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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Funeral Directors and Embalmers; Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC65-20-10 et seq.
<b>Regulation title(s)</b>	Regulations of the Board of Funeral Directors and Embalmers
<b>Action title</b>	Periodic Review
<b>Date this document prepared</b>	10/16/18

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The Board intends to amend its regulations governing the practice of funeral services by clarifying certain provisions, updating regulations, and strengthening rules for surface transportation and removal and courtesy cards.

### Acronyms and Definitions

*Please define all acronyms or technical definitions used in the Agency Background Document. .*

N/A

## Mandate and Impetus

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

The mandate for this action is a periodic review that was posted on Townhall and published in the Register of Regulations. The comment period on the periodic review began on May 14, 2018 and ended on June 13, 2018; there were no comments on this chapter.

## Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

**18VAC65-20-10 et seq. Regulations of the Board of Funeral Directors and Embalmers** are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board with authority to promulgate regulations to administer the regulatory system:

**§ 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 (§ [2.2-4000](#) 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.*

In addition, § 54.1-2803 sets out the specific powers and duties of the Board:

**§ 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.

**Purpose**

*Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

The purpose of this regulatory action is to provide clear, enforceable regulations. Both the licensees and the public need clarity on these matters so public health and safety is not jeopardized.

**Substance**

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

Pursuant to its periodic review of regulations, the Board intends to consider the following amendments:

**18VAC65-20-10 et seq. - Regulations of the Virginia Board of Funeral Directors and Embalmers**

- Title change to avoid confusion and to reflect that there are four sets of regulations for the Virginia Board of Funeral Directors and Embalmers. Retitle to Regulations Governing the Practice of Funeral Services.

**18VAC65-20-10. Definitions.**

- Clarify definition for “Branch” or “chapel” or further define “affiliated” or “affiliation.”

**18VAC65-20-50. Posting of license.**

- Clarify that the license shall be posted in each establishment or branch where a licensee practices.

**18VAC65-20-60. Accuracy of information.**

- For consistency with the provision for establishments, require a surface transportation and removal service to notify the board within 14 days of any change in the name of the manager of record.

- Specify that a notice of renewal can be transmitted electronically, consistent with legislation that became effective on July 1, 2018.

**18VAC65-20-70. Required Fees.**

- Clarify fee language related to review and renewal fees for continuing education providers (no change in fees).
- Strike language related to shortfall reduction of fees, which is no longer valid.
- Include fees for inactive status under fee schedules (currently in section 154).

**18VAC65-20-130. Renewal of license; registration.**

- Add a third requirement to this section to require that, in order to renew courtesy card, a courtesy card holder submit verification of a current, unrestricted funeral service license from the applicant's licensing authority(ies).

**18VAC65-20-151. Continued competency requirements for renewal of an active license.**

- Add a subsection E to specify that a licensee shall be exempt from the continued competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

**18VAC65-20-152. Continuing education providers.**

- Clarify changes to the process for Board application and approval of continuing education providers.

**18VAC65-20-153. Documenting compliance with continuing education requirements.**

- Clarify that a licensee must maintain original documentation of continuing education compliance for a period of two years after the annual renewal.

**18VAC65-20-154. Inactive License.**

- Move renewal fees for inactive status to section 18VAC65-20-70 (Required fees). Include reference to 18VAC65-20-70 for relevant fee information.

**18VAC65-20-170. Requirements for an establishment license.**

- Clarify reference to manager of record of the establishment.
- Add language related to affiliation of branch or chapel to main establishment.
- Consider language related to emergency operation of a funeral service establishment out of another facility during an emergency.

**18VAC65-20-171. Responsibilities of the manager of record.**

- Clarify that manager of record is responsible for correction of/seeking correction of any deficiencies found during the course of an inspection.

**18VAC65-20-240. Requirements for funeral service licensure by examination.**

- Clarify that applicants must submit mortuary school transcripts when applying for funeral service licensure.
- Delete the 30-day time requirement for submission of the application package prior to an examination date.

**18VAC65-20-350. Requirements for licensure by reciprocity or endorsement.**

- Remove the term “reciprocity” since licensees from other jurisdictions apply for licensure by endorsement.

**18VAC65-20-400. Registration of surface transportation and removal services.**

- Possibly include a requirement that an applicant for registration provide proof of bonding or liability insurance coverage
- Consider registration of individuals for surface transportation and removal in addition to companies

**18VAC65-20-435. Registration of crematories.**

- Clarify whether a manager of record for a funeral establishment may also serve as the manager of record for a crematory at the same location.
- Consider language for the issuance of a provisional registration to a crematory to allow the crematory to conduct a first cremation for purposes of testing the functioning of new retort equipment; once the retort equipment is deemed functional, the crematory would become fully registered.

**18VAC65-20-436. Standards for registered crematories or funeral establishments relating to cremation.**

- Clarify that the cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph *of the remains* signed by the person making the identification, executed prior to the cremation.

**18VAC65-20-440. Courtesy Cards.**

- Clarify verification language to include submission by an applicant of a verification from each state in which the applicant is or has been licensed, whether current, inactive or expired, with at least one license in current, unrestricted status.
- Add clarifying language that the holder of a courtesy card does not include the right to establish or engage generally in the business of funeral directing and embalming in Virginia to reiterate the practice restriction imposed by the statute.

**18VAC65-20-500. Disciplinary action.**

- Include provision related to inappropriate conduct directed toward interns.

**18VAC65-20-510. Embalming report.**

- Add language stating that, if the embalming was assisted in by mortuary science student(s), the report shall include the name of the students and the signature of their supervisor.

**18VAC65-20-580. Preparation room equipment.**

- Clarify that the means or method for the sterilization or disinfection of reusable instruments be by chemical bath or soak; autoclave (steam); or ultraviolet light.

**18VAC65-20-700. Retention of documents.**

- Clarify wording regarding the retention of documents where there is a change of owner or relocation of an establishment.

**APPENDICES I, II, III**

- Change document formatting and update to disclosure language consistent with state and federal laws and regulations.

### Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

There are no viable alternatives to the regulatory changes being considered. Disclosures to the public, which are required by federal law, are included in the appendices that are attached to the regulations. The Legislative/Regulatory Committee of the Board met on July 12, 2018 to review the regulations and make recommendations for the amendments included in the Substance section of this document.

### Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review. This NOIRA is the result of a periodic review announced on May 14, 2018.

### Public Participation

*Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.*

*Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.*

The Board of Funeral Directors and Embalmers is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board is also 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Elaine Yeatts, 9960 Mayland Drive, Henrico, VA 23233 or [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or by FAX to (804) 527-4434. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

The Legislative/ Regulatory Committee of the Board has served as the panel to review the regulations and make recommendations for amendments.