



Final Regulation Agency Background Document

Agency name	Cemetery Board
Virginia Administrative Code (VAC) citation	18 VAC47-20
Regulation title	Cemetery Board Regulations
Action title	Fee Adjustment
Date this document prepared	June 13, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The proposed regulations will adjust fees for the Cemetery Board to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Cemetery Board's most recent fees became effective January 1, 2006. The Cemetery Board has incurred an increase in costs for enforcement activities, Information Systems development costs, and application processing and customer support services. By the close of the biennium fees will not provide adequate revenue for those costs.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (§ 54.1-113), and the general provisions of § 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The Department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

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 or board taking the action, and (3) the title of the regulation.

On June 5, 2013, the Cemetery Board voted to adopt these amendments to 18VAC47-20 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.

The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Cemetery Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

§ 54.1-113 (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-201.4 describes each regulatory board's power and duty to "levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department..."

§ 54.1-304.3 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid..."

§ 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

§ 54.1-2311 provides that Cemetery Board regulants pay the Board a fee which fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Department to be used in the administration of this chapter.

These Code sections require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each board; and
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- Accounts for the revenue collected for each board distinctly;
- Accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board;
- Reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles; and
- Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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 intent of the proposed change in the regulations is to adjust licensing fees for regulants of the Cemetery Board. The board must establish fees adequate to support the costs of the board operations and a proportionate share of the Department’s operations. By the close of the biennium, fees will not provide adequate revenue for those costs.

The Cemetery Board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those persons that meet specific criteria set forth in the statutes and regulations are eligible to receive a cemetery company license or sales personnel registration. The Cemetery Board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the Cemetery Board by citizens, could not be investigated and processed in a timely manner. This could provide an opportunity for a dishonest regulant waiting for action to be taken by the Cemetery Board, to continue to work, harming additional citizens.

The Department of Professional and Occupational Regulation (DPOR) receives no general fund money but, instead, is funded almost entirely from revenue collected for license applications, renewal and other licensing fees. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts which will provide that revenue. Fee revenue collected on behalf of the various boards funds the Department’s authorized special revenue appropriation.

The Cemetery Board has no other source of revenue from which to fund its operations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

The Cemetery Board’s existing regulations are being amended based on projected revenues and expenses with the adjustments being the least burdensome to the regulant population.

Current Regulation	Fee Type		Current Fee	Proposed Fee
18VAC47-20-70	New Applicant	Company (per cemetery)	50	580
18VAC47-20-70	New Applicant	Salesperson (per cemetery)	20	60
18VAC47-20-140	Renewal	Company (per cemetery)	50	580
18VAC47-20-140	Renewal	Salesperson (per cemetery)	20	60
18VAC47-20-140	Reinstatement	Company (per cemetery)	50	580
18VAC47-20-140	Reinstatement	Salesperson (per cemetery)	20	60
18VAC47-20-70	Add a Cemetery	Company	50	580

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 issue for the proposed fee adjustment is the Department’s statutory requirement to comply with the Callahan Act.

The Callahan Act requires DPOR to review each board’s expenditures at the close of each biennium, and to adjust fees if necessary. For the 2010-2012 biennium the Cemetery Board had a \$116,787 cash balance and a Callahan Act percentage of 12.4% and for the 2012-2014 biennium, the Cemetery Board is expected to incur a deficit of \$82,651 and a Callahan Act percentage of -51.3%.

Current financial analysis indicates that proposed fee adjustments will not be sufficient to repay the current cash deficit and continue to support operating costs. Additional increases in fees are necessary.

The cemetery program began on July 1, 2000. Initial fees were set at a level that was expected to cover the Board expenses. However, the volume of applicants and renewals exceeded expectations and a larger than expected cash balance accumulated. Fees were substantially lowered on January 1, 2006 in order to reduce accumulated cash quickly and to comply with the Callahan Act. The expectation at that time was that fees would be raised once the accumulated cash balance was reduced. Fees would then be set to bring in sufficient revenue to cover expenses. The increased fees were approved by the Board in 2011. At the time, the average regulatory approval duration was between 18 to 24 months. However, the approval process duration will now be over 24 months. In this time, the Board has incurred a cash deficit. Fees are needed to cover the operating expenses of the Board and to be sufficient to bring the Board out of the deficit cash position.

Implementation of the final fees is necessary to avoid the continual growth of the deficit cash balance. The current fees and the previously proposed fees are inadequate to recover from the cash deficit

balance. Without the final fees or with any further delay, the Board will be required to initiate an additional increased fee proposal at higher fee levels.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
70	The fee for Cemetery Company license - \$200 per cemetery The fee for Sales Personnel registration - \$75 per cemetery The fee for addition of cemetery - \$200 per cemetery	The fee for Cemetery Company license - \$580 per cemetery The fee for Sales Personnel registration - \$60 per cemetery The fee for addition of cemetery - \$580 per cemetery	The fees were adjusted in order to meet modified Callahan projection.
140	The fee for Cemetery Company license renewal - \$200 per cemetery The fee for Sales Personnel registration renewal - \$75 per cemetery The fee for Cemetery Company license reinstatement - \$200 per cemetery The fee for Sales Personnel registration reinstatement - \$75 per cemetery	The fee for Cemetery Company license renewal - \$580 per cemetery The fee for Sales Personnel registration renewal - \$60 per cemetery The fee for Cemetery Company license reinstatement - \$580 per cemetery The fee for Sales Personnel registration reinstatement - \$60 per cemetery	The fees were adjusted in order to meet modified Callahan projection.

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.

No public comments received.

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
70		<p>The fee for Cemetery Company license - \$50 per cemetery</p> <p>The fee for Sales Personnel registration - \$20 per cemetery</p> <p>The fee for addition of cemetery - \$50 per cemetery</p>	<p>The fee for Cemetery Company license is increased to \$580 per cemetery to facilitate compliance with the Callahan Act.</p> <p>The fee for Sales Personnel registration is adjusted to \$60 per cemetery to facilitate compliance with the Callahan Act.</p> <p>The fee for addition of cemetery is increased to \$580 per cemetery to facilitate compliance with the Callahan Act.</p>
140		<p>The fee for Cemetery Company license renewal - \$50 per cemetery</p> <p>The fee for Sales Personnel registration renewal - \$20 per cemetery</p> <p>The fee for Cemetery Company license reinstatement - \$50 per cemetery</p> <p>The fee for Sales Personnel registration reinstatement - \$20 per cemetery</p>	<p>The fee for Cemetery Company license renewal is increased to \$580 per cemetery to facilitate compliance with the Callahan Act.</p> <p>The fee for Sales Personnel registration renewal is increased to \$60 per cemetery to facilitate compliance with the Callahan Act.</p> <p>The fee for Cemetery Company license reinstatement is increased to \$580 per cemetery to facilitate compliance with the Callahan Act.</p> <p>The fee for Sales Personnel registration reinstatement is increased to \$60 per cemetery to facilitate compliance with the Callahan Act.</p>