

CHAPTER 19  
PREARRANGED FUNERAL CONTRACTS

[Prior to 10/22/86, Insurance Department[510]]

RULES OF GENERAL APPLICABILITY

**191—19.1(523A,523E) Purpose.** The following chapter is promulgated for the purpose of administering the provisions of Iowa Code chapter 523A, the Iowa sales of funeral services and merchandise Act, relating to sales of funeral services, funeral merchandise, or a combination of funeral services and merchandise, pursuant to a prearranged funeral contract, and Iowa Code chapter 523E, the Iowa sales of cemetery merchandise Act, relating to the sale of cemetery merchandise.

**191—19.2(523A,523E) Definitions.** As used in the Acts and this chapter, unless the context otherwise requires:

“*Acts*” means Iowa Code chapter 523A, the Iowa sales of funeral services and merchandise Act and Iowa Code chapter 523E, the Iowa sales of cemetery merchandise Act.

“*Beneficiary*” means any natural person specified or included in a prearranged funeral contract, upon whose death funeral services, funeral merchandise, cemetery merchandise or a combination of funeral services and merchandise shall be performed, provided, or delivered.

“*Burial account*” means an account established at a financial institution for the purpose of funding the future purchase of funeral services, funeral merchandise, cemetery merchandise, or combination of funeral services and merchandise.

“*Cemetery merchandise*” means grave markers, tombstones, ornamental merchandise, and monuments if the agreement does not require installation within 12 months of the purchase.

“*Commissioner*” means the commissioner of insurance for the state of Iowa or the deputy appointed under Iowa Code section 502.601.

“*Credit sale*” means a sale of goods, services, or an interest in land in which all of the following are applicable:

1. Credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.
2. The buyer is a person other than an organization.
3. The goods, services or interest in land are purchased primarily for a personal, family or household purpose.
4. Either the debt is payable in installments or a finance charge is made.
5. With respect to a sale of goods or services, the amount financed does not exceed \$25,000.

“*Establishment*” means each business facility located in or doing business in the state of Iowa (which includes issuing or performing wholly or in part in the state of Iowa any incident of a prearranged funeral contract) that sells, promotes or offers funeral services, funeral merchandise, cemetery merchandise, or a combination of funeral services and merchandise on a preneed basis or which provides funeral services or funeral merchandise pursuant to a prearranged funeral contract.

“*Financial institution*” means a state or federally insured bank, savings and loan association, or credit union, trust department thereof, or a trust company authorized to do business in the state of Iowa.

“*Funds*” means money paid pursuant to a prearranged funeral contract.

“*Funeral merchandise*” means one or more types of personal property to be used at the time of the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, and interment receptacles, but does not include real property, grave markers, tombstones, ornamental merchandise or monuments.

*“Funeral services”* means one or more services to be provided at the time of the final disposition of a dead human body, including but not limited to services necessarily or customarily provided in connection with a funeral, or services necessarily or customarily provided in connection with the interment, entombment, or cremation of a dead human body, or a combination of services, but does not include perpetual care or maintenance.

*“Insolvent”* means the inability to pay debts, as they become due, in the usual course of business.

*“Interest”* or *“income”* means, for purposes of Iowa Code sections 523A.1 and 523E.1, unrealized net appreciation or loss in the fair value of the trust’s assets for which a market value may be determined with reasonable certainty plus the return in money or property derived from the use of trust principal or income, net of investment losses, taxes and expenses incurred in the sale of trust assets, any cost of the operation of the trust and any annual audit fee, including returns received as:

1. Rent of real or personal property, including sums received for cancellations or renewal of a lease and any royalties;
2. Interest on money lent, including sums received as consideration for privilege of prepayment of principal;
3. Cash dividends paid on corporate stock;
4. Interest paid on deposit funds or debt obligations; and
5. Gain realized from the sale of trust assets.

*“Memorial”* means a grave marker, tombstone, item of ornamental merchandise or monument.

*“Person”* means an individual, corporation, trust, partnership or association, or any other legal entity.

*“Prearranged funeral contract”* means an oral or written agreement to furnish, upon the future death of a person named or implied in the agreement, funeral services, funeral merchandise, cemetery merchandise, or a combination of funeral services and merchandise.

*“Purchaser”* means any person (the person may or may not be a beneficiary) who purchases funeral services, funeral merchandise, cemetery merchandise, or a combination of funeral services and merchandise, on a preneed basis.

*“Seller”* means any person located in or doing business in the state of Iowa (which includes issuing or performing wholly or in part in the state of Iowa any incident of a prearranged funeral contract), that sells, promotes or offers funeral services, funeral merchandise, or a combination of funeral services and merchandise on a preneed basis and includes any establishment identified under a burial account as the establishment which will provide funeral services, funeral merchandise, cemetery merchandise, or a combination of funeral services and merchandise.

*“Storage facility”* means any person other than the seller, such as a warehouse keeper, manufacturer, or supplier who stores cemetery merchandise.

*“Trustee”* means any state or federally insured bank, savings and loan, credit union, or trust department thereof, or trust company authorized to conduct business in this state, to the extent that the financial institution has been granted trust powers under the laws of this state or the United States, who holds funds pursuant to a trust agreement. The term “trustee” shall not include:

1. A seller; or
2. Anyone employed by or directly involved with the seller in the seller’s business of selling prearranged funeral plans.

*“Trust instrument”* means the document(s) pursuant to which a trustee receives, holds, invests, and disburses trust funds.

**191—19.3(523A,523E) Titles.** The Acts may be cited as the “Iowa sales of funeral services and merchandise Act” and the “Iowa sales of cemetery merchandise Act.”

**191—19.4(523A,523E) Scope.**

**19.4(1)** This chapter shall apply to any agreement, oral or written, made by any person to furnish, upon the future death of a person named or implied in the agreement, funeral services or funeral merchandise, cemetery merchandise or a combination of funeral services and merchandise sold on a pre-need basis, which shall include burial accounts if the account records or related agreements identify the establishment which will provide the funeral services, funeral merchandise or cemetery merchandise.

**19.4(2)** This chapter shall apply when an agreement is made in this state or an offer to sell a pre-arranged funeral contract is made or accepted in this state. An offer to sell is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state.

**191—19.5 to 19.9** Reserved.

**191—19.10(523A,523E) Administration.**

**19.10(1)** The Acts shall be administered by the commissioner of insurance of the state of Iowa. As deputy administrator, the Iowa superintendent of securities shall be the principal operations officer responsible to the commissioner for the routine administration of the Acts and management of the administrative staff.

**19.10(2)** In the absence of the commissioner, whether because of the vacancy in the office, by reason of absence, physical disability or other cause, the superintendent of securities shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may from time to time delegate to the superintendent of securities any or all of the functions assigned to the commissioner in the Acts.

**19.10(3)** The administrator shall employ officers, attorneys, accountants, investigators, and other employees as shall be needed for the administration of the Acts.

**19.10(4)** Upon request the commissioner may honor requests from interested persons for interpretative opinions.

**191—19.11(523A,523E) Misrepresentations of government approval.** It is unlawful for any seller under the Acts to represent or imply in any manner that the seller has been sponsored, recommended, or approved or that the seller’s abilities or qualifications have in any respect been passed upon by the administrator or the state of Iowa.

**191—19.12(523A,523E) Public access to hearings.** Every hearing in an administrative proceeding shall be open to the public.

**191—19.13(523A,523E) Public access to records.**

**19.13(1)** The administrator shall keep a register of all applications for permits which are or have been effective under the Acts and all denial, suspension, or revocation orders which have been entered under the Acts. The register shall be open for public inspection.

**19.13(2)** Upon request and for reasonable charges the administrator shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document which is a matter of public record and not deemed confidential at any time from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. In any administrative proceeding or prosecution under the Acts, any copy so certified is prima facie evidence of the contents of the entry or document certified.

**19.13(3)** All records maintained by the administrator pursuant to Iowa Code subsection 523A.2(1) shall be confidential and shall not be made available for inspection or copying except upon approval of the administrator or the attorney general.

**19.13(4)** The administrator and the attorney general may keep confidential certain information obtained in the course of an investigation or audit pursuant to Iowa Code chapter 22 as follows:

*a.* Information consisting of records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body;

*b.* Information consisting of a peace officer's investigative report; provided, however, that the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual;

*c.* Information consisting of a report to a governmental agency, which, if released, would give advantage to competitors and serve no public purpose; or

*d.* Information consisting of communications not required by law, rule, or procedure that are made to the insurance division or to any of its employees by identified persons outside of government, to the extent that the division could reasonably believe that those persons would be discouraged from making them if they were available for general public examination. Notwithstanding this provision:

(1) The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

(2) Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

(3) Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the insurance division to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the insurance division to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

**19.13(5)** If the administrator or the attorney general determines that it is necessary or appropriate, in the public interest, the administrator or the attorney general may share information with other administrators, regulatory authorities, or governmental agencies or may publish information concerning a violation of the Acts, this chapter, or an order issued pursuant to the Acts or this chapter.

#### **191—19.14(523A,523E) Compliance with other laws.**

**19.14(1)** All contracts subject to regulation under Iowa Code chapters 523A and 523E must conform to Iowa Code chapter 555A, the door-to-door sales Act, as follows:

*a. Contract.* Every seller shall furnish the buyer with a fully completed receipt or copy of any contract pertaining to the sale of funeral merchandise, cemetery merchandise or services at the time of its execution, which is in the same language as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer and in boldface type of a minimum size of ten points, a statement in substantially the following form:

“You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

b. *Cancellation.* Every seller shall furnish each buyer, at the time the buyer signs the contract or otherwise agrees to buy services or merchandise from the seller, a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten-point boldface type the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

\_\_\_\_\_  
(Enter date of transaction)

\_\_\_\_\_  
(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to

\_\_\_\_\_  
(Name of seller)

at \_\_\_\_\_ not later than midnight of \_\_\_\_\_.  
(Address of seller's place of business) (Date)

I hereby cancel this transaction.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Buyer's signature)

c. *Duties of seller.* A seller shall:

(1) Furnish two copies of the notice of cancellation to the buyer and complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(2) Not include in any contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this chapter including specifically the right to cancel the sale in accordance with the provisions of this chapter.

(3) Inform each buyer orally, at the time the buyer signs the contract or purchases the services or merchandise, of the buyer's right to cancel.

(4) Not misrepresent in any manner the buyer’s right to cancel.

(5) Honor any valid notice of cancellation by a buyer and within ten business days after the receipt of notice refund all payments made under the contract or sale, return any goods or property traded in, in substantially as good condition as when received by the seller, and cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(6) Not negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the seventh business day following the day the contract was signed or the goods or services were purchased.

(7) Within ten business days of receipt of the buyer’s notice of cancellation notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

d. *Effect on indebtedness.* Rescission of any contract pursuant to this chapter or the failure to provide a copy of the contract to the buyer as required by this chapter shall void any contract, note, instrument, or other evidence of indebtedness executed or entered into in connection with the contract and shall constitute a complete defense in any action based on the contract, note, instrument, or other evidence of indebtedness brought by the seller, the successors or assigns unless a successor or assignee of the seller after the seventh business day following the day the contract was signed has detrimentally relied upon a representation of the buyer that the contract has not been rescinded. This rule shall not affect the rights of the holders in due course of checks made by the buyer.

**19.14(2)** In the event of a credit sale, a contract must conform to Iowa Code chapter 537, the Iowa consumer credit code.

**191—19.15(523A,523E) Fees.** The following fees are hereby established by the commissioner:

- 1. Certification . . . . . \$ 5.00
- 2. Replacement permit fee . . . . . \$ 5.00
- 3. Establishment permit fee . . . . . \$50.00
- 4. Filing fee (Establishment’s annual report) . . . . . \$10.00 per contract
- 5. 1995 and 1996 Regulatory fund assessment (Payable in 1996 and 1997) . . . . . \$ 2.00 per contract
- 6. Name change . . . . . \$10.00
- 7. Photocopies of records (per page) . . . . . \$ 0.50
- 8. Printout of sellers . . . . . \$10.00
- 9. Initial sales permit fee . . . . . \$ 5.00
- 10. Sales permit renewal fee . . . . . \$20.00

All fees are nonrefundable.

**191—19.16(523A,523E) Forms—content.** Copies of all necessary forms and instructions may be obtained from the Iowa Securities Bureau, Lucas State Office Building, Room 214, Des Moines, Iowa 50319. The list which follows describes the forms which members of the public shall use when dealing with the bureau, unless waived by the administrator, and computer-generated information may be accepted. Each direction shall be complied with and each question in the forms shall be answered in the same manner as if the forms and instructions were embodied in these rules.

FORM NUMBER	DESCRIPTION
P-1	Application For Establishment Permit. Used by applicants when filing for an establishment permit under the Acts.
P-2	Application For Sales Permit. Used by applicants when filing for a sales permit under the Acts.
P-3	Establishment's Annual Report. Used by establishments when filing their annual report under the Acts.
P-4	Financial Institutions Annual Report. Used by financial institutions when filing their annual report under the Acts.
P-5	Surety Bond. Required form of surety bond that a seller may file with the administrator in lieu of the trust fund required by Iowa Code sections 523A.1, 523A.2, 523E.1 and 523E.2.
P-6	Establishment Permit.
P-7	Sales Permit.
P-8	Storage Facility's Application for Approval.
P-9	Establishment's Annual Report - Short Form.

**191—19.17 to 19.19** Reserved.

**191—19.20(523A,523E) Sales permits.** An individual (including anyone selling insurance) shall not offer, advertise, sell, promote, or otherwise engage in the solicitation of an agreement to furnish, upon the future death of a person named or implied in the agreement, funeral services or funeral merchandise without a sales permit from the administrator. If the individual is an employee or agent of more than one establishment, an additional sales permit must be acquired for each establishment unless the establishments are affiliated by direct or indirect common control.

**191—19.21(523A,523E) Permits not transferable.**

1. Establishment and sales permits shall not be transferable.
2. An establishment permit holder selling a business shall cancel the permit and the purchaser of the business shall apply for a new permit in the purchaser's name within 30 days of the sale.

**191—19.22(523A,523E) Denial, suspension or revocation of permits.**

**19.22(1) Denial of establishment permit.** The administrator may refuse to issue an establishment permit if the administrator finds that the applicant:

- a. Has been convicted of a criminal offense involving dishonesty or false statement, or
- b. Cannot provide the funeral services, or funeral merchandise, or cemetery merchandise that the applicant purports to sell.

**19.22(2) Revocation of sales permit.** The administrator may revoke a sales permit if the administrator finds:

- a. That the seller is not an employee or agent of an establishment which holds a permit pursuant to the Acts,
- b. That the seller has been convicted of a criminal offense involving dishonesty or false statement, or
- c. That the establishment of which the seller is an employee or agent cannot provide the funeral services, or funeral merchandise, or cemetery merchandise the establishment purports to sell.

**19.22(3) Suspension or revocation of permit.** The administrator may, pursuant to Iowa Code chapter 17A, the Iowa administrative procedure Act, suspend or revoke any permit issued pursuant to the Acts if the administrator finds any of the following:

- a. The seller has violated any provisions of the Acts or this chapter or any other state or federal law applicable to the conduct of the seller's business.
- b. Any fact or condition exists which, if it had existed at the time of the original application for the permit, would have warranted the administrator's refusing originally to issue the permit.
- c. The seller is found upon investigation to be insolvent, in which case the permit shall be revoked immediately.

- d. The seller, for the purpose of avoiding the trusting requirement under Iowa Code section 523A.1 or 523E.1 attributes amounts paid pursuant to the agreement to funeral merchandise or cemetery merchandise that is delivered under section 523A.1 or 523E.1 rather than to funeral services sold to the purchaser. The sale of funeral services at a lower price when the sale is made in conjunction with the sale of funeral merchandise or cemetery merchandise to be delivered pursuant to section 523A.1 or 523E.1 than the services are regularly and customarily sold for when not sold in conjunction with funeral or cemetery merchandise is evidence that the seller is acting with the purpose of avoiding the trusting requirement for funeral services under section 523A.1 or 523E.1.

**19.22(4) Temporary suspension.** The administrator may, on good cause shown, suspend any permit for a period not exceeding 30 days, pending investigation.

**19.22(5) Procedure.** Chapter 3 of the Iowa insurance division's administrative rules printed in the Iowa Administrative Code and entitled "Administrative Hearings of Contested Cases," shall govern the practice, procedure and conduct of informal proceedings, contested case proceedings, reviews and licensing.

### **191—19.23(523A,523E) Certificates of authority.**

**19.23(1)** The administrator may issue certificates of authority to confirm the existence of an effective establishment permit. The administrator may set renewal dates of not less than two years from the effective date for the initial certificates of authority, after which certificates of authority shall be renewable biennially on or before January 1.

**19.23(2)** An applicant for a certificate of authority shall submit to the administrator an application on a form provided by the administrator. The application shall include at a minimum the following information:

- a. The name and location of the applicant's business.
- b. The name and location of the establishment that will provide the funeral services, funeral merchandise or cemetery merchandise.
- c. The name and address of each owner, officer or other official of the applicant's business or, in the event the applicant is a corporation, the names and addresses of the chief executive officer and the members of the board of directors.
- d. The types of professional services, funeral merchandise or cemetery merchandise to be sold.
- e. A copy of each form of sales agreement the seller will use for sales of funeral merchandise or cemetery merchandise under Iowa Code sections 523A.1 and 523E.1.



**19.23(3)** Upon a determination by the insurance division that the seller continues to meet the requirements of Iowa Code chapters 523A and 523E, the division shall issue a renewal certificate. The administrator may, pursuant to Iowa Code chapter 17A, suspend any permit if the seller does not file for renewal of the certificate of authority with the insurance division within 30 days of the certificate of authority's expiration date.

**191—19.24** Reserved.

**191—19.25(252J) Denial, suspension or revocation of sales permit for failure to pay child support.**

**19.25(1)** Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the salesperson that the salesperson's pending application, pending request for renewal, or current sales permit will be denied, suspended or revoked 30 days after the date of the notice. Notice shall be sent to the salesperson's last-known address by certified mail.

**19.25(2)** The notice shall contain the following items:

- a.* A statement that the commissioner intends to deny, suspend or revoke the salesperson's sales permit in 30 days;
- b.* A statement that the salesperson must contact the CSRU to request a withdrawal of the certificate of noncompliance;
- c.* A statement that the salesperson's application, request for renewal or current sales permit will be denied, suspended or revoked if the certificate of noncompliance is not withdrawn;
- d.* A statement that the salesperson does not have a right to a hearing before the division, but the salesperson may file an application for a hearing in district court pursuant to Iowa Code section 252J.9 within 30 days of the provision of the notice;
- e.* A statement that the filing of an application with the district court will stay the proceedings of the division;
- f.* A copy of the certificate of noncompliance.

**19.25(3)** The filing of an application for hearing with the district court will stay all proceedings until the commissioner is notified of the resolution of the application.

**19.25(4)** If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice that an application for hearing has been filed, the commissioner shall deny, suspend or revoke the current sales permit 30 days after the notice is issued.

**19.25(5)** Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, pending proceedings shall halt and the named salesperson shall be notified that the proceedings have been halted. If the salesperson's permit has already been suspended or revoked, the salesperson shall reapply for a permit and the application shall be granted if the applicant is otherwise in compliance with the division's rules.

**19.25(6)** All application fees must be paid by the applicant before a sales permit will be issued, renewed or reinstated after the commissioner has denied, suspended or revoked a sales permit pursuant to Iowa Code chapter 252J.

This rule is intended to implement Iowa Code section 252J.8.

**191—19.26 to 19.29** Reserved.

**191—19.30(523A,523E) Termination of business—records.** An establishment permit holder discontinuing business shall maintain records for a period of five years from the date of discontinuing the business, unless a release from this provision is given by the administrator.

**191—19.31(523A,523E) Records.**

**19.31(1)** All establishments and trustees shall keep accurate accounts, books, and records concerning transactions regulated under the Acts.

**19.31(2)** An establishment's accounts, books, and records shall include:

- a. Copies of all contracts;
- b. The name and address of each purchaser;
- c. The name of the contract beneficiary of each preneed contract;
- d. The name and address of the trustee holding the trust funds received under each contract;
- e. The dates and amounts of all receipts (including interest or earnings received or reported to the establishment) and expenditures for each purchaser; and
- f. The dates and amounts of any disbursements relating to funds held in trust.

**19.31(3)** A financial institution's accounts, books, and records shall include:

- a. The name of the establishment;
- b. The names of the contract beneficiaries;
- c. The amount and date of receipt of all funds received from the establishment; and
- d. A record of the amount and date of interest or income deposited in trust and all disbursements.

**19.31(4)** An establishment shall retain all required accounts, books, and records pertaining to each prearranged funeral contract for at least two years after the date of performance or termination, unless a release from this provision is given by the administrator.

**19.31(5)** Inspection.

a. The accounts, books, and records pertaining to a purchaser's prearranged funeral contract shall be available for inspection by purchasers during normal business hours at the establishment's place of business upon request. If the accounts, books and records are not maintained at the establishment, the information shall be made available at the establishment within not less than ten business days.

b. All establishments and trustees shall make all accounts, books, and records concerning transactions regulated under the Acts available to the administrator or the attorney general upon request for the purpose of examination.

**191—19.32(523A,523E) Annual reports.**

**19.32(1)** All holders of an establishment permit, trustees, and financial institutions shall, no later than March 1 of each year, file an annual report with the administrator on the forms prescribed by the administrator. Any person holding more than one establishment permit, as the result of multiple locations, may elect to file only one annual report.

**19.32(2)** Every establishment filing an annual report shall pay a filing fee of \$10 per prearranged funeral contract sold during the year covered by the report. The fee does not apply:

- a. For an agreement where the beneficiary dies in the same year the agreement was sold;
- b. To any modifications or additions, such as payments, involving an existing agreement sold in a previous year;
- c. To an additional agreement purchased by a purchaser already reported to the insurance division; or
- d. To any agreement canceled or revoked in the same year the agreement was sold. However, all these changes must be reported.

**19.32(3)** During 1996 and 1997, every establishment filing an annual report shall also pay a special assessment for the insurance division's regulatory fund of \$2 per prearranged funeral contract sold during the year covered by the report. The assessment does not apply:

- a. For an agreement where the beneficiary dies in the same year the agreement was sold;
- b. To any modifications or additions, such as payments, involving an existing agreement sold in a previous year;

c. To an additional agreement purchased by a purchaser already reported to the insurance division; or

d. To any agreement canceled or revoked in the same year the agreement was sold. However, all these changes must be reported.

**19.32(4)** Establishments shall make a good faith effort to complete the annual report in the form requested by the administrator. To the extent that information requested by the form is not reasonably available to the establishment, the exception shall be noted or noted as a variance. Account balances within 12 months of the date on the form will be accepted if the actual date is noted.

**19.32(5)** The administrator may adopt a short form for the establishment's annual report which incorporates by reference information readily available at the establishment. The administrator may certify and decertify establishments authorized to file the short form report based upon the establishment's record-keeping system, the number of agreements subject to regulation under Iowa Code chapters 523A and 523E, the availability and accessibility of information at the establishment regarding agreements subject to regulation, whether the establishment places 100 percent of funds received in trust, and the findings of the administrator resulting from audits and consumer complaints.

**191—19.33 to 19.39** Reserved.

**191—19.40(523A,523E) Trust funds.** Any seller that does not have insurance coverage protecting against the loss of consumer payments that are not placed in trust within the time period required by Iowa Code sections 523A.1 and 523E.1 shall not commingle trust funds with other funds of the seller. Sellers may use one or more of the following methods:

1. Depositing consumer funds in an escrow account until the trustable amount has been deposited in a trust account at a financial institution;
2. Prior delivery or warehousing of merchandise;
3. Prior filing of a surety bond in lieu of the trust fund; or
4. Simultaneous, same day, deposits of the purchaser's payments in the seller's bank account and the trustable amount by the seller in the trust account.

**191—19.41(523A,523E) Trust instruments.** The administrator may require alterations or additions to a trust agreement if it is not in accord with the provisions of this chapter.

**191—19.42(523A,523E) Investment of trust funds.**

**19.42(1)** A financial institution acting as a trustee of trust funds under this chapter shall invest the funds in accordance with applicable law. In so investing, the trustee shall exercise the judgment and care under the circumstances then prevailing, which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to the speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

**19.42(2)** Subject to contractual agreement between the parties, the trustee may receive a reasonable fee for services rendered as a trustee from the trust funds.

**191—19.43(523A,523E) Burial accounts.** If a burial account identifies, either in the account records or in related agreements, the establishment which will provide the funeral services, funeral merchandise or cemetery merchandise, the account records or the related agreement must contain a statement signed by an authorized representative of the establishment agreeing to furnish the funeral merchandise and services or cemetery merchandise upon the death of a person named in the burial account's records or the related agreement. The burial account shall not identify a specific establishment as payee unless the account records or the related agreement, if any, contains the signature of an authorized representative of the establishment and, if the agreement is for funeral services as defined in Iowa Code chapter 156, a funeral director licensed to deliver those services. An establishment may enter into agreements authorizing more than one burial account and agreeing to furnish the applicable merchandise and service.

**191—19.44(523A,523E) Delivered or warehoused merchandise.**

**19.44(1)** For purposes of Iowa Code sections 523A.1 and 523E.1, funeral and cemetery merchandise shall not be deemed to be delivered to the purchaser or warehoused if the merchandise is subject to a lien or security interest by any party other than the seller. Lawn crypts may be delivered in lieu of trusting. For this purpose, delivery shall mean burial in a grave owned by the purchaser. The seller shall notify the administrator before the lawn crypts are buried, identify the intended location(s) of the lawn crypts within the cemetery, and provide documentation adequately demonstrating delivery has occurred, such as photographs and third-party certifications.

**19.44(2)** For purposes of Iowa Code section 523A.1, caskets and other types of inner burial containers or concrete burial vaults sold after July 1, 1995, may not be warehoused in lieu of the trust fund required by Iowa Code sections 523A.1 and 523A.2.

**191—19.45** Reserved.

**191—19.46(523A,523E) Insurance funding.** For purposes of Iowa Code sections 523A.2(7) and 523E.2(6), a prearranged funeral agreement executed on or after July 1, 1995, shall be deemed to be funded by insurance if one or more of the following are satisfied:

1. All payments under the agreement are paid directly to the insurance company issuing the policy.
2. An existing policy or policies are assigned to the seller or the seller is designated as the beneficiary.

**191—19.47 to 19.49** Reserved.

**191—19.50(523A,523E) Orders.** The administrator may, by order, take actions which are necessary or appropriate for the protection of purchasers and to implement the purposes of the Acts.

**191—19.51(523A,523E) Investigations and subpoenas.**

**19.51(1)** The administrator or the attorney general may:

- a. Make private and public investigations within or outside of this state as the administrator or the attorney general deems necessary to determine whether a person has violated any provision of the Acts or any rule or order hereunder or to aid in the enforcement of the Acts;
- b. Require or permit any person to file a statement under oath or otherwise as the administrator or the attorney general determines as to all the facts and circumstances concerning the matter to be investigated; and
- c. Publish information concerning any violation of the Acts or any rule or order hereunder.

**19.51(2)** For the purpose of any investigation or proceeding under the Acts, the administrator, the attorney general, or any officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the administrator deems relevant or material to the inquiry.

**191—19.52(523A,523E) Audits.**

**19.52(1)** The administrator shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a seller, trustee or financial institution for the purpose of verifying compliance with the Acts and this chapter. When a seller fails or refuses to produce the records for examination when requested by the administrator, the administrator shall have the authority to require, by a subpoena, the attendance of the seller, or its representatives, and any other witness(es) whom the administrator deems necessary or expedient to examine and compel the seller and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to compliance with the Acts or this chapter.

**19.52(2)** Unless waived by the administrator, the audit shall be paid for by the seller(s), and a copy of the report of audit shall be delivered to the administrator and to the seller(s). In the event of an audit involving more than one seller the cost shall be prorated among the sellers on any reasonable basis determined by the administrator.

**191—19.53 to 19.59** Reserved.

RULES THAT APPLY ONLY TO  
IOWA CODE CHAPTER 523A

**191—19.60(523A) Consumer price index adjustment.** Pursuant to Iowa Code section 523A.1, the administrator sets the following inflation adjustment factors for the purpose of calculating the amount of interest or income earned on amounts deposited in trust that must remain trust funds as an adjustment for inflation:

- 1997 . . . . . 1.7%
- 1996 . . . . . 3.3%
- 1995 . . . . . 2.5%
- 1994 . . . . . 2.7%
- 1993 . . . . . 2.7%
- 1992 . . . . . 2.9%
- 1991 . . . . . 3.1%
- 1990 . . . . . 6.1%
- 1989 . . . . . 4.6%
- 1988 . . . . . 4.4%
- 1987 . . . . . 4.4%

Within 180 days after each calendar year, the seller shall calculate the amount of the consumer price index adjustment by multiplying the inflation adjustment factor for the preceding calendar year by the trust's market value on January 1 of the preceding year (minus any contracts which have matured or been canceled during the preceding year).

Within 180 days after each calendar year, the seller may withdraw from the trust an amount equal to the aggregate interest and income credited to the trust during the preceding calendar year, less the greater of:

1. One-half of the aggregate interest and income credited to the trust during the preceding calendar year, or
2. An amount equal to the consumer price index adjustment for the preceding year. Income distributions withdrawn from the trust shall be allocated to those purchasers' accounts remaining in the trust at the end of the month in which the distribution was made and on the basis that each such account's income balance for that month bears to the aggregate income balances of all such accounts. Within 240 days after each calendar year, any income not withdrawn pursuant to this rule shall be allocated to purchasers' accounts remaining in the trust at the end of the month in which the allocation was made.

**191—19.61 to 19.69** Reserved.

RULES THAT APPLY ONLY TO  
IOWA CODE CHAPTER 523E

**191—19.70(523E) Funds deposited at financial institutions.** If an establishment deposits additional funds in order to comply with the requirements of Iowa Code section 523E.1(2), those additional funds may be withdrawn at a later time if the withdrawal will not result in a violation of the requirements of Iowa Code section 523E.1 at the time of the withdrawal. All withdrawals must be reported to the administrator on the annual report.

**191—19.71(523E) Warehoused cemetery merchandise.**

**19.71(1) Application.**

*a.* The standards contained in these guidelines pertain to the offer and sale of cemetery merchandise pursuant to an agreement where the merchandise will be manufactured or purchased and stored until some future date or upon occurrence of the death of the person for whose benefit the merchandise was purchased. The primary focus of these guidelines is on merchandise identification, storage methods, merchandise title, insurance and protection against damage, final or near-final completion of the merchandise and regulatory audits, which are intended to provide reasonable assurance of performance at the time of need.

*b.* The administrator may modify or waive any provision of these guidelines if the object sought to be achieved thereby is accomplished by other means. Where the individual characteristics of specific storage programs warrant modification from these standards, they will be accommodated, insofar as possible, while still being consistent with the spirit of these guidelines.

*c.* Products that deteriorate should not be purchased and stored. At the current time, these guidelines apply only to the storage of bronze memorials.

**19.71(2) Definitions.** As used in this rule:

“*Cemetery merchandise*” means bronze grave markers, tombstones, ornamental merchandise, and monuments sold pursuant to an agreement that does not require installation within 12 months.

“*Memorial*” means a grave marker, tombstone, item of ornamental merchandise, or monument.

“*Purchaser*” means any person who purchases cemetery merchandise at retail and not for the purpose of resale.

“*Seller*” means any person located or doing business in this jurisdiction who sells, promotes, or offers cemetery merchandise to one or more purchasers.

“*Storage facility*” means any person other than the seller, such as a warehouse keeper, manufacturer, or supplier, who stores cemetery merchandise.

“*Substantially complete*” means, for a bronze memorial, a marker that has been tooled, edged, chased and is ready for color and finish.

**19.71(3) Application for approval.**

*a. Forms.* Applications for approval of a storage facility warehousing cemetery merchandise shall be made on forms provided by the administrator and shall be delivered through the mails or otherwise to the administrator’s office.

*b. Complete answers and certifications.* Applications shall not be processed until all questions appearing on the application are fully completed, certified as accurate, and sworn to before a notary public, and all required documents are received by the administrator.

*c. Determination of approval and standards for review.* The administrator shall provide the applicant with its determination within 60 days after receipt of the completed application and required documents. The administrator shall approve a storage facility’s application upon satisfaction of the following conditions:

(1) Insurance coverage and financial condition. As a condition of approval, the applicant must demonstrate that adequate insurance against loss and damage has been purchased and that the applicant’s financial condition is commensurate with any financial obligations assumed in the operation of the storage facility. Proof of the applicant’s financial condition shall include submission of audited financial statements completed in accordance with generally accepted accounting principles, which shall include a balance sheet prepared as of a date within 120 days prior to the application and a profit and loss statement and changes in financial position for each of the three fiscal years preceding the date of the balance sheet, or for the period of their existence, if less than three years.

(2) Record-keeping system. As a condition of approval, the applicant must demonstrate that the applicant has an adequate record-keeping system that allows identification and a description of each item in storage, the ownership of each item in storage, the seller’s name and address, an order number, the order date, the storage date, and aggregate listing and numerical totals for the entire storage facility and for each jurisdiction.

(3) Title. As a condition of approval, the storage facility must undertake to deliver a minimum of two copies of some form of title certificate to the seller, with at least one copy marked as the seller’s copy and at least one copy marked as the purchaser’s copy. Each seller shall be required to deliver at least one copy to the purchaser and to retain one copy in the seller’s records. Certificates of ownership should not be issued until the merchandise is physically stored in substantially complete condition.

(4) Delivery requirements.

1. As a condition of approval, the applicant must undertake to require the purchaser’s signature, or the signature of the purchaser’s legal representative, prior to the delivery of the cemetery merchandise.

2. As a condition of approval, the storage facility must undertake not to accept prepayment of delivery expenses or charges. Unless an adequate surety bond has been filed with the administrator for that purpose, each seller shall be required to hold funds in trust equal to the estimated delivery costs at the time of sale, which funds and any accrued interest or income shall be and remain trust funds until the cemetery merchandise has been delivered to the purchaser. Appropriate written disclosure shall be provided to the seller that delivery costs will be billed to the seller at the time of delivery.

(5) Storage requirements. As a condition of approval, the storage facility must demonstrate that the applicant has an adequate storage system that provides both accessibility and protection against damage. The storage facility must undertake that all cemetery merchandise will be substantially complete prior to storage.

(6) Consent to audits and inspections. As a condition of approval, the applicant must file a written consent authorizing audits and inspections by the administrator, its personnel, and its representatives.

(7) Statutory compliance with other state or provincial laws. As a condition of approval, the applicant shall be in compliance with all applicable laws regulating the applicant's activities as a warehouse keeper, manufacturer, supplier, or seller of cemetery merchandise.

(8) Identification or personalization of merchandise. All cemetery merchandise must be appropriately marked, identified, and described in a manner that it can be distinguished from other similar items of merchandise, unless waived by the administrator by order upon a showing of just cause for the waiver. A waiver application must demonstrate that the storage facility has filed a surety bond with the administrator (in a form and amount deemed sufficient by the administrator) or that the storage facility is in compliance with the following conditions:

1. The storage facility's storage system allows visual inspection and counting.
2. The merchandise is stored by type or style.
3. The record-keeping system identifies the location of the item by a bin system or reasonable alternative.
4. The record-keeping system keeps totals for each type of merchandise in storage.

(9) Payment of accounts receivable. As a condition of approval, the applicant shall undertake to require payment of all applicable accounts receivable within 90 days of the purchase of the cemetery merchandise.

(10) Audits and reports. The administrator shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a storage facility for the purpose of verifying compliance with Iowa Code chapter 523E and this chapter. For purposes of an audit, the division may request a report containing the following information:

1. A description of the storage facility, including the name, address of the principal business office, state or province of organization, date of organization, type of entity (e.g., corporation or partnership), and the location of all storage facilities.

2. A description of the storage program.

3. A detailed description of all merchandise currently in storage, which shall include all of the following:

- The date the merchandise was first placed in storage.
- The surname of the purchaser or the person on whose behalf the merchandise was purchased.
- The location of the merchandise, which shall include the location within the facility utilizing a numbering system that provides the exact location of each item of merchandise, for example, by row, shelf, bin, or box.
- The name and address of the seller.
- The total number of items, by category, in storage at the facility for sellers located in this state.
- The total number of items, by category, in storage at the facility.

Unless waived by the administrator, the transportation and lodging expenses of the audit shall be reimbursed by the storage facility.

These rules are intended to implement Iowa Code chapters 252J, 523A and 523E.

[Filed emergency after Notice 2/23/83, Notice 1/19/83—published 3/16/83, effective 2/23/83]

[Filed emergency 1/13/84—published 2/1/84, effective 1/13/84]

[Editorially transferred from [510] to [191], IAC Supp. 10/22/86; see IAB 7/30/86]

[Filed emergency 8/7/87—published 8/26/87, effective 9/11/87]

[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]

[Filed 2/22/96, Notice 1/17/96—published 3/13/96, effective 4/17/96]

[Filed 7/12/96, Notice 2/28/96—published 7/31/96, effective 9/4/96]

[Filed 9/16/98, Notice 4/8/98—published 10/7/98, effective 11/11/98]