



Virginia's 4PM Burning Law Amended for Orchard and Vineyard Growers

Allowing Burning for Freeze/Frost Protection

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Effective July 1, 2017

Virginia's 4 PM burning law (10.1-1142 – section B) will allow an exemption to orchard and vineyard growers for burning to prevent freeze/frost damage. The law is amended as follows (bold text):

B. Except as provided in subsection C, during the period February 15 through April 30 of each year, even though the precautions required by the foregoing subsection have been taken, it shall be unlawful, in any county or city or portion thereof organized for forest fire control under the direction of the State Forester, for any person to set fire to, or to procure another to set fire to, any brush, leaves, grass, debris or field containing dry grass or other inflammable material capable of spreading fire, located in or within 300 feet of any woodland, brushland, or field containing dry grass or other inflammable material, except between the hours of 4:00 p.m. and 12:00 midnight.

The provisions of this subsection shall not apply to any fires which may be set **[to prevent damage to orchards or vineyards by frost or freezing temperatures or be set]** on federal lands.

Orchard and Vineyard Growers



The noted amendment provides an exception to the 4 PM law for open burning in orchards and vineyards for the purpose of frost and freeze protection.

Key Points:

- ◆ There are no special requirements for an orchard or vineyard manager to initiate outdoor burning for the purposes of frost and freeze protection.
- ◆ The Virginia Department of Forestry defines "Orchards" and "Vineyards" as follows:
 - An **orchard** is an intentional planting of trees or shrubs that is comprised of fruit- or nut-producing trees that are generally grown for commercial production.
 - A **vineyard** is a plantation of commercially grown grape-bearing vines.



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- ◆ The determination of potential frost or freeze conditions and the need to initiate open burning for the purposes of crop protection remains with the vineyard and orchard managers.
- ◆ There is no requirement to notify the VDOF prior to initiating this type of burning operation. However, vineyards and orchards are strongly encouraged to notify the local sheriff's office when they intend to burn. This will ensure wildfire suppression resources are not called out to a non-emergency.
- ◆ Other Virginia Law Codes remain in effect for the purposes of vineyard and orchards burns that are initiated to prevent frost and freeze damage, including the following.
 - Code section D. Any person who builds a fire in the open air, or uses a fire built by another in the open air, within 150 feet of any woodland, brushland or field containing dry grass or other inflammable material, shall totally extinguish the fire before leaving the area and shall not leave the fire unattended.
- ◆ Virginia Code of Law 10.1-1141 remains in effect and is enforceable by the VDOF when any orchard or vineyard burning results in a wildfire requiring a VDOF response.
 - The State Forester in the name of the Commonwealth shall collect the costs of firefighting performed under the direction of a forest warden in accordance with 10.1-1139 from any person who, negligently or intentionally without using reasonable care and precaution starts a fire or who negligently or intentionally fails to prevent its escape, which fire burns on any forestland, brushland, grassland or wasteland. Such person shall be liable for the full amount of all expenses incurred by the Commonwealth, for fighting or extinguishing such fire.

- ◆ Local ordinances may be more restrictive than state code and are not superseded by this code change. Prior to conducting any burning operation, you should check with local authorities to ensure compliance with all local rules and regulations.

Safe Burning Tips for Orchards and Vineyards:

1. Make fires as small as practical but still able to accomplish frost/freeze protection.
2. Make sure there is at least 10 feet surrounding all burn piles that is clear of anything flammable.
3. Never burn materials such as crankcase oil, impregnated wood or other rubber or petroleum-based materials.
4. Make sure you have enough workers to keep a good eye on all the burn piles, and, should any escape beyond the designated area, call 911 immediately.

If you have any questions or need additional information, call the nearest Regional Office of the Virginia Department of Forestry or your local VDOF representative.

Western Regional Office, Salem 540-387-5461

Central Regional Office, Charlottesville 434-977-5193

Eastern Regional Office, New Kent 804-966-5092



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