended by an individual or group.

(3) Approved best management practices information will be available from permitting authorities. The task force, as it deems necessary, will hold public workshops on best management practices that have changed or are new and will periodically review the best management practices starting three years after approval.

(4) The task force will clarify best management practices and make interpretative decisions as needed, considering all authoritative sources on the subject.

(a) An individual or group may request a best management practice clarification from the task force.

(b) The chair of the task force may direct the questioned practice to a subgroup of task force members, provided that agricultural, research, and regulatory interests are included and all task force members are notified, or may direct it to the whole task force.

(5) The task force will change best management practices as necessary to incorporate the latest research.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. WSR 10-23-049 (Order 10-05), § 173-430-050, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650. WSR 95-03-083 (Order 94-17), § 173-430-050, filed 1/17/95, effective 2/17/95. Statutory Authority: RCW 70.94.331. WSR 90-19-062 (Order 90-10), § 173-430-050, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-050, filed 11/9/77. Formerly WAC 18-16-050.]

WAC 173-430-060 Research into alternatives to agricultural burning. (1) Ecology will administer the research

portion of the permit fee to carry out the recommendations of the task force. In carrying out the recommendations, ecology may conduct, cause to be conducted, or approve of a study or studies to explore and test economical and practical alternative practices to agricultural burning. To conduct the study, ecology may contract with public or private entities. Any approved study must provide for the identification of the alternatives as soon as possible.

(2) No less than every two years, the task force will review research needs and submitted proposals and make its recommendations to ecology.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. WSR 10-23-049 (Order 10-05), § 173-430-060, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. WSR 06-16-052 (Order 04-10), § 173-430-060, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650. WSR 95-03-083

(Order 94-17), § 173-430-060, filed 1/17/95, effective 2/17/95; WSR 93-14-022 (Order 92-58), § 173-430-060, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. WSR 90-19-062 (Order 90-10), § 173-430-060, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-060, filed 11/9/77. Formerly WAC 18-16-060.]

WAC 173-430-070 General agricultural burning permit conditions and criteria. Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out the burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(1) Permits must include the following general conditions:

(a) Do not burn at night unless it is specified as a best management practice;

(b) Comply with all fire safety rules of the local fire protection agency including any no-burn directives it may issue;

(c) Call the local air authority burning information line (if there is one) before lighting the fire;

(d) Burn only during times specified by the permitting authority;

(e) Burn when wind takes the smoke away from roads, homes, population centers, or other public areas, to the greatest extent possible;

(f) Do not burn when adverse meteorological conditions exist;

(g) Burn only natural vegetation;

(h) Do not burn or add fuel during any stage of an air pollution episode or local air quality burning ban;

(i) Attend the fire at all times;

(j) Submit a postburn report to the permitting authority.

(2) If the permitting authority determines a specific situation will cause a nuisance under chapter 173-400 WAC or RCW 70.94.640, agricultural burning will not be allowed.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. WSR 10-23-049 (Order 10-05), § 173-430-070, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. WSR 06-16-052 (Order 04-10), § 173-430-070, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650. WSR 95-03-083 (Order 94-17), § 173-430-070, filed 1/17/95, effective 2/17/95; WSR 93-14-022 (Order 92-58), § 173-430-070, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. WSR 90-19-062 (Order 90-10), § 173-430-070, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-070, filed 11/9/77. Formerly WAC 18-16-070.]

WAC 173-430-080 Responsibilities of a permitting authority. (1) The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority must establish and administer an agricultural burning permit system. The minimum responsibilities are described in this section.

(2) The permitting authority must act on a complete application (as determined by ecology or a local air authority with jurisdiction) within seven days of receipt.

(a) Local air authorities are required to use application templates and permit templates supplied by ecology. Ecology

delegated authorities are required to use applications and permits supplied by ecology.

(b) A map must accompany all permit applications.

(i) The map must accurately depict the topography of the area where the requested burn would take place and include roads, and landmarks.

(ii) The map must accurately show affected acreage to be burned.

(iii) The map must show the position of the field within each section the field occupies, down to the 1/4 - 1/4 section. All four border lines of each section must be outlined with the section number, township, and range clearly marked.

(c) The permitting authority must evaluate the application and approve or deny all or part of it.

(d) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(e) If the application is denied, the reason must be stated.

(3) Permitting authorities must issue permits where appropriate on complete applications. Delegated permitting authorities may issue permits when agreed to as part of the delegation order.

(4) Permitting authorities must determine day-to-day burning restrictions near populated areas and arrange for dissemination of the results. Delegated permitting authorities must arrange for assisting in dissemination of results.

(5) The permitting authority or its delegate is responsible for responding to agricultural burning complaints.

(6) The permitting authority must collect the fee, determine the local administration portion of the fee, and issue refunds.

(a) Permitting authorities must issue a permit fee refund for permitted acres not burned on confirmation by the permitting authority. The refund request deadline must be included on the permits.

(b) Local air authorities and delegated permitting authorities must formally adopt the local administration portion of the fee through rule, regulation, ordinance, or resolution.

(7) Delegated permitting authorities must provide ecology with copies of all permits and supporting documentation and transfer the research and smoke management administration portion of the fee to ecology.

(a) Local air authorities and delegated permitting authorities must transfer funds twice a year by July 15 and January 15.

(b) Local air authorities and delegated permitting authorities must provide ecology copies of all permits, applications with supporting documentation, maps, and postburn reports. All spring (January-June) permits need to be provided by July 15th and all fall (July-December) permits by January 15th.

(c) Ecology must deposit all agricultural burning permit fees in the air pollution control account. Permitting authorities may deduct the local administration portion before forwarding the remainder to ecology.

(8) The permitting authority must coordinate compliance. Violations are subject to the remedies of chapter 70.94 RCW, Washington Clean Air Act.

(9) The permitting authority or its delegate must require a postburn report for all permits.

(10) The permitting authority or its delegate must use the web-based data base for issuing all agricultural burning permits.

(a) Local air authorities and its delegates must make arrangements with ecology to enter information into the web-based data base.

(b) Ecology-delegated permitting authorities must attend a minimum of one data base training per calendar year or as provided by ecology.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. WSR 10-23-049 (Order 10-05), § 173-430-080, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. WSR 06-16-052 (Order 04-10), § 173-430-080, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650. WSR 95-03-083 (Order 94-17), § 173-430-080, filed 1/17/95, effective 2/17/95; WSR 93-14-022 (Order 92-58), § 173-430-080, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. WSR 90-19-062 (Order 90-10), § 173-430-080, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-080, filed 11/9/77. Formerly WAC 18-16-080.]

WAC 173-430-090 Receiving delegation—Counties, conservation districts, and fire protection agencies. (1)

The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority is responsible for administering the agricultural burning permit program. The agricultural burning permit program may be delegated to conservation districts, counties, or fire protection agencies.

(2) When ecology or a local air authority with jurisdiction finds that a county, fire protection agency or conservation district is capable of administering the permit program and desires to do so, it may delegate by administrative order the administration, or enforcement authority of the program, or both. The delegated permitting authority must, at a minimum, meet all of the following criteria:

(a) Demonstrating that the responsibilities listed under permitting authority responsibilities section can be fulfilled;

(b) Employing, contracting with, or otherwise accessing someone educated and trained in agronomics;

(c) Providing a copy of the ordinance adopting the local administration portion of the fee;

(d) Providing a copy of agreements between counties, fire districts, and conservation districts when more than one agency will have responsibilities for the agricultural burning program; and

(e) Agreeing to periodic audits and performance reviews.

(3) Delegation may be withdrawn if ecology or the local air authority with jurisdiction finds that the agricultural burning program is not effectively being administered or enforced. Before withdrawing delegation, the delegated agency must be given a written statement of the deficiencies in the program and a compliance schedule to correct program deficiencies. If the delegated agency fails to correct the deficiencies according to the compliance schedule, then ecology or the local air authority may withdraw delegation.

(4) Permitting authorities must work through agreement with counties (if the county is not the permitting authority) and cities to provide convenient methods for evaluating applications, issuing permits and granting permission to burn.

Once a delegation order has been issued, ecology or the local air authority with jurisdiction must approve of any changes to the agreement before implementation.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. WSR 10-23-049 (Order 10-05), § 173-430-090, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. WSR 06-16-052 (Order 04-10), § 173-430-090, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650. WSR 95-03-083 (Order 94-17), § 173-430-090, filed 1/17/95, effective 2/17/95.]

WAC 173-430-100 Severability. The provisions of this regulation are severable. If any provision is held invalid, the application of the provision to other circumstances and the remainder of the regulation will not be affected.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. WSR 10-23-049 (Order 10-05), § 173-430-100, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650. WSR 95-03-083 (Order 94-17), § 173-430-100, filed 1/17/95, effective 2/17/95.]