

191—100.25(523A) Funeral and cemetery merchandise warehoused by preneed sellers.

100.25(1) *Applicability.* This rule applies only to storage existing on or before July 1, 2007, under purchase agreements executed between July 1, 1987, and July 1, 2007.

100.25(2) *Warehousing not permitted.* After July 1, 2007, warehousing shall not be used as an alternative to the trust requirements of Iowa Code chapter 523A.

100.25(3) *Approval of storage facilities by commissioner.* Notwithstanding subrule 100.25(2), if a preneed seller receives approval in writing from the commissioner pursuant to subrule 100.25(4), the trust requirements of Iowa Code sections 523A.201 and 523A.202 do not apply to either:

- a. Payments for outer burial containers made of either polystyrene or polypropylene; or
- b. Cemetery merchandise delivered to the purchaser or stored in a storage facility not owned or controlled by the preneed seller.

100.25(4) *Storage facility application.* The commissioner shall approve a preneed seller's application to have a storage facility designated as an approved storage facility for purposes of subrule 100.25(3) if the following conditions are met:

a. *Insurance coverage and financial condition.* The storage facility shall demonstrate that adequate insurance against loss and damage has been purchased and that the storage facility's financial condition is commensurate with any financial obligations assumed. Proof of the storage facility's financial condition shall include submission of audited financial statements completed in accordance with generally accepted accounting principles, which shall include the following:

- (1) A balance sheet prepared as of a date within 120 days prior to the application; and
- (2) A profit and loss statement and any changes in financial position for each of the three fiscal years preceding the date of the balance sheet or, if the storage facility has been in existence less than three years, for the period of the storage facility's existence.

b. *Records system and maintenance.* The storage facility must demonstrate that it has a system that adequately records:

- (1) For each item in storage: an identification and a description; the ownership; name and address of the preneed seller; an order number; the order date; and the storage date.
- (2) An aggregate listing and numerical totals for the entire storage facility and for each state or province.

c. *Title, delivery, identification, payments.* The storage facility shall agree to comply with subrule 100.25(5).

d. *Storage requirements.* The storage facility shall provide storage that adequately provides both accessibility and protection against damage.

e. *Consent to audits and inspections.* The storage facility shall provide written consent to authorize audits, reviews and inspections by the commissioner pursuant to paragraph 100.25(5) "e" and written consent to provide reports requested pursuant to paragraph 100.25(5) "g."

f. *Compliance with law.* The storage facility shall be in compliance with all applicable laws regulating the applicant's activities as a warehouse keeper, manufacturer, supplier, or preneed seller of cemetery or funeral merchandise.

100.25(5) *Storage facility duties.*

a. *Title.* The storage facility shall provide to the preneed seller a minimum of two copies of a title certificate. The title certificate should not be issued until the merchandise is stored in substantially complete condition. Each preneed seller shall deliver at least one copy of the title certificate to the purchaser and shall retain one copy in the preneed seller's records.

b. *Delivery requirements.* The storage facility shall not accept prepayment of delivery expenses or charges. The storage facility shall provide written disclosure to the preneed seller that delivery costs will be billed at the time of delivery. The storage facility shall require the purchaser's signature, or the signature of the purchaser's legal representative, prior to the delivery of the cemetery or funeral merchandise.

c. *Storage requirements.* The storage facility shall adequately provide accessibility to the stored merchandise and adequately protect the stored merchandise against damage.

d. Identification of merchandise. The storage facility shall allow for visual inspection and counting; have storage by type or style; identify the location of the item by a shelf and bin- or slot-type system or reasonable alternative; and keep totals for each type of merchandise item in storage.

e. Audits and examinations. The storage facility shall allow the commissioner to examine the books, papers, records, memoranda or other documents of the storage facility and stored merchandise for the purpose of verifying compliance with Iowa Code chapter 523A and this rule. Unless waived by the commissioner in writing, the transportation, meal and lodging expenses of the auditors and examiners shall be reimbursed by the storage facility.

f. Identification of merchandise. All cemetery merchandise must be appropriately marked, identified and described in a manner to distinguish it from other similar items of merchandise, unless the commissioner has given to the seller prior written waiver of this requirement upon a showing of good cause.

g. Reports. The commissioner may request reports containing information about the storage facility, including but not limited to the following:

(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 location of all storage facilities;

(2) A description of the storage program; and

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

1. The date the merchandise was first placed in storage;

2. The full name of the purchaser or the person on whose behalf the merchandise was purchased;

3. 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;

4. The name and address of the preneed seller;

5. The total number of items, by category, in storage at the facility for preneed sellers located in this state; and

6. The total number of items, by category, in storage at the facility.

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