

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]

[Filed 3/5/99, Notice 12/16/98—published 3/24/99, effective 4/28/99]