

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER**

ADMINISTRATIVE LAW DIVISION

Form #3 □

Do Not Mark In This Box

Aug 18 3 17 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Board of Embalmers and Funeral Directors TITLE NUMBER: 6

CITE AUTHORITY: 30-6-1 et. seq.

AMENDMENT TO AN EXISTING RULE: YES NO

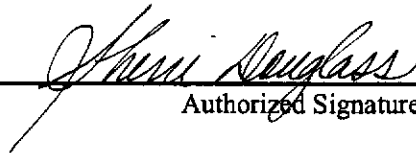
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 3

TITLE OF RULE BEING PROPOSED: Crematory Requirements

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

\$8.00

SUMMARY OF PROPOSED RULE

Title 6

Legislative Rules

Series 3

Crematory Requirements

This rule introduces a new series entitled "Crematory Requirements." The rule focuses on those businesses which operate in part or whole as crematories. These businesses would be considered a type of funeral establishment and would also be required to follow the provisions of 6CSR1 of the Board's legislative rules.

The rule provides definitions of many terms and establishes general provisions for Board operation. The rule prescribes necessary equipment for such facilities, as well as procedures for obtaining permission to cremate, identification of a dead human body, disposition of cremated remains, and other procedures. The rule requires a means for records retention and provides for inspection of such facilities. The rule establishes penalties for violations of the rule.

STATEMENT OF CIRCUMSTANCES

Title 6

Legislative Rules

Series 3

Crematory Requirements

Title 6, Series 3, Crematory Requirements, is a new series. Since the Board's legislative rules were last updated in June 1994, many changes have taken place in the funeral business. Crematories are still new businesses in this state; however, national trends show cremation as a choice in which more and more consumers are taking advantage. Not only can cremation be a less expensive alternative, it is now becoming more acceptable by some religions, allowing consumers more options in planning their funeral services. These types of businesses are most often a division or part of existing, traditional funeral homes, offering not only cremation but funeral services and funeral goods. Few are separate entities which offer only cremation of the body.

Many states have updated their regulations regarding these types of businesses to include basic equipment requirements and minimum cremation procedures in order to prevent bodies that are actually slated for traditional burial from being cremated. Co-mingling of human remains with each other and with animals, such as pets, is also of major concern; most states have banned both. Other states have struggled with how to address unclaimed remains. This rule would address all of these concerns.

Current state requirements are not thorough enough to provide for good consumer protection. There are currently no specific standards in place. Therefore, it is necessary to introduce new regulations designed specifically for crematories so that the Board can effectively regulate the funeral business in order to protect the public.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 18, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Board of Embalmers and Funeral Directors

179 Summers Street, Suite 305

Charleston, WV 25301

558-0302

LEGISLATIVE RULE TITLE: Crematory Requirements

1. Authorizing statute(s) citation 30-6-1 et. seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 3, 2000

b. What other notice, including advertising, did you give of the hearing?

All current licensees and registrants were notified via newsletter which was

mailed July 1, 2000. Additional organizations were notified via letter mailed June

26, 2000. See attached list.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

4:00 p.m. August 1, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X

No comments received 2

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 18, 2000

- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Sherri Douglass, Executive Director

179 Summers Street, Suite 305, Charleston, WV 25301

304-558-0302, Fax 304-558-0660

boeafd@mailcity.com

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

The following persons or groups were notified about the proposed rules, the comment period, and how they could receive copies.

American Association of Retired Persons
American Funeral Consultants
Association for Death Education and Counseling
Better Business Bureau
Cemetery Association (WV)
Cremation Association of North America
WV Department of Health and Human Resource, Medical Examiner and Bureau
for Public Health
WV Department of Health and Human Resource, Vital Registration Office
Federal Trade Commission
Funeral Ethics Association
Hospice Foundation of America, Washington, DC
International Cemetery and Funeral Association
International Conference of Funeral Service Examining Boards
National Funeral Directors Association
National Funeral Directors and Morticians Association
National Selected Morticians
Preferred Funeral Directors International
Pre-Need Associates
Attorney General's Office, Preneed Division
Regulatory Support Services
The American Board of Funeral Service Education
The International Order of the Golden Rule
The National Association of Colleges of Mortuary Science, Inc.
The University of Mortuary Science Education Association
West Virginia Funeral Directors Association
All WV Funeral Establishments
All Licensed Funeral Directors and Embalmers
All Registered Apprentice Funeral Directors and Apprentice Embalmers
All Current Courtesy Card Holders

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Crematory Requirements

Type of Rule: Legislative Interpretive Procedural

Agency: Board of Embalmers and Funeral Directors

Address: 179 Summers Street, Suite 305
Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:

It is predicted that there will be no increased expense to this agency, as the board already employs an inspector. Additional personnel will not be necessary at this time.

3. Objectives of These Rules:

Establish requirements for crematories, such as necessary equipment, operating procedures, and records retention as a means of protecting the consumer.

Rule Title: Crematory Requirements

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

There will be no impact on General Revenue, as this agency is self-sustaining. It is predicted that there will be little or no economic impact on this agency, amounting to less than \$500 in revenue, as there are less than 10 crematories operating currently.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: It is predicted that there will be little or no impact on licensees or registrants, as most crematories will meet the basic equipment requirements. There will be minimum expense involved in setting up the operating procedures.

C. Economic Impact on Citizens/Public at Large.

There should be no economic impact on citizens at large, as the requirements should not impact overall cost of crematory services.

Date: August 18, 2000

Signature of Agency Head or Authorized Representative:

Shemi Neufman

FILED

6CSR3

AUG 18 3 17 PM '00

TITLE 6
LEGISLATIVE RULE
BOARD OF EMBALMERS AND FUNERAL DIRECTORS

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

SERIES 3
CREMATORY REQUIREMENTS

§6-3-1. General.

- 1.1 Scope. - This rule relates to the minimum requirements of crematories.
- 1.2 Authority. - WV Code §30-6-3.
- 1.3 Filing Date. -
- 1.4 Effective Date. -

§6-3-2. Definitions. For the purposes of this rule, crematories are considered funeral establishments and the provisions of 6CSR1, series 1, article 1 of chapter 6 of the West Virginia Board of Embalmers and Funeral Directors shall apply, in addition to the provisions of 6CSR3, series 3, article 1 of chapter 6.

2.1. Arrangements conference. Includes the time spent with the next-of-kin, or other duly authorized or legally responsible person, planning for the funeral and/or final disposition of a dead human body.

2.2. Board. Means the West Virginia Board of Embalmers and Funeral Directors.

2.3. Funeral establishment. For purposes of this rule, means a place of business maintained and operated by a person, partnership, association, corporation or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to such activities that are primarily incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the cremation, of dead human bodies, and any related term which designates activities relating to the shelter, care, custody and preparation of a deceased human body. These funeral establishments, while principally operating as crematories, may also embalm, make arrangements, financial and otherwise, for funeral services, transportation, burial or other disposition of dead human bodies, provided that it meets all requirements for such additional activities under the provisions of 6CSR1, series 1, article 1 of chapter 6.

2.3.1. Branch funeral establishment. Means a funeral establishment which is owned one-hundred percent by, operated by, is a subsidiary of, or otherwise financially connected or controlled by a licensed main funeral establishment. If the preparation of dead human bodies by embalming or cremation is done at the main establishment and the main establishment is within 60 miles of the branch facility, then the equipment for such preparation of dead human bodies is not required at the branch facility.

2.3.2. Main funeral establishment. Means a primary funeral establishment.

2.3.3. A "trade service" or "mortuary service" means a funeral establishment devoted strictly to the preparation and embalming or cremation of dead human bodies, and which may also include the financial arrangements for said embalming and transportation of dead human bodies. A trade service or mortuary service does not offer to the public funeral services, either in the funeral establishment, in religious facilities, or at graveside.

2.4. Embalming. The introduction into the vascular system or hollow organs of a dead human body, by arterial or by hypodermic injection, of any chemical substance, fluids, or gases used for the purpose of preservation and includes the disinfection, preservation and/or restoration of a dead human body.

2.5. Funeral service. Includes the religious, fraternal or civil ceremony performed with the body present at a funeral home, church or other public place and also includes the committal or other dedication ceremony at a cemetery or other place of final disposition.

2.6. Professional services. Includes embalming, cremation, funeral services, and the arrangements conference.

2.7 Person. Means a person, partnership, association, corporation or other organization.

2.8 Registrant. Means a person who holds a certificate of registration issued by this board.

2.9 Licensee. Means a person who holds a license or courtesy card issued by this board.

2.10 Cremated remains. Means all human remains recovered after the completion of the cremation process, which may include but not be limited to the residue of any foreign matter such as casket material, dental work, or eyeglasses that were cremated with the human.

2.11 Cremation. Means any mechanical or thermal process whereby a dead human body is reduced to ashes and bone fragments. Cremation also includes any other mechanical or thermal process whereby human remains are pulverized, burned, re-cremated, or otherwise further reduced in size or quantity.

2.12 Crematory. Means a place of business maintained and operated for compensation by a person, partnership, association, corporation, or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted, in part or whole, to such activities as are incident, convenient, or related to the reduction of dead human bodies to ashes and bone fragments. A crematory is a funeral establishment under the provisions of this article.

2.13 Cremation chamber. Means the enclosed space within which cremation takes place.

§6-3-3. Necessary Equipment. Failure to comply with the following requirements shall result in disciplinary action as outlined in article six (6) of chapter thirty (30) and article one (1) of chapter thirty (30) of W.Va. Code, if not corrected within the allotted time designated by the inspector or any other duly authorized representative of the board.

3.1. A main funeral establishment shall have the equipment for the conduct of cremating and funeral directing and includes but is not limited to:

3.1.1. If a main funeral or branch establishment operates, in whole or part, as a crematory, it must meet the following requirements:

a. have one or more commercially manufactured cremation unit, equipped with an interlock, maintained in good working condition, and in accordance with the division of environmental protection legislative rules 45 CSR 13;

b. have a commercially manufactured mechanical device or processor for grinding, crushing, or pulverizing cremated remains maintained in good working condition; and

c. have an appropriate holding facility for dead human bodies awaiting cremation; unembalmed dead human bodies retained or being held for more than eight hours prior to cremation shall be kept in a refrigeration unit.

3.1.2. A crematory shall have the necessary equipment as outlined in section 4 of these rules, with the following exception. A main or branch funeral establishment operating solely as a crematory, where no embalming is performed, is not required to maintain an embalming room.

§6-3-4. Crematories.

4.1 All funeral establishments operating as crematories, in part or whole, shall abide by the following additional requirements set forth in this section. These additional requirements are subject to inspections, pursuant to section 5 of these rules.

4.2 Written permission to cremate. All licensed crematories shall obtain a permit for

cremation from the legally authorized person who has the legal right to authorize the cremation. All licensed crematories shall obtain a permit for cremation from the county medical examiner, assistant county medical examiner, or the county coroner in whose county jurisdiction death takes place as stated on the death certificate. The authorized crematory may obtain authorization from the office of the chief medical examiner if: (a) the crematory has concerns following authorization by county personnel regarding the identity or cause of death of the decedent or, (b) in cases where the crematory is unable to contact the county medical examiner, assistant county medical examiner, or county coroner of the county in which death takes place. Authorization for cremation must be documented on the appropriate office of the chief medical examiner form (OCME 10).

Authorization for cremation may be requested and received by facsimile, at the discretion of the county medical examiner, assistant county medical examiner, or county coroner. Where the county medical examiner or coroner is unwilling to issue authorization by facsimile, the authorized crematory may request authorization by facsimile from the office of the chief medical examiner, at the discretion of the chief medical examiner or his designee. The operator of the crematory shall not cremate a dead human body prior to receiving the written authorization to cremate from the legally authorized person or the permit for cremation. These two documents must be retained pursuant to the provisions of section 4.6 of these rules.

4.3 Identification of a dead human body. All licensed crematories shall develop, implement, and maintain an identification procedure whereby dead human bodies can be identified from the time the crematory accepts delivery of the remains until the cremated remains are released to a legally authorized person. After cremation, an identifying disk, tab, or other permanent label shall be placed within the cremated remains container before the cremated remains are released from the crematory. This disk, tag, or label shall be made of durable, noncorroding materials. Each identification disk, tab, or label shall have a number that shall be recorded on all paperwork regarding the decedent. The identification disk, tab, or label shall also contain the name of decedent, the date of death, the county and state of death, the date of cremation, and the name of the crematory. This procedure shall be designed to reasonably ensure that the proper body is cremated and that the cremated remains are returned to the appropriate legally authorized person.

4.4 Cremation chamber for human remains. The operator of a crematory shall knowingly cremate only dead human bodies or human remains in a cremation chamber, along with the cremation container and a sheet or pouch utilized for disease control. No operator of a crematory shall knowingly use or allow the use of the same cremation chamber for the cremation of dead human bodies and animals.

4.5 Cremation procedures.

4.5.1. Privacy. Only authorized crematory personnel shall be permitted in the cremation area while any dead human body is in the cremation area awaiting cremation, in the cremation chamber, being removed from the cremation chamber, or being processed and placed in a cremated remains container. A sign marked "private" shall appear at all entrances to the cremation area. If the family of the decedent wishes to view the body, an area designated for such use will be provided,

and shall not be a part of the cremation area. The designated area shall be maintained in a clean and sanitary condition.

4.5.2. Removal of objects from the dead human body. No operator of a crematory shall remove any dental gold, body parts, organs, or other items of value from a dead human body prior to the cremation or from the cremated remains after cremation except with the express written permission from the legally authorized person with the right to control such objects. The operator shall identify jewelry and ask the legally authorized person if jewelry is to be removed, prior to cremation. This information shall be maintained as part of the records.

4.5.3. Commingling of human remains prohibited. Except with the express written permission of the legally authorized person with the right to control the disposition, no crematory shall cremate more than one dead human body at the same time and in the same cremation chamber, or introduce a second dead human body into a cremation chamber until reasonable efforts have been employed to remove all fragments of the preceding cremated remains, or cremate a dead human body and other human remains at the same time in the same cremation chamber. The fact that there is incidental and unavoidable residue in the cremation chamber used in a prior cremation is not a violation of this provision.

4.5.4. Removal from the cremation chamber. Upon completion of the heat and flame reduction process, reasonable efforts shall be made to remove, from the cremation chamber, all of the recoverable cremated human remains and non-combustible materials or items. Insofar as is possible, the non-combustible materials or items shall be separated from the cremated human remains and disposed of, in any lawful manner, by the crematory. The cremated human remains shall be placed in an appropriate container to be transported to the processing area.

4.5.5. Commingling of human remains prohibited. Except with the express written permission of the legally authorized person with the right to control the disposition, no crematory shall mechanically process more than one dead human body at the same time and in the same mechanical processor, or introduce a second dead human body into a mechanical processor until reasonable efforts have been employed to remove all fragments of the preceding cremated remains, or mechanically process a dead human body and other human remains at the same time in the same mechanical processor. The fact that there is incidental and unavoidable residue in the mechanical processor used in a prior cremation is not a violation of this provision.

4.5.6. Processing the cremated remains. The cremated human remains shall be reduced by a motorized device to a granulated appearance appropriate for final disposition and placed in a cremated remains container along with the appropriate identifying disk, tab, or label.

4.5.7. Container of sufficient capacity and durability. If a cremated remains container is of insufficient capacity to accommodate all cremated remains of a given dead human body, subject to directives provided in the written authorization to cremate, the crematory shall place the excess cremated remains in a secondary cremated remains container and attach the second container, in a

manner so as not to be easily detached through incidental contact, to the primary cremated remains container. The secondary container shall contain a duplicate of the identification disk, tab, or label that was placed in the primary container and all paperwork regarding the given body shall include a notation that the cremated remains were placed in two containers. All containers shall be closed, rigid, and leak resistant.

4.5.8. Disposition of accumulated residue. Every crematory shall provide for the removal and disposition in accordance with local, state, and federal laws of any accumulated residue from any cremation chamber, mechanical processor, container, or other equipment used in cremation.

4.5.9. Release of cremated remains. Following completion of the cremation, the inurned cremated remains shall be released according to the instructions given on the written authorization to cremate. If the cremated remains are to be shipped, they must be securely packaged and transported via a method which has an internal tracking system available and which provides for a receipt signed by the person accepting delivery. Where there is a dispute over release or disposition of the cremated remains, a crematory may deposit the cremated remains with a court of competent jurisdiction pending resolution of the dispute or retain the cremated remains until the legally authorized person with the right to control disposition presents satisfactory indication that the dispute is resolved.

4.5.10. Unclaimed cremated remains. If, after sixty (60) calendar days following the inurnment, the cremated remains are not claimed or disposed of according to the written authorization to cremate, the crematory shall give written notice, by certified mail, to the person who signed the authorization to cremate, that the cremated remains are unclaimed and requesting further release directions. Should the cremated remains be unclaimed one hundred eighty (180) calendar days following the mailing of the written notification, the crematory may dispose of the cremated remains in an appropriate manner and in accordance with local, state, and federal laws.

4.6 Records.

4.6.1. Required records. Every crematory shall create and maintain on its premises an accurate record of every cremation provided. The record shall include all of the following information for each cremation;

- a. The name of the person or other funeral establishment delivering the body for cremation;
- b. The name of the deceased and the identification number assigned to the body;
- c. The date of acceptance of delivery;
- d. The names of the cremation chamber and mechanical processor operator;
- e. The time and date that the body was placed in and removed from the cremation chamber;

- f. The time and date that processing and inurnment of the cremated remains was completed;
- g. The time, date, and manner of release of the cremated remains;
- h. The written authorization to cremate, and the name and address of the person who signed the authorization to cremate;
- i. The permit for cremation from the medical examiner, and the date form was presented to the operator of the cremation chamber; and
- j. All supporting documentation, including but not limited to any transit or disposition permits, a photocopy of the death certificate, any documents supporting attempt to deliver unclaimed remains, documents listing objects remaining or removed from the deceased prior to or after cremation.

4.6.2. Retention of records. Records required under subsection 4.6.1 of this section shall be maintained at the crematory for a period of five (5) calendar years after the release of the cremated remains. Following this period and subject to any other laws requiring retention of such records, the crematory may then place the records in storage.

§6-3-5. Inspections.

5.1. Areas of inspections. The Board shall produce an inspection report to use as a guide while inspecting an establishment, a copy of which will be left with the establishment at the conclusion of the inspection and a copy which will be filed in the office of the Board. Areas of inspections shall include those areas outlined in section 12.3 of 6CSR1, in addition to the following:

- 5.1.1 Materials as specified in section 3 of these rules; and
- 5.1.2. Procedures as specified in section 4 of these rules.

5.2. All funeral establishments shall maintain all necessary equipment, as established in section 3 of these rules and as established in 6CSR1, as well as all other materials in a clean, safe, and sanitary condition. All such equipment and materials shall be in good repair and are subject to inspection. The building in which the funeral establishment is located shall also be in good repair and maintained in a clean, safe, and sanitary condition and is subject to inspection.

§6-3-6. Penalties. Any violation of this rule constitutes grounds for the refusal to renew a license or constitutes grounds for the suspension or revocation, or other disciplinary action as outlined in article six (6) of chapter thirty (30) and article one (1) of chapter thirty (30) of W.Va. Code, of any license or certificate issued under the provisions of article six (6) of chapter thirty (30) of W.Va. Code.


Public Comments
Title 6, Series 3

Reg #	Regulation (Quote)	Item of Regulation	Issue	Recommended Solution
§ 2.3	Definition of Funeral Establishment	To regulate crematories	Whereas it is clear that the Board intends for crematories to be licensed as funeral homes, they are not licensed as funeral homes because they have their own set of laws. It is confusing to the public, licensees, and these regulants to use the word "funeral establishment" throughout Series 3.	Please clarify for the public and all regulants that crematories are clearly differentiated from the traditional licensed funeral home and contract services both in the services they offer and also in their scope of practice as regulated by this Board. Please refer to them as crematories in these regulations.
New	General Price List, Urn Price List, Urn Vault Price List, Alternative Container Price List and Cremation Casket Price List.	Public Protection	Whereas the mortuary profession is rapidly expanding, West Virginia might soon see applications for licensure from crematories that work only with funeral homes and crematories that serve the general public yet are not affiliated with any licensed funeral home. For this reason, I do not believe these requirements build in instant consumer protection by way of requirements for price lists.	To prevent re-promulgation of laws in the immediate future, I recommend that crematories be required to have a General Price List, Urn Price List (where applicable) and Urn Vault Price List (where applicable) and a combination Cremation Casket and Alternative Container Price List (where applicable). I recommend that these price list requirements be similar to if not the same as those for retail casket stores.

Reg. #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
New	Urn Price List, Urn Vault Price List, Alternative Container and Cremation Casket Price List.	Public Disclosure	If the Board proposes a new regulation to cover urns, urn vaults, alternative containers and cremation caskets, protective features and product warranties come into effect.	Please consider requiring that the following disclosure be placed on the respective Urn, Urn Vault, Alternative Container and Cremation Casket Price Lists for crematories: "The only warranty on the containers sold by _____ (name of the crematory) is the express written warranty if any, granted by the manufacturer. This crematory, by law, cannot make any warranty, express or implied, with respect to any containers we sell or offer to the public."
New	Itemized Statement of Goods and Services Selected	Public Disclosure	For reasons described earlier in these comments, I believe the public is best served by having a copy of an itemized contract. If a crematory makes arrangements directly with the public, the goods and services it provides would be identical to a Direct Cremation sold by a funeral home.	Please add a requirement for an Itemized Statement of Funeral Goods and Services as the Board has proposed for retail casket stores.

Reg #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
New	Record Retention	Public Protection	If the Board considers the above recommendations for at need contracts and price lists, a retention requirement appears necessary.	Please consider requiring that price lists be kept a minimum of one year after they expire. Please consider a requirement that Itemized Statements of Funeral Goods also be retained for a minimum of one year.
Generic	All pertinent requirement from Series 1 that are also repeated in Series 2	NA	Duplicate Comments	Please consider my comments to Series 1 incorporated by reference to Series 2 as applicable.

Respectfully Submitted,



Meredith P. Partridge
Regulatory Support Services, Inc.



STATE OF WEST VIRGINIA
Board of Embalmers and Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301
304-558-0302
FAX 304-558-0660

August 17, 2000

Meredith Partridge
Regulatory Support Services
PO Box 83
Manakin-Sabot, VA 23103

Dear Ms. Partridge:

On August 16, 2000, the Board reviewed your written comments on the proposed legislative rules regarding each of the proposed rules: §6-1-1 et seq., §6-2-1 et seq., §6-3-1 et seq., and §6-4-1 et seq. Based upon those comments, the Board made several amendments.

Please find enclosed Response, which highlights the amendments.

The Board believes that this amendment satisfies many of your concerns and found your comments to be very helpful. The Board appreciates your input and has attempted to take into consideration all points of view in their pursuit of regulations that meet the Board's duty to protect the public and enforce related regulations.

Sincerely,

A handwritten signature in cursive script that reads "Sherri Douglass".

Sherri Douglass, MSW
Executive Director

Response to Regulatory Support Services

The Board has attempted to incorporate many of your concerns through various amendments. We appreciate all of the good suggestions for changes. Please note that some recommendations for change were not possible or practical at this time. I would like to address as many of those as possible.

§6-1-4.2. Regarding the one year extension of the apprenticeship, the board believes that your recommendation still does not eliminate the subjectiveness of which you speak. Much of what we do can be subjective. It would be difficult to list all the possible reasons for which an apprentice could receive an extension, as each individual situation may vary. We believe that board members are intelligent enough and have enough work experience to know what would be considered "good cause" just as a good employer would know what constitutes an excused absence.

§6-1-10.1. The board did not choose to address this issue at this time, as it did not understand the concern.

§6-1-11.4 - 11.6. Regarding the capitalization of certain words, words in the middle of a sentence are not to be capitalized. This is standard for our state laws.

§6-2-2.3. and §6-3-2.3. The board attempted to clarify the definition. Please see below.

§6-2-4.3.1 and 4.4.1. and §6-3-1 et seq. Regarding the warranty disclaimer, the board has been informed by the Office of the Attorney General that such a statement, as you suggest, is not legal in our state as it violates implied warranty laws. Therefore, we would not attempt to supercede an existing law which is out of our bounds of jurisdiction.

§6-3-1 et seq. Regarding the inclusion of price lists for urns, urn vaults, and cremation caskets, the board will address those matters in future rules. We realize that these changes are not going to happen over night and this will be a process which will last for a few years. The board will continue to consider this suggestion in future proposed rules.

§6-3-1 et seq. Regarding the inclusion of Statement of Goods and Services, this is irrelevant as Series One of the proposed legislative rules addresses this. And crematories would be required to not only follow the regulations in Series Three, but also regulations in Series One.

§6-4-1 et seq. Regarding a toll free phone number. While the board sees this as a well-intentioned idea, the funding at this time does not provide for such a number. We will consider it for the future.

§6-4-2.10 and 3.6.1. Regarding due process, the board believes that the proposed procedures do not interfere or burden the licensee's right to due process. Additionally, the use of the word "may" will remain because the process is one that is not black and white, step-by-step. Many things can happen during the course of an investigation and circumstances of a case will vary with each case. Therefore, to attempt to put all cases into a "cookie cutter" form would be difficult. There must be some leeway for the board throughout the process to provide for various options for resolution.

Please note the following: **"Strikethroughs"** suggest deletion of language
"Highlights" suggest new language

Amendments Response to Regulatory Support Services Title 6, Series 1

§6-1-2. Definitions.

2.1. **Arrangements conference.** Includes the time spent with the next-of-kin, or other duly authorized or legally responsible person, planning and making financial arrangements for the funeral and/or final disposition of a dead human body.

§6-1-3. Licensing Examination.

3.1 An applicant for the state licensing examination shall remit the appropriate fees for examination and shall supply the Board with the following documentation:

3.1.1 A certified copy of a birth certificate establishing the applicant's age at ~~eighteen (18)~~ or over,

c. ~~Two (2) letters from persons who have known the applicant for a minimum of five (5) years preceding application, who are not related to the applicant, and can attest to the applicant's moral character and temperate habits;~~

~~3.12.~~ One of the following:

a. A certified transcript which shows successful completion of an associate degree or sixty (60) semester hours or ninety (90) quarter hours of college credit toward a baccalaureate degree, to be completed by a dean of academic affairs or an equivalent officer of an accredited college or university which offers an associate degree or a baccalaureate degree, and a certified transcript from an approved school of mortuary science which shows successful completion of at least 12 months of study in mortuary science; or

b. A certified transcript which shows successful completion of a bachelor's degree from an approved school of mortuary science for which at least 12 months of study is specifically in mortuary science and equivalent to a diploma program, and for which at least sixty (60) semester hours or ninety (90) quarter hours are in liberal arts.

~~3.13.~~ A certificate of completion of the apprenticeship program as outlined in Section 4 of these rules; and

~~3.14.~~ A certificate issued by the International Conference of Funeral Service Examining Boards showing a passing score of its' examination of not less than seventy-five percent (75%).

§6-1-5. Control of Dead Bodies.

~~5.6.4. Public Transportation equipment. A dead human body may be transported by means of public transportation provided that the body must be properly embalmed and encased in an appropriate container, or by any private vehicle or aircraft or private vehicle or private aircraft that meet the following standards:~~

- a. promotes respect for and preserves the dignity of the dead human body;
- b. shields the body from being viewed from outside of the vehicle;
- c. has ample enclosed area to accommodate an ambulance cot, aircraft ambulance stretcher, casket, alternative container, or cremation container, in a horizontal position;
- d. is so designed to permit loading and unloading of the body without excessive tilting of the casket, or other container which holds the body;
- e. if used for the transportation of more than one body at one time, the vehicle or aircraft must be designed so that a body or container does not rest directly on top of another body or container, and that each body or container is secured in such a manner as to prevent the body or container from excessive movement within the vehicle.

~~5.6.5. Transportation procedures. A dead human body transported via public transportation or private vehicle must be placed in a carrying container adequate to prevent seepage of fluids and escape of offensive odors.~~

~~a. Public transportation. When a dead human body is transported by public transportation, it must be properly embalmed and enclosed in a casket or alternative container and an appropriate outside shipping container. A body which is transported by means of public transportation must be properly prepared in accordance with the regulations or policies of the transportation carrier.~~

~~b. Private transportation. When transportation is by any private vehicle or aircraft, the outside shipping container may be omitted if the body is encased in a casket or alternative container. The casket, or alternative container, and the outside container may both be omitted and, in such case, the body shall be wrapped in a sheet that is impervious to liquids and offensive odors, covered in such a manner that the body cannot be viewed.~~

~~5.6.6. Embalming required. A dead human body that is being transported by public transportation or will not reach its destination within seventy-two (72) hours following death must be properly embalmed. Refrigeration is not considered a form of preservation or disinfection and does not alter the seventy-two hour requirement.~~

~~5.6.7. A dead human body transported via public transportation or private vehicle must be placed in a carrying container adequate to prevent the seepage of fluids and escape of offensive odors.~~

§6-1-6. Health Requirements.

6.2. **Bodies of individuals affected with infections or contagious diseases.** A licensee who has knowledge that a body is affected with infectious or contagious diseases shall closely and personally supervise such bodies affected with infections or contagious diseases. The bodies shall be encased in airtight burial pouches, transfer cases or sealed caskets when transported within the state. Transportation of the bodies across the borders of this State, whether they are transported into or out of this State, shall require, in addition to the foregoing requirement, embalming, treatment and disinfection of the body cavities and orifices. Body cavities and orifices shall also be treated and disinfected.

§6-1-8. Price Disclosure.

8.1. **General Price and Information List.** All funeral establishments shall comply with the current Federal Trade Commission, Trade Regulation Rule for Funeral Industry Practices, 16 CFR Part 453.

8.2. **Required Records.** The following documents shall be maintained by the funeral establishment for a minimum of one year after expiration: General Price List, Casket Price List, Outer Burial Container Price List, Statement of Goods and Services.

§6-1-9. Advertising and solicitation, applicable to all persons licensed or registered by this board.

9.1. All advertising shall comply with the requirements set forth in article six (6) of chapter thirty (30) of W. Va. Code.

9.2. No licensee, registrant, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall use or sponsor the use of any false, misleading, untrue or deceptive advertising in any manner whatsoever.

9.2.1. If the words "Free," "Without Charge" or other words with similar connotations have the effect of misleading the public, then their use will shall be considered false and misleading by the Board.

§6-1-11. Supervision Required of Licensee and Registrant.

11.4. **Funeral Directing.** A funeral director, licensed by this state, shall be responsible for, be present at, and directly supervise any funeral service conducted for compensation within the state.

11.5. **Embalming and cremation.** An embalmer, licensed by this state, shall be present at and directly supervise any embalming operation performed within the state. Only licensed embalmers or registered apprentice embalmers may embalm dead human bodies. A funeral director, licensed by this state, shall be present at and directly supervise an cremation of a dead human body within the state.

11.6. **Arrangements conference.** A funeral director, licensed by this state, shall be responsible for and supervise any arrangements conference conducted within the state. A registered apprentice funeral director may be present and participate in the arrangements conference under the general supervision of a licensed funeral director.

11.7. "Direct supervision" means the physical presence and oversight of an activity by a licensed funeral director or embalmer.

11.8. "General supervision" means the general oversight or overall responsibility for an activity by a licensed funeral director or licensed embalmer. General supervision does not require the physical presence of the licensed funeral director or licensed embalmer.

§6-1-16. Fees.

16.4.1. Each additional inspection for funeral establishments found to be out of compliance with the provisions of article 6 of chapter 30 of W. Va. Code and series one of title six legislative rules during the initial yearly inspection.

16.4.2. Missed scheduled appointments with inspector, in which the inspector must return to the funeral establishment on a date other than the date of the original appointment. This fee will only be charged if it is determined that the inspector was not at fault for the missed appointment. If a funeral establishment owner or operator contacts the inspector or the board office prior to the scheduled appointment with a reasonable reason for his inability to be present for the appointment and can provide written documentation supporting his reason, the fee shall not be charged. or the appointment was rescheduled at least one week prior to the date of inspection. This fee is designed to cover the cost of the inspector's expenses.

Amendments
Response to Regulatory Support Services
Title 6, Series 2

§6-2-2. **Definitions.** For purposes of these legislative rules, the following terms shall be construed in the following manner, and shall elaborate on definitions contained in section 4, article 6 of chapter 30 .

2.3. **Funeral Establishment.** ~~For purposes of these rules,~~ means a place of business maintained and operated by a person, partnership, association, corporation, or other organization, located in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and sells only funeral goods for compensation. For the purposes of these rules, funeral establishments ~~defined in this rule do not~~ are not permitted to sell or conduct funeral services or prepare dead human bodies for final disposition, or transport dead human bodies. These funeral establishments are commonly known as "retail sellers," "funeral merchandise stores," or "third party sellers" and shall be permitted only to offer funeral goods for sale.

2.8 **Funeral Goods Provider.** Means any person, other than a licensed funeral director or a registered funeral director apprentice, engaged, or holding himself out as engaged in the business of selling or offering to sell funeral goods to the public and shall not use in connection with his name or business the words "funeral director," "undertaker," "mortician," or any other word, term, or title to imply or designate him as a funeral director, undertaker, or mortician. ~~A funeral goods provider is prohibited from the selling or conducting of funeral services, the preparation of dead human bodies for final disposition, and the transportation of dead human bodies.~~

§6-2-4. **Price Disclosure.**

4.1. **General Price and Information List** for funeral establishments that sell only funeral goods. Funeral establishments shall comply with the following requirements, unless otherwise regulated by the current Federal Trade Commission, Trade Regulation Rule for Funeral Industry Practices, 16CFR Part 453:

4.2. **General Price List.**

4.2.1. Maintain a type written or printed General Price List that contains the following information:

- a. The caption: "General Price List;"
- b. The effective date of the General Price List (otherwise known as the "GPL");
- c. Itemized list of all various funeral goods offered for sale, including exact prices or price ranges, from least expensive to most expensive;
- d. Name of the funeral establishment, the majority stock holder's name, the licensed funeral goods provider in charge, full location and mailing address, and telephone number, and
- e. Five disclosures, which include:
 1. The consumer's right to select only the goods desired;
 2. The consumer's right to use alternative containers, if the funeral establishment sells alternative containers;
 3. Basic non-declinable service fees for such things as delivery of goods express shipping, etc. or other service charges. You must disclose this as a separate charge or disclose this as a charge included in the price of the goods;
 4. The availability of a separate Casket Price List, if the funeral establishment sells caskets; and
 5. The availability of a separate Outer Burial Container Price List, if the funeral establishment sells outer burial containers.

4.2.2. The General Price List shall be given to keep to anyone that asks for it, or inquires about the goods offered for sale, in a face-to-face meeting with a representative from the funeral establishment. Telephone inquiries are not considered face-to-face meetings.

4.2.3. During a telephone inquiry about the goods offered for sale, the funeral goods provider or his representative must inform the caller that the General Price List exists and that it is available at the funeral establishment. The funeral establishment is not required to mail the GPL to the caller.

4.2.4. The funeral establishment shall not charge for the General Price List.

~~4.2.5. The General Price List shall be maintained by the funeral establishment for a minimum of one year after it expires.~~

4.3. Casket Price List.

4.3.1. Maintain a type written or printed Casket Price List, if casket or alternative caskets are offered for sale, that contains the following information:

a. The caption: "Casket and Alternative Price List." If the funeral establishment does not offer for sale alternative containers, it may read "Casket Price List;"

b. The effective date of the Casket Price List, (otherwise known as the "CPL");

c. Name of the funeral establishment; and

d. The retail price of each casket and alternative container offered for sale that does not require special ordering, with enough information to identify it, such as the gauge of metal or type of wood, the exterior trim, and interior fabric, manufacturer name, or model number. A photograph or model number alone is not sufficient. Special ordering means purchasing of a casket or container that is not part of the regular offerings to customers.

4.3.2. The Casket Price List shall be made available for review to anyone who, in a face-to-face meeting, asks about caskets or alternative containers offered for sale or inquires about prices. The CPL must be given to the consumer prior to showing these items to the consumer. Individual price cards placed on the caskets or alternative containers can be utilized, but only in addition to the CPL.

4.3.3. If a consumer discusses the option of purchasing an alternative container, it must be disclosed, verbally or in writing, to the consumer that state or local law does not require an alternative casket for direct cremation, in which no formal viewing or visitation will take place with the body present.

~~4.3.4. The Casket Price List shall be maintained by the funeral establishment for a minimum of one year after it expires.~~

4.4. Outer Burial Container Price List.

4.4.1. Maintain a type written or printed Outer Burial Container Price List, if outer burial containers are offered for sale, that contains the following information:

a. The caption: "Outer Burial Container Price List;"

b. The effective date of the Outer Burial Container Price List (otherwise known as the "OBCPL");

c. Name of the funeral establishment; and

d. The retail price of each outer burial container offered for sale that does not require special ordering, with enough information to identify it. A photograph or model number alone is not sufficient. Special ordering means purchasing of an outer burial container that is not part of regular offerings to customers.

e. The following disclosure:

"In most areas of the country, state, or local, law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements."

4.4.2. The Outer Burial Container Price List shall be made available for review to anyone who, in a face-to-face meeting, asks about outer burial containers offered for sale or inquires about prices. The OBCPL must be given to the consumer prior to showing these items to the consumer. Individual price cards placed on the outer burial containers can be

utilized, but only in addition to the OBCPL.

~~4.4.3. The Outer Burial Container Price List shall be maintained by the funeral establishment for a minimum of one year after it expires.~~

4.5. Statement of Goods Selected.

4.5.1. Provide a State of Goods Selected to the consumer at the end of discussion of proposed purchase(s), which contains the following information:

- a. Itemized list of good(s) to be purchased;
- b. The cost(s) of each good to be purchased;
- c. Any cash advances for cash advance goods or deposits to be made toward purchase(s);
- d. Total cost of purchase(s);
- e. Final total cost after deduction of cash advances or deposits; and
- f. The following disclosures:

1. For legal requirements, "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below." The reasons must then be written somewhere on the Statement, if any requirements exist.

2. For cash advance items, "We charge you for our services in obtaining the following cash advance items below." The cash advance items must then be listed, if any exist.

~~4.5.2. The Statement of Goods Selected shall be maintained by the funeral establishment for a minimum of one year after it expires.~~

Amendments Response to Regulatory Support Services Title 6, Series 3

§6-3-2. **Definitions.** For the purposes of this rule, crematories are considered funeral establishments and the provisions of 6CSR1, series 1, article 1 of chapter 6 of the West Virginia Board of Embalmers and Funeral Directors shall apply, in addition to the provisions of 6CSR3, series 3, article 1 of chapter 6.

2.3. **Funeral establishment.** For purposes of this rule, means a place of business maintained and operated by a person, partnership, association, corporation or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to such activities as that are primarily incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the ~~embalming or cremation, funeral, transportation, burial or other disposition of dead human bodies, and includes "trade service," "trade embalmer," mortuary service,"~~ or any related term which designates activities relating to the shelter, care, custody and preparation of a deceased human body. ~~These funeral establishments, while primarily operating as crematories, may also embalm, make arrangements, financial and otherwise, for funeral services, transportation, burial or other disposition of dead human bodies, provided that all requirements for such additional activities are followed, including those provisions set forth in 6CSR1, series 1, article 1 of chapter 6.~~

2.3.1. **Branch funeral establishment.** Means a funeral establishment which is owned one-hundred percent by, operated by, is a subsidiary of, or otherwise financially connected or controlled by a licensed main funeral establishment. If the preparation of dead human bodies by embalming or cremation is done at the main establishment and the main establishment is within 60 miles of the branch facility, then the equipment for such preparation of dead human bodies is not required at the branch facility.

2.3.2. **Main funeral establishment.** Means a primary funeral establishment.



CECIL H. UNDERWOOD
Governor

JAMES A. KAPLAN, M.D.
Chief Medical Examiner

JAMES L. FROST, M.D.
Deputy Chief Medical Examiner
(Morgantown, WV)

ZIA SABET, M.D.
Deputy Chief Medical Examiner
(South Charleston, WV)

PAUL F. MELLEN, M.D.
Assistant Medical Examiner

DONELL K. CASH, Ph. D.
Chief Toxicologist

STATE OF WEST VIRGINIA
OFFICE OF THE CHIEF MEDICAL EXAMINER
701 Jefferson Road
So. Charleston, West Virginia 25309
Phone (304) 558-3920
FAX (304) 558-7886

July 12, 2000

Sheri Douglass
Executive Director
Board of Embalmers and Funeral Directors
179 Summers Street
Suite 305
Charleston, WV 25301

Dear Miss Douglass,

Thanks for the heads-up!

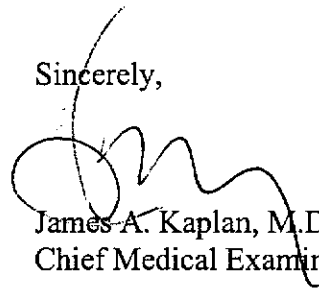
Pursuant to expected amendments to Chapter 6, Article 3, Section 4.2, Written Permission to Cremate: following recent amendments to the Medical Examiner Law, this Office would request that the language be rewritten from "All licensed crematories shall obtain a permit for cremation from the Office of The Chief Medical Examiner" to "All licensed crematories shall obtain a permit for authorization for cremation from the County Medical Examiner, Assistant County Medical Examiner, or County Coroner in whose county jurisdiction death takes place as stated on the death certificate. The authorized crematory may obtain authorization from the Office of The Chief Medical Examiner if:

1. The Crematory has concerns following authorization by county personnel regarding the identity or cause of death of the decedent or,
2. In cases where the crematory is unable to contact the County Medical Examiner, Assistant County Medical Examiner, or County Coroner of the county in which the death takes place.

Authorization for cremation must be documented on the appropriate OCME form (OCME 10). Authorization for cremation may be requested and received by facsimile, at the discretion of the County Medical Examiner, Assistant County Medical Examiner, or Coroner. Where the County Medical Examiner or Coroner is unwilling to issue authorization by facsimile, the authorized crematory may request authorization by facsimile from the State Medical Examiner's Office, at the discretion of the Chief Medical Examiner or his designee".

Miss Douglass, please feel free to contact this office should you have any comments or questions regarding the amended language. Thank you for the courtesy of bringing legislative rule changes to our attention.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Kaplan', written over a vertical line.

James A. Kaplan, M.D.
Chief Medical Examiner

JAK/plc



STATE OF WEST VIRGINIA
Board of Embalmers and Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301
304-558-0302
FAX 304-558-0660

August 17, 2000

Office of the Chief Medical Examiner
Dr. James A. Kaplan, MD
701 Jefferson Road
South Charleston, WV 25309

Dear Dr. Kaplan:

On August 16, 2000, the Board reviewed your written comments on the proposed legislative rules regarding crematory requirements, specifically section 4 of those proposed rules. Based upon those comments, the Board made an amendment, as recommended by your office.

Please find enclosed Response, which highlights the amendment.

The Board believes that this amendment satisfies your concerns regarding the authorization for cremation form (OCME 10). The Board appreciates your input and has attempted to take into consideration all points of view in their pursuit of regulations that meet the Board's duty to protect the public and enforce related regulations.

Sincerely,

A handwritten signature in cursive script that reads "Sherri Douglass".

Sherri Douglass, MSW
Executive Director

Response to Office of the Chief Medical Examiner

The new section shall read as follows:

4.2 Written permission to cremate. All licensed crematories shall obtain a permit for cremation from the legally authorized person who has the legal right to authorize the cremation. All licensed crematories shall obtain a permit for cremation from the county medical examiner, assistant county medical examiner, or the county coroner in whose county jurisdiction death takes place as stated on the death certificate. The authorized crematory may obtain authorization from the office of the chief medical examiner if: (a) the crematory has concerns following authorization by county personnel regarding the identity or cause of death of the decedent or, (b) in cases where the crematory is unable to contact the county medical examiner, assistant county medical examiner, or county coroner of the county in which death takes place. Authorization for cremation must be documented on the appropriate office of the chief medical examiner form (OCME 10). Authorization for cremation may be requested and received by facsimile, at the discretion of the county medical examiner, assistant county medical examiner, or county coroner. Where the county medical examiner or coroner is unwilling to issue authorization by facsimile, the authorized crematory may request authorization by facsimile from the office of the chief medical examiner, at the discretion of the chief medical examiner or his designee. The operator of the crematory shall not cremate a dead human body prior to receiving the written authorization to cremate from the legally authorized person or the permit for cremation. These two documents must be retained pursuant to the provisions of section 4.6 of these rules.

FILED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Dec 29 9 57 AM '00

Staff Counsel: Rita A. Pauley
Date: December 27, 2000
Agency: Board of Embalmers and Funeral Directors
Subject: Crematory Requirements, 6 CSR 3

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

PERTINENT DATES

Filed for public comment: July 3, 2000
Public comment period ended: August 1, 2000
Filed following public comment period: August 18, 2000
Filed LRMRC: August 18, 2000
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule is new. Its stated purpose is to regulate those business that operate in whole or in part as crematories. The business are considered by the Board as a type of funeral establishment. The Board sees a need for this rule in order to protect the public.

This rule provides definitions and establishes the general operating provisions of the Board. It prescribes necessary equipment for crematories, procedures for obtaining permission to cremate, identification of a dead human body, and disposition of cremated remains. The rule requires retention of records and provides for inspection of crematories.

Assuming that the Board has the authority to regulate these businesses the provisions of this rule should be included in 6 CSR 1 or all funeral establishments should be covered by this rule.

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms. The rule provides that "for the purposes fo this rule, crematories are considered funeral establishments and the provisions of 6 CSR 1" will apply. It changes the statutory definition of "funeral establishment" for the purpose of this rule to make it apply only to business that cremate dead human bodies. These business may engage in other activities such as embalming bodies, prepare dead human bodies for burial or cremation, transport bodies and other activities within the statutory definition of funeral establishments.

The definition is inconsistent with the statute. West Virginia Code §30-6-4 defines "funeral establishment" as

...a place of business maintained and operated by a person, partnership, association, corporation, or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to such activities as are incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the embalming, funeral, transportation, burial or other disposition of dead human bodies."

It may be that this broad language is sufficient to grant general regulatory authority over crematories to the Board. If so, it is unnecessary to go from the general to the specific by way of this rule. Clearly, it is improper to make specific changes to the statutory definition for purposes of one rule.

Section 3 proscribes the equipment necessary for operation of a crematorium. This includes such things as a commercially manufactured creation unit and a commercially manufactured device for grinding, crushing or pulverizing the remains.

Section 4 sets forth additional requirements for crematories unrelated to equipment. This section covers obtaining written permission to cremate the body, policy and procedure for identification of dead human bodies and cremation procedures. Commingling of human remains is prohibited without the express written permission of a person legally authorized to control the disposition of the body. The funeral establishment must send written notice to the person legally authorized to dispose of the

body if the remains are not claimed within 60 days of the cremation. If the remains are not claimed or further instructions not given within 180 days of the notice the crematory may dispose of the remains.

Section 5 provides that the Board will inspect funeral establishments. Funeral establishments are required to maintain all necessary equipment specified in this rule and in 6 CSR 1 in a clean, safe and sanitary condition. The building must also be properly maintained and is subject to inspection.

Section 6 is a general penalty section.

AUTHORITY

Statutory authority: W.Va. Code, §30-6-3, which provides, in part, as follows:

...(i) On or before the first day of July, two thousand, the board shall propose for legislative promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code rules necessary to effectuate the purpose of this article including, but not limited to, the subjects to be covered in the examinations and the standards to be attained for licensure; requirements for continuing education, including authorizing continuing education credits through audio or video recordings; and a procedure for the investigation and resolution of complaints against persons licensed under this article...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Possibly.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes. This rule is inconsistent with some of the provisions in 6 CSR 1.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

No.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Possibly.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.