



## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation</b>	Regulation for Open Burning
<b>Regulation title</b>	Regulation for Open Burning
<b>Action title</b>	Open Burning (Revision E12)
<b>Date this document prepared</b>	December 5, 2012

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

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

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.

### 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 safety. 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.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

Section 110(a) of the federal Clean Air Act mandates that each state adopt and submit to the U.S. Environmental Protection Agency (EPA) a plan that provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan (SIP) shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

1. establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the Act, including economic incentives such as fees, marketable permits, and auctions of emissions rights;
2. establish schedules for compliance;
3. prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and
4. require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and record-keeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans. Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

1. adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
2. enforce applicable laws, regulations, and standards, and seek injunctive relief;
3. abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;

4. prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;
5. obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require record-keeping and to make inspections and conduct tests of air pollution sources;
6. require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and
7. make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows: (i) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and (ii) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

Part D of the Clean Air Act specifies state implementation plan requirements for nonattainment areas, with Subpart 1 covering nonattainment areas in general and Subpart 2 covering additional provisions for ozone nonattainment areas.

Section 171 defines "reasonable further progress," "nonattainment area," "lowest achievable emission rate," and "modification." Section 172(a) authorizes EPA to classify nonattainment areas for the purpose of assigning attainment dates. Section 172(b) authorizes EPA to establish schedules for the submission of plans designed to achieve attainment by the specified dates. Section 172(c) specifies the provisions to be included in each attainment plan, as follows:

1. the implementation of all reasonably available control measures as expeditiously as practicable and shall provide for the attainment of the national ambient air quality standards;
2. the requirement of reasonable further progress;
3. a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutants in the nonattainment area;
4. an identification and quantification of allowable emissions from the construction and modification of new and modified major stationary sources in the nonattainment area;
5. the requirement for permits for the construction and operations of new and modified major stationary sources in the nonattainment area;
6. the inclusion of enforceable emission limitations and such other control measures (including economic incentives such as fees, marketable permits, and auctions of emission rights) as well as schedules for compliance;
7. if applicable, the proposal of equivalent modeling, emission inventory, or planning procedures; and
8. the inclusion of specific contingency measures to be undertaken if the nonattainment area fails to make reasonable further progress or to attain the national ambient air quality standards by the attainment date.

Section 172(d) requires that attainment plans be revised if EPA finds inadequacies. Section 172(e) authorizes the issuance of requirements for nonattainment areas in the event of a relaxation of any national ambient air quality standard. Such requirements shall provide for controls which are not less stringent than the controls applicable to these same areas before such relaxation.

Section 182(b) requires stationary sources in moderate nonattainment areas to comply with the requirements for sources in marginal nonattainment areas. Section 182(c) requires stationary sources in serious nonattainment areas to comply with the requirements for sources in both marginal and moderate nonattainment areas.

EPA has issued detailed guidance that sets out its preliminary views on the implementation of the air quality planning requirements applicable to nonattainment areas: the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The General Preamble has been supplemented with further guidance on Title I requirements.

State Requirements

These specific regulations are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300).

Specifically, § 10.1-1308 provides that the board shall have the power to promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act. It further provides that no such regulation shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning.

**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 the regulation 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<sub>x</sub>), and sunlight. When VOC and NO<sub>x</sub> 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 briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. Note, more detail about all provisions or changes is provided in the "Detail of changes" 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.

4. 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 so 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.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

The proposed regulation amendments are not more restrictive than the applicable legal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

Localities that are part of a VOC emissions control areas as defined in 9VAC5-20-206 include certain open burning requirements needed as part of their federally-mandated ozone attainment and maintenance plans. No changes to those current requirements are being proposed. Localities that are subject to a local ordinance may have different requirements from those that do not.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the impacts on the regulated community, and the impacts of the regulation on farm or forest land preservation.*



In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal, the potential impacts of the regulatory proposal, and any impacts of the regulation on farm and forest land preservation. Also, the board is seeking information on impacts to small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email, or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week.

A public hearing may be conducted if a request is made in writing to the staff contact listed below. In order to be considered, the request must include the name and address of the person requesting the hearing and be received by the department by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

All comments requested by this document must be submitted to the agency contact: Mary E. Major, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov), phone 804-698-4423, fax 804-698-4510).

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b></p>	<p>(i) Applicability: The amount of time spent on investigating open burning complaints varies widely among DEQ regions: from 70 to over 300 hours per year, with a statewide total of over 800 hours per year and a regional average of 140 hours per year. Unlike an industrial facility that conducts specific activities on a predictable schedule, open burning activities are ad hoc by nature. The amount of time spent by DEQ staff on open burning compliance varies from year to year depending on many situations, including unpredictable natural disasters such as floods and hurricanes that may necessitate more open burning activity than usual.</p> <p>Of the 40 localities within the VOC emissions control areas, only 5 have no open burning ordinance (Cities of Petersburg and Colonial Heights, Counties of Botetourt, Charles City, and Poquoson), and of those, only Botetourt and Charles City County do not provide curbside waste pickup. Therefore, the VOC emissions control</p>
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	<p>areas in which DEQ must continue to respond to open burning complaints will be limited to Counties of Botetourt and Charles City.</p> <p>Assuming a regional average of 140 hours per year multiplied by 6 regions equates to 840 hours per year spent by the agency on open burning compliance activities. At a base rate of approximately \$50 per hour, this translates to an ongoing cost of \$42,000 per year for the department. It is anticipated that DEQ will realize cost savings as a result of the regulatory amendments; however, given the unpredictable nature of open burning activities, they cannot be quantified at this time. Generally, an indirect cost saving is anticipated by ensuring that open burning issues are directed to the proper agency, whether state or local.</p> <p>(ii) Urban areas: As discussed elsewhere, the concept of "urban areas" has been superseded by the concept of nonattainment and VOC control areas; areas considered to be urban (such as an incorporated city or town) that are not otherwise regulated have the ability to enact local ordinances or provide local services based on local needs. No cost to the department is anticipated as a result of this change, which simply codifies the existing situation and currently used terminology.</p> <p>(iii) On-site: Currently, VDOT operates centralized burning activities under the conditions of an MOU with DEQ. Generally, a small, indirect cost saving to the department is anticipated by codifying the existing situation with VDOT.</p> <p>The sources of department funds to carry out this regulation are the general fund and the federal trust (grant money provided by the U.S. Environmental Protection Agency under Section 105 of the federal Clean Air Act or permit fees charged to affected entities under the permit program). The activities are budgeted under the following program (code)/subprogram (code): (i) Environmental and Resource Management (5120000)/Air Quality Stationary Source Permitting (5122000) and Air Quality Stationary Source Compliance Inspections (5122100) and (ii) Environmental Research and Planning (5130000)/Air Quality Research and Planning (5130700). The costs are expected to be ongoing.</p> <p><b>[Programs (Code)/Subprograms (Code): Environmental and Resource Management (5120000)/Air Quality Regulation Enforcement (5121400)/Air Quality Mobile Source Regulation</b></p>
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	<p>(5121500)/Air Quality Stationary Source Permitting (5122000)/Air Quality Stationary Source Compliance Inspections (5122100);  <b>Environmental Research and Planning (5130000)/Air Quality Research and Planning (5130700);</b>  <b>Environmental Monitoring and Evaluation (5140000)/Air Quality Measurement and Evaluation (5140100)]</b></p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>The projected cost of the regulation on localities is not expected to be beyond that of other affected entities. As discussed elsewhere, localities already have the ability to control open burning and waste collection as they wish; counties with ordinances will continue to enforce them and counties without ordinances have determined that an ordinance is not needed. There may be a small indirect benefit in improved response times by the appropriate agencies to open burning problems.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Open burning may be conducted by a wide range of businesses, agencies, and individual citizens. However, none of the contemplated changes to the regulation will have any direct impact on how open burning is conducted; rather, the regulatory amendments will clarify how open burning concerns are to be addressed: at the local or state level.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>As described above, none of the contemplated changes to the regulation will have any direct impact on how open burning is conducted. No direct impact on any specific entities, including small businesses, is expected.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>No new costs are anticipated to businesses or individuals, since they must meet either the state rule or a local rule. The revisions to the regulation merely direct the control of open burning in a more efficient manner to the appropriate controlling entity, whether state or local government.</p> <p>No new costs are anticipated to localities beyond what they already expend to enforce their own ordinances and local fire and nuisance codes.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>It is anticipated that public health and safety will be better protected through the more effective and efficient administration of open burning. DEQ will properly focus its enforcement efforts to regions with demonstrable air quality problems (VOC control areas), while localities may regulate open burning as they see fit for their individual communities.</p>

	<p>Although the specific costs cannot be defined at this time, it is anticipated that both DEQ and local governments will realize cost savings, and that citizens will enjoy a more expedient means of managing open burning issues.</p> <p>As discussed above, cost savings are anticipated to government (VDOT and DEQ), more efficient burns will result in a reduction in pollution, thereby protecting public health and the environment.</p>
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**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

As provided in the public participation procedures of the State Air Pollution Control Board, the Department included, in the Notice of Intended Regulatory Action, a description of the Department's alternatives and a request for comments on other alternatives and the costs and benefits of the Department's alternatives or any other alternatives that the commenters provided.

Following the above, alternatives to the proposal were considered by the Department. The department has determined that amending the regulation (the second alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets statutory requirements. The alternatives considered by the department, along with the reasoning by which the department has rejected any of the alternatives considered, are discussed below.

1. Retain the regulation without amendment. This option was not selected because a number of issues have been identified that require resolution if the regulation is to meet its goals and operate properly.
2. Amend the regulation. This option was selected because a number of issues have been identified that require resolution if the regulation is to meet its goal of protecting public health and safety while avoiding unreasonable hardships on the regulated community, the department, and the general public.
3. Repeal the regulation. This option was not selected because the regulation is still needed to protect public health and safety.

**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.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

Commenter	Comment	Agency response
Virginia Department of Forestry	<p>The Department of Forestry agrees with the purpose of the State Air Pollution Control Board’s decision to revise the Open Burning Regulation. We agree it is important for the Commonwealth’s agencies to revise regulations as needed to efficiently and effectively meet its goals while avoiding unreasonable hardships on the regulated community, the department, and the general public. We strongly support that open burning for forest management practices continue to be permitted as outlined in 9VAC5-130-50. Virginia’s forest landowners depend upon prescribed (controlled) burning to achieve efficient and effective practices on their forestland to insure healthy and productive forests. Prescribed burning results in direct benefits to forestland owners and the general public, including:</p> <ul style="list-style-type: none"> <li>- Reduces forest fuels, which reduces the damaging effects of wild fires.</li> <li>- Controls growth of undesirable competing species.</li> <li>- Controls diseases spread through</li> </ul>	<p>We agree that prescribed burning is necessary and beneficial, and do not intend to make any changes to the rule that would negatively affect the implementation of forest management practices.</p>

	<p>conifer forests.</p> <ul style="list-style-type: none"> <li>- Creates favorable habitats for certain wildlife and plant species as well as threatened and endangered species.</li> <li>- Removes dead vegetation for certain maintenance and hazard reduction work.</li> <li>- Regenerate desirable species of pine and hardwood.</li> </ul> <p>Section 9VAC5-130-50 permits open burning for forest management practices in accordance with the Department of Forestry's smoke management guidelines as outlined under the Code of Virginia §§ 10.1-1142. The smoke management plan is a comprehensive plan that accounts for climatic and other environmental factors to reduce negative impacts of smoke on the public, while effectively accomplishing the intended forest management practice. The Department of Forestry provides complete training on prescribed burning to its employees as well as non-employees engaged in prescribed burning. The effect of this training effort is a better informed prescribed burning operator, who understands the management of smoke and how to reduce impacts on the public.</p> <p>We strongly support the continuation of permitting open burning for forest management practices. We would suggest that no changes be made to the regulation which would negatively impact the ability of forest land owners to continue the use of prescribed burning tool on their forest lands.</p>	
<p>Virginia Department of Transportation (VDOT)</p>	<p>VDOT performs open burning of clean burning waste and debris waste to support its highway construction and management programs. Such burning is presently regulated under 9VAC5-130-40 A 8 for construction operations and on-site burning for some limited maintenance</p>	<p>We agree that providing VDOT an exemption from the on-site burning requirement within the regulation itself would be beneficial.</p>

	<p>operations. The majority of open burning for most highway maintenance activities, however, is centralized and thus not privileged to the permissions under 9VAC5-130-40 A 8 as these activities are not performed "on-site." Presently, VDOT operates these centralized burning activities under the conditions of a 2009 memorandum of understanding (MOU), "Memorandum of Understanding between the Virginia Department of Environmental Quality and the Virginia Department of Transportation for Centralized Burning of Vegetative Debris from VDOT Roadside Maintenance Operations."</p> <p>Rather than continue such operations under the terms of the MOU, VDOT requests that consideration be made to eliminate the on-site limitation under 9VAC5-130-40 A 8. Such a change would eliminate the need for the MOU and burdensome processes for burn event notification, recordkeeping, reporting and agreement renewal, which does very little to improve air quality. Moreover, such relief would place centralized burning in line with existing controls for on-site burning and in general for the relief currently provided for agricultural and forestry burning activities. There may also be advantages to encouraging centralized versus on-site burning of vegetative debris, as it allows the movement of materials to areas where it is safer to burn, are less likely to create smoke nuisance issues, and can allow for better burn efficiencies.</p> <p>As an alternative to the outright removal of the on-site burning limitation, VDOT would also support the inclusion of a VDOT exemption from the on-site burning requirement within the regulation itself, similar to the exemption currently provided for forest management and agricultural practices under 9VAC5-130-50.</p>	
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<p>Virginia Farm Bureau Federation</p>	<p>On behalf of the 38,000 Producer Members of the Virginia Farm Bureau Federation I offer the following comments regarding the Open Burning NOIRA. Burning remains a critical tool for production agriculture. Crops such as warm season grasses, used for livestock forage and energy production, require burning in order to reach their full potential. Many vegetable crops and cotton utilize burning to remove residue for subsequent crops. Every farm in the Commonwealth has significant storm damage several times a year. Each of these scenarios and more produce high volumes of organic material that generally requires burning. The volume makes transportation impractical and other practices such as pit burning with fans expensive. The use of onsite burning is a must for agriculture producers. Such burns are generally single occurrences over a short period of time. However timing is critical due to safety concerns. When crops are green and growing they are less susceptible to spreading fire to unintended fields and crops. This often conflicts with non attainment periods. However since such burns are single shorts events variances should be allowance to address normal production practices and weather related damage. If these regulations move forward, farmer and farm organization representation, from organizations like Farm Bureau, is critical to achieving balance and reduced harm economically.</p>	<p>We agree that burning is a critical tool for production agriculture, and do not intend to change any requirements directly related to agricultural burning. The commenter will have the opportunity to comment on the specific language of the proposed regulation during the normal public comment period; we look forward to and appreciate their input.</p>
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**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 the proposal will have a direct impact on families. However, there will be positive indirect impacts in that the proposal will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and safety problems.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
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.	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>  Provisions ensure that the permitting exemption for open pit incinerators of Chapter 80 apply.
9VAC5-130-10 B		The provisions of this chapter apply throughout the Commonwealth of Virginia.	<del>The provisions of this article</del> <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>  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.
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 Pollution Control Law) regulating such burning in all or any part of the locality.	<del>The provisions of this chapter do</del> <u>This chapter does</u> 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 <u>as required by Part IV of this chapter.</u>  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.	<del>The provisions of this chapter do</del> <u>This chapter does</u> 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 " <u>vegetative debris</u> " 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			<u>"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.</u>  Add the term "regular burn site" to address burn issues specific to VDOT.
130-20-C			<u>"Volatile organic compound emissions control area" means an area designated as such under 9VAC5-20-206.</u>

			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.	<del>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.</del>  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.
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.	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.  Delete the reference to "public or private" collection service. This simplifies the provision and provides clarity as to where the activity can take place.
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,	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

		<p>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 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>from any other clearing operations. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited in <del>volatile organic compounds emissions control areas (see 9VAC5-20-206)</del> during <u>from</u> May 1, <del>June, July, August, and through</del> 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>
<p>130-40 A 9</p>		<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, <del>and</del> agriculture practices <u>and highway construction and maintenance programs</u> 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</p>
<p>130-40 A 10</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 May, June,</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 <del>volatile organic compounds emissions control areas (see 9VAC5-20-206)</del> during <u>from</u> May 1, <del>June, July, August, and through</del> September 30.</p> <p>Delete the reference to volatile organic compounds emissions control areas as the new Part II only pertains in VOC control areas and the phrase is</p>

		July, August, and September.	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	Forest management, <u>and</u> agricultural practices <u>and</u> highway construction and maintenance programs.  Add provisions to address open burning issues specifically for the VDOT.
130-50 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.	This provision is deleted. Section 130-30 now is only applicable in VOC emissions control areas; Section 50 is applicable statewide.
	130-50-C		<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>  <u>1. The department has approved the BMP.</u>  <u>2. The local department regional office shall be notified at least 5 business days before commencement of a burn.</u>  <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>  <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>  <u>5. No more than one burn event per regular burn site shall be scheduled or commenced per 60-day period.</u>  <u>6. The open burn shall be extinguished for reasons including but not</u>

			<p><u>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>Add provisions to address open burning issues specifically for the VDOT.</p>
	Part IV Local Ordinances	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-<del>100</del> 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 <u>a VOC control area with</u> the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model. <u>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 guidance for minimum requirements for local ordinances outside of VOC control areas.</p>
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	<p><del>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.</del></p>

		provision from which the waiver is requested.	Waiver provisions have been deleted, as only restriction to burning are 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 <del>chapter</del> 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 <del>chapter</del> ordinance 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 <del>chapter</del> ordinance 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 <del>chapter</del> ordinance and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the <del>meaning</del> meanings 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, <del>and</del> agriculture practices <u>and 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
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 <del>public or private</del> 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

<p>130-60 C Model Ordinance Section (000-6). Permissible open burning. B 5</p>		<p>No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.</p>	<p>A 5. No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.</p>
<p>130-60 C Model Ordinance Section (000-6). Permissible open burning. E</p>		<p>(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.</p>	<p>(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 <del>during from</del> May 1, June, July, August, or <del>through</del> September 30. Provides consistency with 9VAC5-130-40 A 8 and A 10.</p>
<p>9VAC5-130-60 Waivers</p>		<p>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.</p> <p>B. Demonstrations made pursuant to subsection A of this section should, at a minimum, meet the following criteria:</p> <ol style="list-style-type: none"> <li>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.</li> <li>2. That the governmental entity has the legal authority to enforce the statutory provisions or enforceable mechanisms.</li> </ol>	<p><del>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.</del></p> <p><del>B. Demonstrations made pursuant to subsection A of this section should, at a minimum, meet the following criteria:</del></p> <ol style="list-style-type: none"> <li><del>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.</del></li> <li><del>2. That the governmental entity has the legal authority to enforce the statutory provisions or enforceable mechanisms.</del></li> </ol> <p><del>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.</del></p> <p><del>D. A waiver from any applicable provision of this article may be granted by the</del></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><del>board for any locality which has lawfully adopted an ordinance in accordance with 9VAC5-130-100.</del></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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**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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