

Regulation sections 11 AAC 95	Commenter	Comment	Response
All	Maegan Bosak, Community Affairs Director, City & Borough of Sitka	The City and Borough of Sitka has reviewed the Notice of Proposed Changes on Wildland Fire Prevention in the Regulations of the Department of Natural Resources, and has no concerns on the proposed regulation changes.	No change needed.
N/A	James Squyres	It is apparent that these proposed changes in Regulations are as a result of the passage of House Bill 355 that was passed in the 30th Legislature. HB355 was contentious and sustained numerous changes throughout the legislative process, many having to do with concerns by Alaskans regarding the overstepping of constitutional privacy (Article 1, Section 22), due process (Article 1, Section 7) and potential searches (Article 1, Section 14) committed by a wide variety of state personnel without probable cause of any crimes being committed on Alaskan's privately owned property. What should be noted is the tendency of DNR to originally overstep at such a level as to require pullback during the legislative process. This is overreach is unfortunately occurring once again in the regulation process. The result of HB355 was far from perfect. Twelve legislators were unsatisfied and voted "Nay" on the final product, several of which stand ready to assist Article 1, Section 2 Alaskans to effect additional warranted change to the statute if the final product of these Regulations infringe on Alaskan's rights as laid out in the Alaska Constitution.	No change needed.
.412	James Squyres	It was not previously unreasonable for an Alaskan who had obtained a SOA DNR Special Burning Permit with a site inspection by the Forestry Fire Prevention Officer to have multiple small fires. The purpose for this is so that an experienced burner can feed a slash fire to a safe level and utilize the time while that one burns down to feed another under controlled conditions. This is a traditional Alaskan way of life. Two small fed fires can be safer, more efficient and easier to manage than one very large pre-stacked pile subsequently lit off. While this proposed regulation may be considered appropriate for a small scale burn permit it unnecessarily ties the hands of a Fire Prevention Officer when issuing a custom large scale permit and places an onerous burden on Alaskans seeking to comply with the regulations. None of the statute citations referenced for this proposed regulation specify a "single burn."	The regulation will be changed to clarify that a person may conduct only a single burn at a time under a small scale burn permit. See 11 AAC 95.414. Multiple small fires may be addressed under the terms of a large scale burn permit. See 11 AAC 95.416.
.422(b)(3)	James Squyres	Large portions of Alaska do not have cell or internet service, therefore this permit requirement MISSES THE MARK. The effect of this regulation, whether intended or	11 AAC 95.422.(b) will no longer state that a permittee must "(3) contact

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		<p>not, is to prevent legal burns via permit throughout much of the state. Article 8, Section 1 of the Alaska Constitution indicates “It is the policy of the State to encourage the settlement of its land and the development of its resources...” Remote property is disposed by the state into private ownership under various programs. The proper use of fire as a tool to dispose of slash while constructing building sites and clearing a margin of defensible space is all but prevented in remote areas outside of cell range during the building season. For areas closer to cell service having additional manpower for someone to leave the fire site and to travel into cell service to check for messages from Forestry places an onerous physical and financial burden on the individual who is otherwise engaging in a safe burn. To comply in the remote areas an Alaskan would have to purchase an Iridium satellite phone placing an onerous financial burden on an individual basis or the State would have to supply a Sat phone if they wanted to align compliance with Article 8, Section 1 and “encourage the settlement of land” - either solution is impractical. Alaska Statute Sec. 41.17.080. entitled “Regulations” indicates “(c) The commissioner may establish regions, districts, or other subdivisions of forest land in the state in which different regulations apply to reflect varying conditions in the state or to facilitate administration.” This may be an opportunity to exercise this portion of statute and after parsing the State into areas with cell service coverage, and areas without cell service coverage, create the flexibility in the special burning permit process to deal with this issue, which MUST be addressed. To persist with this proposed regulation without creating some type of exception or provision for areas where Alaskans live outside cell service would be UNREASONABLE, ARBITRARY AND AN ABUSE OF DISCRETION. Governor Mike Dunleavy, who used to represent as a Senator large swaths of the unorganized borough outside of cell range would be shocked at these consequences of HB355 which effectively shut down a legal permitted burn throughout much of the state. It is expected that DNR Forestry will argue that remote landowners out of cell range should wait till outside the fire season to burn. This response simply indicates that they failed to take a hard look at the circumstances. A ridiculous example that hits the mark would be of an Alaskan at a remote fly-in property, property disposed into private ownership by the state in accordance with Article 8, Section 1, developing their building site during the building season and being unable to reduce fire hazard slash on site on a day with no wind and steady rain. The additional risk to safety for the individual to return during the winter months</p>	<p>the closest Division of Forestry Area office by telephone or through the Division of Forestry’s Internet website (A) each day immediately prior to starting a burn to obtain the status and limitations for permitted burning in that area for that day; and (B) if the weather conditions change during burning in a way that increases fire danger (for example, the wind or temperature increases), the permittee must re-check the message to determine whether permit suspensions or burn closures have been implemented;”</p> <p>11 AAC 95.422(b)(2) will instead state that “a permittee must comply with any status and limitations requirements, including (A) temporary burn suspensions or restrictions, (B) emergency burn closures or restrictions, and (C) burn limits in the area for that day;”</p> <p>These requirements ensure burning is conducted safely, because weather and fuel conditions may change rapidly, and because of the very high risk of a fire escaping and causing significant damage when a burn is conducted during dangerous weather conditions.</p>

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		is onerous and unnecessary and literally increases the fire hazard in the very defensible space they are trying to create.	
.430	James Squyres	The regulation should be corrected as follows... (1) a permittee denies <i>requested permission to access private property at a reasonable time</i> to an authorized employee of the Division of Forestry for the purpose of inspecting the area and material to be burned or which is being burned... Explanation- The reason for this change will be subtle to some and obvious to others. Please reference newly modified Sec. 41.15.040. Right of entry to control and suppress fires. This statute deals with entering upon any land regarding the topic of “wildland fire.” A special permit for controlled burns may cover a period of time subsequent to its issuing in which the subject area is totally cold with no intention to light any fire, subject to the permit, in the immediate short run. For an initial Large Scale Burn Permit to be issued the land owner initiates an invitation/permission process for the Fire Prevention Officer to come on site for inspection. Subsequent to this, right of entry onto private land should not be presumed without asking permission at a “reasonable time” which if then denied by the land owner the permit could then be revoked. Anything to the contrary of this is simply side-stepping the constitutional concerns under Article 1, Section 22 Right to Privacy- “The right of the people to privacy is recognized and shall not be infringed..” and Article 1, Section 14 regarding unreasonable searches and being secure on their property unless there is reason to believe that a crime is being committed. These were concerns that were brought up on the record in the legislative committee process in both the House and Senate and I would suggest that folks reading this to go back and review testimony and discussion.	No change needed. AS 41.15.010 states that the intent of AS 41.15.010-41.15.170 is to protect state, private, and municipal land from wildland fire. AS 41.15.141 authorizes certain authorized persons to enter upon any land, whether publicly or privately owned, when they are administering the statutory authorities in AS 41.15 for the purpose of preventing, investigating, suppressing or controlling a wildland fire. Confirming that burning is being conducted safely and at authorized times and under authorized conditions requires inspecting the burn site and is reasonably necessary to these statutory purposes.
.465	James Squyres	REMOVE - This proposed regulation should simply be removed as it clearly overreaches the statute and attempts to create a basis to sidestep constitutional side-rails. Do Alaska DNR public employees take an oath of employment to uphold the U.S. And Alaska Constitutions? Under this regulation certain state employees could climb over a locked gate and enter a posted property with no implied ingress and with no probable cause that a crime is being committed in January to inspect a cold BBQ grill with 2 feet of snow over it as long as it is a “reasonable time”. The potential for nefarious abuse of this regulation would be codified and will surely lead to unnecessary conflict because Alaskans inherently know that their rights are being violated. DNR Forestry may try to apply a “circular reasoning” argument that they have the authority to create these regulations	DOF intends to delete this regulation. As described above, AS 41.15.040 authorizes access to state, municipal, and private land in order to prevent, investigate, control, or suppress a fire. Primary implementation of this authority is described in 11 AAC 95.430.

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		<p>under statute but this is defeated because neither statute nor code can violate the constitution. Article 1, Section 22 Right to Privacy- “The right of the people to privacy is recognized and shall not be infringed..” and Article 1, Section 14 Searches and Seizures - regarding unreasonable searches and Alaskans being secure on their property unless there is reason to believe that a crime is being committed. These were concerns that were brought up on the record in the legislative committee process in both the House and Senate and I would suggest that folks go back and review verbal and written testimony and discussion that is on the record for House Bill 355.</p>	
N/A	James Squyres	<p>A Comment on NOTICE regarding these Proposed Regulations. Many Article 1, Section 2 Alaskans have no idea about the passage of House Bill 355 nor its implications or about these proposed regulations. They may only find out when the Fire Prevention Officer walks down their driveway. Immediately after the passage of House Bill 355 on or about May 11, 2018, I called Division of Forestry Director Chris Maisch and left a message in his personal voicemail box asking him to please place me on the email list for any proposed changes in regulations affiliated with the passage of House Bill 355. This message on his machine should have been no surprise to him as we had heard each other in testimony on HB355 over several months and in different committees. I repeated my email address and phone number twice and welcomed him to call to discuss the bill if he wished. I apparently was not placed on the list as I received no notification of these proposed regulations from DNR Division of Forestry. I was informed of the proposed regulation changes through Senator Coghill's office, which is the only way that I knew about them to present these comments.</p>	<p>The commenter’s name and email have been added to the “interested persons” list on these regulations.</p> <p>The public was notified of the proposed regulations in accordance with Public Records Act (AS 44.62) requirements, which included notification on the State of Alaska’s online public notice system, on the Division of Forestry’s “What’s New” website, in the Anchorage Daily News on January 24th, and in a media release of January 29th that was subsequently covered in a news story on KUAC radio in Fairbanks. Additionally, all legislators are notified of proposed regulations changes, as well as people who have contacted the DNR Commissioner’s Office to be put on an “interested persons” list for regulations.</p>