

**RULE ADOPTIONS
VOLUME 42, ISSUE 10
ISSUE DATE: MAY 17, 2010
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY CEMETERY BOARD**

Adopted Amendments: N.J.A.C. 13:44J-2.1, 8.4 and 14.3

Adopted New Rule: N.J.A.C. 13:44J-13.7

Definitions; Application for For-Profit Management Certificate of Authority

Proposed: August 17, 2009 at 41 N.J.R. 3027(a).

Adopted: November 12, 2009 by William Nichols, Chairman, New Jersey Cemetery Board.

[page=940] Filed: January 12, 2010 as R.2010 d.041, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.6).

Authority: N.J.S.A. 45:27-4.

Effective Date: May 17, 2010.

Expiration Date: May 2, 2011.

Summary of Agency-Initiated Changes:

1. The term "for-profit management and operation certificate of authority" was incorrectly referred to as a "for-profit operation and management certificate of authority" in N.J.A.C. 13:44J-2.1. The Board is changing N.J.A.C. 13:44J-2.1 upon adoption to correct this mistaken reference.
2. During its review of N.J.A.C. 13:44J-13.7 prior to adoption, the Board determined that the phrase "a new cemetery company" in subsection (f) could be interpreted as referring only to cemetery companies that are newly created. The intent of the Board (as clearly stated in the notice of proposal Summary at 41 N.J.R. 3027(a), 3027) was to refer to cemetery companies that did not receive management services in the past from the holder of a for-profit management services certificate of authority. The Board has changed N.J.A.C. 13:44J-13.7(f) upon adoption to clarify that the cemetery company referred to is one that did not receive management services in the past.
3. If a holder of a for-profit management services certificate of authority or a for-profit management and operation certificate of authority ceases its management relationship with every cemetery company, its certificate of authority expires. The intent of N.J.A.C. 13:44J-13.7(h) (as clearly stated in the notice of proposal Summary at 41 N.J.R. 3027(a), 3027) is to prohibit a company whose certificate has expired from offering services to any cemetery company until it receives another certificate. The Board believes that the use of the term "new" in N.J.A.C. 13:44J-13.7(h) could be misinterpreted as only applying to cemetery companies to which the company never provided services. As a clarification, the Board has changed N.J.A.C. 13:44J-13.7(h) upon adoption to delete the word "new."

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted new rule and amendments.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus*** ; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 2. DEFINITIONS

13:44J-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

...

"For-profit management and operation certificate of authority" means a certificate of authority issued pursuant to P.L. 2006, c. 26 to a for-profit corporation, partnership, association or other private entity that managed or operated a cemetery prior to January 14, 2004, which authorizes the holder to manage or operate a cemetery.

"For-profit management services certificate of authority" means a certificate of authority issued pursuant to P.L. 2006, c. 26 to a for-profit corporation, partnership, association or other private entity that authorizes the holder to provide management services for a cemetery.

["For-profit operation and management certificate of authority" means a certificate of authority issued pursuant to P.L. 2006, c. 26 to a for-profit corporation, partnership, association or other private entity that managed or operated a cemetery prior to January 14, 2004, which authorizes the holder to manage or operate a cemetery.]

...

SUBCHAPTER 8. DISINTERMENT

13:44J-8.4 Temporary storage prior to final entombment or interment within a single cemetery

(a) (No change.)

(b) A cemetery company may temporarily store human remains in a properly constructed receiving vault prior to final entombment or interment for up to four years. If a cemetery company needs to temporarily store human remains for more than four years, the cemetery company must obtain the written consent for an extension at least 120 days prior to the end of the four-year period, which includes a set term for the extension, from the person who has the right to control the disposition of remains pursuant to N.J.S.A. 45:27-22. The cemetery company shall advise the Board that the person who has the right to control the disposition of remains has granted the extension. The cemetery company may transfer the remains from the place of temporary storage to the place of final entombment or interment without obtaining a disinterment permit and without the presence of a licensed funeral director if both the temporary storage and final resting place are within a single cemetery.

(c)-(e) (No change.)

SUBCHAPTER 13. APPLICATIONS

13:44J-13.7 Application for for-profit management certificate of authority

(a) A for-profit entity that managed or operated a cemetery company or companies prior to January 14, 2004, that seeks to continue to manage or operate the same cemetery company or companies shall file with the Board the following:

1. Proof that the for-profit entity managed or operated a cemetery prior to January 14, 2004;

2. The management contract the entity has entered into with the cemetery. Such contracts shall be considered proprietary commercial information pursuant to N.J.S.A. 47:1A-1 et seq.;

3. A completed certificate of authority application;
4. A completed information sheet;
5. An application fee, as set forth in N.J.A.C. 13:44J-3.1(a)1iv(1), made payable to the New Jersey Cemetery Board; and
6. A copy of articles of incorporation and/or charter, and bylaws, if the entity is incorporated.

(b) A for-profit management entity that did not manage or operate a cemetery company prior to January 14, 2004 and which seeks to provide management services for a cemetery company shall apply for a for-profit management services certificate of authority by submitting the following:

1. The management services contract the entity has entered into with the cemetery. Such contracts shall be considered proprietary commercial information pursuant to N.J.S.A. 47:1A-1 et seq.;
2. A completed certificate of authority application, which shall include the information the Board needs to determine:
 - i. The applicant's fitness and ability to perform proposed services;
 - ii. The applicant's fitness and ability to conform to N.J.S.A. 45:27-1 et seq. and this chapter; and
 - iii. The applicant's fitness and ability to comply with health protection rules of the New Jersey Department of Health and Senior Services, the New Jersey Department of Environmental Protection, or a local health authority;

3. A completed information sheet;
4. An application fee as set forth in N.J.A.C. 13:44J-3.1(a)1iv(1), made payable to the New Jersey Cemetery Board; and
5. If the entity is incorporated, a copy of articles of incorporation and/or charter, and bylaws.

(c) For purposes of this rule, an entity that only provides sales services for a cemetery company shall not be considered as providing management services for a cemetery company and shall not be required to obtain a certificate of authority.

(d) A for-profit entity shall hold one certificate of authority, regardless of the number of cemeteries for which the entity provides management services.

(e) If the holder of a for-profit management and operation certificate of authority enters into a contract to provide management and operation services for a new cemetery company, it shall submit the contract to [page=941] provide such services to the Board. Such contracts shall be considered proprietary commercial information pursuant to N.J.S.A. 47:1A-1 et seq.

(f) A holder of a for-profit management services certificate of authority seeking to provide management services for a *[new]* cemetery company ***that is not currently receiving management services from the holder of the certificate*** shall apply to the Board for approval to provide such services by submitting the management contract the entity has entered into with the cemetery. Such contracts shall be considered proprietary commercial information pursuant to N.J.S.A. 47:1A-1 et seq.

(g) A holder of a for-profit management services certificate of authority or a for-profit management and operation certificate of authority shall notify the Board if it ends a management relationship with any cemetery company with which it has contracted.

(h) If the holder of a for-profit management services certificate of authority or a for-profit management and operation

certificate of authority ends its management relationship with every cemetery company it has contracted with, the certificate of authority shall expire and the company shall submit the expired certificate of authority to the Board. A company whose certificate of authority has expired shall not provide management services for a *[new]* cemetery company until it has obtained a new for-profit management certificate of authority pursuant to (b) above.

SUBCHAPTER 14. SALES OF INTERMENT SPACES

13:44J-14.3 Pre-construction sales of mausoleum space

(a)-(g) (No change.)

(h) A cemetery company that is granted an extension pursuant to (g) above shall make a full refund of the monies paid to any pre-construction purchaser within 30 days of receiving a written request for refund from the purchaser or his or her authorized representative.

(i)-(m) (No change.)