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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Cemetery Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	18 VAC 47-20
<b>Regulation title(s)</b>	Cemetery Regulations
<b>Action title</b>	Amend regulation to comply with Chapter 251, 2013 Acts of Assembly
<b>Date this document prepared</b>	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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

18 VAC 47-20-220 of the Cemetery Board's regulations deal with cemetery companies furnishing consumers with an itemized statement and general price list of burial fees. Chapter 251 of the 2013 Acts of Assembly charged the Cemetery Board with developing a process to ensure consumers receive a current price list and itemized statement of charges for burial services prior to contract execution. The amended language will require cemetery companies to provide consumers with an acknowledgment signed by the consumer and the cemetery sales personnel stating the cemetery company provided the general price list and itemized statement before the execution of the contract,

### 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.*

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None

### Statement of final agency action

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

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The Cemetery Board reviewed and adopted the regulations entitled “Cemetery Regulations” on January 8, 2014.

### 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.*

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§ 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.*

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The purpose of the planned regulatory action is to make changes to incorporate language as necessary to implement the requirements of Chapter 251 of the Acts of the 2013 Assembly for developing a process whereby a consumer will be provided a current general price list and itemized statement of charges for burial services.

**Rationale for using fast-track process**

*Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

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The fast track process is being used to implement this amendment as quickly as possible to provide better protection to both consumers and cemetery companies from claims the consumer did not receive the general price list and itemized statement prior to contract execution. This action is non-controversial since it helps both the consumer and the cemetery company by providing a mechanism to ensure the parties received the required information.

**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.*

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Amend the section dealing with itemized statement and general price list of burial fees to implement the provisions of Chapter 251 of the Acts of the 2013 Assembly.

**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.*

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

The primary advantage to the Commonwealth is that the revisions to the regulations reflect the importance 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 localities will be particularly affected by the proposed regulations.

### 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 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.

### 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:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>No costs to Virginia, the Department, or the Board are expected from this regulatory change.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>There are no projected to costs to localities as a result of implementing or enforcing the amended regulations.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new</b></p>	<p>All licensed cemetery companies and the sales personnel for each cemetery.</p>

<p><b>regulations or changes to existing regulations.</b></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:  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.</p>	<p>93 cemetery companies operating 164 cemeteries with 1,788 sales persons are affected.</p> <p>Approximately 90 cemetery companies are considered small businesses.</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 include all costs including:</b>  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.</p>	<p>Costs to the cemetery companies will be very minimal for the development, use, and record-keeping of the acknowledgement forms. No costs to individuals or other entities are expected.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Consumers and cemetery companies are protected by the new requirement which ensures consumers are informed of the costs involved in a contract with a cemetery.</p>

### 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. There are no less burdensome or less intrusive viable alternatives to the proposal.

### Public participation notice

*If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

### Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) 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.

Commenter	Comment	Agency response

Not applicable

### 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

<p>47-20-220</p>		<p>Cemetery companies must furnish a written general price list and a written itemized statement of goods and services they provide. The list must be available to individuals making inquiries in person and be offered by the cemetery company to the individuals at the beginning of a discussion of burial arrangements.</p>	<p>Add language which requires the cemetery company to provide the general price list and itemized statement of goods and services to individuals entering contracts prior to the execution of the contract. The contract must include an acknowledgement signed by both the individual and the cemetery company sales personnel that the cemetery company provided the general price list and itemized statement to the individual prior to contract execution. This new language which makes it clear that the cemetery company has to provide the consumer with a current general price list and itemized statement of goods of services prior to contract execution is being added to conform to the requirement set forth in Chapter 251 of the Acts of the 2013 Assembly. The likely impact of the proposed requirement is to provide consumers with the information they need to make an informed decision about burial services.</p>
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