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Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XIII. Cemetery Industry

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Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XIII. Cemetery Industry

Chapter 1. General Provisions

§101. Authority

A. These rules and regulations are adopted and promulgated by authority of, and in accordance with, the Administrative Procedure Act, R.S. 49:951-966, both inclusive; Act 417 of 1974 of the Louisiana Legislature, Title 8, Chapters 1-13, both inclusive; Sections 1-904, both inclusive, of the Louisiana Revised Statutes, as they may from time to time be amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:61.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975).

§103. Definitions

A. There is incorporated herein by reference all of the definitions set forth and contained in R.S. 49:951-966, both inclusive, and in Title 8, Louisiana Revised Statutes. The following words and terms, when used in these rules and regulations, shall have the following meanings unless the text hereof or the definitions contained in the above cited statutes clearly indicate otherwise.

Act or Louisiana Administrative Procedure Act R.S. 49:951-966, both inclusive, as the same may from time to time be amended.

Board The Louisiana Cemetery Board.

Presiding Officer The chairperson of the Louisiana Cemetery Board or a member of the Louisiana Cemetery Board appointed by him to preside over rulemaking or adjudication proceeding to be conducted by the board.

Title 8 or Louisiana Cemetery Act Act 417 of 1974 of the Louisiana Legislature, being all of Title 8 of the Louisiana Revised Statutes, as the same may from time to time be amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:61 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975).

Chapter 3. Organization

§301. Officers of Board

A. The officers of the board shall be a chairperson, a vice-chairperson, and a secretary-treasurer. The board may designate and elect such other officers as it shall determine. All officers shall be elected from among the members of the board, and shall perform such duties as shall be prescribed by the board.

B. Officers shall be elected to serve for a period of one year or until their successors are elected. Their term of office shall begin at the close of the meeting at which they are elected.

C. No member shall hold more than one office at a time, except that one member may serve as secretary-treasurer. An officer may serve consecutive terms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:64 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975).

§303. Meetings; Quorum

A. Regular meetings of the board shall be held at least twice a year, at such times and places as shall be determined by the board. Special meetings may be called by the chairperson and shall be called upon the written request of any three members of the board.

B. Written notice of all meetings shall be sent by the secretary to each member of the board at least 10 days prior to the date on which the meeting is to be held. In cases of emergency, a minimum of three day's notice shall be given.

C. Four members of the board shall constitute a quorum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:65 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975).

§305. Committees

A. The Executive Committee shall consist of the officers of the board.

B. There shall be the following standing committees:

1. Administrative Committee;
2. Examination and Inspection Committee;
3. Rules and Regulations Committee.

C. Such other committees, standing or special, shall be appointed by the board or by the chairperson of the board, as the board or the chairperson shall from time to time deem necessary to carry on the work of the board. All appointments to committees, standing or special, other than the Executive Committee, shall be made by the chairperson. The chairperson shall be ex officio a member of all committees, and as such, he shall have the same rights as the other committee members, including the right to vote, but he shall not be counted in determining whether a quorum is present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975).

§307. Parliamentary Authority; Order of Business

A. The rules contained in the current edition of *Roberts Rules of Order* shall govern the board in all cases to which they are applicable and in which they are consistent with these rules and regulations and any special rules of order or procedure that the board may adopt. The board may vary, modify or deviate from such rules of order whenever it shall deem it necessary or advisable to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 8:68 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975).

§309. Computation of Time

A. In computing a period of time allowed or prescribed by these rules and regulations, by law or by order of the board, the date of the act, event or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday or a day of the weekend, in which event the period runs until the end of the next day which is not a legal holiday or a day of the weekend.

B. A half-holiday is considered as a legal holiday. A legal holiday or day of the weekend is to be included in the computation of a period of time allowed or prescribed, except when:

1. it is expressly excluded;
2. it would otherwise be the last day of the period; or
3. the period is less than seven days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975).

§311. Amendment of Rules

A. These rules and regulations may be amended, and any such amendments shall become effective, in accordance with and as provided by the Administrative Procedure Act, and particularly, but without limitation, R.S. 49:953 and 954.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975).

§313. Appearances

A. No person, except an individual appearing in his own behalf or as a witness on behalf of a party, shall be permitted to participate in any proceeding before the board unless such person is represented by an attorney of this state in good standing.

B. Any attorney or counselor from any other jurisdiction, of good standing there, may, at the discretion of the board be admitted, pro hae vice, to associate with an attorney of this state in a proceeding and to participate therein in the same

manner as an attorney of this state, provided, however, that all pleadings, briefs, and other papers filed with the board in such matters shall be signed by an attorney authorized to practice in this state who shall be held responsible for them and who shall be present at all times during the proceeding unless excused by the presiding officer.

C. Any person appearing before or transacting business with the board in a representative capacity may be required by the board or the presiding officer to file evidence of his authority to act in such capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 8:68 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975).

§315. Formal Requirements for Pleadings

A. All pleadings shall be printed or typewritten and shall be prepared on either letter size or legal size paper.

B. All pleadings must be signed in ink by the attorneys of record, if any. Pleadings filed by a party acting on his own behalf shall be signed by such party.

C. All pleadings initiating a proceeding or otherwise seeking affirmative relief, all answers and all petitions of intervention shall be verified, except for those matters initiated or petitions or orders to show cause brought by the board or upon the motion of the attorney general of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 8:68 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975).

§317. Statutory References in Pleadings

A. All pleadings, except those filed by the board, shall cite by appropriate reference the statutory provision or other authority under which the board's action is sought, and shall refer to any statutes, rules, regulations, decisions, orders and/or opinions, germane to the particular matter or proceeding involved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 69.1, R.S. 8:68 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975).

§319. Ex Parte or Emergency Relief

A. If a petition or other pleading filed by a person other than the board seeks ex parte action or the granting of emergency relief pending full hearing, it shall set forth the necessity or emergency for such requested action and must be supported by affidavits to make a prima facie case.

B. The board may take emergency action upon compliance with the appropriate provisions of the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:68.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975).

Chapter 5. Rulemaking Procedure

§501. Proceedings by the Board

A. The board may initiate proceedings for the promulgation, amendment or repeal of any rule. Such proceedings shall be conducted in accordance with the Administrative Procedure Act, and particularly but without limitation, R.S. 49:953 and 954.

B. The board will maintain a list of persons who have made timely requests for advance notice of its rulemaking proceedings, and will give notice to such persons by certified mail in accordance with R.S. 49:953.A(1).

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 8:68 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Louisiana Cemetery Board, LR 1:521 (December 1975).

§503. Initiation of Proceedings by Interested Persons

A. Any interested person may petition the board requesting the adoption, promulgation, amendment or repeal of a rule. The petition shall be filed by mailing same to the board at its administrative office in the city of New Orleans.

B. A petition filed in accordance with this Section shall contain the following:

1. the names and addresses of the petitioners;
2. the names and addresses of the attorneys, if any, of petitioners;
3. all pertinent allegations of fact, views, arguments and reasons supporting the action sought by the petition;
4. a statement or prayer expressing the action sought by the petition.

C. Within 90 days after submission of a petition under this Chapter 5, the board shall either deny the petition in writing, stating the reasons for the denial, or shall initiate rulemaking proceedings in accordance with the Administrative Procedure Act. Such proceedings shall be conducted in accordance with the procedures set forth in R.S. 49:953 and R.S. 49:954.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 8:68 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975).

Chapter 7. Certificate or License

§701. Applications

A. All applications for any certificate of authority or license necessary or required by the Louisiana Cemetery Act shall be submitted to and filed with the board at its administrative office in the city of New Orleans, whether or not the applicant believes himself to be exempt from the provisions of the Louisiana Cemetery Act, and must be accompanied by the charge, fee or other sum provided for in said Act, which requirement may be waived by the board. Payment of such charge, fee or other sum shall be by check

or money order made payable to the Louisiana Cemetery Board. If the board determines that the applicant is exempt from obtaining a certificate of authority or license, it shall so inform the applicant and return to the applicant the charge, fee or other sum forwarded with the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 8:70 and R.S. 8:72.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975).

§703. Forms and Instructions

A. All applications required by LAC 46:XIII.701 shall be on the forms provided by the board, and shall be prepared and filed in accordance with the instructions issued by the board.

B. The forms and instructions shall be prepared by the board and shall contain such instructions and call for such information as may be useful to the board in the administration and enforcement of the Louisiana Cemetery Act. Forms and instructions may be obtained by any interested party upon written request to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975).

§705. Other Provisions Concerning Certificate or License

A. A certificate or license shall, be valid for the period of time stated thereon, unless it shall have been sooner suspended or revoked. Each certificate of authority for the operation of a cemetery must be displayed on the premises of the cemetery authority, and each license for the conduct of other businesses subject to the provisions of the Louisiana Cemetery Act shall be exhibited on reasonable request.

B. A certificate of authority may be transferred upon compliance with the provisions of the Louisiana Cemetery Act and particularly, but without limitation, R.S. 8:76. All other licenses provided for by the Louisiana Cemetery Act shall be nontransferable.

C. All certificates and licenses provided for by the Louisiana Cemetery Act shall be renewed prior to the expiration date shown thereon. Requests for renewal shall be on forms provided by the board and shall be accompanied by the charge, fee, or other sum fixed by the board.

D. Every cemetery authority and every person who has been determined by the board to be exempt from obtaining a certificate of authority or license, as the case may be, shall immediately notify the board of any fact, circumstance, condition or change in status or mode of operation which might result in the loss of the previously granted exemption. The board may from time to time require submission of such information as it may deem necessary to determine if an exemption previously granted should be continued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:72.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975).

§707. Refusal to Grant Certificate or License

A. If the board refuses to grant any certificate or license applied for under the Louisiana Cemetery Act, it shall give written notice of its decision, with the reasons therefor, within 10 days thereafter.

B. An applicant for a certificate of authority shall have 15 days after receipt of notice of the denial in which to initiate an adjudication proceeding. If no such proceeding is initiated, the action of the board shall be final.

C. If the board intends to deny an application for a license to engage in the business of a cemetery sales organization or a cemetery management organization, the board shall give the applicant for such license the notice required by R.S. 8:406, and shall initiate an adjudication proceeding as otherwise provided for in these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975).

§709. Revocation or Suspension of Certificate or License

A. Upon receipt of information of facts or conduct that would, in the opinion of the board, constitute grounds for revocation or suspension of a certificate or license, the board shall comply with the provisions of the Administrative Procedure Act regarding the revocation, suspension, annulment or withdrawal of any license, and particularly but without limitation, R.S. 49:961. A holder of a certificate or license shall have 15 days from receipt of the notice required by R.S. 49:961.C in which to show compliance with all lawful requirements for the retention of his certificate and/or license.

B. If the board, after considering all of the facts and information at hand, is of the opinion that the subject certificate or license should be revoked or suspended, it shall issue an order accordingly, which order shall be served upon the certificate holder or licensee in the manner provided for in §907 of these rules and regulations.

C. An aggrieved certificate holder or licensee shall have 15 days after receipt of the order revoking or suspending his certificate or license in which to initiate an adjudication proceeding. If no such proceeding is initiated, the order of the board shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:72.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975).

Chapter 9. Proceedings other than Rulemaking; General Procedural Rules

§901. Proceedings by the Board

A. Proceedings initiated by the board, except for the promulgation, amendment or repeal of a rule, shall be commenced by the issuance of an order to show cause

directed to the respondent. Such order shall state the acts, conduct, or the failure or omission to act alleged to be contrary to or in violation of any provision of law or of any of the lawful rules, regulations, orders, decisions or opinions issued, rendered and/or promulgated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975).

§903. Proceedings by Persons Other than the Board

A. Any person desiring to initiate adjudication proceedings and who is entitled or required by law to do so shall prepare and file with the board a petition which shall:

1. be in the form and content as set forth in §503.B;
2. state the name and address of each respondent;
3. contain supporting evidentiary material including, whenever applicable and possible, particular reference to the statute, rule, regulation, order, decision or opinion involved.

B. Any person desiring to initiate adjudication proceedings but who is not entitled or required by law to do so shall prepare and file with the board a petition which shall meet the requirements of §901.A. If the board shall determine that the petition is filed in good faith, that the petitioner would be entitled to relief if the allegations of his petition are established and that such allegations otherwise justify the initiation of adjudication proceedings, the board shall initiate adjudication proceedings in accordance with this Chapter 9 of these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975).

§905. Notice

A. Upon the issuance of an order to show cause by the board, or upon the initiation of adjudication proceedings pursuant to a petition filed by any person in accordance with this Chapter 9, the board shall issue a notice in conformity with the provisions of R.S. 49:955.

B. The hearing set by such notice shall be fixed not less than 20 nor more than 30 days from the date of such notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975).

§907. Service of Notice; Pleadings, and other Documents

A. Unless otherwise directed by the board, service of such notice, and of all pleadings, decisions, orders, and other papers and documents shall be made, and shall be deemed valid if made, by delivering one copy to each party or his attorney of record in person or depositing it in the United States mail, first class, postage prepaid, certified or registered mail, return receipt requested, directed to the party or his attorney of record at his post office address. Service by mail shall be deemed complete at the date of mailing.

B. Unless otherwise provided, when any party has appeared by attorney, service upon such attorney shall be deemed valid service upon the party until notice of dismissal of such attorney is received in writing by the chairperson of the board or its subordinate presiding officer and served on all parties of record to the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:69.1.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975).

§909. Answer or Appearance

A. A respondent may file his answer or other appearance personally or through an attorney not later than five days before the date fixed for the hearing.

B. The filing of an answer or other appearance by an attorney constitutes an appearance by the party for whom the pleading is filed, and also constitutes an appearance of the attorney on behalf of such party. An attorney who has appeared on behalf of a party may withdraw from any proceeding upon good cause shown to the board and upon written notice to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975).

§911. Contents of Answer

A. The answer shall contain:

1. a specific admission, denial or explanation of the matters and things alleged in the order to show cause or the petition, or if the respondent is without knowledge, he shall so state to that effect, such statement operating as a denial; admissions or denials may be to all or part of an allegation but shall squarely meet the substance of an allegation;

2. a specific detailed statement of any affirmative defense or matter in extenuation or mitigation;

3. a clear and concise statement of the facts and matters of law relied upon constituting the grounds of the defense or the basis for extenuation or mitigation. Any allegations of the order to show cause or the petition not denied in the answer shall be deemed admitted and may be so found by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975).

§913. Default in Answering or Appearing

A. In the event of the failure of a respondent to answer or otherwise appear within the time allowed, and provided that these rules and regulations relative to service and notice have been complied with, such respondent failing to answer or otherwise appear shall be deemed to be in default. At the time fixed for the hearing, the party initiating the proceeding shall present its evidence and in due course, and after due consideration of all of the pleadings, evidence and the entire record, the board shall render its decision or issue its order or ruling, as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975).

§915. Leave to Intervene Necessary

A. Persons, other than the original parties to any proceeding, whose interests are to be directly and immediately affected by the proceeding, shall secure an order from the board or its subordinate presiding officer granting leave to intervene before being allowed to participate, provided, that the granting of leave to intervene in any proceeding shall not be construed to be a finding or determination of the board or its subordinate presiding officer for purposes of judicial review or appeal.

B. A petition for leave to intervene must clearly identify the proceedings in which the intervention is sought, must set forth the name and address of the petitioner for intervention, and must contain a clear and concise statement of the direct and immediate interest of the petitioner in such proceeding, stating the manner in which such petitioner will be affected by such proceeding, outlining the matters and things relied upon by such petitioner as a basis for his request to intervene, and if affirmative relief is sought, the petition must contain a clear and concise statement of the relief sought and the basis thereof.

C. A petition to intervene and adequate proof of service of a copy thereof on all parties of record to the proceeding shall be filed not less than three days prior to the commencement of the hearing. For good cause shown, the board or its subordinate presiding officer shall allow a petition of intervention to be filed not later than the time of the hearing. If such petition to intervene is not filed in accordance with §915, such petition will not be considered. If a petition to intervene shows direct and immediate interest in the subject matter of the proceeding or any part thereof, and does not unduly broaden the issues, the board or its subordinate presiding officer may grant leave to intervene or otherwise appear in the proceeding with respect to the matters set out in the intervening petition, subject to such reasonable conditions as may be prescribed. If it appears during the course of a proceeding that an intervenor has no direct or immediate interest in the proceeding, and that the public interest does not require participation by such intervenor therein, the board or its subordinate presiding officer may dismiss such intervenor from the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975).

§917. Prehearing Conference

A. The board or its subordinate presiding officer may, of its own volition, or upon the motion of any party of record, by giving seven days prior written notice of the time and place to all parties of record, hold a prehearing conference for the purpose of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the

number of witnesses, and considering such other matters as may expedite the orderly conduct and disposition of the proceeding, or the settlement thereof.

B. The action taken at such prehearing conference and all the agreements, admissions, and/or stipulations made thereat by the parties concerned shall be made a part of the record and shall be approved by such parties. When so approved, such action shall control the subsequent course of the proceeding, unless otherwise stipulated by all parties of record with the consent of the board or its subordinate presiding officer.

C. In any proceeding, the board or its subordinate presiding officer may, in its discretion, call all parties together for a conference prior to the taking of testimony, or may recess a hearing, after it has commenced, for the purpose of holding a conference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975).

§919. Hearing

A. At the date, time and place fixed for the hearing, the board shall hear all matters presented in connection with the proceeding pending before it. The hearing shall be conducted by the chairperson of the board or a subordinate presiding officer who shall have been previously appointed by the chairperson of the board to conduct the hearing. The board and all other parties may be represented personally or by counsel.

B. Opportunity shall be afforded all interested persons to respond and present evidence on all issues of fact involved and arguments on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

C. The board or its subordinate presiding officer conducting any proceeding subject to this Chapter 9 shall have the power to direct, control and regulate the order, procedure and course of the hearing, including, but not limited to, opening statements, the order and method of presentation of testimony and evidence by all parties, and closing statements. The board or its subordinate presiding officer shall have the further power to set the time and place for continued or recessed hearings, fix the time for filing of memoranda and other documents, and generally to do all things necessary and proper for the conduct of a full and fair hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:68.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975).

§921. Adjudication Procedure

A. In the conduct of adjudication, as defined in R.S. 49:951.1, the board shall conform to and comply with, and shall conduct such adjudication in accordance with, the applicable provisions of the Administrative Procedure Act, and particularly, but without limitation, R.S. 49:955-965,

both inclusive, and the terms, conditions and provisions thereof, dealing with such matters as notice, hearing, records, rules of evidence, oaths and affirmations, subpoenas, depositions and discovery, decisions and orders, rehearings, judicial review, appeals, and all other matters included in such statutory provisions which are specifically incorporated herein and made part hereof as rules and regulations of this board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975).

§923. Judicial Review of Adjudication

A. Judicial review of a final decision or order in adjudication proceedings shall be in accordance with, and is governed by, R.S. 49:964.

B. The party seeking such judicial review shall cause to be prepared, and shall transmit to the reviewing court, the original or a certified copy of the entire record of the proceeding under review. All costs of preparing and transmitting the record for review shall be borne by the party prosecuting such appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975).

§925. Informal Proceedings Authorized

A. Nothing in these rules and regulations shall be construed as prohibiting the board from holding informal proceedings, hearings or conferences for the purpose of aiding the board in ascertaining and determining facts necessary for the performance of its duties. Any person who is aggrieved by any action or determination of the board following such an informal proceeding, hearing, or conference, and who is otherwise entitled thereto, may file a petition requesting the promulgation, amendment or repeal of a rule, or may file a petition to initiate an adjudication proceeding, under applicable provisions of these rules and regulations. Such petitions for exercise of the rulemaking process or for adjudication shall be handled by the board *de novo*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975).

Chapter 11. Declaratory Orders and Rulings

§1101. Right to Seek Order or Ruling; Procedure

A. Any person entitled by law or by these rules and regulations may seek from the board a declaratory order or ruling on the applicability of any statutory provision or of any rule or order of the board.

B. A request for a declaratory order or ruling shall be by petition filed with the board at its administrative office. Such petition shall set forth in clear and concise language all facts,

circumstances and relevant information as to the necessity for such ruling or order, and shall make specific reference to the statutory provision, rule or order of the board about which the declaratory order or ruling is requested. Within 45 days of the receipt of all necessary information from the petitioner for a declaratory order or ruling, the board shall issue its order or rule; provided, however, that the board may, if it deems it to be in the public interest, refer the petition for declaratory order or ruling to the Louisiana attorney general for a formal opinion. In such event, the board shall render its order or rule, based upon the opinion of the attorney general, within 20 days from receipt of such attorney general's opinion.

C. Pending the issuance of the requested order or rule by the board, all proceedings and actions connected with the matter submitted to the board shall be held in abeyance or stayed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975).

§1103. Declaratory Judgment for Determining Validity or Applicability of a Rule

A. The validity or applicability of a rule may be determined in an action for declaratory judgment in the Civil District Court for the Parish of Orleans as provided for in the applicable provisions of the Administrative Procedure Act, and particularly but without limitation, R.S. 49:963.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975).

§1105. Informal Opinions

A. Nothing in Chapter 11 shall be construed as prohibiting the board from rendering an informal or advisory opinion to any person on any matter arising out of the administration or enforcement of the Louisiana Cemetery Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975).

Chapter 13. Cemetery Care Fund; Merchandise Trust Fund

§1301. Payments to Perpetual Care Trust Fund

A. After establishment of the permanent care trust fund when and as required by Chapter 7 of R.S. 8:451-467, both inclusive, the amount to be deposited in the trust fund, which is a minimum of 10 percent of the gross receipts, less sales tax and interest or finance charges, if any, for the sale or conveyance of any interment space, but in no event less than 10 percent of the fair market value of each interment space conveyed, such fair market value to be determined on the basis of the current fair market value of comparable interment space in the same cemetery, shall be delivered to

the trustee not later than 90 days after the end of each quarter of the cemetery authority's tax reporting year.

B. In the event the purchase price of any such interment space not be fully paid and thereafter be resold the cemetery authority shall be entitled to credit for the amount which in the interim had been deposited in the trust fund with respect to such space.

C. No deposit to the permanent care trust fund shall be required in those instances in which a cemetery authority uses or conveys an interment space for an indigent interment, provided the space so used or conveyed is contained within a special area or section of the cemetery set aside and used solely for indigent interments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982).

§1303. Remittance by the Trustee to the Cemetery Authority

A. All income received by trustees of cemetery care funds, which is not remitted to the cemetery authority within 120 days after the end of the latest tax reporting year of the cemetery authority, owning or operating a cemetery for which the trust fund is maintained, shall become for all purposes part of, and added to, the corpus of the principal of the trust.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982).

§1305. On-Site Inspections

A. The board shall have the right to make on-site inspections and examinations of the endowment care funds and the merchandise trust funds of a cemetery authority, or other legal entity, its books and records pertaining thereto and its cemetery or mausoleum, and its contracts for sales of personal property and/or services for future delivery, at any time during normal working hours, and by any employee or other person designated by the board so to do.

B. By way of illustration as to the extent of such on-site inspections, the cemetery authority shall:

1. as to endowment care funds:

a. produce copies of all contracts and deeds, for inspection, relative to the last reporting form and since the last examination, as they pertain to the gross selling interment prices of spaces deeded during such period or on the gross receipts from contracts of sales during period;

b. provide documentation from the trustee as to receipt of the deposit to the Perpetual Care Trust Fund of the required 10 percent deposit of gross receipts from all sales made with a provision for perpetual care during the period covered by the examination;

c. provide access to its interment records to ascertain that proper information is being documented,

including but not limited to the name of each deceased person, date of cremation or interment, and name of funeral director;

d. provide copies of its contracts and deeds for review so it may be ascertained if perpetual care and the required 10 percent deposit is specific in each document presented to the consumer;

2. as to merchandise trust funds:

a. produce for inspection and review copies of all contracts for sales of personal property and/or services for future delivery, relative to the last reporting form or since the last examination, as they pertain to the sales of personal property and/or services during period;

b. provide documentation from the trustee as to receipt of the required deposit to the Merchandise Trust Fund of 50 percent of the gross receipts, less sales taxes, on all such contracts for future delivery when delivery is to be made at an uncertain date or more than 120 days after receipt of final payment under any such contract;

c. provide a copy of each of its contracts for sale of personal property and/or services for review so it may be ascertained if any of said documents specifies that delivery will be made within 120 days after receipt of final payment on contract and if not, that the cemetery authority or other legal entity has established a merchandise trust fund into which 50 percent of the gross receipts, less sales taxes, is being deposited.

C. During any such on-site inspection the representative of the board shall:

1. ascertain that the interment records are adequately protected from destruction by fire in that they are kept in a place of safekeeping;

2. inspect the grounds and other facilities of the cemetery to determine if perpetual care maintenance is, in fact, being reasonably performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982).

Chapter 15. Qualifications of Applicants for Certificates of Authority

§1501. Qualifications

A. R.S. 8:71 required the board to determine whether applicants "are financially responsible, trustworthy, and have good personal and business reputations, in order that only cemeteries of permanent benefit to the community in which they are located will be established in this state." While no rigid specifications, particularly as to character, can be fashioned, some objective evidence of a lack of such qualifications should exist before an application is denied. Clearly, if the applicant is an individual who has, or is a firm, association or corporation any of whose officers, owners, directors or managerial personnel has or have:

1. been convicted of a felony; or

2. has employed misrepresentation or deception in obtaining, renewing or reinstating a license or privilege from a public entity, or in seeking a certificate or license from this board; or

3. has used false or misleading advertising or solicitation in any business venture, the application should be denied unless the applicant produces evidence indicating complete rehabilitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:468 (September 1982).

Chapter 17. Construction; Divisibility

§1701. Construction; Divisibility

A. If any provision of these rules and regulations or the application thereof is held invalid, the remainder of these rules and regulations or other applications of such provisions shall not be affected. No subsequent amendment, modification or revision of these rules and regulations shall be held to supersede or modify the provisions hereof except to the extent that such amendment, modification, or revision shall do so expressly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended LR 8:467 (September 1982).

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XIII. Cemetery Industry

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