



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Board of Funeral Service	
2. Rule citation & name: 21 NCAC 34B .0707 Refrigeration	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: February 19, 2021	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: February 10, 2021 b. Proposed Temporary Rule published on the OAH website: February 17, 2021 c. Public Hearing date: March 10, 2021 d. Comment Period: February 19, 2021 through March 12, 2021 e. Notice pursuant to G.S. 150B-21.1(a3)(2): February 11, 2021 f. Adoption by agency on: April 14, 2021 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
<p>Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. Since January 1, 2021, the number of daily deaths in North Carolina related to COVID-19 has remained high, putting significant strain on practitioners in the death care industry to ensure that unembalmed decedents are properly stored and maintained until final disposition. Rule 21 NCAC 34B .0707 regulates a crematory's use of temporary refrigeration units and off-site refrigeration units to ensure proper protocols for a decedent's identification, care, and chain of custody.</p>	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The escalating rate of deaths in North Carolina posed by COVID-19 requires immediate action to ensure unembalmed human remains are stored and maintained in a manner that protects both public health and the dignity of the decedent.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Stephen Davis

Phone: 919-733-9380

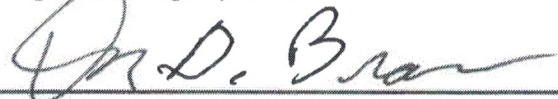
E-Mail: sdavis@ncbfs.org

Agency contact, if any:

Phone:

E-Mail:

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Don D. Brown

Title: President

E-Mail: dbfuneralhome@aol.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

21 NCAC 34B .0707 is adopted under temporary procedures as follows:

21 NCAC 34B .0707 REFRIGERATION

(a) Any refrigeration unit procured and maintained by a funeral establishment must satisfy the following requirements:

- (1) be capable of storing at least three adult human bodies, each measuring up to seven feet in length and three hundred pounds in weight, in the holding facility;
- (2) be capable of maintaining an interior temperature of 40 degrees Fahrenheit while loaded with the maximum number of bodies for which it is designed;
- (3) shall have sealed concrete, stainless steel, galvanized, aluminum, or other flooring in walk-in units;
- (4) shall have stainless steel, aluminum, or other non-corrosive materials for the remainder of all units;
- and
- (5) be subject to inspection by Board inspectors at all times.

(b) Upon declaration of a state of emergency, as provided in G.S. 166A-19.20, the Board shall allow, for a period not to exceed the length of the emergency declaration, funeral establishments to procure and maintain one or more temporary refrigeration units. Any such temporary refrigeration unit must satisfy the requirements set forth in paragraph (a)(2)-(5) of this Rule. Any such temporary refrigeration unit not located inside the funeral establishment shall be kept locked at all times when human remains are stored inside.

(c) Human remains stored in a refrigeration unit, as set forth in paragraphs (a) and (b) of this Rule, must be kept in a container than complies with G.S. 90-210.121(9)(b)-(f).

(d) Prior to using a refrigeration unit that is not located on its premises, a funeral establishment shall provide the Board with a written document that sets forth the following:

- (1) the name, contact information, and license number, if applicable, of the entity that owns the property on which the refrigeration unit is located;
- (2) the physical address of the property on which the refrigeration unit is located;
- (3) the name, contact information, and license number, if applicable, of the entity responsible for maintaining the refrigeration unit that meets the requirements of paragraphs (a) and (b) of this Rule;
- (4) certification from both the licensed manager of the funeral establishment and an officer, owner, member, or partner of the entity responsible for maintaining the refrigeration unit in compliance with paragraphs (a) and (b) of this Rule, acknowledging that:
 - (i) the funeral establishment shall use the refrigeration unit for the storage of human remains;
 - (ii) the refrigeration unit complies with paragraphs (a) and (b) of this Rule;
 - (iii) a log documenting the chain of possession of human remains shall be maintained, which sets forth the name of the decedent, the funeral establishment or other entity for whom the human remains are being stored, and the date and time that human remains are placed inside and removed from the refrigeration unit;
 - (iv) the Board inspectors shall have access to the refrigeration unit at all times;

1 (v) any licensee or permit holder that uses or maintains a refrigeration unit that is not compliant
2 with this Rule is subject to disciplinary action pursuant to G.S. 210.25(d)(4) and 90-
3 210.25(e)(1)(j).

4
5 *History Note:* *Authority G.S. 90-210.23; 90-210.27A(h), (l);*
6 *Emergency Adoption Eff. February 19, ~~2021~~, 2021;*
7 *Temporary Adoption Eff. May 28, 2021.*



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Board of Funeral Service	
2. Rule citation & name: 21 NCAC 34C .0202 Refrigeration	
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: February 19, 2021	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: February 10, 2021 b. Proposed Temporary Rule published on the OAH website: February 17, 2021 c. Public Hearing date: March 10, 2021 d. Comment Period: February 19, 2021 through March 12, 2021 e. Notice pursuant to G.S. 150B-21.1(a3)(2): February 11, 2021 f. Adoption by agency on: April 14, 2021 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
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Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. Since January 1, 2021, the number of daily deaths in North Carolina related to COVID-19 has remained high, putting significant strain on practitioners in the death care industry to ensure that unembalmed decedents are properly stored and maintained until final disposition. Rule 21 NCAC 34C .0202 regulates a crematory's use of temporary refrigeration units and off-site refrigeration units to ensure proper protocols for a decedent's identification, care, and chain of custody.	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The escalating rate of deaths in North Carolina posed by COVID-19 requires immediate action to ensure unembalmed human remains are stored and maintained in a manner that protects both public health and the dignity of the decedent.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

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9. Rule-making Coordinator: Stephen Davis

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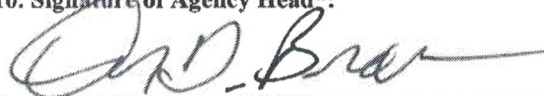
E-Mail: sdavis@ncbfs.org

Agency contact, if any:

Phone:

E-Mail:

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Don D. Brown

Title: President

E-Mail: dbfuneralhome@aol.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

21 NCAC 34C .0202 is amended under temporary procedures as follows:

21 NCAC 34C .0202 REFRIGERATION

(a) Crematory and hydrolysis licensees shall have located on its premises a refrigeration unit ~~that: capable of storing at least three adult human bodies, each measuring up to seven feet in length and three hundred pounds in weight, in the holding facility. Each refrigeration unit required by this Rule shall be capable of maintaining an interior temperature of 40 degrees Fahrenheit while loaded with the maximum number of bodies for which it is designed; shall be a sealed concrete, stainless steel, galvanized, aluminum, or other flooring in walk-in units; and shall be stainless steel, aluminum, or other non-corrosive materials for the remainder of all units.~~

(1) is capable of storing at least three adult human bodies, each measuring up to seven feet in length and three hundred pounds in weight, in the holding facility;

(2) is capable of maintaining an interior temperature of 40 degrees Fahrenheit while loaded with the maximum number of bodies for which it is designed;

(3) has sealed concrete, stainless steel, galvanized, aluminum, or other flooring in walk-in units; and

(4) has stainless steel, aluminum, or other non-corrosive materials for the remainder of all units.

(b) A refrigeration unit in compliance with paragraph (a)(1)-(4) of this Rule shall satisfy a crematory or hydrolysis licensee's compliance with paragraph (a) of this Rule if the refrigeration unit is housed in a funeral establishment, crematory, or hydrolysis licensee sharing common ownership with, and located on the same contiguous piece of property as, the crematory or hydrolysis licensee.

~~(b)~~(c) Unembalmed human remains retained in the custody of a crematory or hydrolysis licensee for more than 24 hours prior to cremation or hydrolysis shall be kept in a refrigeration unit. Human remains stored in a refrigeration unit, as set forth in paragraphs (a) and (c) of this Rule, must be kept in a container than complies with G.S. 90-210.121(9)(a)-(f). Upon declaration of a state of emergency, as provided in G.S. 166A-19.20, the Board shall allow, for a period not to exceed the length of the emergency declaration, a crematory or hydrolysis licensee to procure and maintain one or more temporary refrigeration units. Any such temporary refrigeration unit must satisfy the requirements set forth in paragraph (a)(1)-(4) of this Rule. Any such temporary refrigeration unit not located inside the crematory shall be kept locked at all times when human remains are stored inside.

(d) Prior to using a refrigeration unit that is not located on its premises, a crematory or hydrolysis licensee shall provide the Board with a written document that sets forth the following:

(1) the name, contact information, and license number, if applicable, of the entity that owns the property on which the refrigeration unit is located;

(2) the physical address of the property on which the refrigeration unit is located;

(3) the name, contact information, and license number, if applicable, of the entity responsible for maintaining the refrigeration unit that meets the requirements of paragraph (a)(1)-(4) of this Rule;

(4) certification from both the manager of the crematory and an officer, owner, member, or partner of the entity responsible for maintaining the refrigeration unit in compliance with paragraph (a)(1)-(4) of this Rule, acknowledging that:

- 1 (i) the crematory or hydrolysis licensee shall use the refrigeration unit for the storage of human
2 remains;
3 (ii) the refrigeration unit complies with paragraph (a)(1)-(4) of this Rule;
4 (iii) a log documenting the chain of possession of human remains shall be maintained, which
5 sets forth the name of the decedent, the funeral establishment or other entity for whom the
6 human remains are being stored, and the date and time that human remains are placed
7 inside and removed from the refrigeration unit;
8 (iv) the Board inspectors shall have access to the refrigeration unit at all times;
9 (v) any licensee or permit holder that uses or maintains a refrigeration unit that is not compliant
10 with this Rule is subject to disciplinary action pursuant to G.S. 210.25(d)(4) and 90-
11 210.25(e)(1)(j).

12 ~~(e) The provisions of this Rule shall not be construed to require a crematory facility and hydrolysis facility that share~~
13 ~~common ownership and are located on a single contiguous piece of property to maintain more than one refrigeration~~
14 ~~unit.~~

15
16 *History Note: Authority G.S. 90-210.121(9),(12); 90-210.123(g); 90-210.134(a); 90-210.136(d),(h);*
17 *Eff. July 1, 1991;*
18 *Recodified from Rule .0201 Eff. July 7, 1992;*
19 *Amended Eff. July 1, 2004;*
20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19,*
21 *2017;*
22 *Temporary Amendment Eff. May 24, 2019;*
23 *Temporary Amendment Expired Eff. March 13, 2020;*
24 *Amended Eff. January 1, 2021;*
25 *Emergency Amendment Eff. February 19, ~~2021~~, 2021;*
26 *Temporary Amendment Eff. May 28, 2021.*