



Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary action: 9VAC5-130 Secondary action: None
Regulation title	Regulation for Open Burning
Action title	Open Burning (E12)
Date this document prepared	April 8, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The Regulation for Open Burning is needed to protect public health and safety, reduce emissions of volatile organic compounds in ozone nonattainment areas, and to require that open burning be conducted safely and in a manner as to prevent the release of air pollutants. The regulation amendments are needed in order for the regulation to efficiently and effectively meet its goals while avoiding unreasonable hardships on the regulated community, the Department of Environmental Quality (DEQ), and the general public.

Changes made to the final regulation are strictly editorial; no major changes were made to the proposal.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On April 4, 2014, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulation for Open Burning, (9VAC5 Chapter 130. The regulatory action is to be effective as provided in the Administrative Process Act.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. The identification should include a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of the extent to which the authority is mandatory or discretionary.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The regulation is necessary for the protection of public health and safety, as it is needed to meet the primary goals of the federal Clean Air Act: the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration (PSD) of air quality in areas cleaner than the NAAQS.

The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient air in order to protect public health and safety. EPA requires that each state submit a State Implementation Plan (SIP), including any laws and regulations necessary to enforce the plan, that shows how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the SIP must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance).

A SIP is the key to the state's air quality programs. The Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards--that is, it would have to promulgate and implement an air quality plan for that state. EPA is also, by law, required to impose sanctions in cases where there is no approved plan or the plan is not being implemented, the sanctions consisting of loss of federal funds for highways and other projects and/or more restrictive requirements for new industry. Generally, the plan is revised, as needed, based upon changes in the Act and its requirements.

The basic approach to developing a SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources

contributing to the problem, develop a control strategy to reduce emissions from contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future. The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the state to attain and maintain the air quality standards.

Federal guidance on states' approaches to the inclusion of control measures in the SIP has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. Many regulatory requirements were adopted in the 1970s when no detailed guidance existed. The legally binding federal mandate for these regulations is general, not specific, consisting of the Act's broad-based directive to states to attain and maintain the air quality standards. However, in recent years, the Act, along with EPA regulations and policy, has become much more specific, thereby removing much of the states' discretion to craft their own air quality control programs.

Generally, a SIP is revised, as needed, based upon changes in air quality or statutory requirements. For the most part the SIP has worked, and the standards have been attained for most pollutants in most areas. However, attainment of NAAQS for one pollutant – ozone – has proven problematic. While ozone is needed at the earth's outer atmospheric layer, excess concentrations at the surface have an adverse effect on human health and safety. Ozone is formed by a chemical reaction between volatile organic compounds (VOCs), nitrogen oxides (NO_x), and sunlight. When VOC and NO_x emissions are reduced, ozone is reduced.

The Act establishes a process for evaluating the air quality in each region and identifying and classifying each nonattainment area according to the severity of its air pollution problem. Nonattainment areas are classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification (or class) is subject to successively more stringent control measures. Areas in a higher classification of nonattainment must meet the mandates of the lower classifications plus the more stringent requirements of their class. In addition to the general SIP-related sanctions, nonattainment areas have their own unique sanctions. If a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements. The Act includes specific provisions requiring these sanctions to be issued by EPA if so warranted.

Once a nonattainment area is defined, each state is then obligated to submit a SIP demonstrating how it will attain the air quality standards in each nonattainment area. Certain specific control measures and other requirements must be adopted and included in the SIP. In cases where the specific federal control measures are inadequate to achieve the emission reductions or attain the air quality standard, the state is obligated to adopt additional control measures as necessary to achieve this end. The open burning rule is needed to make legally enforceable one of several control measures identified in plans submitted by the Commonwealth for the attainment and maintenance of the ozone air quality standard.

The Regulation for Open Burning is intended to meet three goals: 1) to protect public health and safety with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; 2) to reduce VOC emissions in Virginia's ozone nonattainment areas to facilitate the attainment and maintenance of the air quality standards; and 3) to require that open burning be conducted in a manner as to prevent the release of air pollutants. The purpose of the planned action is to revise the regulation as needed to efficiently and effectively meet its goals while avoiding unreasonable hardships on the general public, the department, and the regulated community.

The current regulation provides for the control of open burning and use of special incineration devices. It specifies the materials that may and may not be burned, the conditions under which burning may occur, and the legal responsibilities of the person conducting the burning. The regulation permits open burning or the use of special incineration devices for disposal of clean burning construction waste, debris waste and demolition waste but provides for a restriction during ozone season (May through September) in the volatile organic compound (VOC) emissions control areas, which generally correspond to nonattainment

areas, as well as maintenance and Early Action Compact areas that require additional controls to avoid a nonattainment designation. Open burning is limited to clean burning waste and debris waste; certain materials may never be burned anywhere at any time. Finally, the regulation provides a model ordinance for localities that wish to adopt their own legally enforceable mechanisms to control burning.

In addition to controlling ozone, open burning restrictions control particulate matter (smoke) and hazardous air pollutants, which are harmful to human health.

Open burning in the Commonwealth has been regulated by the board since 1972. As the years pass, the need to control certain types of burning and how to do so evolves, and the regulation must be evaluated and revised from time to time in order to effectively meet its goals. Since the last substantive revision of the regulation in 2003, the following specific issues have been identified.

1. Applicability: Although the population has increased and cities and towns have expanded, so too have methods of dealing with certain waste materials; for example, opportunities for recycling and composting have increased. Numerous localities have also opted to adopt open burning ordinances in the interest of expeditiously meeting their residents' needs. In addition, areas with recognized pollution problems, such as ozone nonattainment areas, have open burning restrictions that enable the Commonwealth to meet targeted national standards.

In Virginia, localities have the power to regulate only what the General Assembly expressly provides. The fact that the Virginia legislature has explicitly allowed for local control over open burning suggests a legislative intent that localities should be able to control—or not control—open burning as they see fit. Essentially, open burning is a local air pollution problem and should be addressed via local governments working together to respond to the needs of their citizens and local governments which have complete authority to adopt or intervene as they deem appropriate for the citizens of their jurisdictions.

Additionally, DEQ staff endeavor to ensure that the board's regulations are properly implemented and enforced. However, it is not DEQ staff's role to address neighborhood disputes; rather, local law enforcement personnel are best able to address such disagreements. If local police and fire services cannot resolve such problems, it is not reasonable to expect DEQ personnel to do so in their stead. Local services are also better equipped to more quickly respond to a local issue; the investigation of an open burning complaint by DEQ staff can be far more time-consuming and therefore less effective in addressing a complaint. Furthermore, in the case of an actual environmental emergency, DEQ's Pollution Response Program (PREP) provides for responses to pollution incidents in order to protect human health and the environment. PREP staff often work to assist local emergency responders, other state agencies, federal agencies, and responsible parties, as may be needed, to manage pollution incidents.

It is believed that the board's open burning regulation should be limited to VOC control areas (see 9VAC5-20-206), which correspond to localities with recognized air pollution issues. Other localities would still be able to adopt and implement local burning ordinances in accordance with state law should local conditions and needs warrant, and the model ordinance contained within the state rule would be retained. Note that although not every locality in Virginia has an open burning ordinance or provides curbside waste pickup, virtually all localities have some form of fire protection and nuisance codes that can be used to directly address local open burning problems.

2. Urban areas: 9VAC5-130-40 A 5 allows open burning in "urban areas" for the on-site destruction of leaves and tree, yard and garden trimmings located on private property if no regularly scheduled public or private collection service is available. In "non-urban" areas, such open burning is permitted regardless of the availability of collection service. Urban areas are defined generally in 9VAC5-10 (General Definitions), with the specific localities listed in 9VAC5-20-201.

The concept of "urban areas" was adopted by the board in the early 1980s in order to balance the need for waste disposal in areas without access to public services such as refuse collection against the health and safety needs those persons likely to be affected. Since then, the term "urban areas" has been superseded by other federally established terms for characterizing population groups, including "urban

clusters" and "urbanized areas." Ultimately, each community determines what characterizes an area and treats it accordingly, whether through zoning, ordinance, or providing certain services. Additionally, the delimitation of areas in the context of control of air pollution has evolved from focus on population to focus on measured air pollution (that is, to emissions control areas).

Since population characteristics are not necessarily indicative of an air pollution problem, the criteria for burning limitations should not be based on a list of "urban areas," but simply as to whether or not waste collection service is available. Emissions control areas, which have known, quantifiable air pollution control issues, would continue to be governed by the open burning regulation in addition to any local ordinances. Otherwise, as discussed elsewhere, the locality may choose to regulate--or not regulate--open burning as it deems appropriate

3. On-site: The term "on-site" was originally added in order to limit open burning where the waste material was generated to minimize problems associated with the transport and storage of solid waste. However, the Virginia Department of Transportation (VDOT) cannot burn highway maintenance debris "on-site" and therefore; special provisions have been added to address the specific burning needs of VDOT. For all other situations, the "on-site" requirements remain.

During the regulatory development process, other options for improving the regulation will be entertained.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

1. The applicability provisions are modified to establish new parts of the regulation (Part II, Volatile Organic Compound Emissions Control Areas, and Part III, Special Statewide Requirements for Forestry, Agricultural and Highway Programs), and to specify that open burning prohibitions and restrictions and permissible open burning provisions apply only in VOC emissions control areas.
2. Definitions for "regular burn site" and "volatile organic compound emissions control area" have been added.
3. The reference to "urban areas" has been deleted from the permissible burning provisions for VOC emissions control areas. Open burning is now predicated according to whether a regularly scheduled collection for leaf/yard trimmings or household waste is available.
4. Part III is created to address special statewide requirements for forestry, agricultural and highway programs.
5. Part IV, Local Ordinances, has been modified to stipulate that any model ordinance in VOC control areas must include all prohibitions and restrictions on burning currently imposed in the state regulation. Model ordinances for areas outside of the VOC emissions control areas must, at a minimum, include the general and statewide provisions of the state-wide regulation.

Issues

Please identify the issues associated with the proposed regulatory action, including: (1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of

implementing the new or amended provisions; (2) the primary advantages and disadvantages to the agency or the Commonwealth; and (3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. Public: The public will benefit from a more rapid resolution of nuisance problems by contacting local authorities rather than DEQ regional offices. In addition, public health may likely benefit in that the department will be directing scarce resources to air quality issues with a more serious impact on health and safety. Some members of the public may perceive limiting options for complaints to local authorities as a disadvantage. However, local government control of open burning outside of volatile organic compound emissions control areas is expected to provide for locality-specific controls, and more timely and effective response to complaints.

2. Department: The department will be able to redirect staff resources to other air quality issues with a greater impact public health and safety. There are no disadvantages to the department

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC5 130-20	"Regular burn site" means, in reference to burning conducted by the Virginia Department of Transportation, state-owned property where burning is expected to occur greater than once per year.	"Regular burn site" means, in reference to burning conducted by the Virginia Department of Transportation, state-owned state controlled] property where burning [conducted by the Virginia Department of Transportation] is expected to occur greater than once per year.	Editorial change; provide clarity
9VAC5 130-40 A 5	5. In urban areas, open Open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In non-urban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property	5. In urban areas, open Open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such leaves and tree, yard and garden trimmings is available at the adjacent street or public road. In non-urban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of	Editorial change; provide clarity

	regardless of the availability of collection service for such trimmings.	the availability of collection service for such trimmings.	
9VAC5 130-40 A 9	9. Open burning is permitted for forest management, and agriculture practices and <u>highway construction and maintenance programs</u> approved by the board (see 9VAC5-130- 50), provided the following conditions are met: a. The burning shall be at least 1000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and b. The burning shall be attended at all times.	9. Open burning is permitted for forest management, and agriculture <u>agricultural</u> practices and <u>highway construction and maintenance programs</u> approved by the board (see 9VAC5-130- 50), provided the following conditions are met: a. The burning shall be at least 1000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and b. The burning shall be attended at all times.	Editorial change; provide clarity
9VAC5 130-100 (000-5)	D. Open burning for forest management, and agriculture practices and <u>highway construction and maintenance programs</u> approved by the State Air Pollution Control Board; and	D. Open burning for forest management, and agriculture <u>agricultural</u>] practices and highway construction and maintenance programs approved by the State Air Pollution Control Board; and	Editorial change; provide clarity

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Irene M. Shandruk, U.S. EPA Region 3	The definition of "regular burn site" would be easier to understand if it read as follows: "Regular burn site" means state-owned property where burning conducted by the Virginia Department of Transportation is expected to occur greater than once per year.	Recommendation accepted with an additional correction. "State-owned" has been changed to "state controlled" to address any property used by but not necessarily owned by the Department of Transpiration for controlled burning.
Irene M. Shandruk, U.S. EPA Region 3	In section 130-50, "agricultural practices" is used, however, in other sections (130-40-A9 and 130-60-C model ordinance section 000-5), "agriculture practices" is used. Use of terms should be consistent throughout. They should	Recommendation accepted

	all probably read "agricultural"	
Steven Wright, Roanoke, VA	<p>As proposed: 5. In urban areas, open <u>Open</u> burning is permitted for the on-site destruction of leaves and tree, yard, and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In nonurban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.</p> <p>Suggested change (bold language below) to clarify that burning leaves is prohibited in scheduled collection situations and not just "such trimmings": 5. In urban areas, open <u>Open</u> burning is permitted for the on-site destruction of leaves and tree, yard, and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for leaves, tree, and such trimmings is available at the adjacent street or public road. In nonurban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.</p>	Recommendation accepted
W	<p>Positive trend, suggest one bit of clarification. These changes generally look like they should provide a positive trend for the air quality and pollutant issues of constituents. It would be good to explicitly add leaves and tree to the latter half of 9VAC5-140[130] A 5 so as to remove possible ambiguity in interpretation. e.g. "collection service for such trimmings" would leave less interpretation if stated as "collection service for leaves, tree, and such trimmings..."</p>	Recommendation accepted

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section	Proposed	Current requirement	Proposed change and rationale
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number	new section number, if applicable		
9VAC5 130-10 A		A. Except as provided in subsections C and D of this section, the provisions of this chapter apply to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices	<p>A. Except as provided in subsections C and D of this section, the provisions of this chapter apply to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices. <u>Special incineration devices, including open pit incinerators, are exempt from permitting requirements according to the provisions of 9VAC5-80-1105 and such exemption applies throughout the Commonwealth of Virginia.</u></p> <p>Provisions ensure that the permitting exemption for open pit incinerators of Chapter 80 apply.</p>
9VAC5-130-10 B		The provisions of this chapter apply throughout the Commonwealth of Virginia	<p>The provisions of this article <u>This part and Part II of this chapter apply to volatile organic compounds emissions control areas (see 9VAC5-20-206). This part and Parts III and IV of this regulation apply throughout the Commonwealth of Virginia.</u></p> <p>Part II is referenced which contains provisions for open burning prohibitions and permissible open burning and stipulates that those provisions only apply in volatile organic compound (VOC) emissions control areas. Part III (Special Statewide Requirements for Forestry, Agricultural and Highway Programs) and Part IV (Local Ordinances) are also referenced and provisions stipulate that those Parts apply statewide.</p>
130-10-C		The provisions of this chapter do not apply to such an extent as to prohibit the burning of leaves by persons on property where they reside if the local governing body of the county, city or town in which such persons reside has enacted an otherwise valid ordinance (under the provisions of § 10.1-1308 of the Virginia Air	<p>The provisions of this chapter do <u>This chapter does not apply to such an extent as to prohibit the burning of leaves by persons on property where they reside if the local governing body of the county, city or town in which such persons reside has enacted an otherwise valid ordinance (under the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law) regulating such burning in all or any part of the locality as required by Part IV of this chapter.</u></p>

		Pollution Control Law) regulating such burning in all or any part of the locality.	Changes make the regulation easier to read and understand and provide additional clarifying language regarding local ordinances' by referencing provisions in Part IV of the chapter.
130-10-D		The provisions of this chapter do not apply to air curtain incinerators subject to the provisions of (i) Article 45 (9VAC5-40-6250 et seq.), Article 46 (9VAC5-40-6550 et seq.), or Article 54 (9VAC5-40-7950 et seq.) of 9VAC5-40 (Existing Stationary Sources) or (ii) Subparts Eb, AAAA or CCCC of 40 CFR 60.	The provisions of this chapter do This chapter does not apply to air curtain incinerators subject to the provisions of (i) Article 45 (9VAC5-40-6250 et seq.), Article 46 (9VAC5-40-6550 et seq.), or Article 54 (9VAC5-40-7950 et seq.) of 9VAC5-40 (Existing Stationary Sources) or (ii) Subparts Eb, AAAA or CCCC of 40 CFR 60. Changes make the regulation easier to read and understand.
130-20-C		"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.	"Debris waste" or "vegetative debris" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils. Add the additional term "vegetative debris" to reference material generated by VDOT
130-20-C			"Regular burn site" means, [in reference to burning conducted by the Virginia Department of Transportation, state-owned state controlled] property where burning [conducted by the Virginia Department of Transportation] is expected to occur greater than once per year. Add the term "regular burn site" to address burn issues specific to VDOT. Provided additional editorial changes for ease of reading and changed "state-owned" to "state-controlled".
130-20-C			"Volatile organic compound emissions control area" means an area designated as such under 9VAC5-20-206. Add the term "Volatile organic compound emissions control area" to identify where the regulation is applicable.
130-30	Part II	Open burn prohibitions are state wide	By creating Part II and putting section 130-30 under Part II means those provisions only apply in VOC emissions control areas, not statewide due to new provisions in 9VAC5-130-10 B.

130-40	Part II	Permissible open burning is state wide	By creating Part II and putting section 130-40 under Part II means those provisions only apply in VOC emissions control areas, not statewide due to new provisions in 9VAC5-130-10 B.
130-40-A 5		In urban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In non-urban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.	<p>In urban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for [such leaves and tree yard and garden] trimmings is available at the adjacent street or public road. In non-urban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.</p> <p>Open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In non-urban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.</p> <p>The change removes the references to "urban" and "non-urban" and also deletes the reference to either "private or public" collection service. This simplifies the provision and provides clarity as to where the activity can take place. In addition, an editorial change was made by addition the phrase "leaves, trees and" for additional clarity.</p>
130-40-A 6		Open burning is permitted for the on-site destruction of household waste by homeowners or tenants, provided that no regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.	<p>Open burning is permitted for the on-site destruction of household waste by homeowners or tenants, provided that no regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.</p> <p>Delete the reference to "public or private" collection service. This simplifies the provision and provides clarity as to where the activity can take place.</p>
130-40-A 8		Open burning or the use of special incineration devices is permitted on-site for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines,	Open burning or the use of special incineration devices is permitted on-site for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations. Open burning or the use of special incineration devices for the

		<p>buildings or building areas, sanitary landfills, or from any other clearing operations. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited in volatile organic compound emissions control areas (see 9VAC5-20-206) during from May, June, July, August, and September.</p>	<p>purpose of such destruction is prohibited in volatile organic compounds emissions control areas (see 9VAC5-20-206) during from May 1, June, July, August, and through September 30.</p> <p>Delete the reference to volatile organic compound emissions control areas as the new Part II only pertains in VOC control areas and the phrase is redundant. Clarify that the burning restriction is from the entire month of May through the entire month of September.</p>
130-40-A 9		<p>Open burning is permitted for forest management, and agriculture practices approved by the board (see 9VAC5-130- 50), provided the following conditions are met:</p> <p>a. The burning shall be at least 1000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and</p> <p>b. The burning shall be attended at all times.</p>	<p>Open burning is permitted for forest management, and [agriculture agricultural] practices and highway construction and maintenance programs approved by the board (see 9VAC5-130-50), provided the following conditions are met:</p> <p>a. The burning shall be at least 1000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and</p> <p>b. The burning shall be attended at all times.</p> <p>Adds provisions to include highway construction and maintenance programs to address open burning issues specifically for the VODT. In addition, changed agriculture to agricultural.</p>
130-40-A 10		<p>Open burning or the use of special incineration devices is permitted for the destruction of clean burning waste and debris waste on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited in volatile organic compounds emissions</p>	<p>Open burning or the use of special incineration devices is permitted for the destruction of clean burning waste and debris waste on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited in volatile organic compounds emissions control areas (see 9VAC5-20-206) during from May 1, June, July, August, and through September 30.</p> <p>Delete the reference to volatile organic compounds emissions control areas as</p>

		control areas (see 9VAC5-20-206) during May, June, July, August, and September.	the new Part II only pertains in VOC control areas and the phrase is redundant. Clarify that the burning restriction is from the entire month of May through the entire month of September.
130-50	Part III		By creating Part III and putting section 130-50 under Part III means that section applies statewide due to new provisions in 9VAC5-130-10 B.
130-50		Forest management and agricultural practices	<p>Forest management, and agricultural practices <u>and highway construction and maintenance programs.</u></p> <p>Add provisions to address open burning issues specifically for the VDOT.</p>
1330-50 A		Open burning is permitted in accordance with subsections B and C of this section provided the provisions of subsections B through E of 9VAC5-130-30 are met.	<p>Open burning is permitted in accordance with subsections B and C of this section provided the provisions of subsections B through E of 9VAC5-130-30 are met.</p> <p>This provision is deleted. Section 130-30 now is only applicable in VOC emissions control areas; Section 50 is applicable statewide.</p>
	130-50 C		<p><u>C. Open burning may be used for the destruction of vegetative debris generated by highway construction and maintenance programs conducted by the Virginia Department of Transportation (VDOT) provided the burning is conducted in accordance with the VDOT's Best Management Practice (BMP) for vegetative debris and the following requirements are met:</u></p> <p><u>1. The department has approved the BMP.</u></p> <p><u>2. The local department regional office shall be notified at least 5 business days before commencement of a burn.</u></p> <p><u>3. No liquid accelerants (e.g. diesel, motor oil, etc.) or other prohibited materials (e.g. building debris, treated wood, painted wood, paper, cardboard, asphaltic materials, tires, metal, garbage, etc.) shall be used.</u></p> <p><u>4. No burn activity shall be conducted in a VOC Emission Control Area from May 1 through September 30 or in violation of § 10.1-1142 et seq. of the Code of Virginia.</u></p>

			<p><u>5. No more than one burn event per regular burn site shall be scheduled or commenced per 60-day period.</u></p> <p><u>6. The open burn shall be extinguished for reasons including but not limited to the following:</u></p> <p><u>a. Unfavorable meteorological conditions (i.e., high winds or air stagnation).</u></p> <p><u>b. Official declaration by a governmental entity of a pollution alert, code red air quality action day, or air quality health advisory where the burn activity is occurring, or</u></p> <p><u>c. The emission of smoke, ashes, dust, dirt, odors, or any other substance creates a threat to public health, a nuisance, a pollution problem, a fire hazard, a safety hazard, or impairment to visibility on traveled roads or airports.</u></p> <p><u>Add provisions to address open burning issues specifically for the VDOT.</u></p>
	Part IV Local Ordinance s	Part II Local Ordinances	<p>PART # IV Local Ordinances</p> <p>Addition Parts have been added to the regulation which requires the change in numbering.</p>
130-100	130-60	9VAC5-130-100. Local ordinances on open burning.	<p>9VAC5-130-100 9VAC5-130-60. Local ordinances on open burning.</p> <p>Numbering has been changed due to the deletion of waiver provisions.</p>
130-60-A 2		In order to assist local governments in the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model.	<p>In order to assist local governments in a <u>VOC control area with the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model. For local governments located outside of a VOC control area, an ordinance must contain, at a minimum, the provisions in the title, purpose, definitions and exemptions sections of the model ordinance in subsection C of this section.</u></p> <p>Add clarifying language that the model ordinance in subsection C is applicable for VOC control areas and provide</p>

			guidance for minimum requirements for local ordinances outside of VOC control areas
130-60 B 1 d		If a waiver from any provision of this chapter has been requested under 9VAC5-130-60, the language of the ordinance shall achieve the objective of the provision from which the waiver is requested.	If a waiver from any provision of this chapter has been requested under 9VAC5-130-60, the language of the ordinance shall achieve the objective of the provision from which the waiver is requested. Waiver provisions have been deleted, as restrictions to burning are only in VOC control areas.
130-60- C Model Ordinance Section (000-1). Title		This chapter shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.	This chapter ordinance shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning. Change "chapter" to "ordinance" for clarity and ensure the model ordinance is not confused with the state regulation
130-60- C Model Ordinance Section (000-2). Purpose		The purpose of this chapter is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This chapter is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.	The purpose of this chapter is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This chapter is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws. Change "chapter" to "ordinance" for clarity and ensure the model ordinance is not confused with the state regulation
130-60- C Model Ordinance Section (000-3). Definitions		For the purpose of this chapter and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the meaning given them in this section.	For the purpose of this chapter ordinance and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the meaning <u>meanings</u> given them in this section. Change "chapter" to "ordinance", change "meaning" to "meanings" for clarity.
130-60- C Model Ordinance Section (000-5). Exemptions. D		Open burning for forest management and agriculture practices approved by the State Air Pollution Control Board; and	Open burning for forest management, and [agriculture agricultural] <u>agricultural</u> practices and <u>highway construction and maintenance programs</u> approved by the State Air Pollution Control Board; and

			Provide reference for new provisions for open burning specifically for the VDOT in 9VAC5-130-50-C. In addition, changed agriculture to agricultural.
130-60 C Model Ordinance Section (000-6). Permissible open burning. A 3		No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road.	No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road). The change deletes the reference to either "private or public" collection service. This simplifies the provision and provides consistency with 9VAC5-130-40 A 5.
130-60 C Model Ordinance Section (000-6). Permissible open burning. B 5		No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.	No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road). The change deletes the reference to either "private or public" collection service. This simplifies the provision and provides consistency with 9VAC5-130-40 A 5.
130-60 C Model Ordinance Section (000-6). Permissible open burning. E		E. Sections 000-6.A. through D. notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during May, June, July, August, or September.	E. Sections 000-6.A. through D. notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during from <u>May 1, June, July, August, or through September 30.</u> Provides consistency with 9VAC5-130-40 A 8 and A 10
9VAC5-130-60 Waivers		A. A waiver from any provision of this article may be granted by the board for any person or geographic area provided that satisfactory demonstration is made that another state or local government entity has in effect statutory provisions or other enforceable mechanisms that will achieve the objective of the provision from which the waiver is granted. B. Demonstrations made pursuant to subsection A of this section should, at a	A. A waiver from any provision of this article may be granted by the board for any person or geographic area provided that satisfactory demonstration is made that another state or local government entity has in effect statutory provisions or other enforceable mechanisms that will achieve the objective of the provision from which the waiver is granted. B. Demonstrations made pursuant to subsection A of this section should, at a minimum, meet the following criteria: _____ 1. The demonstration should show that the statutory provisions or

		<p>minimum, meet the following criteria:</p> <p>1. The demonstration should show that the statutory provisions or other enforceable mechanisms essentially provide the same effect as the provision from which the waiver is granted.</p> <p>2. That the governmental entity has the legal authority to enforce the statutory provisions or enforceable mechanisms.</p>	<p>other enforceable mechanisms essentially provide the same effect as the provision from which the waiver is granted.</p> <p>2. That the governmental entity has the legal authority to enforce the statutory provisions or enforceable mechanisms.</p> <p>C. Waivers under subsection A of this section shall be executed through a memorandum of understanding between the board and affected governmental entity and may include such terms and conditions as may be necessary to ensure that the objectives of this article are met by the waiver.</p> <p>D. A waiver from any applicable provision of this article may be granted by the board for any locality which has lawfully adopted an ordinance in accordance with 9VAC5-130-100.</p> <p>The waiver provisions are deleted as they are no longer necessary and have been addressed in other parts of the regulation.</p>
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Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The provisions establishing prohibitions and requirements for anyone conducting permissible open burning apply only in VOC emissions control areas; exemptions pertaining to open burning for forestry management, agricultural practices or highway construction or maintenance programs apply statewide. Local ordinances must be approved by the board, according to § 10.1-1321 B of the Code of Virginia and any ordinance that is more stringent than the state regulation shall take precedence within the respective locality. The regulation does not apply to air curtain incinerators subject to other provisions of the Boards regulations, specifically Articles 45, 46, or 54 nor to sources subject to Subparts Eb, AAA or CCCC or 40 CFR 60. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; or (5) exemption of small businesses from all or any part of the requirements contained in the proposed regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: (1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; (2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; (3) strengthen or erode the marital commitment; and (4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth’s air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

- CTG - control technique guideline
- EPA - U.S. Environmental Protection Agency
- RACT - reasonably available control technology
- SIP - state implementation plan
- VOC - volatile organic compound
- VDOT- Virginia Department of Transportation

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