



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Historic Resources
<b>Virginia Administrative Code (VAC) citation</b>	17 VAC5-20
<b>Regulation title</b>	Regulations Governing Permits for the Archaeological Removal of Human Remains
<b>Action title</b>	Revision to §40: Permit application; §50: Public comment; and §60: Issuance or denial of permit
<b>Date this document prepared</b>	February 26, 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*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The Department of Historic Resources, Board of Historic Resources intends to revise 17VAC5-20 to enhance public notification requirements rendering the application process more transparent and responsive to community interests, ensure that the applicant has the resources (financial and otherwise) to complete the proposed work and ensure respectful disposition of the recovered remains, and to make technical changes to modernize the language such as removal of gender-specific references.

### 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. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

§ 10.1-2305 authorizes the Department to issue permits for the archaeological removal of human remains and associated artifacts. § 10.1-2305 D calls on the Virginia Board of Historic Resources to promulgate regulations to “provide for appropriate public notice prior to issuance of a permit, provide for appropriate treatment of excavated remains, the scientific quality of the research conducted on the remains, and the appropriate disposition of the remains upon completion of the research.”

## Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

As development pressure increases the need for land, historically significant cemeteries and unmarked burials will be moved to make way for new construction. While most such removals are conducted by professionals in the funeral/cemetery industry, occasionally the responsible party will engage archaeologists to conduct the work. In these cases (roughly 4-6 per year) the Department of Historic Resources is charged with ensuring the respectful treatment of both buried human remains and the living community that has an interest in these remains. Recent cases in which interested parties felt they had not been given enough notice or consideration by the property owners has prompted the Department to re-evaluate existing requirements and revise those requirements to go beyond the tradition public notices in local newspapers which seldom reach the interested community. The Department will also consider technical changes to modernize and simplify regulatory language and to ensure that the permit holder has sufficient resources to accomplish all the work, including respectful reburial in a timely manner, required in the permit application.

## Substance

*Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

The Department and Board seek to revise:

17VAC5-20-40(A)(4) to specifically require a statement confirming adequate resources to complete the research design as well as final disposition of the recovered remains. This revision is necessary in order to document that the permit holder is capable, financially and otherwise, of ensuring the respectful disposition of all recovered remains.

17VAC5-20-50(B) to require publication of notices using relevant electronic and social media and other public outlets as well as print newspapers. This revision recognizes the prevalence of electronic and social media in modern communication, as well as the need for greater flexibility in use of signage and other means of passive public notification.

17VAC5-20-60(C) to remove gender-specific references to the directorship of the Department.

In pursuing these revisions, the Department intends to render the permit application and consideration process more transparent to the interested public, to further ensure the respectful treatment of recovered human remains, and to more fully modernize the language of these implementing regulations.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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The Department has considered maintaining the regulations in their current form and simply requesting that applicants diverge from the existing requirements during the application process. However, in practice the Department has found that applicants tend to adhere to the minimum and are reluctant to provide any information not required by regulation. The Department is of the opinion that the proposed changes are minimal, yet will provide enhanced protection for the buried individuals as well as for the interests of the living community.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

*Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

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The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Joanna Wilson Green, Virginia Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA, 23220 – telephone: (804) 482-6098 – email: [joanna.wilson@dhr.virginia.gov](mailto:joanna.wilson@dhr.virginia.gov)**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

The agency does not plan to hold a public following the publication of the proposed stage of this regulatory action. Should the agency decide to hold a public hearing, notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

In addition to the standard public comment process, the Department intends to consult informally with professional archaeologists, Virginia Indian tribal leaders, and elected officials and private citizens who

have indicated an interest in this process. The proposed revisions may, therefore, be amended or expanded as a result of these discussions.

### Family impact

*Assess the potential 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.*

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The proposed regulatory action should have no impact on the institution of the family and family stability as herein described.

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