

# Notice of Agency Rulemaking Proposal

AGENCY: 02-331, Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine State Board of Funeral Service

CHAPTER NUMBER AND TITLE:

Chapter 12: Transportation of Human Remains (repeal and replace)

TYPE OF RULE (*check one*):     Routine Technical     Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY:

Following a public hearing held on July 12, 2022 and a comment period ending on July 29, 2022, the Board voted at its September meeting to provisionally adopt the proposed major substantive rule titled Chapter 12, Transportation of Human Remains. Subsequently and during the review required by 5 M.R.S. § 8052(7)(B) and § 8056(1)(A), it was determined that the section of Federal Motor Carrier Safety Regulations referenced in the second paragraph of Section 4, subsection D of the rule would need to be fully incorporated by reference pursuant to 5 M.R.S. § 8056(1)(B).

In response to that specific finding, and pursuant to 5 M.R.S. § 8052(5)(B), the Board is soliciting comments from the public regarding its proposal to remove this reference to federal regulation altogether. The Board had intended the citation to the federal regulation to be a helpful and educational reference, and based on the information it has received that to include the reference in the rule would require incorporating the provision entirely, proposes to omit the reference to Federal Motor Carrier Safety Regulations section 393.102. The other proposed changes are technical changes to correct minor errors.

Copies of the proposed rule and rulemaking documents may be found on the Board's webpage:

<https://www.maine.gov/pfr/professionallicensing/professions/board-funeral-services>. Scroll down to "What's New" and "Rulemaking."

Date, time and location of PUBLIC HEARING (*if any*): N/A. Pursuant to 5 M.R.S. § 8052(1) and § 8053(3)(B), an additional public hearing may be requested by five (5) interested persons by submitting a request in writing to contact person for this filing.

Comments on the proposed rule may be submitted by emailing [Candice.B.Wright@maine.gov](mailto:Candice.B.Wright@maine.gov) or by mailing comments to the Maine Board of Funeral Service, Attn: Candice Wright, 35 State House Station, Augusta, ME 04333-0035.

COMMENT DEADLINE: Friday, December 16, 2022, 5:00 p.m. Comments may be submitted to Candice Wright, Consumer Assistance and Hearing Coordinator, 35 State House Station, Augusta, ME 04333-0035, [Candice.B.Wright@maine.gov](mailto:Candice.B.Wright@maine.gov).

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, email*): Candice Wright, Consumer Assistance and Hearing Coordinator, 35 State House Station, Augusta, ME 04333-0035, [Candice.B.Wright@maine.gov](mailto:Candice.B.Wright@maine.gov), 207-624-8601, TTY: Maine relay 711.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): N/A

STATUTORY AUTHORITY FOR THIS RULE: 32 M.R.S. §§ 1451 and 1501

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (if different): P.L. 2021, c. 268

AGENCY WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/board-funeral-services>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [kristin.racine@maine.gov](mailto:kristin.racine@maine.gov)

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\* Check one of the following two boxes.

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rulemaking notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

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**Please approve bottom portion of this form and assign appropriate AdvantageME number.**

APPROVED FOR PAYMENT \_\_\_\_\_ DATE: \_\_\_\_\_

(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
014	02A	4230	01	4946				

# Rulemaking Fact Sheet

(5 M.R.S.A. §8057-A)

AGENCY: 02-331, Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine State Board of Funeral Service

NAME, ADDRESS, PHONE NUMBER, EMAIL OF AGENCY CONTACT PERSON:

Candice Wright, Consumer Assistance and Hearing Coordinator, 35 State House Station, Augusta, ME 04333-0035, [Candice.B.Wright@maine.gov](mailto:Candice.B.Wright@maine.gov), 207-624-8601, TTY: Maine relay 711.

CHAPTER NUMBER AND RULE TITLE:

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STATUTORY AUTHORITY: 32 M.R.S. §§ 1451 and 1501; P.L. 2021, c. 268

DATE, TIME AND PLACE OF PUBLIC HEARING: N/A. Pursuant to 5 M.R.S. § 8052(1) and § 8053(3)(B), an additional hearing may be requested by five (5) interested persons by submitting a request in writing to contact person for this filing.

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PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE:

Following a public hearing held on July 12, 2022 and a comment period ending on July 29, 2022, the Board voted at its September meeting to provisionally adopt the proposed major substantive rule titled Chapter 12, Transportation of Human Remains. Subsequently and during the review required by 5 M.R.S. § 8052(7)(B) and § 8056(1)(A), it was determined that the section of Federal Motor Carrier Safety Regulations referenced in the second paragraph of Section 4, subsection D of the rule would need to be fully incorporated by reference pursuant to 5 M.R.S. § 8056(1)(B).

In response to that specific finding, and pursuant to 5 M.R.S. § 8052(5)(B), the Board is soliciting comments from the public regarding its proposal to remove this reference to federal regulation altogether. The Board had intended the citation to the federal regulation to be a helpful and educational reference, and based on the information it has received that to include the reference in the rule would require incorporating the provision entirely, proposes to omit the reference to Federal Motor Carrier Safety Regulations section 393.102. The other proposed changes are technical changes to correct minor errors.

Copies of the proposed rule and rulemaking documents may be found on the Board's webpage: <https://www.maine.gov/pfr/professionallicensing/professions/board-funeral-services>. Scroll down to "What's New" and "Rulemaking."

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? \_\_\_ YES  NO

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

It is anticipated that the proposed change to the rule will eliminate a reference to a federal regulation that was not intended to be an enforceable provision of board rule.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) Expertise of board members and specific finding made during the course of the review required by 5 M.R.S. § 8052(7)(B) and § 8056(1)(A).

ESTIMATED FISCAL IMPACT OF THE RULE: None anticipated with regards to the proposed change to eliminate a reference to a federal regulation.

***FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:***

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:  
[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED  
AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

*Note: If necessary, additional pages may be used.*

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 12: TRANSPORTATION OF HUMAN REMAINS

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SUMMARY: This chapter contains rules regarding the transportation of dead human bodies and human remains.

1. Generally

Licensees may transport dead human bodies or human remains only in vehicles owned by or leased to the funeral establishment or a practitioner of funeral service.

2. Definitions

For this chapter, the following terms are defined as:

A. Multipurpose Funeral Vehicle: “Multipurpose Funeral Vehicle” means a vehicle, other than a hearse, used for transporting dead human bodies or human remains.

B. Hearse: “Hearse” means a vehicle specially constructed and used for conveying dead human bodies or human remains.

C. Hinge Point: “Hinge Point” means the point on a seat assembly where the vertical seat back attaches to and pivots above the horizontal seat base.

D. Platform: “Platform” means a removable or permanent rigid surface including but not limited to a casket floor, a loading deck, or wood or other material that is used to facilitate the loading and unloading of transportation equipment.

E. Raised Platform: “Raised Platform” means a platform at a height above the hinge point.

F. Transportation Equipment: “Transportation Equipment” means a stretcher, cot, rack, cot mate, tray, platform, casket, alternative container, or like mechanisms that are made of metal or other rigid materials and are used for transporting dead human bodies or human remains.

3. Dignity in the transportation of dead human bodies or human remains

Licensees transporting dead human bodies or human remains must promote respect for and preserve the dignity of dead human bodies or human remains by:

A. Enclosing and concealing dead human bodies or human remains from public view.

- B. Providing ample enclosed area to accommodate transportation equipment; and
- C. Loading, transporting, and unloading dead human bodies or human remains without excessive tilting or movement of the transportation equipment.

4. Safety of drivers and passengers in multipurpose funeral vehicles

Multipurpose funeral vehicles used to transport dead human bodies or human remains must meet the following requirements:

- A. If a platform is used, the following applies:
  - 1. The platform must be securely attached to the floor of the vehicle when the vehicle is in transit; and
  - 2. The platform must be on a plane level to the vehicle floor and below the hinge point to the driver and front passenger seats.
- B. If a raised platform is used, the following applies:
  - 1. The raised platform must be securely attached to the vehicle when the vehicle is in transit;
  - 2. The raised platform must be located behind the passenger seat only; and
  - 3. The passenger seat must remain empty.
- C. Multipurpose funeral vehicles owned or leased by funeral establishments or funeral practitioners must comply with Sections 4(A) and 4(B) as soon as practicable but no later than five years from the effective date of this chapter.
- D. To reduce the risk of driver or passenger injury, a licensee shall make a good faith effort to secure any transportation equipment and cargo stored in the back of the vehicle with tiedowns such as padded lines, rope, strapping, synthetic webbing or cordage, or other attachment or fastening devices. Funeral establishments shall be responsible for providing tiedowns for this purpose.

Containers, platforms, or transportation equipment secured in compliance with the performance criteria found in Federal Motor Carrier Safety Regulations section 393.102 is deemed in compliance with this subsection.

5. Transportation of Human Remains by Common Carrier

Dead human bodies that are embalmed must be enclosed in a casket or alternative container designed for this purpose when transported by common carrier.

Dead human bodies that are not embalmed or in a decomposition state must be enclosed

in a galvanized metal, sealed case (Ziegler or equivalent) or casket designed to prevent leakage of fluids and offensive odors when transported by common carrier.

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STATUTORY AUTHORITY: 32 M.R.S. §§1451 and 1501

EFFECTIVE DATE:

December 26, 2009 – filing 2009-699

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 12: TRANSPORTATION OF HUMAN REMAINS

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SUMMARY: This chapter contains rules regarding the transportation of human remains.

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~~1. Generally~~

~~Human remains may be transported only in vehicles owned by or leased to the funeral establishment, a practitioner of funeral service, or an authorized person.~~

~~2. Vehicles Owned or Leased by Funeral Establishment or Practitioner~~

~~Human remains transported in vehicles owned by or leased to the funeral establishment or practitioner must be enclosed and concealed from public view. Such vehicles must:~~

- ~~1. Promote respect for and preserve the dignity of the dead human body;~~
- ~~2. Provide ample enclosed area to accommodate a mortuary cot or stretcher in a horizontal position;~~
- ~~3. Permit loading and unloading of the body without excessive tilting of the cot or stretcher; and~~
- ~~4. Protect the body or container from excessive movement within the conveyance.~~

~~4. Transportation of Unembalmed or Decomposing Remains by Common Carrier~~

~~Human remains which are not embalmed or are in a state of decomposition, when transported by common carrier, must be enclosed in a galvanized metal, sealed case (Ziegler or equivalent) or casket designed to prevent leakage of fluids and offensive odors.~~

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STATUTORY AUTHORITY: 32 M.R.S.A. §§1451 and 1501

EFFECTIVE DATE:

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Note: former Chapters 12 and 14

<b>Chapter 12, "Continuing Education Requirement"</b>	<b>Chapter 14, "Transportation of Human Remains"</b>
<p><b>EFFECTIVE DATE:</b> December 28, 1979 - all board rule language part of Chapter 1, "Rules of Maine State Board of Funeral Service"</p> <p><b>AMENDED:</b> September 7, 1992 - as "Continuing Education Requirement" March 1, 1997</p> <p><b>EFFECTIVE DATE (ELECTRONIC CONVERSION):</b> March 18, 1997</p> <p><b>AMENDED</b> December 21, 1999</p> <p><b>REPEALED AND REPLACED:</b> October 29, 2001 - as "Transportation of Human Remains." Former subject matter moved to Chapter 11.</p>	<p><b>EFFECTIVE DATE:</b> March 1, 1997</p> <p><b>REPEALED AND REPLACED:</b> October 24, 2001 - as "Temporary Storage." Former subject matter moved to Chapter 12.</p>

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 12: TRANSPORTATION OF HUMAN REMAINS

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SUMMARY: This chapter contains rules regarding the transportation of dead human bodies and human remains.

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1. Generally

Licensees may transport dead human bodies or human remains only in vehicles owned by or leased to the funeral establishment or a practitioner of funeral service.

2. Definitions

For this chapter, the following terms are defined as:

- A. Multipurpose Funeral Vehicle: "Multipurpose Funeral Vehicle" means a vehicle, other than a hearse, used for transporting dead human bodies or human remains.
- B. Hearse: "Hearse" means a vehicle specially constructed and used for conveying dead human bodies or human remains.
- C. Hinge Point: "Hinge Point" means the point on a seat assembly where the vertical seat back attaches to and pivots above the horizontal seat base.
- D. Platform: "Platform" means a removable or permanent rigid surface including but not limited to a casket floor, a loading deck, or wood or other material that is used to facilitate the loading and unloading of transportation equipment.
- E. Raised Platform: "Raised Platform" means a platform at a height above the hinge point.
- F. Transportation Equipment: "Transportation Equipment" means a stretcher, cot, rack, cot mate, tray, platform, casket, alternative container, or like mechanisms that are made of metal or other rigid materials and are used for transporting dead human bodies or human remains.

3. Dignity in the transportation of dead human bodies or human remains

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4. Safety of drivers and passengers in multipurpose funeral vehicles

Multipurpose funeral vehicles used to transport dead human bodies or human remains must meet the following requirements:

A. If a platform is used, the following applies:

- 1. The platform must be securely attached to the floor of the vehicle when the vehicle is in transit; and
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B. If a raised platform is used, the following applies:

- 1. The raised platform must be securely attached to the vehicle when the vehicle is in transit;
- 2. The raised platform must be located behind the passenger seat only; and
- 3. The passenger seat must remain empty.

C. Multipurpose funeral vehicles owned or leased by funeral establishments or funeral practitioners must comply with Sections 4(A) and 4(B) as soon as practicable but no later than five years from the effective date of this chapter.

D. To reduce the risk of driver or passenger injury, a licensee shall make a good faith effort to secure any transportation equipment and cargo stored in the back of the vehicle with tiedowns such as padded lines, rope, strapping, synthetic webbing or cordage, or other attachment or fastening devices. Funeral establishments shall be responsible for providing tiedowns for this purpose.

Containers, platforms, or transportation equipment secured in compliance with the performance criteria found in Federal Motor Carrier Safety Regulations section 393.102 is deemed in compliance with this subsection.

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