



Virginia
Regulatory
Town Hall

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Proposed Regulation Agency Background Document

Agency name	Board of Funeral Directors and Embalmers, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC65-20-10 et seq.
Regulation title	Regulations of the Board of Funeral Directors and Embalmers
Action title	Identification of human remains
Date this document prepared	April 23, 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

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The key provisions of the amended regulation are guidance on the identifiers that may be used for visual identification of the remains and the resources available to achieve positive identification if visual identification is not feasible.

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

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, administer a registration and renewal program, and discipline regulated professionals.

§ 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...*
- 6. 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.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations...*

Chapter 377 of the 2010 Acts of the Assembly amended § 54.1-2818.1 and provided the specific mandate to adopt regulations for identification of human remains as a prerequisite for cremation.

§ 54.1-2818.1. Prerequisites for cremation.

No dead human body shall be cremated without permission of the medical examiner as required by § 32.1-284 and visual identification of the deceased by the next-of-kin or his representative, who may be any person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825, an agent named in an advance directive pursuant to § 54.1-2984, or a sheriff, upon court order, if no next-of-kin, designated person or agent is available. When visual identification is not feasible, other positive identification of the deceased may be used as a prerequisite for cremation.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The intent of the regulatory action is compliance with the second enactment of Chapter 377 of the 2010 Acts of the Assembly. While the statute is fairly explicit about the prerequisites for cremation, the regulation further amplifies how visual identification can be done – through

viewing the remains or a photograph or by use of unique identifiers and markings. If positive identification must be used, the regulations specify who may be consulted for that purpose. In order to ensure authorization for cremation can be obtained in accordance with § 54.1-2818.1 in a timely manner, the proposed regulation expands on the statutory mandate for visual identification, or if that is not feasible, positive identification. Visual identification may be accomplished by viewing unique identifiers or markings (tattoos, birth marks, etc.). If positive identification must be used, a crematory may consult with law enforcement for fingerprints, DNA, etc., with the local medical examiner or with medical personnel at a hospital or other facility. With the amendments the Board has adopted, the statute can be more clearly implemented, and families or designated persons are able to achieve closure in a more humanely and timely manner. Proper identification of human remains prior to cremation is essential to the health, safety and welfare of the public because it is necessary to ensure that misidentified or unidentified persons are not cremated. Cremation eliminates the possibility that a lost loved one could later be identified or that the remains may provide evidence in a criminal investigation.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

The Code requires "visual identification" of the deceased before cremation; proposed regulations clarify that visual identification may be made by viewing unique identifiers or markings on the remains. Further, the Code allows the use of positive identification if visual identification is not possible. Proposed regulations clarify that a crematory may use positive identification of the deceased in consultation with the law enforcement, a medical examiner or medical personnel.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

- 1) The primary advantage to the public is further clarification of the statutory requirements for identification of a body prior to cremation. With the amendments the Board has adopted, the statute can be more clearly implemented, and families or designated persons are able to achieve closure in a more humanely and timely manner. There are no disadvantages.
- 2) While there are no advantages or disadvantages to the agency; greater clarity of law and regulation can resolve questions and issues that are sometimes fielded by Board staff.
- 3) There are no other matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

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 requirements creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation. There would be little or no additional expense for promulgation of the amended rule. Consideration of the proposed rule has been during a regularly scheduled board meeting, and to the extent possible, all notifications would be done electronically to minimize the cost. There are no on-going expenditures for the agency related to amendments to regulations.</p>
<p>Projected cost of the <i>new regulations or changes to existing regulations</i> 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 <i>new regulations or changes to existing regulations</i>.</p>	<p>Funeral establishments that provide cremation of deceased persons.</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 (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 97 registered crematories in Virginia. Some are small businesses and others are owned by large, national corporations.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. 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 associated with the proposed regulation.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Families or designated persons may be able to achieve closure in a more humanely and timely manner.</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.

There are no alternatives to the proposed regulatory action since it is mandated by Chapter 377 of the 2010 Acts of the Assembly. The regulation is intended to assist funeral directors in addressing individual questions and situations that arise about identification and the prerequisites for cremation.

Regulatory flexibility analysis

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.

There are no reporting or compliance requirements that could accomplish the purpose of this regulatory action which is intended to provide regulatory guidance to the statutory requirements for identification prior to cremation.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Lacy Whittaker on behalf of the Va. Funeral Directors Association	Supports the regulation and has no comment	The Board appreciates the comment.

Family impact

Please assess the impact of the proposed 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 impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. 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.*

There are no changes from the emergency regulation currently in effect.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
436	n/a	Sets out the authorization requirements for cremation	<p>Subsection A is amended to provide regulatory guidance on the attestation of visual identification of human remains. The amended language specifies that:</p> <p>2. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. <u>Visual identification may be made by viewing unique identifiers or markings on the remains.</u></p> <p>If visual identification is not feasible, the law permits the funeral establishment to use positive identification of the remains. Regulatory guidance on positive identification is provided in the amendments to #3:</p> <p>3. In the event visual identification is not feasible, a crematory may use other positive identification of the deceased <u>in consultation with law enforcement, a medical examiner, or medical personnel</u> as a prerequisite for cremation pursuant to § <u>54.1-2818.1</u> of the Code of Virginia.</p> <p><i>For visual identification of remains, there are recognizable features or markings that may be used by the next-of-kin or a representative of the deceased. For positive identification, if visual ID is not feasible, the funeral establishment may rely on positive identification – such fingerprints, DNA, dental records, etc. A positive</i></p>

			<i>identification will require consultation to obtain the necessary record.</i>
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