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Fast-Track Regulation Agency Background Document

Agency name	Board of Funeral Directors and Embalmers, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC65-20-10 et seq.
Regulation title(s)	Regulations for the Board of Funeral Directors and Embalmers
Action title	Standards for crematories
Date this document prepared	2/10/15

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

The amendment to section 436 will allow a crematory to cremate human remains of more than one person in the same unit provided the remains and ashes are kept in separate chambers.

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.

N/A

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 January 13, 2015, the Board of Funeral Directors and Embalmers adopted an amendment to 18VAC65-20-10 et seq., Regulations for the Board of Funeral Directors and Embalmers.

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 24 establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Funeral Directors and Embalmers to promulgate regulations and to administer a registration program.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. *To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions...*

To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.

§ 54.1-2814.1. Registration as a cremator.

A. No crematorium, cemeterian, memorial society, or other establishment, organization, or person shall cremate a dead human body without having registered with the Board as a cremator.

B. The Board shall prescribe the procedures for registration under this section. Such procedures shall include a requirement that any crematory registered with the Board that engages in the practice of funeral services operate in compliance with the provisions § 54.1-2810. However, nothing in this subsection shall require a crematory registered with the Board to obtain a license as a funeral service establishment as long as the crematory provides cremation services directly to or for a licensed funeral service establishment only and not to the general public.

C. The Board may suspend or revoke any crematory registration or deny any application for such registration, or refuse to issue or renew any such registration, if the Board finds that the

applicant or registrant has violated any provision of this chapter, the Board's regulations, or if the Board finds the crematory has operated or is operating in a manner that endangers the health, safety or welfare of the public.

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 goal of the proposal is to allow use of a more efficient and cost-effective retort or unit that emits fewer air particulates and uses less fuel. Those aspects of the unit contribute to efforts to protect the environment and the health and safety of the public.

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?

This amendment updates the current regulation for consistency with newer technology but maintains the policy of not allowing the co-mingling of cremains by a crematory. The amendment will facilitate but not mandate usage of the newer type of retort or unit; it is not controversial and was unanimously supported by board members.

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.

Currently, regulations do not allow a crematory to cremate the human remains of more than one person simultaneously in the same retort or cremation unit. This amendment will allow cremation of more than one person provided the remains are separated into different chambers within the same retort or unit.

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.

- 1) The primary advantage to the public is the fuel efficiency and the emission of fewer air particulates; it will facilitate usage of a more efficient cremation unit by crematories. There are no disadvantages because the policy of separating cremains is not amended.
- 2) There are no advantages and disadvantages to the agency or the Commonwealth.
- 3) There are no other pertinent matters of interest to the regulated community, government officials, and the public.

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 requirements more restrictive than federal.

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.

There are no localities affected.

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 amendment is necessary to accommodate newer technology in the cremation industry. There are no other methods other than the amendment to section 436 to accomplish the purpose.

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>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There are no costs to implement and enforce the proposed regulation.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The businesses affected would be registered crematories or licensed establishments that have crematory units.</p>
<p>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. 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>There is no estimate of the number affected. Only those that choose to use the newer type of cremation unit would be affected. The board has no data on the type of cremation unit used by crematories in Virginia.</p>
<p>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: 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>There are no costs of the changes. Crematories that choose to purchase the type of crematory units may realize some modest savings in fuel efficiency.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The units with separate chambers are more fuel efficient and emit less air particulates.</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.

Since this is a less burdensome and intrusive alternative to the current requirement, the amendment is necessary to achieve the purpose.

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.

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.

There is no family impact.

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.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
436	Subsection B #3. A crematory shall not cremate the human remains of more than one person simultaneously in the same <u>retort</u> , unless the crematory has received specific written authorization to do so from the person signing the cremation authorization form.	The amendment will delete the word “retort” and substitute “chamber” within the same unit. There is a new type of cremation retort or cremation unit that has a secondary reduction chamber. The Phoenix II-3 maintains separation of the bodies and ashes, which is consistent with the intent of the current regulation. By amending the regulation, a unit or retort that has separate <i>chambers</i> within the unit would be permitted. It is more fuel efficient and emits less air particulates. An amendment is necessary to allow for that type of system to be used as intended.