



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina Board of Funeral Service

2. Rule citation & name: 21 NCAC 34A .0128 Waiver

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No Effective date: April 14, 2020

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: April 3, 2020
- b. Proposed Temporary Rule published on the OAH website: April 7, 2020
- c. Public Hearing date: April 24, 2020
- d. Comment Period: April 13, 2020 through May 4, 2020
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): April 3, 2020
- f. Adoption by agency on: June 10, 2020
- 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.

- ☒ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

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. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. On March 14, 2020, the Governor of North Carolina issues Executive Order No. 117 that prohibited mass gatherings, closed schools, and urged social distancing.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required? The public health threat posed by COVID-19 requires immediate action to limit mass gatherings, increase social distancing, and limit exposure of high risks individuals. It is in the public's interest to immediately adopt rules that limit the Board's regulated audience's exposure to COVID-19 and allow for relaxed requirements during the time of this public health emergency. Further, this rule alleviates concerns related to safe but increased access to funeral service workers during the COVID-19 outbreak.

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 E. Davis

Phone: 919-733-9380

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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: Mark Blake

Title: President

E-Mail: Mark.Blake@sci-us.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

21 NCAC 34A .0128 is adopted with changes under temporary procedures as follows:

21 NCAC 34A .0128 WAIVER

(a) The Board may waive any rule in this Chapter that is not statutorily required if a licensee, trainee, or continuing education course provider submits a written request. ~~The Board may also waive any rule in Chapter 34 of the Administrative Code that is not statutorily required upon its own initiative.~~ Factors the Board shall use in determining whether to grant the waiver are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver;
- (5) notice to and opposition by the public;
- (6) need for the waiver; and
- (7) previous requests for waivers submitted from the requesting party.

~~(b) The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative during a disaster declaration by the President of the United States or the Governor, a national emergency declaration by the President of the United States, or a state of emergency declaration issued under G.S. 166A-19.3(19), based on the factors set forth in Paragraph (a)(1), (2), (3), (5) and (6) of this Rule. If the Board wishes to waive a rule, it shall provide notice by posting a link on their website and sending out information to their interested persons mailing list.~~

~~(c) Any waiver granted by the Board in accordance with this Rule based upon a declared state of emergency shall include a date certain upon which the waiver will expire, not to exceed twelve (12) months from the date that the waiver is granted.~~

History Note: *Authority G.S. 90-210.23(a); 150B-19(6);*
Emergency Adoption Eff. April 14, 2020; 2020;
Temporary Adoption Eff. July 24, 2020.