

# Regulatory Analysis Form

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

(1) Agency

Department of State, Bureau of Professional and Occupational  
Affairs, State Board of Funeral Directors

(2) I.D. Number (Governor's Office Use)

16A-4813

IRRC Number: 2604

(3) Short Title

Forms review

(4) PA Code Cite

49 Pa. Code §§ 13.204, 13.224

(5) Agency Contacts & Telephone Numbers

Primary Contact: Thomas A. Blackburn, Assistant  
Counsel, Department of State (717) 783-7200

Secondary Contact: Joyce McKeever, Deputy Chief  
Counsel, Department of State (717) 783-7200

(6) Type of Rulemaking (check one)

☐ Proposed Rulemaking  
☒ Final Order Adopting Regulation  
☐ Policy Statement

(7) Is a 120-Day Emergency Certification  
Attached?

☒ No  
☐ Yes: By the Attorney General  
☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Regulations of the Board require a funeral establishment to have its form statement of funeral goods and services and preneed contract reviewed and approved by the Board. The Board has only refused to approve forms where the form failed to comply with provisions of the Funeral Director Law or Board regulations concerning the forms. Because its authority was not clear, the Board did not refuse to approve forms where enforcement of a term of the form would lead to a violation of the Funeral Director Law or Board regulations. This amendment authorizes the Board to refuse to approve a form statement of funeral goods and services or preneed contract where enforcement of a term of the agreement would lead to a violation of the Funeral Director Law or Board regulations.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The regulatory amendment is adopted under section 16(a) of the Funeral Director Law (Act) (63 P.S. § 479.16(a)).

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Because its authority to do so was not clear, the Board has not refused to approve a form where enforcement of a term of that form would violate the Funeral Director Law or Board regulations, unless the Funeral Director Law or regulation specified that the form must include (or may not include) such term. As a result, a funeral director could have a contract, approved by the Board, which would obligate a customer to accept a term that would violate the Funeral Director Law or Board regulations. Arguably, the Board would not be able to take disciplinary action against a funeral who enforced such a term in a form agreement, despite the term violating the Funeral Director Law or Board regulations, because the Board approved the funeral director to use that form. This regulatory amendment is necessary to permit the Board to fully enforce the Funeral Director Law and Board regulations.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Without this regulatory amendment, a funeral director could have a contract, approved by the Board, which would obligate a customer to accept a term that would violate the Funeral Director Law or Board regulations. However, the Board could not refuse to approve a form, the enforcement of a term of which would not be a violation of the Funeral Director Law or Board regulations. *See, Bean v. State Bd. of Funeral Directors*, 855 A.2d 148 (Pa. Cmwlth. July 22, 2004) (Funeral Director Law and current Board regulations do not authorize customer to rescind otherwise irrevocable preneed contract at any time prior to death).

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Funeral home customers will benefit from the regulation, because the funeral home will not be able to include in its forms any term that would violate the Funeral Director Law or Board regulations.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The Board has identified no group of individuals or entities that will be adversely affected by the regulation.

## Regulatory Analysis Form

(15) List the persons, groups or entities that will be required to comply with the regulation.  
(Approximate the number of people who will be required to comply.)

**All licensed funeral establishments will be required to comply with the proposed regulatory amendment. Approximately 1770 funeral entities are licensed, whether widow/widower, estate, restricted business corporation, professional corporation, pre-1935 corporation, branch place of practice funeral establishments, sole proprietorship or partnership establishments.**

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

**In March, 2003, the Board created an exposure draft that would have deleted from the Board's regulations the requirement that the Board review and approve forms. The Board solicited comments from the Pennsylvania Funeral Directors Association and all individuals who had attended any Board meeting during the preceding year. The Pennsylvania Pre-Need Association objected to the removal of the requirements that the Board review and approve forms. As an alternative to the original draft, the Board instead proposed a broader review of licensee contracts.**

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

**There are no costs to members of the regulated community associated with compliance with the amendments.**

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

**There are no costs or savings to local governments associated with compliance with the proposed amendments.**

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

**There are no costs to state government associated with implementation of the proposed amendments.**

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 07-08	FY+1 08-09	FY+2 09-10	FY+3 10-11	FY+4 11-12	FY+5 12-13
SAVINGS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						

## Regulatory Analysis Form

Local Government						
State Government						
Total Savings						
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

**Not applicable.**

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 (FY 04-05)	FY-2 (FY 05-06)	FY-1 (FY 06-07)	Current FY (FY 07-08)
Pa. State Board of Funeral Dir.	\$698,263	\$713,951	\$842,000	\$876,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

**No adverse effects or costs have been associated with compliance with the regulations. Therefore, the above-identified benefits would outweigh any adverse effects and cost.**

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

**Because the requirement for form review is currently in the Board's regulations, the Board considered no non-regulatory alternatives.**

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

**No alternative regulatory schemes were considered, because no other regulatory schemes would effectuate the Funeral Director Law.**

## **Regulatory Analysis Form**

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

**The proposed regulatory amendments do not overlap or conflict with any federal requirements.**

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

**The states of Delaware, Maryland, New Jersey, New York, Ohio and West Virginia do not require licensees to submit forms for review and approval. Although it does not delete the current requirement that a licensee must submit forms for Board review and approval, this regulatory amendment will not put Pennsylvania at any more of a competitive disadvantage.**

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

**This regulation will have no effect on other regulations of the Board or other state agencies.**

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

**The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the first Wednesday of each month. More information can be found on the Board's web-site ([www.dos.state.pa/funeral](http://www.dos.state.pa/funeral)) or by calling the Board office at (717) 783-3397.**

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

**No.**

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

**The Board has determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.**

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

**The regulation will be effective upon publication in final form in the Pennsylvania Bulletin.**

## **Regulatory Analysis Form**

(31) Provide the schedule for continual review of the regulation.

**The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1.**

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to  
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Copy below is hereby certified to be a true and correct  
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Executive or Independent  
Agencies.

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

State Board of Funeral Directors

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-4813

BY: Andrew C. Clark

\_\_\_\_\_  
DATE OF APPROVAL

MAR 3 2008  
DATE OF APPROVAL

\_\_\_\_\_  
DATE OF ADOPTION:

BY: Michael J. Yeosock  
Michael J. Yeosock, FD

(Deputy General Counsel  
(~~Chief Counsel~~,  
Independent Agency  
(~~Strike inapplicable title~~))

[ ] Check if applicable  
Copy not approved.  
Objections attached.

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[ ] Check if applicable.  
No Attorney General approval  
or objection within 30 day  
after submission.

FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF FUNERAL DIRECTORS

49 Pa. Code §§ 13.204, 13.224  
FORMS REVIEW

The State Board of Funeral Directors (Board) amends §§ 13.204 and 13.224 (relating to written agreement; and funding and reporting of prepaid burial contracts) to read as set forth in Annex A.

#### Description and Need for the Rulemaking

Currently, §§ 13.204 and 13.224 set forth requirements for contracts typically used by licensees in providing, or agreeing to provide, funeral goods and services. Under § 13.204(a), a licensee must use a form agreement or statement of funeral goods and services that has been reviewed and approved by the Board. Likewise, § 13.224(f) requires a licensee to use a form prepaid burial contract or preneed contract form that has been reviewed and approved by the Board. However, the existing provisions do not state the basis upon which the Board may disapprove a form submitted to it. In implementing the existing sections, the Board has refused to approve form contracts or agreements that include a term prohibited by the Funeral Director Law (act) or Board regulations, or form contracts or agreements that do not include a term required by the act or Board regulations. However, in the absence of express language in its regulations, the Board has not questioned whether the enforcement of any contractual provision of the form would lead to a violation of a provision of the act or Board regulations and accordingly has not disapproved any form agreements on that basis.

By these amendments to §§ 13.204 and 13.224, the Board makes clear that it will refuse to approve a form that does not comply with the act or Board regulations or if the enforcement of any of terms of the form would result in a violation of the act or the regulations.

#### Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 37 Pa.B. 1867 (April 21, 2007) with a 30-day public comment period. The Board received written comments from the following members of the public: James J. Kutz, Esquire, on behalf of AmeriServe Trust and Financial Services Co. and others; and John Eirkson, executive director of the Pennsylvania Funeral Directors Association (PFDA).

On June 6, 2007, the House Professional Licensure Committee (HPLC), as part of its review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.12), notified the Board that the HPLC had no comments and would take no formal action on this proposed rulemaking until final promulgation. The Board received no comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of its review of proposed rulemaking under the Regulatory Review Act. On June 20, 2007, the Independent Regulatory Review Commission (IRRC), as part of its review of proposed rulemaking under the Regulatory Review Act, notified the Board that IRRC had no objection, comments or recommendations to offer on the proposed rulemaking.

Mr. Kutz first commented that he saw no reason, let alone a compelling reason, to promulgate a regulation which informs the licensee that the Board will not approve any prepaid



burial contract or statement of funeral goods and services that violates the act or Board regulations. According to Mr. Kutz, it should go without saying that the Board is not in the business of approving illegal agreements. As a corollary, Mr. Kutz also questioned whether the Board “has had a policy of approving agreements that violate the law and if so, what is the explanation for that troublesome fact?” As indicated above, in the absence of regulatory language on this point, in reviewing form agreements the Board has not looked beyond those terms required or permitted by the existing regulations. The Board could simply delete from its regulations the obligation to review and approve form agreements, thereby avoiding any questions of estoppel and trusting its licensees to comply with the licensure law until shown otherwise. However, doing so would simply be abdicating the important consumer protection function of verifying in advance that the form agreements the licensee presents to a customer comply with the act and regulations. Mr. Kutz next suggested that the proposed amendments would “create more confusion than clarity” by not further addressing who will make any determination of whether the form agreement violated the act or regulations. The regulatory amendments place licensees on notice of what the Board will consider in reviewing the licensees’ form agreements. It goes without saying that the Board will conduct that review in a way that fully comports with the licensee’s procedural due process rights. Also, Mr. Kutz asserts that, because the Board is separately proposing additional regulations also related to preneed funeral arrangements, these proposed amendments were “simply the forerunner for anticipated prosecution by the Board in the event it is successful in securing approval of its more comprehensive regulations [that Mr. Kutz believes] are intended to effectively blunt the affect (sic) of the federal court decision in Walker v. Flitton,” 364 F.Supp.2d 503 (U.S.D.C. M.D. Pa. 2005): While the merits of any other proposed rulemaking will be addressed in that rulemaking, these regulatory amendments simply set forth the scope of Board review of form agreements and do not set forth the basis for any prosecution. Finally, Mr. Kutz went on to opine that the industry would be better served by a single comprehensive statutory proposal to modernize the law applicable to the funeral industry. The Board can only promulgate regulations that are authorized by the act, that is, regulations needed to implement and enforce the act; the Board cannot act outside the scope of its authority under the act and cannot revise or repeal the act.

PFDA first noted its agreement with the proposed amendments. However, PFDA suggested that the Board go further in reviewing not just the licensee’s form agreement with the customer, but also the licensee’s master trust agreement with the financial institution in which the licensee will place the customer’s prepaid funds. The Board has neither the expertise nor the statutory authority to consider terms of banking arrangements. Section 13(c) of the act (63 P.S. § 479.13(c)) requires a funeral director who has received preneed money to “either deposit the same in an escrow account in, or transfer the same in trust to, a banking institution in this Commonwealth.” By enacting this requirement, the General Assembly made clear that the Department of Banking, though its authority to regulate banking institutions, would assure the integrity of that money. The Board’s obligation was only to assure that the money would be held by a banking institution. Subsequent to the close of the public comment period, PFDA additionally commented that, in addition to the Board, the Department of Banking, the Department of Insurance and the State Securities Commission should review form agreements of funeral directors. While such additional review may be beneficial and authorized in the other agencies’ enabling statutes, the Board through its rulemaking cannot obligate these other agencies to review licensee forms.

In conclusion, the Board has not revised its proposed rulemaking in response to the comments that it received.

#### Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

#### Effective date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

#### Statutory Authority

The final rulemaking is authorized under section 16(a) of the Funeral Director Law (63 P.S. § 479.16(a)).

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 11, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 1867, to IRRC and the chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on \_\_\_\_\_, 2008, the final-form rulemaking was approved by the HPLC. On \_\_\_\_\_, 2008, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.5(g) of the Regulatory Review Act (71 P.S. § 845.5(g)), IRRC was deemed to have approved the final-form rulemaking.

#### Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Heidy Weirich, Administrator, State Board of Funeral Directors, by mail to P.O. Box 2649, Harrisburg, PA 17105-2649, or by e-mail at [st-funeral@state.pa.us](mailto:st-funeral@state.pa.us).

### Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) There are no amendments to this final-form rulemaking that would enlarge the scope of proposed rulemaking published at 37 Pa.B. 1867.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Funeral Director Law.

### Order

The Board, acting under its authorizing statute, orders that:

- (a) The regulations of the Board at 49 Pa. Code Chapter 13 are amended, by amending §§ 13.204 and 13.224, to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

Michael J. Yeosock, Chairperson  
State Board of Funeral Directors

## ANNEX A

### TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

#### PART I. DEPARTMENT OF STATE

#### Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

#### CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS

\* \* \* \* \*

#### STANDARDS OF PRACTICE AND CONDUCT

##### § 13.204. Written agreement.

\* \* \* \* \*

(h) The Board will not approve a form statement of funeral goods and services that does not comply with the act or this chapter, or the enforcement of any term of which would result in the violation of the act or this chapter.

#### PREPAID BURIAL CONTRACTS

##### § 13.224. Funding and reporting of prepaid burial contracts.

\* \* \* \* \*

(f) [Prepaid] Form prepaid burial contracts or form preneed contracts to be used by a funeral director shall be reviewed and approved by the Board and should reflect whether or not an additional service fee or arrangement fee is charged. [Prepaid] Form prepaid burial contracts or form preneed contracts used by a funeral director may not incorporate a contract for funeral merchandise entered into by a person or entity other than a funeral director. The Board will not approve a form prepaid burial contract or preneed contract that does not comply with the act or this chapter, or the enforcement of any term of which would result in the violation of the act or this chapter.

(3) **[Independent laboratories]** Laboratories shall avoid locked-in referral arrangements between themselves and a prescriber.

#### **PAYMENT FOR OUTPATIENT LABORATORY SERVICES**

##### **§ 1243.52. Payment conditions for various services.**

(a) If a laboratory refers work to another laboratory, payment will be made to either the referring laboratory or the laboratory actually performing the test. Payment will be made only if the laboratory billing the Department is currently participating in the MA Program and has listed the diagnostic procedure being billed with the **[Bureau of Provider Relations]** Department as specified in § 1243.41(1) (relating to participation requirements).

\* \* \* \* \*

##### **§ 1243.54. Noncompensable services.**

Payment will not be made to a laboratory for the following services regardless of where or to whom they are provided:

\* \* \* \* \*

##### **(3) Procedures that the laboratory is not CLIA-certified to perform.**

[Pa.B. Doc. No. 07-883. Filed for public inspection April 20, 2007, 9:00 a.m.]

## **STATE BOARD OF FUNERAL DIRECTORS**

**[49 PA. CODE CH. 13]**

### **Forms Review**

The State Board of Funeral Directors (Board) proposes to amend §§ 13.204 and 13.224 (relating to written agreement; and funding and reporting of prepaid burial contracts) to read as set forth in Annex A.

#### *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

#### *Statutory Authority*

The proposed rulemaking is authorized under section 16(a) of the Funeral Director Law (act) (63 P.S. § 479.16(a)).

#### *Background, Need and Description of the Proposed Amendment*

Currently, §§ 13.204 and 13.224 set forth requirements for contracts typically used by licensees in providing, or agreeing to provide, funeral goods and services. Under § 13.204(a), a licensee shall use a form agreement or statement of funeral goods and services that has been reviewed and approved by the Board. Likewise, § 13.224(f) requires a licensee to use a form prepaid burial contract or preneed contract form that has been reviewed and approved by the Board. However, the existing provisions do not state the basis upon which the Board may disapprove a form submitted to it.

In implementing the existing sections, the Board has refused to approve form contracts or agreements that include a term prohibited by the act or Board regulations,

or form contracts or agreements that do not include a term required by the act or Board regulations. However, in the absence of express language in its regulations, the Board has not disapproved a form that includes a contractual provision the enforcement of which would lead to a violation of a provision of the act or Board regulations.

Under the proposed amendments to §§ 13.204 and 13.224, the Board would have authority to refuse to approve a form that does not comply with the act or the regulations or if the enforcement of any terms of the form would result in a violation of the act or Board regulations.

The Board solicited input from and provided an exposure draft of this proposed rulemaking to funeral directors and organizations. In addition, the Board considered the impact the proposed amendments would have on the regulated community and on public health, safety and welfare. The Board finds that the proposed amendments address a compelling public interest as described in this preamble.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no additional paperwork requirement upon the Commonwealth, political subdivisions or the private sector.

#### *Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 11, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

#### *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Michelle T. Smey, Administrator, State Board of Funeral Directors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4813 (Forms Review) when submitting comments.

ANTHONY SCARANTINO,  
Chairperson

**Fiscal Note:** 16A-4813. No fiscal impact; (8) recommends adoption.

## Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL  
STANDARDS

## PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL  
AFFAIRSCHAPTER 13. STATE BOARD OF FUNERAL  
DIRECTORS

## STANDARDS OF PRACTICE AND CONDUCT

## § 13.204. Written agreement.

\* \* \* \* \*

(h) The Board will not approve a form statement of funeral goods and services that does not comply with the act or this chapter, or the enforcement of any term of which would result in the violation of the act or this chapter.

## PREPAID BURIAL CONTRACTS

## § 13.224. Funding and reporting of prepaid burial contracts.

\* \* \* \* \*

(f) [Prepaid] Form prepaid burial contracts or form preneed contracts to be used by a funeral director shall be reviewed and approved by the Board and should reflect whether or not an additional service fee or arrangement fee is charged. [Prepaid] Form prepared burial contracts or form preneed contracts used by a funeral director may not incorporate a contract for funeral merchandise entered into by a person or entity other than a funeral director. The Board will not approve a form prepaid burial contract or preneed contract that does not comply with the act or this chapter, or the enforcement of any term of which would result in the violation of the act or this chapter.

[Pa.B. Doc. No. 07-684. Filed for public inspection April 20, 2007, 9:00 a.m.]

## [49 PA. CODE CH. 13]

## Renewal Fee

The State Board of Funeral Directors (Board) proposes to amend § 13.12 (relating to fees) to read as set forth in Annex A. The proposed rulemaking will raise the biennial renewal fee for licensed funeral directors and funeral establishments from \$185 to \$325.

*Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The increase in the biennial renewal fee will go into effect beginning with renewal for the February 1, 2008, through January 31, 2010, biennial renewal period.

*Statutory Authority*

This proposed rulemaking is authorized by section 18.1 of the Funeral Director Law (act) (63 P.S. § 479.18.1).

*Background and Need for the Amendment*

Section 18.1(a) of the act requires the Board to fix the fees for renewal of licenses by regulation and if the revenue generated by fees, fines and civil penalties is not sufficient to match expenditures over a 2-year period, the

Board is required to increase those fees by regulation. Section 18.1(b) of the act requires the Board to increase fees when revenue raised by fees, fines and civil penalties are not sufficient to meet expenditures.

The Board's current biennial license renewal fee was established by regulation and took effect for the 2004-2006 biennial renewal period, the only increase since 1992. The Board raises virtually all its revenue through fees. The biennial license renewal fee is the most substantial revenue-generating fee of the fees charged by the Board.

At the Board's meeting on June 7, 2006, the Department of State's Revenue and Budget Offices presented a summary of the Board's actual revenues and expenses for Fiscal Year (FY) 2004-05 and projected revenues and expenses for FY 2005-06 through FY 2016-17. At the end of FY 2004-05, the Board had a deficit of \$99,582. The Budget Office projects that, without an increase in the renewal fee, deficits will continue to grow, with an anticipated deficit of \$684,119 at the end of FY 2008-09, an anticipated deficit of \$1,212,119 at the end of FY 2010-11 and an anticipated deficit of \$4,037,119 by the end of FY 2016-17.

For the Board's consideration, the Budget Office presented summaries for various increases in the renewal fee beginning with the 2008-10 renewal period. If the renewal fee were increased to \$230, an increase of approximately 25%, the Budget Office projected continued deficits. Specifically, the Board would experience a deficit of \$374,009 at the end of FY 2008-09, a deficit of \$591,899 at the end of FY 2010-11 and a deficit of \$1,002,789 at the end of FY 2012-13. The deficits would continue to grow to \$2,486,569 at the end of FY 2016-17. Similarly, if the renewal fee were increased to \$280, an increase of approximately 50%, the Budget Office projected a deficit of \$46,159 at the end of FY 2008-09, a surplus of \$63,801 at the end of FY 2010-11 and a deficit of \$19,239 at the end of FY 2012-13. The deficits would continue to grow to \$847,319 at the end of FY 2016-17.

If, however, the renewal fee were increased to \$325, an increase of approximately 75%, the Budget Office projected a surplus of \$249,906 at the end of FY 2008-09, a surplus of \$653,931 at the end of FY 2010-11 and a surplus of \$865,956 at the end of FY 2012-13. The surplus would then continually decrease to \$628,006 at the end of FY 2016-17. If the renewal fee were increased to \$370, an increase of approximately 100%, the Budget Office projected a surplus of \$543,971 at the end of FY 2008-09 and a surplus of \$1,244,061 at the end of FY 2010-11. The surplus would then continually increase to \$2,103,331 at the end of FY 2016-17. After considering each of these options, the Board elected to increase the biennial renewal fee to \$325, as the least restrictive means of eliminating the projected deficits and restoring the Board's fiscal integrity as required by section 18.1 of the act.

*Description of the Proposed Amendments*

Section 13.12 (relating to fees) will be amended to increase the biennial renewal fee from \$185 to \$325.

*Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will increase the biennial renewal fee for funeral directors and funeral establishments in this Commonwealth, but, otherwise, should have no adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The proposed

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE

**DATE:** January 22, 2008

**TO:** Andrew C. Clark, Deputy General Counsel  
Office of General Counsel

**FROM:** Thomas A. Blackburn, Counsel  
State Board of Funeral Directors

**RE:** Final rulemaking:  
State Board of Funeral Directors  
Forms review (16A-4813)

There are no significant legal and policy issues presented by this proposed amendment to the regulations of the State Board of Funeral Directors regarding forms review. The amendment would authorize the Board to refuse to approve a funeral home's form statement of funeral goods and services where enforcement of any term of the agreement would result in a violation of the Funeral Director Law or Board regulations, regardless of whether the regulations specifically prohibited such a term from being in the agreement.

I certify that I have reviewed this regulation for form and legality, that I have discussed any legal and policy issues with the administrative officers responsible for the program, and that all information contained in the Preamble and Annex is correct and accurate.

TAB

## 16A-4813: Forms Review

### Commentators List

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James J. Kutz  
Post & Schell Attorneys at Law  
17 North Second Street  
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Harrisburg, PA 17101-1601

John W. Eirkson, Executive Director  
Pennsylvania Funeral Directors Associate  
7441 Allentown Boulevard  
Harrisburg, PA 17112-9982





COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF FUNERAL DIRECTORS  
Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-3397

March 31, 2008

The Honorable Arthur Coccodrilli, Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Final Regulation  
State Board of Funeral Directors

16A-4813: Forms Review

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Funeral Directors pertaining to Forms Review.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Yeosock".

Michael J. Yeosock, Chairperson  
State Board of Funeral Directors

MJY/TAB:rs

Enclosure

cc: Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Albert H. Masland, Chief Counsel  
Department of State  
Joyce McKeever, Deputy Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge  
Department of State  
Thomas A. Blackburn, Counsel  
State Board of Funeral Directors  
State Board of Funeral Directors

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 16A-4813  
SUBJECT: FORMS REVIEW  
AGENCY: DEPARTMENT OF STATE  
STATE BOARD OF FUNERAL DIRECTORS

2008 MAR 31 AM 9:52

INDEPENDENT REGULATORY  
REVIEW COMMISSION

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

FILING OF REGULATION

DATE SIGNATURE

2/21/08 *Jim M. [Signature]*

DESIGNATION

HOUSE COMMITTEE ON PROFESSIONAL LICENSURE

MAJORITY CHAIRMAN *Mike Stuck*

3/31/08 *Mary Walmer*

SENATE COMMITTEE ON CONSUMER PROTECTION &  
PROFESSIONAL LICENSURE

MAJORITY CHAIRMAN *Robert Tomlinson*

3/31/08 *St. Helmer*

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

March 4, 2008