



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	47
Virginia Administrative Code (VAC) citation	18 VAC 47 -20
Regulation title	Cemetery Board Regulations
Action title	Amend to implement changes to the Code of Virginia
Document preparation date	January 19, 2005

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

1. This is an emergency situation pursuant to § 2.2-4011(ii) of the Code of Virginia. Chapters 192 and 247 of the Acts of the 2004 General Assembly, which were the result of HB 857 and SB 303 respectively, require regulations to be effective within 280 days of enactment.

2. The new regulation establishes qualifications and standards of conduct for compliance agents employed by cemetery companies and also adds a section on protection of perpetual care and preneed trust funds.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-2313.D states in part that the Board shall have the power and duty to regulate preneed burial contracts and perpetual care trust fund accounts and regulate sales personnel. Section 54.1-2313.E states in part that the Board shall adopt such other regulations it deems appropriate. Section 54.1-201.E states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulation is mandatory to implement Chapter 192 and Chapter 247 of the Acts of the 2004 General Assembly.

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 new regulation establishes qualifications and standards of conduct for compliance agents employed by cemetery companies as well as standards of approval for training courses for compliance agents. It also provides a mechanism for protection of the perpetual care and preneed trust funds. The new regulation is necessary to implement Chapter 192 and Chapter 247 of the Acts of the 2004 General Assembly which were the result of HB 857 and SB 303. The goal of the regulation is to establish qualifications and standards of conduct for compliance agents in accordance with SB 303 and to provide a mechanism for protection of the trust funds and appointment of a receiver in accordance with HB 857.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 47-20-10		Definitions	Add definitions for approved training program, experience, and compliance agent designee to implement changes required by SB 303.
	18 VAC 47-20-35		Add section establishing qualifications for compliance agents & designees to implement changes required by SB 303.
18 VAC 47-20-70		\$25.00 dishonored check fee	Remove this fee as it is no longer current. The current fee is found in the Code of Virginia so it is not needed in the regulation.
18 VAC 47-20-140		\$25.00 dishonored check fee	Remove this fee as it is no longer current. The current fee is found in the Code of Virginia so it is not needed in the regulation.
18 VAC 47-20-240	18 VAC 47-20-260	Allows for appointment of receiver for execution of preneed contracts at need if the cemetery company license is suspended or revoked	Allows board to initiate legal proceedings to protect both the perpetual care and preneed trust funds if the board finds the licensee or its agent has committed any wrongful acts as described in the regulation and statute. This change expands the board's authority to protect the public from wrongdoing by a licensee or its agent pursuant to HB 857.
	18 VAC 47-20-250		Add section establishing conduct for compliance agent and designee to implement changes required by SB 303. This is needed to ensure that Virginians are dealing with cemetery companies that comply with the law and regulation.
	18 VAC 47-20-270		Add section which provides standards of approval for training courses needed for a person to become qualified as compliance agent or designee in order to implement changes required by SB 303. This is needed to ensure that courses provided to people with minimal experience get the education required to meet the qualifications in the regulation.

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.

Chapter 192 and Chapter 247 of the Acts of the 2004 General Assembly and the current Code of Virginia mandate amendment of the regulation. No alternatives have been identified to evaluate.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

No impact on families in Virginia has been identified as resulting from the proposed amendment to the regulation.