

Regulatory Review Package

Emergency Regulations

Board of Funeral Directors and Embalmers 18 VAC 65-20-10 et seq.

1. Regulatory Review Package

a. Proposed emergency regulation - See attached.

b. Source of the legal authority to promulgate the contemplated regulation.

The proposed emergency regulations are being promulgated to comply with statutory provisions of HB 1078 passed by the 1998 General Assembly. House Bill 1078 (Chapter 867) has an enactment clause requiring the Board of Funeral Directors and Embalmers to promulgate regulations to implement the act to be effective within 280 days of the enactment. (See attached copy of Chapter 867)

Rulemaking is mandatory in order for the Board to comply with statutory language in which it is stated that the Board shall promulgate regulations within 280 days of enactment.

c. Letter of assurance from the office of the Attorney General.

See attached.

d. Statement of necessity.

Promulgation of the Emergency Regulation, 18 VAC 65-20-10 et seq., is necessary to conform to statutory provisions of Chapter 857 of the 1998 Acts of the Assembly. In accordance with the Administrative Process Act, the “emergency situation” which exists is specified in § 9-6.14:4.1 (C)(5)(ii) of the Code of Virginia as one in which the agency is required by statutory law to have a regulation in effect within 280 days from the enactment of the law. The proposed regulations are not exempt from provisions of subdivision C of § 9-6.14:4.1.

e. Statement of changes which the regulations will implement.

18 VAC 65-20-70. Initial fees.

The fee for registration of a crematory is established at \$100; the renewal of a crematory registration is established at \$100, payable by January 31st of each year.

The reinstatement fee for a crematory which has allowed its registration to lapse is \$50 for up to 3 years following expiration.

The crematory registration is added to the list of other types of registrations for which there is a \$25 charge for providing a duplicate copy and a \$50 charge for a duplicate wall certificate.

18 VAC 65-20-120 Expiration dates.

The expiration date is established as January 31st of each calendar year.

18 VAC 65-20-130. Renewal of license; registration.

The crematory is added to the listing of persons or entities which must renew according to provisions of this section.

18 VAC 65-20-435. Registration of crematories.

This section establishes the requirement for a person intending to own or operate a crematory to register with the Board at least 30 days prior to opening. It also specifies that an entity providing cremation services directly to the public must be licensed as a funeral service establishment or be a branch of such establishment. This references the current requirement for licensing of funeral establishments.

f. Statement of reasoning for the regulations.

The emergency regulations promulgated by the Board are essential to provide the **fees and a renewal schedule** necessary for operation of a program of registration of crematories, as the agency is required by statute to derive all funds from fees charged to its regulated entities. The statute stipulates only the registration of crematories; the statute authorizes no other requirements, such as inspections or reporting of numbers of cremations.

g. Statement on alternatives considered.

The Board did not consider alternatives to the promulgation of regulations as it was mandated to do so by the statute. It did consider and adopt the least burdensome regulation consistent with the specific provisions of the statutes and with its concern for public health and safety.

The fees established by the Board for the registration of crematories are consistent with those charged to a funeral service licensee, but are less than the registration fee of a surface transportation and removal service or the licensure fee of a funeral service establishment. Therefore, the Board determined that the \$100 fee was the least burdensome and most reasonable.

The regulation in 18 VAC 65-20-435, which specifies that a crematory providing cremation services **directly to the public** must also be licensed as a funeral service establishment or a branch of an establishment, is provided as a clarification of the statute defining the “practice of funeral services” as “engaging in the care and disposition of the human dead, the preparation of the human dead for the funeral service, burial or cremation, the making of arrangements for the

funeral service or for the financing of the funeral service and the selling or making of financial arrangements for the sale of funeral supplies to the public.”

While there has been some opposition expressed to that provision of the regulation, it is the opinion of the Board’s counsel that the Board has interpreted the statutory definition correctly. If a crematory provides its services directly to the public (as opposed to providing contract services to a funeral service establishment), such crematory is functioning as a funeral establishment and must be so licensed.

1. Publication of a NOIRA to replace emergency regulations

The Board of Funeral Directors and Embalmers hereby requests permission to publish a Notice of Intended Regulatory Action to replace the Emergency Regulations with permanent regulations. (NOIRA form to be submitted is attached.)