

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

INITIAL STATEMENT OF REASONS

Hearing Date: No public hearing has been scheduled.

Subject Matter of Proposed Regulations: Approval to Share a Crematory Manager

Section(s) Affected: Add section 2326.6 to Division 23 of Title 16 of the California Code of Regulations (CCR)

Background and Statement of the Problem

The Cemetery and Funeral Bureau (“Bureau” or “CFB”) licenses, regulates, and investigates complaints against 14 different license categories in California, totaling approximately 13,100 licensees. These licensing categories include funeral establishments, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery broker branch, cemetery broker additional, cemetery salespersons, cremated remains disposers, crematories, crematory managers, hydrolysis facilities, cemetery managers, and private, nonreligious cemeteries. It is the Bureau’s duty to enforce and administer the Cemetery and Funeral Act (Chapter 12 (commencing with section 7600) of Division 3 of the Business and Professions Code (BPC)) (Act). (Bus. & Prof. Code, § 7602, subd. (a)(2).) The Bureau is authorized to establish necessary rules and regulations for the enforcement of the Act and the laws subject to its jurisdiction. (Bus. & Prof. Code, § 7606.)

In 2017, the Legislature passed Senate Bill (SB) 800 (Committee on Professions, Business Professions and Economic Development, Chapter 573, Statutes of 2017), amending BPC section 7713(a) to authorize “licensed crematories within close geographical proximity of each other to request the Bureau to allow a licensed crematory manager to manage, supervise, and direct the business or profession of more than one facility.”

There are no existing regulations that specify the processes and procedures for how a licensed crematory may apply to the Bureau to share a licensed crematory manager to manage, supervise, and direct the business or profession of more than one facility.

This proposal would establish such a regulation.

The Bureau has drafted proposed text to provide the requirements for applying for and receiving approval from the Bureau to share a designated crematory manager to manage, supervise, and direct the business or profession of more than one facility.

The Bureau has consulted with stakeholders (licensees, consumer advocates, and members of the public) regarding the proposed sharing of crematory manager regulations. At the Bureau’s Advisory Committee meeting held on May 24, 2018, the draft language for sharing a crematory manager was discussed and made available for public comment. The Bureau received no comments from stakeholders. However, since 2018, the Bureau has made certain modifications to the proposed text to enhance clarity.

The Bureau proposes to adopt section 2326.6, titled “Approval to Share a Crematory Manager” to list the conditions a crematory shall meet when requesting Bureau approval to share a designated crematory manager.

Subdivision (a) requires the licensed crematories to be under common ownership and defines what the Bureau considers “common ownership.”

Subdivision (b) requires a licensed crematory to designate one crematory as the main office where the individual licensed owner, partners, or corporate officers of each of the licensed crematories may be contacted.

Subdivision (c) requires the licensed crematories to be located within 60 miles from the designated main office.

Subdivision (d) requires a licensed crematory requesting approval from the Bureau to share a designated crematory manager to submit form 23-SCRM (New 4/22), “Request for Approval to Share Crematory Manager.” The regulation will incorporate the form by reference and list all the requirements.

Anticipated Benefits From Regulatory Action:

This proposal would establish a consistent and simple process for licensed crematories to obtain Bureau approval to share a designated crematory manager to supervise and manage more than one facility. It also provides licensed crematories an opportunity to be more efficient and save money by making the business decision to share a designated crematory manager to manage more than one of its facilities.

Factual Basis/Rationale

Adopt section 2326.6 of Division 23 of Title 16 of the CCR (Approval to Share a Crematory Manager)

BPC section 7713(a) allows the Bureau to approve a licensed crematory to share a designated crematory manager for more than one facility. The conditions set forth in section 2326.6 subdivision (a) through (d) are necessary to assist the Bureau to continue to carry out its highest priority of consumer protection by ensuring all licensed crematories wishing to share a designated crematory manager are evaluated by the same conditions. The rationale for each condition is:

Subdivision (a)

Subdivision (a) requires the licensed crematories be under common ownership. BPC section 7713(a) requires a crematory to employ a licensed crematory manager to manage, supervise, and direct its operations.

Requiring crematories to be under common ownership is necessary to eliminate a possible conflict of interest for the licensed crematory manager that could occur if that individual is employed by two unrelated business entities. BPC section 7713(c) states “The designated crematory manager shall be responsible for exercising direct supervision and control over the operations, employees, and agents of the crematory as is necessary to ensure full compliance with the applicable provisions of this code, the Health and Safety Code, and any regulations adopted thereto. Failure of the designated crematory manager or the licensed crematory to exercise that supervision or control shall constitute a ground for disciplinary action.” A crematory manager may be unable to competently perform the duties and meet all the obligations which are required under BPC section 7713(c) if they work for more than one employer.

Subdivision (b)

Subdivision (b) requires a licensed crematory to designate one crematory as the main office where the principals of all the licensed crematories under common ownership can be contacted.

This is necessary to provide the Bureau with one centralized location for communication with the licensee, resulting in greater efficiency and ease of communication. This also establishes a main office location for the basis of the calculation of the 60-mile requirement specified in subdivision (c) of this section.

Subdivision (c)

Subdivision (c) requires each licensed crematory sharing a designated crematory manager to be located within 60 miles of the designated main office. BPC section 7713(a) requires crematories that share a designated crematory manager to be in “close geographical proximity” of each other.

Subdivision (c) is necessary to define “close geographical proximity.” The Bureau has determined requiring the licensed crematories be located within 60 miles from the designated main office is consistent with the rationale underlying the requirement for a “close geographical proximity.” To effectively manage more than one crematory, a manager should be physically available and able to meet with a consumer without a consumer having to wait for hours. Given potential traffic congestion in urban areas, the amount of time required to travel beyond 60 miles may be considerable. Consequently, the Bureau has determined that 60 miles would be the maximum distance between

crematories to allow a crematory manager to effectively manage more than one location.

Subdivision (d)

Subdivision (d) incorporates by reference the application (form) for a crematory requesting to share a designated crematory manager and allows the form to be submitted by email to emailcfb@dca.ca.gov or by mail to the address listed on the form. The information an applicant provides on the form is necessary to establish the crematory is compliant with all applicable laws, rules, and regulations. The Bureau will not issue its approval until it is satisfied that the public interest, human health, and environmental quality will be served by the applicant.

The form, Request for Approval to Share Crematory Manager, will contain the following:

A. Introductory Paragraph

The form contains an introductory paragraph explaining the purpose of the form and instructions for completing and submitting the form. This is necessary to provide information to the applicant regarding the purpose of the form.

B. Section A: Crematory Information

The form requires the following identifying information:

1. Name of the crematory.
2. License number of the crematory.
3. Address of the crematory.
4. Mailing address (address of record) if different, from address information.
5. Telephone number.
6. Primary Contact Name, first and last name, telephone number, and optional email address.

Requirements 1 through 6 are necessary to research and verify the applicant's records. In addition, the Bureau requires the application to evaluate whether the applicant meets each of the conditions of approval to share a crematory manager as outlined in section 2326.6. The contact information is necessary for the Bureau to contact the applicant with notices and other mailings.

C. Section B: Crematory Manager Information

The form requires the name and license of the crematory manager.

1. Name of crematory manager.
2. Crematory manager license number and date of association.

Requirements 1 and 2 are necessary to verify that the crematory has designated a licensed crematory manager and the association date is current. BPC section 7713(a) requires any change in the designated manager to be reported to the Bureau within 10 days.

D. Section C: Request for Approval to Share Crematory Manager

1. This section contains the following statement: “Per CCR section 2326.6, the crematory must be under common ownership and within 60 miles from the main office designated.”
2. The form asks for the name, license number, address, city, state, and zip code, of the crematory designated as the main office. It also asks for the license numbers of all crematories sharing the designated crematory manager.

Requirements 1 and 2 are necessary to verify that the crematory meets the conditions set forth in the regulation to share a designated crematory manager. This is necessary to ensure that crematories are managed appropriately.

E. Section D: Certification of Crematory Manager

BPC section 7713(b) requires the designated crematory manager to be responsible for exercising direct supervision and control over the operations, employees, and agents of the crematory as is necessary to ensure full compliance with the applicable provisions of the code, the Health and Safety Code, and any regulations adopted thereto.

The Crematory Manager certification requirement in Section D requires the crematory manager to certify that all information provided is true, complete, and accurate. Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications under penalty of perjury: “The whole point of permitting a declaration under penalty of perjury, in lieu of a sworn statement, is to help ensure that declarations contain a truthful factual representation and are made in good faith.”].) Accordingly, the certification under penalty of perjury in the form is necessary to ensure that applicants submit truthful and accurate information to the Bureau.

In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Bureau (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Bureau with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. [“The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or

are not known to be true.” *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

F. Section E: Certification of Authorized Representative

The Bureau proposes one individual be designated as the authorized representative responsible for submitting the application on behalf of the crematory. An individual licensed owner, partner, or corporate officer may act as this representative for the crematory. The authorized representative certifies all information provided is true, complete, accurate. Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications under penalty of perjury: “The whole point of permitting a declaration under penalty of perjury, in lieu of a sworn statement, is to help ensure that declarations contain a truthful factual representation and are made in good faith.”].) Accordingly, the certification under penalty of perjury in the form is necessary to ensure that applicants submit truthful and accurate information to the Bureau.

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The Bureau relies upon applicants’ self-reported information in evaluating applications. The certification requirement protects consumers because it helps ensure that only applicants who meet the Bureau requirements, as demonstrated by their application materials, will be eligible for approval.

Finally, the form includes the required notices and disclosures to the applicant for the Bureau’s collection of personal information in compliance with Section 27 of the BPC section 27 and Civil Code sections 1798.24, and 1798.40.

The application, Request for Approval to Share Crematory Manager, form 23-SCRM (New 4/22), incorporated by reference, would be cumbersome, unduly expensive, and otherwise impractical to publish in the California Code of Regulations. The form will be available on the Bureau’s website and hard copies will be available from the Bureau upon request.

Underlying Data

Technical, theoretical, or empirical studies, reports, or documents relied upon:

- SB 800 (Committee on Business, Professions and Economic Development, Chapter 573, Statutes of 2017)
- Advisory Committee Meeting Minutes, May 24, 2018

Business Impact:

The Bureau has made an initial determination the proposed regulatory action would not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts or evidence/documents/testimony:

The Bureau has determined the only types of businesses that may be affected are licensed crematories seeking the Bureau’s approval to share a designated crematory manager to manage, supervise, and direct the business or profession of more than one facility.

As of July 2021, the Bureau is responsible for 230 licensed crematories throughout California. The change in the number of crematories licensed by the Bureau has been negligible over the period from fiscal years 2018-19 through 2020-21. While the law has been in effect for the past three years, the number of licensed crematory managers has increased by less than one percent from fiscal years 2018-19 through 2020-21, indicating that the change in the law has not had a noticeable impact on California businesses as illustrated on the table below:

Licensed crematories for the last three fiscal years		
2018-19	2019-20	2020-21
229	228	230

Licensed crematory managers for the last three fiscal years		
2018-19	2019-20	2020-21
590	603	610

Economic Impact Assessment:

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

- It will not create but may eliminate jobs within the State of California because this proposed regulation allows an owner of multiple crematories who meets the conditions of approval to employ one designated crematory manager for all of the crematories instead of employing a designated crematory manager for each location.

- It will not create new business or eliminate existing businesses within the State of California or the expansion of business currently doing business within the State of California. For the last three fiscal years, the Bureau’s licensing population for crematories has remained consistent, as shown on the above table. Given the current crematory licensee population is only 230, and not all will meet the conditions of approval, the Bureau has determined the number of licensees is insufficient to create a statewide adverse economic impact.
- There are no anticipated benefits to the health and welfare of California residents because the implementation of the regulatory package allowing a crematory to share a crematory manager has no impact on the health, welfare, and safety of California residents.
- There are no anticipated benefits to worker safety because this regulatory package allowing a crematory to share a crematory manager has no impact to worker safety.
- There are no anticipated benefits to the state’s environment because this regulatory package allowing a crematory to share a crematory manager has no impact to the state’s environment.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected or accepted:

Alternative 1: Do nothing. This alternative was rejected because it would make the Bureau non-compliant with the statutory requirements of BPC section 7713.

Alternative 2: Adopt a new regulation. The Bureau has determined that this alternative is the most efficient option for the Bureau to meet the statutory requirements of BPC section 7713.