

STATE OF WISCONSIN
CEMETERY BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CEMETERY BOARD
CEMETERY BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 19-148)

PROPOSED ORDER

An order of the Cemetery Board to amend CB 2.06 (1) (intro.) relating to maintenance of burial records.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 157.62 (5), Stats.

Statutory authority:

Sections 157.62 (5) and 440.905 (2), Stats.

Explanation of agency authority:

Section 157.62 (5), Stats. provides “[t]he cemetery board shall promulgate rules requiring cemetery authorities and licensees to maintain other records and establishing minimum time periods for the maintenance of those records.”

Section 440.905 (2), Stats. provides “[t]he board has rule-making authority and may promulgate rules relating to the regulation of cemetery authorities, cemetery salesperson, and cemetery preneed sellers...”

Related statute or rule: None.

Plain language analysis:

This rule brings ch. CB 2 into compliance with state law requiring that the Board set a minimum time period for which a cemetery authority must retain burial records. The rule project amends s. CB 2.06 to require that a cemetery authority retain burial records permanently.

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

The federal government does not set time frames for maintaining cemetery burial records.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

A preliminary public hearing on scope was held at the Cemetery Board's August 20, 2019 meeting. No comments were received.

Comparison with rules in adjacent states:

Illinois: Illinois requires cemetery authorities to keep a record of every interment, entombment, and inurnment. The record must include the deceased's name, age, date of burial, and the specific location of the interred, entombed, or inurned human remains. (225 ILCS 411/20-5 (d)). Neither statute nor rule specifies the length of time that the record must be retained by the cemetery authority.

Iowa: Iowa requires cemeteries to keep a record of each interment in a cemetery, including the date the remains were interred, the name, date of birth, date of death, and a unique identifier for the location of the interment space. There is no specification regarding how long these records must be maintained. (Iowa Stats. s. 523I.311).

Michigan: Michigan does not appear to require that cemeteries maintain burial records.

Minnesota: Minnesota requires cemeteries to keep a register of burials including the date of each burial, entombment, or cremation, and the name, age, sex, nativity, and cause of death of every person interred or cremated in the cemetery. There is no specification regarding how long these records must be maintained. (Minn. Stats. s. 306.03).

Summary of factual data and analytical methodologies:

The Cemetery Board performed a review of its administrative rules pursuant to s. 227.29, Stats. and determined that the rules did not provide for a minimum time period that cemetery authorities must retain burial records, as required by s. 157.62 (5), Stats. This rule project remedies that deficiency. The Cemetery Board determined that due to the importance of burial records, they ought to be retained indefinitely by the cemetery authority.

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

This rule was posted for 14 days to receive public comment on the economic impact of the proposed rule. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, 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 Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the hearing scheduled for 9:30 AM on January 21, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. CB 2.06 (1) (intro.) is amended to read:

CB 2.06 (1) (intro.) A cemetery authority or licensee shall maintain permanently a record for all human remains buried within a cemetery. This record shall include the following information:

SECTION 2. 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)

This Proposed Order of the Cemetery Board is approved for submission to the Governor and Legislature.

Dated _____

Chair