

DEPARTMENT OF **ENERGY, LABOR AND ECONOMIC GROWTH**
~~CONSUMER AND INDUSTRY SERVICES~~

~~OFFICE OF COMMERCIAL SERVICES~~

CEMETERY COMMISSIONER

~~GENERAL RULES~~

Filed with the secretary of state on

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(By authority conferred on the state cemetery commissioner by section 8 of **1968 PA 251, MCL 456.528; and EROs 1996-2, MCL 445.2001; 2003-18, MCL 445.2011; and 2008-4, MCL 445.2025**)

R 456.101, R 456.121, R 456.123, R 456.124, R 456.125, R 456.126, R 456.131, R 456.132, R 456.133, R 456.134, R 456.136, R 456.137, R 456.138, R 456.139, R 456.144, R 456.145, R 456.146, R 456.151, R 456.152, R 456.153, R 456.154, R 456.161, R 456.162, R 456.163, R 456.164, R 456.165, R 456.166, R 456.167, R 456.191, R 456.192, R 456.193, R 456.194, R 456.195, and R 456.196 of the Michigan Administrative Code are rescinded, and R 456.1101, R 456.1102, R 456.1201, R 456.1202, R 456.1203, R 456.1301, R 456.1302, R 456.1303, R 456.1304, R 456.1305, R 456.1306, R 456.1307, R 456.1308, R 456.1401, R 456.1402, R 456.1403, R 456.1404, R 456.1501, R 456.1502, R 456.1503, R 456.1601, R 456.1602, R 456.1701, R 456.1702, R 456.1801, R 456.1802, R 456.1803, R 456.1804, R 456.1901, R 456.1902, R 456.1903, R 456.1904, R 456.11001, R 456.11002, R 456.11003, R 456.11004, R 456.11101, R 456.11102, R 456.11103, R 456.11104, R 456.11201, R 456.11202, R 456.11203, R 456.11301, R 456.11302, R 456.11303, R 456.11304, R 456.11305, R 456.11401, R 456.11402, R 456.11403, R 456.11404, R 456.11405, R 456.11406, R 456.11407, R 456.11408, R 456.11409, R 456.11410, R 456.11411, R 456.11412, R 456.11501, R 456.11502, R 456.11503, R 456.11504, R 456.11601, R 456.11602, R 456.11603, R 456.11604, R 456.11605, R 456.11606, R 456.11607, R 456.11608 and R 456.11609 are added as follows:

PART 1. GENERAL PROVISIONS DEFINITIONS

R 456.101 Definitions. **Rescinded.**

~~Rule 1. As used in these rules:~~

~~(a) "Act" means Act No. 251 of the Public Acts of 1968, as amended, being SS456.521 to 456.543 of the Michigan Compiled Laws.~~

- ~~-(b) "Cemetery" means a cemetery or entity subject to the act.~~
- ~~-(c) "Commission" means the state cemetery commission created by the act.~~
- ~~-(d) "Remains" means human remains.~~
- ~~-(e) "Memorials" means any object on which is inscribed the name and generally the inclusive dates of life of the deceased that is used to identify a grave.~~
- ~~-(f) "Trainee" means a person who has not been previously licensed by the commission to sell interment rights, cemetery merchandise or services.~~
- ~~-(g) "Business entity" means a group of persons formed into a corporation, association, organization, partnership or copartnership.~~
- ~~-(h) "Agent" means a person who acts with authority for or in the place of another person in the sale of interment rights or cemetery merchandise and services.~~
- ~~-(i) "Seller" means a person who offers for sale interment rights, cemetery merchandise or services.~~
- ~~-(j) "Cemetery lots" means an area for earth interment.~~
- ~~-(k) "Pre-need" or "advance of need" means interment rights, cemetery merchandise or services sold to a purchaser before time of death.~~
- ~~-(l) "Turf top crypts" means a section of a cemetery in which preconstructed underground outside containers have been installed for use of interments.~~
- ~~-(m) "Vendor" means a cemetery company or its authorized agents.~~
- ~~-(n) "Interment right" means 1 of the following:~~
 - ~~-(i) Burial right (earth burial).~~
 - ~~-(ii) Entombment right (crypt).~~
 - ~~-(iii) Columbarium right (inurnment).~~
- ~~-(o) "Escrow" means an unallocated account held pursuant to the terms of a Written trust agreement.~~

R 456.121 Permits, registrations, and licenses. Rescinded.

~~—Rule 21. A permit, registration or license issued pursuant to the act is valid from July 1 to June 30. An application for a permit, registration or license shall be filed with the commission at least 30 days before July 1 of each year.~~

R 456.123 Property and unit descriptions. Rescinded.

~~—Rule 23. (1) A cemetery shall file with the commission:~~

~~-(a) A map containing a legal description of all land that has been purchased for cemetery purposes and adopted as part of the plan or design of the cemetery.~~

~~-(b) Platted maps designating all locations of burial rights developed and completed for burial.~~

~~-(2) A cemetery shall not sell or assign burial rights in a section or part of the cemetery which has not been developed and completed for burial unless a certified copy of the platted map designating burial rights contained in the section has been filed with the commission.~~

~~-(3) In case of a mausoleum, a burial structure or a columbarium, a cemetery shall file with the commission a substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevations and other divisions with descriptive names and numbers. If a structure has not been completed for~~

~~entombment or inurnment as of the effective date of this rule, the map shall be filed before any rights in this structure are sold.~~

R 456.124 Ownership and location records. Rescinded.

~~–Rule 24. (1) A cemetery shall keep a record of the ownership of all interment, entombment and inurnment rights in the cemetery.~~

~~–(2) A cemetery shall keep record of all interments, entombments and inurnments showing the name, age, date of service, cemetery sections, lot numbers, grave number and, in case of a mausoleum or columbarium, all information necessary to easily locate an interment, entombment or inurnment.~~

~~–(3) A cemetery shall keep a record of remains cremated in the cemetery and whether or not the cremated remains are interred, entombed or inurned on the premises.~~

~~–(4) A cemetery shall keep records either in duplicate forms in separate buildings or in single copies within a container which has at least 1 hour fire proof rating. These records shall be available at all reasonable times to official inspection by the commission or any of its officers or agents.~~

R 456.125 Records of future obligations. Rescinded.

~~–Rule 25. On December 31 of each year a cemetery shall have available for examination by the commission, an annual statement or record as of its most recent fiscal year which ended at least 6 months prior to the December 31 date, certified to by the owners, or in case of a corporation by 2 directors or trustees, showing the financial status of all contractual liabilities and obligations for future performance of services by the cemetery corporation or the organization so obligated which is affiliated with the cemetery. This statement or record shall contain the following information:~~

~~–(a) Complete description of the future performance obligations involved.~~

~~–(b) Total cost of full performance of all obligations as of the date of statement.~~

~~–(c) Complete information on the means, provision, trust or other vehicle which will assure fulfillment of all obligations, stating ledger and market values of the vehicle, its location, nature of investments and trustees including fees paid to trustees.~~

R 456.126 Financial statements. Rescinded.

~~–Rule 26. A cemetery shall have available each year for examination by the commission, an annual statement or record as of its most recent fiscal year. The statement shall be available 6 months after the end of the fiscal year. The statement or record shall be certified to by the owners, or in case of a corporation, by 2 directors or trustees, as to the financial condition of the cemetery entity or corporation. This statement or record shall contain substantially all of the following information:~~

~~–(a) List of all assets, current and fixed, showing costs and depreciation.~~

~~–(b) List of all liabilities, current and long term.~~

~~–(c) Stockholders' equity.~~

~~–(d) Statement of income and expenses.~~

~~–(e) Information on all insurance coverage of cemetery assets and responsibilities.~~

~~–PART 3. ENDOWED CARE FUND, MERCHANDISE FUND, AUDITS, REPORTS, AND SALES~~

R 456.131 Sales of interment rights, cemetery merchandise or services. **Rescinded.**

~~–Rule 31. (1) A contract or agreement in which payments are to be made as consideration toward the purchase or option to purchase of interment rights, cemetery merchandise or services and which is signed by a purchaser and a vendor, constitutes a sale as referred to in subsection (2) of section 7a of Act No. 12 of the Public Acts of 1869, as amended, being S456.107a of the Michigan Compiled Laws in subsection (2) of section 35a of Act No. 87 of the Public Acts of 1855, as amended, being S456.35a of the Michigan Compiled Laws and in subsections (1), (2), and (3) of section 16 of Act No. 251 of the Public Acts of 1968, as amended, being S456.536 of the Michigan Compiled Laws.~~

~~–(2) If a cemetery uses sales contracts or purchase agreements that include interment rights, burial vaults, grave memorials or cemetery services, payments made by a purchaser in event of a death of either spouse shall apply first on the amount shown as charged for interment rights.~~

~~–(3) All vendors shall comply with Act No. 227 of the Public Acts of 1971, being SS445.111 to 445.117 of the Michigan Compiled Laws, if sales are made at residences of purchasers.~~

R 456.132 Gross proceeds from sales. **Rescinded.**

~~–Rule 32. Gross proceeds received from a sale of interment rights, cemetery merchandise or services is the total of all funds received or credited to the vendor as payments from a purchaser or lending institution on behalf of a purchaser before an amount is deducted as security for an uncollectible account or an amount is deducted which is due the trust funds by contract which is charged the purchaser in addition to the purchase price. A record of monthly gross proceeds of sales shall be kept by a vendor. An interest or carrying charge payment or sales tax shall not be considered part of gross proceeds from sales if the interest, carrying charge or sales tax is separately stated in the purchase agreement and is recorded separately as a payment is made.~~

R 456.133 Endowed care funds. **Rescinded.**

~~–Rule 33. (1) An irrevocable endowed care fund, as referred to in section 16 of the act, shall be a trust fund administered by a trustee or trustees under the terms of a written trust instrument which specifies the statutory and regulatory responsibilities of the trustee or trustees. The endowed care trust fund shall be kept separate and apart from all other funds, property or securities of the cemetery, cemetery corporation, association or trustee or trustees. The net income of the endowed care trust fund shall be paid only to the entity in possession, management, operation and control of the cemetery grounds and~~

~~structures for the sole purpose of maintenance of the cemetery grounds or structures. Capital gains from the sale of an asset in the endowed care trust fund shall be considered a deposit to the principal or the corpus of the trust and as such shall not be considered a part of net income.~~

~~–(2) The required funds due the endowed care trust fund shall be deposited only in an account, which is a legal depository of the corpus of the endowed care trust fund.~~

~~–(3) Assets of the endowed care trust fund shall be deposited with a bank or trust company located in this state.~~

R 456.134 Trust fund audits and records. Rescinded.

~~–Rule 34. (1) If an audit of a trust fund obligation is made by the commission, an audit report shall be furnished to the party audited. The audit report shall contain the following information:~~

~~–(a) Deposits made to the trust fund for the period of audit.~~

~~–(b) Required deposits as per audit.~~

~~–(c) Deficit or overage, if any.~~

~~–(2) Deposit deficits shall be paid within 30 days from the date of the audit unless other arrangements are authorized in writing by the commission. Certification of the deposits shall be forwarded to the commission.~~

~~–(3) A party in disagreement with a commission audit report may appeal for an adjustment by:~~

~~–(a) Furnishing the commission with the party's contention of adequate proof of error.~~

~~–(b) Requesting an informal hearing with the commission.~~

~~–(c) Requesting a formal hearing with the commission.~~

~~–(4) A cemetery shall have available in its registered office for examination by the commission, all records pertinent to the maintenance, establishment and reporting of its required trust funds.~~

R 456.136 Sales tactics. Rescinded.

~~–Rule 36. An organization or person selling interment rights, cemetery merchandise or services, pursuant to R 456.131 shall:~~

~~–(a) Not use a sales presentation or advertisement which conceals or misstates a material fact.~~

~~–(b) Fully disclose to a purchaser in a conspicuous manner on the purchase agreement or contract that there will be a future cost for interment fees or installation of cemetery merchandise unless these costs are included in the sales price and so stated on the contract or agreement.~~

~~–(c) Not mislead prospects to believe that the seller is in any way connected with an organization other than the entity which is selling the interment rights, cemetery merchandise or services.~~

~~–(d) Not offer free interment rights, installation or care deposits to an organization, group or person if the free offer is accompanied by a requirement that other interment rights, cemetery merchandise or services be purchased or that the free offer is accompanied by the option of purchase of adjoining~~

~~interment rights at a price which is inflated above regular comparable prices within the cemetery.~~

~~–(e) Not sell interment rights supposedly at a substantial discount where in fact the actual price of the rights has been increased to cover the supposed discount.~~

~~–(f) Not represent that the price of interment rights to a purchaser is a special price to him only, if another purchaser would be given the same price.~~

~~–(g) Not use sales presentations which lead a purchaser to believe that interment rights, cemetery merchandise or services are being acquired at no cost and that the money required to be contributed by the purchaser is for maintenance or other expenses, whereas a different result follows.~~

~~–(h) Not induce a purchaser to buy interment rights with promises or representations that future price increases will enable a purchaser to realize profits from the sale of his rights.~~

~~–(i) Not promise, represent or agree as a condition of an interment right's sale, or sale of cemetery merchandise or services, to resell for, or repurchase from a purchaser, any right, cemetery merchandise or services.~~

~~–(j) Not sell interment rights unless the specific location and description of the rights coinciding with the official platted records of the cemetery is specified in the sales agreement.~~

~~–(k) Not sell interment rights in an earth interment section which is not completed for interment including lawn and landscaping, unless there is a comparable section completed for interment including lawn and landscaping in the same cemetery that is available at no additional cost to the purchaser in case of need, to which the purchaser agrees to transfer.~~

~~–(l) Not sell interment rights in an earth interment section which is not developed as provided in subrule (7) of R 456.137, 48 months after the date of the first sale of rights in such section. If the section is not developed by that date, except for national emergency, all moneys paid by the purchaser shall be refunded on written request by the purchaser.~~

~~–(m) Not accept a pre-need sales contract unless a minimum down payment of \$10.00 is received from the purchaser at the time of sale.~~

~~–(n) Not take a negotiable instrument, other than cash or a currently dated check or draft, as evidence of the obligation of the purchaser as a down payment.~~

~~–(o) Not pay the down payment for the purchaser, or make an agreement with the purchaser that the down payment can be paid at a later date. This practice is commonly known in the cemetery industry as "fronting a sale".~~

~~–(p) Not present a sales presentation and obtain purchaser's signature to a sales contract if the purchaser cannot read or speak English unless there is a disinterested person present who can explain fully to the purchaser what he is buying. The name and address of the disinterested person shall appear in his handwriting somewhere on the contract.~~

R 456.137 Incomplete structures. Rescinded.

~~–Rule 37. (1) A vendor who sells an interment right in a structure which is not then completed for interment shall:~~

- ~~–(a) Stipulate in the sales agreement a specific period of time within which the structure shall be completed and ready for interment which shall be not more than 48 months after the date of the sales agreement, and that if the structure is not completed by that date, except for a national emergency, all moneys paid by the purchaser pursuant to the agreement shall be refunded.~~
- ~~–(b) Determine the total construction cost of the structure.~~
- ~~–(c) Determine the construction cost of the unit being sold and divide it by the amount of gross proceeds to be derived from the sale of the unit which figure shall be multiplied by 100 to obtain the construction cost percentage.~~
- ~~–(d) Place the construction cost percentage of any gross proceeds payment in a special construction trust fund in a bank or trust company located in this state within 30 days after the date of the payment.~~
- ~~–(2) The sum of construction costs of all units in a subrule (1) structure shall equal the total construction cost of the subrule (1) structure.~~
- ~~–(3) Withdrawals from the construction fund can be made only to pay current construction costs as the construction of the structure progresses to the final completion.~~
- ~~–(4) All vendors shall submit to the commission for approval, and before such sales are made, the following:~~
 - ~~–(a) Copy of contracts or purchase agreements.~~
 - ~~–(b) Maps required by subrule (2) of R 456.123.~~
 - ~~–(c) Estimated cost of the structure, including features and embellishments.~~
 - ~~–(d) Estimated amount of gross proceeds to be derived from the sale of the interment rights.~~
 - ~~–(e) A copy of sales brochures, promotional pamphlets and artist's rendering of the proposed structure if such items are used in the sales program.~~
 - ~~–(f) A copy of all proposed sales advertising or radio and television scripts used in these sales promotions.~~
- ~~–(5) A vendor shall not sell or assign burial rights in any undeveloped part of the cemetery unless 15% of the gross proceeds received from the sales is deposited in a special fund under a written agreement in a bank or trust company located in this state. The fund shall be designated as a cemetery development fund, naming the new area. A copy of the written agreement shall be forwarded to the commission. Withdrawals from the development fund can be made only to pay current development costs as the development progresses to final completion. Upon final completion any undisbursed funds including earned income may be withdrawn by the vendor from the development fund.~~
- ~~–(6) A vendor selling turf top crypts in an area that is not developed or ready for interments shall deposit 130% of the cost of each crypt sold into a special fund, under a written agreement, in a bank or trust company located in this state. The fund shall be designated as a cemetery development fund, naming the new area. A copy of the written agreement shall be forwarded to the commission. Withdrawals from the development fund can be made only to pay current development costs as the development progresses to the final completion. Upon final completion any undisbursed funds including earned income may be withdrawn by the vendor from the development fund. Vendors contemplating~~

~~selling in an undeveloped cemetery area or undeveloped turf top crypt area shall submit to the commission the following information before sales are made:~~

- ~~–(a) Estimated cost of the development, including features and all embellishments.~~
- ~~–(b) Plat maps required by subrule (2) of R 456.123.~~
- ~~–(c) A copy of sales brochures, promotional pamphlets and artist's rendering of the proposed developed area if such items are used in the sales programs.~~
- ~~–(d) A copy of all proposed sales advertising or radio and television scripts used in these sales promotions.~~
- ~~–(7) A developed cemetery area means an area containing grass or sod and landscaping of sufficient quality to present a good appearance, and section markers of durable material used to identify the location of interment rights in that area including any and all cemetery features promised the purchaser for that area. Deposits will be made to the development fund until an inspection of the area so developed is made by the commission. The inspection shall be made within 30 days after receipt of written request from the vendor. If the inspection is not made within 30 days, the vendor may terminate deposits to the development fund as required under subrule (5) and may withdraw any funds remaining in development fund. The commission shall approve or disapprove the area as ready for interment and the commission's failure to do so in writing within 30 days constitutes approval of the area.~~

~~R 456.138 Permitting violations of R 456.136. **Rescinded.**~~

~~–Rule 38. An organization including its officers which knowingly permits a person under employment, contract or sales control, either directly or indirectly, to violate any provision of R 456.136 is also guilty of the same violation.~~

~~R 456.139 New cemeteries. **Rescinded.**~~

- ~~–Rule 39. (1) In determining community need for a proposed new cemetery as required by section 13 of the act the commission shall use a 25-mile radius as a potential sales and service area in making a survey to determine the number of cemeteries, type of ownership and burial rights available to the public in that area.~~
- ~~–(2) The commission shall require the applicant for a new proposed cemetery to have title in fee to at least 40 acres before final approval is granted.~~
- ~~–(3) A newly established cemetery shall not sell or assign burial rights in any areas of the cemetery until at least 2 acres are developed, as required by subrule (7) of R 456.137 which development shall be located at the front or near the main entrance of the proposed cemetery.~~

~~–PART 4. CASKETS, EARTH BURIALS, ENTOMBMENTS, AND CREMATIONS~~

~~R 456.144 Earth burials. **Rescinded.**~~

~~–Rule 44. (1) A cemetery shall not make an interment unless a legally executed burial transit permit is received.~~

~~-(2) A cemetery shall make an interment immediately following the committal service or receipt of remains if it does not interfere with the dignity of any other committal service. If weather conditions prevent an immediate interment, the cemetery shall obtain written authorization for delayed interment signed by the next of kin or authorized agent. The authorization shall specify the approximate hour and date of interment and place of temporary storage.~~

~~-(3) Immediately following the committal service and interment, a cemetery shall fill a grave and as soon as settling is reasonably complete and weather conditions permit, shall sod, seed or adequately cover a grave with limestone chips, gravel or other suitable material.~~

~~-(4) A cemetery shall cover a grave in which an unsealed outside container is used with at least 16 inches of earth over the outside container.~~

~~-(5) A cemetery shall remove all equipment used in the committal service and in the interment immediately following the service and interment.~~

R 456.145 Entombments. **Rescinded.**

~~-Rule 45. (1) A cemetery shall not make an entombment unless a legally executed burial transit permit is received.~~

~~-(2) A cemetery shall entomb the remains and permanently seal the crypt immediately following the committal services or receipt of the remains.~~

~~-(3) If circumstances do not permit immediate entombment following a committal service or receipt of remains, the cemetery shall obtain written authorization for delayed entombment signed by the next of kin or authorized agent. The authorization shall specify the approximate hour and date of entombment and place of temporary storage of the remains.~~

R 456.146 Cremations. **Rescinded.**

~~-Rule 46. (1) A crematory shall not cremate remains unless it has:~~

~~-(a) A legally executed burial transit permit authorizing the cremation.~~

~~-(b) A written authorization from a person representing himself as being legally qualified to make the authorization and who in the opinion of the crematory authority is legally qualified to make the authorization and is 1 of the following:~~

~~-(i) The surviving spouse.~~

~~-(ii) A surviving child or parent.~~

~~-(iii) A next of kin.~~

~~-(iv) A person who has acquired the right to control disposition of the remains.~~

~~-(2) A crematory shall cremate remains as soon as reasonably possible, but if cremation does not take place within a reasonable time after receipt of the remains, the crematory shall obtain written authorization for delayed cremation signed by the next of kin or authorized agent. The authorization shall specify the approximate hour and date of cremation and place of temporary storage.~~

~~-(3) A crematory shall place cremated remains in a container properly marked as to the name of the deceased and date of cremation.~~

~~-(4) A crematory at all times shall handle cremated remains with dignity, respect and utmost care.~~

~~PART 5. GROUNDS, FACILITIES, AND BUILDINGS~~**R 456.151 Grounds. Rescinded.**

- ~~Rule 51. (1) A cemetery grounds shall be maintained with a general cemetery care program at required intervals to assure an acceptable appearance.~~
- ~~(2) A cemetery grounds including maintenance service areas shall be kept free of trash and debris. Trash receptacles shall be provided.~~
- ~~(3) A pond, lake, waterway, fountain and other body of water on a cemetery shall be kept reasonably free of trash and odors.~~
- ~~(4) A cemetery's trees and shrubs shall be trimmed at regular intervals.~~
- ~~(5) An undeveloped cemetery property shall be screened by fencing or shrubs, or it shall be mowed or maintained in an attractive manner.~~
- ~~(6) A cemetery road shall be kept accessible and in reasonably good repair as the normal operation of the cemetery dictates.~~
- ~~(7) A grave which has settled shall be refilled as soon as reasonably possible.~~
- ~~(8) A grave marker or a monument shall be reset and trimmed as necessary.~~
- ~~(9) A dangerous condition in the cemetery shall be corrected immediately.~~

R 456.152 Facilities. Rescinded.

- ~~Rule 52. (1) The name of the cemetery shall appear near the entrance on a permanent type sign, at least 3 square feet in size, and if the office is not located on the grounds, the location of the office shall be noted on the sign.~~
- ~~(2) A cemetery fence shall be kept in good repair.~~
- ~~(3) Identifying features or section markers of durable material shall be placed permanently in the ground to identify the named or numbered sections of the cemetery which shall coincide with a cemetery map.~~
- ~~(4) A grave shall be located by a permanent lot survey marker which shall be located in the ground within a reasonable distance of the grave and coinciding with a cemetery section on the map. Each grave in a single grave section shall be located by a permanent numbered grave marker.~~
- ~~(5) A lot survey marker shall be kept reasonably visible under normal weather conditions.~~
- ~~(6) A cemetery's grave decorations rules shall be posted or made available in printed form.~~
- ~~(7) Maintenance equipment not in use shall be stored in the maintenance service areas.~~

R 456.153 Buildings. Rescinded.

- ~~Rule 53. A building, including a mausoleum, shall be kept in good repair.~~

R 456.154 Rest rooms and public accommodations. Rescinded.

- ~~Rule 54. A cemetery shall maintain reasonable and acceptable rest rooms and public accommodations deemed necessary by the commission after inspection is made by a field investigator and a report submitted.~~

~~PART 6. MERCHANDISE TRUSTS~~

R 456.161 Merchandise trust agreements. Rescinded.

- ~~—Rule 61. (1) A vendor shall submit 2 copies of a written merchandise trust agreement to the commission for approval. In addition to other requirements, a merchandise trust agreement shall provide all of the following:~~
- ~~—(a) That deposits made to the merchandise trust account by a vendor shall be invested by the trustee only in accordance with Act No. 177 of the Public Acts of 1937, as amended, being SS555.201 to 555.203 of the Michigan Compiled Laws, except that funds shall not be invested in life insurance policies on any person or invested in a company owned or operated by a cemetery or its authorized agent or in loans to any person directly connected with or employed by a cemetery or its agents.~~
 - ~~—(b) That deposits to the merchandise trust account shall be certified by an officer of the vendor or agents authorized by a vendor to act in its behalf.~~
 - ~~—(c) That withdrawals from the merchandise trust account shall be made on the presentation to the trustee of an affidavit certified by the vendor that the cemetery merchandise or services have been installed, delivered, performed or terminated. Withdrawals shall not be made in excess of the allocated deposit and vendor shall so certify. The trustee shall retain the affidavit as a permanent part of the trust records and the vendor shall keep a copy.~~
 - ~~—(d) That at least an annual accounting period shall be established and the trustee shall furnish to the vendor an accounting which shall contain the following information:~~
 - ~~—(i) A separate listing of all assets held by cost and fair market value with totals.~~
 - ~~—(ii) Total deposits made to the trust account during the reporting period and total to date.~~
 - ~~—(iii) Total withdrawals from the merchandise trust account during the reporting period and total to date.~~
 - ~~—(iv) A certification by the vendor to the trustee that the total assets of the merchandise trust account are at least equal to the total obligations as determined by the current deposits as required by subrule (1) of R 456.162.~~
 - ~~—(v) Net income including ordinary income and capital gains paid to vendor during the accounting period.~~
 - ~~—(e) That at any time the commission makes a determination that the merchandise trust account is underfunded to meet the total current obligations, the commission may order the vendor to deposit all future trust income, as of the date of the order, to the principal of the merchandise trust account to be allocated in accordance with subdivision (b) until the total assets of the corpus of the merchandise trust account equals the total obligations as determined by the current deposits as required by subrule (1) of R 456.162.~~
 - ~~—(f) That the purpose of the merchandise trust account is to protect the purchaser and the commission may inspect the records of the vendor and trustee relating thereto.~~
- ~~—(2) Assets of the merchandise trust funds established by a vendor or its authorized agents shall be deposited with a bank or trust company located in this state.~~

R 456.162 Required deposits to merchandise trust account. **Rescinded.**

~~Rule 62. (1) When cemetery merchandise or services are sold to a purchaser, a vendor or an agent authorized by a vendor or acting on its behalf under an agreement or sales contract to sell cemetery merchandise or services shall deposit, on or before the last day of the month following the month of collection, the following amounts to a merchandise~~

~~trust account and maintain such deposits until such time as the cemetery merchandise or services are installed, delivered, performed or terminated:~~

~~—(a) One hundred thirty percent of the cost of each grave memorial that the vendor is obligated to furnish and install. A vendor representing more than 1 memorial manufacturer may take the average cost of all manufacturers the vendor represents in determining the 130% of cost if all manufacturers meet the specifications as contained in the purchase or sales agreement. At all times the total amount required to be on deposit in the merchandise trust account for obligations concerning grave memorials shall be not less than the current cost of all such obligations.~~

~~—(b) The greater amount of either 70% of the gross proceeds received from the sale of each burial vault or 130% of the cost of each burial vault that the vendor is obligated to furnish and install. At all times the total amount required to be on deposit in the merchandise trust account for obligations concerning burial vaults shall be not less than 130% of the current costs of all such obligations.~~

~~—(c) The greater amount of either 100% of the gross proceeds received from the sale of cremations, grave openings and closings or \$100.00 for each cremation, grave opening and closing that the vendor is obligated to furnish.~~

~~(2) A vendor may withdraw from the merchandise trust account only after the cemetery merchandise or services are delivered, stored, installed, performed or terminated. The vendor may withdraw from the merchandise trust account only the current cost of grave memorials which are ordered by him and stored by the vendor or cast and stored by a memorial company.~~

~~He may withdraw the balance only when the grave memorial is installed. A vendor may withdraw from the merchandise trust account only the current cost of a burial vault if he orders and stores the vault. He may withdraw the balance only when the vault is installed.~~

~~(3) A vendor storing grave memorials or burial vaults until time of need shall insure the memorials and vaults against fire and theft in an amount in excess of their total replacement cost. A current certificate of insurance coverage shall be filed with the commission annually.~~

~~(4) A vendor shall make deposits to the merchandise trust account as required by the act and when he does any of the following:~~

~~(a) Makes a pre-need cash sale.~~

~~(b) Sells the sale contract to a bank or lending institution.~~

~~(c) Receives prorated payments direct from a purchaser, generally referred to as a house account, unless the vendor has an approved merchandise escrow account as provided in R 456.163. The deposit required on a house account payment shall be as provided in R 456.163.~~

R 456.163 ~~Merchandise escrow account.~~ **Rescinded.**

~~—Rule 63. (1) A vendor may establish a merchandise escrow account in a bank or trust company located in this state under a written trust agreement approved by the commission into which he shall deposit payments on house accounts.~~

~~—(2) The deposit required on a house account payment received from the sale of a grave memorial shall be a percentage of each payment made by a purchaser computed by dividing the sale price of the grave memorial into 130% of the cost of the memorial. Sales tax, finance or carrying charges and memorial maintenance trust deposits are not considered a part of the sale price in determining the percentage.~~

~~—(3) The deposit required on a house account payment received from the sale of a burial vault is the greater of either 70% of each payment made by a purchaser or 130% of the cost of the burial vault. The deposit shall be computed as provided in subrule (2) for grave memorials.~~

~~—(4) A vendor may make payments to a merchandise escrow account until the purchaser makes payment in full at which time the vendor shall transfer the deposit to the merchandise trust account.~~

~~—(5) A vendor may withdraw from the merchandise escrow account only after the cemetery merchandise or services are delivered, stored, installed, performed or terminated.~~

~~—(6) Merchandise escrow account deposits and withdrawals shall be certified to by the vendor as to their regularity and accuracy.~~

R 456.164 ~~Pre-existing merchandise trust accounts.~~ **Rescinded.**

~~—Rule 64. (1) A vendor having a merchandise trust, escrow or other depository account pre-dating the effective date of this rule, shall take appropriate measures to demonstrate annually to the satisfaction of the commission the assurance of fiduciary responsibility in the maintenance of the account and the financial integrity of the account to meet the current cost of the merchandise for which deposits were made to the pre-existing merchandise trust. If the total amount in a pre-existing account is inadequate to meet current obligations, the vendor shall present to the commission a satisfactory plan of good faith affirmative action to restore the deficit. R 456.162 does not apply to any contractual obligations entered into prior to the effective date of this rule except for withdrawal requirement as stated in subrule (2).~~

~~—(2) A vendor continuing a pre-existing merchandise trust, escrow or other depository account shall furnish the commission an annual accounting on forms acceptable to the commission which shall contain the information required by R 456.125 and a certification that the total deposits are adequate to meet the total current cost of the merchandise for which deposits were made to the pre-existing merchandise trust, escrow or other depository account.~~

~~—(3) Instead of complying with subrules (1) and (2) a vendor having a pre-existing merchandise trust, escrow or other depository account may close the account and deposit its assets in a merchandise trust under R 456.161 subject to all the terms and conditions of the trust except that the vendor shall not be required to~~

~~deposit an amount in excess of that necessary to meet current cost of total contractual obligations. If the amount deposited is inadequate to meet current obligations, the vendor shall present to the commission a satisfactory plan of good faith affirmative action to restore the deficit. The election in this section shall be made in writing with a copy to the commission.~~

~~R 456.165 Record keeping, inspection, audit, and hearings.~~ **Rescinded.**

~~–Rule 65. A vendor shall maintain a monthly accounting record which indicates separately all cash proceeds received from the sale of interment rights, burial vaults, grave memorials or cemetery services. The vendor shall also maintain a monthly accounting record setting forth in detail all deposits to the merchandise trust account. This record shall include:~~

- ~~–(a) Name and contract number of the purchaser.~~
- ~~–(b) A description of the cemetery merchandise or services purchased.~~
- ~~–(c) Amount to be credited to the purchaser's account.~~

~~–(2) A vendor shall also maintain a monthly accounting record setting forth in detail all withdrawals from the merchandise trust account. This record shall include:~~

- ~~–(a) Name and contract number of the purchaser.~~
- ~~–(b) A description of the cemetery merchandise or services purchased.~~
- ~~–(c) Amount withdrawn.~~
- ~~–(d) Whether the cemetery merchandise or services were installed, delivered, performed or terminated.~~

~~–(3) The records shall be available for inspection or audit at any time during regular business hours by the commission or its authorized agents. The records shall be maintained within the state either by the cemetery or in the office of its authorized agent.~~

~~–(4) The commission may order a hearing on the current status of the merchandise trust account if it determines that one of the following has occurred:~~

- ~~–(a) The trust is underfunded to meet current obligations.~~
- ~~–(b) Required deposits were not made.~~

~~R 456.166 Required reporting; financial statement.~~ **Rescinded.**

~~–Rule 66. (1) A vendor shall submit to the commission, 60 days after the accounting date established as required by R 456.161, on forms provided by the commission, all information deemed necessary by the commission to assure that the merchandise trust account is adequate to provide all of the cemetery merchandise and services the vendor is obligated to provide. A vendor shall submit a current financial statement when requested by the commission as provided in R 456.126.~~

~~R 456.167 Sales contracts or agreements.~~ **Rescinded.**

~~–Rule 67. (1) Purchase agreements or sales contracts made with a purchaser of grave memorials shall contain at least the following descriptive information:~~

- ~~–(a) Size of memorial.~~
- ~~–(b) Material and specifications.~~

- ~~-(c) Number of vases.~~
- ~~-(d) Type of base.~~
- ~~-(2) Purchase agreements or sales contracts made with a purchaser of burial vaults shall contain at least the following descriptive information:~~
 - ~~-(a) Size.~~
 - ~~-(b) Type (concrete, steel, plastic, etc.).~~
 - ~~-(c) Approximate weight.~~
 - ~~-(d) Approximate load strength specifications.~~
- ~~-(3) The descriptive information may be contained in a separate certification attached to the sales contract or agreement.~~

~~— PART 9. HEARINGS~~

R 456.191 Statements of facts and appearances. **Rescinded.**

- ~~—Rule 91. (1) A party requesting a hearing shall submit in writing a fair and accurate statement of the facts to the commission and all interested parties.~~
- ~~—(2) An appearance at a hearing shall be made in person, by a duly authorized representative, or by counsel.~~

R 456.192 Defaults. **Rescinded.**

- ~~—Rule 92. If a person who has been properly served with a notice of hearing fails to appear at a noticed hearing, the commission or designated hearing officer may proceed with a hearing of the case brought before them and, on evidence presented, may make a decision.~~

R 456.193 Answers, arguments, and briefs. **Rescinded.**

- ~~—Rule 93. A person who has been served with a notice of hearing may file a written answer before the date of the hearing, and at the hearing may appear and present an oral statement on the charges contained in the notice of hearing. If a written argument or brief is presented, a copy shall be served on the secretary of the commission and all interested parties, at least 5 days before the date for the hearing.~~

R 456.194 Adjournments and continuances. **Rescinded.**

- ~~—Rule 94. A hearing shall not be adjourned or continued except on an order of the commission. A motion or request for an adjournment or a continuance shall be in writing, and shall state concisely the reasons why the adjournment or continuance is necessary. The motion or request shall not be considered unless it is filed with the secretary of the commission at least 5 days before the date assigned for the hearing, except on a showing that, for reasons not within the control of the person or party making the motion or request, the motion or request could not be filed within the time limited.~~

R 456.195 Stipulations. **Rescinded.**

- ~~—Rule 95. The parties to a hearing, by a stipulation in writing filed with the secretary of the commission, may agree on the facts or any portion of the facts~~

~~involved in the controversy, which stipulation shall be regarded and used as evidence in the hearing. Parties are requested to agree on the facts when practicable.~~

R 456.196 Depositions. Rescinded.

~~—Rule 96. A deposition shall be taken only on written authority of the commission if it is proved in writing to the commission that it is impractical or impossible to otherwise obtain the evidence. If a deposition is permitted, it shall be taken according to the rules for taking a deposition in a civil action in this state.~~

R 456.1101 Definitions.

Rule 101. As used in these rules:

(a) "Abandoned" means cemetery property that the owner surrenders, relinquishes, or disclaims; a cemetery that has gone to commons.

(b) "Act" means 1968 PA 251, MCL 456.521 et seq., and known as the cemetery regulation act.

(c) "Agent of a cemetery" means a person who acts with authority for or in the place of another person in the sale of interment rights or cemetery merchandise and services.

(d) "Business entity" means a group of persons formed into a corporation, association, limited liability company (LLC), organization, partnership or co-partnership.

(e) "Casket" means any vessel used for human remains, including, but not limited to, an urn, coffin, or box.

(f) "Cemetery lots" means an area designated for earth interment.

(g) "Complaint form" means the form, prescribed by the commissioner, that an individual must complete and submit to file a complaint.

(h) "Contested case" means that term as defined in the administrative procedures act, 1969 PA 306.

(i) "Dedicated land" means land taken off the tax rolls and designated as a cemetery.

(j) "Department" means the department of energy, labor, and economic growth.

(k) "Developed cemetery area for earth interment" means an area containing grass, sod, or landscaping of sufficient quality to present a good appearance, and section markers of durable material used to identify the location of earth interment rights in that area including all cemetery features promised the purchaser for that area.

(l) "Developed cemetery area other than for earth interment" means an area containing a structure and surrounded by landscaping of sufficient quality to present a good appearance, and markers of durable material used to identify the location of interment or inurnment rights in that area including all cemetery features promised the purchaser for that area.

(m) "Encumbrance" means anything restricting title to the land, including but not limited to, a lease, lien, or mortgage.

(n) "Escrow" means an unallocated account held under the terms of a written escrow agreement.

(o) "Hearing officer" means an individual who conducts or handles administrative hearings or administrative hearing functions for a department or agency, including, but not limited to, a hearing officer, hearings officer, hearing examiner, administrative law judge, or a presiding officer. "Hearing officer" includes the commissioner, his or her designee, including a designated administrative hearing officer in the SOAHR to conduct or assist in the conduct of a hearing on any matter, whether a contested case or other administrative hearing, within the jurisdiction of the commissioner.

(p) "Maintained" means general upkeep and care of the grounds, buildings and facilities.

(q) "Memorials" has the same meaning as defined in MCL 328.214(f).

(r) "Office of the State Cemetery Commissioner" or "OSCC" means the department organizational unit and personnel that are responsible for administering the cemetery regulation act, 1968 PA 251, related acts, and rules or regulations promulgated there under; including, licensing, registration, audit, inspection, investigation, or other regulatory functions.

(s) "Operated" means to control the functions of or to exert power or direct influence over the management of the cemetery.

(t) "Pre-need" means interment rights, cemetery merchandise or services sold to a purchaser before time of death.

(u) "Prepaid contract" has the same meaning as defined in MCL 328.215(d).

(v) "Registrant" means any person authorized by the commissioner to own and operate a cemetery.

(w) "Registration" means a permit or registration issued by the OSCC.

(x) "Remains" means human remains.

(y) "Resident agent" means an individual designated to accept service of legal process on behalf of another person.

(z) "Seller" means a person who sells interment rights, cemetery merchandise, or services.

(aa) "State Office of Administrative Hearings and Rules" or "SOAHR" means the agency created under executive reorganization order 2005-1, MCL 445.2021, to provide services related to administrative hearing functions including, but not limited to, a contested case hearing, or the hearing portion of a contested case for a department or agency.

(bb) "Turf top crypts" means a preconstructed container for interment that is designed to be partially buried and partially above ground.

(cc) "Turf top crypts section" means a section of a cemetery designated to contain turf top crypts.

(dd) "Vendor" means a business entity, individual, or an authorized agent who is operating a cemetery.

R 456.1102 Terms defined in act.

Rule 102. Terms defined in the cemetery regulation act have the same meaning when used in these rules.

PART 2. GENERAL

R 456.1201 Disclosures.

Rule 201. (1) Except as otherwise provided in these rules, if an obligation has been placed upon a registrant to report or submit information to the commissioner, the reporting or submission may be accomplished by reporting or submitting information to the designated area within the OSCC.

(2) A registrant or applicant for a registration has a continuing duty to disclose any changes in information provided to the OSCC in the application. The duty to disclose changes in information continues throughout any period of registration granted by the OSCC.

(3) A registrant or applicant must immediately notify the OSCC, in writing, if the person becomes aware that its cemetery is in violation of the act or these rules.

R 456.1202 Waiver.

Rule 202. The commissioner, may, in writing, waive, restrict, or alter any requirement or procedure set forth in these rules, not the act, if the commissioner determines the following:

(a) There is good cause;

(b) The waiver, restriction, or alteration is in the best interest of the public and the cemetery industry.

R 456.1203 Registration is not transferrable.

Rule 1203. A person who holds a registration cannot transfer the authority to own and operate a cemetery.

PART 3. REPORTING AND RECORDS

R 456.1301 General reporting; submittals; notifications.

Rule 301. (1) Unless otherwise permitted or required, a person must submit all forms, fees, documents, papers, and other materials to the principal office of the OSCC at the address and in the manner and form prescribed by the commissioner.

(2) Forms must be completed in ink, signed by an authorized person, and submitted by mail, fax, or in person, not electronic mail or using an electronic signature unless specific authorization has been granted by the commissioner.

(3) A person that applies for or holds a cemetery registration or person that has control of a person that applies for or holds a cemetery registration must comply with MCL 456.533 within 30 days of the triggering event.

(4) A person holding or applying for a registration must establish, maintain, and identify a resident agent or agent, in the case of an individual who is not a resident of the state, within Michigan for the purpose of accepting service of process, notices, and other forms of communication for the person holding or applying for the registration.

R 456.1302 Records retention.

Rule 302. Each registrant must keep, for a minimum of 7 years, and maintain accurate, complete, legible, and permanent records of any books, contracts, records, or documents pertaining to, prepared in, or generated by, the cemetery operation, including, but not limited to, all of the following:

- (a) Forms.**
- (b) Reports.**
- (c) Accounting records.**
- (d) Ledgers.**
- (e) Computer generated data.**
- (f) Internal audit records.**
- (g) Correspondence.**
- (h) Personnel records.**

R 456.1303 Reporting property and unit descriptions.

Rule 303. (1) A cemetery shall file with the OSCC, when new structures or developments occur, the following:

(a) A document containing a legal description of all land that has been purchased for cemetery purposes and adopted as part of the plan or design of the cemetery.

(b) Document designating all locations of burial rights developed and completed for burial.

(c) A site drawing or survey document that shows the following:

(i) The location of all structures, sidewalks, internal roads, parking, and public road frontage.

(ii) The dimensions and identity of all existing and proposed easements and encroachments.

(iii) Identification of all contiguous properties or waterways.

(iv) If the cemetery lies within or abuts a 100-year floodplain, floodplain data showing the 100-year contour line to the point where it intersects with the boundaries of the cemetery. Where a floodplain area exists, it must be clearly labeled with the words "floodplain area."

(2) A cemetery must not sell or assign burial rights in a section or part of the cemetery that has not been developed and completed for burial unless

a certified copy of the platted map designating burial rights has been filed with the OSCC.

(3) In case of a mausoleum, a burial structure, or a columbarium, a cemetery must file with the commissioner a substantial map or plat on which the sections, halls, rooms, corridors, elevations, and other divisions with descriptive names and numbers must be delineated.

(4) Effective for structures built after the effective date of this rule, the cemetery must file above documents before any rights are sold.

R 456.1304 Access to records.

Rule 304. All records pertaining to the operations and business of the cemetery, including but not limited to, trust records, contracts for cemetery merchandise or services, and accounting records, must be available for inspection by the OSCC at any time during regular business hours. The records must be available at the cemetery.

R 456.1305 Interment right, ownership, and location records.

Rule 305. (1) A cemetery must keep a record of the ownership of all interment, entombment, and inurnment rights in the cemetery and that record must be available at all reasonable times to official inspection by the OSCC.

(2) A cemetery must keep record of all interments, entombments, and inurnments showing the name, age or date of birth and date of death, date of service, cemetery sections, lot numbers, grave number, and, in case of a mausoleum or columbarium, all information necessary to easily locate an interment, entombment, or inurnment.

(3) A cemetery must keep a record of remains cremated in the cemetery and whether or not the cremated remains are interred, entombed, or inured on the premises. If the remains were not interred, entombed, or inured on the premises, a record of transfer of custody to another person must be kept.

(4) A cemetery must keep records either in duplicate forms in separate buildings or in single copies within a container which has at least 1 hour fire proof rating.

R 456.1306 Accounting records.

Rule 306. Registrant must maintain complete, accurate, and legible records of all transactions pertaining to its revenues and expenses, assets, liabilities, and equity for not less than 7 years.

R 456.1307 Cash receipts journal.

Rule 307. A registrant must maintain a monthly cash receipts journal in chronological order that separately lists all proceeds received from the sale of interment rights, burial vaults, grave memorials, grave openings and closings, cremations, and other sale items. The journal must include at least the following:

- (a) The date the proceeds are received.
- (b) The name of the buyer and beneficiary.
- (c) The contract number.
- (d) The total amount of proceeds received on the date of receipt. The total received allocated into the above categories of sale and separately list interest and sales tax.
- (e) Monthly totals by sales category.
- (f) For an internment right provided by the cemetery without charge, the journal must include the name of the recipient, beneficiary, the date the right was given, and an indication in the journal that the adult internment right was given at no charge.

R 456.1308 Installment contract requirements.

Rule 308. A registrant must maintain a ledger record for each installment contract sold. The ledger must include at least the following:

- (a) The name and address of the buyer and beneficiary.
- (b) The contract number.
- (c) The individual price of each item sold, the total price of all items sold, any applicable commission, and the total sales tax and interest rate indicated separately.
- (d) The date of the contract and the dates payments are received.
- (e) The amount of each payment received with the payment's allocation to each item purchased and applied to sales tax and interest.
- (f) A running balance of the amount due for each item purchased and the applicable sales tax, after each payment received.

PART 4. REGISTRATION

R 456.1401 Types of registrations.

Rule 401. (1) The OSCC authorizes the following 3 types of registration:

- (a) cemetery
 - (b) fee exempt cemetery
 - (c) crematory
- (2) A cemetery operating a separate crematory on its grounds must obtain a separate registration for the cemetery and the crematory section of the cemetery.

R 456.1402 Validity; renewal; required.

Rule 402. (1) A registration issued pursuant to the act is valid from date of issue or July 1, whichever is later, to June 30 of the following year. Each cemetery must file a renewal application for a registration with the OSCC on or before June 1 of each year. Failure to receive a renewal form from the OSCC does not waive this requirement.

(2) A registration is required of each cemetery created, maintained and operated in Michigan, regardless of size or prior registration. The OSCC must register all cemeteries created, maintained and operated regardless of remaining available interment rights. Cemeteries exempt under MCL 456.530(1) will not be registered.

(3) Private family cemeteries created pursuant to MCL 128.111, 1875 PA 88, should notify the OSCC of their existence and location but do not need to register annually. The OSCC will keep a record of any known private family cemeteries.

R 456.1403 Registration renewal fees.

Rule 403. (1) The registration renewal fee required under MCL 456.531 must accompany any application for renewal.

(2) A \$10 per day late fee may be charged for all renewal applications submitted after June 1. Failure to pay an invoice for the late fee is a violation of the act and may result in administrative action including fines, suspension, or revocation.

(3) Consistent with MCL 456.530(2), a non-profit cemetery, 10 acres or less in size, with a burial prior to September 15, 1968, is exempt from the renewal fee under MCL 456.530. A renewal form is still required to be submitted on or before June 1 of each year.

(4) All fees, fines, charges, and assessments provided for under these rules will be submitted in a timely manner to the OSCC in the form of a check or money order made payable to: "State of Michigan – Cemetery," or by another method of payment that is acceptable to the commissioner.

R 456.1404 Pre-paid funeral and cemetery sales registration.

Rule 404. A person must not sell pre-paid cemetery merchandise or services unless that person complies with MCL 328.211 et seq., 1986 PA 255 and has provided the OSCC with proof of registration and an approved copy of the pre-paid escrow agreement.

PART 5. CEMETERY

R 456.1501 New cemetery application.

Rule 501. An application for a permit to create, maintain, and operate a new cemetery must contain at least all of the following:

- (a) The name and address of the owner or operator of the proposed cemetery.
- (b) The name and Michigan address of the resident agent of the proposed cemetery.
- (c) The name and address of the proposed cemetery.
- (d) The names, addresses, birth dates, social security numbers, and relationship to the owner of all proposed persons under MCL 456.529.

- (e) Approval from the local municipality to show need.
- (f) Selection of an entity formation statute to govern the registrant if the registrant did not form under the rural cemetery corporation act, 1869 PA 12, MCL 456.101 et seq., or the cemetery corporations act, 1855 PA 87, MCL 456.1 et seq.
- (g) Applicable entity documents, including but not limited to, bylaws, operating agreement, certificate of assumed name, articles of incorporation, articles of organization, articles of association, and partnership certificates.
- (h) Endowment and perpetual care trust agreement.
- (i) Physical plans, including documents required under R 456.1304.
- (j) Proof of all R 456.1503 requirements.
- (k) Resume of the person proposed to run the daily operations of the cemetery, including a crematory.
- (l) Pre-paid funeral and cemetery sales registration or application, if applicable.
- (m) Pre-paid escrow agreement, if applicable.
- (n) Health department approval.

R 456.1502 Investigation of Application and Applicant for a permit to establish a new cemetery, including a crematory.

Rule 502. (1) The OSCC will conduct a background investigation on an applicant. The OSCC will also use the information provided in the application and disclosure form as a basis for the investigation required under MCL 456.533. This does not limit the development of independent information to meet MCL requirements.

(2) The filing of an application by an applicant is considered specific consent to the performance of any investigation under MCL 456.533. The applicant waives all claims against the OSCC arising out of the investigation of the application.

(3) A misrepresentation or omission in the application or disclosure form is cause for the denial, suspension, or revocation of a permit by the commissioner.

(4) A person applying for a permit must update the application if there has been a change in any of the information.

(5) The permit application will require the person applying for the permit, and each affiliated person, to submit all of the following information and documentation on forms prescribed by the commissioner:

(a) The application for permit to establish a new cemetery or new crematory.

(b) Disclosure forms, in the manner and form prescribed by the commissioner.

(c) Requested information for all persons identified in MCL 456.533(2) to the extent known by the person applying for the permit.

(d) Other information and documentation as may be required by the OSCC to conduct the investigation required under MCL 456.533.

R 456.1503 New cemeteries.

Rule 503. (1) In determining community need for a proposed new cemetery as required under MCL 456.536 the OSCC may accept a survey of a 25-mile radius as a potential sales and service area to determine the type and number of burial rights available to the public in that area. In lieu of the survey the OSCC may rely on a township or community planning and development authorization as sufficient need for the cemetery in the proposed area.

(2) The OSCC will require the applicant for a new proposed cemetery to have title in fee simple to at least 40 acres of land before granting final approval. The commissioner may waive the presumptive requirement of 40 acres of land if sufficient evidence is provided from agencies such as department of community health, department of environmental quality, or local planning and control boards to determine a facility of less acreage is appropriate.

(3) A newly established cemetery for earth interment must not sell or assign burial rights in any areas of the cemetery until at least 2 acres of developed cemetery area for earth interment exists. The area must be located at the front or near the main entrance of the proposed cemetery.

(4) A newly established cemetery that sells interment rights must establish an endowment and perpetual care trust fund as required under MCL 456.536. The initial deposit into the endowment and perpetual care trust fund is not to be used against future deposit requirements.

PART 6. CHANGE OF CONTROL**R 456.1601 Certificate of approval for a proposed change of control application.**

Rule 601. (1) An application for a change of control of a cemetery must contain at least all of the following:

- (a) The name and address of the current owner or operator.**
- (b) The name and Michigan address of the proposed resident agent.**
- (c) The name and address of the proposed owner or operator.**
- (d) The name and address of the cemetery.**
- (e) The names, addresses, birth dates, social security numbers, and relationship to the proposed owner of all the proposed persons under MCL 456.529.**
- (f) Selection of an entity formation statute to govern the registrant if the registrant did not form under the rural cemetery corporation act, 1869 PA 12, MCL 456.101 et seq.; the cemetery corporations act, 1855 PA 87, MCL 456.1 et seq.; or the cremation companies act, 1915 PA 58, MCL 456.201 et seq.**

(g) Applicable entity documents, including but not limited to, bylaws, operating agreement, certificate of assumed name, articles of incorporation, articles of organization, articles of association, and partnership certificates.

(h) Endowment and perpetual care trust agreement.

(i) Merchandise trust agreement, if applicable.

(j) Physical plans, including documents required under R456.1303.

(k) Resume of the person proposed to run the daily operations of the cemetery, including a crematory.

(l) Pre-paid funeral and cemetery sales registration or application, if applicable.

(m) Pre-paid escrow agreement, if applicable.

(n) Health department approval.

(o) Purchase agreement to clearly identify sale and assets disposition.

(p) A sworn statement from the seller required under MCL 456.532(2)(b).

(q) Sworn statements from buyer and seller required under MCL 456.532(2)(d).

(r) The source, nature, and amount of consideration to be used in the sale or transfer of the cemetery.

(s) A sworn statement that discloses the regulated financial institution where the principal from the endowment and perpetual care trust accounts will be held in escrow for the 6 months required under MCL 456.532(2)(d) including an accompanying escrow agreement.

(2) A certificate for approval of a proposed change of control application must be completed any time there is a change in controlling interest, including member changes, share transfers, partnership agreement, or any other event or accumulation of events that results in change of control of the cemetery.

R 456.1602 Investigation of application and applicant for a certificate of approval for a proposed change of control.

Rule 602. (1) The OSCC will conduct a background investigation on an applicant. The OSCC will also use the information provided in the application and disclosure form as a basis for the investigation required under MCL 456.532.

(2) The filing of an application by an applicant is considered specific consent to the performance of any investigation under MCL 456.533. The applicant waives all claims against the OSCC arising out of the investigation of the application.

(3) A misrepresentation or omission in the application or disclosure form is cause for the denial, suspension, or revocation of a certificate by the commissioner.

(4) A person applying for a certificate is under a continuing obligation to update the application if there has been any change in any of the information.

(5) The certificate application will require the person applying for the certificate, and each affiliated person, to submit all of the following information and documentation on forms prescribed by the commissioner:

- (a) The application for certificate of approval of a proposed change of control.
- (b) Disclosure forms, in the manner and form prescribed by the commissioner.
- (c) Requested information of all persons identified in MCL 456.533(2).
- (d) Other information and documentation as may be required by the OSCC to conduct the investigation required under MCL 456.532.

PART 7. EARTH BURIALS AND ENTOMBMENTS

R 456.1701 Earth burials.

Rule 701. (1) A cemetery must not make an earth interment of non-cremated human remains unless a legally executed burial transit permit is received.

(2) A cemetery must make an interment immediately following the committal service or receipt of remains if it does not interfere with the dignity of any other committal service. If circumstances prevent an immediate interment, the cemetery must make reasonable efforts to notify the next of kin or authorized agent in writing. The notification must include the location of temporary storage.

(3) A cemetery must fill a grave within 24 hours following the interment. As soon as settling is reasonably complete and weather conditions permit, a cemetery must sod, seed, or adequately cover a grave with limestone chips, gravel, or other suitable material.

(4) The uppermost portion of the vault or any other burial container must be placed at least 12 inches below grade.

R 456.1702 Entombments.

Rule 702. (1) A cemetery must not make an entombment of non-cremated human remains unless a legally executed burial transit permit is received.

(2) A cemetery must entomb the remains and permanently seal the crypt immediately following the committal services or receipt of the remains.

(3) If circumstances do not permit immediate entombment following receipt of remains, the cemetery must make reasonable efforts to notify the next of kin or authorized agent in writing. The notification must include the location.

PART 8. ENDOWMENT AND PERPETUAL CARE TRUSTS

R 456.1801 Endowed and perpetual care trust funds requirements.

Rule 801. (1) Any regulated cemetery selling interment rights, unless exempt under MCL 456.530, must establish an endowment and perpetual care trust fund in compliance with MCL 456.536.

(2) Net Capital gains from the sale of an asset in the endowment and perpetual care trust fund must be considered a deposit to the principal or the corpus of the trust and as such must not be considered a part of income.

(3) The funds required under MCL 456.536(6) must be deposited in an account with a regulated financial institution, with trust powers in Michigan.

(4) Trust fund agreements and subsequent amendments to the trust fund agreements must be approved by the OSCC.

(5) The cemetery or the trustee must notify the OSCC, in writing, of all subsequent amendments to trust fund agreements within 30 days.

(6) All trust fund records must be available for inspection by the OSCC in Michigan.

(7) The cemetery must retain a copy of all MCL 456.536(8) withdrawal authorizations for a minimum of 7 years.

R 456.1802 Endowment and perpetual care trust agreement requirements.

Rule 802. (1) The endowment and perpetual care trust fund agreement must include reference to all of the following:

(a) The OSCC must have free access in Michigan to the books, papers, records and documents that relate to the endowment and perpetual care trust fund of the cemetery.

(b) The michigan prudent investor rule applies to all trust investments. Trust agreements cannot provide for any standard less than that found in the michigan prudent investor rule.

(c) Only trustee fees and costs of trustee may be paid from the principal of the trust.

(d) The OSCC must be notified 14 days prior to any change in trustee.

(e) No portion of the funds required to be in the trust may be used for salaries or other payments, directly or indirectly, of the person owning the cemetery, with the exception of services directly related to the provision of the endowment and perpetual care.

(f) The income and interest from the fund can only be paid to the entity in possession, management, operation, and control of the grounds and structures intended to benefit from the fund. The sole use of the income and interest from the fund is for the endowment and perpetual care of the cemetery specifically intended to benefit from the fund.

(g) Net capital gains are not to be considered part of the incometo the fund; however, they are considered excess amounts and may be applied to offset future deposit requirements.

(h) The trust must be governed by Michigan law.

(i) A trustee must not invest in life insurance policies on any person.

(j) A cemetery cannot direct the trustee to and the trustee must not invest in any company owned or operated, directly or indirectly, by a cemetery, its authorized agents, or its affiliated persons, or in loans to any persons connected with or employed by a cemetery or its agents.

(k) A trustee in the trustee's personal capacity shall not engage in a transaction with the trust funds that the trustee represents and shall not invest trust money in a company, corporation, or association with which the trustee is affiliated, other than as a bondholder or minority stockholder. A trustee in the trustee's personal capacity shall not personally derive a profit from the purchase, sale, or transfer of the trust's property.

(l) The trustee must be independent from the cemetery.

(2) If the cemetery chooses to direct the trustee in the investment of the funds, under MCL 456.536(4), the cemetery must first provide the OSCC with a certificate of proof of fiduciary liability insurance. The certificate must:

(a) Name the endowment and perpetual care trust as beneficiary.

(b) Allow the commissioner or the attorney general to file a claim against the policy.

(c) Be renewed and provided to the OSCC every 6 months.

(d) Provide coverage greater than or equal to 100% of the amount of trust funds the cemetery directs investment of.

(e) Be in a form acceptable to the commissioner.

(f) Provide that the funds are placed with a regulated financial institution with trusting powers even though the regulated financial institution is acting only as custodian.

(3) Each cemetery must be able to provide documentation of the fund interest, income, and principal.

R 456.1803 Notice of intent to move endowment and perpetual care funds for a directed trustee.

Rule 803. (1) A cemetery which directs trustee investments must comply with MCL 456.536(18).

(2) A regulated financial institution trustee must notify the OSCC, at least 7 days prior to moving trust funds to a successor trustee.

(3) A regulated financial institution trustee can provide notice to the OSCC for the cemetery.

(4) A trustee will provide other reports, reasonably requested by the OSCC.

R 456.1804 Endowment and perpetual care withdrawal.

Rule 804. (1) Any withdrawal must be requested in writing with a copy of the request retained by the cemetery. The writing must be in a form prescribed by the commissioner or must contain the name of the person requesting the withdrawal, the date, the amount, the specific purpose for the withdrawal, and a signature.

(2) A copy of all requests for withdrawal must be submitted with the annual report.

PART 9. ENDOWMENT AND PERPETUAL CARE FUND USE

R 456.1901 Endowment and perpetual care funds used for grounds upkeep.

Rule 901. A cemetery must use the income and interest from the endowment and perpetual care trust funds for the perpetual care of the cemetery including, but not limited to, the following:

(a) To maintain the grounds at regular intervals to assure an acceptable appearance.

(b) To keep the grounds free of trash and debris and provide trash receptacles.

(c) To keep A ponds, lakes, waterways, fountains, and other bodies of water on cemetery grounds reasonably free of trash and odors.

(d) To keep trees and shrubs trimmed at regular intervals.

(e) To keep undeveloped cemetery property screened by fencing or shrubs, or-mowed or maintained in an attractive manner.

(f) To keep A cemetery roads accessible and in reasonably good repair.

(g) To refill and level, as soon as reasonably possible, a grave that has settled.

(h) To reset and trim around grave markers or monuments as necessary.

(i) To immediately correct a dangerous condition in the cemetery.

R 456.1902 Endowment and perpetual care funds used for facility upkeep.

Rule 902. A cemetery must use the income and interest from the endowment and perpetual care trust funds for the perpetual care of the cemetery including, but not limited to, the following:

(a) To maintain a permanent type sign, at least 3 feet square in size, near the entrance containing the cemetery name, management contact information, and office location if the office is not located on the grounds.

(b) To keep the cemetery fence in good repair.

(c) To provide identifying features or section markers of durable material, placed permanently in the ground to identify the named or numbered sections of the cemetery, which must coincide with a cemetery map.

(d) To place a permanent lot survey marker in the ground within a reasonable distance of the grave that coincides with a cemetery section on the map.

(e) To be able to easily locate lot survey markers under normal weather conditions.

(f) To post or provide, in writing, a cemetery's rules and regulations, including grave decoration rules.

(g) To store maintenance equipment in the maintenance service areas when not in use.

R 456.1903 Endowment and perpetual care funds used for building upkeep.

Rule 903. Among other things, a cemetery must use the income and interest from the endowment and perpetual care trust funds to keep buildings, including a mausoleum, if applicable, in good repair.

R 456.1904 Endowment and perpetual care funds used for public accommodations.

Rule 904. Among other things, if public accommodations and rest rooms exist, the cemetery must use endowment and perpetual care trust fund income and interest to maintain facilities in a reasonable and acceptable manner.

PART 10. MERCHANDISE TRUST FUNDS

R 456.11001 Merchandise trust accounts required deposits.

Rule 1001. (1) When cemetery merchandise or services are sold to a purchaser, a vendor or an agent authorized by a vendor or acting on its behalf under an agreement or sales contract to sell cemetery merchandise or services must deposit, on or before the last day of the month following the month of collection, the following amounts to a merchandise trust account and maintain such deposits until such time as the cemetery merchandise or services are installed, delivered, performed, or terminated:

(a) One hundred thirty percent of the cost of each grave memorial that the vendor is obligated to furnish and install. A vendor representing more than 1 memorial manufacturer may take the average cost of all manufacturers the vendor represents in determining the 100% of cost if all manufacturers meet the specifications as contained in the purchase or sales agreement. At all times the total amount required to be on deposit in the merchandise trust account for obligations concerning grave memorials must be not less than the current cost of all such obligations.

(b) The deposit for the proceeds received from the sale of each burial vault must be as required under MCL 456.536(10). At all times the total amount required to be on deposit in the merchandise trust account for obligations concerning burial vaults must be not less than 100% of the current costs of all such obligations.

(c) The greater amount of either 100% of the proceeds received from the sale of cremations, grave openings and closings or \$100.00 for each cremation, grave opening and closing that the vendor is obligated to furnish.

(2) A vendor may withdraw from the merchandise trust account only after the cemetery merchandise or services are delivered, stored, installed, performed, or terminated. The vendor may withdraw from the merchandise

trust account only the current cost of grave memorials which are ordered by him and stored by the vendor or cast and stored by a memorial company. He may withdraw the balance only when the grave memorial is installed. A vendor may withdraw from the merchandise trust account only the current cost of a burial vault if he orders and stores the vault. He may withdraw the balance only when the vault is installed.

(3) A vendor storing grave memorials or burial vaults until time of need must insure the memorials and vaults against fire and theft in an amount in excess of their total replacement cost. A current certificate of insurance coverage must be filed with the OSCC annually.

(4) A vendor must make deposits to the merchandise trust account as required by the act and when he does any of the following:

(a) Makes a pre-need cash sale.

(b) Sells the sale contract to a bank or lending institution.

(c) Receives prorated payments. The deposit required on a prorated payment must be as provided:

(i) The deposit required on a prorated payment received from the sale of a grave memorial must be the current cost divided by the total sales price times the proceeds received.

(ii) The deposit required on a prorated payment received from the sale of a burial vault is the greater of either 70% of each payment made by a purchaser or 130% of the current cost of the burial vault divided by sales price times proceeds received. Total deposit upon completion of all payments received must not be less than \$100.

(iii) The greater amount of either 100% of the proceeds received from the sale of cremations, grave openings and closings or \$100.00 for each cremation, grave opening and closing that the vendor is obligated to furnish.

R 456.11002 Pre April 11, 1974 merchandise trust accounts.

Rule 1002. (1) A vendor having a merchandise trust, escrow or other depository account pre-dating April 11, 1974 must take appropriate measures to demonstrate annually to the satisfaction of the OSCC the assurance of fiduciary responsibility in the maintenance of the account and the financial integrity of the account to meet the current cost of the merchandise for which deposits were made to the pre-existing merchandise trust. If the total amount in a pre-existing account is inadequate to meet current obligations, the vendor shall present to the commission a satisfactory plan of good faith affirmative action to restore the shortage. R 456.11001 does not apply to any contractual obligations entered into prior to April 11, 1974 except for withdrawal requirement as stated in subrule (2).

(2) A vendor continuing a pre-existing merchandise trust, escrow, or other depository account shall furnish the OSCC an annual accounting on forms acceptable to the commissioner and a certification that the total deposits are adequate to meet the total current cost of the merchandise for which

deposits were made to the pre-existing merchandise trust, escrow, or other depository account.

(3) Instead of complying with subrules (1) and (2) a vendor having a pre-existing merchandise trust, escrow or other depository account may close the account and deposit its assets in a merchandise trust subject to all the terms and conditions of the trust except that the vendor is not required to deposit an amount in excess of that necessary to meet current cost of total contractual obligations. If the amount deposited is inadequate to meet current obligations, the vendor must present to the commissioner a satisfactory plan of good faith affirmative action to restore the deficit. The election in this section shall be made in writing with a copy to the commissioner.

R 456.11003 Merchandise or service sales.

Rule 1003. The registrant must ensure that the following are properly trusted or escrowed as required:

(a) Preneed contracts for cemetery merchandise or services executed prior to January 1, 2005, no matter when payments are received, must be trusted as required under the prior laws and rules. The amounts trusted must remain in trust until such time as the cemetery merchandise or services are installed, delivered, performed or terminated. Amounts trusted for preneed contracts executed prior to January 1, 2005, must not be removed from trust and placed with an escrow agent required under the Prepaid Funeral and Cemetery Sales Act.

(b) Preneed cemetery merchandise contracts, installment or otherwise executed subsequent to December 31, 2004, must have their proceeds escrowed with an escrow agent and maintained in escrow until such time as the cemetery merchandise is installed or delivered, or until the contract is revoked or cancelled and refunded.

(c) At need installment contracts for cemetery merchandise must be trusted as required under the prior laws and rules regardless as to when the contract was executed. The amounts trusted must remain in trust until such time as the cemetery merchandise is installed, delivered, or terminated. Amounts trusted for at need installment contracts must not be removed from trust and placed with an escrow agent required under the Prepaid Funeral and Cemetery Sales Act.

(d) Prepaid contracts for cemetery merchandise or services executed subsequent to December 31, 2004, must be escrowed as required under the Prepaid Funeral and Cemetery Sales Act.

R 456.11004 Merchandise trust fund agreements.

Rule 1004. (1) All cemeteries that entered into contracts for merchandise or services after October 30, 1972 and prior to January 1, 2005, must establish and maintain a merchandise trust account. A vendor must submit a copy of the merchandise trust fund agreement to the OSCC for approval.

In addition to MCL 456.536 and R 456.11001 requirements, a merchandise trust agreement must provide all of the following:

(a) That deposits made to the merchandise trust account must be invested by the trustee only in accordance with the trust agreement. All trust investments and agreements cannot provide for any standard less than that found in the michigan prudent investor rule. Additionally, funds must not be invested in life insurance policies on any person; or invested in a company owned or operated by a cemetery or its authorized agent; or in loans to any person directly connected with or employed by a cemetery or its agents.

(b) That deposits to the merchandise trust account must be certified by an officer of the vendor or agents authorized by a vendor to act in its behalf.

(c) That withdrawals from the merchandise trust account must be made on the presentation to the trustee of an affidavit certified by the vendor that the cemetery merchandise or services have been installed, delivered, performed, or terminated. Withdrawals must not be made in excess of the allocated deposit and vendor must so certify. The trustee must retain the affidavit as a permanent part of the trust records and the vendor must keep a copy.

(d) That at least an annual accounting period must be established and the trustee must furnish to the vendor an accounting, which must contain the following information:

(i) A separate listing of all assets held by cost and fair market value with totals.

(ii) Total deposits made to the trust account during the reporting period and total to date.

(iii) Total withdrawals from the merchandise trust account during the reporting period and total to date.

(iv) A certification by the vendor to the trustee that the total assets of the merchandise trust account are at least equal to the total obligations as determined by the current deposits as required by subrule (1) of R 456.11001.

(v) Net income including ordinary income and capital gains paid to vendor during the accounting period.

(e) That at any time the OSCC makes a determination that the merchandise trust account is underfunded to meet the total current obligations, the commissioner may order the vendor to deposit all future trust income, as of the date of the order, to the principal of the merchandise trust account until the total assets of the corpus of the merchandise trust account equals the total obligations as determined by the current deposits as required by subrule (1) of R 456.11001.

(f) That the purpose of the merchandise trust account is to protect the purchaser and the OSCC may inspect the records of the vendor and trustee relating thereto.

(g) That all records pertaining to the merchandise trust account must be kept in Michigan and must be open to inspection by the OSCC upon request.

(h) That any amendment to the merchandise trust account agreement is reported to the OSCC in writing.

(i) That the OSCC must be notified in writing of any change in trustee.

(j) The trust must be governed by Michigan Law.

(k) The trustee of the fund must be a fiduciary who is a person with the authority to act as a fiduciary under the estates and protected individuals code, 1998 PA 386.

(2) Assets of the merchandise trust funds established by a vendor or its authorized agents must be deposited with a regulated financial institution located in this state.

PART 11. CREMATORY

R 456.11101 New crematory application.

Rule 1101. (1) An application for permit to create, maintain, and operate a new crematory must contain at least all of the following:

(a) The name and address of the owner or operator of the proposed crematory.

(b) The name and michigan address of the resident agent of the proposed crematory.

(c) The name and address of the proposed crematory.

(d) The names, addresses, birth dates, social security numbers, and relationship to the owner of all the proposed persons under MCL 456.529.

(e) Department of environmental quality, air quality division permit to install as required by rule 201(1), promulgated pursuant to part 55, air pollution control, of the natural resources and environment protection act, 1994 PA 451.

(f) Approval from the local municipality to show need.

(g) Title to the land, consistent with R 456.1503 and R 456.11103.

(h) Selection of the cremation companies act, 1915 PA 58, MCL 456.201 et seq., to govern the registrant if the registrant did not form under the cremation companies act.

(i) Applicable entity documents, including but not limited to, bylaws, operating agreement, certificate of assumed name, articles of incorporation, articles of organization, articles of association, and partnership certificates.

(j) Resume of the person proposed to run the daily operations of the crematory.

(k) Pre-paid funeral and cemetery sales registration or application, if applicable.

(l) Pre-paid escrow agreement, if applicable.

(m) Health department approval.

(2) The application and the applicant are subject to a MCL 456.533 investigation and R 456.1502.

R 456.11102 Cremations.

Rule 1102. (1) A crematory must not cremate remains unless it has:

(a) A legally executed burial transit permit authorizing the cremation.

(b) A written authorization from a person representing himself as being legally qualified to make the authorization and who in the opinion of the crematory authority is legally qualified to make the authorization under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 et seq.

(2) A crematory must cremate remains as soon as reasonably possible, but if cremation does not take place within a reasonable time after receipt of the remains, the crematory must make reasonable efforts to notify the next of kin or authorized agent in writing. The notification must include the location of temporary storage.

(3) A crematory must identify cremated remains with the name of the deceased and date of cremation on record.

(4) A crematory at all times must handle cremated remains with dignity, respect, and utmost care.

R 456.11103 Crematory land.

Rule 1103. A crematory must be established on land owned in fee simple by the crematory.

R 456.11104 Registration.

Rule 1104. (1) Each crematory must register with the OSCC. A facility with more than one incinerator is only required to have one crematory registration, but each incinerator must have a DEQ permit to install or waiver on file with the OSCC.

(2) For a minimum of 3 years, a crematory must keep a record of human remains cremated, including name of deceased, date human remains were received by the crematory, date cremated, who performed the cremation, who transferred the human remains to the crematory, and where the cremated human remains are interred, entombed, inurned, or to whom they were returned.

(3) A crematory that ceases operation must notify the OSCC immediately.

PART 12. AUDIT

R 456.11201 Audit records.

Rule 1201. (1) When an audit or examination is conducted of a cemetery or its trust or escrow funds by the OSCC, an audit report must be furnished to the party audited. The audit report must contain the following information:

- (a) Change in trust fund balance for the period of audit.
 - (b) Required deposits.
 - (c) Excess or shortage, if any.
- (2) Deposit shortages must be paid within 30 days from the date of the audit report unless other arrangements are authorized in writing by the commissioner. Certification of the deposits must be forwarded to the OSCC.
- (3) A party in disagreement with an OSCC audit report may appeal for an adjustment by:
- (a) Furnishing the commissioner with the party's contention of adequate proof of error.
 - (b) Requesting a conference.
 - (c) Requesting a formal hearing.
- (4) A cemetery must have available in its registered office for examination by the OSCC, all records pertinent to the maintenance, establishment, and reporting of its required trust funds.

R 456.11202 Audit fee.

Rule 1202. An invoice for the audit fee will be sent with the audit report. The cemetery must pay the audit fee within 60 days of the date of the invoice, unless other arrangements are authorized in writing by the commissioner.

R 456.11203 Financial statements.

Rule 1203. (1) Upon request of the OSCC, for assisting in the conduct of an audit, financial statements may be required for an audit or examination of the cemetery or its trust or escrow funds.

(2) Instead of a formal audit by the OSCC, the OSCC may enter into an agreement with a cemetery to allow a licensed Michigan CPA engaged by the cemetery to render an opinion under generally accepted accounting practices to the financial statements of the cemetery entity.

PART 13. ANNUAL REPORT

R 456.11301 Annual reports.

Rule 1301. (1) A cemetery must submit each year for examination by the OSCC, an annual report, on forms provided by the OSCC, all information considered necessary by the commissioner. The report must be submitted by June 30 unless an extension of up to 90 days is granted by the commissioner upon written request of the cemetery as specified in subsection 2.

(2) A registrant must submit a written request, on the form provided by the commissioner, for extension of the due date for the annual report. The OSCC must receive the extension request before June 15 of the year

following the report year. The commissioner may grant one extension for not more than 90 days.

(3) A registrant must submit all reports by June 30 of the year following the report year, unless an extension has been granted.

R 456.11302 Records of future obligations.

Rule 1302. The cemetery must maintain, and supply upon request of the OSCC, a supporting detailed inventory of all contractual liabilities and obligations for future performance to relate to the merchandise trust fund analysis as presented in the annual report. The cemetery must supply a detailed inventory of all contractual liabilities and obligations for future performance for any period the OSCC considers necessary for examination, review, or audit.

R 456.11303 Standard reporting year.

Rule 1303. Annual reports must be based on a calendar year beginning January 1 and ending December 31, unless otherwise approved in writing by the commissioner.

R 456.11304 Internal controls purpose.

Rule 1304. The procedures of the internal control system referred to in MCL 456.536(12)(d) should be designed to ensure at least all of the following:

- (a) That the trust assets of the registrant are safeguarded.
- (b) That the financial records of the registrant are accurate and reliable.
- (c) That the transactions of the registrant are performed only in accordance with the specific authorization.
- (d) That the transactions are recorded adequately.
- (e) That accountability for trust funds is maintained.
- (f) That only authorized personnel have access to trust assets.
- (g) That recorded trust assets are compared with actual trust assets at reasonable intervals and appropriate actions are taken with respect to any discrepancies.
- (h) That the functions, duties, and responsibilities are appropriately segregated and performed in accordance with sound practices by competent, qualified personnel and that no person is in a position to perpetuate and conceal errors or irregularities in the normal course of their duties.

R 456.11305 CPA requirements for annual report.

Rule 1305. (1) The cemetery must engage a licensed Michigan CPA who must perform sufficient test work to render an opinion as to compliance with the provisions set forth in the annual report.

(2) The cemetery must authorize the CPA to release the CPA work papers relating to the cemetery annual report to the OSCC for review upon request.

PART 14. SALES AND ADVERTISING**R 456.11401 Sales of interment rights, cemetery merchandise, or services.**

Rule 1401. (1) A contract or agreement in which payments are to be made as consideration toward the purchase or option to purchase of interment rights, cemetery merchandise or services and which is signed by a purchaser and a vendor, constitutes a sale as referred to in subsections (6), (9), and (10) of MCL 456.536.

(2) If a cemetery uses sales contracts or purchase agreements that include interment rights, burial vaults, grave memorials, or cemetery services, payments made by a purchaser in event of a death of either spouse shall apply first on the amount shown as charged for interment rights.

(3) All vendors must comply with the home solicitation sales act, 1971 PA 227, MCL 445.111 et seq., if sales are made at residences of purchasers.

(4) The cemetery must comply with the pre-paid funeral and cemetery sales act, 1986 PA 255.

R 456.11402 Proceeds from sales.

Rule 1402. Proceeds received from a sale of interment rights, cemetery merchandise, or services is the total of all funds received or credited to the vendor as payments from a purchaser or lending institution on behalf of a purchaser before an amount is deducted as security for an uncollectible account or an amount is deducted which is due the trust funds by contract which is charged the purchaser in addition to the purchase price. An interest or carrying charge payment or sales tax must not be considered part of proceeds from sales if the interest, carrying charge, or sales tax is separately stated in the purchase agreement and is recorded separately as a payment is made.

R 456.11403 Sale or resale of burial, entombment, or columbarium rights owned by a person other than the registered cemetery.

Rule 1403. (1) A person engaged in the sale or reselling of burial, entombment, or columbarium rights owned by a person other than a cemetery, must deposit the greater of \$20 or 15% of all proceeds received from the sale of those rights into the endowment and perpetual care trust fund of the cemetery where the burial, entombment, or columbarium right exists.

(2) Each registrant is responsible for maintaining accurate records of the disposition of human remains, and to ensure compliance under MCL 456.536(7) for burial, entombment, or columbarium rights must:

(a) Retain a specific record of ownership of burial rights, entombment rights, or columbarium rights, and the transfer of those rights to another person;

(b) Handle the processing of the deposit into the endowment and perpetual care trust fund of the cemetery where the burial, entombment, or columbarium rights exist when the funds are presented by the person transacting the sale or resale;

(c) Upon receipt of the required endowment and perpetual care fund deposit amount from the person involved in the sale or resale, issue a new certificate, deed, or other customary document to the new owner of the burial, entombment, or columbarium rights evidencing the rights;

(d) Provide a receipt to the person involved in the sales transaction for the deposit amount;

(e) Retain a copy of a bill of sale or other evidence of a sales transaction or transfer of burial, entombment, or columbarium rights by a person other than a cemetery when the registrant is presented with a request to update rights ownership information.

(3) A cemetery or registrant may:

(a) Refuse to reissue a certificate, deed, or other customary document to the purchaser or new owner evidencing the rights to burial, entombment, or columbarium if the greater of \$20 or 15% of sale proceeds are not presented by the person engaged in the sale or resale of the rights.

(b) Require a bill of sale or other evidence of a sales transaction containing the sales price from which the deposit amount to the endowment and perpetual care trust fund can be calculated.

(c) Charge a reasonable administrative fee, not to exceed \$100 or another amount determined to be reasonable by the commissioner, to:

(i) update records;

(ii) process the deposit to the endowment and perpetual care trust fund;

(iii) provide a receipt for the deposit amount; and

(iv) reissue a certificate, deed, or other customary document showing proof of rights to the new owner.

(d) Forego the deposit amount to the endowment and perpetual care trust fund when there is a request to transfer burial, entombment, or columbarium rights to an immediate family member of the current owner of the rights and evidence of the family relationship is shown through birth, marriage, or other supporting records presented to the registrant.

R 456.11404 Sales tactics.

Rule 1404. An organization or person selling interment rights, cemetery merchandise, or services, pursuant to R 456.11401 must:

(a) Not use a sales presentation or advertisement which conceals or misstates a material fact.

(b) Fully disclose to a purchaser in a conspicuous manner on the purchase agreement or contract that there will be a future cost for

interment fees or installation of cemetery merchandise unless these costs are included in the sales price and so stated on the contract or agreement.

(c) Not mislead prospects to believe that the seller is in any way connected with an organization other than the entity which is selling the interment rights, cemetery merchandise, or services.

(d) Not offer free interment rights, installation, or care deposits to an organization, group, or person if the free offer is accompanied by a requirement that other interment rights, cemetery merchandise, or services be purchased or that the free offer is accompanied by the option of purchase of adjoining interment rights at a price which is inflated above regular comparable prices within the cemetery.

(e) Not sell interment rights supposedly at a substantial discount where in fact the actual price of the rights has been increased to cover the supposed discount.

(f) Not represent that the price of interment rights to a purchaser is a special price to him only, if another purchaser would be given the same price.

(g) Not use sales presentations which lead a purchaser to believe that interment rights, cemetery merchandise, or services are being acquired at no cost and that the money required to be contributed by the purchaser is for maintenance or other expenses, whereas a different result follows.

(h) Not induce a purchaser to buy interment rights with promises or representations that future price increases will enable a purchaser to realize profits from the sale of his rights.

(i) Not promise, represent, or agree as a condition of an interment right's sale, to resell for, or repurchase from a purchaser, any right, unless the terms of resale or repurchase are in writing in the purchase contract or agreement.

(j) Not sell interment rights unless the specific location and description of the rights coinciding with the official platted records of the cemetery is specified in the sales agreement, or the specific location and description is waived in writing by the purchaser.

(k) Not sell interment rights in an earth interment section which is not completed for interment including lawn and landscaping, unless there is a comparable section completed for interment including lawn and landscaping in the same cemetery that is available at no additional cost to the purchaser in case of need, to which the purchaser agrees to transfer.

(l) Not sell interment rights in an earth interment section which is not a developed cemetery area for earth interment, 48 months after the date of the first sale of rights in such section. If the section is not developed by that date, except for a state of emergency declared by federal or state executive branch or by judicial decree, all moneys paid by the purchaser must be refunded on written request by the purchaser.

(m) Not take as a down payment a credit or debit card, an electronic funds transfer, a negotiable instrument or other instrument, device, or means that

authorizes the immediate transfer of funds, unless such payment is for immediate collection or transfer.

(n) Not pay the down payment for the purchaser, or make an agreement with the purchaser that the down payment can be paid at a later date, unless the down payment is part of a retail installment agreement. This practice is commonly known as "fronting a sale".

(o) Not present a sales presentation and obtain purchaser's signature to a sales contract if the purchaser cannot read or speak the language the presentation and contract are presented unless there is a disinterested person present who can explain fully to the purchaser what he is buying. The name and address of the disinterested person must appear in his handwriting somewhere on the contract.

R 456.11405 Sales in incomplete structures.

Rule 1405. (1) A vendor who sells an interment right in a structure which is not then completed for interment must:

(a) Stipulate in the sales agreement a specific period of time within which the structure must be completed and ready for interment which must be not more than 4 years after the date of the sales agreement, and that if the structure is not completed by that date, except for a state of emergency declared by federal or state executive branch or by judicial decree, all moneys paid by the purchaser pursuant to the agreement must be refunded upon request of purchaser.

(b) Determine the estimated total construction cost of the structure.

(c) Deposit all proceeds, less the required endowment and perpetual care trust fund deposit, in a special construction trust fund in a bank or trust company located in this state within 30 days after the date of the payment.

(d) Obtain a performance bond from which any refunds, required under MCL 456.536a, can be made.

(2) Withdrawals from the construction trust fund can be made only to pay current construction costs as the construction of the structure progresses to completion. Upon completion, as described in R 456.11407, any undisbursed funds including earned income may be withdrawn from the construction trust fund.

(3) All vendors must submit to the OSCC for approval, and before such sales are made, the following:

(a) A copy of contracts or purchase agreements.

(b) A copy of the construction trust agreement.

(c) Documents as required by R 456.1304.

(d) The estimated cost of the structure, including features and embellishments.

(e) The estimated amount of proceeds to be derived from the sale of the interment rights.

(f) A copy of sales brochures, promotional pamphlets, and artist's rendering of the proposed structure if such items are used in the sales program.

(g) A copy of all proposed sales advertising or radio and television scripts used in these sales promotions.

(h) A copy of the performance bond.

R 456.11406 Sales in undeveloped areas.

Rule 1406. (1) A vendor who sells or assigns an interment rights in any undeveloped part of the cemetery must:

(a) Stipulate in the sales agreement a specific period of time within which the structure must be completed and ready for interment which must be not more than 4 years after the date of the sales agreement, and that if the structure is not completed by that date, except for a state of emergency declared by federal or state executive branch or by judicial decree, all moneys paid by the purchaser pursuant to the agreement must be refunded upon request of purchaser.

(b) Deposit all of the proceeds, less the required endowment and perpetual care trust fund deposit, received from the sales in a special trust fund under a written trust agreement in a bank or trust company located in this state within 30 days after the date of the payment. The trust fund must be designated as a cemetery development trust fund, naming the new area.

(c) Submit a copy of the written trust agreement to the OSCC for approval.

(d) Obtain a performance bond from which any refunds can be made.

(2) Withdrawals from the development trust fund can be made only to pay current development costs as the development progresses to completion. Upon completion, as described in R 456.11407, any undisbursed funds including earned income may be withdrawn from the development trust fund.

(3) All vendors must submit to the OSCC for approval, and before such sales are made, the following:

(a) Estimated cost of the development, including features and all embellishments.

(b) Documents required by R 456. 11304.

(c) A copy of sales brochures, promotional pamphlets, and artist's rendering of the proposed developed area if such items are used in the sales programs.

(d) A copy of all proposed sales advertising or radio and television scripts used in these sales promotions.

(e) A copy of the performance bond.

R 456.11407 Sales of undeveloped turf top crypt section.

Rule 1407. (1) A vendor selling turf top crypts in an area that is not developed or ready for interments must:

(a) Stipulate in the sales agreement a specific period of time within which the crypts must be completed and ready for interment which must be not more than 4 years after the date of the sales agreement, and that if the area is not completed by that date, except for a state of emergency declared by federal or state executive branch or by judicial decree, all moneys paid by

the purchaser pursuant to the agreement must be refunded upon request of purchaser.

(b) Deposit all of the proceeds, less the required endowment and perpetual care trust fund deposit, received from each crypt sold into a special trust fund, under a written trust agreement, in a bank or trust company located in this state within 30 days after the date of the payment. The trust fund must be designated as a cemetery development trust fund, naming the new area.

(c) Submit a copy of the written trust agreement to the OSCC for approval.

(d) Obtain a performance bond from which any refunds can be made.

(2) Withdrawals from the development trust fund can be made only to pay current development costs as the development progresses to the completion. Upon completion, as described in R 456.11407, any undisbursed funds including earned income may be withdrawn from the development trust fund.

(3) Vendors contemplating selling in an undeveloped turf top crypt area must submit to the OSCC the following information before sales are made:

(a) Estimated cost of the development, including features and all embellishments.

(b) Documents required by R 456. 11304.

(c) A copy of sales brochures, promotional pamphlets, and artist's rendering of the proposed developed area if such items are used in the sales programs.

(d) A copy of all proposed sales advertising or radio and television scripts used in these sales promotions.

(e) A copy of the performance bond.

R 456.11408 Completion requirements.

Rule 1408. (1) For any new cemetery area for earth interment vendor will make deposits to the development trust fund until the commissioner declares in writing the area is a developed cemetery area for earth interment. The OSCC will make an inspection within 30 days after receipt of a written request from the vendor. If the OSCC does not inspect within 30 days, the vendor may terminate deposits to the development trust fund and may withdraw any funds remaining in development trust fund. The commissioner must approve or disapprove the area as a developed cemetery area for earth interment within 30 days of inspection and the commissioner's failure to do so in writing within 30 days of inspection constitutes approval of the area.

(2) For any new cemetery area other than for earth interment vendor will make deposits to the development trust fund until the commissioner declares in writing the area is a developed cemetery area other than for earth interment. The OSCC will make an inspection within 30 days after receipt of written request from the vendor. If the OSCC does not inspect within 30 days, the vendor may terminate deposits to the development trust fund as required under subrule (5) and may withdraw any funds remaining

in development trust fund. The commissioner must approve or disapprove the area as a developed cemetery area other than for earth interment within 30 days of inspection and the commissioner's failure to do so in writing within 30 days of inspection constitute approval of the area.

R 456.11409 Permitting violations of R 456.11403.

Rule 1409. A cemetery owner or operator that knowingly permits a person under employment, contract, or sales control, either directly or indirectly, to violate any provision of R 456. 11403 is also guilty of the same violation.

R 456.11410 Sales contracts or agreements for at need sales.

Rule 1410. (1) Purchase agreements or sales contracts made with a purchaser of grave memorials must contain at least the following descriptive information:

- (a) Size of memorial.
- (b) Material and specifications.
- (c) Number of vases.
- (d) Type of base.

(2) Purchase agreements or sales contracts made with a purchaser of burial vaults must contain a product description including the product construction material.

R 456.11411 Advertising.

Rule 1411. Only a facility or person registered with the OSCC as a cemetery may advertise for cremation services. Pre-paid funeral and cemetery sales registration is not sufficient to advertise cremation services, unless the advertiser is also registered as a cemetery.

R 456.11412 Violation of MCL 339.1812(2).

Rule 1412. Any violation of MCL 339.1812(2) is prima facie evidence of a violation of the Cemetery Regulation Act.

PART 15. ABANDONED CEMETERIES

R 456.11501 Action.

Rule 1501. The commissioner has the authority to enter into a memorandum of understanding, or other agreement, with any agency or municipal corporation to facilitate cooperation of the transfer and care of abandoned cemeteries as circumstances dictate.

R 456.11502 Notification.

Rule 1502. (1) Any party filing an action involving an abandoned cemetery must notify the OSCC in writing.

(2) Any registrant aware of an abandoned, or possibly abandoned, cemetery must notify the OSCC in writing of the cemetery's location.

R 456.11503 Determining a cemetery is abandoned.

Rule 1503. After reviewing the totality of the circumstances and consulting with the municipality in which the cemetery resides, the commissioner may determine a cemetery has been abandoned.

R 456.11504 Endowment and perpetual care fund transfer.

Rule 1504. Any endowment and perpetual care fund existing when a municipality takes over care or ownership of any abandoned cemetery must be transferred to the municipality now in possession of the cemetery.

PART 16. DISCIPLINARY ACTIONS AND HEARINGS

R 456.11601 Allegation of violation.

Rule 1601. An allegation of violation against a person may be filed in writing and in a form acceptable to the commissioner.

R 456.11602 Investigation or audit; disciplinary action.

Rule 1602. The OSCC will determine if an allegation requires investigation or audit. If the OSCC determines an investigation or audit is necessary the following will occur:

(a) The OSCC will refer an allegation for an investigation or audit.

(b) If it is determined through an investigation or audit that a person violated the act or these rules, then the commissioner may initiate disciplinary action.

R 456.11603 Appearance; effect; service.

Rule 1603. (1) An attorney appearing in a matter before the OSCC must file an appearance identifying his or her client and the matter in which the attorney will appear.

(2) A person represented before the OSCC by an attorney or representative under these rules will be bound by the representations of the attorney or representative.

(3) The OSCC will serve the party and attorney of record for a party.

(4) A respondent may represent himself or may be represented by an attorney.

R 456.11604 Response to a notice of intent.

Rule 1604. Response to a notice of intent as described in MCL 456.539 must be in writing and signed.

R 456.11605 Stipulation.

Rule 1605. The parties named in a formal complaint may settle the matter by stipulation with the approval of the commissioner.

R 456.11606 Formal Complaint; compliance conference.

Rule 1606. A respondent to a formal complaint may request an informal compliance and settlement conference with the OSCC to show compliance and attempt a settlement of the formal complaint prior to a formal hearing.

R 456.11607 Contested case hearing proceedings.

Rule 1607. All proceedings related to contested cases will be conducted in accordance with the administrative procedures act, 1969 PA 306, MCL 24.201 et seq., except as otherwise provided in the act.

R 456.11608 Hearing Officers.

Rule 1608. When a contested case hearing is required the commissioner will request that SOAHR assign a hearing officer.

R 456.11609 Proposals for decision; filing of exceptions.

Rule 1609. (1) Following the hearing, a copy of the proposal for decision, findings of fact and conclusions of law prepared by the hearing office appointed by SOAHR will be forwarded to the parties.

(2) Within 15 days of the service of the proposal for decision, a party may file exceptions to the proposal for decision with the commissioner in writing, stating the findings of fact or conclusions of law to which exception is taken. Oral argument will not be granted, except upon direction of the commissioner.

(3) The commissioner will review the hearing record, the proposal for decision, findings of fact, conclusions of law, and any exceptions filed and will issue a final decision unless the commissioner determines further proceedings are necessary.

(4) The commissioner must review and grant or deny any request for a rehearing.