

**CEMETERY AND FUNERAL BUREAU
INITIAL STATEMENT OF REASONS**

Hearing Date: July 22, 2015

Subject Matter of Proposed Regulations: Hearses and First-Call or Pickup Cars; Authorization to Accept or Decline Embalming; Sanitation; Care and Preparation for Burial; Posting Rules; Notice Regarding Casket Disclaimer; Casket Price Lists, Price Tags, Price Ranges and Display; Rental Caskets; Cemetery and Funeral Bureau Notification; Statement of Disclosure of Preneed Agreement

10 Section(s) Affected:

Amend Sections 1209, 1214, 1216, 1221, 1255, 1258, 1258.1, 1258.2, 1258.4
Repeal Section 1258.3

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

The regulations enforced by the Cemetery and Funeral Bureau (Bureau) exist for the protection of California consumers and to inform Bureau licensees of their rights and responsibilities within the scope of practice.

Most of these regulatory sections have not had any substantial regulatory changes made since they were originally enacted. These regulations have been determined, through a series of stakeholder meetings, to be outdated, unclear, cumbersome, and no longer reflective of industry standards and practices.

2. Anticipated benefits from this regulatory action:

The proposed regulatory changes will modernize language to reflect current industry standards and practices, clarify terms and definitions, clearly state consumer rights, and simplify regulatory language. These changes are the culmination of a series of stakeholder meetings where licensees, consumer advocates, and members of the public weighed in on the proposed regulatory language.

Factual Basis/Rationale:

The California State Board of Funeral Directors and Embalmers was established in 1939 with the creation of the Funeral Directors and Embalmers Law. Assembly Bill 910 (Speier, Chapter 381, Statutes of 1995) fully transferred the regulatory operations of the Board of Funeral Directors and Embalmers to the Department of Consumer Affairs (Department). Effective January 1, 1996, the Department succeeded to, and was vested

with, all the duties, powers, purpose, responsibilities, and jurisdiction of the Cemetery Board and the Board of Funeral Directors and Embalmers, and consolidated the functions into the Cemetery and Funeral Programs.

In 2000, Assembly Bill 2888 (Committee on Consumer Protection Governmental Efficiency and Economic Development, Chapter 568, Statutes of 2000) created the Cemetery and Funeral Bureau. Business and Professions Code (BPC) section 7606 authorizes the Bureau to adopt and enforce reasonably necessary rules and regulations relating to the practice of funeral directing and embalming. The protection of the public is the highest priority of the Bureau (BPC section 7601.1). The Bureau achieves its goal of consumer protection through the following primary methods: issuing and renewing licenses; overseeing funeral and cemetery trust funds; investigating complaints; conducting inspections; and disciplining licensees for violations of its laws and regulations. These regulatory changes were determined to be necessary through a series of stakeholder and Bureau Advisory Committee meetings beginning in 2006, and most recently discussed at the June 13, 2013, Bureau Advisory Committee Meeting.

The Bureau has consulted with stakeholders (licensees, consumer advocates, and members of the public) on numerous occasions about updating the current funeral regulations. Bureau Public Advisory Committee meetings in 2005, 2006, 2008, 2010, 2011, 2012, and 2013, included updates to the funeral regulations discussions, and the Bureau held a publicly noticed Proposed Regulations Workshop in August 2012.

The Bureau is proposing the following regulatory changes:

Amend Section 1209 of Article 2 of Title 16 of the California Code of Regulations:

This section currently includes ambulances, which are no longer used as decedent removal vehicles (also known as hearses, first-call or pickup cars). It further states that such vehicles shall be kept clean and sanitary so as not to endanger the public health or safety.

The proposed amendment would strike ambulances from inclusion, and would add “under the control and operation of the funeral establishment” when referencing removal vehicles and equipment to clarify ownership of the vehicle(s) in question. It would also add “noxious” to deleterious odor in describing the conditions the vehicle should be kept free of. This is necessary for the protection of public health and safety and worker safety and more accurately reflects the expectations for the industry.

Amend Section 1214 of Article 3 of Title 16 of the California Code of Regulations:

This section describes how to authorize disposition with or without embalming, including a short definition of embalming and details where a decedent may be transported to for storage or embalming purposes.

The proposed amendment would change the title of the section to clearly state that embalming can be accepted or declined, and that language would be added to the section as well. The current title of the form “Authorization for Disposition With or

Without Embalming” is misleading because the form does not authorize the entire disposition of a decedent, it merely requests approval for embalming or allows embalming to be declined. Therefore, the form title is being changed to “Authorization to Accept or Decline Embalming” and has been assigned a form number and revision date, 12-AUTH (rev. 11/14). In order to reduce paper consumption, the Bureau added language allowing the licensee to print another form, such as the Disclosure of Preneed Agreement required by California Code of Regulation Section 1277.5, on the back of the Authorization to Accept or Decline Embalming form. Revisions on the form include: “Licensed funeral establishment” being replaced by “location” to reflect the availability of decedent storage and/or embalming at locations other than at a funeral establishment (such as a crematory for storage or a bureau approved off-site location for embalming); language regarding fees for transport is deleted as redundant as this information would be included on the contract; and language on the form is added or amended for consistency and clarity, such as changing “Relationship” to “Relationship to Decedent” and “Phone” to “Telephone number”. These changes are necessary to ensure consumers are provided clear and concise information prior to accepting or declining embalming and to inform the consumer of the location of the exact location of the decedent if the body is being stored and/or prepared at a location other than the funeral establishment.

Amend Section 1216 of Article 3 of Title 16 of the California Code of Regulations:

This section defines the type of facilities utilized by funeral establishments for decedents, and sets sanitation standards for those facilities.

The proposed amendment would update the list of facilities to include refrigeration facilities, as bodies can either be embalmed or refrigerated under California law. This is necessary to ensure regulations maintain consistency with statutory authority.

Amend Section 1221 of Article 3 of Title 16 of the California Code of Regulations:

This section discusses the need for the care and preparation of a body for burial or other disposition to be private.

The proposed amendment would modernize the regulation by updating the terms used to describe mortuary science students, by removing references to nurses as unnecessary, and by allowing the person with the right to control disposition under Health and Safety Code section 7100 to authorize any person to be present, not just immediate family members. This is necessary to ensure regulations maintain consistency with statutory authority.

Amend Section 1255 of Article 7 of Title 16 of the California Code of Regulations:

This section details where a placard containing California Code of Regulation Section 1221 must be posted. The locations required correlate to the locations contained in California Code of Regulation Section 1216.

The proposed amendment would include refrigeration facilities along with the current preparation, embalming, and storage room(s). This is necessary to ensure regulations maintain consistency with statutory authority.

Amend Section 1258 of Article 7 of Title 16 of the California Code of Regulations:

This section defines what must be stated regarding a sealing device on a casket having such a device or represented as having one, and where the statement must be included and in what font size.

The proposed amendment modifies the casket disclaimer by deleting excess verbiage and simplifying the language. It also ensures that the following statement “There is no evidence that any casket represented as having protective features, which may include a gasket, will preserve human remains.” is placed on the Casket Price List (CPL) when a casket or caskets having a sealing device are offered for sale, and that those caskets are identified. The CPL is given to the consumer for retention, so the requirement that the same statement be on a separate card on or in a physically displayed casket, or at the beginning of a photographically displayed casket catalog, is redundant and therefore deleted. These changes are necessary to ensure consumers are provided clear and concise information when considering funeral goods and services available to purchase.

Amend Section 1258.1 of Article 7 of Title 16 of the California Code of Regulations:

This section details the CPL described by Business and Professions Code section 7685 and 7685.1, including color and composition description requirements.

The proposed amendments would delete the provision in subdivision (b) requiring the exterior wood color of a casket to be described as light, medium, or dark. The Bureau has not received consumer complaints regarding this issue, and it has proven unwieldy and confusing to licensees and consumers alike. In subdivision (c)(1), the Bureau finds that requiring all caskets “regularly offered for sale” to be included on the CPL is reasonable. A funeral establishment may be able to order hundreds of different caskets upon request, but only offer twenty popular models for sale on a continuous basis. (Subdivision (h) defines “regularly offered for sale” to prevent any confusion.) Further, the requirement that an infant and child casket price range and a rental casket price range be separately listed is confusing, and instead the CPL should include a price range for all caskets offered for sale, and a price range for all alternative containers offered for sale. Subdivision (f) defines “casket” and subdivision (g) defines “alternative container” for clarity. In subdivision (d), “representation of caskets” is added to include the current industry practice of utilizing a display that includes only a representative portion of a casket to save space in the funeral establishment’s casket selection room. These changes are necessary to ensure consumers are provided clear and concise information when considering funeral goods and services available to purchase.

Amend Section 1258.2 of Article 7 of Title 16 of the California Code of Regulations:

This section defines and discusses a rental casket. It also includes a definition of “casket”.

The proposed amendments would delete the definition of casket found in subdivision (b) and move it to California Code of Regulation Section 1258.1. The language in subdivision (a) is edited to reflect the fact that a funeral establishment may or may not offer a rental casket. The necessary subdivisions are lettered to reflect the deletion of (b), and a new subdivision (f), more clearly states that the rental casket needs to be on the CPL and that it needs to be on the funeral goods and services contract when utilized. The contractual requirement negates the need for a separate rental casket agreement, so that portion of the proceeding subdivision is deleted as redundant. These changes are necessary to ensure consumers are provided clear and concise information when considering renting a casket in lieu of purchasing a casket.

Repeal Section 1258.3 of Article 7 of Title 16 of the California Code of Regulations:

This section requires a contract for funeral goods and services offered by a funeral establishment which contains charges for both funeral goods and services and cemetery or crematory goods and services to have the information from Business and Professions Code section 9662 (the contact information for the bureau) printed on the first page.

The proposed repeal of this section would remove requirements that were imposed when the Cemetery Board and the Board of Funeral Directors and Embalmers were two separate entities. Business and Professions Code section 7685.3 was amended by Assembly Bill 408 (Correa, Chapter 305, Statutes of 2001) to require the necessary information on contracts. This is necessary to remove duplicative language from regulation.

Amend Section 1258.4 of Article 7 of Title 16 of the California Code of Regulations:

This section contains a reference to Business and Professions Code section 7685(b), which is no longer accurate due to the passage of Senate Bill 658 (Negrete McLeod, Chapter 386, Statutes of 2011). This is necessary to provide accurate reference in regulation.

The proposed amendment makes a technical change to reference the subdivision.

Underlying Data:

1. Minutes from Advisory Committee Meetings in 2005, 2006, 2008, 2010, 2011, 2012, and 2013.

Business Impact:

These regulations will not have a significant adverse economic impact on businesses. This determination is based on the following facts or evidence/documents/ testimony:

Licensees regulated by the Bureau are not expected to face any new or increased costs due to the proposed regulatory amendments and repeal. Any requirement placed upon a business, such as the provision of California Code of Regulation Section 1214 to complete the Authorization to Accept or Decline Embalming, already exists.

Description of alternatives which would lessen any significant adverse impact on business (which includes small business):

There are no alternatives less burdensome than those proposed.

Economic Impact Assessment:

The Bureau does not anticipate any significant economic impact due to these regulatory changes.

In accordance with Government Code Section 11346.3(b), the Bureau has made the following assessments regarding the proposed added and amended regulations:

Creation or Elimination of Jobs within the State of California

The existing regulations apply to the funeral industry in California, specifically licensed funeral establishments, funeral directors, embalmers, and apprentice embalmers. In defining, clarifying, and streamlining through the amendment of Sections 1209, 1214, 1216, 1221, 1255, 1258, 1258.1, 1258.2, and 1258.4, and the repeal of Section 1258.3 no jobs will be created or eliminated in the State of California.

Creation of New or Elimination of Existing Businesses within the State of California

The existing regulations apply to the funeral industry in California, specifically licensed funeral establishments, funeral directors, embalmers, and apprentice embalmers. In defining, clarifying, and streamlining through the amendment of Sections 1209, 1214, 1216, 1221, 1255, 1258, 1258.1, 1258.2, and 1258.4, and the repeal of Section 1258.3 no new business will be created or existing business eliminated in the State of California.

Expansion of Businesses or Elimination of Existing Businesses within the State of California

The existing regulations apply to the funeral industry in California, specifically licensed funeral establishments, funeral directors, embalmers, and apprentice embalmers. In defining, clarifying, and streamlining through the amendment of Sections 1209, 1214,

1216, 1221, 1255, 1258, 1258.1, 1258.2, and 1258.4, and the repeal of Section 1258.3 no existing business in the State of California will be expanded or eliminated.

Benefits of the Regulation

The proposed amendments to existing regulations found within the California Code of Regulations under the Bureau's jurisdiction exist to make clear the responsibility of licensed funeral establishments, funeral directors, embalmers, and apprentice embalmers. These regulations exist for the protection of California consumers and to inform Bureau licensees of their rights and responsibilities within the scope of practice. As they currently exist, these regulations have been determined, through a series of stakeholder meetings, to be unclear and cumbersome. Therefore, the Bureau is seeking to be responsive to changes in practice by updating the regulations for clarity, and streamlining where possible, including the repeal of a regulation that is duplicative. The proposed amendment and repeal of regulation Sections 1209, 1214, 1216, 1221, 1255, 1258, 1258.1, 1258.2, 1258.3, and 1258.4 is consistent with State law, and will not adversely affect the health of California's residents, worker safety, or the State's environment. The proposed regulatory action will, as described above, benefit the general welfare of California residents by clarifying and streamlining the existing funeral regulations under the jurisdiction of the Bureau.

Specific Technologies or Equipment:

These regulations do not require the use of any specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected or accepted:

Alternative 1: Status Quo. This alternative was rejected since it fails to serve the best interest of consumers and licensees. The modernization and streamlining of the Bureau's regulations is overdue to ensure regulations keep pace with industry standards and practices.