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Proposed Regulation Agency Background Document

Agency name	Cemetery Board
Virginia Administrative Code (VAC) citation(s)	18 VAC 47-20
Regulation title(s)	Cemetery Board Regulations
Action title	Amending regulations to incorporate needed changes
Date this document prepared	April 16, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This action makes changes to the regulations in order to provide clarification to existing regulations and to incorporate revised training hours. The proposed regulations also make changes to address statutory amendments to ensure consistency with the law on pet interments. The regulations were developed by a committee of Board members and members of the public with expertise in the cemetery industry. The committee worked to ensure the regulations complement the current cemetery law, provide minimum burdens on the regulants while still protecting the public and reflect current procedures and policies of the Board and DPOR.

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.

DPOR- Department of Professional and Occupational Regulation.

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.

Chapter 500 of the Acts of the 2014 General Assembly states in part: “The Board shall adopt such regulations as the Board deems appropriate and necessary to implement the provisions of this section. Regulations of the Board shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq).” § 54.1-2313.D of the Code of Virginia states: “In addition to the general powers and duties conferred in this subtitle, the Board shall have the power and duty to (i) regulate preneed burial contracts and perpetual care trust fund accounts as prescribed by this chapter, including, but not limited to, the authority to prescribe preneed contract forms, disclosure requirements and disclosure forms and to require reasonable bonds to insure performance of preneed contracts, (ii) regulate and register sales personnel employed by a cemetery company, and (iii) regulate and establish qualifications and standards of conduct for compliance agents employed by a cemetery company to assure compliance of the cemetery with the provisions of this chapter.”

§ 54.1-201.A.1 of the Code of Virginia states: “The powers and duties of regulatory boards shall be as follows: to establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.”

§ 54.1-201.A.5 of the Code of Virginia states: “The powers and duties of regulatory boards shall be as follows: to promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board....”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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 purpose of the planned regulatory action is to make clarifying changes, incorporate language as necessary to implement new statutory requirements for interment of pets, to ensure consistency with State law and to make any other changes which the board considered necessary. Since the regulations have not undergone substantial revision since 2007, a thorough review was necessary to ensure the

regulations complement the Cemetery Board's laws, provide minimum burdens on the regulants while still protecting the public and reflect current procedures and policies of the Board and DPOR. The goal of the new regulation is to make clear to both the cemetery companies and the public what the requirements are for cemeteries which choose to permit the interment of pets so an individual can choose whether or not he wants to be interred in that cemetery.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

Amend Records of interments section for clarity and to ensure consistency with statutory changes.

Amend prohibited activities to ensure consistency with statutory changes.

Add section as necessary to implement provisions of § 54.1-2312.01 of the Code of Virginia.

Amend Standards of approval of training course reducing the hours to make the training more meaningful without unnecessary excess information to fill the hours.

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.

The primary advantage to the public is that the revisions will improve the clarity of the regulations, ensure consistency with current board practices and legal requirements, and standards of practice in the industry, all to better protect the health, safety, and welfare of citizens of the Commonwealth.

The primary advantage to the Commonwealth is that the revisions to the regulations reflect the importance that Virginia places on ensuring the regulations are the least burdensome but also provide protection to the citizens of the Commonwealth. No disadvantages to the Commonwealth could be identified.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is 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.

There are no applicable federal 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.

No impact on localities has been identified as resulting from the proposed regulation.

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 and the impacts of the regulated community.

In addition to any other comments, the Cemetery Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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) 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 for the public comment file may do so by mail, email or fax to Christine Martine, Executive Director, Cemetery Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, fax to (866) 826-8863, or email to cemetery@dpor.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <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 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and 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 (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

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.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	No costs to Virginia, the Department, or the Board are expected from this regulatory change. **See Fiscal Impact by year below.
Projected cost of the new regulations or changes to existing regulations on localities.	No anticipated costs to any locality.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Cemetery Companies may be affected if they choose to provide separate sections of the cemeteries for the interment of pets. Individuals

	who wish to become compliance agents or compliance agent designees will be affected by the reduction in training hours.
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. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Approximately 93 cemetery companies with 164 cemeteries are affected by the regulation change. Less than 10 individuals per year apply to become compliance agents or designees. Approximately 90 cemetery companies are considered small businesses.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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.	No costs to individuals, businesses, or other entities are expected.
Beneficial impact the regulation is designed to produce.	The amended regulations provide clarity to the cemetery company regarding the interment of pets in its cemetery more than is detailed in the statute. The reduction in the hours for the training course will make the training more concise and meaningful to the trainee.

**	FY 2015	FY 2016	FY2017	FY2018
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	\$0	\$0	\$0	\$0
Ongoing Costs	\$0	\$0	\$0	\$0
Total Fiscal Impact	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

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.

Failure to adopt these changes will result in regulations not being as clear as possible and not conforming to statutory changes.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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 Board considers that the regulatory methods implemented were promulgated to accomplish the applicable law while minimizing the adverse impact on individuals and businesses and ensuring that the health, safety and welfare of the public is protected.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Not applicable.

Public comment

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

No comments were received during the public comment period.

Family impact

Please assess the impact of this 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.

The proposed changes are not expected to have an impact on families.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
47-20-180		This section sets out the requirements for records of interments.	The proposed change adds language to the regulation to include the interment of pets which is now permitted in the current law as amended in 2014 Acts of Assembly, Chapter 500. The proposed language is intended to guide cemetery companies and the public in what records must be kept by a cemetery company regarding interment of humans and their pets.
47-20-190		This section sets out the prohibited activities of licensees and registrants.	The proposed changes add language detailing what actions the board considers as prohibited acts based upon the law as added in 2014 Acts of Assembly, Chapter 500. The board is clarifying the statute by addressing what actions may result in a violation of this section so both the regulants and the public know.
47-20-270		This section sets out the standards for the board approval of training courses.	The proposed language decreases the number of hours needed for approval of the training course. The board

			determined the information necessary for the training course could be covered in less time and the reduction in the hours for the training course will make the training more concise and meaningful to the trainee.
	47-20-280		This section is added to conform with the statutory changes, see 2014 Acts of Assembly, Chapter 500. The new language makes it clear that all provisions of the chapter apply to cemetery companies which choose to establish a section in its cemetery for the interment of pets and/or their deceased humans.