

**TITLE 16. CEMETERY AND FUNERAL BUREAU
DEPARTMENT OF CONSUMER AFFAIRS**

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING

**§ 2310, Regulatory Charge
§ 2311, Filing Fee
§ 2326.05, Application for Hydrolysis Facility License
§ 2326.1, Managers
§ 2329.1, Abandonment of Application for Hydrolysis Facility License
§ 2339, Form and Content of Crematory and Hydrolysis Contracts
§ 2370, Special Trusts**

California Code of Regulations (CCR)

NOTICE IS HEREBY GIVEN that the Cemetery and Funeral Bureau (hereinafter “Bureau” or “CFB”) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. 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 by Monday, August 3, 2020.

The Bureau has not scheduled a public hearing on this proposed action. The Bureau will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

The Bureau may, upon its own motion or at the request of any interested party, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations 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 the 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, 7639.08, 7653, 7712.5, and 7740 of the Business and Professions Code (BPC), and to implement, interpret or make specific BPC sections 7639, 7639.04, 7639.06, 7639.08, 7639.10, 7653.35, 7712.11, and

7730.11, CFB is considering changes to Division 23 of Title 16 of the CCR as described in this Notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The death care industry transacts business with consumers at a time when they are emotionally vulnerable. Protection of the public is mandated to be the highest priority for the CFB in exercising its licensing, regulatory, and disciplinary functions. CFB 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.

CFB licenses, regulates, and investigates complaints against 13 different licensure categories in California, totaling approximately 13,500 licensees. These licensing categories include funeral establishments, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery broker branch, cemetery broker additional, cemetery salespersons, cremated remains disposers, crematories, crematory managers, cemetery managers, and private, nonreligious cemeteries.

In 2017, the California State Legislature passed Assembly Bill (AB) 967 (Gloria, Chapter 846, Statutes of 2017), requiring CFB to license and regulate hydrolysis facilities, hydrolysis facility managers, and to enact requirements applicable to hydrolysis facilities substantially similar to those applicable to crematoria beginning July 1, 2020.

BPC section 7606 authorizes CFB to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Cemetery and Funeral Act (Act). Additionally, as required under AB 967, the primary purpose of this proposal is to implement, interpret, and make specific the provisions of Article 2.7 of the BPC relative to the licensure and regulation of alkaline hydrolysis facilities.

CFB proposes the following changes:

- **Amend CCR section 2310, Regulatory Charge**

Existing law prescribes an annual regulatory charge of \$400 to be paid by a cemetery authority under the Act, and a quarterly charge of \$8.50 for each burial, entombment, or inurnment made during the preceding quarter.

The Bureau proposes to amend the regulation to provide that the annual regulatory charge for a hydrolysis facility is \$900, and the quarterly charge is \$8.50 for each hydrolysis made during the preceding quarter. The Bureau also proposes to require each licensed hydrolysis facility to submit annual chamber maintenance records for the

preceding year, along with the Department of Public Health evaluation (if applicable) for each annual renewal of its license. The Bureau proposes a provision stating that the license of any cemetery authority, crematory or hydrolysis facility shall not be renewed if the licensee fails to pay the quarterly regulatory charge prescribed under this section. The Bureau also proposes to add “and” before “eight dollars” and “fifty cents” in subdivisions (a) and (b) for consistency throughout the regulation.

- **Amend CCR section 2311, Filing Fee**

Existing law provides that an initial filing fee of \$400 applies to original applications for a certificate of authority to operate a cemetery and for a crematory license.

The Bureau proposes to amend the regulation to establish an initial filing fee of \$900 for an original application for a hydrolysis facility. The Bureau proposes to establish an excess investigation fee to be deposited with the Bureau in the amount of no more \$1,400 if investigation costs exceed \$100 per day. The Bureau also proposes to spell out “one hundred dollars” before \$100 in subdivision (a) for consistency throughout the regulation.

- **Adopt CCR section 2326.05, Application for Hydrolysis Facility License**

The Bureau proposes to adopt a regulation setting forth the required contents of and documents required to be submitted with an “Application for Hydrolysis Facility License,” and incorporating the form by reference.

- **Amend section 2326.1, Managers**

Existing law provides that each cemetery must be operated under the supervision of a cemetery manager qualified as such by the Bureau. The applicant for a new certificate of authority is required to designate a cemetery manager and the applicant must submit a written statement from the cemetery manager demonstrating that he or she has two (2) years' experience in the cemetery business, or equivalent experience.

The Bureau proposes to amend the regulation to provide that each licensed hydrolysis facility must be operated under the supervision of a crematory manager designated by the applicant and certified by the Bureau. The Bureau will require a written statement from the hydrolysis chamber manufacturer demonstrating that the crematory manager has received the proper training for the operation of the hydrolysis chamber and the proposed activities of the licensed hydrolysis facility. The applicant will be able to designate an additional crematory manager who has been qualified and certified by the Bureau to succeed the crematory manager in the event the crematory manager is unable to perform duties as required.

- **Adopt Section 2329.1, Abandonment of Application for Hydrolysis Facility License**

The Bureau proposes to adopt a regulation providing that an application for a hydrolysis facility license will be deemed abandoned and all fees previously paid will be deemed forfeited if the applicant refuses or fails to comply with the provisions of sections 2326.05 (requiring an application) and 2326.1(c) (requiring the designation and certification of a crematory manager) within one year of written notification by the Bureau. In addition, this section provides that when the application is deemed abandoned, the applicant must re-submit a new application, fees, and documents.

- **Amend Section 2339, Form and Content of Crematory and Hydrolysis Contracts**

Existing law prescribes the contents of written crematory agreements between parties.

The Bureau proposes to strike outdated statutory citations in the regulation and replace them with current citations. The amendment provides that charges for hydrolysis must be provided in such agreements and provides that agreements for hydrolysis or hydrolysis services must provide the manner in which funds paid on account of such arrangements are to be handled in sufficient detail.

- **Amend Section 2370, Special Trusts**

Existing law provides that cemetery authorities may establish an endowment care fund. Section 2370 provides that trusts established for burial purposes include cremation or other commodities or services furnished at the time of and in connection with cremation or interment.

The Bureau proposes to amend the regulation to add that trusts established for burial purposes include hydrolysis services in addition to cremations.

ANTICIPATED BENEFITS OF PROPOSED REGULATIONS

Hydrolysis provides consumers an alternative method of disposition of human remains to the traditional burial and cremation method. Hydrolysis promotes a more environmentally friendly approach to the method of disposition of human remains for California's residents. As provided in the legislative analyses of AB 967, this proposal seeks to license and regulate hydrolysis facilities and managers. The proposed regulations would implement requirements for hydrolysis facilities to obtain licensure and allow the CFB to continue protecting the public health, safety, and welfare of California's consumers. Hydrolysis promotes worker safety because the hydrolysis facility chamber is self-contained and does not expose the worker to the byproducts. In

addition, this proposal seeks to improve clarity, transparency, and consistency for applicants and licensees within the industry.

DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATION(S)

During the process of developing these regulations and amendments, CFB has conducted a search of any similar regulations of these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

Application for Hydrolysis Facility License, form 23-HF (07/20)

DISCLOSURES REGARDING PROPOSED ACTION

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:

The Bureau expects to incur approximately \$50,000 to create a new license subtype in its system for hydrolysis facility licenses.

The Bureau does not know whether the Department of Public Health will incur any costs from performing evaluations of hydrolysis chambers.

The Bureau does not know how many applications it will receive for hydrolysis facility licenses. However, if 15 applicants apply for licensure in the first year of implementation, the costs of enforcement relating to such licenses will be minor and absorbable.

Cost or 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:

CFB has made an initial determination that the proposed regulatory action will not have an adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Business Reporting Requirement

The proposed regulations impose additional reporting, recordkeeping, or other compliance requirements:

The Bureau has determined that it is necessary for the health, safety, or welfare of the people of the state that the regulations apply to businesses. Each licensee operating a hydrolysis facility shall be required to annually submit proof of the chamber maintenance records and the California Department of Public Health evaluation to demonstrate that the chamber continues to operate as originally approved. In addition, each hydrolysis facility shall report to the Bureau any change in the designated certified crematory manager. This proposal will benefit the public who will receive more accurate information, licensees who will understand what information is required without needing to contact Bureau staff, and ensures that only hydrolysis facilities that continue to meet regulatory standards operate lawfully in this state.

Cost Impact on Representative Private Person or Business:

CFB estimates that there will be a significant cost for businesses or individuals to comply with the proposed regulations. The projected startup costs for getting a business ready to operate varies. However, CFB considers the purchase price of the hydrolysis chamber to be significant, approximately \$140,000 to \$350,000, but easily offset by the potential revenue that can be generated by a hydrolysis facility.

The CFB is unable to project the potential revenue that can be generated by a hydrolysis facility. However, the hydrolysis process creates a new “green” technology method of disposition of human remains in California that may be a large revenue generator. Hydrolysis presents consumers with an alternative to cremation or traditional burial. According to The Cremationist of North America magazine, (Vol. 55, No. 2, published 2019), California is ranked at 76.5 percent in cremations as of 2018, and it is projected to increase to 74.2 percent by 2023. CFB predicts hydrolysis will share a portion of cremation as the preferred method of disposition, as cemeteries are running out of space and burial costs continue to increase over time.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The proposed regulations may affect small businesses, who do not possess the startup

costs to operate a hydrolysis facility. The startup cost for a hydrolysis facility may be cost-prohibitive for a small business. While the cost of the hydrolysis chamber may vary by vendor, the cost to purchase the hydrolysis chamber ranges between \$140,000 to \$350,000. In addition, the cost of obtaining the approval of the hydrolysis chamber from the California Department of Public Health as required under the AB 967 statutory mandate may be burdensome for a small business.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

CFB has made an initial determination that the adoption and amendment of this regulatory proposal will have a minimal adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

CFB estimates 15 applicants will apply for licensure within the first year of implementation and 2 applicants annually thereafter. These applicants will be required to submit the initial application to CFB and pay the initial license fee of \$900. CFB projects this should be easily offset by the revenue generated by a hydrolysis facility once licensure is obtained.

The Bureau has determined that this regulatory proposal will have the following effects:

- It will not create or eliminate jobs in the State of California because this proposed regulation applies to the cemetery industry, specifically licensed hydrolysis facilities. If any jobs are impacted, the types of jobs that may be impacted are those held by persons licensed by CFB to provide cemetery and funeral-related service.
- It will not eliminate existing but will create new businesses within the State of California because the proposed regulations would allow an applicant to file an application for a hydrolysis facility license in California. The proposed regulation does not negatively impact the existing cemetery or funeral industry.
- It will expand but not eliminate existing business because this regulation applies to the cemetery industry in California. CFB projects 15 applicants would apply for licensure the first year.
- The regulatory proposal furthers the goal of CFB which is to continue protecting the public health, safety, and welfare of California's consumers because the regulations are aimed toward reducing hydrolysis that is performed by an unlicensed facility and aligns with the Bureau's mandate of consumer protection.

Additionally, hydrolysis promotes a more environmentally friendly approach to the disposition of human remains for California's residents.

- This regulatory proposal will positively affect worker safety because it establishes licensure and hydrolysis facility criteria, based upon recent statutory mandates.
- This regulatory proposal will positively affect the state's environment because hydrolysis is considered an environmentally friendly choice because there are no direct emissions of harmful greenhouse gasses or mercury released to the atmosphere.

CONSIDERATION OF ALTERNATIVES

CFB 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.

Set forth below are the alternatives that were considered and the reason the alternative was rejected or adopted:

Alternative 1: Maintain the status quo. This alternative was rejected because it would make the CFB non-compliant with the statutory mandates of AB 967.

Alternative 2: Adopt new regulations and amend existing regulatory sections. This alternative was accepted as the most efficient option for CFB to license and regulate hydrolysis facilities, and hydrolysis facility managers in order to comply with AB 967, which mandates CFB to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to CFB in writing relevant to the above determinations at 1625 North Market Blvd., Suite S-208, Sacramento, California 95834.

INITIAL STATEMENT OF REASONS AND INFORMATION

CFB 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, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from CFB at 1625 North Market Blvd., 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 website listed below.

CONTACT PERSON

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

Name: Carolina Sammons
Address: 1625 North Market Boulevard, Suite S-208
Sacramento, CA 95834
Telephone No.: (916) 574-7876
Fax No. (916) 928-7988
Email Address: carolina.sammons@dca.ca.gov

The backup contact person is:

Name: Cheryl Jenkins
Address: 1625 North Market Boulevard, Suite S-208
Sacramento, CA 95834
Telephone No.: (916) 574-8203
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Email Address: cheryl.jenkins@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Carolina Sammons at (916) 574-7876.

Website Access: Materials regarding this proposal can be found at www.cfb.ca.gov.