

RULE TEXT
(Part 203 – emergency variance)

Part 203 of Title 19 NYCRR is amended to add new section 203.14 to read as follows:

Section 203.14 Emergency cases.

Whenever the governor has declared a disaster emergency pursuant to section 28 of the Executive Law or the cemetery board determines that emergency conditions exist that substantially delay timely cremation of human remains, then, notwithstanding the requirements of section 203.13 (c) of this part, a crematory may accept human remains delivered with a cremation authorization form in which the intended crematory has been manually corrected by a funeral director or a person authorized to deliver remains on behalf of a funeral director, provided that the crematory is able to verify the intended final disposition for such human remains and provided the person in control of disposition has been made aware of and has consented to the transfer.

FINDING OF NECESSITY

The cemetery board finds and determines that adopting this rule on an emergency basis is necessary for the preservation of the public health, safety, and general welfare, and that compliance with the requirements of subdivision one of section 202 of the State Administrative Procedures Act would be contrary to the public interest, for the following reasons:

1. On March 7, 2020, Governor Andrew M. Cuomo declared a State disaster emergency for the entire State of New York relating to the novel coronavirus (COVID-19) outbreak. The governor's declaration authorizes "all necessary State agencies to take appropriate action to assist local governments and individuals in containing, preparing for, responding to and recovering from this state disaster emergency, to protect state and local property, and to provide such other assistance as is necessary to protect public health, welfare, and safety."
2. Not-for-Profit Corporation Law Article 15 mandates that a next of kin or authorizing agent authorize cremation by a signed authorization form attesting to the permission for the cremation of the deceased. It prohibits crematories from cremating remains without the form.
3. 19 NYCRR section 203.13(c) requires that the cremation authorization form set forth the name and address of the crematory and provide explicit authorization for the crematory to cremate the remains of the deceased. It requires the signature of the person in control of disposition attesting to the accuracy and completeness of the information in the cremation authorization form and requires the signature of the funeral director as a witness to its execution.
4. As a result of the COVID-19 outbreak, the downstate region has experienced a

tremendous surge in deaths and a need for cremation that exceeds the capacity of downstate crematories, resulting in substantial delays in cremation and creating significant issues with storage of remains.

5. Crematories outside of downstate are available to cremate remains promptly, but the requirements relating to the cremation authorization form delay or impede sending remains to a crematory other than the one named in the form that was signed by the person in control of disposition.
6. To address these issues, procedures must be in place that would allow crematories to accept human remains delivered with a cremation authorization form in which the intended crematory has been manually corrected by a funeral director or a person authorized to deliver remains on behalf of a funeral director.
7. In order to protect the interests of the family of the deceased, the procedures should require that the crematory is able to verify the intended final disposition for such human remains.
8. Not-for-Profit Corporation Law section 1504(c)(1) gives the cemetery board the power and duty to adopt such reasonable rules and regulations as the cemetery board shall deem necessary for the proper administration of Article 15.
9. Under this rule, due to the Governor's March 7, 2020 Emergency Order, these emergency procedures will be effective immediately upon filing of this emergency rulemaking.
10. In the future, these procedures will be effective upon: (1) a declaration by the Governor of a disaster emergency pursuant to section 28 of the Executive Law, or (2) a determination by the cemetery board that emergency conditions exist that substantially delay timely cremation of human remains.