



Notice of Intended Regulatory Action (NOIRA) 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	Requirements for crematories
Document preparation date	6/15/07

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

As a result of the work of a Task Force on Cremation laws and regulations, the Board intends to amend its regulations for the practice of funeral services to establish standards for crematories and the persons who operate them. While the Board has authority to oversee and inspect crematories, it has not had regulatory standards by which to determine that a facility is not operating in a manner that ensures the integrity of the cremation process and protects those who may come in contact with dead human remains. The goal of the regulatory action is to establish some accountability for the facility, standards for clear identification of remains and authorization to cremate, acceptable and safe cremation practices, and appropriate training for operators.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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, levy fees, 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.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 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...*

In addition to the general powers and duties of a health regulatory board, the Board of Funeral Directors and Embalmers has specific statutory authority as follows:

§ 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.*

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The Board intends to amend existing regulations to consider the following requirements in regulations governing crematories:

- Crematory to name a manager of record
- Training for operators of the crematory, including OSHA standards
- A funeral service licensee to obtain authorization to cremate and the content of an authorization form
- A method for positive identification of remains
- Maintenance of documentation
- Standards for proper storage of remains prior to cremation
- Standards for disposal of unclaimed remains
- A permit to operate the crematory for agencies such as the Department of Environmental Quality
- Acceptable cremation practices, including prohibition on multiple cremations at one time
- A preclusion of the cremation of non-human remains in same retort
- Removal and disposal of radioactive devices and other non-biological materials and devices
- A waiting period after death prior to cremation (with religious practice exception)
- Certification of crematory operators

The Board is acting within its statutory authority to establish standards for the practice of funeral service, including cremation and to determine the qualifications to enable any person to engage in the practice of funeral service and the operation of a funeral service establishment, including a crematory. Standards are necessary to ensure that there is a responsible party for the operation of the crematory and that operators are properly trained for the safe operation of the retort, including meeting OSHA and DEQ standards to protect the employees of the establishment but also persons in the community. Other requirements will ensure that cremation is not performed on the wrong remains or against the wishes of the next-of-kin. With additional regulatory standards, inspectors will be able to ensure cremation is practiced in a manner that respects the dignity of human remains, provides assurance to families, and protects the health and safety of those who may be affected by the practices of a crematory.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The Board appointed a Task Force on Cremation to look at the issues and problems with cremation and crematories, not only in Virginia but nationally. There have been some egregious and well-publicized examples of the failure of crematories and their operators to act in an ethical and appropriate manner. Bodies have been left uncremated, animal remains have been mixed with human remains and the wrong body has been cremated. The Task Force consisted on four board members, representatives of the Virginia Cemetery Association, the Virginia Morticians Association, the Virginia Funeral Director's Association, the Independent Funeral Directors of Virginia, and persons who own crematories and funeral establishments with crematories.

To attempt to protect the public in Virginia from such incidences, the Board believes it must be proactive in establishing standards. The Task Force has met on several occasions to review the model regulations of the Cremation Association of North America (CANA) and to look at laws and regulations in other states, such as Maryland and North Carolina. The draft regulations will likely borrow from language of other states and will be limited in scope to those requirements which the Office of the Attorney General has advised are within the legal authority of the Board.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact on the institution of the family and family stability.