



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Funeral Directors and Embalmers, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC65-20-10 et seq.
<b>Regulation title</b>	Regulations of the Board of Funeral Directors and Embalmers
<b>Action title</b>	Periodic review – Regulatory reform project
<b>Date this document prepared</b>	4/23/13

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

The amendments are recommended as a result of a periodic review of Chapter 20 and are clarifying in nature or intended to make the requirements somewhat less restrictive. Amendments will: 1) require less time for submission of an application for a new establishment prior to opening; 2) eliminate the specific 40-hour a week requirement for a manager of record to be employed by an establishment; 3) clarify the requirement for compliance with OSHA standards; and 4) allow a first-aid kit to be kept either in a preparation room or immediately accessible to the room.

### 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 April 23, 2013, the Board of Funeral Directors and Embalmers amended 18VAC65-20-10 et seq., Regulations of 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.*

18VAC65-20-10 et seq., Regulations of the Board of Funeral Directors and Embalmers are promulgated by the Board of the Board of Funeral Directors and Embalmers under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary for the administration of a regulatory program.

**§ 54.1-2400 -General powers and duties of health regulatory boards**

*The general powers and duties of health regulatory boards shall be:*

...

*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 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

**Specific authority for the Board is found in:**

**§ 54.1-2803. Specific powers and duties of Board.**

*In addition to the general powers and duties conferred in this subtitle, the Board shall have the following specific powers and duties to:*

- 1. Establish standards of service and practice for the funeral service profession in the Commonwealth.*
- 2. Regulate and inspect funeral service establishments, their operation and licenses.*
- 3. Require licensees and funeral service interns to submit all information relevant to their practice or business.*
- 4. Enforce the relevant regulations of the Board of Health.*
- 5. Enforce local ordinances relating to funeral service establishments.*
- 6. Advise the Department of Health Professions of any training appropriate for inspectors serving as the Board's agents.*
- 7. Establish, supervise, regulate and control, in accordance with the law, programs for funeral service interns.*
- 8. Establish standards for and approve schools of mortuary science or funeral service.*
- 9. Regulate preneed funeral contracts and preneed funeral trust 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.*
- 10. Inspect crematories and their operations.*

**§ 54.1-2804. Licensing authority.**

*The Board of Funeral Directors and Embalmers is authorized to determine the qualifications to enable any person to engage in the practice of funeral service, preneed funeral planning, funeral directing, embalming and the operation of a funeral service establishment.*

**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 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 overall purpose of the amended regulation is clarification and ease of compliance with requirements for funeral establishments. Less restrictive regulations for establishment applicants, managers of record, and embalming equipment will result in a modest decrease in the regulatory burden without any associated risk of harm to the public. The Board will continue to have the ability to monitor compliance and enforce regulations that protect the public health and safety in the handling and disposition of human remains.

**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?*

*Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

The fast track process is being used because the changes are mostly less restrictive and clarifying. There should be no controversy from these periodic review recommendations.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.*

Amendments will: 1) require less time for submission of an application for a new establishment prior to opening; 2) eliminate the specific 40-hour a week requirement for a manager of record to be employed by an establishment; 3) clarify the requirement for compliance with OSHA

standards; and 4) allow a first-aid kit to be kept either in a preparation room or immediately accessible to the room.

**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) There are no real advantages or disadvantages to the public. Clarification of rules or a modest reduction in regulatory requirements will benefit licensees, but there is not likely to be a perceptible advantage to the consumer.
- 2) There are no advantages or disadvantages to the Commonwealth.
- 3) This action is in response to a periodic review of regulations.

**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 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.

**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 alternative regulatory methods that accomplish the purpose of these regulations.

**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><b>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</b></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><b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b></p>	<p>There are no costs to localities.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b></p>	<p>The entities that are likely to be affected by these amendments would be funeral service licensees, licensed establishments, surface transportation and removal services, and registered crematories</p>
<p><b>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.</b> 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>Funeral service providers – 1439                  Funeral service establishments – 426                  Branch funeral establishments - 62                  Surface transportation and removal services – 43                  Crematories – 97                  While many are small businesses, some are owned by large, national corporations. The Board does not license by type, so it does not have an estimate of the number that are small businesses.</p>
<p><b>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</b></p>	<p>There are no costs for amendments to regulations.</p>

<b>regulations.</b>	
<b>Beneficial impact the regulation is designed to produce.</b>	There may be some benefit to establishments with less restrictive requirements for a full-time manager and maintenance of embalming records.

**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 viable alternatives to the proposed changes that meet the essential purpose, since requirements for licensure and maintenance of funeral establishments are set in current regulations.

**Periodic review/small business impact review result**

***If this fast-track regulation is not the result of a periodic review/small business of the regulation, please delete this entire section.***

*If this fast-track regulation is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

- (1) The Notice of Periodic Review was published in the *Register of Regulations*, posted on Townhall and sent to the PPG list for the Board. Comment was requested from November 5, 2012 to December 5, 2012. There were no comments.
- (2) The regulation is necessary for public protection since the Board has a statutory mandate to “Establish standards of service and practice for the funeral service profession in the Commonwealth.” It has been reviewed for clarity and amended for ease of understanding.
- (3) The regulation for licensure is mandated by Chapter 28 of Title 54.1 of the Code of Virginia.
- (4) The agency has not received complaints or comments; it does not overlap or duplicate other law or regulation.
- (5) Amendments to this chapter have been promulgated 19 times from 2003 to 2012 to update or eliminate unnecessary requirements.

**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 family.

**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.*

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
170	Sets out requirements for a license as a funeral establishment	An amendment to subsection C will shorten the advance notification required for issuance of a new funeral establishment license. Currently, a completed application must be on file at least 45 days prior to opening an establishment to allow for scheduling and completing an inspection of the location by the Department. The Board believes a 30-day time period is adequate and will give a new establishment or branch more time to have all required elements in place prior to an opening inspection.
171	Establishes the responsibilities for the manager of record for each funeral establishment	The intent of the requirement for a full-time manager of record is to ensure that there is a person responsible to the Board for operation of the establishment at all times. The statute (54.1-2810) requires: <i>No license to operate a funeral establishment shall be issued by the Board unless each such funeral establishment has in charge, full time, a person licensed for the practice of funeral service or a licensed funeral director.</i> Currently, regulations specify that “full-time” must be 40 hours per week. The proposed regulation would require that the manager must be employed “full-time” by and <i>in charge of</i> the establishment without specifying a number of hours. If a manager can be fully in charge and employed full-time for a fewer number of hours per week, that would satisfy the amended regulation and the intent of the requirement.
400	Sets out requirements for surface transportation and removal services	The current regulation specifies evidence of training in the requirements of the Occupational

		<p>Safety and Health Administration (OSHA). OSHA has “standards,” rather than “requirements.” Additionally, OSHA has standards for occupational safety that do not relate to the funeral business. The OSHA standards for which funeral-related businesses are accountable are those for universal precautions and blood-borne pathogens. Therefore, the amendment will so specify.</p>
435	<p>Sets out requirements for registration of crematories</p>	<p>The current regulation specifies evidence of training in the requirements of the Occupational Safety and Health Administration (OSHA). OSHA has “standards,” rather than “requirements.” Additionally, OSHA has standards for occupational safety that do not relate to the funeral business. The OSHA standards for which funeral-related businesses are accountable are those for universal precautions and blood-borne pathogens. Therefore, the amendment will so specify.</p> <p>Amendments in subsections B and D eliminate a “grandfather” clause for certification that ended in July of 2009.</p>
436	<p>Sets out standards for registered crematories or funeral establishments that operate a crematory</p>	<p>The title is amended to more accurately reflect the provisions of the section which apply to identification and preparation of remains for cremation, which may be handled by an establishment that does not “operate a crematory” but uses the services of a registered crematory that only does business with funeral establishments. The amended title is “Standards for registered crematories or funeral establishment <u>relating to cremation.</u>”</p>
580	<p>Sets out requirements for equipment in a preparation room</p>	<p>There must be a first aid kit available for the preparation room. Currently, it is required that it be “immediately accessible” <i>outside the door</i> of the room to address concern about possible contamination. The Board believes that the kit may be more useful if maintained in the prep room, so the amended regulation will give an establishment the option of where to maintain a first aid kit.</p>