

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
BOARD OF HEALTH**

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**NOTICE OF ADOPTION OF A RESOLUTION  
TO AMEND ARTICLE 205 OF THE NEW YORK CITY HEALTH CODE**

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In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, a Notice of Intention of the proposed amendment of Article 205 of the New York City Health Code (the “Health Code”) was published in the City Record on June 26, 2009, and a public hearing was held on July 28, 2009. One person testified at the public hearing and one written comment was received. In addition to notes being added after each section to reflect the rationale set forth in the Statement of Basis and Purpose, one change was made to the resolution in response to public comments. At its meeting on September, 22 2009, the Board of Health adopted the following resolution.

**STATUTORY AUTHORITY**

These amendments to the New York City Health Code (“Health Code”) are promulgated pursuant to Sections 556, 558 and 1043 of the New York City Charter (the “Charter”). Section 556 of the Charter provides the Department of Health and Mental Hygiene (“Department” or “DOHMH”) with jurisdiction to regulate all matters affecting health in the City of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the “Board”) to amend the Health Code and to include in the Health Code all matters to which the DOHMH’s authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

**STATEMENT OF BASIS AND PURPOSE**

**INTRODUCTION**

As part of a comprehensive review of the Health Code to assess the efficacy of the articles in protecting the public’s health, the Department proposed that Article 205, Deaths and Disposals of Human Remains, be amended, effective January 1, 2010, to assure that the revised provisions provide adequate legal tools to effectively address public health matters and to reflect modern standards and current programmatic practice while removing outdated provisions.

Pursuant to this review and assessment of the Health Code, the Board amended Article 205 as provided for below.

## Section 205.01

Subdivision (c) was amended to more fully define human remains, including a conceptus, to clarify when a permit for disposition is required. The 24 weeks or more of gestation is consistent with former §205.13, which required a permit for disposition after 24 weeks.

Subdivision (d) was added to define “hospice,” which under State Public Health Law includes hospice care programs as well as hospice facilities. Hospice is increasingly utilized as a form of end-of-life care, and consequently hospice providers are preparing a larger proportion of death certificates.

Subdivision (e) was deleted. It had defined “use for anatomical purposes”, which was referred to in section 205.13 and has been deleted. New subdivision (e) was added to conform to the provisions of State Public Health Law §4201, which applies in the City and establishes the persons in descending priority who shall have the right to control the disposition of the remains of a decedent. It replaces former subdivision (d), which defined “next of kin” and their order of priority to receive communications and to give instructions regarding the disposal of a decedent’s remains.

## Section 205.03

Subdivision (a) has been amended to clarify the circumstances when a hospital or hospice must report a death and to broaden the situations in which institutions are required to report deaths to include deaths occurring en route to a hospital or while under the care of a hospice. This subdivision was also amended to permit the designee of a person in charge of a hospital or hospice to report a death to the DOHMH. This will enable the hospital or hospice to delegate the task of filing the report to a lower level employee. Subdivision (a) has also been amended to reflect the correct name of the office of chief medical examiner, and to reflect that a medical examiner within the Office of Chief Medical Examiner is the person responsible for reporting a death. The subdivision was further amended to reflect gender neutrality.

Subdivision (b) was amended to correct legal nomenclature distinguishing between a “subsection” and a “paragraph.” The words “office of” were added to chief medical examiner to indicate that it is the office that is required to report.

Subdivision (c) was amended to remove a general description of electronic filing of death certificates, as it is described in greater detail in new subdivision 205.03 (d). This subdivision was also amended to add agents of funeral directors or undertakers and agents or designees of the person in charge of the City mortuary. Funeral directors or undertakers and the person in charge of the City mortuary may use agents to file paper certificates and confidential medical reports with the Department, and now this subdivision will reflect this practice. The subdivision will now require that if funeral directors or undertakers use such agents they must be registered with the Department to

ensure compliance with Departmental procedures. Subdivision (c) was also amended to correct legal nomenclature distinguishing between a “subdivision” and a “subsection.”

Subdivision (d) was added to require all hospitals and hospices that report 25 or more deaths to the Department per year, and the office of chief medical examiner, to report deaths electronically. When a required reporter files electronically, a funeral director or undertaker authorized to take charge of the remains, or the person in charge of the City mortuary when filing an application for a disposition permit, must also file such application electronically. All persons required or authorized to report a death or to file a death certificate with the Department that are not required to report or file electronically may, at their election and upon approval of the Department, implement an electronic reporting system or continue to report deaths on approved paper forms. This subdivision takes effect on April 1, 2010.

Subdivision (e) was added to require departmental approval of electronic reporting systems, in order to ensure the uniformity and quality of data collection. Toward that end, all individuals utilizing the electronic reporting system must be trained or approved by the Department in the proper use of the system and completion of electronic reporting forms. The subdivision also provides for alternative arrangements, upon the Department’s approval or initiative, in particular circumstances.

Subdivision (f) was added to provide for situations in which a reporter receives required information after reporting the death. The reporter must submit such information within five business days of receipt.

Subdivision (g) was added to provide for situations in which a reporter receives autopsy results or other information that would change the information in the cause of death section of the certificate or the confidential medical report. The reporter must submit such information within five business days of receipt.

Subdivision (h) was added to require reporters to provide, within five business days of a request by the Department, additional information necessary to complete, clarify or verify the information required to be reported. Such information may include, for example, updated causes of death.

#### Section 205.05

The title of section 205.05 was amended to “Preparation and certification of certificate of death and confidential medical report of death” and the paragraph titles “*Preparation*” and “*Certification*” were added to subdivision (a). These changes were made to indicate that separate rules apply to the preparation and certification of certificates.

Paragraph (1) of subdivision (a) was amended to permit the designee of a person in charge of a hospital or hospice to prepare the required certificate and confidential medical report, if any. Such a designee must be trained or approved by the Department.

This is particularly useful for electronic reporting and will enable the hospital or hospice to delegate the task of preparing the certificate to a lower level employee. The training and approval requirement should improve data quality. It was further amended to clarify the circumstances when a hospital or hospice must report a death and to broaden the situations in which institutions are required to report deaths to include deaths occurring en route to a hospital or while under the care of a hospice. Paragraph (1) of subdivision (a) was also amended to delete the reference to that portion of the confidential medical report of death pertaining to race and ancestry to be completed by the funeral director or, in the case of city burial, by the physician. The Department is planning to modify the death certificate form so that the race and ancestry items will no longer be contained in the confidential medical report of death.

Paragraph (2) of subdivision (a) is substantially new and was amended to clarify which physicians may certify a death, including the physician in attendance or such physician's duly authorized medical associate. A person certifying a certificate and confidential medical report, if any, shall examine the documents for correctness of the information contained thereon and make necessary changes.

Subdivision (b) was amended by deleting the requirement that the Board of Health approve the electronic form of certificates, because, aside from incidental formatting differences, electronic forms are merely reflective of the paper forms prescribed by the Board pursuant to this subdivision. Subdivision (b) was also amended to reflect changes made to subdivision (a) and to provide for improving the quality of data collection. Any worksheets used by anyone authorized to prepare certificates of death and confidential medical reports must be approved by the Department. Any individual who uses such worksheets shall be trained or approved by the Department. The worksheets shall be retained by the hospital or hospice for a period of three years from the date of event and shall, upon request, be made available to the Department for inspection. The subdivision also clarifies which person preparing the certificate and confidential medical report shall be responsible for completing its various sections.

#### Section 205.07

Subdivision (a) was amended to provide that disclosure of the confidential medical report of death shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code. It was further amended to provide for inspection by researchers authorized and approved by the National Death Index of the National Center for Health Statistics of the federal Centers for Disease Control and Prevention, or its successor agency. This is to facilitate scientific research of death data by researchers who apply through the federally established National Death Index. Subdivision (a) was also amended to provide for inspection of confidential medical reports of death occurring on or after January 1, 2010 by the spouse, domestic partner, parent or child of the deceased, or by the individual who is identified on the death certificate as the person in control of disposition. This change will make cause of death information available to the above list of individuals, which is consistent with the

policies of some states. The addition of the person in control of disposition was made in response to a public comment.

Subdivision (b) was amended to include epidemiologic surveillance and investigation conducted by governmental public health agencies within the meaning of “scientific purposes”.

#### Section 205.09

This section was essentially reenacted and renumbered from the former Section 205.06, which was deleted.

Subdivision (a) was amended to provide discretion to the Department in the issuance of certifications of deaths, which are abstracts of death certificates. The Department does not currently have the systems to prepare or issue such certifications.

Subdivision (b) was amended to update the minimum amount of information that would be useful on a certification of death by adding the date that the certificate was accepted for filing by the Department and the manner of death (accident, suicide, homicide or natural).

#### Section 205.11

This section was amended to reflect gender neutrality. Subdivision (b) was deleted and replaced with Section 205.03 (g), which provides for situations in which a reporter receives autopsy results or other information that would change the information in the cause of death section of the certificate or the confidential medical report.

#### Section 205.13

Former section 205.13, concerning disposal of certain human remains after use for anatomical purposes, was deleted as an unnecessary requirement for public health purposes. Section 205.01, defining “human remains”, and Section 205.21, concerning the issuance of disposition permits, now specify the circumstances when such a permit is required or authorized.

New section 205.13 is derived from the former section 205.17. Subdivision (a) was amended to add a reference to remains, as defined in section 205.01(c), resulting from a termination of pregnancy occurring in the City in order to be consistent with the rest of the section. This subdivision was also amended to correct legal nomenclature distinguishing between a “subdivision” and a “section.”

Subdivision (b) was added to provide for the holding of human remains for more than the time periods specified in subdivision (a) of this section without being buried, cremated or transported out of the City if an appropriate interim disposition permit has been issued. This was to accommodate, among other circumstances, the interim holding

of body parts (as occurred during the World Trade Center disaster), or the holding of human remains during mass mortality events or while being used for anatomical purposes.

#### Section 205.15

This section is derived from former section 205.19. This section was amended to clarify that it applies to deaths or terminations of pregnancy that occur in hospice or other health care facilities, in addition to hospitals. The reference to “a permit issued pursuant to §205.25” was deleted because, in practice, disposition permits are not issued until after death certificates are prepared, certified and registered. The references to “next of kin” and the “Public Administrator” were deleted and replaced with the “person in control of disposition” as now defined in section 205.01. The section was further amended to clarify that the performance of an autopsy pursuant to §4214(1) of the State Public Health Law refers to unclaimed remains. The section was also amended to reflect gender neutrality.

#### Section 205.17

This section is derived from former section 205.21. This section was amended by replacing “next of kin, legal representative or, in the absence of arrangements by such next of kin or legal representative, by a friend of the deceased” with the “person in control of disposition”. This is consistent with amendments to Section 205.01. The section was also amended to reflect gender neutrality.

#### Section 205.19

This section, relating to the removal of human remains, is derived from former section 205.23. Subdivision (a) was amended by separating it into paragraphs (1) and (2). Paragraph (1) was amended to update, clarify and conform to current practice the circumstances under which human remains may be removed from the place of death or termination of pregnancy. The paragraph now provides for electronic filing prior to removal. The paragraph was further amended to clarify that the filing must be made by the person required to report a death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03, and was amended to reference interim disposition permits in accordance with changes to sections 205.13 and 205.21. Paragraph (1) was amended to delete the requirement that a licensed funeral director or undertaker must have in his or her possession a “completed” certificate of death or termination of pregnancy, as the personal particulars section may not yet have been completed by the funeral director or undertaker. The paragraph was further amended to clarify throughout that it applies to terminations of pregnancy as well as deaths.

Paragraph (2) of subdivision (a) is new. It provides for the removal of human remains from the place of death or termination of pregnancy in the case of a death from natural causes occurring elsewhere than in a hospital or hospice if the funeral director, undertaker or person in charge of the mortuary has obtained authorization from the office

of chief medical examiner to remove the remains, or has obtained authorization to remove the remains and assurance from the physician attending the death, or from his or her duly authorized medical associate, that the death is from natural causes and that said physician or medical associate assumes responsibility for certifying to the cause of death. This is consistent with current practice.

Subdivision (b) was amended to correct legal nomenclature distinguishing between a “subdivision” and a “subsection” and to correct the title of the office of chief medical examiner.

Subdivision (c) was amended to correct the title of the office of chief medical examiner, reflect gender neutrality and correct legal nomenclature distinguishing between a “subdivision” and a “subsection.”

Subdivision (d) was amended to clarify that the police department is of the City, and to correct the title of the office of chief medical examiner.

#### Section 205.21

This section, regarding disposition permits, is derived from former section 205.25. Permits to bury, cremate or to transport human remains have long been required in New York City. In circumstances such as during mass mortality events or when human remains are used for anatomical purposes, it may be necessary to temporarily hold human remains beyond the periods specified in section 205.13 without burial, cremation or transportation. Subdivision (b) of section 205.13 requires the issuance of an interim disposition permit by the Department to temporarily hold human remains for such periods. Accordingly, subdivision (a) of this section 205.21 has been amended to include reference to interim temporary holding permits, in addition to burial, cremation and transportation permits.

Subdivision (b) has been divided into three paragraphs. New paragraph (3) of subdivision (b) specifies the information required to be kept by a person to whom an interim holding permit has been issued. It also requires the surrender of the interim permit when a final disposition permit to bury, cremate or transport the human remains is issued.

Subdivision (d) has been revised to utilize the newly defined term “person in control of disposition”.

#### Section 205.23

This section is derived from former section 205.27. It has been amended to clarify that when human remains are being transported into the City from a jurisdiction that does not issue disposition permits, the Department may accept certified copies of certificates of death or termination of pregnancy in lieu of a permit.

## Section 205.25

This section is derived from former section 205.31. Subdivision (a) has been repealed as the regulation of new cemeteries and cemetery name changes is wholly within the jurisdiction of the New York State Department of Health and Department of State pursuant to the Public Health Law and Not-for-Profit Corporation Law and related regulations. The remaining subdivisions have been re-lettered accordingly.

## Section 205.27

This section, regarding disinterment permits, is derived from former section 205.33 and remains essentially unchanged. Modifications were made to reflect renumbering of sections, correcting the title of the Office of Chief Medical Examiner, the use of the new term “person in control of disposition” and gender neutrality.

## Section 205.29

Former section 205.29, regarding when and where permits are obtained, has been deleted as unnecessary.

This new section 205.29 is derived from former section 205.35.

Subdivision (a) now requires that agents of funeral directors or undertakers who seek to file certificates with the Department must, in addition to the funeral directors or undertakers, register with the Department.

Subdivision (b) was amended to require presentation of a government issued picture identification, in addition to the State-issued certificate, in order for a funeral director or undertaker to register with the Department.

Subdivision (c) was added to specify the documentation that an agent must present in order to be registered with the Department. Such measures provide a greater level of security to the registration process.

## Section 205.31

This section, regarding the authority of funeral directors or undertakers to apply for departmental permits, is derived from former section 205.37. Subdivision (a) now uses the term “person in control of disposition” as it is newly defined in section 205.01. Paragraphs (1) and (2) were also amended to reflect gender neutrality.

## Section 205.33

This section replaced former section 205.39 and provides authority for the Department to withhold registration of funeral directors, undertakers or their agents, to

refuse to issue permits or to accept certificates for filing such when serious or repeated violations of the Code are found to have been committed. When City registration is denied, suspended or revoked, an opportunity to be heard will be provided pursuant to the rules of the Department, currently found in Chapter 7 of Title 24 of the Rules of the City of New York. Such a strict enforcement mechanism will prevent abuses of the registration process.

The adopted rule is as follows:

Note – Matter in brackets [ ] is to be deleted  
Matter underlined is new

**RESOLVED**, that, effective January 1, 2010, Article 205 of the New York City Health Code be and the same hereby is revised, to be printed together with explanatory notes to read as follows:

## **ARTICLE 205**

### **Deaths and Disposals of Human Remains**

#### Introductory Notes

This Article contains provisions for the reporting of deaths occurring in the City, for the maintenance of registries of deaths, [for the reporting of autopsies of infants,] and for the disposal of human remains. In following the traditional and administratively convenient pattern of incorporating both the requirements for reporting of deaths and sepulture, this Article serves two aims—to assure statistical accuracy as well as sound disposal of the dead. As part of a comprehensive review and revision of the Code, the amendments to this Article seek, in particular, to reflect modern standards and current programmatic practice while removing outdated provisions.

#### §205.01 **Definitions.**

When used in this title:

- (a) “Burial” means interment of human remains in the ground or in a tomb, vault, crypt, cell or mausoleum, and includes any other usual means of final disposal of human remains other than cremation.
- (b) “Cremation” means the burning of human remains in a crematory.
- (c) “Human remains” or “remains” means a [dead fetus] conceptus which has completed 24 weeks or more of gestation or all or any part of the dead body of a human being but does not include human ashes recovered after cremation. For purposes of this Article a conceptus of less than 24 weeks gestation for which the issuance of a

disposition permit pursuant to §205.21 has been requested shall be treated as human remains.

(d) “Hospice” means a program issued a certificate of approval pursuant to Article 40 of the Public Health Law and defined as such in §4002 of said law.

[(d)](e) “Person in control of disposition” [Next of kin] means, in accordance with all of the provisions of §4201 of the Public Health Law, the [person or] following persons who are eighteen years of age or older in [the following] descending order of priority:[, who are available within the applicable limits of time as provided in this article to receive communications and to give instructions regarding the disposal of a decedent's remains either personally, by telephone, telegraph, mail or other usual means:

(1) The spouse or the domestic partner who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such a partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of Personnel are to be transferred to the City Clerk.); or,

(2) The children who are 18 years of age or over; or

(3) The grandchildren and other descendants who are 18 years of age or over; or,

(4) The parents or surviving parent; or,

(5) The brothers and sisters and their descendants who are 18 years of age or over; or,

(6) The grandparents; or,

(7) The great grandparents and uncles and aunts who are 18 years of age or over; or,

(8) Such other persons who are 18 years of age or over and would be entitled to share in the estate of the decedent as specified in §4-1.1 of the Estates, Powers and Trusts Law.]

(1) the person designated in a written instrument executed pursuant to the provisions of §4201 of the Public Health Law;

(2) the decedent's surviving spouse;

(2-a) the decedent's surviving domestic partner;

(3) any of the decedent's surviving children;

(4) either of the decedent's surviving parents;

(5) any of the decedent's surviving siblings;

- (6) a guardian appointed pursuant to article seventeen or seventeen-a of the Surrogate's Court Procedure Act or article eighty-one of the Mental Hygiene Law;
- (7) any person who would be entitled to share in the estate of the decedent as specified in §4-1.1 of the Estates, Powers and Trusts Law, with the person in closest relationship having the highest priority;
- (8) a duly appointed fiduciary of the estate of the decedent;
- (9) a close friend or relative who is reasonably familiar with the decedent's wishes, including the decedent's religious or moral beliefs, when no person higher on this list is reasonably available, willing, or competent to act, provided that such person has executed a written statement pursuant to subdivision seven of §4201 of the Public Health Law; or
- (10) a chief fiscal officer of a county or a public administrator appointed pursuant to article twelve or thirteen of the surrogate's court procedure act, or any other person acting on behalf of the decedent, provided that such person has executed a written statement pursuant to subdivision seven of §4201 of the Public Health Law.

[(e) Use for anatomical purposes means the performance of an autopsy or dissection, or the preservation in an anatomical library.]

***Notes:***

This section was amended by resolution adopted on September 22, 2009.

Subdivision (c) was amended to more fully define human remains, including a conceptus, to clarify when a permit for disposition is required. The 24 weeks or more of gestation is consistent with former §205.13, which required a permit for disposition after 24 weeks.

Subdivision (d) was added to define “hospice,” which under State Public Health Law includes hospice care programs as well as hospice facilities. Hospice is increasingly utilized as a form of end-of-life care, and consequently hospice providers are preparing a larger proportion of death certificates.

Subdivision (e) was deleted. It had defined “use for anatomical purposes”, which was referred to in section 205.13 and has been deleted. New subdivision (e) was added to conform to the provisions of Public Health Law §4201, which applies in the City and establishes the persons in descending priority who shall have the right to control the disposition of the remains of a decedent. It replaces former subdivision (d), which defined “next of kin” and their order of priority for receiving communications and giving instructions regarding the disposal of a decedent’s remains.

§205.03 **Reporting deaths.**

(a) When a death occurs in the City, it shall be reported to the Department as follows:

(1) If the death is from natural causes and occurs in a hospital, or en route thereto, or while under the care of a hospice, by the person in charge of the hospital or hospice, or his or her designee; or,

(2) If the death is from natural causes and occurs elsewhere than in a hospital, or en route thereto, or while not under the care of a hospice, by the licensed physician in attendance or by [his] such physician's duly authorized medical associate, provided such associate reviews the medical records of the decedent and certifies that he or she has found no evidence of suspicious or unusual circumstances; or,

(3) If the death is investigated by the [office of the chief medical examiner] Office of Chief Medical Examiner pursuant to Title 17, Chapter 2 of the Administrative Code, and jurisdiction over the remains is assumed by that office, by a medical examiner within the [office of the chief medical examiner] Office of Chief Medical Examiner.

(b) The person required to report a death pursuant to paragraphs (1) or (2) of subdivision (a) [subsection (a)(1) or (2)] of this section shall file a certificate of death and a confidential medical report, and the [chief medical examiner] Office of Chief Medical Examiner, when required to report pursuant to paragraph (3) of subdivision (a) [subsection (a)(3)] of this section, shall file a certificate of death only. Reports shall be filed within 24 hours after the death or the finding of the remains with any office maintained and designated by the Department for such purposes.

(c) In circumstances where the person required to report a death pursuant to subdivision (a) of this section does not file a report thereof electronically, [The] the requirement of filing the certificate of death and the confidential medical report, if any, may be fulfilled by delivering the same immediately upon demand and within the time prescribed by subdivision [subsection] (b) of this section, to a funeral director or undertaker authorized to take charge of the remains, or to the person in charge of the [city] City mortuary if the remains are to be buried in the [city] City cemetery. Such funeral director, undertaker or person in charge of the [city] City mortuary, or an agent of such funeral director or undertaker registered with the department pursuant to this Article or a designee of the person in charge of the mortuary, shall file the certificate and confidential medical report

with the Department within 72 hours following death or the finding of the remains.

Funeral directors, undertakers, [and] the person in charge of the City mortuary, and their agents or designees, shall not divulge information contained in the confidential medical report of death except to authorized personnel of the Department. [Certificates of death and confidential medical reports may be filed with the Department electronically by means of computer programs specified and provided or otherwise authorized for use by the Department.]

(d) All hospitals and hospices that report 25 or more deaths to the Department per year, and the Office of Chief Medical Examiner, shall electronically prepare any death certificates and confidential medical reports, and shall, within 24 hours after the death or finding of the remains, file such documents electronically with the Department by means of computer programs specified and provided or otherwise authorized for use by the Department. In circumstances where a person required to report a death pursuant subdivision (a) of this section files a report thereof electronically with the Department, and an authorized funeral director or undertaker has taken charge of the remains, such funeral director or undertaker shall, within 72 hours after the death or the finding of the remains, file such document with the Department electronically by means of computer programs specified and provided or otherwise authorized for use by the Department. If the remains are to be buried in the City cemetery, the person required to report a death pursuant to subdivision (a) of this section shall complete the process of electronically filing the entire certificate of death and confidential medical report, if any, within 72 hours after the death or finding of the remains. All persons required or authorized to report a death or to file a death certificate with the Department that are not required to report or file electronically pursuant to this subdivision may, at their election and upon approval by the Department, implement an electronic reporting system or continue to report deaths on approved paper forms. This subdivision shall take effect on April 1, 2010.

(e) All facilities, organizations or individuals required or electing to report electronically pursuant to subdivision (d) of this section shall apply to the Department prior to implementing any system and, upon approval by the Department, shall make electronic reports only in such manner and on computer programs prescribed and provided or

otherwise authorized by the Department. All individuals utilizing the Department's electronic reporting system to prepare, certify, enter information onto or file death certificates or confidential medical reports, pursuant to §205.05, shall be trained or approved by the Department in the proper use of the system and completion of the electronic reporting forms. Written paper reports may be submitted for a limited period of time only in the case of extenuating circumstances, temporary equipment failure, or prolonged inability to access the electronic reporting system, and only with the specific approval of the Department. In addition, the Department may on its own initiative allow written, paper reports to be submitted if electronic reporting is not possible in a particular circumstance. The Department may, in addition, require summary, cumulative or periodic reports on such reporting schedule as it may deem necessary.

(f) The person required to report a death or to file a death certificate shall provide to the Department any information that was required to be reported, but that was not so reported, within five business days of that person receiving the information.

(g) Within five business days of receipt of any autopsy results or other information that would change the information in the cause of death section of the certificate or the confidential medical report, the person required to report the death shall file a supplemental report of the cause of death to amend the certificate or confidential medical report, if any. Said supplemental report shall be certified by a person specified in paragraph (2) of subdivision (a) of §205.05 of this Article.

(h) Upon a request by the Department for additional information that may be necessary to complete, clarify or verify the information required to be reported, the person required to report a death or to file a death certificate shall provide such information to the Department within five business days of the request.

***Notes:***

This section was amended by resolution adopted on September 22, 2009.

Subdivision (a) has been amended to clarify the circumstances when a hospital or hospice must report a death and to broaden the situations in which institutions are required to report deaths to include deaths occurring en route to a hospital or while under the care of a hospice. This subdivision was also amended to permit the designee of a person in charge of a hospital or hospice to report a death to the DOHMH. This will enable the hospital or hospice to delegate the task of filing the report to a lower level

employee. Subdivision (a) has also been amended to reflect the correct name of the Office of Chief Medical Examiner, and to reflect that a medical examiner within the Office of Chief Medical Examiner is the person responsible for reporting a death. The subdivision was further amended to reflect gender neutrality.

Subdivision (b) was amended to correct legal nomenclature distinguishing between a “subsection” and a “paragraph.” The words “Office of” were added to Chief Medical Examiner to indicate that it is the office that is required to report.

Subdivision (c) was amended to remove a general description of electronic filing of death certificates, as it is described in greater detail in new subdivision 205.03 (d). This subdivision was also amended to add agents of funeral directors or undertakers and agents or designees of the person in charge of the City mortuary. Funeral directors or undertakers and the person in charge of the City mortuary use agents to file certificates and confidential medical reports with the Department, and now this subdivision will reflect that practice. The subdivision will now require that all such agents used by funeral directors or undertakers to be registered with the Department to ensure compliance with Departmental procedures. Subdivision (c) was also amended to correct legal nomenclature distinguishing between a “subdivision” and a “subsection.”

Subdivision (d) was added to require all hospitals and hospices that report 25 or more deaths to the Department per year, and the Office of Chief Medical Examiner, to report deaths electronically. When a required reporter files electronically, a funeral director or undertaker authorized to take charge of the remains, or the person in charge of the City mortuary when filing an application for a disposition permit, must also file such application electronically. All persons required or authorized to report a death or to file a death certificate with the Department that are not required to report or file electronically may, at their election and upon approval of the Department, implement an electronic reporting system or continue to report deaths on approved paper forms. This subdivision takes effect on April 1, 2010.

Subdivision (e) was added to require departmental approval of electronic reporting systems, in order to ensure the uniformity and quality of data collection. Toward that end, all individuals utilizing the electronic reporting system must be trained or approved by the Department in the proper use of the system and completion of electronic reporting forms. The subdivision also provides for alternative arrangements, upon the Department’s approval or initiative, in particular circumstances.

Subdivision (f) was added to provide for situations in which a reporter receives required information after reporting the death. The reporter must submit such information within five business days of receipt.

Subdivision (g) was added to provide for situations in which a reporter receives autopsy results or other information that would change the information in the cause of death section of the certificate or the confidential medical report. The reporter must submit such information within five business days of receipt.

Subdivision (h) was added to require reporters to provide, within five business days of a request by the Department, additional information necessary to complete, clarify or verify the information required to be reported. Such information may include, for example, updated causes of death.

**§205.05 Preparation and certification of certificate of death and confidential medical report of death.**

(a) (1) Preparation. Except with regard to personal particulars as specified in subdivision (b) of this section, [The] the certificate of death and confidential medical report, if any, shall be prepared by the person required to [file] report the same pursuant to subdivision (a) of §205.03, but when a death occurs in a hospital or en route thereto, or while under the care of a hospice, the certificate and confidential medical report shall be prepared by the physician in attendance or assisting, by the chief medical officer of the hospital or hospice, [or] by the physician in charge of the service on which the death occurs, or by a designee of the person in charge of the hospital or hospice who is trained or approved by the Department. [That portion of the confidential medical report of death pertaining to race and ancestry shall be completed by the funeral director or, in the case of city burial, by the physician.]

(2) Certification. A certificate of death and the confidential medical report, if any, shall be certified by a physician in attendance or such physician's duly authorized medical associate, by the chief medical officer of the hospital or hospice reporting the death, or by the physician in charge of the service on which the death occurred. When a death certificate is filed by the Office of Chief Medical Examiner, the certificate shall be certified by a medical examiner within that office. A person certifying a certificate and confidential medical report, if any, shall examine said documents for correctness of the information contained thereon and make necessary changes.

(b) The certificate of death and confidential medical report, if any, shall, except when such are filed electronically pursuant to §205.03(d), be prepared on forms prescribed by the Board and furnished by the Department. [Certificates of death and confidential medical reports may be filed with the Department electronically by means of computer] Computer programs specified and provided or otherwise authorized for use by the Department for electronic filing shall reflect the forms prescribed by the Board except to the extent that differences may be necessary or warranted in order to accommodate

electronic formatting. The [physician] person preparing the certificate and confidential medical report, if any, pursuant to paragraph (1) of subdivision (a) of this section, shall enter the name of the deceased and all other information required by the form, but the [personal] information concerning the deceased characterized as “personal particulars” shall be entered by the funeral director or undertaker authorized to take charge of the remains except when the remains are to be buried in the [city] City cemetery, in which case such personal particulars shall be entered by the person preparing the certificate pursuant to paragraph (1) of subdivision (a) of this section. The confidential medical report shall contain a statement of the cause of death which shall represent the physician's best opinion on the basis of all the evidence available to him or her. When the death is reported by [occurs in] a hospital or hospice, the information required by the forms shall be taken from the hospital or hospice records of the case. If, in a hospital or a hospice, worksheets are used in the preparation of certificates of death and confidential medical reports, they shall be provided or approved by the Department, and individuals using such worksheets shall be trained or approved by the Department. Worksheets shall be retained by the hospital or hospice for a period of three years from the date of the event, and shall, upon request, be made available to the Department for inspection.

***Notes:***

This section was amended by resolution adopted on September 22, 2009.

The title of section 205.05 was amended to “Preparation and certification of certificate of death and confidential medical report of death” and the paragraph titles “*Preparation*” and “*Certification*” were added to subdivision (a). These changes were made to indicate that separate rules apply to the preparation and certification of certificates.

Paragraph (1) of subdivision (a) was amended to permit the designee of a person in charge of a hospital or hospice to prepare the required certificate and confidential medical report, if any. Such a designee must be trained or approved by the Department. This is particularly useful for electronic reporting and will enable the hospital or hospice to delegate the task of preparing the certificate to a lower level employee. The training and approval requirement should improve data quality. It was further amended to clarify the circumstances when a hospital or hospice must report a death and to broaden the situations in which institutions are required to report deaths to include deaths occurring en route to a hospital or while under the care of a hospice. Paragraph (1) of subdivision (a) was also amended to delete the reference to that portion of the confidential medical report of death pertaining to race and ancestry to be completed by the funeral director or, in the case of city burial, by the physician. The Department is planning to modify

the death certificate form so that the race and ancestry items will no longer be contained in the confidential medical report of death.

Paragraph (2) of subdivision (a) is substantially new and was amended to clarify which physicians may certify a death, including the physician in attendance or such physician's duly authorized medical associate. A person certifying a certificate and confidential medical report, if any, shall examine the documents for correctness of the information contained thereon and make necessary changes.

Subdivision (b) was amended by deleting the requirement that the Board of Health approve the electronic form of certificates, because, aside from incidental formatting differences, electronic forms are merely reflective of the paper forms prescribed by the Board pursuant to this subdivision. Subdivision (b) was also amended to reflect changes made to subdivision (a) and to provide for improving the quality of data collection. Any worksheets used by anyone authorized to prepare certificates of death and confidential medical reports must be approved by the Department. Any individual who uses such worksheets shall be trained or approved by the Department. The worksheets shall be retained by the hospital or hospice for a period of three years from the date of event and shall, upon request, be made available to the Department for inspection. The subdivision also clarifies which person preparing the certificate and confidential medical report shall be responsible for completing its various sections.

#### **[§205.06 Certifications of Death.**

(a) A party entitled to obtain a transcript of a record of death, or a certified copy of a certificate of death, may request a certification of death, and the Department shall thereupon issue such a certificate.

(b) A certification of death shall contain only the name, sex, date of death and the place of death of the person to whom it relates, as well as the death record number from which said information is derived.]

#### **§205.07 Confidential medical report of death; not subject to [subpoena] compelled disclosure or inspection.**

(a) The confidential medical report of death shall [not] be confidential and not subject to [subpoena] compelled disclosure or to inspection by persons other than the Commissioner or authorized personnel of the Department, except in a criminal action or criminal proceeding, or for official purposes by a Federal, State, county or municipal agency charged by law with the duty of detecting or prosecuting crime, or by researchers authorized and approved by the National Death Index of the National Center for Health Statistics of the federal Centers for Disease Control and Prevention, or successor agency.

The Commissioner may, however, approve the inspection of such confidential medical reports for scientific purposes and, for confidential medical reports of deaths occurring on or after January 1, 2010, by the spouse, domestic partner, parent or child of the deceased or by the individual identified on the death certificate filed with the Department as the person in control of disposition.

(b) Within the context of this section, scientific purposes shall mean epidemiologic surveillance and investigation by a governmental public health agency, research, and/or the compilation of statistics relating factors bearing on disease incidence, prevalence, mortality or treatment.

(c) Notwithstanding subsection (a), upon application of an individual licensed to practice medicine, the Commissioner may release a certified copy of the confidential medical report of death, or, in his or her sole discretion, provide abstracts of such information, when, and to the extent that:

(1) a need for the family medical history has been demonstrated, to the satisfaction of the Commissioner, in order to counsel or to diagnose and/or treat an illness or condition in an individual; and

(2) the information contained in the confidential medical report of death has been demonstrated, to the satisfaction of the commissioner, to be otherwise unavailable.

(d) The information released pursuant to subsection (c) may be issued only to the licensed practitioner making the request.

***Notes:***

This section was amended by resolution adopted on September 22, 2009.

Subdivision (a) was amended to provide that disclosure of the confidential medical report of death shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code. It was further amended to provide for inspection by researchers authorized and approved by the National Death Index of the National Center for Health Statistics of the Centers for Disease Control and Prevention, or its successor agency. This is to facilitate scientific research of death data by researchers who apply through the federally-established National Death Index. Subdivision (a) was also amended to provide for inspection of confidential medical reports of death occurring on or after January 1, 2010 by the spouse, domestic partner, parent or child of the deceased, or by the individual identified on the death certificate as the person in charge of disposition. This change will make cause of death information available to the above list of individuals, which is consistent with the policies of some states.

Subdivision (b) was amended to include epidemiologic surveillance and investigation conducted by governmental public health agencies within the meaning of “scientific purposes”.

**§205.09 Certifications of Death.**

(a) A party entitled to obtain a transcript of a record of death, or a certified copy of a certificate of death, may request a certification of death, and the Department may, at its discretion, thereupon issue such a certificate.

(b) A certification of death shall contain only the name, sex, date of death, date that the certificate was accepted for filing by the Department, manner of death and the place of death of the person to whom it relates, as well as the death record number from which said information is derived.

***Notes:***

This section was added by resolution adopted on September 22, 2009.

This section was essentially reenacted and renumbered from the former Section 205.06, which was deleted.

Subdivision (a) was amended to provide discretion to the Department in the issuance of certifications of deaths, which are abstracts of death certificates. The Department does not currently have the systems to prepare or issue such certifications.

Subdivision (b) was amended to update the minimum amount of information that would be useful on a certification of death by adding the date that the certificate was accepted for filing by the Department and the manner of death (accident, suicide, homicide or natural).

**§205.11 Performance and reports of autopsies.**

[(a)] When, in the opinion of the Commissioner, the prevention of spread of disease or other public health consideration requires that an autopsy be performed, he or she may request the [office of the chief medical examiner] Office of Chief Medical Examiner of the City or arrange for a pathologist to perform the same and to file an autopsy report with and in the manner specified by the Department.

[(b)] Except when such autopsy is performed by the office of the chief medical examiner, the person in charge of a hospital shall file a report of every autopsy performed in the hospital on the remains of an infant under one year of age. The report shall be submitted on a form furnished by the Department and shall be filed within one month of death with

any office maintained and designated by the Department for such purposes. The autopsy report shall contain the findings of the pathologist and such additional facts concerning the causes of death as do not appear in the confidential medical report of death as originally filed. It shall be subject to the provisions governing confidentiality of medical reports of death pursuant to §205.07.]

**Notes:**

This section was amended by resolution adopted on September 22, 2009.

This section was amended to reflect gender neutrality. Subdivision (b) was deleted and replaced with Section 205.03 (g), which provides for situations in which a reporter receives autopsy results or other information that would change the information in the cause of death section of the certificate or the confidential medical report.

**[§205.13 Disposal of certain human remains after use for anatomical purposes.**

When the death of an infant under one year of age or a spontaneous termination of pregnancy in which the conceptus has completed 24 weeks of gestation occurs in a hospital, the hospital may use the human remains for anatomical purposes if it obtains the written consent of the next of kin and a permit from the Department. After such use and without further authorization or permit, the hospital may itself dispose of the remains by incineration if it has the necessary facilities, or it may request the person in charge of the City mortuary to undertake the disposal.]

**[§205.17]§205.13 Disposal of human remains; time limit.**

(a) Except as set forth in subdivision (b) of this section, [Remains] remains of persons dying in the City, or remains resulting from a termination of pregnancy occurring in the City, shall be buried, cremated or transported out of the City within four days following death or termination of pregnancy. Such remains may, however, within the four-day period, be placed in the general reception vault of a cemetery for a period not exceeding ten days from the placement therein. The Department may extend the time limitations contained in this subdivision [section] and may, in granting an extension, specify conditions to be observed to prevent seepage or escape of offensive odors.

(b) Human remains may be temporarily held for more than the time periods specified in subdivision (a) of this section without being buried, cremated or transported out of the

City only if an appropriate interim disposition permit has been issued pursuant to §205.21 of this Article.

***Notes:***

This section was amended by resolution adopted on September 22, 2009.

Former section 205.13, concerning disposal of certain human remains after use for anatomical purposes, was deleted as an unnecessary requirement for public health purposes. Section 205.01, defining “human remains”, and Section 205.21, concerning the issuance of disposition permits, now specify the circumstances when such a permit is required or authorized.

New section 205.13 is derived from the former section 205.17. Subdivision (a) was amended to add a reference to remains, as defined in section 205.01(c), resulting from a termination of pregnancy occurring in the City in order to be consistent with the rest of the section. This subdivision was also amended to correct legal nomenclature distinguishing between a “subdivision” and a “section.”

Subdivision (b) was added to provide for the holding of human remains for more than the time periods specified in subdivision (a) of this section without being buried, cremated or transported out of the City if an appropriate interim disposition permit has been issued. This was to accommodate, among other circumstances, the interim holding of body parts (as occurred during the World Trade Center disaster), or the holding of human remains during mass mortality events or while being used for anatomical purposes.

**[§205.19] §205.15 Delivery of remains to funeral director or undertaker; unclaimed remains.**

When a death or termination of pregnancy occurs in a hospital, hospice or other health care facility, the person in charge shall deliver the remains immediately upon demand and within the time for filing reports prescribed in §§203.03(c) and 205.03(b) to a funeral director or undertaker who presents [a permit issued pursuant to §205.25 or] a certification that he or she has been authorized to take charge of the remains by the person in control of disposition [next of kin] as defined in §205.01 [or by the Public Administrator]. If the remains are not claimed within 24 hours following death or termination of pregnancy, the person in charge of the hospital, hospice or other health care facility shall immediately notify the person in charge of the City mortuary. If, however, an autopsy is to be performed on unclaimed remains pursuant to §4214(1) of the Public Health Law, [he] the person in charge of the hospital, hospice or other health care facility shall notify the person in charge of the City mortuary within 48 hours of death and prior to the autopsy. Under such circumstances the filing of the certificate of

death and confidential medical report may be postponed until 72 hours after death. The requirement of filing may be fulfilled by delivery of the certificate and confidential medical report to the person in charge of the City mortuary when the remains are removed from the hospital or other health care facility.

***Notes:***

This section was amended by resolution adopted on September 22, 2009.

This section is derived from former section 205.19. This section was amended to clarify that it applies to deaths or terminations of pregnancy that occur in hospice or other health care facilities, in addition to hospitals. The reference to “a permit issued pursuant to §205.25” was deleted because, in practice, disposition permits are not issued until after death certificates are prepared, certified and registered. The references to “next of kin” and the “Public Administrator” were deleted and replaced with the “person in control of disposition” as now defined in section 205.01. The section was further amended to clarify that the performance of an autopsy pursuant to §4214(1) of the State Public Health Law refers to unclaimed remains. The section was also amended to reflect gender neutrality.

**[§205.21] §205.17 Claiming of human remains removed to the City mortuary.**

When human remains which have been removed to the City mortuary are subsequently claimed, the person in charge of the City mortuary shall deliver the remains, on demand, to a funeral director or undertaker who submits a written statement that he or she, or the funeral establishment with which he or she is associated, has been employed by the person in control of disposition [next of kin, legal representative or, in the absence of arrangements by such next of kin or legal representative, by a friend of the deceased]. Together with the remains, the person in charge of the [city]City mortuary shall deliver the certificate of death or termination of pregnancy and confidential medical report, if any, or, if such documents have been filed with the Department, any permit issued by the Department authorizing burial in the City cemetery. When the funeral director or undertaker is required to notify the [Public Administrator] public administrator of a county in the City pursuant to §1113 of the Surrogate's Court Procedure Act, the statement of such funeral director's or undertaker's employment shall first be approved by the [Public Administrator] public administrator.

**Notes:**

This section was amended by resolution adopted on September 22, 2009.

This section is derived from former section 205.21. This section was amended by replacing “next of kin, legal representative or, in the absence of arrangements by such next of kin or legal representative, by a friend of the deceased” with the “person in control of disposition”. This is consistent with amendments to Section 205.01. The section was also amended to reflect gender neutrality.

**[§205.23] §205.19 Removal of human remains from place of death or termination of pregnancy.**

(a) (1) Except as specified in this section, [No]no person shall remove human remains from the place of death or termination of pregnancy unless a certificate of death or termination of pregnancy and a confidential medical report, if any, have been filed electronically with the Department by the person required to report a death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03, or unless such documents have been delivered to a funeral director, undertaker or to the person in charge of the City mortuary pursuant to §205.03 or §203.03, or unless a burial, cremation, interim or transportation permit has been issued pursuant to [§205.25] §205.21. Prior authorization of the Department shall not be required to remove human remains to a county in [the]a State contiguous to the City. However, an appropriate permit shall be obtained prior to burial or cremation of human remains, temporary holding of remains pursuant to subdivision (b) of §205.13, or transportation to any other area [prior to burial or cremation], as required pursuant to this Article. When a death or termination of pregnancy occurs under circumstances which do not require notification to the [office of the chief medical examiner] Office of Chief Medical Examiner, the remains may be removed from the place of death, termination of pregnancy or autopsy to another place within the City or to a county within [the]a State contiguous to the City by a licensed funeral director or undertaker [who] if such person has in his or her possession a [completed] certificate of death or termination of pregnancy including any confidential medical report, or if such certificate and confidential medical report, if any, have been filed electronically with the Department by the person required to report the death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03. If, however, the death or termination of pregnancy is required to be reported to

the Department by the [office of the chief medical examiner] Office of Chief Medical Examiner pursuant to §205.03(a)(3) or §203.03(a)(4), [respectively,] the remains may be removed from the place of death, termination of pregnancy or autopsy by the funeral director or undertaker [who has] if either he or she has received a completed death or termination of pregnancy certificate from the medical examiner who had taken charge of the remains, or if a death or termination of pregnancy certificate has been electronically filed by the [office of chief medical examiner] Office of Chief Medical Examiner.

(2) Notwithstanding the requirements of paragraph (1) of this subdivision, in the case of a death from natural causes occurring elsewhere than in a hospital or hospice, such remains may be removed only to a funeral establishment within the City or within a county of a State contiguous to the City if the funeral director, undertaker or person in charge of the mortuary has obtained authorization from the Office of Chief Medical Examiner to remove the remains, or has obtained authorization to remove the remains and assurance from the physician attending the death, or from his or her duly authorized medical associate pursuant to paragraph (2) of subdivision (a) of §205.03, that the death is from natural causes and that said physician or medical associate assumes responsibility for certifying to the cause of death.

(b) When a death occurs in a hospital, under circumstances which do not require notification to the [office of the chief medical examiner] Office of Chief Medical Examiner, the person in charge of the hospital may remove the remains to another hospital for purposes of autopsy, but such remains shall not be removed from the hospital in which the autopsy is performed unless the applicable provisions of subdivision [subsection] (a) of this section have been complied with.

(c) When a death occurs under circumstances which do not require notification to the [office of the chief medical examiner] Office of Chief Medical Examiner and while the deceased was under the continued medical supervision of a staff physician of a voluntary or municipal hospital as part of the general care offered by such hospital to a patient who has been transferred from the hospital to his or her home, the person in charge of such hospital may remove the remains to the hospital for purposes of autopsy, but such remains shall not be removed from the hospital unless the applicable provisions of subdivision [subsection] (a) of this section have been complied with.

.....

(d) This section shall not prevent the transportation of human tissues for diagnostic purposes or pathological study, the removal of human remains by the person in charge of the City mortuary for burial in the City cemetery or the removal of human remains when ordered by an officer of the City [Police Department] police department or the Office of [the] Chief Medical Examiner pending completion of an investigation by either agency or by both.

**Notes:**

This section was amended by resolution adopted on September 22, 2009.

This section, relating to the removal of human remains, is derived from former section 205.23. Subdivision (a) was amended by separating it into paragraphs (1) and (2). Paragraph (1) was amended to update, clarify and conform to current practice the circumstances under which human remains may be removed from the place of death or termination of pregnancy. The paragraph now provides for electronic filing prior to removal. The paragraph was further amended to clarify that the filing must be made by the person required to report a death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03, and was amended to reference interim disposition permits in accordance with changes to sections 205.13 and 205.21. Paragraph (1) was amended to delete the requirement that a licensed funeral director or undertaker must have in his or her possession a “completed” certificate of death or termination of pregnancy, as the personal particulars section may not yet have been completed by the funeral director or undertaker. The paragraph was further amended to clarify throughout that it applies to terminations of pregnancy as well as deaths.

Paragraph (2) of subdivision (a) is new. It provides for the removal of human remains from the place of death or termination of pregnancy in the case of a death from natural causes occurring elsewhere than in a hospital or hospice if the funeral director, undertaker or person in charge of the mortuary has obtained authorization from the Office of Chief Medical Examiner to remove the remains, or has obtained authorization to remove the remains and assurance from the physician attending the death, or from his or her duly authorized medical associate, that the death is from natural causes and that said physician or medical associate assumes responsibility for certifying to the cause of death. This is consistent with current practice.

Subdivision (b) was amended to correct legal nomenclature distinguishing between a “subdivision” and a “subsection” and to correct the title of the Office of Chief Medical Examiner.

Subdivision (c) was amended to correct the title of the Office of Chief Medical Examiner, reflect gender neutrality and correct legal nomenclature distinguishing between a “subdivision” and a “subsection.”

Subdivision (d) was amended to clarify that the police department is of the City, and to correct the title of the Office of Chief Medical Examiner.

[§205.25] **§205.21 Burial, cremation, holding and transportation of human remains; disposition permit.**

(a) When a death or termination of pregnancy occurs in the City, the remains shall not be buried, cremated, temporarily held as an interim disposition pursuant to subdivision (b) of §205.13 or transported out of the City unless an appropriate disposition permit has been issued by the Department. However, remains may be transported out of the city to a contiguous county in the State without obtaining prior authorization to transport from the Department. In such cases, an appropriate disposition permit must still be issued by the Department prior to burial, [or ]cremation, interim disposition or transportation to any other area. Such burial, [or ]cremation, interim disposition or transportation permit shall not be issued until a certificate of death or termination of pregnancy and, if required, a confidential medical report have been filed with the Department. A permit to bury, temporarily hold or cremate human remains or to transport them out of the City includes authorization to remove the remains from the place of death or termination of pregnancy pursuant to [§205.23(a)]§205.19(a). If remains are to be transported out of the City by common carrier, they shall be prepared in such manner as to comply with the State Sanitary Code.

(b) (1) No person in charge of a cemetery or crematory in the City shall allow human remains to be buried or cremated in the cemetery or crematory until a permit issued pursuant to subsection (a) of this section is surrendered to him or her, and he or she shall not accept any permit which has been changed or altered unless the change or alteration is countersigned by the Department. A permit for the burial or cremation of human remains issued by the authorized agency of any municipality or county within the United States, of any state, territory or possession of the United States, the District of Columbia, or of any foreign State within whose jurisdiction the death or termination of pregnancy occurred, which specifies the cemetery or crematory, may be accepted by the person in charge of the cemetery or crematory instead of a permit issued by the Department. If a permit issued in another jurisdiction does not specify the cemetery or crematory, or if the cemetery or crematory specified is not the actual place of intended burial or cremation, it

shall not be accepted by the person in charge of a cemetery or crematory but shall be exchanged for a permit issued by the Department.

(2) The person in charge of a cemetery or crematory shall maintain a permanent record of each burial or cremation which shall include the permit number and permit issuing authority of all permits received pursuant to this subdivision[section] and after making such permanent record, he or she may completely destroy such permits by incineration or other equally effective means.

(3) The person to whom an interim disposition permit has been issued in accordance with subdivision (b) of §205.13 shall maintain a permanent record of each of the human remains being temporarily held which shall include the permit number, and shall maintain the original interim disposition permit until such time it is surrendered to the Department in exchange for a final burial, cremation or transportation permit.

(c) A burial permit issued pursuant to this section includes authorization to place the remains in the general reception vault of the cemetery named in the permit prior to permanent burial in such cemetery.

(d) Application for a cremation permit shall be made by the person in control of disposition [next of kin, legal representative or friend of the deceased]. The application shall be supported by an affidavit which establishes the authority of such person in control of disposition [next of kin, legal representative or friend] to request cremation. The affidavit shall contain the name of the funeral director or undertaker who is to arrange for cremation, the name of the crematory where cremation is to take place and a statement that the applicant assumes all responsibility for the cremation. Such affidavit shall be maintained by the funeral director or undertaker. No cremation permit shall be issued unless the application is approved by the office of the chief medical examiner pursuant to [§ 878-3.1] §17-204 of the Administrative Code.

***Notes:***

This section was amended by resolution adopted on September 22, 2009.

This section, regarding disposition permits, is derived from former section 205.25. Permits to bury, cremate or to transport human remains have long been required in New York City. In circumstances such as during mass mortality events or when human remains are used for anatomical purposes, it may be necessary to temporarily hold human remains beyond the periods specified in section 205.13 without

burial, cremation or transportation. Subdivision (b) of section 205.13 requires the issuance of an interim disposition permit by the Department to temporarily hold human remains for such periods. Accordingly, subdivision (a) of this section 205.21 has been amended to include reference to interim temporary holding permits, in addition to burial, cremation and transportation permits.

Subdivision (b) has been divided into three paragraphs. New paragraph (3) of subdivision (b) specifies the information required to be kept by a person to whom an interim holding permit has been issued. It also requires the surrender of the interim permit when a final disposition permit to bury, cremate or transport the human remains is issued.

Subdivision (d) has been revised to utilize the newly defined term “person in control of disposition”.

**[§205.27]§205.23 Transportation of human remains into City.**

Human remains shall not be brought into the City unless a permit for their transportation, burial or cremation has been issued by the authorized agency of a municipality or county within the United States, of a state, territory or possession of the United States, the District of Columbia or of any foreign state within whose jurisdiction death or termination of pregnancy occurred. When the jurisdiction in which the event occurred does not issue such permits, the Department may accept certified copies of certificates of death or termination of pregnancy in lieu of such permits. Remains brought into the City for burial or cremation shall be dealt with pursuant to [§205.17] §205.13 and [§205.25] §205.21. Remains brought into the City in the course of transit shall not be detained for any purpose other than transshipment unless a permit is first obtained from the Department specifying where, how long and under what conditions such remains may be held, but no such permit shall be required for the uninterrupted transit or for the direct transshipment of remains. This section does not apply to the transportation of human tissues to be used for diagnostic purposes or pathological study.

***Notes:***

This section was amended by resolution adopted on September 22, 2009.

This section is derived from former section 205.27. It has been amended to clarify that when human remains are being transported into the City from a jurisdiction that does not issue disposition permits, the Department may accept certified copies of certificates of death or termination of pregnancy in lieu of a permit.

[§205.29 **Obtaining of permits.**

Application for permits to remove, bury, cremate or transport human remains shall be made during regular office hours at the office of the Department maintained and designated for such purposes. The Department may, however, in its discretion, authorize the issuance of permits during other hours and at other offices of the Department.]

[§205.31] §205.25 **Cemeteries, crematories, mausoleums, vaults and tombs.**

[(a) No new cemetery or crematory, and no mausoleum, vault, tomb, grave or other place of burial which is not within an existing cemetery shall be established in the City without the consent of the Board. The owner of a cemetery or crematory shall notify the Department of any change of name of the cemetery or crematory.]

[(b)] (a) When human remains are buried in the ground, the top of the coffin or casket shall be at least three feet below the level of the ground, but if the coffin or casket is enclosed in a concrete or metal vault, the top of the vault shall be at least two feet below the level of the ground.

[(c)] (b) General vaults in cemeteries used for the permanent burial of human remains shall be provided with crypts or cells which can be sealed, and every crypt or cell shall be sealed immediately after remains are placed in it unless the remains are enclosed in a hermetically-sealed metal or stone coffin or casket.

[(d)] (c) General reception vaults in cemeteries shall be maintained in good sanitary condition.

**Notes:**

This section was amended by resolution adopted on September 22, 2009.

This section is derived from former section 205.31. Subdivision (a) has been repealed as the regulation of new cemeteries and cemetery name changes is wholly within the jurisdiction of the New York State Department of Health and Department of State pursuant to the Public Health Law and Not-for-Profit Corporation Law and related regulations. The remaining subdivisions have been re-lettered accordingly.

[§205.33] §205.27 **Disinterment permits; opening of coffins or caskets.**

(a) No person shall disinter a coffin or casket containing human remains or expose or disturb a mausoleum, vault, tomb, grave or other place of burial unless a disinterment

permit has been issued by the Department, but this requirement does not apply during the course of a burial for which a burial permit has been obtained pursuant to [§205.25] §205.21. No disinterment permit is required when the disinterment is ordered by the [office of the chief medical examiner] Office of Chief Medical Examiner or the district attorney of a county within the City in the exercise of official duties. A disinterred coffin or casket containing human remains shall be prepared so as to comply with the State Sanitary Code.

(b) Disinterment permits may be issued only to funeral directors and undertakers of, if the remains are to be reburied in the same cemetery, to the person in charge of the cemetery. Application for a disinterment permit shall be made on a form furnished by the Department and submitted at any office maintained and designated by the Department for such purposes. The application shall be supported by an affidavit from the person in control of disposition [next of kin, legal representative] or other authorized person requesting disinterment. Such affidavit shall be maintained by the funeral director or undertaker.

(c) No person, other than the chief medical examiner or [his] the chief medical examiner's duly authorized representative, shall open a coffin or casket which has been disinterred unless the opening is ordered by a court of competent jurisdiction.

***Notes:***

This section was amended by resolution adopted on September 22, 2009.

This section, regarding disinterment permits, is derived from former section 205.33 and remains essentially unchanged. Modifications were made to reflect renumbering of sections, correcting the title of the Office of Chief Medical Examiner, the use of the new term “person in control of disposition” and gender neutrality.

[§205.35] §205.29 Registration of funeral directors and undertakers, and their agents.

(a) No permit or authorization pursuant to this article shall be issued or granted to a funeral director or undertaker who has not registered with the Department pursuant to subdivision[subsection] (b) of this section. No certificate of death or confidential medical report shall be filed with the Department on behalf of a funeral director or undertaker

except by an agent of such funeral director or undertaker who has registered with the Department pursuant to subdivision (c) of this section.

(b) A funeral director or undertaker who has a State certificate of registration pursuant to §3428 of the Public Health Law may register with the Department upon presentation of his or her State registration certificate and a government-issued picture identification of said funeral director or undertaker. The registration shall contain [his] the registrant's name and address and the name and address of funeral establishments with which [he] such registrant is associated, if any, and [he] such registrant shall present evidence of such associations. [He] The registrant shall subsequently register any change of name or address or association.

(c) An agent of a funeral director or undertaker may register with the Department upon presentation of (1) a letter of authorization in a form specified by the Department from the funeral director or undertaker who is the principal of the agent, and (2) a government-issued picture identification of the agent.

***Notes:***

This section was amended by resolution adopted on September 22, 2009.

Former section 205.29, regarding when and where permits are obtained, has been deleted as unnecessary.

This new section 205.29 is derived from former section 205.35.

Subdivision (a) now requires that agents of funeral directors or undertakers who seek to file certificates with the Department must, in addition to the funeral directors or undertakers, register with the Department.

Subdivision (b) was amended to require presentation of a government issued picture identification, in addition to the State-issued certificate, in order for a funeral director or undertaker to register with the Department.

Subdivision (c) was added to specify the documentation that an agent must present in order to be registered with the Department. Such measures provide a greater level of security to the registration process.

[§205.37] **§205.31 Authority of funeral director or undertaker.**

(a) No funeral director or undertaker shall apply for any permit required pursuant to this article unless he or she, or the funeral establishment with which he or she is associated,

has been employed by the person in control of disposition[next of kin, legal representative or a friend of the deceased]. When applying for such permit, the funeral director or undertaker shall sign a statement on the certificate of death or fetal death which shall contain:

- (1) His or her name and [New York] State license number;
  - (2) The name, business address and [New York] State business registration number of the funeral establishment with which he or she is associated;
  - (3) The name and the relationship to the decedent of the person who has employed the funeral establishment with which he or she is associated.
- (b) When a funeral director or undertaker is required to notify the [Public Administrator]public administrator of a county in the City pursuant to §1113 of the Surrogate's Court Procedure Act, the employment of the funeral director or undertaker shall first be approved by such [Public Administrator]public administrator before a burial, cremation or transportation permit may be issued.

***Notes:***

This section was amended by resolution adopted on September 22, 2009.

This section, regarding the authority of funeral directors or undertakers to apply for departmental permits, is derived from former section 205.37. Subdivision (a) now uses the term “person in control of disposition” as it is newly defined in section 205.01. Paragraphs (1) and (2) were also amended to reflect gender neutrality.

**[\$205.39] §205.33 Authority of Department to withhold registration, permits and filing of certificates.**

In addition to the forfeitures and penalties set forth in Articles 3 and 5 of this Code, when serious, repeated or persistent violations of any of the provisions of this Code are found, the Department may deny, suspend or revoke any registration and refuse to issue burial permits or other authorizations issued pursuant to this Article, or refuse to accept for filing certificates of death or confidential medical reports. Any funeral director, undertaker or funeral establishment, or registered agent of such director, undertaker or establishment, whose City registration is denied, suspended or revoked shall thereafter be provided with an opportunity to be heard pursuant to the rules of the Department. [When,

in the discretion of the Department, an investigation is to be instituted, the Department may withhold the issuance of any permit authorized to be issued pursuant to this article.]

***Notes:***

This section was amended by resolution adopted on September 22, 2009.

This section replaced former section 205.39 and provides authority for the Department to withhold registration of funeral directors, undertakers or their agents, to refuse to issue permits or to accept certificates for filing such when serious or repeated violations of the Code are found to have been committed. When City registration is denied, suspended or revoked, an opportunity to be heard will be provided pursuant to the rules of the Department, currently found in Chapter 7 of Title 24 of the Rules of the City of New York. Such a strict enforcement mechanism will prevent abuses of the registration process.

