

**TITLE 16. CEMETERY AND FUNERAL BUREAU
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS**

NOTICE IS HEREBY GIVEN that the Cemetery and Funeral Bureau (hereinafter "Bureau") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at the hearing to be held at:

Cemetery and Funeral Bureau
1625 North Market Boulevard
1st Floor Hearing Room
Sacramento, CA 95834
Wednesday, July 22, 2015
1:30 – 2:30 p.m.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on Monday, July 20, 2015, or must be received by the Bureau at the hearing.

The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference:

Pursuant to the authority vested by Sections 7606 and 7616 of the Business and Professions Code (BPC), and to implement, interpret or make specific section 7606, 7615, 7616, 7640, 7641, 7685, 7685.1, 7702, 7704, 7707, and 7745 of said code, the Bureau is considering changes to Division 12 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

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.

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”.

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.

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.

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).

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.

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

This section details the CPL described by BPC 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.

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.

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 BPC 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. BPC section 7685.3 was amended by Assembly Bill 408 (Correa, Chapter 305, Statutes of 2001) to require the necessary information on contracts. Therefore, this section is duplicative and unnecessary.

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

This section contains a reference to BPC section 7685(b), which is no longer accurate due to the passage of Senate Bill 658 (Negrete McLeod, Chapter 386, Statutes of 2011).

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

B. Policy Statement Overview/Anticipated Benefits of Proposal

The regulations enforced by the Bureau exist for the protection of California consumers and to inform the Bureau licensees of their rights and responsibilities within the scope of practice. The Bureau has determined that this regulatory proposal will benefit California consumers and maintain consumer protection by modernizing language to reflect current industry standards and practices, clarifying terms and definitions, clearly stating consumer rights, and simplifying regulatory language.

C. Consistency and Compatibility with Existing State Regulations

After conducting a review for any regulations that would relate to or affect this area, the Bureau has evaluated this regulatory proposal and it is not inconsistent or incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None

Business Impact:

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:

The Bureau currently licenses approximately 6,027 (as of October 5, 2014) funeral establishments, funeral directors, embalmers, and apprentice embalmers in the State of California. There will be no significant impact to the licensees, as the proposed regulatory changes modernizing language to reflect current industry standards and practices, clarifying terms and definitions, clearly stating consumer rights, and simplifying 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.

Cost Impact on Representative Private Person or Business:

The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would not adversely affect small businesses because the proposed changes focus on clarifying and streamlining existing funeral regulations under the jurisdiction of the Bureau.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The Bureau has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and the State's environment:

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.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Cemetery and Funeral Bureau at 1625 North Market Boulevard, Suite S-208, Sacramento, California 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Cheryl Jenkins
Address: 1625 North Market Boulevard, Suite S-208
Sacramento, CA 95834
Telephone No.: (916) 574-8203
Fax No.: (916) 928-7988
E-mail Address: Cheryl.Jenkins@dca.ca.gov

The back-up contact person is:

Name: Linda Kassis
Address: 1625 North Market Boulevard, Suite S-208
Sacramento, CA 95834
Telephone No.: (916) 574-7878
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Web site Access: Materials regarding this proposal can be found at www.cfb.ca.gov.