

Dept. of Labor, Licensing, and Regulation – Title 9

as of September 2016

Office of Cemetery Oversight – Subtitle 34 {09.34.01.00}

Chapter 01 – Registration and Permit Requirements

Scope. {09.34.01.01}

A. This chapter governs the:

- (1) Registration of individuals who operate cemeteries and provide burial goods in the State; and
- (2) Application procedures for persons requiring a permit to operate a cemetery or provide burial goods in this State.

B. This chapter does not apply to:

- (1) A person that owns and operates a bona fide religious, nonprofit cemetery in this State;
- (2) The operation of a funeral establishment in this State, including the sale of burial goods in the ordinary course of the funeral establishment's business;
- (3) A licensed funeral director acting within the scope of a State funeral director's license;
- (4) A mortician acting within the scope of a State mortician's license;
- (5) A not-for-profit organization created before 1900 by an act of the General Assembly;
- (6) A county, city, or municipal corporation that owns and operates a cemetery in the State; or
- (7) A veterans' cemetery operated by the State.

Definitions. {09.34.01.02}

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Balance sheet" means a statement of financial position which presents assets, liabilities, and stockholders' equity or fund balance, and distinguishes current assets and current liabilities from other assets and liabilities.
- (2) "Bona fide religious, nonprofit cemetery" means a cemetery which is owned and operated solely by a religious organization and is established as a nonprofit business entity.

- (3) "Comparative balance sheet" means a statement of financial position which presents assets, liabilities, and stockholders' equity or fund balance, and compares a previous year's results with the most recent year's results.
- (4) "Contract" means an agreement between a consumer and a cemetery or burial goods business for any service or any burial good purchased from a cemetery or burial goods business.
- (5) "Development stage enterprise financial sheet" means a financial statement which is prepared in conformity with generally accepted accounting principles and which includes the following:
- (a) A balance sheet;
 - (b) An income statement;
 - (c) A statement of changes in financial position; and
 - (d) A detailed statement of stockholders' equity.
- (6) "Director" means the Director of the Office of Cemetery Oversight.
- (7) "Office" means the Office of Cemetery Oversight.
- (8) "Registered cemeterian" means an individual who:
- (a) Is registered to operate a cemetery as a sole proprietor or on behalf of a sole proprietor or permit holder; and
 - (b) May employ sales counselors to provide burial space, goods, or services.
- (9) "Registered sales counselor" means an individual employed by a cemetery or burial goods business who provides burial space, goods, or services.
- (10) "Registered seller" means an individual who:
- (a) Is registered to provide burial goods as a sole proprietor or on behalf of a sole proprietor or permit holder to operate a burial goods business; and
 - (b) May employ sales counselors.
- (11) "Responsible party" means a sole proprietor or the individual designated by a partnership, limited liability company, or corporation to be responsible for the operations of a cemetery or burial goods business.
- (12) "Substantial doubt" means that a certified public accountant, after reviewing a business's balance sheet, related note disclosures, and supplementary information, determines that a company's ability to continue as a going concern is in doubt or that a company is unable to continue to meet its obligations as they become due without substantial disposition of assets outside the ordinary course of business, restructuring of debt, externally forced revisions of its operations, or similar actions.

Exception from Permit and Registration Requirements. {09.34.01.03}

A. Except as provided in §§C and D of this regulation, a bona fide religious, nonprofit cemetery is exempt from the permit requirements in this chapter.

B. Except as provided in §§C and D of this regulation, an owner, operator, or employee of a bona fide religious, nonprofit cemetery is exempt from the registration requirements of this chapter.

C. A bona fide religious, nonprofit cemetery in which burials have taken place within the previous 5 years, shall file with the Director, once every 2 years, a statement that includes the name, address, and telephone number of the:

- (1) Cemetery;
- (2) Religious organization that owns and operates the cemetery; and
- (3) Individual who is responsible for the oversight of the cemetery.

D. If the Director determines that a cemetery claiming exemption under Business Regulation, §5-102, Annotated Code of Maryland, is no longer exempt, that cemetery and its owners, operators, and employees shall apply for the required permits and registrations within 30 days of the determination.

Permit—Requirements for Initial Permit of Business. {09.34.01.04}

A. A corporation, limited liability company, or partnership shall receive a permit to operate a cemetery or to provide burial goods in this State if the corporation, limited liability company, or partnership meets the permit requirements in this regulation.

B. A corporation, limited liability company, or partnership shall receive a permit from the Office if the entity:

- (1) Completes an application on a form provided by the Director;
- (2) Pays the nonrefundable permit fees under COMAR 09.34.03;
- (3) Provides the name, address, and phone number of each affiliated cemetery or burial goods business;
- (4) Designates a registered cemeterian or registered seller as the responsible party for each affiliated cemetery or burial goods business provided that the registered cemeterian or registered seller may not be designated as the responsible party for more than a combined total of two cemeteries or burial goods businesses;
- (5) Provides a list of the officers, directors, members, partners, agents, and employees of the entity applying for the permit;

(6) Provides the number of required sales contracts entered into within the business' last 2 fiscal years; and

(7) Complies with the appropriate financial stability requirements under Regulation .06 of this chapter.

Registration—Requirements for Initial Registration of Individuals Who Operate Cemeteries or Provide Burial Goods. {09.34.01.05}

A. An individual shall be registered by the Office if the individual meets the registration requirements of this regulation.

B. An individual shall be registered with the Office if the individual:

(1) Completes a registration application supplied by the Office;

(2) Pays the initial nonrefundable application fee and any additional fees set by the Director under COMAR 09.34.03;

(3) Is 18 years old or older;

(4) Is of good character and reputation, and lists the applicant's previous three employers;

(5) States the name and mailing address of the cemetery or burial goods business with which the applicant is affiliated;

(6) States whether the cemetery or burial goods business with which the applicant is affiliated is owned or controlled by:

(a) A partnership;

(b) A limited liability company;

(c) A corporation; or

(d) A sole proprietorship;

(7) States whether the application is for:

(a) Registered cemeterian;

(b) Registered seller;

(c) Sales counselor; and

(8) If the applicant is a responsible party, demonstrates financial stability under Regulation .06 of this chapter for the permit or sole proprietor application of the cemetery or burial goods business with which the applicant is affiliated.

C. Additional Requirements.

(1) An individual applying for initial registration shall provide the Office with a detailed description of activities including, but not limited to, whether the applicant has:

- (a) Had a license, certification, registration, or permit of the type for which application is being made ever denied, suspended, or revoked by Maryland or any jurisdiction;
- (b) Been convicted of a felony in any state or federal court;
- (c) Been convicted of any drug offense committed after January 1, 1991;
- (d) Been convicted in any state or federal court of a misdemeanor directly related to the ownership or operation of a cemetery or burial goods business;
- (e) Had any civil judgments or settlements within the 5 years before applying for registration which relate directly to the operation of a cemetery or providing burial goods or services;
- (f) Been convicted by a court in this State of violating a usury provision under Commercial Law Article, Title 12, Annotated Code of Maryland, or an unfair and deceptive trade practices provision under Commercial Law Article, Title 13, Annotated Code of Maryland; and
- (g) Filed for bankruptcy.

(2) Additional Information. An applicant shall submit copies of all:

- (a) Charging documents which were issued and docket entries for convictions which occurred before applying for registration, for a misdemeanor or felony referred to in §C(1) of this regulation;
- (b) Disciplinary actions, judgments, and final orders which occurred or were issued, before applying for registration for any regulatory probation, suspension, or revocation, referred to in §C(1)(a) of this regulation, in Maryland or any jurisdiction; and
- (c) Civil judgments or settlements against the applicant within the past 5 years which relate directly to the operation of a cemetery or providing burial goods.

D. An individual may not be designated as the responsible party for more than a combined total of two cemeteries or burial goods businesses.

E. An individual may be issued registrations for affiliations with more than one cemetery or burial goods business if each affiliated cemetery or burial goods business is owned by the same individual or entity.

Business Application—Financial Stability. {09.34.01.06}

A. The following are the categories of cemeteries and burial goods businesses for purposes of determining financial stability:

- (1) A for-profit cemetery or a cemetery which sells burial goods making initial application;
- (2) A nonprofit cemetery which does not sell burial goods making initial or renewal application;
- (3) A for-profit cemetery or a cemetery which sells burial goods applying for renewal of permit;
- (4) A burial goods business or new burial goods business making initial application, or existing burial goods business applying for renewal;
- (5) A new cemetery which sells burial goods or new cemetery which does not sell burial goods; and
- (6) A cemetery which no longer sells goods or space and in which an average of five or fewer interments have occurred within the past 3 fiscal years.

B. To determine financial stability of each category of affiliated cemetery or burial goods business, the responsible party shall:

- (1) Submit an application on a form supplied by the Director;
- (2) Submit a certificate of good standing, issued by the Maryland Department of Assessments and Taxation, or its equivalent as determined by the Director, and dated not earlier than 30 days before the application;
- (3) Submit any additional documentation required as set forth in §§C—H of this regulation; and
- (4) If the applicant is a cemetery, state whether the cemetery is organized as a for-profit or nonprofit operation and whether it sells burial goods.

C. The responsible party for a cemetery described in §A(1) of this regulation shall submit:

- (1) A balance sheet; and
- (2) A review by a certified public accountant retained by the affiliated cemetery, prepared in accordance with generally accepted accounting principles, as to the financial stability of the cemetery.

D. The responsible party for a cemetery described in §A(2) of this regulation shall submit an affidavit which states that the cemetery does not sell burial goods and has nonprofit status.

E. The responsible party for a cemetery in §A(3) of this regulation shall submit:

- (1) A comparative balance sheet; and
- (2) A review by a certified public accountant retained by the affiliated cemetery, prepared in accordance with accepted accounting principles, as to the financial stability of the cemetery.

F. The responsible party for a burial goods business in §A(4) of this regulation shall submit the documents required by §B(1) and (2) of this regulation.

G. Development Stage Enterprise Financial Sheet.

(1) The responsible party for a cemetery described in §A(5) of this regulation shall submit a development stage enterprise financial sheet, prepared in accordance with generally accepted accounting principles, by a certified public accountant retained by the affiliated cemetery.

(2) If the certified public accountant retained by the affiliated cemetery has substantial doubt about the reporting entity's ability to continue in business beyond 1 year from the development stage enterprise financial sheet, the certified public accountant shall specifically reference this concern in the development stage enterprise financial sheet.

H. The responsible party for a cemetery described in §A(6) of this regulation shall submit an affidavit stating that the cemetery no longer sells space or goods and that there has been an average of five or fewer interments per year in the past 3 fiscal years.

I. The balance sheet and the comparative balance sheet in this regulation shall include:

(1) Note disclosures which, if applicable to the affiliated cemetery or burial goods business, shall include:

(a) A description of how cemetery roadways, garden features, and other features of the cemetery are accounted for, whether as fixed assets and depreciated, or as cost of the grave space inventory and part of cost of sales as spaces are sold,

(b) The method of providing for allowance for cancellations on installment contracts,

(c) The method of accounting for developed burial gardens, constructed mausoleum crypt or niche inventories, and related cost of sales,

(d) Receivables sold with recourse,

(e) The method of accounting for preconstruction sales of burial gardens, mausoleum crypts, or niche spaces,

(f) A description of how the obligation for undelivered merchandise sold as preneed is accounted for,

(g) The method of recognizing preneed sales of services and related costs,

(h) The nature and amount of any perpetual care assets included in the classified balance sheet, which may or may not be in accordance with generally accepted accounting principles,

(i) The existence and nature of any nonstatutory trust funds,

(j) Loans or other amounts receivable from, or payable to, merchandise and service trust funds or perpetual care trust funds not otherwise reported on the face of the classified balance sheet or in the supplementary information, and

(k) A description of loans or other amounts receivable from, or payable to, shareholders, directors, trustees, or officers; and

(2) Supplementary information which, if applicable to the affiliated cemetery or burial goods business, shall include:

(a) Amounts of installment contracts receivable for which customer payments are more than 120 days beyond their scheduled payment dates and the dollar amounts that are beyond the 120 days, and

(b) Details of liabilities due upon collection of final payment on installment contracts receivable.

J. The balance sheet and comparative balance sheet, related note disclosures, and supplementary information submitted to the Office shall be that of the most recently ended fiscal year of the affiliated cemetery. The comparative balance sheet shall also include a comparison with the statements submitted for the reported fiscal year in the previous application.

K. If the certified public accountant has substantial doubt about the reporting entity's ability to continue in business beyond 1 year from the balance sheet date, the certified public accountant shall specifically reference this concern in the review report or related note disclosures, or both.

L. If the cemetery or burial goods business is owned by a publicly traded company, or is owned by a company or individual that normally reports its financial statements on a consolidated basis, the balance sheet may be prepared on a combined basis for all of its cemeteries or burial goods businesses located in Maryland, only if the publicly traded company, company, or individual that owns multiple cemeteries or burial goods businesses guarantees its obligations to consumers among all of its Maryland properties or businesses that are included in the combined report.

M. The Office may waive the financial stability requirement of this regulation only if the affiliated cemetery or burial goods business has fulfilled the financial stability requirements of this regulation within the past 2 years.

Change of Information. {09.34.01.07}

The responsible party shall notify the Office of any change in the information provided in the application for a permit or registration either before or after the issuance of a permit or registration within 1 week from the date of a change.

Setting of Fees. {09.34.01.08}

All fees shall be set by the Director. The fee schedule is set forth in COMAR 09.34.03.

Renewal. {09.34.01.09}

A. A person who is registered or permitted with the Office may renew registration or a permit every 2 years beginning on a date specified by the Office in the following manner:

(1) Complete the renewal application on a form supplied by the Director;

- (2) Pay the renewal fee set in COMAR 09.34.03;
- (3) Meet the initial registration or permit requirements under Regulations .04, .05, and .06 of this chapter;
- (4) Submit the documentation required by Regulation .06 of this chapter, and
- (5) If a balance sheet is required, submit a comparative balance sheet, related note disclosures, and supplementary information based on the requirements for a comparative balance sheet of Regulation .06 of this chapter accompanied by a review report prepared by a retained certified public accountant.

B. Before the expiration date of the registration or permit, a registrant or permit holder shall complete and return the renewal form and renewal fee according to instructions. After the expiration date, if a registrant or permit holder has not yet applied for renewal, the registrant or permit holder is no longer authorized to engage in the operation of a cemetery or to provide burial goods in this State.

C. If a registrant or permit holder completes and returns the renewal form before the deadline established by the Office, and the Office does not renew the registration or permit before the registration or permit expires, the registrant or permit holder is considered to be actively registered or permitted until receipt from the Office of either a renewed registration or permit or a notice of denial of registration or permit.

D. If a registrant or permit holder applies for renewal past the renewal deadline established by the Office, the registrant or permit holder shall pay the renewal fee plus the late renewal fee under COMAR 09.34.03.

Lapsed Registration. {09.34.01.10}

A person who has been registered or permitted by the Office and who has allowed the registration or permit to lapse for at least 6 months may apply for registration or a permit in the following manner:

- A. Complete an initial registration or permit application on a form supplied by the Office;
- B. Pay the initial registration or permit fee and the late renewal fee under COMAR 09.34.03;
- C. Meet the initial registration or permit requirements under Regulations .04, .05, and .06 of this chapter;
- D. Submit the documentation required by Regulation .06 of this chapter;
- E. If a balance sheet is required, submit a comparative balance sheet, related note disclosures, and supplementary information based on the requirements for a comparative balance sheet of Regulation .06 of this chapter accompanied by a review report prepared by a retained certified public accountant; and
- F. Provide a full, written explanation to the Office detailing the reasons why the registration or permit was allowed to expire and why registration or a permit is now sought.

Hearings. {09.34.01.11}

A. Registration or Permit Denial. An applicant, registrant, or permit holder applying for an initial or renewal registration or permit may be denied approval subject to the hearing provisions of Business Regulation Article, §5-311, Annotated Code of Maryland, for any of the grounds listed in Business Regulation Article, §5-310, Annotated Code of Maryland.

B. Hearing Before Director.

- (1) Except as otherwise provided in §B(2)—(6) of this regulation, all contested case hearings before the Director shall be governed by COMAR 09.01.02.
- (2) In addition to the actions provided in COMAR 09.01.02.03C, the Director shall attempt to negotiate a settlement of a complaint between the complainant and a registrant or permit holder. If the Director is unable to negotiate a settlement of a complaint, the Director may, at the request of either party, refer the complaint to the Office of the Attorney General or the Office of Administrative Hearings for binding arbitration, if both parties agree to binding arbitration.
- (3) An applicant who has been notified that a new or renewal registration or permit has been or may be denied and who requests a hearing before the Director must file the request for a hearing not later than 30 days after the date the notice or proposed action was mailed.
- (4) The Director shall send the hearing notice described in COMAR 09.01.02.07B at least 10 days before the hearing, or, if the parties have agreed to a date for which 10 days notice cannot be given, at the earliest time possible.
- (5) The notice to an applicant that a new or renewal registration or permit has been or may be denied shall state that the proposed action of the Director shall be affirmed if:
 - (a) A hearing is not requested within 30 days after the date the notice of proposed action was mailed; or
 - (b) The applicant fails to appear for the hearing after requesting a hearing.
- (6) If, after a hearing, the proposed action of the Director is upheld, the appellant shall pay the hearing costs as described in COMAR 09.34.03.03F.

C. Hearings Delegated to the Office of Administrative Hearings. All contested case hearings delegated to the Office of Administrative Hearings shall be governed by COMAR 09.01.03.

Display of Registration or Permit. {09.34.01.12}

A registrant or permit holder shall display the registration or permit conspicuously at each business address of the registrant or permit holder.

Administrative History. {09.34.01.9999}

Effective date: December 28, 1998 (25:26 Md. R. 1922)

**Chapter revised as an emergency provision effective September 1, 2001 (28:19 Md. R. 1676);
emergency status expired March 1, 2002**

Chapter revised effective March 18, 2002 (29:5 Md. R. 503)

Regulation .04B amended effective February 13, 2006 (33:3 Md. R. 241)

Regulation .05D, E adopted effective February 13, 2006 (33:3 Md. R. 241)

Regulation .11 amended effective November 23, 2006 (33:23 Md. R. 1794)

Office of Cemetery Oversight – Subtitle 34 {09.34.02.00}

Chapter 02 – Perpetual Care

Scope. {09.34.02.01}

This chapter governs each sole proprietor registered cemeterian or permit holder who is required to have a perpetual care trust fund and identifies the information which must be provided to the Office of Cemetery Oversight as part of the perpetual care trust report.

Definition. {09.34.02.02}

A. In this chapter, the following term has the meaning indicated.

B. Income of a Perpetual Care Trust Fund.

(1) "Income of a perpetual care trust fund" means interest or dividends earned on the perpetual care trust fund.

(2) "Income of a perpetual care trust fund" does not include realized capital gains of a perpetual care trust fund.

Perpetual Care Report. {09.34.02.03}

A. Each sole proprietor registered cemeterian or permit holder subject to the perpetual care trust requirements of Business Regulation Article, Title 5, Subtitle 6, Annotated Code of Maryland, shall file a perpetual care trust fund report with the Director of the Office of Cemetery Oversight within 120 days after the close of each calendar or other fiscal year chosen by the sole proprietor registered cemeterian or permit holder.

B. The perpetual care trust fund report shall:

(1) Be on the form that the Director requires and include:

(a) The name of the sole proprietor registered cemeterian or permit holder;

(b) Each location of the sole proprietor registered cemeterian or permit holder;

(c) The amount of money in each perpetual care trust fund at the beginning of the calendar or other fiscal year chosen by the sole proprietor registered cemeterian or permit holder;

(d) The amount of money that the sole proprietor registered cemeterian or permit holder received during that year that is subject to the trust requirements of Business Regulation Article, Title 5, Subtitle 6, Annotated Code of Maryland;

(e) The amount of money actually deposited into each perpetual care trust fund in that year;

(f) The amount of money spent from the perpetual care trust fund during that year to provide care, maintenance, administration, and embellishment of each cemetery, except for money used for the care of monuments and memorials;

(g) The name and address of each trustee;

(h) If an individual trustee, proof of a fidelity bond from a recognized bonding institution, authorized to do business in the State, in an amount at least equal to the trust fund, and which meets the requirements of Business Regulation Article, Title 5, Subtitle 6, Annotated Code of Maryland; and

(i) If not previously submitted, a copy of the current written trust agreement between the sole proprietor registered cemeterian or permit holder and the trustee whose terms conform to Business Regulation Article, Title 5, Subtitle 6, Annotated Code of Maryland.

(2) Be certified as to correctness by a certified public accountant retained by the cemetery;

(3) Be accompanied by a trustee's summary statement of assets; and

(4) Be accompanied by a fee of \$25.

Realized Capital Gains of a Perpetual Care Trust Fund. {09.34.02.04}

Realized capital gains of a perpetual care trust fund are not income of the perpetual care trust fund and shall be deposited in the perpetual care trust fund as principal.

Administrative History. {09.34.02.9999}

Effective date: February 13, 2006 (33:3 Md. R. 241)

Office of Cemetery Oversight – Subtitle 34 {09.34.03.00}

Chapter 03 – Fees

Registration Fees. {09.34.03.01}

A. Initial registration fees are as follows:

- (1) Registered cemeterian/registered seller who is a sole proprietor of a cemetery or burial goods business — \$150 plus \$15 per sales contract of \$250 or more entered into within the business' past 2 fiscal years;
- (2) Registered cemeterian/registered seller who is not a sole proprietor of a cemetery or burial goods business — \$150;
- (3) Registered cemeterian who operates a nonprofit cemetery which does not sell burial goods — \$50;
- (4) Sales counselor — \$100.

B. Registration renewal fees are as follows:

- (1) Registered cemeterian/registered seller who is a sole proprietor of a cemetery or burial goods business — \$150 plus \$15 per sales contract of \$250 or more entered into within the business' past 2 fiscal years;
- (2) Registered cemeterian/registered seller who is not a sole proprietor of a cemetery or burial goods business — \$150;
- (3) Registered cemeterian who operates a nonprofit cemetery which does not sell burial goods — \$50;
- (4) Sales counselor — \$100.

C. The late renewal fee is \$100.

Permit Fees. {09.34.03.02}

Permit fees are as follows:

- A. Initial permit fee — \$200 plus \$15 per sales contract of \$250 or more entered into within the business' past 2 fiscal years;

B. Permit renewal fee — \$200 plus \$15 per sales contract of \$250 or more entered into within the business' past 2 fiscal years;

C. Initial permit fee for a nonprofit cemetery which does not sell burial goods — \$50;

D. Permit renewal fee for a nonprofit cemetery which does not sell burial goods — \$50;

E. Late renewal fee — \$100.

Other Fees. {09.34.03.03}

Other fees are as follows:

A. Replacement of registration — \$50;

B. Replacement of permit — \$50;

C. Returned check fee — \$50;

D. Annual perpetual care trust report fee — \$25;

E. Annual preneed sales trust report fee — \$25;

F. Hearing costs described in Business Regulation Article, §5-312(h), Annotated Code of Maryland, shall be determined to be the cost of a court reporter and the transcripts ordered by the Office or by the Office of the Attorney General for the purpose of presenting a case alleging violation of Business Regulation Article, §5-310, Annotated Code of Maryland, before the Office or the Office of Administrative Hearings;

G. Additional copy of registration — \$50;

H. Additional copy of permit — \$50;

I. Business name change — \$25;

J. Personal name change — \$25; and

K. Business address change — \$25.

Administrative History. {09.34.03.9999}

Effective date: December 28, 1998 (25:26 Md. R. 1923)

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Chapter revised effective April 10, 2006 (33:7 Md. R. 668)

Regulation .01A, B amended effective April 29, 2013 (40:8 Md. R. 723)

Regulation .02A, B amended effective April 29, 2013 (40:8 Md. R. 723)

Regulation .03D, E amended effective October 22, 2007 (34:21 Md. R. 1914)

Regulation .03I—K amended effective September 26, 2016 (43:19 Md. R. 1072)

Office of Cemetery Oversight – Subtitle 34 {09.34.04.00}

Chapter 04 – Code of Ethics and Professional Standards

Scope. {09.34.04.01}

This chapter governs any person who holds a registration or permit to operate a cemetery or to provide burial goods in this State.

Definitions. {09.34.04.02}

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) Burial Space.

(a) "Burial space" means land or space in a structure used or to be used for human interment.

(b) "Burial space" includes an interment right in the land or space.

(2) Consumer.

(a) "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods, consumer services, consumer realty, or consumer credit.

(b) "Consumer" includes an individual directed by the consumer, or properly acting on behalf of a deceased consumer, to inquire about the cost or purchase of burial space or burial goods or to act on behalf of the consumer.

(3) "Installation of a memorial" includes the installation of a foundation for a memorial.

(4) "Licensee" means a person licensed by the State agency to sell burial space, burial goods, or burial services.

(5) "Memorial" means a marker, memorial, monument, scroll, urn, vase, or other permanent fixture used to memorialize a burial space.

General Professional Practices. {09.34.04.03}

A. A registrant or permit holder shall:

(1) Act in a manner that respects and protects the dignity of a decedent and the decedent's family;

(2) Conduct business in a reasonable, usual, and customary manner;

- (3) Comply with the State public health laws as set forth in Health-General Article, §4-215 and §5-501 et seq., Annotated Code of Maryland;
- (4) Comply with Commercial Law Article, Titles 12 and 13, Annotated Code of Maryland;
- (5) Implement and follow through on all arrangements agreed upon between a consumer and the cemetery or burial goods business;
- (6) Provide appropriate services for and respect the rights of individuals without regard to age, race, creed, national origin, gender, disability, marital status, political belief, religious affiliation, social or economic status, or social preferences;
- (7) Comply with the State laws for cremation;
- (8) Be sensitive and responsive to the bereavement needs of a decedent's family;
- (9) Complete the obligations of a paid-in-full contract within a reasonable time of the need for these goods and services;
- (10) Comply with all laws dealing with the operation of a cemetery or providing burial goods;
- (11) Be responsible for repair or replacement of any memorial damaged or improperly set by the registrant or the registrant's or permit holder's employees;
- (12) Disclose to a consumer orally and in writing at or before the time of a preneed sale all goods and services that are reasonably expected to be required at the time of need that are not included in the preneed burial contract, including:
 - (a) Interment or entombment fees including opening and closing costs, and any additional fees associated with an extra depth interment,
 - (b) A vault or grave liner or the installation of a vault or grave liner, or both,
 - (c) Removal and replacement of a footing or memorial, or both, for the opening and closing of a burial space,
 - (d) Imposition of additional fees for weekend, holiday, or after hours interment, including any rights to a refund or reimbursement of the fees for services paid in advance but not utilized, and notification that any additional fees imposed for weekend, holiday, or after hours interment will be those listed on the current general price list at the time of need, and
 - (e) Any other goods or services for which the registrant or permit holder charges a fee including but not limited to memorial care fees, vault inspection fees, vault installation fees, lay-out fees, temporary marker fees, memorial inscription fees, and inspection fees;
- (13) Disclose to a consumer orally and in writing at or before the time of a sale of a monument, memorial, or other permanent product used to identify a human burial space all goods and services related to the monument, memorial, or other permanent product that are reasonably

expected to be required for the full use and care of the product at the time of need that are not included in the burial contract, including:

- (a) Installation of memorials,
- (b) Inspection and lay-out fees charged by cemeteries in connection with the installation of foundations, memorials, or both,
- (c) Removal and resetting fees,
- (d) Memorial care fees,
- (e) Date of death inscription, and
- (f) Any other goods, services, or fees directly related to or reasonably expected to be required for full use and care of installed memorials;

(14) State to a consumer in clear understandable language orally and in writing, at the time of entering into a contract, all cancellation and refund rights which may be available to the consumer, including rights relating to burial spaces, caskets, and burial goods considered delivered;

(15) Disclose to a consumer, orally and in writing, the responsibility of the registrant or permit holder for the continued care of memorials after purchase;

(16) Disclose to a consumer, orally and in writing, at or before the time of an at-need sale that:

- (a) Memorials and foundations for memorials may be purchased either from the cemetery or an outside burial goods business; and
- (b) The installation or servicing of memorials, including foundations, may be purchased from either the cemetery or an outside burial goods business;

(17) Provide to any person who requests information, at the office, regarding burial space, burial goods, or burial services, the general price list for the person to retain;

(18) Provide accurate information, orally, from the general price list to any person who requests information, by telephone, regarding specific burial space, burial goods, or burial services;

(19) Present to a consumer a balanced display of various cost options of burial goods or services offered for sale; and

(20) Comply with any oral or written disclosure requirements in this chapter by obtaining a signed acknowledgment from the consumer.

B. A registrant or permit holder may not:

- (1) Place advertisements which include statements:

- (a) Containing misrepresentation of facts,
 - (b) Likely to mislead or deceive because in context the statement makes only a partial disclosure of relevant facts,
 - (c) Relating to fees without reasonable disclosure of all relevant variables so that the statement would not be misunderstood or be deceptive to a consumer, or
 - (d) Containing representations or implications that in reasonable probability can be expected to cause an ordinarily prudent person to misunderstand or be deceived;
- (2) Use, or participate in the use of, any form of communication to consumers containing a false, fraudulent, misleading, deceptive, or unfair statement or claim;
- (3) Operate a cemetery or provide burial goods while under the influence of alcohol, an illegal drug, or a controlled dangerous substance which has not been prescribed by a physician;
- (4) Fail to provide care to a memorial or burial space if the registrant or permit holder agrees to provide this care;
- (5) Provide less care to or state or imply that less care is given a memorial or burial space if a memorial is obtained from a person other than the registrant or permit holder; and
- (6) Pay or agree to pay any sum or any thing of value to any person, who is not licensed or registered by a State agency to sell burial space, or burial goods or services, for soliciting or referring, at need, a consumer for the purchase of burial space, or burial goods or services.

Professional Standards for Registered Cemeterians and Permit Holders that Own or Operate Cemeteries. {09.34.04.04}

A. A registered cemeterian or cemetery permit holder shall:

- (1) Maintain cemetery grounds and structures in a reasonable condition;
- (2) Keep accurate records of all sales and interments, including a map or plat which identifies the section name, lot number, and site number of each burial space in the cemetery or mausoleum or both;
- (3) Establish and maintain a record with the dates, locations, facts, and any permit required under Health-General Article, §4-215(e), Annotated Code of Maryland, relative to the relocation of human remains, including cremated human remains, from an existing burial space to another burial space;
- (4) Provide to a consumer, orally and in writing, at the time of entering into a contract for a memorial, a statement of the cemetery's policy on the use of independent monument companies;
- (5) Provide to a consumer, within 1 business day, a response to an authorization request for the installation or servicing of a foundation or burial goods;

- (6) Provide to a consumer, upon request, within 1 business day, information about the rules and regulations for a section and area of the cemetery, including the specifications, standards, and requirements, and any fees for the installation and type of memorial;
- (7) Provide, upon request, to a consumer, within 1 business day, information regarding the exact location of a burial space for the purpose of installing or servicing a memorial;
- (8) Have the same specifications, standards, and requirements for the installation of memorials in the registrant's or permit holder's cemetery regardless of who sold the memorial; and
- (9) Disclose to a consumer, orally and in writing, at the time of entering into a contract, the number of interments that may be placed in each burial space and their disposition within a burial space.
- (10) Disclose to the owner of the burial space, in writing, if damage has occurred to the integrity of a casket, liner, vault, crypt, mausoleum space, or columbarium space within 10 days of discovery of the damage;
- (11) If the damage which has occurred to the integrity of a casket, liner, vault, crypt, mausoleum space, or columbarium space, was caused by the actions of the cemetery, offer to repair or to supply to the owner of the burial space a reasonable and comparable alternative burial space, casket, liner, vault, crypt, mausoleum space, or columbarium space; and
- (12) Maintain in the cemetery's office, for inspection by consumers, a current and complete listing of the rules and requirements of the cemetery including those related to memorialization, interment, memorial services, burial space embellishments, and hours of operation.

B. A registered cemeterian or cemetery permit holder may not:

- (1) State or imply that the State requires a consumer to come to a cemetery before an interment is performed;
- (2) Charge extra fees for the storage of a casket, or the opening and closing of a burial space after hours, due to a delay in burial attributable to a breakdown of equipment or to the registrant's or permit holder's actions;
- (3) Charge a fee for disclosing any information which is needed to install or service a memorial;
- (4) Establish any policy or rule which unreasonably impedes, prohibits, or restricts anyone from viewing the lowering of a casket or participating in a funeral service at a burial space;
- (5) Knowingly or intentionally open a burial space other than that which the lot owner, next-of-kin, family, or their agent or personal representative owns or purchased for right of burial;
- (6) Knowingly or intentionally resell a burial space which has already been sold for future use or in which an interment exists;
- (7) Charge any fees relating to the installation or servicing of burial goods purchased from a registered cemeterian, registered seller, or permit holder, other than the registered cemeterian or

permit holder, unless the fee is reasonable and is based on actual labor and other appropriate costs; and.

(8) Charge a fee for any memorial care other than perpetual memorial care.

Administrative History. {09.34.04.9999}

Effective date: March 22, 1999 (26:6 Md. R. 485)

Regulation .02B amended effective February 13, 2006 (33:3 Md. R. 241)

Regulation .03A amended effective February 13, 2006 (33:3 Md. R. 241)

Regulation .04A amended effective December 10, 2001 (28:24 Md. R. 2128); February 13, 2006 (33:3 Md. R. 241)

Regulation .04B amended effective February 13, 2006 (33:3 Md. R. 241)

Office of Cemetery Oversight – Subtitle 34 {09.34.05.00}

Chapter 05 – Crematories – Definitions

Scope. {09.34.05.01}

This chapter governs the definition of terms used in COMAR 09.34.06, COMAR 09.34.07, COMAR 09.34.08 and COMAR 09.34.09.

Definitions. {09.34.05.02}

A. In COMAR 09.34.06, COMAR 09.34.07, COMAR 09.34.08, and COMAR 09.34.09, the following terms have the meanings indicated.

B. Terms Defined.

- (1) “Advertisement” means the publication, dissemination, or circulation of any oral or written matter, including labeling, which directly or indirectly calls to the attention of the public the goods or services one has to offer.
- (2) “Authorizing agent” means an individual legally entitled to order the cremation of human remains or legally authorized to control the final disposition of human remains.
- (3) “Board” means the Board of Morticians and Funeral Directors.
- (4) Consumer.
 - (a) “Consumer” means an actual or prospective purchaser of consumer services, consumer goods, or consumer credit.
 - (b) “Consumer” includes an individual directed by the consumer, or properly acting on behalf of a deceased consumer, to inquire about the cost or purchase of cremation services or cremation related goods, or to act on behalf of the consumer.
- (5) “Cremated human remains” means all human remains recovered after completion of cremation and the use of pulverizing equipment.
- (6) “Cremation” means the process of reducing human remains to bone fragments through intense heat and evaporation, including any mechanical or thermal process and may include pulverization.
- (7) “Cremation container” means a readily combustible, rigid container in which human remains are sent to the crematory and then placed in the cremation chamber for cremation.

- (8) "Cremator" means the machinery within which the process of cremation of human remains begins.
- (9) "Crematory" means a building, portion of a building, or structure that houses the necessary appliances and facilities for cremation.
- (10) "Crematory authority" means a legal entity or sole proprietor that has been issued a permit by the Office of Cemetery Oversight to operate as a crematory and perform cremations.
- (11) "Embalming" means the disinfection or preserving of human remains by arterial or cavity injection or any other type of preservation.
- (12) "Engage in the operation of a crematory" means controlling or managing a crematory.
- (13) "Holding facility" means an area, within or adjacent to a crematory, designed for the retention of human remains before cremation.
- (14) "Human remains" means the body of a deceased person, or part of a body or limb that has been removed from a living person.
- (15) "Office" means the Office of Cemetery Oversight.
- (16) "Permit" means a permit issued by the Office to allow a person to operate a business which engages in the operation of a crematory or to act as a registered crematory operator.
- (17) "Permit holder" means the holder of a permit under Business Regulation Article, Title 5, Annotated Code of Maryland, to engage in the operation of a crematory or to act as a registered crematory operator.
- (18) "Person" means an individual, receiver, trustee, corporation, limited liability company, or partnership.
- (19) "Processed human remains" means the end result of pulverization of cremated human remains, where the residue from the cremation process is cleaned leaving only bone fragments reduced to 5 millimeters or less.
- (20) "Registered crematory operator" means an individual registered to operate a crematory as a sole proprietor or on behalf of a sole proprietor or permit holder.
- (21) "Responsible party" means a sole proprietor or the individual designated by a corporation, limited liability company, or partnership, which holds a permit to engage in the operation of a crematory, to be responsible for the operations of the crematory.
- (22) "Sealable container" means any container in which processed human remains can be placed and sealed so as to prevent leakage of the processed human remains or the entry of any foreign material.

Administrative History. {09.34.05.9999}

Effective date: March 31, 2014 (41:6 Md. R. 378)

Office of Cemetery Oversight – Subtitle 34 {09.34.06.00}

Chapter 06 – Permit and Registration Process and Fees

Scope. {09.34.06.01}

This chapter governs the permit process for persons, regulated under Business Regulation Article, Title 5, Annotated Code of Maryland, who operate a crematory in the State and the fees for crematory and registered crematory operator permits.

Permit Issuing Agency. {09.34.06.02}

A. A person who holds a permit or registration under Business Regulation Article, Title 5, Annotated Code of Maryland, and owns a greater interest in a crematory than a licensee under Health Occupations Article, Title 7, Annotated Code of Maryland, shall obtain a permit to engage in the operation of a crematory from the Office.

B. A person whose ownership interest in a crematory is equal to the ownership interest in the crematory of a licensee under Health Occupations Article, Title 7, Annotated Code of Maryland, shall obtain a permit to engage in the operation of a crematory from the Office.

C. A person who owns a crematory and is neither a licensee under Health Occupations Article, Title 7, Annotated Code of Maryland, nor a registrant or permit holder under Business Occupations Article, Title 5, Annotated Code of Maryland, shall obtain a permit to engage in the operation of a crematory from the Office.

D. A person who is a licensee or holder of a corporation license under Health Occupations Article, Title 7, Annotated Code of Maryland, and owns a greater interest in a crematory than a person who holds a permit or registration under Business Regulation Article, Title 7, Annotated Code of Maryland, shall obtain a permit to engage in the operation of a crematory from the Board.

E. An individual, who is designated as the registered crematory operator by a person required to obtain a permit to operate a crematory from the Office, shall obtain a registered crematory operator permit from the Office.

F. All operating crematories and individuals designated as the registered crematory operator required to obtain a permit from the Office shall apply to the Office for a permit within 90 days from the effective date of this chapter.

Permit — Requirements for Permit for a Crematory Owned by a Corporation, Limited Liability Company, or Partnership. {09.34.06.03}

A. A corporation, limited liability company, or partnership shall receive a permit to operate a crematory in this State if the corporation, limited liability company, or partnership meets the permit requirements of this regulation.

B. A corporation, limited liability company, or partnership shall receive a permit if the entity:

- (1) Completes an application form;
- (2) Pays the nonrefundable application fee and any other fees due under this chapter;
- (3) Provides the name, address, and phone number of each affiliated crematory;
- (4) Designates a registered crematory operator as the responsible party for each affiliated crematory provided that the registered crematory operator may not be designated as the responsible party for more than a total of two crematories;
- (5) Provides a list of the officers, directors, members, partners, agents, and employees of the entity applying for the permit;
- (6) Provides a certificate of status, issued by the Maryland Department of Assessments and Taxation, indicating that the entity is in good standing, or its equivalent as determined by the Office, and dated not earlier than 30 days before the date of the application; and
- (7) Provides an affidavit stating that:
 - (a) No federal or State taxes or fees are delinquent; and
 - (b) The corporation, limited liability company or partnership is financially stable.

Permit — Requirements for Permit for a Crematory Owned by a Sole Proprietor. {09.34.06.04}

A. A sole proprietor applicant for a crematory permit shall receive a permit to operate a crematory in this State if the sole proprietor applicant meets the permit requirements of this regulation.

B. A sole proprietor shall receive a permit if the sole proprietor:

- (1) Completes an application form;
- (2) Pays the nonrefundable application fee and any other fees due under this chapter;
- (3) Provides the name, address, and phone number of each affiliated crematory;
- (4) Designates a registered crematory operator as the responsible party for each affiliated crematory provided that the registered crematory operator may not be designated as the responsible party for more than a total of two crematories;
- (5) Provides an affidavit stating that:

- (a) No federal or State taxes or fees are delinquent; and
 - (b) The crematory business is financially stable; and
- (6) Provides evidence to the Office of the sole proprietor's ability to read and write.

Permit — Requirements for Registration for a Registered Crematory Operator.
{09.34.06.05}

A. An individual shall register with and receive a permit from the Office as a registered crematory operator if the individual meets the registration requirements of this regulation.

B. An individual shall be registered with the Office as a registered crematory operator if the individual:

- (1) Completes an application form;
- (2) Pays the nonrefundable application fee and any other fees due under this chapter;
- (3) Is 18 years old or older;
- (4) Is of good character and reputation and lists the applicant's previous three employers;
- (5) Has achieved certification as a crematory operator by the Cremation Association of North America (CANA), International Cemetery, Cremation and Funeral Association (ICCF), or other equivalent certification recognized by the Office and the Board;
- (6) Has successfully completed the operator training course of the manufacturer of the cremator located in the crematory with which the applicant is affiliated;
- (7) States the name and mailing address of the crematory with which the applicant is affiliated;
- (8) States whether the crematory with which the applicant is affiliated is owned or controlled by:
 - (a) A corporation;
 - (b) A partnership;
 - (c) A limited liability company; or
 - (d) A sole proprietorship;
- (9) States whether the applicant is the responsible party for the affiliated crematory; and
- (10) Provides evidence to the Office of the individual's ability to read and write.

C. Additional Requirements.

(1) An individual applying for a permit as a registered crematory operator shall provide the Office with a detailed description of activities including, but not limited to, whether the applicant has:

(a) Had a license, certification, registration, or permit of the type for which the application is being made ever denied, suspended, or revoked by any jurisdiction;

(b) Been convicted of a felony in any State or federal court;

(c) Been convicted in any State or federal court of a misdemeanor directly related to the ownership or operation of a crematory;

(d) Had any civil judgments or settlements within the 5 years before applying for a permit which directly related to the ownership or operation of a crematory; or

(e) Been convicted by a court in this State of violating a usury provision under Commercial Law Article, Title 12, Annotated Code of Maryland, or an unfair and deceptive trade practices provision under Commercial Law Article, Title 13, Annotated Code of Maryland.

(2) An applicant shall submit copies of all:

(a) Charging documents which were issued and docket entries for convictions, which occurred before applying for a permit, for a misdemeanor or felony referred to in §C(1)(b),(c), or (e) of this regulation;

(b) Disciplinary actions, judgments, and final orders which occurred or were issued before applying for a permit for any regulatory probation, suspension, or revocation referred to in §C(1)(a) of this regulation; and

(c) Civil judgments or settlements against the applicant within the past 5 years which directly relate to the ownership or operation of a crematory.

(3) An individual applying for a permit, who is designated by the crematory authority as the responsible party, shall state the name and residential address of each employee who sells goods or services to the public while engaging in the operation of a crematory.

D. A registered crematory operator may not be designated as the responsible party for more than two crematories.

E. An individual may be issued permits for affiliations with more than one crematory if each affiliated crematory is owned by the same individual or entity.

F. An individual who will become the registered crematory operator for a crematory which was in operation prior to the effective date of this chapter or for a crematory which has filed an application for a permit pursuant to this chapter shall obtain the certification and training required by §B(5) and (6) of this regulation within 90 days from the effective date of this chapter or be subject to action by the Office.

Permit — Requirements for Permit for a New Crematory Owned by a Corporation, Limited Liability Company, or Partnership. {09.34.06.06}

A. A corporation, limited liability company, or partnership shall receive a permit to operate a new crematory in this State if the corporation, limited liability company, or partnership meets the permit requirements of this regulation.

B. A corporation, limited liability company, or partnership shall receive a permit from the Office if, at least 30 days prior to the opening of the new crematory, the entity:

- (1) Completes an application form;
- (2) Pays the nonrefundable application fee and any other fees due under this chapter;
- (3) Provides the name, address, and phone number of each affiliated crematory;
- (4) Designates a registered crematory operator as the responsible party for each affiliated crematory provided that the registered crematory operator may not be designated as the responsible party for more than a total of two crematories;
- (5) Provides a list of the officers, members, partners, agents, and employees of the entity applying for the permit; and
- (6) Provides an affidavit stating that the corporation, limited liability company, or partnership:
 - (a) Is financially stable; and
 - (b) Has the ability to continue to operate the crematory business for a 2-year period after issuance of a permit.

C. Crematories not in operation prior to the effective date of this chapter shall be certified by:

- (1) The Cremation Association of North America (CANA);
- (2) The International Cemetery, Cremation and Funeral Association (ICCFA); or
- (3) Another equivalent body recognized by the Office and the Board.

Permit — Requirements for a New Crematory Owned by a Sole Proprietor.
{09.34.06.07}

A. A sole proprietor applicant for a new crematory shall receive a permit to operate if the sole proprietor applicant meets the permit requirements of this regulation.

B. A sole proprietor shall receive a permit from the Office if, at least 30 days prior to the opening of the new crematory, the sole proprietor applicant:

- (1) Completes an application form;
- (2) Pays the nonrefundable application fee and any other fees due under this chapter;

- (3) Provides the name, address, and phone number of each affiliated crematory;
- (4) Designates a registered crematory operator as the responsible party for each affiliated crematory provided that the registered crematory operator may not be designated as the responsible party for more than a total of two crematories;
- (5) Provides an affidavit stating that the new crematory business:
 - (a) Is financially stable; and
 - (b) Has the ability to continue to operate the crematory business for a 2-year period after issuance of a permit; and
- (6) Provides evidence to the Office of the individual's ability to read and write.

C. Before applying to the Office for a permit, any crematory not in operation before the effective date of this chapter, shall have in its employ an individual who holds a certification from:

- (1) The Cremation Association of North America (CANA);
- (2) The International Cemetery, Cremation and Funeral Association (ICCFA); or
- (3) Another equivalent body recognized by the Office and the Board.

Change of Information. {09.34.06.08}

The responsible party shall notify the Office of any change in the information provided in the application for permit for a crematory or for a permit as a registered crematory operator, either before or after the issuance of a permit, within 1 week of the date of the change.

Renewal. {09.34.06.09}

A. Before the expiration date of a permit, a permit holder shall complete and return the renewal form, pay the renewal fee, and submit any required documentation.

B. A person who has a permit to engage in the operation of a crematory or a permit as a registered crematory operator may renew the permit every 2 years, beginning on a date specified by the Office, in the following manner:

- (1) Complete the renewal application form;
- (2) Pay the nonrefundable renewal fee set forth in Regulation .13 of this chapter;
- (3) Meet the permit requirements under Regulation .03, .04, or .05 of this chapter; and
- (4) Submit the documentation required by Regulation .03, .04, or .05 of this chapter.

C. After the expiration date of a permit, if a permit holder has not yet applied for renewal, the permit holder is no longer authorized to engage in the operation of a crematory or to act as a registered crematory operator.

D. If a permit holder completes the renewal application process set forth in Regulation .09B of this chapter before the expiration date of the permit and the Office does not renew the permit before its expiration date, the permit holder is considered to be actively permitted until receipt from the Office of either a renewed permit or a notice of denial of a permit.

E. If a permit holder applies for renewal of a permit after the expiration date of the permit, the permit holder shall pay the renewal fee plus the late renewal fee under Regulation .12 of this chapter.

Lapsed Permit. {09.34.06.10}

A person who has been issued a permit and who has allowed the permit to lapse for at least 6 months may apply for a permit in the following manner:

A. Complete a permit application form;

B. Pay the permit fee and the late renewal fee under Regulation .12 of this chapter;

C. Meet the permit requirements under Regulation .03, .04, or .05 of this chapter;

D. Submit the documentation required by Regulation .03, .04, or .05 of this chapter;

E. Provide a full written explanation to the Office detailing the reasons why the permit was allowed to expire and why a permit is now sought; and

F. Submit to the Office an affidavit stating that the person did not engage in the operation of a crematory or act as a registered crematory operator in this State while the permit was lapsed.

Hearings — Permit Denial. {09.34.06.11}

A. Permit Denial. An applicant or permit holder applying for an initial or renewal permit to the Office may be denied the issuance of a permit, subject to the hearing provisions of Business Regulation Article, §5-312, Annotated Code of Maryland.

B. Hearing Before Director of Office.

(1) Except as otherwise provided in §B(2)—(6) of this regulation, all contested cases before the Director of the Office shall be governed by COMAR 09.01.02.

(2) An applicant who has been notified that a new or renewal permit has been or may be denied and who requests a hearing before the Director of the Office must file the request for a hearing not later than 30 days after the notice of proposed action was mailed.

(3) The Director of the Office shall send the hearing notice described in COMAR 09.01.02.07B at least 10 days before the hearing or, if the parties have agreed to a date for which 10 days notice cannot be given, at the earliest time possible.

(4) The notice to an applicant that a new or renewal permit has been or may be denied shall state that the proposed action of the Director of the Office shall be affirmed if:

(a) A hearing is not requested within 30 days after the date the notice of proposed action was mailed; or

(b) The applicant fails to appear for the hearing after requesting a hearing.

(5) If, after a hearing, the proposed action of the Director of the Office is upheld, the appellant shall pay the hearing costs described in Regulation .12 of this chapter.

C. Hearings Delegated by the Office to the Office of Administrative Hearings. All contested case hearings delegated to the Office of Administrative Hearings shall be governed by COMAR 09.01.03.

Fees. {09.34.06.12}

A. Permit fees:

- (1) Crematory permit — \$350;
- (2) Registered Crematory Operator permit — \$300;
- (3) Crematory permit renewal — \$350;
- (4) Registered Crematory Operator permit renewal — \$300; and
- (5) Late renewal fee — \$200.

B. Miscellaneous fees:

- (1) Replacement of permit — \$50;
- (2) Returned check fee — \$50;
- (3) Additional copy of permit — \$50;
- (4) Business name change — \$50;
- (5) Personal name change — \$50;
- (6) Business address change — \$50; and
- (7) Annual preneed sales trust report — \$25.

C. Hearing costs described in Business Regulation Article, §5-312(h), Annotated Code of Maryland, shall be determined to be the cost of a court reporter and the transcripts ordered by the Office, or by the Office of the Attorney General, for the purpose of presenting a case alleging violation of Business Regulation

Article, Title 5, Annotated Code of Maryland, before the Office or before the Office of Administrative Hearings,

Display of Permit. {09.34.06.13}

A permit holder shall display the permit conspicuously, in a public area at each business address of the permit holder.

Cremation Prior to Obtaining a Permit. {09.34.06.14}

A crematory may cremate the human remains of one decedent prior to obtaining a permit from the Office, provided:

A. The cremation is only performed as part of the manufacturer's operator training course for the cremation machinery in which the cremation takes place; and

B. The person or persons with the right to final disposition of the decedent are notified and have given permission prior to the cremation.

Administrative History. {09.34.06.9999}

Effective date: March 31, 2014 (41:6 Md. R. 378)

Regulation .14 adopted as an emergency provision effective August 28, 2014 (41:19 Md. R. 1074); adopted permanently effective November 24, 2014 (41:23 Md. R. 1372)

Office of Cemetery Oversight – Subtitle 34 {09.34.07.00}

Chapter 07 – Crematories – Inspections, Complaints, and Discipline

Scope. {09.34.07.01}

This chapter governs crematory inspections, the complaint process, investigations, grounds for discipline, and penalties.

Inspection by the Office. {09.34.07.02}

A. A crematory shall be available for inspection by a representative of the Office at any time during operating hours.

B. Each crematory shall be inspected:

- (1) On at least a biennial basis;
- (2) In furtherance of an investigation; or
- (3) Upon the sale or change of ownership of the crematory.

C. A crematory shall maintain the following minimum standards:

- (1) The premises shall be maintained in a sanitary manner to comply with Centers for Disease Control's guidelines on universal precautions;
- (2) Except by express, written consent of the authorizing agents to perform simultaneous, multiple cremations, there shall be no more than one human body cremated in a single cremator at a time;
- (3) A cremator shall be cleaned completely after each cremation;
- (4) There may not be co-mingling of human remains and pet remains in refrigeration units or cremation machinery;
- (5) Separate cremators shall be dedicated for the cremation of human remains and the cremation of pets;
- (6) There may not be:
 - (a) Co-mingling of cremated human remains with other cremated human remains or pet remains;

(b) Scooping of cremated human remains from a bucket containing commingled cremated human remains; or

(c) Any form of misrepresentation in the return of cremated human remains;

(7) Excluding a deceased person with a known communicable infection, human remains shall be properly identified before cremation by verifying that the documentation accompanying the human remains is consistent with a visual observation of the human remains;

(8) A burial transit permit shall be an original document pertaining to the deceased;

(9) Each crematory shall have:

(a) A sink with hot and cold water in the room in which the cremator is housed; and

(b) The equipment necessary to thoroughly clean the floor within the room housing the cremator with water and an appropriate sanitizing agent;

(10) The name of the deceased shall be visible on the outside of the cremation container;

(11) Human remains shall be properly stored prior to cremation;

(12) Crematories shall:

(a) Use only mechanical pulverizing equipment meeting industry standards that has been thoroughly brushed as clean as possible between each use; and

(b) Pulverize the cremated human remains with a mortar and pestle when the cremated human remains are not sufficient in amount for pulverizing in mechanical equipment;

(13) Separate pulverizing drums shall be dedicated for cremated human remains and cremated pet remains;

(14) Before pulverizing, the mechanical pulverizer shall be clamped;

(15) A crematory may not refuse to release cremated human remains pending payment of outstanding fees;

(16) Within 6 months of the effective date of this regulation, cremators without safety devices that prevent the automatic door from dropping prematurely shall be retrofitted with such safety devices;

(17) Portable fans may not be used in the area of the cremator or pulverizing equipment;

(18) There shall be a minimum of 6 inches between a cremator smoke stack and the roof of the crematory;

(19) A cremator shall have, visible on its front, a warning sign stating "No leaning past the door of the cremator.";

(20) The permit holder or registered crematory operator shall be present at the crematory during regular business hours; and

(21) All individuals who operate the cremator in a crematory shall be certified by the Cremation Association of North America (CANA), International Cemetery, Cremation and Funeral Association (ICCF), or other equivalent certification recognized by the Office and the Board. Individuals receiving training toward certification to operate a cremator shall be allowed to work under the supervision of a registered crematory operator who has the required certification for a period not to exceed 6 months.

D. The following completed forms shall be available at all times for inspection and copying and are subject to be pulled at random by the inspector:

- (1) Cremation authorization form;
- (2) Burial transit permit;
- (3) Delegation of authority form;
- (4) Receipt for human remains;
- (5) Record of cremation;
- (6) Certificate of cremation; and
- (7) Return of human cremated remains certificate.

E. Inspection results shall be written on forms approved by the Office.

F. The representative of the Office performing the inspection shall, upon completion of the inspection:

- (1) Apprise the permit holder of the findings of the inspection; and
- (2) Provide the permit holder or a representative of the permit holder with a copy of the inspection report.

G. The permit holder or representative of the permit holder shall sign and verify receipt of the inspection report.

H. At the time of the Office's inspection, the permit holder shall provide written documentation to the Office's inspector that:

- (1) The cremator has been inspected in accordance with manufacturer specifications;
- (2) In accordance with manufacturer specifications, it is not time for a manufacturer's inspection; or
- (3) The permit holder has requested that the manufacturer conduct an inspection of the cremator.

Crematory Inspection Report, Deficiencies, Violations, and Penalties. **{09.34.07.03}**

A. The Director of the Office shall review the inspection report and make a determination as to whether a deficiency exists.

B. The Office shall notify the permit holder of the results of the inspection by providing a copy of the inspection report to the permit holder.

C. If a permit holder passes an inspection, the permit holder shall prominently display, in public view on the premises, a statement issued by the Office that the crematory has successfully passed an inspection.

D. If the Director of the Office finds a deficiency, the Director of the Office shall:

(1) Within 7 days notify the permit holder of the deficiency or failure to pass the inspection; and

(2) Provide a copy of the inspection report, notice of the deficiency, or failure to pass the inspection to the crematory permit holder within 30 days of completion of the inspection.

E. Correction of Deficiency.

(1) Except as provided in this section, a crematory permit holder shall correct a deficiency within 30 days after receipt of notification or sooner as determined by the Office.

(2) The Office may require immediate correction of a deficiency if the Office considers the correction necessary in the interest of public health.

(3) The crematory permit holder may request an extension of time within which to correct a deficiency.

(4) The Office may approve an extension of time for correction of a deficiency.

(5) Upon completion of the correction of all deficiencies, the crematory permit holder shall notify the Office.

(6) Upon notification by the crematory permit holder, a representative of the Office shall re-inspect the crematory.

(7) The Office shall notify the crematory permit holder, in writing, of the results of the re-inspection report by providing a copy of a new inspection report to the crematory permit holder.

(8) If re-inspection reveals additional deficiencies not cited in the first report, the crematory permit holder shall correct those deficiencies in the time period specified by the Office unless an extension of time for correction of the additional deficiencies is requested by the crematory permit holder and approved by the Office.

F. Penalties. In the event that a crematory permit holder fails to allow an inspection of the crematory or fails to comply with a notice to correct deficiencies or violations within the time specified, the Office shall:

(1) Deem the failure to be a threat to the public health, safety, or welfare requiring immediate action;

(2) Summarily suspend the crematory permit as provided under State Government Article, §10-226(c)(2), Annotated Code of Maryland;

(3) Provide notice of the Office's action to the crematory permit holder; and

(4) Provide the crematory permit holder a subsequent opportunity for a hearing pursuant to Business Regulation Article, §5-312, Annotated Code of Maryland.

Complaints. {09.34.07.04}

A. A complaint regarding a crematory authority or a registered crematory operator under the jurisdiction of the Office shall be:

(1) Filed by the complainant, on a form devised by the Office in compliance with the provisions of Business Regulation Article, §5-311(b), Annotated Code of Maryland; and

(2) Processed in accordance with the provisions of Business Regulation Article, §5-311(c)—(h), Annotated Code of Maryland.

B. The Office may initiate a complaint or investigation.

Investigations. {09.34.07.05}

The Office and the Board may share investigative information and conduct joint investigations.

Grounds for Discipline and Penalties. {09.34.07.06}

A. Subject to the hearing provisions of Business Regulations Article, §5-312, Annotated Code of Maryland, the Director of the Office of Cemetery Oversight may deny a crematory permit or registered crematory operator permit to an applicant, reprimand any person required to obtain a crematory permit or registered crematory operator permit, or suspend or revoke a crematory permit or registered crematory operator permit of an applicant or permit holder, or an agent, employee, officer, director, or partner of the applicant or permit holder for the reasons set forth in Business Regulation Article, §5-310, Annotated Code of Maryland.

B. The Director of the Office may seek the remedies and may impose the penalties set forth in Business Regulation Article, Title 5, Annotated Code of Maryland, for violations of that title.

Administrative History. {09.34.07.9999}

Effective date: March 31, 2014 (41:6 Md. R. 378)

Office of Cemetery Oversight – Subtitle 34 {09.34.08.00}

Chapter 08 – Crematories – Cremation Procedures

Scope. {09.34.08.01}

This chapter governs the procedures to be followed by a permit holder in performing a cremation in this State.

Removal, Identification, and Transportation of Human Remains. {09.34.08.02}

A. Upon receipt of human remains, a permit holder, in the presence of the authorizing agent or representative of the funeral establishment engaging crematory services, shall:

- (1) Verify that the information on the wrist tag of the human remains is consistent with the documentation accompanying the human remains and consistent with the visual observation of the human remains;
- (2) Use a metal detector wand to inspect for the presence of any battery operated, implanted devices including pacemakers, defibrillators, or pain relief devices;
- (3) Refuse to accept human remains for cremation if an inspection of the human remains indicates the presence of any battery operated, implanted device;
- (4) Remove and properly dispose of any hazardous object or any other materials that the permitted designee of the crematory authority deems should be removed from the human remains or cremation container in order to prevent harm to the public health or damage to the cremator;
- (5) Remove any jewelry on the human remains or in the cremation container;
- (6) Return any removed jewelry to the authorizing agent or representative of the funeral establishment engaging cremation services; and
- (7) Obtain a signed, itemized receipt from the authorizing agent or representative of the funeral establishment engaging cremation services for the removed jewelry and retain the receipt as a permanent record.

B. Foreign objects removed from the human remains:

- (1) Shall be treated as medical waste and disposed of accordingly; and
- (2) May not be donated until a sterilization process through a third party, recognized by the Office, to dispose properly of medical waste has been performed.

C. Materials identifying the human remains placed in the custody of a crematory authority shall contain the following information:

- (1) Name;
- (2) Date of birth;
- (3) Date of death;
- (4) Name of funeral establishment or authorizing agent;
- (5) Gender; and
- (6) Name and relationship of authorizing agent to the decedent.

D. A crematory authority shall not accept unidentified human remains for cremation.

Cremation Container. {09.34.08.03}

A. A cremation container:

- (1) Shall be a readily combustible, rigid container suitable for cremation;
- (2) Shall provide a completely enclosed covering for the human remains;
- (3) Shall be resistant to leakage or spillage;
- (4) Shall be of sufficient strength and rigidity for ease of handling;
- (5) Shall provide protection to the health and safety of crematory establishment personnel;
- (6) Shall comply with all local, State, and federal governmental emissions regulations; and
- (7) May not be composed of metal or polyethylene material.

B. A cremation container which appears to be heavily coated with varnish, lacquer, or any other highly combustible substance shall be:

- (1) Placed in a cold cremator within which no cremation has occurred in the prior 4 hours; or
- (2) Coated completely with water before being placed in the cremator.

Holding Facilities. {09.34.08.04}

A holding facility shall:

A. Comply with applicable public health laws;

- B Preserve the dignity of human remains;
- C. Recognize the integrity, health, and safety of crematory establishment personnel; and
- D. Be secure from access by unauthorized persons.

Holding Remains. {09.34.08.05}

- A. Unless prevented by emergency circumstances, human remains that have been designated for cremation shall be cremated by a crematory authority within 48 hours after receipt.
- B. A crematory authority may not hold human remains for cremation unless the human remains are contained within an individual, rigid, stackable, closed cremation container.
- C. A crematory authority may not accept a cremation container from which there is any evidence of leakage of the body fluids from the human remains therein.
- D. Whenever a crematory authority is unable to cremate human remains within 48 hours of taking custody thereof due to emergency circumstances, the crematory authority shall maintain the human remains in a refrigerated holding facility, either on or off site, at 40° F or less, unless the remains have been embalmed.

Identification of Human Remains Immediately Prior to Cremation. {09.34.08.06}

- A. Immediately prior to being placed within the cremator, a designee of the crematory authority shall:
 - (1) Verify the identification of the human remains; and
 - (2) Place in the cremator the circular, hard metal identification disc of the human remains being cremated where it shall remain in place until the cremation process is complete.
- B. The designee of the crematory authority who is operating the cremator may not leave the immediate area of the cremator during the cremation process.

Cremation Authorization. {09.34.08.07}

- A. Except as otherwise provided in this regulation, a crematory authority may not cremate human remains until:
 - (1) The body has been identified as required by Health Occupations Article, §7-411, Annotated Code of Maryland;
 - (2) The crematory has received:
 - (a) A cremation authorization on a form approved by the Office and signed by an authorizing agent;

(b) If applicable, a written delegation document or facsimile; and

(c) Any other documentation required by federal, State, or local law; and

(3) The crematory authority has documented that at least 12 hours have elapsed from the time of death of the individual whose remains are to be cremated.

B. The cremation authorization form shall:

(1) Be provided by the crematory authority to the authorizing agent, and signed by the authorizing agent;

(2) Contain the following information:

(a) The identity of the human remains;

(b) Date of death;

(c) The name and address of the crematory where the cremation will occur;

(d) The name and address of the authorizing agent and the relationship between the authorizing agent and the deceased;

(e) Authorization for the crematory authority to cremate the human remains;

(f) Authorization to verify that the following have been removed prior to cremation:

(i) Implanted pacemaker or defibrillator; or

(ii) Any other materials that the crematory authority deems should be removed to prevent harm to the public health or damage to equipment;

(g) A representation by the authorizing agent that radiological implant treatment has not occurred to the human remains within 5 days before cremation;

(h) A representation that the authorizing agent is aware of no objection to the human remains being cremated by any person who has a right to control the disposition of the human remains; and

(i) The name and address of the person authorized to claim the cremated remains from the crematory authority or accept the cremated remains via registered mail; and

(3) Be signed by the authorizing agent.

C. If an authorizing agent is not available to execute the cremation authorization form, the authorizing agent may delegate that authority to another individual:

(1) In writing; or

(2) If located outside the area, by transmitting to the crematory authority:

(a) A signed, notarized statement, electronically or by facsimile device, that contains the name, address, and relationship of the sender to the deceased and the name and address of the individual to whom authority is delegated; and

(b) Once the authorizing agent is located in the area, a notarized statement, through the United States Postal Service attesting to the delegation of authority.

D. Upon receipt of the written delegation document or a copy of the delegation statement transmitted electronically or by facsimile device, the crematory authority shall allow the named individual to serve as the authorizing agent. The documents shall be signed by the authorizing agent in the presence of a notary.

E. A person signing a cremation authorization form is deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and the authority of that person to order such a cremation.

F. A crematory authority shall notify and obtain the written consent of the authorizing agent before the cremation of human remains at a location other than the location named on the cremation authorization form.

G. A crematory authority shall maintain a copy of every cremation authorization form required under this regulation as permanent records.

H. Cremation authorization records are subject to inspection and copying by the Office.

Record of Receipt of Remains. {09.34.08.08}

A. A crematory authority shall provide to an individual who delivers human remains for cremation a receipt signed by both the crematory authority and the person who delivered the human remains, that includes the:

(1) Name of the individual from whom the human remains were received and the name of the individual's employer, if any;

(2) Name and address of the crematory authority;

(3) Name and address of the deceased;

(4) Gender of the deceased;

(5) Date of death of deceased; and

(6) Verification of authorized burial transit permit.

B. The crematory authority shall maintain a record of each cremation which shall include the:

(1) Name of the deceased;

- (2) Date of birth of the deceased;
- (3) Date of death of the deceased;
- (4) Gender of the deceased;
- (5) Name and address of the authorizing agent;
- (6) Date, time, and location of cremation; and
- (7) Name of the individual who performed the cremation.

C. The crematory authority shall provide a certificate of disposition of cremated human remains to the authorizing agent or funeral establishment that arranged for the cremation that contains the:

- (1) Name of the deceased;
- (2) Name of the authorizing agent;
- (3) Date, time, and location where cremation occurred;
- (4) Name of the individual who performed the cremation;
- (5) Name and address of the person who received the cremated human remains from the crematory authority; and
- (6) If ascertainable, the location, including the name of the cemetery and plot location if the remains are interred, the manner, and the date of the disposition of the cremated human remains.

D. The crematory authority shall maintain a copy of every record and receipt required by this regulation as permanent records.

E. All records required to be maintained by a crematory authority by this chapter are subject to inspection and copying by the Office.

Use of a Casket; Embalming. {09.34.08.09}

A. Except as provided in §B of this regulation, a crematory authority may not:

- (1) Require that human remains be placed in a casket before cremation or that human remains be cremated in a casket;
- (2) Refuse to accept human remains for cremation because the remains are not in a casket; or
- (3) Refuse to accept human remains for cremation because the remains are in a suitable, combustible wooden casket, but may request the authorizing agent or funeral establishment engaging the services of the crematory authority to remove the metal mattress holder in the casket.

B. Human remains delivered to a crematory authority may not be removed from the cremation container and the cremation container shall be cremated with the human remains unless the authorizing agent for the deceased requests that the human remains be placed in the cremator without enclosure in a cremation container.

C. The cremation container shall be cremated with the human remains unless the authorizing agent for the deceased requests a more natural environment for the deceased. A crematory authority is not required to accept this manner of disposition.

D. A crematory authority may not require that human remains be subjected to embalming before cremation.

Disposition of Cremated Human Remains. {09.34.08.10}

A. Upon completion of the cremation, insofar as is possible:

(1) All of the recoverable residue of the cremation process shall be:

(a) Removed from the cremator:

(b) Except for medical devices remaining after cremation, processed; and

(c) Placed in a container; and

(2) The identification disc required by Health Occupations Article, §7-411, Annotated Code of Maryland, shall be:

(a) Removed from the cremator; and

(b) Placed in the container with the cremated human remains.

B. Medical devices which remain after the completion of the cremation process shall be treated as medical waste and disposed of accordingly.

C. After pulverization, all of the processed human remains, together with the identification disc, shall be placed in a sealable container.

D. If the cremation container opening is not of adequate dimensions to accommodate an identification disc, it shall be affixed to the container and a record of the cremation number shall be placed in the container.

E. If all of the processed human remains and the identification tag will not fit within the dimensions of a sealable container, the remainder of the processed human remains shall be returned to the authorizing agent, or the agent's representative, in a separate, sealable container. Container seams shall be taped.

F. If the processed human remains and identification tag do not adequately fill the container's interior dimensions, the extra space may be filled with packing material that will not become intermingled with the processed human remains and then securely closed.

G. If a sealable container containing processed human remains is to be shipped, the sealable container shall:

- (1) Be placed within a separate sturdy box with all box seams securely taped closed; and
- (2) Have the name of the deceased person whose processed human remains are contained therein legibly written on the outside of the container.

H. If processed human remains have been in the possession of a crematory authority, as originally authorized by the authorizing agent, without instructions for disposition, for a period of 10 days or more from the date of cremation, the crematory authority may send the processed human remains, using the current mailing standard approved by the U.S. Postal Service, to the authorizing agent.

Tools. {09.34.08.11}

A crematory shall maintain, at its own expense, the following tool inventory:

- A. Safety placement tool measuring a minimum of 49 inches in length;
- B. Wire brushes for cleaning cremators;
- C. Brush with fine bristles for cleaning pulverizers;
- D. Mortar and pestle;
- E. Funnel;
- F. High temperature protective gloves and heat resistant leather gloves;
- G. Hand magnet and metal detector wand to detect and remove metal from cremated human remains;
- H. Tweezers to remove nonmetal objects from cremated human remains; and
- I. Dust masks.

Visitors. {09.34.08.12}

A. The crematory permit holder or registered crematory operator shall:

- (1) Submit to the Office the number of persons not affiliated with the operation of the crematory who can safely be within the same room and within 10 feet of the cremator door; and
- (2) Verify to the Office that the crematory permit holder has submitted the information required in §A(1) of this regulation to their liability insurance carrier.

B. Crematories that begin operation after July 1, 2014, shall construct a viewing room the area of the cremator if the crematory authority intends to permit more than two visitors present in the area of the cremator during a cremation.

Administrative History. {09.34.07.9999}

Effective date: March 31, 2014 (41:6 Md. R. 378)

Office of Cemetery Oversight – Subtitle 34 {09.34.09.00}

Chapter 09 – Crematories – Code of Ethics

Scope. {09.34.09.01}

This chapter governs any person who holds a permit, pursuant to Business Regulation Article, Title 5, Annotated Code of Maryland, to engage in the operation of a crematory or to act as a registered crematory operator.

General Professional Practices. {09.34.09.02}

A. A permit holder shall:

- (1) Act in a manner that respects and protects the dignity of a decedent and the decedent's family;
- (2) Conduct business in a reasonable, usual, and customary manner;
- (3) Comply with the State public health laws as set forth in Health General Article, §§4-215 and 5-501 et seq., Annotated Code of Maryland;
- (4) Comply with Business Regulation Article, Title 5, Annotated Code of Maryland;
- (5) Comply with the Commercial Law Article, Titles 12 and 13, Annotated Code of Maryland;
- (6) Implement and follow through on all arrangements agreed upon between a consumer and the crematory;
- (7) Provide appropriate services for and respect the rights of individuals without regard to age, race, creed, national origin, gender, disability, marital status, political belief, religious affiliation, social or economic status, or social preferences;
- (8) Comply with all local, State, and federal laws for regarding the disposition of human remains;
- (9) Be sensitive and responsive to the bereavement needs of a decedent's family;
- (10) Provide a general price list in effect at that time, in accordance with the requirements of the Federal Trade Commission's funeral rule found at 16 CFR part 453; and
- (11) Provide accurate information from the general price list to any person who requests information, by telephone, regarding cremation related goods or services.

B. In advertising, a permit holder may not include statements:

- (1) That are misrepresentations of facts;

(2) That are likely to mislead or deceive because, in context, the statement makes only a partial disclosure of relevant facts;

(3) Relating to fees without reasonable disclosure of all relevant variables so that the statement would not be misunderstood or be deceptive to a consumer; or

(4) Containing representations or implications that in reasonable probability can be expected to cause an ordinarily prudent person to misunderstand or be deceived.

C. A permit holder or registered crematory operator may not:

(1) Use, or participate in the use of, any form of communication to consumers containing a false, fraudulent, misleading, deceptive, or unfair statement or claim; or

(2) Operate a crematory or perform a cremation while under the influence of alcohol, an illegal drug, or a controlled dangerous substance which has not been prescribed by a physician.

Administrative History. {09.34.07.9999}

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