

**STATE OF WISCONSIN  
CEMETERY BOARD**

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<b>IN THE MATTER OF RULE-MAKING</b>	<b>:</b>	<b>REPORT TO THE LEGISLATURE</b>
<b>PROCEEDINGS BEFORE THE</b>	<b>:</b>	<b>CHS. CB 3 - 5</b>
<b>CEMETERY BOARD</b>	<b>:</b>	<b>CR 12-021</b>

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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS:**

None.

**III. FISCAL ESTIMATE AND EIA:**

The Fiscal Estimate and EIA is attached.

**IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

The purpose of this proposal is to implement the transfer of authority necessitated by 2007 Wis. Act 174 by repealing chs. SPS 52 to 54 and creating chs. CB 3 to 5. The proposal transfers from the Department of Safety and Professional Services to the Cemetery Board the authority to regulate: (1) warehouses that store cemetery merchandise sold under a preneed sales contract; (2) changes of trustees for care and preneed trust funds; and (3) alternative care fund investments. The administrative code provisions governing those areas are currently located in chs. SPS 52 to 54.

The proposal essentially changes titles and numbering in existing rules. The proposed rules primarily amend those chapters to reflect the transfer of regulatory authority and to update other non-substantive information.

Proposed ch. CB 4 adds some provisions that are closely related to those already in effect. First, new s. CB 4.015 defines “financial institution,” to have the meaning set forth in s. 705.01 (3), Stats. That definition already appears in s. 157.19 (1), Stats., and applies to all of s. 157.19, Stats., which is the enabling statute for the rules set forth in current ch. SPS 53 and proposed ch. CB 4. The Cemetery Board adds this definition to the existing rules for increased clarity as to what constitutes a financial institution within the meaning of that chapter.

Existing rules require an affidavit from only the transferee financial institution for changes of trustee of care funds or preneed trust funds. Sections SPS 53.03 (1) (d) and (2) (d). The sole substantive change in this proposal would require an affidavit from the transferor financial institution as well in ss. CB 4.03 (1) (e) and (2) (e). The transferor’s affidavit must confirm that all deposits into the funds to be transferred were timely, and that there have been no

withdrawals of the principal. This requirement will ensure that the trustee change is not for purposes of hiding impropriety in the transferor institution's management of the funds, and will further the goal of s. 157.19 (d), Stats., to protect the rights and interests of the beneficiaries of both types of trust funds.

Finally, given the Cemetery Board's quarterly meeting schedule, full-board determinations of an application for a warehouse to store merchandise sold under a pre-need sales contract or a request to change the trustee of a care or pre-need trust fund within 60 days of receipt, as required by current s. SPS 53.02 (4), may not be feasible. To facilitate timely determinations of such requests, proposed rule ss. CB 3.02 (3) and CB 4.02 (4) provide for determinations by the Board's designee if necessary.

**V. SUMMARY OF PUBLIC COMMENTS AND THE SECTION'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:**

The Cemetery Board held a public hearing on March 13, 2012. No testimony was received at the hearing, nor did the Board receive any written comments.

On its own motion, the Board inserted the phrase "or its designee" after "board" in the first sentence of s. CB 3.02 (3). That insertion renders consistent the process for the approvals described in ss. CB 3.02 (3) and CB 4.02 (4).

**VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

**Comment 5.a.:** In s. CB 4.03 (1) (d) (in SECTION 9) and s. CB 4.03 (2) (d) (in SECTION 10), what period of time would be considered "timely"? Also in both provisions, the "that the principal has never withdrawn" should be replaced by "that the principal has *not been* withdrawn". [Emphasis added.]

**Response:** Accepted in part, rejected in part. The Cemetery Board declines to define the word "timely". In the relevant rules, "timely" refers to time periods that are specified elsewhere in law. The definition of what those time periods are is beyond the scope of this rule.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

**VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:**

These rules will not affect small businesses fiscally or economically, as they recreate, pursuant to a legislative transfer of authority, administrative rules that have been in effect for many years. For that reason, review by the Small Business Regulatory Review Board was unnecessary. The regulatory flexibility analysis for this final draft of the proposal has not changed from the analysis applicable to the initial draft.