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Final Regulation Agency Background Document

Agency name	Cemetery Board
Virginia Administrative Code (VAC) citation(s)	18 VAC47-20
Regulation title(s)	Cemetery Board Regulations
Action title	Amending regulations to incorporate needed changes
Date this document prepared	February 26, 2016

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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

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.

On February 3, 2016, the Cemetery Board voted to adopt these amendments to 18VAC47-20 Cemetery Board Regulations as final.

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.

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.

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.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change

The Board made no changes.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response

<p>Virginia Cemetery Association (VCA)</p>	<p>VCA is concerned about the language being added in 18VAC47-20-190.16 regarding advertisements by cemetery companies which choose to have a section devoted to the interment of pets or humans and their pets. They feel the proposed language will be costly and overly burdensome on the cemetery company as it should only apply to advertisements at the cemetery itself not to all advertisements purchased by the cemetery company. They suggest two different alternatives to the proposed language. In Option one, the board would delete subsection 16 and amend subsection 17 to include the words “or advertise” dealing with signage on the section devoted to the interments of pets or humans and their pets. Option two has the board amending subsection 16 to remove the proposed language on advertisements and replace it with language requiring the GPL to clearly state the cemetery company has such section(s) in its cemetery.</p>	<p>Section 54.1-2312.01 of the <i>Code of Virginia</i> states, in part, a cemetery company may have a section in the cemetery devoted to the interment of human remains and their pets or devoted to the interment of pets provided the section of the cemetery is advertised as such by the cemetery company. The statute does not state advertising only at the cemetery. Section 54.1-2310 of the <i>Code of Virginia</i> defines advertisement as meaning “any information disseminated or placed before the public.” Since the definition states any information, the board cannot limit advertising to only the General Price List (GPL) or the signage as suggested. The board developed the proposed regulation in the least burdensome manner. The proposed language conforms to the statutory definition of “advertisement” and §§ 54.1-2312.01(A)(3) and 54.1-2312.01(B)(2) while still permitting a cemetery company which allows pet interments the discretion to determine the specific language in such an advertisement.</p>
<p>Service Corporation International (SCI) submitted via Town Hall</p>	<p>SCI believes the language being added in 18 VAC 47-20-190 subsections 16 and 17 may create a burden for cemeteries. SCI suggests two different alternatives to the proposed language. In Option one, the board would delete subsection 16 and amend subsection 17 to include the words “or advertise” dealing with signage on the section devoted to the interments of pets or humans and their pets. Option two has the board amending subsection 16 to remove the proposed language on advertisements and replace it with language requiring the GPL to clearly state the cemetery company has such section(s) in its cemetery.</p>	<p>Section 54.1-2312.01 of the <i>Code of Virginia</i> states, in part, a cemetery company may have a section in the cemetery devoted to the interment of human remains and their pets or devoted to the interment of pets provided the section of the cemetery is advertised as such by the cemetery company. The statute does not state advertising only at the cemetery. Section 54.1-2310 of the <i>Code of Virginia</i> defines advertisement as meaning “any information disseminated or placed before the public.” Since the definition states any information, the board cannot limit advertising to only the General Price List (GPL) or the signage as suggested. The board developed the proposed regulation in the least burdensome manner. The proposed language conforms to the statutory definition of “advertisement” and §§ 54.1-2312.01(A)(3) and 54.1-2312.01(B)(2) while still permitting a cemetery company which allows pet interments the discretion to determine the specific language in such an advertisement.</p>
<p>Memorial</p>	<p>Memorial Gardens of the New River</p>	<p>Section 54.1-2312.01 of the <i>Code of Virginia</i></p>

<p>Gardens of the New River Valley</p>	<p>Valley is concerned about the language being added in 18VAC47-20-190.16 regarding advertisements by cemetery companies which choose to have a section devoted to the interment of pets or humans and their pets. They feel the proposed language will be costly and overly burdensome on the cemetery company as it should only apply to advertisements at the cemetery itself not to all advertisements purchased by the cemetery company. They suggest two different alternatives to the proposed language. In Option one, the board would delete subsection 16 and amend subsection 17 to include the words “or advertise” dealing with signage on the section devoted to the interments of pets or humans and their pets. Option two has the board amending subsection 16 to remove the proposed language on advertisements and replace it with language requiring the GPL to clearly state the cemetery company has such section(s) in its cemetery.</p>	<p>states, in part, a cemetery company may have a section in the cemetery devoted to the interment of human remains and their pets or devoted to the interment of pets provided the section of the cemetery is advertised as such by the cemetery company. The statute does not state advertising only at the cemetery. Section 54.1-2310 of the <i>Code of Virginia</i> defines advertisement as meaning “any information disseminated or placed before the public.” Since the definition states any information, the board cannot limit advertising to only the General Price List (GPL) or the signage as suggested. The board developed the proposed regulation in the least burdensome manner. The proposed language conforms to the statutory definition of “advertisement” and §§ 54.1-2312.01(A)(3) and 54.1-2312.01(B)(2) while still permitting a cemetery company which allows pet interments the discretion to determine the specific language in such an advertisement.</p>
<p>Stafford Memorial Park submitted via Town Hall</p>	<p>Stafford Memorial Park is concerned about the language being added in 18VAC47-20-190.16 regarding advertisements by cemetery companies which choose to have a section devoted to the interment of pets or humans and their pets. They feel the proposed language will be costly and overly burdensome on the cemetery company as it should only apply to advertisements at the cemetery itself not to all advertisements purchased by the cemetery company. They suggest two different alternatives to the proposed language. In Option one, the board would delete subsection 16 and amend subsection 17 to include the words “or advertise” dealing with signage on the section devoted to the interments of pets or humans and their pets. Option two has the board amending subsection</p>	<p>Section 54.1-2312.01 of the <i>Code of Virginia</i> states, in part, a cemetery company may have a section in the cemetery devoted to the interment of human remains and their pets or devoted to the interment of pets provided the section of the cemetery is advertised as such by the cemetery company. The statute does not state advertising only at the cemetery. Section 54.1-2310 of the <i>Code of Virginia</i> defines advertisement as meaning “any information disseminated or placed before the public.” Since the definition states any information, the board cannot limit advertising to only the General Price List (GPL) or the signage as suggested. The board developed the proposed regulation in the least burdensome manner. The proposed language conforms to the statutory definition of “advertisement” and §§ 54.1-2312.01(A)(3) and 54.1-2312.01(B)(2) while still permitting a cemetery company which allows pet interments the discretion to determine the specific language in such an advertisement.</p>

	<p>16 to remove the proposed language on advertisements and replace it with language requiring the GPL to clearly state the cemetery company has such section(s) in its cemetery.</p>	
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All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
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.

