

Clearinghouse Rule 17-050

STATE OF WISCONSIN
CEMETERY BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CEMETERY BOARD
CEMETERY BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Wisconsin Cemetery Board to renumber and amend CB 5.03 (3), to amend CB 2 (title), and to create CB 1.015 (2), CB 2.05, CB 6, and CB 6.05 (Note) relating to mausoleums and burial records.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 157.12 (2), 157.62 (5), and 440.905

Statutory authority: Sections 157.12 (2), 157.62 (5), and 440.905

Explanation of board authority: Section 157.12 (2) (a) requires the cemetery board to promulgate rules governing the location, material, and construction of mausoleums. Section 440.905 grants the cemetery board rule-making authority and the authority to promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers.

Related statute or rule: SPS 361.30, SPS 361.36 (1) (f), SPS 361.41 (3), SPS 361.50 and SPS 362.3100, and Wis. Stat. 157, Wis. Stat. 440.

Plain language analysis:

The rule creates a cemetery burial record and provides cemetery board guidance for the oversight of mausoleum construction and inspections.

Summary of, and comparison with, existing or proposed federal regulation:

None

Comparison with rules in adjacent states:

Illinois: In 2010 the state of Illinois passed the cemetery oversight act. This act included provisions guiding cemetery licensing, reporting, ethics, continuing education, and cemetery sales.

Iowa: All forms, certificates and reports pertaining to the registration of death events are the property of the Iowa regulatory agency and are required to be surrendered to the state registrar upon demand. Under Iowa code 641- 97.17 and 641- 97.18 the funeral director is responsible for recording final disposition records.

Michigan: Cemeteries are required maintain accurate, complete, and legible records of any books, contracts, records, or documents pertaining to, prepared in, or generated by, the cemetery operation including, but not limited to, forms, reports, accounting records, ledgers, internal audit records, correspondence, and personnel records. All records are required to be maintained for at least 7 years from the date of record completion.

Minnesota: Cemeteries are not licensed by the state of Minnesota but are governed by local units of government.

Summary of factual data and analytical methodologies:

The cemetery board reviewed the rule and statutory requirements.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule will be posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals for a period of 14 days.

Fiscal Estimate and Economic Impact Analysis:

The department is currently soliciting information and advice from businesses, local government units, and individuals in order to prepare the economic impact analysis.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Kirsten.Reader@Wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Greg DiMiceli, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Greg DiMiceli, Rule Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov.

Comments must be received on or before (TBD) to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. CB 2 (title) is amended to read:

**FILING OF ANNUAL REPORTS AND MAINTAINING BURIAL RECORDS BY CEMETERY
AUTHORITIES AND PRENEED SELLERS.**

SECTION 2. CB 2.05 is created to read:

CB 2.05. Burial Record. (1) A cemetery authority or licensee shall maintain a record for all human remains buried within a cemetery. This record shall include the following information:

- (a) The name of the deceased.
- (b) The last-known address of the deceased.
- (c) The date of birth of the deceased.
- (d) The date of death as listed on the disposition of human remains.
- (e) The date remains are placed in the grave, niche, or crypt.
- (f) The exact location in the cemetery where the human remains are buried or placed. The specific location shall correspond to the map or plat maintained by the cemetery authority or licensee.
- (g) The name of the person authorizing the burial and his or her relationship to the deceased.
- (h) The name of the funeral establishment, as defined in s. 445.01 (6).
- (i) The type of burial vault used, if any, including, poured concrete, precast concrete, plastic, or polyurethane.
- (j) The type of the grave marker or monument, including granite, along with the marker style, including, flush, upright, or slanted.

(2) A cemetery authority or licensee shall record burial information under CB 2.05 (1) no more than 10 business days following the burial. All burial records completed after the effective date of this rule shall be maintained either in an electronic format which is easily accessible for review or in a legibly written format.

(3) All burial records shall be maintained by the cemetery authority. Upon conveyance of a cemetery, burial records shall be transferred to the new cemetery authority who shall then maintain the transferred records.

Section 3. CB 5.03 (3) is renumbered and amended to read:

CB 1.015. Definitions. ~~As used in this chapter:~~ (3) (1) "Board" means the cemetery board.

Section 4. CB 1.015 (2) is created to read:

CB 1.015 (2). "Mausoleum" has the meaning given in s. 157.061 (9).

SECTION 5. CB 6 is created to read:

Chapter CB 6. MAUSOLEUMS.

CB 6.01. Mausoleum construction review. The board, or its designee, shall review the location, construction plans, building material, and the construction of mausoleums. The board shall make this review under the requirements of SPS 361.30 and s. 157.12 Stats.

CB 6.02. Mausoleum plan approval. Mausoleum construction plans shall be reviewed by the board, or its designee. Plans shall be reviewed under SPS 361.30 and s. 440.92 (2) (e), Stats. Plans shall expire 3 years after the date indicated on the approved building plans of the building shell if not closed within those 3 years.

CB 6.03. Mausoleum construction code. In addition to board construction requirements, mausoleum construction shall follow the requirements of SPS 362.3100 and the International Building Code, chapter 31. Mausoleum structures shall be designed, constructed, and maintained in accordance with IBC chapter 31. Mausoleums shall be classified as a Group S-1 storage occupancy and shall be constructed of reinforced concrete or other materials of similar durability.

CB 6.04. Mausoleum construction. A mausoleum shall be constructed to last as long as possible, taking into consideration the technology and economics applicable to mausoleum construction at the time of construction with construction materials reviewed by the board under SPS 361.50 and s. 157.12 (2) (d) Stats.

CB 6.05. Mausoleum inspections. The board or its designee shall inspect a mausoleum under SPS 361.41 and provide written notification of violations within 30 days after receiving written notice from a cemetery authority that the construction or conversion of a mausoleum has been completed, except as provided in s. 157.12 (2) (b), Stats., public mausoleum spaces may not be sold prior to approval by the board or its designee.

SECTION 6. CB 6.05 (Note) is created to read:

Note. See Wis. Stat. § 440.70 for the definition of ‘Columbarium’ or ‘see subch. VII of Wis. Stat. ch. 440 for information about columbaria and other matters relating to Crematory Authorities.’ See Wis. Stat. §157.061 (9) for the definition of ‘Mausoleum’ and Wis. Stat. §157.061 (14) for the definition of ‘Public Mausoleum’.

SECTION 7. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
