

**Note from the Codifier:** The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days. For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

### CHAPTER 34 – BOARD OF FUNERAL SERVICE

**Notice** is hereby given in accordance with G.S. 150B-21.1 that the Board of Funeral Service intends to adopt the rule cited as 21 NCAC 34B .0707 and amend the rule cited as 21 NCAC 34C .0202.

**Codifier of Rules** approved this rule as an emergency rule effective February 19, 2021 and received for publication the following notice and proposed temporary rule on February 10, 2021.

**Public Hearing:**

**Date:** March 10, 2021

**Time:** 10:00 a.m.

**Location:** 1033 Wade Ave, Ste 108, Raleigh, NC 27605

**Reason for Proposed Temporary Action:** A serious and unforeseen threat to the public health, safety or welfare. 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 has continued to escalate at an unprecedented rate, 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 funeral establishment'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. 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.

**Comment Procedures:** Comments from the public shall be directed to: Stephen E. Davis, North Carolina Board of Funeral Service, 1033 Wade Ave, Ste 108, Raleigh, NC 27605; phone 919-733-9380; fax 919-733-8271; email sdavis@ncbfs.org. The comment period begins February 19, 2021 and ends March 12, 2021.

### SUBCHAPTER 34B - FUNERAL SERVICE

#### SECTION .0700 - PREPARATION OF DEAD BODIES

##### 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 Subparagraphs (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:
  - (A) the funeral establishment shall use the refrigeration unit for the storage of human remains;
  - (B) the refrigeration unit complies with Paragraphs (a) and (b) of this Rule;

- (C) 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;
- (D) the Board inspectors shall have access to the refrigeration unit at all times;
- (E) any licensee or permit holder that uses or maintains a refrigeration unit that is not compliant with this Rule is subject to disciplinary action pursuant to G.S. 210.25(d)(4) and 90-210.25(e)(1)(j).

Authority G.S. 90-210.23; 90-210.27A(h), (l).

## SUBCHAPTER 34C - CREMATORIES

### SECTION .0200 - EQUIPMENT AND PROCESSING

#### 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 Subparagraphs (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 Subparagraphs (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 Subparagraphs (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 Subparagraphs (a)(1)-(4) of this Rule, acknowledging that:
  - (A) the crematory or hydrolysis licensee shall use the refrigeration unit for the storage of human remains;
  - (B) the refrigeration unit complies with Subparagraph (a)(1)-(4) of this Rule;
  - (C) 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;
  - (D) the Board inspectors shall have access to the refrigeration unit at all times;
  - (E) any licensee or permit holder that uses or maintains a refrigeration unit that is not compliant with this Rule is subject to disciplinary action pursuant to G.S. 210.25(d)(4) and 90-210.25(e)(1)(j).

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

Authority G.S. 90-210.121(9),(12); 90-210.123(g); 90-210.134(a); 90-210.136(d),(h).