

53 N.J.R. 540(a)

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RULE ADOPTIONS

Reporter

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Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > NEW JERSEY CEMETERY BOARD

Administrative Code Citation

Adopted Amendments: N.J.A.C. 13:44J-2.1, 3.1, 9.1, and 13.1

Adopted New Rules: N.J.A.C. 13:44J-9.1 through 9.11, 9.13, and 13.8

Text

Crematories

Proposed: April 20, 2020, at 52 N.J.R. 871(a).

Adopted: September 10, 2020, by the Cemetery Board, William C. Nichols, Chairman.

Filed: February 22, 2021, as R.2021 d.022, **without change.**

Authority: N.J.S.A. 45:27-4 and 39.

Effective Date: April 5, 2021.

Expiration Date: April 5, 2025.

Summary of Public Comments and Agency Responses:

The official comment period ended June 19, 2020. The New Jersey Cemetary Board (Board) received comments from the following individuals:

1. Katie Chatterton, Corporate Counsel, SCI Shared Resources, LLC
2. Judy Welshons, Executive Director, NJ Cemetery Association

1. COMMENT: A commenter contends that the definition of "operators" at proposed new N.J.A.C. 13:44J-9.1(b) permits entities to operate crematories that were not contemplated pursuant to P.L. 2011, c. 230. The commenter requests clarification that this definition is consistent with the intent of P.L. 2011, c. 230.

RESPONSE: The definition of "operators" at proposed new N.J.A.C. 13:44J-9.1(b) states: "For purposes of this subchapter, 'operator' means a cemetery company, governmental entity, a religious corporation or organization, or a funeral home that operates a crematory." It is not clear which entities the commenter believes are not contemplated pursuant to P.L. 2011, c. 230. N.J.S.A. 45:27-6 recognizes that cemeteries may be owned or operated by governmental entity, a religious corporation or organization, or by a cemetery company. N.J.S.A. 45:27-40 requires that a crematory be located on dedicated cemetery property, which is property owned by one of the entities delineated by N.J.S.A. 45:27-6. In addition, N.J.S.A. 45:27-40 recognizes that the requirement that a crematory be located on cemetery property does not apply to a crematorium operated in conjunction with a funeral home that was established prior to December 1, 1971. Accordingly, P.L. 2011, c. 230 contemplates that a cemetery company, governmental entity, religious corporation or organization, and some funeral homes can operate a crematory. The definition of "operators" at proposed new N.J.A.C. 13:44J-9.1(b) includes all of the entities authorized to operate crematories pursuant to P.L. 2011, c. 230.

2. COMMENT: A commenter recommends that proposed new N.J.A.C. 13:44J-9.3(b)5 be amended to change the phrase "signature of the funeral director" to "signature of the funeral home representative." The commenter contends that transportation of a deceased person is not an activity that requires licensure as a funeral director. The commenter also recommends that the phrase "funeral director" at proposed new N.J.A.C. 13:44J-9.3(c) be changed to "funeral home." The commenter contends that industry standards require funeral homes to maintain authorization and receipt forms, not individual funeral directors.

RESPONSE: The Board points out that, pursuant to N.J.S.A. 45:27-19, a funeral director must authorize delivery to a crematory, regardless of whether the funeral director actually performs the transportation of a deceased person. Accordingly, it is appropriate to require the

signature of a funeral director at proposed new N.J.A.C. 13:44J-9.3(b)5. While it may be true that funeral directors are not required to maintain records, proposed new N.J.A.C. 13:44J-9.3(c) refers to providing a copy of authorization and receipt forms, not maintaining such forms once they are provided. The Board does not believe it is necessary to amend proposed new N.J.A.C. 13:44J-9.3 upon adoption, as the commenter recommends.

3. COMMENT: A commenter points out that the phrase "or be temporarily entombed" was removed from proposed new N.J.A.C. 13:44J-9.6(c) when the rule was repropounded based upon comments the Board received on this provision. The commenter recommends that proposed new N.J.A.C. 13:44J-9.6(c) be amended upon adoption to permit storage in a mausoleum crypt. The commenter contends that temporary storage may be necessary to address peak demand situations.

RESPONSE: The comment discussed in the reproposal contended that there is no recognized mechanism for temporary entombment. N.J.A.C. 8:9-1.1 requires unembalmed human remains to be refrigerated, embalmed, buried, or cremated 48 hours after death. N.J.A.C. 8:9-1.1 does not recognize temporary entombment. The commenter also was concerned that temporary entombment would lead to confusion as to the veracity of burial/cremation/transit permits, as the method of disposition listed would not reflect the actual disposition. Based upon these concerns, the Board revised proposed new N.J.A.C. 13:44J-9.6(c) to remove references to temporary entombment. The Board believes that concerns addressed at proposed new N.J.A.C. 13:44J-9.6(c) remain valid and will not amend the language as requested. The Board believes there are other methods to address peak demand situations that do not entail temporary entombment.

4. COMMENT: A commenter contends that proposed new N.J.A.C. 13:44J-9.7(b)2 requires an employee who is responsible for accepting human remains for cremation to review a "cremation permit required by N.J.A.C. 8:9 Appendix A." The commenter asks if crematories may accept out-of-State cremation permits or if the new rule will require a New Jersey cremation permit.

RESPONSE: The commenter did not quote the entirety of proposed new N.J.A.C. 13:44J-9.7(b)2. The proposed new rule requires the employee responsible for accepting human remains for cremation to review a "cremation permit required by N.J.A.C. 8:9 Appendix A or a similar form from another state." The new rule, as it was proposed, recognizes that a crematory may accept an out-of-State cremation permit.

A Federal standards analysis is not required because the adopted amendments and new rules do not involve any Federal standards or requirements.

Full text of the adoption follows:

SUBCHAPTER 2. DEFINITIONS

13:44J-2.1 Definitions

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

...

[page=541] "Cemetery" means any land or place used or dedicated for use for burial of human remains, cremation of human remains, or disposition of cremated human remains.

...

SUBCHAPTER 3. FEE SCHEDULE

13:44J-3.1 Charges and fees

(a) The following fees shall be charged by the Board:

1. Cemetery company fees:

i.-iii. (No change.)

iv. Application fees:

(1)-(10) (No change.)

(11)	Construction	of
crematory.....	500.00	

2.-3. (No change.)

(b) (No change.)

SUBCHAPTER 9. CREMATED HUMAN REMAINS AND CREMATORIES

13:44J-9.1 Purpose and scope; definitions

(a) The purpose of this subchapter is to implement the provisions of P.L. 2011, c. 230, which requires that crematories be located on dedicated cemetery property, except for those operated in conjunction with a funeral home that was established prior to December 1, 1971.

(b) For purposes of this subchapter, "operator" means a cemetery company, governmental entity, a religious corporation or organization, or a funeral home that operates a crematory.

13:44J-9.2 Crematory records

(a) An operator that performs cremations shall maintain records for each cremation that includes:

1. The name, last residence, age, and place and date of death of the decedent;

2. The name and address of the person or persons who authorized the cremation;

3. The name and address of the funeral home, and the name and license number of its funeral director, from whom the remains were received for cremation;

4. The date and time the cremation was started;

5. The date and time the cremation was completed;

6. The recipient of the cremated human remains or, if there is no recipient, the final disposition of the cremated human remains;

7. The type of casket or container;

8. The number of the metal identification disc, or other non-combustible identification tool, issued by the operator;

9. The cremation unit or retort number, if there is more than one unit; and

10. The initials of the individual or individuals performing the cremation.

(b) Cremation records shall be kept for at least seven years from the date of the cremation.

(c) An operator shall make records maintained pursuant to (a) above available to the Board upon request.

13:44J-9.3 Authorization and receipt form(s) for cremations

(a) An operator shall not perform a cremation, unless the following information has been provided by a funeral director on an authorization and receipt form(s):

1. Name of the decedent;

2. Last residence of decedent, if known;

3. Decedent's date of birth or age and the date, time, and place of death;

4. Whether the death was due to an infectious or contagious disease, if known;

5. A statement that any surgical implants that must be removed prior to cremation have been removed;

6. Whether the decedent received radiation therapy, the type of radiation therapy, and the date it was provided;

7. Name, address, relationship to decedent, and the signature of the individual or individuals authorizing cremation;

8. Name and address of the funeral home from which the remains were received for cremation;

9. Name, license number, and signature of the funeral director for the funeral home from which the remains were received for cremation and a certification of the contents of the casket or container signed by the funeral director; and

10. Planned disposition of cremated human remains and date on which this disposition will occur, if known.

(b) Upon delivery of human remains to a crematory, the operator shall record the following information on the authorization and receipt form(s):

1. Date and time remains were received by the operator;

2. Type of casket or container;

3. The number of the metal identification disc, or other non-combustible identification tool, issued by the operator;

4. Signature of person responsible for taking custody of the remains for the operator; and

5. Signature and license number of funeral director delivering the remains to the operator.

(c) After providing the information required by (b) above, the operator shall provide a copy of the authorization and receipt form(s) to the funeral director who delivered the human remains to the crematory and shall maintain a copy of the form as part of the operator's records for at least seven years from the date of the cremation.

(a) An operator shall maintain a log of inspections, preventative maintenance, scheduled maintenance, and emergency maintenance on cremation units or retorts. Such a log shall include:

1. The cremation unit or retort number, if there is more than one unit;
2. Number of cremations performed since last maintenance;
3. Description of the work performed on the cremation unit or retort or the type of inspection performed;
4. Name of person performing the work or inspection; and
5. Disposition of any debris.

(b) Logs shall be retained for at least seven years from the date the last maintenance or inspection was provided.

13:44J-9.5 Caskets and containers

(a) An operator shall only accept for cremation a decedent's remains if they are in a casket or container that is:

1. Totally enclosed;
2. Rigid;
3. Has no evidence of leaking; and
4. Made up of materials that will not emit hazardous or toxic elements upon combustion.

(b) An operator shall not perform a cremation if a casket or container has a zinc liner or is made of copper, bronze, fiberglass, plastic, Styrofoam, or polystyrene.

(c) Handles or ornaments that will interfere with a cremation or cause visible emission release shall be removed prior to cremation.

13:44J-9.6 Storage facilities

(a) An operator shall have a storage facility for human remains that cannot be immediately cremated because cremation equipment is being used for other cremations. Such facilities shall be easily accessible from the area where cremations are performed.

(b) A casket or container in a storage facility shall be placed on its own shelf or rack. A casket or container shall not be placed on the floor.

(c) Un-embalmed human remains kept for more than 24 hours shall be placed in a refrigerated storage facility.

13:44J-9.7 Receiving remains for cremation

(a) An operator shall appoint an employee or employees who are responsible for accepting human remains for cremation.

(b) A person appointed pursuant to (a) above shall, prior to accepting human remains, review and inspect the following:

1. Cremation authorization and receipt form(s) that contains the information required by N.J.A.C. 13:44J-9.3;

2. Cremation permit required by N.J.A.C. 8:9 Appendix A or a similar form from another state; and

3. The casket or container to ensure it complies with the requirements of N.J.A.C. 13:44J-9.5.

(c) A person appointed pursuant to (a) above shall:

[page=542] 1. Prepare and sign the authorization and receipt form(s) pursuant to N.J.A.C. 13:44J-9.3 and provide a copy to the funeral director delivering the decedent's remains to the crematory;

2. Ensure that the name of the decedent and funeral home are clearly marked on the casket or container; and

3. Attach a copy of the authorization and receipt form(s) to the casket or container.

(d) An operator shall ensure that, from the time human remains have been delivered to the crematory until such time as the cremated human remains are released, the remains are identified through at least two separate means, one of which is a metal identification disc, or other non-combustible identification tool, in order to prevent the misidentification of remains.

13:44J-9.8 During a cremation

(a) During a cremation, the operator shall ensure that someone is monitoring the cremation and temperature.

(b) Upon the completion of a cremation, an operator shall ensure that cremated human remains and casket or container residue are inspected to establish that the cremation process is completed prior to starting the cool down of the cremation unit or retort.

13:44J-9.9 Removing and processing cremated human remains and casket or container residue

(a) Prior to removing cremated human remains and casket or container residue, an operator shall ensure that the metal identification disc, or other non-combustible identification tool, is checked against the authorization and receipt form(s).

(b) Non-combustible material shall be removed from cremated human remains and casket or container residue.

13:44J-9.10 Temporary containers and packaging

(a) After processing pursuant to N.J.A.C. 13:44J-9.9, cremated human remains and casket or container residue shall be transferred to a leak-proof container. No other material shall be placed in the container without written instructions from the individual authorizing the cremation.

(b) The operator shall affix a label to the container with the decedent's name and the date of the cremation.

(c) Prior to affixing the label to the container pursuant to (b) above, the operator shall ensure that the metal identification disc, or other non-combustible identification tool, authorization and receipt form(s), and label are checked for consistency and accuracy.

13:44J-9.11 Notification

(a) An operator shall notify the Board of any replacement or closure of a crematory.

(b) Prior to expanding an existing crematory, an operator shall notify the Board. If the Board determines that the expansion constitutes construction of a crematory, the operator shall apply to the Board for approval pursuant to N.J.A.C 13:44J-13.8.

13:44J-9.12 Shipment of cremated human remains

An operator may ship cremated human remains through the U.S. Postal System, using registered or certified mail, return receipt, or any other parcel service that provides a delivery document. The operator shall label both the inside container and outside wrapper to identify the contents as cremated human remains. The cremated human remains shall be securely packaged.

13:44J-9.13 Annual cremation fee

(a) Operators shall submit to the Board the cremation fee pursuant to N.J.A.C. 13:44J-3.1(a)1ii annually.

(b) If an operator is required to submit an annual report pursuant to N.J.A.C. 13:44J-5.6, the operator shall include the cremation fee with

any other charges due to the Board that are submitted with the annual report.

SUBCHAPTER 13. APPLICATIONS

13:44J-13.1 Application for certificate of authority

(a)-(e) (No change.)

(f) A cemetery company organized on or after December 1, 1971, applying for a certificate of authority shall submit to the Board:

1.-8. (No change.)

9. A statement and supporting evidence, if any, that the cemetery company is financially able to establish a Maintenance and Preservation Fund of \$ 75,000 pursuant to the requirements of N.J.S.A. 45:27-13, except that a cemetery company that has been engaged in the operation of a cemetery prior to December 1, 1971, shall not be required to provide such a statement.

(g)-(k) (No change.)

13:44J-13.8 Application for approval to construct a crematory

(a) Construction of a crematory shall not begin without, in addition to any other statutory or regulatory requirements, prior Board approval.

(b) An entity that wishes to construct a crematory shall submit to the Board:

1. A completed application for approval to construct a crematory;
2. Construction plans for the crematory;
3. A copy of the authorization and receipt form(s) for cremations;
4. Procedures for conducting cremations;
5. Rules and price lists regarding cremations; and
6. An application fee as set forth at N.J.A.C. 13:44J-3.1(a)1iv(11).

(c) Upon receipt of an application for approval to construct a crematory, the Board shall notify the Department of Health that it has received the application.

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