

Title 98 WAC

CEMETERY BOARD

Chapters

98-08	Practice and procedure.
98-11	Nonendowed care cemeteries.
98-12	Endowment care cemeteries.
98-14	Prearrangement contracts.
98-16	Hybrid units.
98-20	Cemetery property.
98-70	Fees.

98-08-510	Continuances.
98-08-520	Rules of evidence—Admissibility criteria.
98-08-530	Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections.
98-08-540	Petitions for rule making, amendment or repeal.
98-08-550	Petitions for rule making, amendment or repeal—Requisites.
98-08-560	Petitions for rule making, amendment or repeal—Agency must consider.
98-08-570	Petitions for rule making, amendment or repeal—Notice of disposition.
98-08-580	Declaratory rulings.
98-08-590	Forms.

Chapter 98-08 WAC

PRACTICE AND PROCEDURE

WAC

98-08-010	Appearance and practice before agency—Who may appear.
98-08-030	Appearance and practice before agency—Solicitation of business unethical.
98-08-040	Appearance and practice before agency—Standards of ethical conduct.
98-08-050	Appearance and practice before agency—Appearance by former employee of agency or former member of attorney general's staff.
98-08-060	Appearance and practice before agency—Former employee as expert witness.
98-08-070	Computation of time.
98-08-080	Notice and opportunity for hearing in contested cases.
98-08-090	Service of process—By whom served.
98-08-100	Service of process—Upon whom served.
98-08-110	Service of process—Service upon parties.
98-08-120	Service of process—Method of service.
98-08-130	When service complete.
98-08-140	When service complete—Filing with agency.
98-08-150	Subpoenas—Where provided by law—Form.
98-08-170	Subpoenas—Service.
98-08-190	Subpoenas—Proof of service.
98-08-200	Subpoenas—Quashing.
98-08-210	Subpoenas—Enforcement.
98-08-220	Subpoenas—Geographical scope.
98-08-370	Official notice—Matters of law.
98-08-380	Official notice—Material facts.
98-08-390	Presumptions.
98-08-400	Stipulations and admissions of record.
98-08-410	Form and content of decisions in contested cases.
98-08-420	Definition of issues before hearing.
98-08-430	Prehearing conference rule—Authorized.
98-08-440	Prehearing conference rule—Record of conference action.
98-08-450	Submission of documentary evidence in advance.
98-08-460	Excerpts from documentary evidence.
98-08-470	Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses.
98-08-480	Expert or opinion testimony and testimony based on economic and statistical data—Written sworn statements.
98-08-490	Expert or opinion testimony and testimony based on economic and statistical data—Supporting data.
98-08-500	Expert or opinion testimony and testimony based on economic and statistical data—Effect of noncompliance with WAC 98-08-470 or 98-08-480.

WAC 98-08-010 Appearance and practice before agency—Who may appear. No person may appear in a representative capacity before the board or its designated hearing officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.

(3) A bona fide officer, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership, or corporation. [Rule .08.010, effective 2/8/60.]

Reviser's note: As filed with the code reviser's office, the above section also contains an additional subsection reading as follows: "(5) [Qualification of nonlawyer representative, ethical conduct, etc.]"

WAC 98-08-030 Appearance and practice before agency—Solicitation of business unethical. It shall be unethical for persons acting in a representative capacity before the board to solicit business by circulars, advertisements or by personal communication or interviews not warranted by personal relations: *Provided*, That such representatives may publish or circulate business cards. It is equally unethical to procure business indirectly by solicitors of any kind. [Rule .08.030, effective 2/8/60.]

WAC 98-08-040 Appearance and practice before agency—Standards of ethical conduct. All persons appearing in proceedings before the board in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the board may decline to permit such person to appear in a representative capacity in any proceeding before the board. [Rule .08.040, effective 2/8/60.]

WAC 98-08-050 Appearance and practice before agency--Appearance by former employee of agency or former member of attorney general's staff. No former employee of the board or member of the attorney general's staff may at any time after severing his employment with the board or the attorney general appear, except with the written permission of the board, in a representative capacity on behalf of other parties in a formal proceeding wherein he previously took an active part as a representative of the board. [Rule .08.050, effective 2/8/60.]

WAC 98-08-060 Appearance and practice before agency--Former employee as expert witness. No former employee of the board shall at any time after severing his employment with the board appear, except with the written permission of the board, as an expert witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation as a representative of the board. [Rule .08.060, effective 2/8/60.]

WAC 98-08-070 Computation of time. In computing any period of time prescribed or allowed by the board rules, by order of the board or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. [Rule .08.070, effective 2/8/60.]

WAC 98-08-080 Notice and opportunity for hearing in contested cases. In any contested case, all parties shall be served with a notice at least 20 days before the date set for the hearing. The notice shall state the time, place, and issues involved, as required by RCW 34.04.090(1). [Rule .08.080, effective 2/8/60.]

WAC 98-08-090 Service of process--By whom served. The board shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it. [Rule .08.090, effective 2/8/60.]

WAC 98-08-100 Service of process--Upon whom served. All papers served by either the board or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact. [Rule .08.100, effective 2/8/60.]

WAC 98-08-110 Service of process--Service upon parties. The final order, and any other paper required to

be served by the agency upon a party, shall be served upon such party or upon the agent designated by him or by law to receive service of such papers, and a copy shall be furnished to counsel of record. [Rule .08.110, effective 2/8/60.]

WAC 98-08-120 Service of process--Method of service. Service of papers shall be made personally or, as provided by RCW 68.05.170, by first-class, registered, or certified mail; or by telegraph. [Rule .08.120, effective 2/8/60.]

WAC 98-08-130 When service complete. Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed; by telegraph, when deposited with a telegraph company properly addressed and with charges prepaid. [Rule .08.130, effective 2/8/60.]

WAC 98-08-140 When service complete--Filing with agency. Papers required to be filed with the board shall be deemed filed upon actual receipt by the board at the place specified in its rules accompanied by proof of service upon parties required to be served. [Rule .08.140, effective 2/8/60.]

WAC 98-08-150 Subpoenas--Where provided by law--Form. Every subpoena allowed by RCW 68.05.150 shall state "cemetery board" and the title of the proceeding, if any, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place. [Rule .08.150, effective 2/8/60.]

WAC 98-08-170 Subpoenas--Service. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person. [Rule .08.170, effective 2/8/60.]

WAC 98-08-190 Subpoenas--Proof of service. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the board or the officer before whom the witness is required to testify or produce evidence. If service is made by a person other than an officer of the board, and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service. [Rule .08.190, effective 2/8/60.]

WAC 98-08-200 Subpoenas--Quashing. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed (and upon notice to the party to whom the subpoena was issued) the board or its authorized member or officer may (1) quash or modify the subpoena if it is unreasonable or requires

evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions. [Rule .08.200, effective 2/8/60.]

WAC 98-08-210 Subpoenas--Enforcement. Upon application and for good cause shown, the board will seek judicial enforcement of subpoenas issued to parties and which have not been quashed. [Rule .08.210, effective 2/8/60.]

WAC 98-08-220 Subpoenas--Geographical scope. Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing. [Rule .08.220, effective 2/8/60.]

WAC 98-08-370 Official notice--Matters of law. The board or its hearing officer, upon request made before or during a hearing, will officially notice:

(1) **Federal law.** The Constitution; congressional acts, resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register;

(2) **State law.** The constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions of administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser.

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, the several states and foreign nations;

(4) **Agency organization.** The board's organization, administration, officers, personnel, official publications, and practitioners before its bar. [Rule .08.370, effective 2/8/60.]

WAC 98-08-380 Official notice--Material facts. In the absence of controverting evidence, the board and its hearing officers, upon request made before or during a hearing, may officially notice:

(1) **Board proceedings.** The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the board;

(2) **Business customs.** General customs and practices followed in the transaction of business;

(3) **Notorious facts.** Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

(4) **Technical knowledge.** Matters within the technical knowledge of the board as a body of experts, within the

scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) **Request or suggestion.** Any party may request, or the hearing officer of the board may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated orally on the record, at any prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum, or brief served upon all parties, at any time prior to a final decision;

(6) **Statement.** Where an initial or final decision of the board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer of the board may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) **Controversion.** Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading, reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

(8) **Evaluation of evidence.** Nothing herein shall be construed to preclude the board or its authorized agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them. [Rule .08.380, effective 2/8/60.]

WAC 98-08-390 Presumptions. Upon proof of the predicate facts specified in the following six subsections hereof without substantial dispute and by direct, clear, and convincing evidence, the board, with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

(1) **Continuity.** That a fact of a continuous nature, proved to exist at a particular time, continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;

(2) **Identity.** That persons and objects of the same name and description are identical;

(3) **Delivery.** Except in a proceeding where the liability of the carrier for nondelivery is involved, that mail matter, communications, express or freight, properly addressed, billed and delivered respectively to the post office, telegraph, cable or radio company, or authorized common carrier of property with all postage, tolls

and charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business;

(4) **Ordinary course.** That a fact exists or does not exist, upon proof of the existence or nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly co-exists with the fact presumed;

(5) **Acceptance of benefit.** That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly in his own self-interest so to do;

(6) **Interference with remedy.** That evidence, with respect to a material fact which in bad faith is destroyed, eluded, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact. [Rule .08.390, effective 2/8/60.]

WAC 98-08-400 Stipulations and admissions of record. The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) **Upon whom binding.** Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a prehearing conference, oral hearing, oral argument or by a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) **Withdrawal.** Any party bound by a stipulation or admission of record at any time prior to final decision may be permitted to withdraw the same in whole or in part by showing to the satisfaction of the hearing officer or the board that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding. [Rule .08.400, effective 2/8/60.]

WAC 98-08-410 Form and content of decisions in contested cases. Every decision and order, whether proposed, initial, or final, shall:

(1) Be correctly captioned as to name of agency and name of proceeding;

(2) Designate all parties and counsel to the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Be accompanied by appropriate numbered findings of fact and conclusions of law;

(5) Whenever practical, the conclusions of law shall include the reason or reasons for the particular order or remedy afforded;

(6) Wherever practical, the conclusions and/or order shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same. [Rule .08.410, effective 2/8/60.]

WAC 98-08-420 Definition of issues before hearing. In all proceedings the issues to be adjudicated shall be made initially as precise as possible, in order that hearing officers may proceed promptly to conduct the hearings on relevant and material matter only. [Rule .08.420, effective 2/8/60.]

WAC 98-08-430 Prehearing conference rule—Authorized. In any proceeding the board or its designated hearing officer upon its or his own motion, or upon the motion of one of the parties or their qualified representatives, may in its or his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider

- (1) The simplification of the issues;
- (2) The necessity of amendments to the pleadings;
- (3) The possibility of obtaining stipulations, admissions of facts and of documents;
- (4) The limitation of number of expert witnesses;
- (5) Such other matters as may aid in the disposition of the proceeding. [Rule .08.430, effective 2/8/60.]

WAC 98-08-440 Prehearing conference rule—Record of conference action. The board or its designated hearing officer shall make an order or statement which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order. [Rule .08.440, effective 2/8/60.]

WAC 98-08-450 Submission of documentary evidence in advance. Where practicable the board or its designated hearing officer may require:

(1) That all documentary evidence which is to be offered during the taking of evidence be submitted to the hearing examiner and to the other parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation of cross-examination and rebuttal evidence;

(2) That documentary evidence not submitted in advance, as may be required by subsection (1), be not received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner;

(3) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a

later time upon a clear showing of good cause for failure to have filed such written objection. [Rule .08.450, effective 2/8/60.]

WAC 98-08-460 Excerpts from documentary evidence. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing examiner and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding. [Rule .08.460, effective 2/8/60.]

WAC 98-08-470 Expert or opinion testimony and testimony based on economic and statistical data--Number and qualifications of witnesses. That the hearing examiner or other appropriate officer in all classes of cases where practicable make an effort to have the interested parties agree upon the witness or witnesses who are to give expert or opinion testimony, either by selecting one or more to speak for all parties or by limiting the number for each party; and, if the interested parties cannot agree, require them to submit to him and to the other parties written statements containing the names, addresses and qualifications of their respective opinion or expert witnesses, by a date determined by him and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications. [Rule .08.470, effective 2/8/60.]

WAC 98-08-480 Expert or opinion testimony and testimony based on economic and statistical data--Written sworn statements. That the hearing examiner or other appropriate officer, in all classes of cases in which it is practicable and permissible, require, and when not so permissible, make every effort to bring about by voluntary submission, that all direct opinion or expert testimony and all direct testimony based on economic or statistical data be reduced to written sworn statements, and, together with the exhibits upon which based, be submitted to him and to the other parties to the proceeding by a date determined by the hearing officer and fixed a reasonable time in advance of the hearing; and that such sworn statements be acceptable as evidence upon formal offer at the hearing, subject to objection on any ground except that such sworn statements shall not be subject to challenge because the testimony is not presented orally, and provided that witnesses making such statements shall not be subject to cross-examination unless a request is made sufficiently in advance of the hearing to insure the presence of the witnesses. [Rule .08.480, effective 2/8/60.]

WAC 98-08-490 Expert or opinion testimony and testimony based on economic and statistical data--Supporting data. That the hearing examiner or other appropriate officer, in his discretion but consistent with the

rights of the parties, cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying statements and exhibits submitted in accordance with WAC 98-08-480, but, wherever practicable that he restrict to a minimum the placing of such data in the record. [Rule .08.490, effective 2/8/60.]

WAC 98-08-500 Expert or opinion testimony and testimony based on economic and statistical data--Effect of noncompliance with WAC 98-08-470 or 98-08-480. Whenever the manner of introduction of opinion or expert testimony or testimony based on economic or statistical data is governed by requirements fixed under the provisions of WAC 98-08-470 or 98-08-480, such testimony not submitted in accordance with the relevant requirements shall not be received in evidence in the absence of a clear showing that the offering party had good cause for his failure to conform to such requirements. [Rule .08.500, effective 2/8/60.]

WAC 98-08-510 Continuances. Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the board or its designated hearing officer of said desire, stating in detail the reasons why such continuance is necessary. The board or its designated hearing officer, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the board or its designated hearing officer may grant such a continuance and may at any time order a continuance upon its or his own motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the examiner or other officer conducting the hearing may in his discretion continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing. [Rule .08.510, effective 2/8/60.]

WAC 98-08-520 Rules of evidence--Admissibility criteria. Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the officer conducting the hearing, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the state of Washington. [Rule .08.520, effective 2/8/60.]

WAC 98-08-530 Rules of evidence--Tentative admission--Exclusion--Discontinuance--Objections. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling.

The officer conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. [Rule .08.530, effective 2/8/60.]

WAC 98-08-540 Petitions for rule making, amendment or repeal. Any interested person may petition the board requesting the promulgation, amendment, or repeal of any rule. [Rule .08.540, effective 2/8/60.]

WAC 98-08-550 Petitions for rule making, amendment or repeal--Requisites. Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as a suggested amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule. [Rule .08.550, effective 2/8/60.]

WAC 98-08-560 Petitions for rule making, amendment or repeal--Agency must consider. All petitions shall be considered by the board and the board may, in its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule. [Rule .08.560, effective 2/8/60.]

WAC 98-08-570 Petitions for rule making, amendment or repeal--Notice of disposition. The board shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition. [Rule .08.570, effective 2/8/60.]

WAC 98-08-580 Declaratory rulings. As prescribed by RCW 34.04.080, any interested person may petition the board for a declaratory ruling. The board shall consider the petition and within a reasonable time the board shall:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for hearing argument upon the matter, and give reasonable notification to the person of the time and place for such hearing and of the issues involved;
- (4) If a hearing as provided in subsection (3) is conducted, the board shall within a reasonable time:
 - (a) Issue a binding declaratory rule; or
 - (b) Issue a nonbinding declaratory ruling; or
 - (c) Notify the person that no declaratory ruling is to be issued. [Rule .08.580, effective 2/8/60.]

WAC 98-08-590 Forms. Any interested person petitioning the board for a declaratory ruling pursuant to

RCW 34.04.080, shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "before the cemetery board of the state of Washington." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory ruling." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original and two legible copies shall be filed with the agency. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" in size.

Any interested person petitioning the board requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "before the cemetery board of the state of Washington." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and two legible copies of the petition shall be filed with the agency. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" in size. [Rule .08.590, effective 2/8/60.]

Chapter 98-11 WAC
NONENDOWED CARE CEMETERIES

WAC
98-11-010 Financial responsibility requirements for nonendowment care cemeteries.

WAC 98-11-010 Financial responsibility requirements for nonendowment care cemeteries. Any cemetery authority (as defined in RCW 68.04.190) which desires to obtain a certificate of authority to operate a cemetery (as required by RCW 68.05.200), but which does not deposit in an endowment care fund the minimum sum required by RCW 68.40.010 of an endowment care cemetery shall be required by the cemetery board, in the exercise of the powers conferred upon it by RCW 68.05.210, as a condition precedent to the granting of such certificate of authority, to present to the cemetery board satisfactory proof that the cemetery authority has, at the time of its application for such certificate of authority or within a reasonable time prior thereto, a corporate net worth, determined by commonly accepted accounting standards and criteria, in excess of one hundred thousand dollars: *Provided*, That nothing herein shall apply to any corporation, association, society or municipal corporation referred to in RCW 68.05.280: *Provided further*, That any cemetery authority which is denied a certification of authority under the provisions hereof, shall have the right to appeal from such denial to the superior court of the county in which the cemetery authority is located or proposed to be located, such appeal to be taken within thirty days after the denial of the certificate of authority. [Order 72-1, § 98-11-010, filed 9/8/72.]

Chapter 98-12 WAC
ENDOWMENT CARE CEMETERIES

WAC
98-12-010 Endowment care trust funds—Alteration of identity of trustee—Notice required.
98-12-020 Improved commercial or real estate income.
98-12-030 "Gross sales price" defined.
98-12-040 Records of endowment care funds.

WAC 98-12-010 Endowment care trust funds—Alteration of identity of trustee—Notice required. Any cemetery authority (as defined in RCW 68.04.190) which, after having been granted a certificate of authority under RCW 68.05.200, alters the identity of the trustee or trustees of its endowment care fund (under RCW 68.44.110 through 68.44.130) shall, within thirty days after the effective date of such alteration, give written notice of such alteration to the cemetery board, such notice to include the identity of the new trustee or trustees, as well as proof that the new trustee or trustees are financially responsible, trustworthy, and have good personal and business reputations: *Provided*, That nothing herein shall apply to any corporation, association, society or municipal corporation referred to in RCW 68.05.280. [Order 72-1, § 98-12-010, filed 9/8/72.]

WAC 98-12-020 Improved commercial or real estate income. In determining the trust fund income for the purpose of RCW 68.44.020 and 68.44.170, an allowance for depreciation on the improved real estate will be used as a determining factor in computing fund income. The trustee shall deduct depreciation from the gross rents and transfer the amount into a fund for depreciation account. The fund may be reinvested with other endowment investments, or may be used to create a sinking fund within the endowment fund. [Statutory Authority: RCW 68.05.100. 81-07-013 (Order 104), § 98-12-020, filed 3/9/81.]

WAC 98-12-030 "Gross sales price" defined. In determining "ten percent of the gross sales price" pursuant to RCW 68.40.010, gross sales price shall not include the endowment care fund portion. Endowment care shall be added to the gross sales price and separately identified as endowment care on any contract. For example: Grave gross sales price - \$100.00. Endowment care requirement - \$10.00. Total contract price - \$110.00. [Statutory Authority: RCW 68.05.100. 83-02-063 (Order 106), § 98-12-030, filed 1/5/83.]

WAC 98-12-040 Records of endowment care funds. Any cemetery authority maintaining an endowment care fund shall, at all times, maintain a current accounting system in accordance with generally accepted accounting standards and principles. The system shall include, but not be limited to, all the following:

(1) A general journal for journal entries: All original documents must be numbered with a reference number, check number, or contract number.

(2) An individual contract or agreement with each individual purchasing a right of interment with reference numbering.

(3) A sales register or journal showing the recording of all individual sales including date of sale, gross sales price of the interment right, consumer name, reference number to the original document, general ledger account number for postings, and amount payable to the endowment care fund.

(4) An individual account record which records the amount of the gross sales price of the right of interment, payments received and the amount due or paid to the endowment care fund.

(5) A check register or cash disbursements journal which shall show payments to the endowment care fund by date and amount, name and reference number, and check number. In addition, a file of cancelled checks and/or money order receipts shall be maintained.

(6) Schedules or documentation reconciling to and showing the detail of each payment to the endowment care fund including date of payment, individual customer name, account and reference number of original document.

(7) A cash receipts journal which shall show receipts from individual customers as well as receipts from the endowment care fund and their proper disbursements to the maintenance accounts.

(8) Records of maintenance expenses.

(9) Where the directors of the cemetery authority act as trustees for its endowment care fund, the records of the endowment care fund shall be kept as separate records (reconciled quarterly) and shall consist of, but not be limited to, the following:

(a) A general ledger with all accounts numbered.

(b) Minute book.

(c) A separate account designated as the endowment care fund account through which receipts to the fund, disbursements to the investments of the fund and disbursements to the cemetery authority are transmitted.

(d) A portfolio listing of all investments or cash holdings of the fund.

All records required to be maintained pursuant to this rule and Title 68 RCW, whether maintained manually or by computer, shall be retained and available for inspection for a period of seven years and shall be in such form as to be understandable to the cemetery board examiner or other persons reasonably having cause to access them. [Statutory Authority: RCW 68.05.100. 83-02-063 (Order 106), § 98-12-040, filed 1/5/83.]

Chapter 98-14 WAC

PREARRANGEMENT CONTRACTS

WAC

98-14-010	Definitions.
98-14-020	Itemization of charges.
98-14-030	Form of delivery.
98-14-040	Performance of services.
98-14-050	Determination of delivery.
98-14-060	Suppliers.
98-14-070	Securities for loans.
98-14-080	Development plan.
98-14-090	Records of prearrangement trust funds.

WAC 98-14-010 Definitions. All definitions of chapter 68.46 RCW apply to this chapter of WAC. [Order CB 101, § 98-14-010, filed 10/17/75.]

WAC 98-14-020 Itemization of charges. In addition to all other requirements of the law relating to consumer contracts, all prearrangement contracts must have a specific itemization of charges and descriptions for each merchandise or service to be furnished or delivered including, but not limited to, an itemization of services to be performed on delivered merchandise such as, but not limited to, marker installation and care. There shall be a special itemization of charges and descriptions for each grave niche or crypt sold in connection with any prearrangement contract. [Order CB 101, § 98-14-020, filed 10/17/75.]

WAC 98-14-030 Form of delivery. All prearrangement contracts must state on the contract what form or forms of delivery of merchandise will constitute "delivery" to satisfy the requirements of RCW 68.46.050. [Order CB 101, § 98-14-030, filed 10/17/75.]

WAC 98-14-040 Performance of services. Prearrangement services, including shipment and installation of prearrangement merchandise, shall not be deemed to

have been furnished within the meaning of RCW 68.46.050(1) until performance of such services has actually occurred. [Order CB 101, § 98-14-040, filed 10/17/75.]

WAC 98-14-050 Determination of delivery. Prearrangement merchandise shall be delivered within the meaning of RCW 68.46.050(1) when:

(1) Actual delivery of the merchandise is made to the contract beneficiary; or

(2) Delivery of the merchandise is made to the cemetery authority for the contract beneficiary and the merchandise is permanently affixed to real property or a mausoleum; or

(3) Delivery of the merchandise to the cemetery authority for the contract beneficiary with the storage provided by the cemetery authority, provided that fifty percent of the service charge of the installation and other services to be performed upon the merchandise is maintained in the prearrangement trust fund, and an insurance provision is maintained when stored in a building: *Provided*, That no insurance is necessary when merchandise is affixed to the grave; or

(4) The cemetery authority has paid its supplier for prearrangement merchandise, and the supplier has caused such merchandise to be manufactured and stored, and has caused title to such merchandise to be transferred to the contract beneficiary, and has agreed to ship such merchandise upon his request or the request of the cemetery authority: *Provided*, That fifty percent of the service charge of delivery, installation and other costs are maintained in the prearrangement trust fund by the cemetery authority. Such delivery and installation cost must be itemized upon the prearrangement contract, in accordance with WAC 98-14-020. [Order CB 101, § 98-14-050, filed 10/17/75.]

WAC 98-14-060 Suppliers. No person, firm or corporation shall be deemed a supplier for purposes of chapter 98-14 WAC, unless it:

(1) Permanently and unalterably identifies all such merchandise with the name of the contract beneficiary; and

(2) Submits to the board not less than annually a certified report by a certified public accountant of all merchandise which has been purchased through a Washington cemetery authority and which, at the date of such report, was then in storage; and

(3) Permits the board or its designee, at any time, to examine stored merchandise which was purchased through a Washington cemetery authority and to examine any document pertaining thereto; and

(4) Submits evidence of a bond insuring the existing and good title of any merchandise due any contract beneficiary purchased through a Washington cemetery authority; and

(5) Submits evidence insuring that all merchandise purchased through a Washington cemetery authority and being stored by said supplier is insured for casualty, theft or other loss normally assumed by a bailee for hire. [Order CB 101, § 98-14-060, filed 10/17/75.]

WAC 98-14-070 Securities for loans. In any instance where a prearrangement contract containing undelivered merchandise or services is sold, pledged or otherwise encumbered as security for a loan by cemetery authority, the cemetery authority shall pay into the prearrangement trust fund fifty percent of the total sale price of the prearrangement contract within twenty days of receipt of payment of the proceeds from such sale or loan. [Order CB 101, § 98-14-070, filed 10/17/75.]

WAC 98-14-080 Development plan. Any cemetery authority selling undeveloped graves, unconstructed crypts or niches in accordance with chapter 68.46 RCW shall make available to the purchaser at the time the prearrangement contract is signed, a statement of estimated time schedule of the development or construction. Such schedules, or modifications of them, will also be submitted to the cemetery board annually with the financial reports required by RCW 68.46.090 and made available to holders of prearrangement contracts affected by such development or construction in the offices of the cemetery authority. [Statutory Authority: RCW 68.05.100. 83-02-063 (Order 106), § 98-14-080, filed 1/5/83.]

WAC 98-14-090 Records of prearrangement trust funds. Any cemetery authority maintaining a prearrangement trust fund shall, at all times, maintain a current accounting system in accordance with generally accepted accounting standards and principles. The system shall include, but not be limited to, all of the following:

- (1) An individual contract or agreement with each individual establishing a prearrangement trust agreement.
- (2) A sales register or journal showing the recording of all individual sales including date of sale, gross sales price, and detail of items sold.
- (3) An individual account record which records the amount of the prearrangement agreement, all payments received, the amount due the prearrangement trust fund and the distribution of payments received to the prearrangement trust fund or the cemetery authority in accordance with the method then allowed by the cemetery authority's prearrangement license.

(4) A cash receipts journal which shall show each payment received from individual customers.

(5) Schedules or documentation reconciling to and showing detail of each payment to and withdrawal from the prearrangement trust fund including date of payment, individual customer name, and amounts.

All records required to be maintained pursuant to this rule and Title 68 RCW, whether maintained manually or by computer, shall be retained and available for inspection for a period of seven years and shall be in such form as to be understandable to the cemetery board examiner or other persons reasonably having cause to access them. [Statutory Authority: RCW 68.05.100. 83-02-063 (Order 106), § 98-14-090, filed 1/5/83.]

Chapter 98-16 WAC HYBRID UNITS

WAC	
98-16-010	Hybrid unit.
98-16-020	Hybrid unit as funeral merchandise or services.
98-16-030	Disclosure of support or service items.

WAC 98-16-010 Hybrid unit. A hybrid unit shall mean any combination "casket-vault" that is designed, intended, or represented to function as a substitute for a casket and/or a vault, or intended to serve the same purpose as a casket or a vault or in lieu thereof. [Statutory Authority: RCW 68.05.100. 81-07-013 (Order 104), § 98-16-010, filed 3/9/81.]

WAC 98-16-020 Hybrid unit as funeral merchandise or services. A hybrid unit shall be considered funeral merchandise or services as defined in RCW 48.40.002 (2)(b), unless specifically designated, detailed and represented to the contrary in cemetery prearrangement contracts: *Provided, however,* That hybrid units not subject to regulation under chapter 48.40 RCW shall, if applicable, be subject to chapter 68.46 RCW and considered cemetery merchandise or services. Such cemetery prearrangement contracts, advertising, and other representations shall clearly state which items of the hybrid unit are being sold as funeral merchandise or services and which are being sold as cemetery merchandise or services. [Statutory Authority: RCW 68.05.100. 81-07-013 (Order 104), § 98-16-020, filed 3/9/81.]

WAC 98-16-030 Disclosure of support or service items. In accordance with WAC 98-14-020, hybrid units specified as cemetery merchandise or services in cemetery prearrangement contracts must be itemized, and must disclose and describe all items of support or services which are required or may be required for the future or intended use of hybrid units. "Support or service" as used herein means any function, activity, or object, and their availability, required or that may be required to meet a buyer's expectations for necessary cemetery merchandise or services and/or funeral merchandise or services. Whether items of support or service are included in the immediate purchase price or are reserved for future sale at the time of need, must be clearly set forth in the cemetery prearrangement contract, and in all advertising or representations pertaining to preneed or prearrangement contract sales of hybrid units. [Statutory Authority: RCW 68.05.100. 81-07-013 (Order 104), § 98-16-030, filed 3/9/81.]

Chapter 98-20 WAC CEMETERY PROPERTY

WAC	
98-20-010	Removal of dedication.

WAC 98-20-010 Removal of dedication. Any cemetery authority, as defined in RCW 68.04.190, which desires to remove the dedication to cemetery purposes from

all or any part of its property pursuant to RCW 68.24-.090, must notify the cemetery board, in writing, of its intention to do so at least 60 days prior to filing the proceeding in superior court pursuant to RCW 68.24-.090. [Statutory Authority: RCW 68.05.100. 81-07-013 (Order 104), § 98-20-010, filed 3/9/81.]

**Chapter 98-70 WAC
FEES**

WAC
98-70-010 Fees.

WAC 98-70-010 Fees. The following fees shall be charged by the Washington state cemetery board:

Title of Fee	Fee
Regulatory charges	
Charge per each preceding [calendar] year interments, entombments and inurnments	\$ 2.40
Prearrangement sales license	
Application	100.00
Renewal	50.00

[Statutory Authority: RCW 68.05.100 and 68.05.230. 83-24-010 (Order 107), § 98-70-010, filed 11/29/83. Statutory Authority: RCW 68.05.100, 68.05.230 and 68.46.180. 81-24-026 (Order 105), § 98-70-010, filed 11/24/81.]

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.