



NORTH CAROLINA BOARD OF FUNERAL SERVICE

MEMORANDUM

DATE: March 13, 2017
TO: Interested Parties of the North Carolina Board of Funeral Service
FROM: Christina D. Cress, General Counsel / Rulemaking Coordinator CDC
RE: Proposed Adoption of Permanent Rules:
21 NCAC 34B .0617 Practicing During Disasters
21 NCAC 34B .0618 Practicing During Emergencies

N.C.G.S. 150B-21.2 requires a rule-making body to notify interested persons of its intent to adopt new rules. It also requires notification of the date, time and location of the public hearing on the rule. The North Carolina Board of Funeral Service (hereinafter the "Board") submitted the attached Notice of Text Form 0300 to the Codifier of Rules, Office of Administrative Hearings, indicating its intent to proceed with the following rule-making actions:

21 NCAC 34B – Funeral Service
21 NCAC 34B .0617 Practicing During Disasters (Adopt)
21 NCAC 34B .0618 Practicing During Emergencies (Adopt)

The proposed rule texts are also attached to this memorandum and were submitted for publication in the April 3, 2017 edition of the N.C. Register, which can be found at the Office of Administrative Hearings website at <http://www.ncoah.com/rules/register>. The proposed effective date of these rules is September 1, 2017.

The Board is accepting public comments on these proposed rules from March 13, 2017 through June 2, 2017. Comments will also be accepted in person at the public hearing on May 10, 2017. Comments may be submitted by:

- E-mail: ccress@ncbfs.org
- Public Hearing:
 - May 10, 2017
 - Time: 10:00 a.m.
 - Location: 1033 Wade Avenue, Suite 108, Raleigh, NC 27605
- Mail: Attn: Christina D. Cress, NC Board of Funeral Service, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605

This information will also be published on the Board's website at www.ncbfs.org. If you have questions related to these proposed rules, please call the Board's office at (919) 733-9380.



NOTICE OF TEXT
[Authority G.S. 150B-21.2(c)]

OAH USE ONLY
VOLUME:
ISSUE:

CHECK APPROPRIATE BOX:

- Notice with a scheduled hearing
- Notice without a scheduled hearing
- Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 13. If a hearing is scheduled, complete block 5.
Previous publication of text was published in Volume: Issue:

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

2. Link to agency website pursuant to G.S. 150B-19.1(c): www.ncbfs.org

3. Proposed Action -- Check the appropriate box(es) and list rule citation(s) beside proposed action:

ADOPTION: 21 NCAC 34B .0617 – PRACTICING DURING DISASTERS; 21 NCAC 34B .0618 – PRACTICING DURING EMERGENCIES

READOPTION with substantive changes:

READOPTION without substantive changes:

AMENDMENT:

REPEAL:

4. Proposed effective date: September 1, 2017

5. Is a public hearing planned? Yes No

If yes: Public Hearing date: May 10, 2017
Public Hearing time: 10:00 a.m.
Public Hearing Location: NC Board of Funeral Service, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605

6. If no public hearing is scheduled, provide instructions on how to demand a public hearing: N/A

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OFFICE OF ADMINISTRATIVE HEARINGS
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7. Explain Reason For Proposed Rule(s): Hurricane Matthew caused significant flooding, destruction, and damage in North Carolina. The North Carolina Board of Funeral Service (hereinafter the "Board") is aware of at least two funeral establishments licensed by the Board that sustained damage resulting in non-compliance with the requirements for maintaining an active funeral establishment permit, as specified in N.C. Gen. Stat. § 90-210.27A and 21 NCAC 34B .0702-.0706. The Board believes that promulgation of these permanent rules are necessary for protecting public health, safety and welfare in such a way that does not penalize funeral establishment licensees that sustain flooding or other damage during natural disasters or other emergencies resulting in temporary non-compliance with the laws and rules enforced by the Board.

8. Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: Christina D. Cress

Address: 1033 Wade Avenue, Suite 108, Raleigh, NC 27605

Phone (optional): (919) 715-0905

Fax (optional): (919) 733-8271

E-Mail (optional): ccress@ncbfs.org

10. Comment Period Ends: June 2, 2017

11. Fiscal impact (check all that apply).

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

- State funds affected
- Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

12. Rule-making Coordinator: Christina D. Cress

Address: 1033 Wade Avenue, Suite 108, Raleigh, NC 27605

Phone: (919) 715-0905

E-Mail: ccress@ncbfs.org

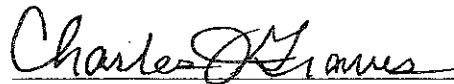
Agency contact, if any:

Phone:

E-mail:

13. The Agency formally proposed the text of this rule(s) on
Date: March 8, 2017

14. Signature of Agency Head* or Rule-making Coordinator:



*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: Charles J. Graves

Title: Board President

Proposed Adoption for Publication in the Register

1 21 NCAC 34B .0617 is proposed for adoption as follows:

2
3 **21 NCAC 34B .0617 PRACTICING DURING DISASTERS**

4 (a) Upon the declaration of a state of emergency, as provided in G.S. 166A-19.20, the Board may waive, for a period
5 not to exceed 120 days following the rescission of the declaration of a state of emergency, any requirement of G.S.
6 90-210.27A and 21 NCAC 34B .0702-.0706. Only those funeral establishments impacted by and located in a county
7 in which the state of emergency has been declared shall be eligible for a waiver.

8 (b) Any funeral establishment seeking a waiver pursuant to this Rule shall request the same on a form prescribed by
9 the Board, to include the following:

10 (1) name and permit number of the funeral establishment making the waiver request;

11 (2) a description of the circumstances giving rise to the request;

12 (3) a plan for correcting any violations of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706 caused by the
13 emergency; and

14 (4) the anticipated time frame that the funeral establishment will return to full compliance with G.S. 90-
15 210.27A and 21 NCAC 34B .0702-.0706.

16 (c) A funeral establishment seeking to extend a waiver in excess of 120 days shall provide a written request and
17 explanation to the Board for its consideration. It shall be within the discretion of the Board to grant or deny an
18 extension request, based on the following criteria:

19 (1) the degree of risk of harm, if any, that the continued non-compliance poses to the general public;

20 (2) the efforts undertaken by the funeral establishment towards compliance with the plan submitted to the
21 Board at the time of its initial waiver request; and

22 (3) the circumstances surrounding the funeral establishment's request for additional time.

23
24 *Authority G.S. 90-210.23(d), (e); 90-210.25(d); 90-210.27A.*

ORIGINAL

3-13-2017

Proposed Adoption for Publication in the Register

1 21 NCAC 34B .0618 is proposed for adoption as follows:

2
3 **21 NCAC 34B .0618 PRACTICING DURING EMERGENCIES**

4 (a) When a funeral establishment experiences an emergency occurrence or imminent threat of damage, injury, or loss
5 of property resulting from a natural or man-made incident, the Board may waive, for a period not to exceed 120 days,
6 any requirement of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706. The funeral establishment may continue to
7 operate if it has provided evidence that the emergency does not pose an immediate threat to human life, an immediate
8 threat of serious physical injury, or an immediate threat of serious adverse health effects.

9 (b) Any funeral establishment seeking a waiver pursuant to this Rule shall request the same on a form prescribed by
10 the Board, to include the following:

11 (1) name and permit number of the funeral establishment making the waiver request;

12 (2) a description of the circumstances giving rise to the request;

13 (3) a plan for correcting any violations of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706 caused by the
14 emergency; and

15 (4) the anticipated time frame that the funeral establishment will return to full compliance with G.S. 90-
16 210.27A and 21 NCAC 34B .0702-.0706.

17 (c) A funeral establishment seeking to extend a waiver in excess of 120 days must provide a written request and
18 explanation to the Board for its consideration. It shall be within the discretion of the Board to grant or deny an
19 extension request, based on the following criteria:

20 (1) the degree of risk of harm, if any, that the continued non-compliance poses to the general public;

21 (2) the efforts undertaken by the funeral establishment towards compliance with the plan submitted to the
22 Board at the time of its waiver request; and

23 (3) the circumstances surrounding the funeral establishment's request for additional time.

24
25 *Authority G.S. 90-210.23(d), (e); 90-210.25(d); 90-210.27A.*

ORIGINAL

3-13-2017