

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

- * The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- * Please address questions regarding information on this notice to the agency.
- * The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- * The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:

44095

Date filed:

9-23-2019

State Admin Rule Filing Id:

Time filed:

	Agency No.	Rule No.	Section No.
Utah Admin. Code Ref (R no.):	R 156	- 9	-
Changed to Admin. Code Ref. (R no.):	R	-	-

1. **Agency:** Commerce/Division of Occupational and Professional Licensing
Room no.:
Building: Heber M. Wells Building
Street address 1: 160 East 300 South
Street address 2:
City, state, zip: Salt Lake City UT 84111-2316
Mailing address 1: PO Box 146741
Mailing address 2:
City, state, zip: Salt Lake City UT 84114-6741
Contact person(s):

Name:	Phone:	Fax:	E-mail:
Robyn Barkdull	801-530-6727	801-530-6511	rbarkdull@utah.gov

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

2. **Title of rule or section (catchline):**

Funeral Service Licensing Act Rule

3. **Type of notice:**

New ___; Amendment XXXX; Repeal ___; Repeal and Reenact ___

4. **Purpose of the rule or reason for the change:**

Following a review of the current rule by the Funeral Service Licensing Board, the Board and Division are now recommending these changes. The purpose of this filing is to provide continuing education (CE) credit hours for instructors of funeral CE courses that hold a funeral service director license. The filing also updates the requirements for contract forms and eliminates the language in a pre-need contract prohibiting a cash advance item unless it is a guaranteed product.

5. **This change is a response to comments from the Administrative Rules Review Committee.**

No XXXX Yes ___

6. Summary of the rule or change:

Section R156-9-304: This section provides CE credit for licensees who teach CE courses that meet the requirements of R156-9-304 to receive two hours of CE credit for each hour of instruction. Section R156-9-605: This section makes formatting changes for clarity. Subsection R156-9-607(2): This section is being deleted. It eliminates the reference to type size for contract forms. Font/type size is addressed in statute and no further clarification is necessary in rule. Subsection R156-9-607(3): This section is being deleted. It eliminates Division approval for a contract form. Section R156-9-610: This section is being deleted. It eliminates the language in a pre-need contract prohibiting a cash advance item unless it is a guaranteed product. Sections R156-9-610 through R156-9-618: These sections are being renumbered following deletion of R156-9-610 as explained above.

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No ; Yes XXXX

The proposed amendments to Sections R156-9-304, R156-9-605, R156-9-607(2-3), and R156-9-610 through R156-9-618 are not expected to directly impact state government revenues or expenditures because the amendments only update the requirements for contract forms and eliminate the language in a pre-need contract prohibiting a cash advance item unless it is a guaranteed product. State government neither enforces nor is affected by this process. The amendments also make technical, non-substantive changes. There will be a minimal cost to the Division of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any indirect impacts cannot be estimated.

B) Local government:

Affected: No XXXX Yes

The proposed amendments to Sections R156-9-304, R156-9-605, R156-9-607(2-3), and R156-9-610 through R156-9-618 are not expected to directly impact local government revenues or expenditures because the amendments only update the requirements for contract forms and eliminate the language in a pre-need contract prohibiting a cash advance item unless it is a guaranteed product. Local governments neither enforce nor are affected by this process. The amendments also make technical, non-substantive changes. Any indirect impacts cannot be estimated.

C) Small businesses ("small business" means a business employing fewer than 50 persons)

Affected: No XXXX; Yes

The proposed amendments to Sections R156-9-304, R156-9-605, R156-9-607(2-3), and R156-9-610 through R156-9-618 are expected to have no fiscal benefit or cost impact to small business. Small businesses that provide the services of a funeral service director or funeral service establishment (BASICS 812210 – Funeral Homes and Funeral Services) will not see an increase or a decrease in service costs as a result of these proposed amendments. The Division estimates that this could result in a fiscal neutrality for the approximately 91 small business (NAICS 812210 - Funeral Homes and Funeral Services) throughout the state. Any indirect impacts cannot be estimated.

D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):

Affected: No Yes XXXX

The proposed amendments to Sections R156-9-304, R156-9-605, R156-9-607(2-3), and R156-9-610 through R156-9-618 are expected to have no fiscal benefit or cost impact to other persons utilizing the services of individuals who hold a license in the funeral service profession. Any indirect impacts cannot be estimated. The proposed amendments to Sections R156-9-304, R156-9-605, R156-9-607(2-3), and R156-9-610 through R156-9-618 are expected to have minimal fiscal benefit or cost to the individuals who hold a license. The proposed amendments allow CE credit to be given to a licensed funeral service director who also teaches an approved CE course. This may relieve the licensee from taking additional CE hours to renew his/her license. CE course providers charge an average of \$20/hour to take the course, providing a benefit of \$40 to a licensed individual who receives two hours of CE credit for teaching each one hour of CE. There is no way to determine if/how many hours may be taught by a licensee in any given renewal period. The remainder of the proposed amendments only make non-substantive technical changes that would have no fiscal impact on individuals. Any indirect impacts cannot be estimated.

8. Compliance costs for affected persons:

The proposed amendments to Sections R156-9-304, R156-9-605, R156-9-607(2-3), and R156-9-610 through R156-9-618 are expected to have no compliance costs for any affected persons.

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

The purpose of this filing is to provide continuing education (CE) credit hours for instructors of funeral CE courses that hold a funeral service director license. The filing also updates the requirements for contract forms and eliminates the language in a pre-need contract prohibiting a cash advance item unless it is a guaranteed product. **Small Businesses:** The proposed amendments to Sections R156-9-304, R156-9-605, R156-9-607(2-3), and R156-9-610 through R156-9-618 are expected to have no fiscal benefit or cost impact to small business. Small businesses that provide the services of a funeral service director or funeral service establishment (NAICS 812210 – Funeral Homes and Funeral Services) will not see an increase or a decrease in service costs as a result of these proposed amendments. The Division estimates that this could result in a fiscal neutrality for the approximately 91 small business (NAICS 812210 - Funeral Homes and Funeral Services) throughout the state. Any indirect impacts cannot be estimated. **Non-Small Businesses:** The proposed amendments to Sections R156-9-304, R156-9-605, R156-9-607(2-3), and R156-9-610 through R156-9-618 have no fiscal impact to non-small business. Non-small businesses (NAICS 812210 – Funeral Homes and Funeral Services) will not see an increase or a decrease in service costs as a result of these proposed amendments. The Division estimates that this could result in a fiscal neutrality for the approximately two non-small businesses (NAICS 812210 - Funeral Homes and Funeral Services) which employ more than 50 employees within the state of Utah. Any indirect impacts cannot be estimated

B) Name and title of department head commenting on the fiscal impacts:

Francine A. Giani, Executive Director

10 This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :

Subsection 58-1-106(1)(a)

Subsection 58-1-202(1)(a)

Section 58-9-504

11 This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; if none, leave blank):

	First Incorporation	Second Incorporation
Official Title of Materials Incorporated (from title page)		
Publisher		
Date Issued		
Issue, or version		
ISBN Number (optional)		
ISSN Number (optional)		
Cost of Incorporated Reference		
Action: Adds, updates, or removes		

(If this rule incorporates more than two items by reference, please attach additional pages)

12 The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy): 11/14/2019

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):
10/22/2019	1:00 PM	160 East 300 South, Conference Room 464 (4th floor), Salt Lake City, Utah

13 This rule change may become effective on (mm/dd/yyyy): 11/21/2019

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

14 Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")); may not include the name of the agency:

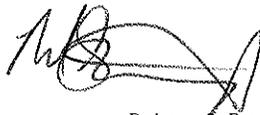
funeral industries	licensing
funeral service directors	preneed funeral arrangements

15 Attach an RTF document containing the text of this rule change R156-9.pro
(filename):

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

AGENCY AUTHORIZATION

**Agency head or
designee, and title:**



Date
(mm/dd/yyyy)
: 9-23-2019

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$75	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$75	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$75	\$0	\$0

*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

The proposed amendments to Section R156-9-304e, R156-9-605, R156-9-607(2-3) and R156-9-610 through R156-9-618 have no fiscal impact to non-small business. Non-small businesses (NAICS 812210-Funeral Homes and Funeral Services) will not see an increase or a decrease in service costs as a result of these proposed amendments. The Division estimates that this could result in a fiscal neutrality for the approximately two non-small businesses (NAICS 812210-Funeral Homes and Funeral Services) which employ more than 50 employees within the state of Utah. Any indirect impacts cannot be estimated.

Include agency head sign-off here. The head of the Department of Commerce, Francine Giani, has reviewed and approved this fiscal analysis.

R156. Commerce, Occupational and Professional Licensing.

R156-9. Funeral Service Licensing Act Rule.

R156-9-304. Continuing Professional Education - Funeral Service Directors.

In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and Section 58-9-304, the continuing education requirements for funeral service directors [~~is defined, clarified or~~] are established as follows:

(1) Continuing professional education ("CPE") shall consist of 20 hours of qualified continuing professional education in each preceding two-year period of licensure or expiration of licensure.

(2) If a renewal period is shortened or extended to effect a change of renewal cycle or if an initial license is granted for a period of less than two years, the [~~continuing professional education~~] CPE hours required for that period shall be increased or decreased proportionately.

(3) The standards for qualified [~~continuing professional education~~] CPE are:

(a) College classes, seminars, or workshops sponsored by professional associations in areas related to funeral service will generally qualify for [~~continuing professional education~~] CPE if the education contributes to the professional competence and knowledge of the funeral service director and if the program complies with the standards set forth under Subsection (b).

(b) CPE programs shall meet the following standards:

(i) the course shall be formally organized and be primarily instructional;

(ii) the sponsor shall prepare an outline of the course which shall be retained for a minimum of four years following the presentation;

(iii) the sponsor shall list the hour rating of the course in the course outline. One hour of CPE shall be credited for each 50 minute period of instruction;

(iv) the sponsor shall record and keep an accurate record of course attendance including the date, place, and the name of the licensed funeral service directors attending the course; and

(v) the sponsor shall issue a certificate of completion listing the time, date, place, name of licensee, number of hours of CPE completed and the course title.

(c) Formal correspondence or other individual study programs which require registration shall provide evidence of satisfactory completion including test results and meet all other requirements [~~as specified in~~] of this section [~~will qualify~~].

(d) Each semester hour of college credit shall equal 15 hours of CPE. A quarter hour shall equal ten hours of CPE.

(e) Licensees who teach qualified CPE courses shall receive two CPE hours for each hour teaching. However, no teaching credit shall be granted for participation in a panel discussion.

(f) A licensee may earn up to eight hours for volunteer service as a subject-matter expert in the review and development of funeral service licensing exams, and for volunteer service on committees or in leadership

roles in any state, national, or international organization for the development and improvement of the funeral service professions.

(4) Upon written request from the licensee, the Board may waive the requirement for CPE as provided in Section R156-1-308d.

(5) The licensee is responsible to ~~[insure]~~ensure that the program will qualify for CPE. Each licensee shall keep an accurate record of CPE on forms supplied by the Division. The records shall be maintained for a minimum of four years after the end of the renewal cycle for which the CPE is due.

(6) The Division in collaboration with the Board shall perform random audits to determine if the licensee is in compliance with the CPE requirements. If audited, or upon request by the Division, the licensee is responsible to submit documentation of compliance with CPE requirements.

R156-9-605. Licensure of Persons Selling Preneed Funeral Arrangements to be Funded by Proceeds from Insurance or Annuity Policy.

~~(1) [Any person who sells or represents that they will or intend to sell specific funeral goods or services, represents that goods or services will be provided by a specific funeral establishment, represents that specified amount of money will purchase defined funeral goods or services, or represents that payment for those goods or services to be provided at some future date shall be accomplished through the purchase of a life insurance policy or annuity policy, is engaged in the sale of a preneed funeral arrangement and is required to be licensed as a funeral service establishment or sales agent.]~~The following persons are engaged in the sale of a preneed funeral arrangement and are required to be licensed as a funeral service establishment or sales agent:

(a) any person who sells or represents that they will or intend to sell specific funeral goods or services;

(b) any person who represents that goods or services will be provided by a specific funeral establishment;

(c) any person who represents that specified amount of money will purchase defined funeral goods or services; or

(d) any person who represents that payment for funeral goods or services to be provided at some future date shall be accomplished through the purchase of a life insurance policy or annuity policy.

(2) Any person who sells or represents that they will or intend to sell an insurance or annuity policy which will provide a certain benefit at time of death, represents that such benefit will be available to pay for funeral arrangements and no reference is made to specific funeral goods or services, to the cost of specific funeral goods or services, or to the services of a specific funeral service establishment, is not engaged in the sale of a preneed funeral arrangement and is not required to be licensed as a funeral service establishment or preneed sales agent.

(3) Nothing in this section shall be interpreted to affect or modify any requirement under state law regarding licensure of persons engaged in the sale of insurance or annuity policies.

R156-9-607. Contract Forms - Division Model.

~~[(1)]~~ In accordance with Subsection 58-9-302(3)(e), a funeral service establishment shall ensure that if any amendments are made to~~[7]~~ any form of contract or agreement that is filed with its application for licensure, the amendments meet the requirements of Section 58-9-701 before that contract or agreement is used in any marketing or sale of preneed funeral arrangements. [

~~(2) In accordance with the provisions of Subsection 58-9-701(2)(a), easy-to-read type size is defined to be of a type size large enough to accommodate no more than six lines per vertical inch and no more than 15 characters per horizontal inch.~~

~~(3) After April 30, 2007, a new preneed contract form is not required to contain a clause indicating that the Division has approved the contract. Preneed contract forms approved prior to April 30, 2007, shall continue to contain a clause indicating approval by the Division.]~~

~~**[R156-9-610. Cash Advance Item Prohibited Unless a Guaranteed Product.**~~

~~A cash advance item as defined in 16 CFR Part 453, Funeral Industry Practices Trade Regulation Rule, of the Federal Trade Commission is prohibited in a preneed funeral arrangement contract unless the item is a guaranteed product permitting the contract to meet the requirements of Subsection 58-9-701(2)(d).]~~

R156-9-[611]610. Use of Funds in Trust Account to Purchase Insurance or Annuity Policy.

A funeral service establishment may convert a contract funded by monies held in trust with a contract funded by the proceeds from an insurance or annuity policy provided:

(1) the buyer consents in writing to the conversion after full disclosure of the consequences of the transaction in writing by the funeral service establishment;

(2) the buyer's consent is given without coercion, threat, concealment of material fact, undue influence, or other prejudicial influence inconsistent with the buyer's best interest;

(3) the funeral service establishment uses all monies held in the individual trust account, including interest, as premium for the purchase of the life insurance or annuity policy, unless otherwise directed in writing by the buyer;

(4) the new preneed funeral arrangement contract must be in writing and must provide for goods and services which at least equal to those required of the funeral service establishment under the original contract, and

(5) the new contract meets all requirements of Title 58, Chapter 9, and this rule.

R156-9-[612]611. Conversion of Trust Accounts Under Prior Law Prohibited.

Conversion of funds held in trust which was established under any prior law regulating preneed funeral arrangements, may not be converted to a trust under the provisions of current statute and rules, but shall continue to be held in trust under the terms and conditions of the predecessor law. However, the funeral service establishment is required to file reports with the Division as required under this rule.

R156-9-[613]612. Prohibition Against Provider Accepting Payment in a Form Other Than Cash, Cash Equivalents, or Negotiable Instruments.

A funeral service establishment may accept in payment for a preneed funeral arrangement contract only cash, cash equivalents, or negotiable instruments which are readily convertible to cash.

R156-9-[614]613. Funeral Service Establishment Expenditure of Earnings from Trust Account.

(1) In accordance with Subsection 58-9-704(1), earnings of a preneed funeral arrangement trust account shall be available to the funeral service establishment for expenditure toward reasonable trustee expenses of administering a trust account, not to exceed the lesser of the earnings remaining in the trust account or 1% of the entire trust account, plus any amounts necessary to pay taxes incurred on the entire trust account's earnings.

(2) In accordance with Subsection 58-9-704(2), earnings of an individual account within the trust shall be available to the funeral service establishment for expenditure toward other authorized reasonable funeral service establishment expenses incurred against the individual account, not to exceed earnings totaling 30% of the sales amount of the respective preneed funeral arrangement contract.

(3) Remaining earnings of individual accounts within the trust shall, except as provided in Subsection 58-9-704(3), remain in each individual account within the trust to pay by account, the costs of providing the goods and services required under respective preneed funeral arrangement contracts.

R156-9-[615]614. Maximum Life Insurance Proceeds Payable to Funeral Service Establishment.

(1) Preneed life insurance proceeds payable to a funeral service provider shall not exceed the funeral service establishment's insurable interest in the recipient of goods and services which, by definition, shall not exceed the funeral service establishment's current retail price for the goods and services provided, as determined by the funeral service establishment's price list in effect at the recipient of goods and service's death.

(2) Excess preneed life insurance proceeds not paid to the funeral service establishment shall be returned to the owner of the life insurance policy or his heirs and beneficiaries unless otherwise designated by the owner or his heirs and beneficiaries.

R156-9-[616]615. Reporting Requirements.

(1) In accordance with Sections 58-9-504 and 58-9-706, each funeral service establishment shall maintain an annual report at the establishment which shall be subject to Division audit at anytime. The annual report shall be maintained in a format set forth by the Division and shall include:

(a) a statement of compliance certifying:

(i) that all payments received from the sale of contracts have been:

(A) placed in the funeral service establishment's trust account in accordance with Section 58-9-702 and administered in accordance with Sections 58-9-703 through 58-9-705 and this rule; or

(B) submitted to the insurance company whose insurance or annuity policy funds the contract;

(ii) that complete and accurate information concerning the preneed funeral arrangements by the funeral service establishment or the funeral service establishment's sales agent was furnished or made available to the independent certified public accountant who prepared the report of agreed upon procedures; and

(iii) that the annual report is complete and accurate;

(b) at least one of the following reports which reconciles balances in all trust accounts and insurance policies to those in the annual report:

(i) a report from a bank trust department;

(ii) a report from a licensed insurance company; or

(iii) an accounting report on forms available from the Division, completed by an independent certified public accountant (CPA) licensed pursuant to Title 58, Chapter 26a, which report indicates the procedures used and agreed upon by the CPA and the funeral service establishment.

(c) an exhibit listing preneed contracts sold prior to April 29, 1991, funded by money, 75% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different, and balance due; the individual trust account number and amount trusted; and the trust earnings, earnings used, and trust balance;

(d) an exhibit listing preneed contracts sold after April 28, 1991, funded by money, 100% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum the information required under subsection (c);

(e) an exhibit listing preneed contracts funded by money placed in trust which were serviced, revoked, rescinded, or amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different; the individual trust account number and trust balance at the recipient of goods and service's death; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced;

(f) an exhibit listing preneed contracts sold after April 28, 1991, funded in whole or in part by insurance, which shall include at a minimum: the contract number, date, amount, recipient of goods and services and buyer if different; the insurance company; the policy number, policy holder, and face amount; and

(g) an exhibit listing preneed contracts funded by insurance which were serviced, revoked, rescinded, or otherwise amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services, and buyer if different; the insurance company; the policy number and policy holder; the policy proceeds; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced.

R156-9-[617]616. Maximum Revocation Fee.

If a buyer revokes or defaults under a guaranteed preneed funeral arrangement contract, the funeral service establishment may retain a revocation fee from the trust corpus, not to exceed 25% of the amount received from the sale of the contract and trust earnings thereupon, provided the revocation fee is clearly identified in the contract.

R156-9-[618]617. Goods and Services Not Provided - Refund.

If goods or services selected in the preneed contract are not provided at the time of need, the amount paid for those goods and services and any unexpended earnings thereupon will be distributed to the preneed contract buyer or the buyer's representative or in their absence, the buyer's heirs and beneficiaries.

KEY: funeral industries, licensing, funeral service directors, preneed funeral arrangements

Date of Enactment or Last Substantive Amendment: [~~September 10, 2018~~2019]

Notice of Continuation: April 26, 2016

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-9-504