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

<b>Agency name</b>	Cemetery Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC47-20
<b>VAC Chapter title(s)</b>	Cemetery Board Rules and Regulations
<b>Action title</b>	General Review of Cemetery Board Rules and Regulations
<b>Date this document prepared</b>	March 22, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The Cemetery Board (“the Board”) intends to undertake a general regulatory review of the Cemetery Board Rules and Regulations. The regulation provides for the licensure of cemetery companies and registration of sales personnel.

The goals of the action include:

1. Review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022);
2. Review to ensure the regulation complements current Virginia law and meets applicable federal requirements, if any;
3. Review to ensure the regulation is organized, clear, and understandable; and

- 4. Review to ensure the regulation provides minimal burdens on regulants while still protecting the public.

In addition, the review will ensure the regulation reflects current DPOR procedures and policies, along with any other changes determined to be necessary and appropriate.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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“DPOR” means Department of Professional and Occupational Regulation.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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The impetus for this regulatory action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor “...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth.”

This action is not the result of a mandate.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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The agency is the Cemetery Board.

Section 54.1-201 of the Code of Virginia provides, in part:

- A. The powers and duties of regulatory boards shall be as follows:
  - 1. 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.
  - 5. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) 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. The regulations shall not be in conflict with the

purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

## Purpose

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

The General Assembly has charged the Board with the responsibility for regulating those who engage in the business of a cemetery company by requiring such entities obtain a license in order to engage in this profession. In addition, the Board is charged with the responsibility of regulating and registering sales personnel employed by a cemetery company.

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to assure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the Board.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

## Substance

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

The Board formed a regulatory review committee composed of members of the Board to conduct a review of this regulation. The committee's membership includes individuals who are cemetery operators.

The regulatory review committee is performing a review of the regulation. The Board is expected consider the substantive changes detailed below. However, the Board may consider other changes prior to adoption of the proposed regulation.

Part I – Definitions (18 VAC 47-20-10):

- Revising the section to remove the definition of “moral turpitude.” This term is a common legal term and does not require definition in the regulation.
- Revising the section to add a definition for the term “reasonably maintain” as it relates to the maintenance of buildings, grounds, and facilities of a licensed cemetery company.

Part II – Application and Entry Requirements (18 VAC 47-20-20 et seq.):

Qualifications for Cemetery Company License (18 VAC 47-20-30): Revising provisions related to the disclosure of prior criminal history to clarify that applicants must disclose (i) any felony conviction; and (ii) any misdemeanor convictions involving moral turpitude within five (5) years of the date of application. Currently, applicants are required to disclose any felony conviction or conviction of any crime of moral turpitude.

Qualifications for Compliance Agents and Designees (18 VAC 47-20-35):

- Revising the section to remove the requirement that a compliance agent or designee of a cemetery company be either a principal or full-time employee of the company.
- Revising the section to provide that an applicant disclose any misdemeanor conviction involving moral turpitude in the preceding five (5) years. Currently, applicants are required to disclose any misdemeanor conviction involving moral turpitude.

Qualifications for Registration of Sales Personnel (18 VAC 47-20-40):

- Revising the section to remove the requirement that an applicant for a sales personnel registration provide the address for each cemetery for which the individual will act as sales personnel.
- Revising provisions related to the disclosure of prior criminal history to clarify that applicants must disclose (i) any felony conviction; and (ii) any misdemeanor convictions involving moral turpitude within five (5) years of the date of application. Currently, applicants are required to disclose any felony conviction or conviction of any crime of moral turpitude.

Concurrent Registration Permitted; Transfer of Sales Personnel Registration Prohibited (18 VAC 47-20-50): Revising the provisions of the section to allow a sales personnel registration to be transferred from one licensed cemetery company to another. Currently, transfer of a sales personnel registration is prohibited.

Qualifications of Trustees (18 VAC 47-20-60):

- Revising the section to reduce from five (5) years to two (2) years the minimum experience required for an individual to qualify as a trustee of a perpetual care trust fund or preneed trust fund.
- Revising the section to provide that a trustee or trust firm disclose any outstanding judgments, outstanding tax obligations, or defaults on bonds related to the management of the trust during the previous seven (7) years prior to application. Currently, applicants are required to disclose this information for the previous 10 years prior to application.
- Revising the section to require that the applicant disclose whether the trustee firm, or its parent or predecessor organization, has been adjudicated as bankrupt or has had any proceeding for relief of debtors during the previous seven (7) years prior to application. Currently, applicants are required to disclose this information for the previous 10 years prior to application.

Part III – Renewal and Reinstatement of License (18 VAC 47-20-80 et seq.):

Procedures for Renewal (18 VAC 47-20-100): Revising the section to provide that DPOR will notify the licensee or registrant of impending license expiration. Currently, the regulation requires DPOR to mail a renewal application to the licensee or registrant.

Reinstatement Required (18 VAC 47-20-110): Revising the section to extend from one (1) year to five (5) years from the date of expiration of a license or registration the period during which the license or registration may be reinstated.

Status of Licensee or Registrant During the Period Prior to Reinstatement (18 VAC 47-20-120): Revising the provisions of the section to provide that a license or registration which is reinstated will next expire two years from the last day of the month in which it was reinstated. Currently, licenses and registrations that are reinstated expire two years from the previous expiration date.

Board Discretion to Deny Renewal or Reinstatement (18 VAC 47-20-130): Revising the section to remove a provision that the Board may deny renewal or reinstatement of a license or registration if the regulant has not fully paid monetary penalties, satisfied sanctions and paid costs imposed by the Board. This provision is unnecessary because any failure by a regulant to satisfy sanctions imposed by the Board would result in an administrative suspension of the license.

Part IV – Standards of Practice and Conduct (18 VAC 47-20-150 et seq.):

Maintenance of License and Registration (18 VAC 47-20-160):

- Revising the section to remove a requirement that a registered salesperson report a change in home address. Currently, a registered salesperson must report any change in home address within 30 days of the change.
- Revising the section to extend from 10 days to 30 days the period of time that cemetery company compliance agent must return the registration of a salesperson who has been discharged or terminated from employment by the cemetery company.

Compliance Agent or Designee Conduct (18 VAC 47-20-250): Revising the provisions of this section to remove a requirement a cemetery company provide guidance on solicitation as part of the required training, procedures, or policies of the cemetery company.

Standards of Approval of Training Course (18 VAC 47-20-270):

- Revising the provisions of the section to reduce from four (4) hours to two (2) hours the minimum length of a training course.
- Revising the provisions of the section to remove “solicitation” as a required topic for a training course.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

## Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

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A goal of this regulatory action is to review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022). As the regulation is developed, the Board will consider potential alternatives to existing requirements that may be less burdensome or intrusive while still meeting the essential purpose of the regulation.

## Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

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This NOIRA is not being used to announce a periodic review or a small business impact review.

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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The Board formed a regulatory review committee composed of members of the Board to conduct a review of this regulation. Meetings of the committee included opportunities for public comment.

The Cemetery Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

Anika Coleman  
Executive Director  
9960 Mayland Drive  
Perimeter Center, Suite 400  
Richmond, VA 23233  
[cemetery@dpor.virginia.gov](mailto:cemetery@dpor.virginia.gov)  
(866) 826-8863 (fax)

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 the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.