

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

OFFICE OF COMMERCIAL SERVICES

CEMETERY COMMISSION

GENERAL RULES

(By authority conferred on the state cemetery commission by section 8 of Act No. 251 of the Public Acts of 1968, as amended, being S456.528 of the Michigan Compiled Laws)

PART 1. GENERAL PROVISIONS

R 456.101 Definitions.

Rule 1. As used in these rules:

(a) "Act" means Act No. 251 of the Public Acts of 1968, as amended, being SS456.521 to 456.543 of the Michigan Compiled Laws.

(b) "Cemetery" means a cemetery or entity subject to the act.

(c) "Commission" means the state cemetery commission created by the act.

(d) "Remains" means human remains.

(e) "Memorials" means any object on which is inscribed the name and generally the inclusive dates of life of the deceased that is used to identify a grave.

(f) "Trainee" means a person who has not been previously licensed by the commission to sell interment rights, cemetery merchandise or services.

(g) "Business entity" means a group of persons formed into a corporation, association, organization, partnership or copartnership.

(h) "Agent" means a person who acts with authority for or in the place of another person in the sale of interment rights or cemetery merchandise and services.

(i) "Seller" means a person who offers for sale interment rights, cemetery merchandise or services.

(j) "Cemetery lots" means an area for earth interment.

(k) "Pre-need" or "advance of need" means interment rights, cemetery merchandise or services sold to a purchaser before time of death.

(l) "Turf top crypts" means a section of a cemetery in which preconstructed underground outside containers have been installed for use of interments.

(m) "Vendor" means a cemetery company or its authorized agents.

(n) "Interment right" means 1 of the following:

(i) Burial right (earth burial).

(ii) Entombment right (crypt).

(iii) Columbarium right (inurnment).

(o) "Escrow" means an unallocated account held pursuant to the terms of a written trust agreement.

History: 1979 AC.

R 456.111 Rescission.

Rule 11. The General Rules of the predecessor state cemetery commission, being R 456.1 to R 456.52 of the Michigan Administrative Code and appearing on pages 4821 to 4823 of the 1968 Annual Supplement to the Code, are rescinded.

History: 1979 AC.

PART 2. PERMITS, REGISTRATIONS, LICENSES, AND RECORDS

R 456.121 Permits, registrations, and licenses.

Rule 21. A permit, registration or license issued pursuant to the act is valid from July 1 to June 30. An application for a permit, registration or license shall be filed with the commission at least 30 days before July 1 of each year.

History: 1979 AC.

R 456.122 Rescinded.

History: 1979 AC; 1996 AACS.

R 456.123 Property and unit descriptions.

Rule 23. (1) A cemetery shall file with the commission:

(a) A map containing a legal description of all land that has been purchased for cemetery purposes and adopted as part of the plan or design of the cemetery.

(b) Platted maps designating all locations of burial rights developed and completed for burial.

(2) A cemetery shall not sell or assign burial rights in a section or part of the cemetery which has not been developed and completed for burial unless a certified copy of the platted map designating burial rights contained in the section, has been filed with the commission.

(3) In case of a mausoleum, a burial structure or a columbarium, a cemetery shall file with the commission a substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevations and other divisions with descriptive names and numbers. If a structure has not been completed for entombment or inurnment as of the effective date of this rule, the map shall be filed before any rights in this structure are sold.

History: 1979 AC.

R 456.124 Ownership and location records.

Rule 24. (1) A cemetery shall keep a record of the ownership of all interment, entombment and inurnment rights in the cemetery.

(2) A cemetery shall keep record of all interments, entombments and inurnments showing the name, age, date of service, cemetery sections, lot numbers, grave number and, in case of a mausoleum or columbarium, all information necessary to easily locate an interment, entombment or inurnment.

(3) A cemetery shall keep a record of remains cremated in the cemetery and whether or not the cremated remains are interred, entombed or inurned on the premises.

(4) A cemetery shall keep records either in duplicate forms in separate buildings or in single copies within a container which has at least 1 hour fire proof rating. These records shall be available at all reasonable times to official inspection by the commission or any of its officers or agents.

History: 1979 AC.

R 456.125 Records of future obligations.

Rule 25. On December 31 of each year a cemetery shall have available for examination by the commission, an annual statement or record as of its most recent fiscal year which ended at least 6 months prior to the December 31 date, certified to by the owners, or in case of a corporation by 2 directors or trustees, showing the financial status of all contractual liabilities and obligations for future performance of services by the cemetery corporation or the organization so obligated which is affiliated with the cemetery. This statement or record shall contain the following information:

(a) Complete description of the future performance obligations involved.

(b) Total cost of full performance of all obligations as of the date of statement.

(c) Complete information on the means, provision, trust or other vehicle which will assure fulfillment of all obligations, stating ledger and market values of the vehicle, its location, nature of investments and trustees including fees paid to trustees.

History: 1979 AC.

R 456.126 Financial statements.

Rule 26. A cemetery shall have available each year for examination by the commission, an annual statement or record as of its most recent fiscal year. The statement shall be available 6 months after the end of the fiscal year. The statement or record shall be certified to by the owners, or in case of a corporation, by 2 directors or trustees, as to the financial condition of the cemetery entity or corporation. This statement or record shall contain substantially all of the following information:

- (a) List of all assets, current and fixed, showing costs and depreciation.
- (b) List of all liabilities, current and long term.
- (c) Stockholders' equity.
- (d) Statement of income and expenses.
- (e) Information on all insurance coverage of cemetery assets and responsibilities.

History: 1979 AC.

PART 3. ENDOWED CARE FUND, MERCHANDISE FUND, AUDITS, REPORTS, AND SALES

R 456.131 Sales of interment rights, cemetery merchandise or services.

Rule 31. (1) A contract or agreement in which payments are to be made as consideration toward the purchase or option to purchase of interment rights, cemetery merchandise or services and which is signed by a purchaser and a vendor, constitutes a sale as referred to in subsection (2) of section 7a of Act No. 12 of the Public Acts of 1869, as amended, being S456.107a of the Michigan Compiled Laws in subsection (2) of section 35a of Act No. 87 of the Public Acts of 1855, as amended, being S456.35a of the Michigan Compiled Laws and in subsections (1), (2), and (3) of section 16 of Act No. 251 of the Public Acts of 1968, as amended, being S456.536 of the Michigan Compiled Laws.

(2) If a cemetery uses sales contracts or purchase agreements that include interment rights, burial vaults, grave memorials or cemetery services, payments made by a purchaser in event of a death of either spouse shall apply first on the amount shown as charged for interment rights.

(3) All vendors shall comply with Act No. 227 of the Public Acts of 1971, being SS445.111 to 445.117 of the Michigan Compiled Laws, if sales are made at residences of purchasers.

History: 1979 AC.

R 456.132 Gross proceeds from sales.

Rule 32. Gross proceeds received from a sale of interment rights, cemetery merchandise or services is the total of all funds received or credited to the vendor as payments from a purchaser or lending institution on behalf of a purchaser before an amount is deducted as security for an uncollectible account or an amount is deducted which is due the trust funds by contract which is charged the purchaser in addition to the purchase price. A record of monthly gross proceeds of sales shall be kept by a vendor. An interest or carrying charge payment or sales tax shall not be considered part of gross proceeds from sales if the interest, carrying charge or sales tax is separately stated in the purchase agreement and is recorded separately as a payment is made.

History: 1979 AC.

R 456.133 Endowed care funds.

Rule 33. (1) An irrevocable endowed care fund, as referred to in section 16 of the act, shall be a trust fund administered by a trustee or trustees under the terms of a written trust instrument which specifies the statutory and regulatory responsibilities of the trustee or trustees. The endowed care trust fund shall be kept separate and apart from all other funds, property or securities of the cemetery, cemetery corporation, association or trustee or trustees. The net income of the endowed care trust fund shall be paid only to the entity in possession, management, operation and control of the cemetery grounds and structures for the sole purpose of maintenance of the cemetery grounds or structures. Capital gains from the sale of an asset in the endowed care trust fund shall be considered a deposit to the principal or the corpus of the trust and as such shall not be considered a part of net income.

(2) The required funds due the endowed care trust fund shall be deposited only in an account, which is a legal depository of the corpus of the endowed care trust fund.

(3) Assets of the endowed care trust fund shall be deposited with a bank or trust company located in this state.

History: 1979 AC.

R 456.134 Trust fund audits and records.

Rule 34. (1) If an audit of a trust fund obligation is made by the commission, an audit report shall be furnished to the party audited. The audit report shall contain the following information:

- (a) Deposits made to the trust fund for the period of audit.
- (b) Required deposits as per audit.
- (c) Deficit or overage, if any.

(2) Deposit deficits shall be paid within 30 days from the date of the audit unless other arrangements are authorized in writing by the commission. Certification of the deposits shall be forwarded to the commission.

(3) A party in disagreement with a commission audit report may appeal for an adjustment by:

- (a) Furnishing the commission with the party's contention of adequate proof of error.
- (b) Requesting an informal hearing with the commission.
- (c) Requesting a formal hearing with the commission.

(4) A cemetery shall have available in its registered office for examination by the commission, all records pertinent to the maintenance, establishment and reporting of its required trust funds.

History: 1979 AC.

R 456.135 Rescinded.

History: 1979 AC; 1998-2000 AACS.

R 456.136 Sales tactics.

Rule 36. An organization or person selling interment rights, cemetery merchandise or services, pursuant to R 456.131 shall:

- (a) Not use a sales presentation or advertisement which conceals or misstates a material fact.
- (b) Fully disclose to a purchaser in a conspicuous manner on the purchase agreement or contract that there will be a future cost for interment fees or installation of cemetery merchandise unless these costs are included in the sales price and so stated on the contract or agreement.
- (c) Not mislead prospects to believe that the seller is in any way connected with an organization other than the entity which is selling the interment rights, cemetery merchandise or services.
- (d) Not offer free interment rights, installation or care deposits to an organization, group or person if the free offer is accompanied by a requirement that other interment rights, cemetery merchandise or services be purchased or that the free offer is accompanied by the option of purchase of adjoining interment rights at a price which is inflated above regular comparable prices within the cemetery.

(e) Not sell interment rights supposedly at a substantial discount where in fact the actual price of the rights has been increased to cover the supposed discount.

(f) Not represent that the price of interment rights to a purchaser is a special price to him only, if another purchaser would be given the same price.

(g) Not use sales presentations which lead a purchaser to believe that interment rights, cemetery merchandise or services are being acquired at no cost and that the money required to be contributed by the purchaser is for maintenance or other expenses, whereas a different result follows.

(h) Not induce a purchaser to buy interment rights with promises or representations that future price increases will enable a purchaser to realize profits from the sale of his rights.

(i) Not promise, represent or agree as a condition of an interment right's sale, or sale of cemetery merchandise or services, to resell for, or repurchase from a purchaser, any right, cemetery merchandise or services.

(j) Not sell interment rights unless the specific location and description of the rights coinciding with the official platted records of the cemetery is specified in the sales agreement.

(k) Not sell interment rights in an earth interment section which is not completed for interment including lawn and landscaping, unless there is a comparable section completed for interment including lawn and landscaping in the same cemetery that is available at no additional cost to the purchaser in case of need, to which the purchaser agrees to transfer.

(l) Not sell interment rights in an earth interment section which is not developed as provided in subrule (7) of R 456.137, 48 months after the date of the first sale of rights in such section. If the section is not developed by that date, except for national emergency, all moneys paid by the purchaser shall be refunded on written request by the purchaser.

(m) Not accept a pre-need sales contract unless a minimum down payment of \$10.00 is received from the purchaser at the time of sale.

(n) Not take a negotiable instrument, other than cash or a currently dated check or draft, as evidence of the obligation of the purchaser as a down payment.

(o) Not pay the down payment for the purchaser, or make an agreement with the purchaser that the down payment can be paid at a later date. This practice is commonly known in the cemetery industry as "fronting a sale".

(p) Not present a sales presentation and obtain purchaser's signature to a sales contract if the purchaser cannot read or speak English unless there is a disinterested person present who can explain fully to the purchaser what he is buying. The name and address of the disinterested person shall appear in his handwriting somewhere on the contract.

History: 1979 AC.

R 456.137 Incomplete structures.

Rule 37. (1) A vendor who sells an interment right in a structure which is not then completed for interment shall:

(a) Stipulate in the sales agreement a specific period of time within which the structure shall be completed and ready for interment which shall be not more than 48 months after the date of the sales agreement, and that if the structure is not completed by that date, except for a national emergency, all moneys paid by the purchaser pursuant to the agreement shall be refunded.

(b) Determine the total construction cost of the structure.

(c) Determine the construction cost of the unit being sold and divide it by the amount of gross proceeds to be derived from the sale of the unit which figure shall be multiplied by 100 to obtain the construction cost percentage.

(d) Place the construction cost percentage of any gross proceeds payment in a special construction trust fund in a bank or trust company located in this state within 30 days after the date of the payment.

(2) The sum of construction costs of all units in a subrule (1) structure shall equal the total construction cost of the subrule (1) structure.

(3) Withdrawals from the construction fund can be made only to pay current construction costs as the construction of the structure progresses to the final completion.

(4) All vendors shall submit to the commission for approval, and before such sales are made, the following:

- (a) Copy of contracts or purchase agreements.
- (b) Maps required by subrule (2) of R 456.123.
- (c) Estimated cost of the structure, including features and embellishments.
- (d) Estimated amount of gross proceeds to be derived from the sale of the interment rights.
- (e) A copy of sales brochures, promotional pamphlets and artist's rendering of the proposed structure if such items are used in the sales program.
- (f) A copy of all proposed sales advertising or radio and television scripts used in these sales promotions.

(5) A vendor shall not sell or assign burial rights in any undeveloped part of the cemetery unless 15% of the gross proceeds received from the sales is deposited in a special fund under a written agreement in a bank or trust company located in this state. The fund shall be designated as a cemetery development fund, naming the new area. A copy of the written agreement shall be forwarded to the commission. Withdrawals from the development fund can be made only to pay current development costs as the development progresses to final completion. Upon final completion any undisbursed funds including earned income may be withdrawn by the vendor from the development fund.

(6) A vendor selling turf top crypts in an area that is not developed or ready for interments shall deposit 130% of the cost of each crypt sold into a special fund, under a written agreement, in a bank or trust company located in this state. The fund shall be designated as a cemetery development fund, naming the new area. A copy of the written agreement shall be forwarded to the commission. Withdrawals from the development fund can be made only to pay current development costs as the development progresses to the final completion. Upon final completion any undisbursed funds including earned income may be withdrawn by the vendor from the development fund. Vendors contemplating selling in an undeveloped cemetery area or undeveloped turf top crypt area shall submit to the commission the following information before sales are made:

- (a) Estimated cost of the development, including features and all embellishments.
- (b) Plat maps required by subrule (2) of R 456.123.
- (c) A copy of sales brochures, promotional pamphlets and artist's rendering of the proposed developed area if such items are used in the sales programs.
- (d) A copy of all proposed sales advertising or radio and television scripts used in these sales promotions.

(7) A developed cemetery area means an area containing grass or sod and landscaping of sufficient quality to present a good appearance, and section markers of durable material used to identify the location of interment rights in that area including any and all cemetery features promised the purchaser for that area. Deposits will be made to the development fund until an inspection of the area so developed is made by the commission. The inspection shall be made within 30 days after receipt of written request from the vendor. If the inspection is not made within 30 days, the vendor may terminate deposits to the development fund as required under subrule (5) and may withdraw any funds remaining in development fund. The commission shall approve or disapprove the area as ready for interment and the commission's failure to do so in writing within 30 days constitutes approval of the area.

History: 1979 AC.

R 456.138 Permitting violations of R 456.136.

Rule 38. An organization including its officers which knowingly permits a person under employment, contract or sales control, either directly or indirectly, to violate any provision of R 456.136 is also guilty of the same violation.

History: 1979 AC.

R 456.139 New cemeteries.

Rule 39. (1) In determining community need for a proposed new cemetery as required by section 13 of the act the commission shall use a 25-mile radius as a potential sales and service area in making a survey to determine the number of cemeteries, type of ownership and burial rights

available to the public in that area.

(2) The commission shall require the applicant for a new proposed cemetery to have title in fee to at least 40 acres before final approval is granted.

(3) A newly established cemetery shall not sell or assign burial rights in any areas of the cemetery until at least 2 acres are developed, as required by subrule (7) of R 456.137 which development shall be located at the front or near the main entrance of the proposed cemetery.

History: 1979 AC.

PART 4. CASKETS, EARTH BURIALS, ENTOMBMENTS, AND CREMATIONS

R 456.141 Rescinded.

History: 1979 AC; 1998-2000 AACS.

R 456.142 Rescinded.

History: 1979 AC; 1998-2000 AACS.

R 456.143 Rescinded.

History: 1979 AC; 1998-2000 AACS.

R 456.144 Earth burials.

Rule 44. (1) A cemetery shall not make an interment unless a legally executed burial transit permit is received.

(2) A cemetery shall make an interment immediately following the committal service or receipt of remains if it does not interfere with the dignity of any other committal service. If weather conditions prevent an immediate interment, the cemetery shall obtain written authorization for delayed interment signed by the next of kin or authorized agent. The authorization shall specify the approximate hour and date of interment and place of temporary storage.

(3) Immediately following the committal service and interment, a cemetery shall fill a grave and as soon as settling is reasonably complete and weather conditions permit, shall sod, seed or adequately cover a grave with limestone chips, gravel or other suitable material.

(4) A cemetery shall cover a grave in which an unsealed outside container is used with at least 16 inches of earth over the outside container.

(5) A cemetery shall remove all equipment used in the committal service and in the interment immediately following the service and interment.

History: 1979 AC.

R 456.145 Entombments.

Rule 45. (1) A cemetery shall not make an entombment unless a legally executed burial transit permit is received.

(2) A cemetery shall entomb the remains and permanently seal the crypt immediately following the committal services or receipt of the remains.

(3) If circumstances do not permit immediate entombment following a committal service or receipt of remains, the cemetery shall obtain written authorization for delayed entombment signed by the next of kin or authorized agent. The authorization shall specify the approximate hour and date of entombment and place of temporary storage of the remains.

History: 1979 AC.

R 456.146 Cremations.

Rule 46. (1) A crematory shall not cremate remains unless it has:

- (a) A legally executed burial transit permit authorizing the cremation.
- (b) A written authorization from a person representing himself as being legally qualified to make the authorization and who in the opinion of the crematory authority is legally qualified to make the authorization and is 1 of the following:
 - (i) The surviving spouse.
 - (ii) A surviving child or parent.
 - (iii) A next of kin.
 - (iv) A person who has acquired the right to control disposition of the remains.
- (2) A crematory shall cremate remains as soon as reasonably possible, but if cremation does not take place within a reasonable time after receipt of the remains, the crematory shall obtain written authorization for delayed cremation signed by the next of kin or authorized agent. The authorization shall specify the approximate hour and date of cremation and place of temporary storage.
- (3) A crematory shall place cremated remains in a container properly marked as to the name of the deceased and date of cremation.
- (4) A crematory at all times shall handle cremated remains with dignity, respect and utmost care.

History: 1979 AC.

PART 5. GROUNDS, FACILITIES, AND BUILDINGS

R 456.151 Grounds.

- Rule 51. (1) A cemetery grounds shall be maintained with a general cemetery care program at required intervals to assure an acceptable appearance.
- (2) A cemetery grounds including maintenance service areas shall be kept free of trash and debris. Trash receptacles shall be provided.
 - (3) A pond, lake, waterway, fountain and other body of water on a cemetery shall be kept reasonably free of trash and odors.
 - (4) A cemetery's trees and shrubs shall be trimmed at regular intervals.
 - (5) An undeveloped cemetery property shall be screened by fencing or shrubs, or it shall be mowed or maintained in an attractive manner.
 - (6) A cemetery road shall be kept accessible and in reasonably good repair as the normal operation of the cemetery dictates.
 - (7) A grave which has settled shall be refilled as soon as reasonably possible.
 - (8) A grave marker or a monument shall be reset and trimmed as necessary.
 - (9) A dangerous condition in the cemetery shall be corrected immediately.

History: 1979 AC.

R 456.152 Facilities.

- Rule 52. (1) The name of the cemetery shall appear near the entrance on a permanent type sign, at least 3 square feet in size, and if the office is not located on the grounds, the location of the office shall be noted on the sign.
- (2) A cemetery fence shall be kept in good repair.
 - (3) Identifying features or section markers of durable material shall be placed permanently in the ground to identify the named or numbered sections of the cemetery which shall coincide with a cemetery map.

(4) A grave shall be located by a permanent lot survey marker which shall be located in the ground within a reasonable distance of the grave and coinciding with a cemetery section on the map. Each grave in a single grave section shall be located by a permanent numbered grave marker.

(5) A lot survey marker shall be kept reasonably visible under normal weather conditions.

(6) A cemetery's grave decorations rules shall be posted or made available in printed form.

(7) Maintenance equipment not in use shall be stored in the maintenance service areas.

History: 1979 AC.

R 456.153 Buildings.

Rule 53. A building, including a mausoleum, shall be kept in good repair.

History: 1979 AC.

R 456.154 Rest rooms and public accommodations.

Rule 54. A cemetery shall maintain reasonable and acceptable rest rooms and public accommodations deemed necessary by the commission after inspection is made by a field investigator and a report submitted.

History: 1979 AC.

PART 6. MERCHANDISE TRUSTS

R 456.161 Merchandise trust agreements.

Rule 61. (1) A vendor shall submit 2 copies of a written merchandise trust agreement to the commission for approval. In addition to other requirements, a merchandise trust agreement shall provide all of the following:

(a) That deposits made to the merchandise trust account by a vendor shall be invested by the trustee only in accordance with Act No. 177 of the Public Acts of 1937, as amended, being SS555.201 to 555.203 of the Michigan Compiled Laws, except that funds shall not be invested in life insurance policies on any person or invested in a company owned or operated by a cemetery or its authorized agent or in loans to any person directly connected with or employed by a cemetery or its agents.

(b) That deposits to the merchandise trust account shall be certified by an officer of the vendor or agents authorized by a vendor to act in its behalf.

(c) That withdrawals from the merchandise trust account shall be made on the presentation to the trustee of an affidavit certified by the vendor that the cemetery merchandise or services have been installed, delivered, performed or terminated. Withdrawals shall not be made in excess of the allocated deposit and vendor shall so certify. The trustee shall retain the affidavit as a permanent part of the trust records and the vendor shall keep a copy.

(d) That at least an annual accounting period shall be established and the trustee shall furnish to the vendor an accounting which shall contain the following information:

(i) A separate listing of all assets held by cost and fair market value with totals.

(ii) Total deposits made to the trust account during the reporting period and total to date.

(iii) Total withdrawals from the merchandise trust account during the reporting period and total to date.

(iv) A certification by the vendor to the trustee that the total assets of the merchandise trust account are at least equal to the total obligations as determined by the current deposits as required by subrule (1) of R 456.162.

(v) Net income including ordinary income and capital gains paid to vendor during the accounting period.

(e) That at any time the commission makes a determination that the merchandise trust account is underfunded to meet the total current obligations, the commission may order the vendor to deposit all

future trust income, as of the date of the order, to the principal of the merchandise trust account to be allocated in accordance with subdivision (b) until the total assets of the corpus of the merchandise trust account equals the total obligations as determined by the current deposits as required by subrule (1) of R 456.162.

(f) That the purpose of the merchandise trust account is to protect the purchaser and the commission may inspect the records of the vendor and trustee relating thereto.

(2) Assets of the merchandise trust funds established by a vendor or its authorized agents shall be deposited with a bank or trust company located in this state.

History: 1979 AC.

R 456.162 Required deposits to merchandise trust account.

Rule 62. (1) When cemetery merchandise or services are sold to a purchaser, a vendor or an agent authorized by a vendor or acting on its behalf under an agreement or sales contract to sell cemetery merchandise or services shall deposit, on or before the last day of the month following the month of collection, the following amounts to a merchandise trust account and maintain such deposits until such time as the cemetery merchandise or services are installed, delivered, performed or terminated:

(a) One hundred thirty percent of the cost of each grave memorial that the vendor is obligated to furnish and install. A vendor representing more than 1 memorial manufacturer may take the average cost of all manufacturers the vendor represents in determining the 130% of cost if all manufacturers meet the specifications as contained in the purchase or sales agreement. At all times the total amount required to be on deposit in the merchandise trust account for obligations concerning grave memorials shall be not less than the current cost of all such obligations.

(b) The greater amount of either 70% of the gross proceeds received from the sale of each burial vault or 130% of the cost of each burial vault that the vendor is obligated to furnish and install. At all times the total amount required to be on deposit in the merchandise trust account for obligations concerning burial vaults shall be not less than 130% of the current costs of all such obligations.

(c) The greater amount of either 100% of the gross proceeds received from the sale of cremations, grave openings and closings or \$100.00 for each cremation, grave opening and closing that the vendor is obligated to furnish.

(2) A vendor may withdraw from the merchandise trust account only after the cemetery merchandise or services are delivered, stored, installed, performed or terminated. The vendor may withdraw from the merchandise trust account only the current cost of grave memorials which are ordered by him and stored by the vendor or cast and stored by a memorial company. He may withdraw the balance only when the grave memorial is installed. A vendor may withdraw from the merchandise trust account only the current cost of a burial vault if he orders and stores the vault. He may withdraw the balance only when the vault is installed.

(3) A vendor storing grave memorials or burial vaults until time of need shall insure the memorials and vaults against fire and theft in an amount in excess of their total replacement cost. A current certificate of insurance coverage shall be filed with the commission annually.

(4) A vendor shall make deposits to the merchandise trust account as required by the act and when he does any of the following:

(a) Makes a pre-need cash sale.

(b) Sells the sale contract to a bank or lending institution.

(c) Receives prorated payments direct from a purchaser, generally referred to as a house account, unless the vendor has an approved merchandise escrow account as provided in R 456.163. The deposit required on a house account payment shall be as provided in R 456.163.

History: 1979 AC.

R 456.163 Merchandise escrow account.

Rule 63. (1) A vendor may establish a merchandise escrow account in a bank or trust company located in this state under a written trust agreement approved by the commission into which he shall deposit payments on house accounts.

(2) The deposit required on a house account payment received from the sale of a grave memorial shall be a percentage of each payment made by a purchaser computed by dividing the sale price of the grave memorial into 130% of the cost of the memorial. Sales tax, finance or carrying charges and memorial maintenance trust deposits are not considered a part of the sale price in determining the percentage.

(3) The deposit required on a house account payment received from the sale of a burial vault is the greater of either 70% of each payment made by a purchaser or 130% of the cost of the burial vault. The deposit shall be computed as provided in subrule (2) for grave memorials.

(4) A vendor may make payments to a merchandise escrow account until the purchaser makes payment in full at which time the vendor shall transfer the deposit to the merchandise trust account.

(5) A vendor may withdraw from the merchandise escrow account only after the cemetery merchandise or services are delivered, stored, installed, performed or terminated.

(6) Merchandise escrow account deposits and withdrawals shall be certified to by the vendor as to their regularity and accuracy.

History: 1979 AC.

R 456.164 Pre-existing merchandise trust accounts.

Rule 64. (1) A vendor having a merchandise trust, escrow or other depository account pre-dating the effective date of this rule, shall take appropriate measures to demonstrate annually to the satisfaction of the commission the assurance of fiduciary responsibility in the maintenance of the account and the financial integrity of the account to meet the current cost of the merchandise for which deposits were made to the pre-existing merchandise trust. If the total amount in a pre-existing account is inadequate to meet current obligations, the vendor shall present to the commission a satisfactory plan of good faith affirmative action to restore the deficit. R 456.162 does not apply to any contractual obligations entered into prior to the effective date of this rule except for withdrawal requirement as stated in subrule (2).

(2) A vendor continuing a pre-existing merchandise trust, escrow or other depository account shall furnish the commission an annual accounting on forms acceptable to the commission which shall contain the information required by R 456.125 and a certification that the total deposits are adequate to meet the total current cost of the merchandise for which deposits were made to the pre-existing merchandise trust, escrow or other depository account.

(3) Instead of complying with subrules (1) and (2) a vendor having a pre-existing merchandise trust, escrow or other depository account may close the account and deposit its assets in a merchandise trust under R 456.161 subject to all the terms and conditions of the trust except that the vendor shall not be required to deposit an amount in excess of that necessary to meet current cost of total contractual obligations. If the amount deposited is inadequate to meet current obligations, the vendor shall present to the commission a satisfactory plan of good faith affirmative action to restore the deficit. The election in this section shall be made in writing with a copy to the commission.

History: 1979 AC.

R 456.165 Record keeping, inspection, audit, and hearings.

Rule 65. A vendor shall maintain a monthly accounting record which indicates separately all cash proceeds received from the sale of interment rights, burial vaults, grave memorials or cemetery services. The vendor shall also maintain a monthly accounting record setting forth in detail all deposits to the merchandise trust account. This record shall include:

- (a) Name and contract number of the purchaser.
- (b) A description of the cemetery merchandise or services purchased.
- (c) Amount to be credited to the purchaser's account.

(2) A vendor shall also maintain a monthly accounting record setting forth in detail all withdrawals from the merchandise trust account. This record shall include:

- (a) Name and contract number of the purchaser.
- (b) A description of the cemetery merchandise or services purchased.
- (c) Amount withdrawn.

(d) Whether the cemetery merchandise or services were installed, delivered, performed or terminated.

(3) The records shall be available for inspection or audit at any time during regular business hours by the commission or its authorized agents. The records shall be maintained within the state either by the cemetery or in the office of its authorized agent.

(4) The commission may order a hearing on the current status of the merchandise trust account if it determines that one of the following has occurred:

- (a) The trust is underfunded to meet current obligations.
- (b) Required deposits were not made.

History: 1979 AC.

R 456.166 Required reporting; financial statement.

Rule 66. (1) A vendor shall submit to the commission, 60 days after the accounting date established as required by R 456.161, on forms provided by the commission, all information deemed necessary by the commission to assure that the merchandise trust account is adequate to provide all of the cemetery merchandise and services the vendor is obligated to provide. A vendor shall submit a current financial statement when requested by the commission as provided in R 456.126.

History: 1979 AC.

R 456.167 Sales contracts or agreements.

Rule 67. (1) Purchase agreements or sales contracts made with a purchaser of grave memorials shall contain at least the following descriptive information:

- (a) Size of memorial.
- (b) Material and specifications.
- (c) Number of vases.
- (d) Type of base.

(2) Purchase agreements or sales contracts made with a purchaser of burial vaults shall contain at least the following descriptive information:

- (a) Size.
- (b) Type (concrete, steel, plastic, etc.).
- (c) Approximate weight.
- (d) Approximate load strength specifications.

(3) The descriptive information may be contained in a separate certification attached to the sales contract or agreement.

History: 1979 AC.

PART 9. HEARINGS

R 456.191 Statements of facts and appearances.

Rule 91. (1) A party requesting a hearing shall submit in writing a fair and accurate statement of the facts to the commission and all interested parties.

(2) An appearance at a hearing shall be made in person, by a duly authorized representative, or by counsel.

History: 1979 AC.

R 456.192 Defaults.

Rule 92. If a person who has been properly served with a notice of hearing fails to appear at a noticed hearing, the commission or designated hearing officer may proceed with a hearing of the case brought before them and, on evidence presented, may make a decision.

History: 1979 AC.

R 456.193 Answers, arguments, and briefs.

Rule 93. A person who has been served with a notice of hearing may file a written answer before the date of the hearing, and at the hearing may appear and present an oral statement on the charges contained in the notice of hearing. If a written argument or brief is presented, a copy shall be served on the secretary of the commission and all interested parties, at least 5 days before the date for the hearing.

History: 1979 AC.

R 456.194 Adjournments and continuances.

Rule 94. A hearing shall not be adjourned or continued except on an order of the commission. A motion or request for an adjournment or a continuance shall be in writing, and shall state concisely the reasons why the adjournment or continuance is necessary. The motion or request shall not be considered unless it is filed with the secretary of the commission at least 5 days before the date assigned for the hearing, except on a showing that, for reasons not within the control of the person or party making the motion or request, the motion or request could not be filed within the time limited.

History: 1979 AC.

R 456.195 Stipulations.

Rule 95. The parties to a hearing, by a stipulation in writing filed with the secretary of the commission, may agree on the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence in the hearing. Parties are requested to agree on the facts when practicable.

History: 1979 AC.

R 456.196 Depositions.

Rule 96. A deposition shall be taken only on written authority of the commission if it is proved in writing to the commission that it is impractical or impossible to otherwise obtain the evidence. If a deposition is permitted, it shall be taken according to the rules for taking a deposition in a civil action in this state.

History: 1979 AC.