

## **Meeting Notice**

### **Missouri State Board of Embalmers and Funeral Directors**

**January 21, 2014**

Missouri Dental Association  
3340 American Ave  
Jefferson City, MO 65109

Notification of special needs as addressed by the American with Disabilities Act should be forwarded to the Missouri State Board of Embalmers and Funeral Directors, P.O. Box 423, 3605 Missouri Boulevard, Jefferson City, Missouri 65102 or by calling (573) 751-0813 to ensure available accommodations. The text telephone for the hearing impaired is (800) 735-2966.

Except to the extent disclosure is otherwise required by law, the Missouri State Board of Embalmers and Funeral Directors is authorized to close meetings, records and votes, to the extent they relate to the following: Sections 610.021(1), (3), (5), (7), (13) and (14), RSMo, and Sections 324.001.8 and 324.001.9 RSMo.

The Board may go into closed session at any time during the meeting. If the meeting is closed the appropriate section will be announced to the public with the motion and vote recorded in open session minutes.

# State Board of Embalmers and Funeral Directors

January 21, 2014

Missouri Dental Association  
3340 American Ave  
Jefferson City, MO 65109

## OPEN AGENDA

### January 21, 2014

#### 10:00 a.m.

1. Call to Order
2. Roll Call
3. Approval of Open Agenda
4. Executive Director Report
5. Legal Counsel Report
6. (Tab 1) Review of Proposed Rules
7. Discussion/Dialogue
8. CLOSED
9. Adjournment

## 20 CSR 2120-1.040 Definitions

*PURPOSE: This rule defines terms used throughout the board's regulations consistent with the practice act.*

(1) Apprentice embalmer—an individual who is being trained as an embalmer under the immediate direction and personal supervision of a Missouri licensed embalmer for the “practice of embalming,” the work of preserving, disinfecting, and preparing by arterial embalming, or otherwise, of dead human bodies or the holding of oneself out as being engaged in such work and has met the requirements for registration pursuant to sections 333.041 and 333.042, RSMo, and 20 CSR 2120-2.010.

(2) Apprentice funeral director—an individual who is being trained as a funeral director in a Missouri licensed funeral establishment under the supervision of a Missouri licensed funeral director in the “practice of funeral directing,” the business of preparing, otherwise than by embalming, for the burial, disposal, or transportation out of this state of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging in the general control, supervision, or management of the operations of a Missouri licensed funeral establishment and has met the requirements for registration pursuant to 333.042 and 20 CSR 2120-2.060.

(3) Board—Missouri State Board of Embalmers and Funeral Directors created by the provisions of Chapter 333, RSMo.

(4) **Conference- The International Conference of Funeral Service Examining Boards**

**[(4)] (5) Corporation**—a business entity incorporated under the laws of Missouri or any other state with authority to do business in the state of Missouri.

**[(5)] (6) Cremation log**—a written record or log kept in the cremation area available at all times in full view for a board inspector **[, which shall include the following:**

- (A) The name of the deceased to be cremated;**
- (B) The name of the Missouri licensed establishment where the body is cremated;**
- (C) The date and time the body arrived at the crematory;**
- (D) The date and time the cremation took place;**
- (E) The name and signature of the Missouri licensed funeral director or Missouri licensed embalmer supervising the cremation;**
- (F) The supervising Missouri licensed funeral director's license number or the supervising Missouri licensed embalmer's license number; and**
- (G) The name of the Missouri licensed funeral establishment, or other that was in charge of making the arrangements if from a different location].**

**(7) Cremated remains** —the bone fragments which remain after the cremation process is completed.

**(8) Cremation**—the mechanical process which reduces remains to bone fragments through heat, evaporation and/or an alkaline hydrolysis chemical process entailing maintaining a temperature of at least 305° Fahrenheit for at least one-half (1/2) hour; a final disposition of dead human remains.

**(9) Cremation box**—a container into which cremated remains are placed for transportation or short-term storage.

**(10) Cremation chamber**—the total functioning mechanical unit for the actual cremation process.

**(11) Cremation container**—the container in which the human remains are delivered to the crematory area for cremation.

**(12) Crematory area—the portion of a building which houses the cremation chamber and includes the room where a cremation chamber is located.**

**(13) Crematory holding facility—the area within the crematory area in which dead bodies are placed while awaiting cremation.**

**(14) Cremation urn—the receptacle into which the cremated remains are placed for other than transportation or short-term storage.**

**[(6)] (15) Disinterment—removal of dead human remains from the ground, grave, [or] tomb, mausoleum, or other place where dead human remains are interred.**

**[(7)] (16) Embalmer—an individual holding an embalmer’s license issued by the [State B]board [of Embalmers and Funeral Directors].**

**[(8)] (17) Embalmer examination—an examination consisting of the following:**

**(A) National Board Funeral Service Arts [Section] examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board;**

**(B) In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory, or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination;**

**(C) National Board Funeral Service Science [Section] examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board; and**

**(D) Missouri Law [Section] examination.**

**[(9)] (18) Executive director—executive secretary of the board.**

**(19) Authorized external investment advisor- any federal or Missouri licensed investment advisor qualified to advise a trustee of a preneed trust and retained by the preneed trustee.**

**(20) Independent Financial Advisor – an investment advisor retained pursuant to 436.440.6 RSMo.**

**[(10)] (21) Function—the purpose for which a [physical location] funeral establishment may be used as set forth in these rules.**

**[(11)] (22) Funeral ceremony—a religious service or other rite or memorial ceremony for a decedent.**

**[(12)] (23) Funeral director—an individual holding a funeral director license issued by the [State B]board [of Embalmers and Funeral Directors].**

**[(13)] (24) Funeral director examination-an examination consisting of the following:**

**[(A)] Missouri Law Examination; and**

**(B) Missouri Funeral Service Arts Examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board; or**

**(C) National Board Funeral Service Arts Examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board]**

**(A) National Board Funeral Service Arts examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board.**

**(B) In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory, or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination; and**

**(C) Missouri Law examination.**

[(14)] (25) Funeral director-in-charge—an individual licensed as a funeral director by the [State Board of Embalmers and Funeral Directors] **board** responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

[(15)] (26) Funeral establishment—a building, place, or premises licensed by the [Missouri State Board of Embalmers and Funeral Directors] **board** devoted to or used in the care and preparation for burial, cremation, or transportation of the human dead and includes every building, place, or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose.

[(16)] (27) Funeral service—any service performed in connection with the care of a dead human body from the time of death until final disposition including, but not limited to:

- (A) Removal;
- (B) Entering into contractual agreements for the provision of funeral services;
- (C) Arranging, planning, conducting, and/or supervising visitations and funeral ceremonies;
- (D) Interment;
- (E) Cremation;
- (F) Disinterment;
- (G) Burial; and
- (H) Entombment.

[(17)] (28) Interment—burial **of dead human remains** in the ground [or], **a tomb [entombment of dead human remains]**, **a** mausoleum, or other place **where dead human remains are interred**.

[(18)] (29) Limited license—allows a person to work only in a funeral establishment which is licensed for only cremation including transportation of dead human bodies to and from the funeral establishment.

**(30) Person-any individual, partnership, corporation, cooperative, association or other entity.**

[(19)] (31) Preparation room—refers to the room in a Missouri licensed funeral establishment where dead human bodies are embalmed, bathed, and/or prepared for final disposition.

[20)] (32) Reciprocity examination—shall consist of the Missouri Law Examination.

[21)] (33) Register log—a written record or log [must be] **maintained [kept in the preparation/embalming room of] in** a Missouri licensed funeral establishment available at all times in full view for a board inspector, [which shall include the following:

- (A) The name of the deceased;
- (B) The date and time the dead human body arrived at the funeral establishment;
- (C) The date and time the embalming took place, if applicable;
- (D) The name and signature of the Missouri licensed embalmer, if applicable;
- (E) The name and signature of the Missouri registered apprentice embalmer, if any;
- (F) The Missouri licensed embalmer's license number, if applicable;
- (G) The Missouri apprentice embalmer registration number, if any; and
- (H) The name of the licensed funeral establishment, or other that was in charge of making the arrangements if from a different location.]

**(34) Temporary Funeral Director – license valid for six months, to the surviving spouse or next of kin or the personal representative of a licensed funeral director, or to the spouse, next of kin, employee or conservator of a licensed funeral director disabled because of sickness, mental incapacity or injury. A temporary funeral director cannot serve as funeral director in charge of a Missouri licensed funeral establishment.**

**[(22)] (35)** The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.011, SB 1, Ninety-fifth General Assembly 2009 and section 333.111, RSMo 2000.\* This rule originally filed as 4 CSR 120-1.040. Original rule filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-1.040, effective Aug. 28, 2006. Amended: Filed Jan. 30, 2007, effective July 30, 2007. Amended: Filed July 22, 2009, effective Jan. 30, 2010.

\*Original authority: 333.011, RSMo 1965, amended 2007, 2008, 2009 and 333.111, RSMo 1965, amended 1981, 1993, 1995.

## PUBLIC COMMENTS RECEIVED

### Meierhoffer Funeral Home & Crematory

20 CSR 2120-1.040

*(12) Crematory area—the building or portion of a building which houses the cremation chamber and the holding facility and includes the entire room where a cremation chamber is located and any rooms used for viewing or visitation of a dead human body awaiting cremation or that is being cremated or being removed from the cremation chamber.*

We believe that this is too broad of a definition of the term “crematory area”. By including visitation and viewing rooms in this definition our areas that are used for tradition viewings and visitations as well, at some time in the future, restrictions placed on “crematory areas” could cause unintended consequences. Removing the words “any rooms used for viewing or visitation” would be more appropriate.

20 CSR 2120-1.040

*(19) External investment advisor- any licensed, qualified investment advisor approved and authorized by the trustee of the preneed trust and who holds no personal interest in any assets of the preneed trust and has no financial relationship, business or personal, with any person or entity who has any relationship, business or personal, with the preneed seller such as to create or give the appearance of showing a lack of independence.*

We would like some clarification on this definition. We certainly appreciate the need for independence, but feel the definition as written is too restrictive.

### Preneed Resource Company

#### **2120-1.040(19) External Investment Advisor –**

Is the intent to require registered investment advisors (as opposed to licensed stock brokers)?

RIAs have a higher fiduciary duty than the licensed stock broker.

Is the intent to preclude the investment advisor from having any business relationship with officers, directors or owners of the seller?

Independent of what entity?

#### **2120-1.040(27) Interment –**

This definition becomes somewhat circular with the ending insert. Would the definition have any purpose other than for the interment of a body at a cemetery?

Is clarification needed to exclude cremains?

## 20 CSR 2120-2.070 Funeral Establishments

*PURPOSE: This rule clarifies establishment license classifications, establishment names, and the documents to be maintained by licensed funeral homes.*

(1) Application for a Missouri licensed funeral establishment license shall be made on the forms provided by the board and shall be accompanied by the appropriate fee. Applications are available from the board's office or the board's website [at <http://pr.mo.gov/embalmers.asp>]. Each application shall indicate which license classification is being sought.

(2) There shall be the following license classifications:

(A) Function A establishments shall have authority to embalm dead human bodies and to transport dead human bodies to and from the funeral establishment. An establishment licensed only as a Function A establishment is prohibited from the care and preparation of dead human bodies other than by embalming, and shall also be prohibited from making funeral arrangements or embalming arrangements with any unlicensed person, cremating, conducting visitations and funeral ceremonies, and furnishing any funeral service in connection with the disposition of dead human bodies, or selling of funeral merchandise. **Each Missouri licensed funeral establishment used solely or partially for embalming shall contain a preparation room that shall be devoted to activities incident or related to the preparation or the embalming, or both, of dead human remains and shall be equipped and maintained as described in 20 CSR 2120-2.090. Each Function A funeral establishment licensed for embalming shall maintain on the premises [in the preparation room] a register log.**

(B) Function B establishments shall have authority to cremate **through the use of any mechanical or chemical means** dead human bodies and to transport dead human bodies to and from the funeral establishment. This establishment shall have a functioning cremation chamber **and/or functioning facilities for alkaline hydrolysis chemical process for final disposition of a dead human body**, except as otherwise provided by Chapter 333, RSMo, and the rules of the board. An establishment licensed only as a Function B establishment is prohibited from the care and preparation of dead human bodies other than by cremating, and shall also be prohibited from embalming, making funeral arrangements or cremation arrangements with any unlicensed person, conducting visitations and funeral ceremonies, and furnishing any funeral service in connection with the disposition of dead human bodies or selling funeral merchandise. In no event shall any licensee or licensed establishment cremate human remains in the same retort used for cremating non-human remains. **Each Missouri licensed funeral establishment which is used solely or partially for cremations shall be equipped and maintained as described in 20 CSR 2120-2.071. This function shall maintain on the premises in the cremation area a cremation log.**

(C) Function C establishments shall have authority for the care and preparation of dead human bodies, other than by embalming or cremating, authority to transport dead human bodies to and from the funeral establishment, make funeral arrangements, and furnish any funeral services in connection with the disposition of dead human bodies or the sale of funeral merchandise. **This function shall contain a separate area for the care and custody of dead human remains that is secured with a functioning lock and a separate area for confidential conferences to arrange funeral services. The Function C establishment shall have on-site equipment necessary for arranging funeral services including tables or desks and chairs for funeral service arrangement conferences and file cabinets for the confidential storage of funeral records. This function shall contain a restroom, available drinking water, and an area where funeral ceremonies or visitations may be conducted. The establishment shall be equipped with seating for visitations or funeral ceremonies, casket bier, register book stand, and officiate stand. This function shall maintain on the Missouri premises the following documents:**

**(A) General price list;**

**(B) Preneed contracts which have been cancelled or fulfilled;**

- (C) [Purchase agreements] **Written Statements of Goods and Services;**
- (D) Authorizations to embalm or cremate.**
- (E) Register Log;**
- [(F) Preneed Contracts]

(D) Function D establishments shall have authority to conduct visitations and funeral ceremonies only. A Function D license is dependent upon and shall be operated under the supervision and ownership of a Function C establishment. **This function shall contain a restroom, available drinking water, and an area where funeral ceremonies or visitations may be conducted. The establishment shall be equipped with seating for visitations or funeral ceremonies, casket bier, register book stand, and officiate stand. Each Function D funeral establishment shall maintain on the premises a register log.**

**(E) Function E establishment shall have authority to make funeral arrangements and furnish any funeral services in connection with the disposition of dead human bodies or the sale of funeral merchandise. This function shall have a separate area for confidential conferences to arrange funeral services. The Function E establishment shall have on site tables or desks and chairs for funeral service arrangement conferences and file cabinets for the confidential storage of funeral records. This function shall contain a restroom, available drinking water. The establishment is to be used only for arranging funerals and visitations to be conducted at another facility, no services shall be held at this establishment. This function shall maintain on the premises the following documents:**

- A) General price list;**
- (B) Preneed contracts which have been cancelled or fulfilled;**
- (C) Written Statements of Goods and Services;**
- (D) Authorizations to embalm or cremate;**
- (E) Register Log.**

(3) If a Missouri licensed funeral establishment wishes to [change or] add to its classification, it shall file a new application for a Missouri licensed funeral establishment indicating its new classification. If a Missouri licensed funeral establishment desires to eliminate one (1) of its functions, [,other than a Function C,] it shall notify the board in writing of its intention to surrender the function, but is not required to file a new application for a new Missouri licensed funeral establishment.

[(4) A Missouri licensed funeral establishment shall not be used for any other business purpose other than as a Missouri licensed funeral establishment. It shall be permissible for a Missouri licensed funeral establishment to be in the same building as another business so long as the Missouri licensed funeral establishment has a separate entrance and a separate street address.] **(4)A Missouri licensed funeral establishment shall not be used for any business purpose other than as a Missouri licensed funeral establishment, except as otherwise permitted by statute or rule.**

**A. It shall be permissible for a Missouri licensed funeral establishment to be in the same building as another business so long as the Missouri licensed funeral establishment has a separate entrance, a separate street address, and no areas of the funeral home are shared with the other businesses.**

**B. It shall be permissible to engage in the business of being a preneed seller, preneed provider, preneed agent and/or the sale of life insurance at a Missouri licensed funeral establishment so long as all persons involved in such business hold the necessary licenses to engage in such business lawfully.**

(5) A Missouri licensed funeral establishment shall be used only for the function for which it is licensed.

(6) Each application for a funeral establishment shall be made in the name of the person or business entity authorized to conduct business in Missouri. No license shall be issued to an establishment that has no legal recognition. A Missouri licensed funeral establishment shall maintain a current and active authorization to conduct business in Missouri with the Missouri Secretary of State.

(7) A funeral establishment application shall indicate the name and license number of the Missouri licensed funeral director-in-charge, as defined by 20 CSR 2120-1.040. When the Missouri licensed funeral director-in-charge changes [for a period of more than thirty (30) days], the new Missouri licensed funeral director-in-charge and the former Missouri licensed funeral director-in-charge, jointly or individually, shall notify the board of the change within [thirty (30)] fifteen (15) days of the date when the change first occurs. Failure to notify the board shall be considered a violation of this rule on the part of each Missouri funeral director licensee and on the part of the Missouri licensed funeral establishment. A change in the Missouri licensed funeral director-in-charge does not require a new Missouri licensed funeral establishment license.

(8) Within thirty (30) days after an application for a Missouri licensed funeral establishment has been received in the board's office, the board shall cause the establishment to be inspected. The board shall act on the application and, within thirty (30) days after the application was received in the board's office, the applicant will be advised whether the license is granted or denied. If an applicant determines the establishment will not meet the qualifications for inspection or licensure within the thirty (30)-day application period, up to two (2) thirty (30)-day extensions of the application may be requested by the applicant in writing to the board before the application expires. Each request for an extension shall be received by the board prior to the expiration of the application or extension period.

(9) The establishment license issued by the board is effective for a fixed place or establishment and for a specific name of a person or entity authorized to conduct business in Missouri and may include one (1) "doing business as" name. The license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location. Whenever the ownership, location, or name of the Missouri licensed establishment is changed, a new license shall be obtained. If the Missouri licensed funeral establishment maintains a chapel, preparation room, or other facility in a building or portion physically separated from and located at a place designated by an address differing from the office, chapel, or other facilities of the applicant, the chapel, preparation room, or other funeral facility otherwise located shall be deemed to be a separate funeral establishment. Nothing contained in this rule shall be construed or interpreted to require a separate registration for a building if it is joined or connected by a private passage, walk or driveway existing between the registered establishment and the other building.

(A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce, etc.) without the addition of any new owner(s), it is not necessary to obtain a new establishment license. However, a new application for an establishment license form shall be filed as an amended application [within thirty (30) days] prior to [after] the change of ownership. This form shall be filled out completely with correct, current information.

(B) A corporation is considered by law to be a separate person. If a corporation owns a Missouri licensed funeral establishment, it is not necessary to obtain a new establishment license or to file an amended application for an establishment license if the owners of the stock change.

(C) However, as a separate person, if a corporation begins ownership of a Missouri licensed funeral establishment or ceases ownership of a Missouri licensed funeral establishment, a new establishment license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. Every Missouri licensed funeral establishment shall provide and allow access to any member or **[duly authorized]** agent of the board for the purpose of inspection , **investigation, examination or audit as authorized in Chapters 333 and 436 [as provided by sections 333.061 and 333.101]**, RSMo. If any representative of the Missouri licensed funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the Missouri licensed funeral establishment and by the Missouri licensed funeral director-in-charge of the Missouri licensed funeral establishment. Additionally, if the Missouri licensed funeral establishment representative who fails or refuses to provide or allow access holds any license or registration issued by this board, that person shall be in violation of this rule.

(11) No one licensed by this board may be employed in any capacity by an unlicensed funeral establishment. Violation of this section will be deemed misconduct in the practice of embalming or funeral directing.

(12) Only one (1) **Missouri funeral establishment** license will be issued by this board for any physical facility that is considered to be a Missouri licensed funeral establishment as defined by statute and rule. If a Missouri funeral establishment licensed by this board is destroyed by fire or some other disaster or act of God, the board, in its discretion, for a period of not more than six (6) months, may allow the Missouri licensed funeral establishment to continue its operation from another Missouri licensed funeral establishment or from a facility that has not been licensed as a funeral establishment if the facility meets the minimum requirements for the functions outlined in section (2) of this rule. **A letter must be received by the board from the establishment indicating the address of the facility they wish to operate from, a letter will be issued by the board upon approval, until that time the establishment shall not operate from the proposed location. A letter from the owner of the proposed site must also be sent to the board office.**

(13) A Missouri licensed funeral establishment may use only its registered name in any advertisement or holding out to the public.

(A) All signs, stationery and any advertising in newspapers, publications or otherwise, shall include the name(s) of the Missouri licensed funeral establishment registered with the board. Advertisements that do not comply with this section shall be deemed misleading for the purposes of section 333.**[121]330**, RSMo.

(B) It shall not be deemed to be misleading if a listing appears in a telephone directory or national directory if the name of the Missouri licensed funeral establishment changes after the listing has been placed, but before a new directory is published.

(14) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be **maintained in a manner that does not present a potential or actual hazard to the health, safety, or welfare of the public and** kept free and clean of litter, dirt, debris, and clutter **[or other objects or conditions which present a potential or actual hazard to the health, safety, or welfare of the public]**.

**[[15] The interior and exterior of the Missouri licensed funeral establishment physical plant shall be maintained in a manner that does not present a potential or actual hazard to the health, safety, or welfare of the public.**

**(16) Each Missouri licensed funeral establishment used solely or partially for embalming shall contain a preparation room that shall be devoted to activities incident or related to the preparation or the embalming, or both, of dead human remains and shall be equipped and maintained as described in 20 CSR 2120-2. 090.]**

**[[17] (15) No person shall be permitted in a preparation room during the course of embalming a dead human body except the employees of the Missouri licensed funeral establishment in that the human body is being embalmed, members of the family of the deceased, and persons authorized by the members of the family of the deceased, or any person otherwise authorized by law.**

[(18) Each Missouri licensed funeral establishment which is used solely or partially for cremations shall be equipped and maintained as described in 20 CSR 2120-2.071.

(19) Each Function C establishment shall contain a separate area for the care and custody of dead human remains and a separate area for confidential conferences to arrange funeral services. The Function C establishment shall have on-site equipment necessary for arranging funeral services including tables or desks and chairs for funeral service arrangement conferences and file cabinets for the confidential storage of funeral records.

(20) Each Function C or Function D establishment shall contain a restroom, available drinking water, and an area where funeral ceremonies or visitations may be conducted. The establishment shall be equipped with seating for visitations or funeral ceremonies, casket bier, register book stand, officiate stand, flower display stands, and music-producing equipment.

(21) (16) According to section 333.[121.2(17)]330, RSMo, the State Board of Embalmers and Funeral Directors may impose disciplinary action for failure to obtain authorization to embalm from the person entitled to custody or control of the body, if the body is embalmed. If the body is not embalmed, a Missouri licensed funeral establishment shall not hold the unembalmed body for any longer than twenty-four (24) hours unless the unembalmed body is refrigerated in a cooling unit at a temperature of forty degrees Fahrenheit (40° F) or cooler or encased in an airtight metal or metal-lined burial case, casket or box that is closed and hermetically sealed. If the deceased gave written authorization to embalm and did not revoke the authorization, the authorization shall satisfy this requirement. If the deceased did not give written authorization to embalm, the next of kin of the deceased may give authorization to embalm. Authorization to embalm may be given by the next of kin prior to the death of the person whose body is to be embalmed. Authorization to embalm given prior to death may be in any written document, including a preneed contract.

(A) The next of kin, for purposes of this rule, shall be as defined in section 194.119.2, RSMo.

(B) Any person or friend who assumes responsibility for the disposition of the deceased's remains if no next of kin assumes such responsibility may authorize to embalm the deceased;

(C) The county coroner or medical examiner pursuant to the provisions of Chapter 58, RSMo may authorize to embalm the deceased;

(D) If the body is required to be buried at public expense, the body shall be disposed of according to the terms of section 194.150, RSMo;

(E) If the Missouri licensed funeral establishment receives no authorization to embalm from any of the persons identified in subsections ([21]16)(A), (B), or (C) of this rule, the Missouri licensed funeral establishment may proceed with embalming if it has attempted to locate a person from whom authorization to embalm may be obtained for at least six (6) hours and it has a written statement from city, county, or state law enforcement officials that they have assisted the Missouri licensed funeral establishment in attempting to locate such a person. However, the Missouri licensed embalmer may proceed to embalm sooner if the condition of the body is such that waiting for six (6) hours would substantially impair the ability to effectively embalm the body or if the deceased died as a result of a communicable disease, was subject to isolation at the time of death; and

(F) If a Missouri licensed embalmer proceeds to embalm a body under the provisions of subsection (21)(E), the Missouri licensed funeral establishment which employs the Missouri licensed embalmer shall not require payment for the embalming unless the funeral arrangements that are subsequently made authorized the embalming.

[(22)] (17) Each Missouri licensed funeral establishment shall maintain documentation of the following information regarding authorization to embalm a body which is embalmed by or on behalf of the Missouri licensed funeral establishment—

(A) When authorization to embalm is given in writing:

**(1). The name of the deceased**

[1] (2). The name and signature of the person who is authorizing embalming;

[2] (3). The relationship of that person to the deceased;

[3] (4). The time and date authorization to embalm was given; and

[4] (5). The name and title of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment; and

(B) Authorization to embalm shall be given in writing if the person authorizing embalming is present in the Missouri licensed funeral establishment or in the physical presence of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment. If verbal authorization to embalm is given, the Missouri licensed funeral establishment shall document:

1. The name of the person who is actually authorizing embalming, if different from the person who is verbally communicating authorization to embalm to the Missouri licensed funeral establishment;
2. The relationship of that person to the deceased;
3. The name of the person who is verbally communicating authorization to embalm and that person's relationship to the person who is actually authorizing embalming;
4. The time and date authorization to embalm was given; and
5. The name and title of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment.

[(23) Each Function C funeral establishment shall maintain on the Missouri premises the following documents:

- (A) General price list;
- (B) Preneed contracts which have been cancelled or fulfilled;
- (C) Purchase agreements; and
- (D) Authorizations to embalm or cremate.]

(24) Each Function A funeral establishment licensed for embalming shall maintain on the premises in the preparation room a register log.

[(25) Each Function B funeral establishment licensed for cremation shall maintain on the premises a completely functioning cremation chamber, as defined by 20 CSR 2120-2.071(1)(D), and maintain on the premises in the cremation area a cremation log. A Function B establishment shall not be in violation of this rule if the cremation chamber is completely restored to functioning capacity within one hundred twenty (120) days from the date the cremation chamber ceases to be in compliance with this section. However, if there are extenuating circumstances, and the cremation chamber could not be repaired, documentation of such shall be provided to the board for review and approval. Cremation chambers shall be maintained in proper working order and in compliance with all applicable Missouri Department of Health and Senior Services statutes, rules and regulations; Missouri Department of Natural Resources, statutes, rules and regulations; and all other applicable federal, city, county, and municipal statutes, rules and regulations.

(A) If a Function B establishment has only one (1) cremation chamber, and that chamber is not functioning, notification from the establishment shall be made to the board within ten (10) business days after the cremation chamber stops functioning.

(B) A Function B establishment that has a nonfunctioning cremation chamber may arrange for cremation at another licensed establishment, if the use of an alternate establishment for purposes of cremation is disclosed to the third party making the arrangements on the cremation authorization form.

1. Cremation areas shall contain only the articles, instruments, and items that are necessary for the preparation and cremation of dead human bodies. For purposes of this section, the cremation area shall include the entire room where the retort is located and any rooms used for viewing or visitation of a dead human body awaiting cremation or that is being cremated or being removed from the cremation chamber. This paragraph (25)(B)1. shall not apply to establishments containing retorts or cremation areas for the cremation of non-human remains prior to April 1, 2008, provided that such establishment shall be prohibited from cremating human remains at the same time or in the same retort as non-human remains.

2. Any establishment containing an area for the cremation of non-human remains prior to April 1, 2008, shall be required to comply with this rule if a change of ownership is caused by the addition or

replacement of one (1) or more owners or a new corporation begins ownership of the establishment. This paragraph (25)(B)2. shall not apply if only the owners of the stock of a corporation changes.

3. In no event shall any licensee or licensed establishment cremate human remains in the same retort used for cremating non-human remains].

[26]] (19) All documents required by this rule to be maintained, shall be maintained on the premises of the Missouri licensed funeral establishment for two (2) years from the date the record was created. All documents required to be maintained by this rule may be maintained electronically, but all documents shall be stored in such a manner to allow access by the board and so the board, or its assignee, may easily and timely obtain hard copies or electronic copies in a format easily readable by the board, or its assignee.

[27]] (20) Each funeral establishment shall maintain a register log [as defined by 20 CSR2120-1.040(21)].[The log shall be kept in the preparation or embalming room of the Missouri licensed funeral establishment at all times and in full view for a board inspector. If the funeral establishment does not contain a preparation or embalming room,] [the log shall be kept] on the premises of the licensed funeral establishment and shall be easily accessible and in full view for a board inspector. A register log shall [contain the information required by 20 CSR 2120-1.040(21)]. , **include the following:**

- (A) **The name of the deceased;**
- (B) **The date and time the dead human body arrived at the funeral establishment;**
- (C) **The date and time the embalming took place, if applicable;**
- (D) **The name and signature of the Missouri licensed embalmer, if applicable;**
- (E) **The name and signature of the Missouri registered apprentice embalmer, if any;**
- (F) **The Missouri licensed embalmer's license number, if applicable;**
- (G) **The Missouri apprentice embalmer registration number, if any; and**
- (H) **The name of the licensed funeral establishment, or other that was in charge of making the arrangements if from a different location.**

[28]] (21) No dead human body shall be buried, disinterred, interred, or cremated within this state or removed from this state, unless the burial, disinterment, interment, cremation, removal, or other authorized disposition, is performed under the direction of a Missouri licensed funeral establishment or Missouri licensed funeral director, unless otherwise authorized by law. If the disinterment does not require legal notification to the county coroner or medical examiner, a funeral director's presence may not be required. Nothing in this rule shall be interpreted to require the use of a Missouri licensed funeral establishment or director if the person(s) having the right to control the incidents of burial request or determine otherwise, provided that this provision does not exempt any person from licensure as required by Chapter 333, RSMo. **Any licensed funeral establishment or funeral director that makes arrangements for an unlicensed person to transport dead human bodies within the state of Missouri, or out of this state, is responsible for the conduct of the unlicensed person.**

[29]] (22) A licensee shall be prohibited from knowingly using, placing, or including any false, misleading, deceptive or materially incorrect information, or assisting or enabling any person to provide such information, on a death certificate filed in the state of Missouri.

[30]] (23) Whenever a dead human body is donated to a medical or educational institution for medical and/or scientific study and arrangements for return of the body to the legal next of kin have not been made, then delivery of the body to the medical or educational institution shall constitute final disposition. If, however, arrangements for return of the body to the legal next of kin have been made, then final disposition shall be the burial, interment, cremation, or removal of the body out of this state, after the medical or educational institution has returned the body.

**[31)] (24)** The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

*AUTHORITY: sections 333.061 and 333.121, RSMo Supp. 2008 and sections 333.091, 333.111, and 333.145, RSMo 2000.\* This rule originally filed as 4 CSR 120-2.070. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. Amended: Filed Aug. 16, 1976, effective Dec. 11, 1976. Emergency rule filed Nov. 9, 1978, effective Nov. 20, 1978, expired Feb. 11, 1979. Rescinded and readopted: Filed Nov. 8, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Jan. 13, 1982, effective April 11, 1982. Amended: Filed Aug. 6, 1982, effective Nov. 11, 1982. Amended: Filed Sept. 12, 1985, effective Dec. 26, 1985. Rescinded and readopted: Filed May 28, 1987, effective Sept. 11, 1987. Amended: Filed June 24, 1988, effective Sept. 29, 1988. Amended: Filed Sept. 6, 1988, effective Dec. 11, 1988. Amended: Filed Sept. 6, 1989, effective Dec. 28, 1989. Amended: Filed Dec. 4, 1989, effective March 11, 1990. Amended: Filed Sept. 5, 1990, effective March 14, 1991. Amended: Filed March 4, 1991, effective Sept. 30, 1991. Amended: Filed Aug. 15, 1991, effective Jan. 13, 1992. Amended: Filed Dec. 14, 1992, effective June 7, 1993. Amended: Filed Nov. 29, 1994, effective July 30, 1995. Amended: Filed Sept. 3, 1996, effective April 30, 1997. Amended: Filed Nov. 1, 2001, effective April 30, 2002. Rescinded and readopted: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.070, effective Aug. 28, 2006. Amended: Filed Nov. 15, 2007, effective May 30, 2008. Amended: Filed April 8, 2009, effective Oct. 30, 2009.*

*\*Original authority: 333.061, RSMo 1965, amended 1981, 2001; 333.091, RSMo 1965, amended 1981; 333.111, RSMo 1965, amended 1981, 1993, 1995; 333.121, RSMo 1965, amended 1981, 2007; and 333.145, RSMo 1981.*

## PUBLIC COMMENTS

### Meierhoffer Funeral Home & Crematory

20 CSR 2120-2.070

*[(4) A Missouri licensed funeral establishment shall not be used for any other business purpose other than as a Missouri licensed funeral establishment. It shall be permissible for a Missouri licensed funeral establishment to be in the same building as another business so long as the Missouri licensed funeral establishment has a separate entrance and a separate street address.] (4) A Missouri licensed funeral establishment shall not be used for any business purpose other than as a Missouri licensed funeral establishment, except as otherwise permitted by statute or rule.*

*A. It shall be permissible for a Missouri licensed funeral establishment to be in the same building as another business so long as the Missouri licensed funeral establishment has a separate entrance, a separate street address, and no areas of the funeral home are shared with the other businesses.*

*B. It shall be permissible to engage in the business of being a preneed seller, preneed provider, preneed agent and/or the sale of life insurance at a Missouri licensed funeral establishment so long as all persons involved in such business hold the necessary licenses to engage in such business lawfully.*

The text "no areas of the funeral home are shared with other businesses" in item A. is restrictive if lobby areas, restrooms, coffee lounges, conference rooms, etc. are included in this definition. In many instances in the State of Missouri, combination funeral homes and cemeteries exist where the family comes to one location to make all of their arrangements. Does this proposal require the meeting areas or offices to remain separate? If so, would there be some sort of grandfather clause to address combo funeral homes and cemeteries already in existence?

## 20 CSR 2120-2.071 Funeral Establishments Containing a Crematory Area

*PURPOSE: This rule outlines the requirements and procedures for operating a crematory establishment in Missouri.*

### (1) Definitions.

- (A) Cremated remains—the bone fragments which remain after the cremation process is completed.
- (B) Cremation—the **[technical heating] mechanical** process which reduces remains to bone fragments through heat, **[and] evaporation** **an alkaline hydrolysis chemical process entailing maintaining a temperature of at least 305° Fahrenheit for at least one-half (1/2) hour;** a final disposition of dead human remains.
- (C) Cremation box—a container into which cremated remains are placed for transportation or short-term storage.
- (D) Cremation chamber—the total functioning mechanical unit for the actual cremation process.
- (E) Cremation container—the case in which the human remains are delivered to the crematory area for cremation.
- (F) Crematory area—the building or portion of a building which houses the cremation chamber and the holding facility.
- (G) Holding facility—the area within the crematory area in which dead bodies are placed while awaiting cremation.
- (H) Short-term storage—storage for a period of thirty (30) days or fewer.
- (I) Urn—the receptacle into which the cremated remains are placed for other than transportation or short-term storage.

(2) No body shall be cremated in this state except in a funeral establishment licensed by the board as a Function B establishment.

(3) Each Missouri licensed funeral establishment that contains a crematory area shall maintain permanent records which shall include:

- (A) A written authorization for cremation executed prior to cremation by the person entitled to custody or control of the body which shows the time and date when authorization for cremation was given; and
- (B) Information regarding the cremation which shall include:
  1. The full name of the deceased;
  2. The last place of residence of the deceased;
  3. The place of death of the deceased;
  4. The place of birth of the deceased;
  5. The date and place of the funeral;
  6. The name of the Missouri licensed funeral director, other than a limited license funeral director, with whom the arrangements were made;
  7. The name of the person(s) who made the arrangements with the Missouri licensed funeral director and the relationship to the deceased;
  8. The date and time when cremation was begun;
  9. The name and address of the person to whom the cremated remains were released or the location where the cremated remains were placed; and
  10. If the cremated remains were delivered or placed other than by an employee of the Missouri licensed funeral establishment, the name of the person who made the delivery or placement or the name of the business by which the cremated remains were shipped along with the receipt number.

**11. If cremation is to be performed by chemical disposition, the written authorization shall also include;**

**(A). Specific consent for cremation by chemical process with an explanation of the process to be utilized; and**

**(B). Disclosures on the disposition of personal property including, but not limited to, jewelry, medical devices and any other items that might remain after the chemical disposition process is complete.**

(4) Cremation log—a written record or log kept in the cremation area available at all times in full view, which will include the following:

- (A) The name of the deceased to be cremated;
- (B) The name of the Missouri licensed establishment where the body is cremated;
- (C) The date and time the body arrived at the crematory;
- (D) The date and time the cremation took place;
- (E) The name and signature of the Missouri licensed funeral director [or Missouri licensed embalmer] supervising the cremation;
- (F) The supervising Missouri licensed funeral director's license number [or the supervising Missouri licensed embalmer's license number; and]
- (G) The name of the Missouri licensed funeral establishment or other that was in charge of making the arrangements if from a different location [.] **and**
- (H) The type of cremation performed.**

(5) All records required to be maintained by this rule shall be maintained on the premises of the Missouri licensed funeral establishment for two (2) years from the date the record was created. All documents required to be maintained by this rule may be maintained electronically, but all documents shall be stored in such a manner to allow access by the board, or its assignee, and so the board, or its assignee, may easily and timely obtain hard copies or electronic copies in a format easily readable by the board, or its assignee.

(6) If the deceased gave written authorization to cremate and did not revoke the authorization, that authorization shall satisfy the requirement for authorization to cremate. If the deceased did not give written authorization to cremate, the next of kin of the deceased or the county coroner or medical examiner pursuant to Chapter 58, RSMo, may give authorization to cremate. Authorization to cremate given prior to the death may be in any written document, including a preneed contract. The next of kin, for purposes of this rule, shall be as defined in section 194.119.2, RSMo.

(7) If the Missouri licensed funeral establishment receives no authorization for cremation from any of the persons identified in section (6) of this rule, the Missouri licensed funeral establishment may proceed with cremation if it has attempted to locate a person from whom authorization to cremate may be obtained for at least ten (10) days and it has a written statement from city, county, or state law enforcement officials that they have assisted the Missouri licensed funeral establishment in attempting to locate a person from whom authorization for cremation could be obtained but have been unable to locate such a person. However, the Missouri licensed funeral establishment may proceed with cremation prior to the elapse of twenty-four (24) hours if the deceased died as a result of a communicable disease, was subject to isolation at the time of death, and has not been properly embalmed in accordance with 19 CSR 20-24.010.

(8) The cremation chamber shall be completely functioning at all times and shall be constructed specially to withstand high temperatures and/or **chemicals used in the cremation and to** protect the surrounding structure. A Function B establishment shall not be in violation of this rule if the cremation chamber is completely restored to functioning capacity within one hundred twenty (120) days from the date the cremation chamber ceases to be in compliance with this section. However, if there are extenuating circumstances and the cremation chamber could not be repaired, documentation of such shall be provided to the board for review and approval. Cremation chambers **and processes** shall be maintained in proper working order and in compliance with all applicable Missouri Department of Health and Senior Services statutes, rules and regulations, Missouri Department of Natural Resources, statutes, rules and regulations, and all other applicable federal, **state**, city, county, and municipal statutes, rules and regulations.

(A) If a Function B has only one (1) cremation chamber and that chamber is not functioning, written notification shall be made to the board within ten (10) business days after the cremation chamber stops functioning.

(B) A Function B establishment that has a nonfunctioning cremation chamber may arrange for cremation at another licensed establishment, if the use of an alternate establishment for purposes of cremation is disclosed to the person making the arrangements on the cremation authorization form **and the type of cremation performed is as authorized in the written authorization to cremate.**

**(1) Cremation areas shall contain only the articles, instruments, and items that are necessary for the preparation and cremation of dead human bodies. For purposes of this section, the cremation area shall include the portion of a building which houses the cremation chamber and includes the room where a cremation chamber is located. This paragraph (8) (B) 1 shall not apply to establishments containing retorts or cremation areas for the cremation of non-human remains prior to April 1, 2008, provided that such establishment shall be prohibited from cremating human remains at the same time or in the same retort as non-human remains.**

**(2) Any establishment containing an area for the cremation of non-human remains prior to April 1, 2008, shall be required to comply with this rule if a change of ownership is caused by the addition or replacement of one (1) or more owners or a new corporation begins ownership of the establishment. This paragraph (8) (B) 2 shall not apply if only the owners of the stock of a corporation changes.**

**(3) In no event shall any licensee or licensed establishment cremate human remains in the same retort used for cremating non-human remains.**

(9) The crematory area shall include a work center area equipped with forced air ventilation adequate to protect the health and safety of the operator and any other person(s) present.

(10) No person shall be permitted in the crematory area while any dead human body is in the crematory area awaiting cremation or being cremated or while the cremation remains are being removed from the cremation chamber except the Missouri licensed funeral director, the Missouri licensed embalmer, employees of the Missouri licensed funeral establishment in which the body is being cremated, members of the family of the deceased, persons authorized by the members of the family of the deceased, or any other person authorized by law.

(11) When there is no Missouri licensed funeral establishment employee in the crematory area, the crematory area shall be secure from entry by persons other than Missouri licensed funeral establishment employees or a Missouri licensed embalmer authorized by the funeral establishment.

(12) Each body delivered to the crematory, if not already in a cremation container, plastic pouch, cardboard cremation container, casket made of wood or wood product or metal, shall be placed in such a pouch, container or casket. If a metal container or casket is used, the person making the arrangements shall be informed by the Missouri licensed funeral director with whom the arrangements are made of the disposition of the metal container or casket after cremation, if not placed in the retort. The cremation container shall be composed of a combustible, nonexplosive, opaque material which is adequate to assure protection to the health and safety of any person in the crematory area. The casket or container shall be leak resistant if the body enclosed is not embalmed or if death was caused by a contagious disease. **Each cremation box or urn into which the cremated remains are placed after removal from the cremation chamber shall be labeled clearly with the full name of the deceased and the name of the Missouri licensed funeral establishment with whom the arrangements were made, pursuant to chapter 193.**

(13) The Missouri licensed funeral director with whom the arrangements are made shall make inquiry to determine the presence or existence of any body prosthesis, bridgework or similar items.

(14) No body shall be cremated, **except for cremation by chemical disposition**, with a pacemaker in place. The Missouri licensed funeral director with whom the arrangements are made shall take all steps necessary to ensure that any pacemakers are removed prior to cremation.

**[(15) No body shall be cremated until after a completed death certificate has been filed with the local registrar as required by section 193.175, RSMo.**

(16) Except for metal containers or caskets, each cremation container or casket into which a body is placed shall be placed into the cremation chamber with the body and be cremated. If a metal container or casket is used, the purchaser shall be informed by the funeral director at the time the arrangements are made of the disposition of the metal container or casket after cremation, if the container or casket is not to be placed in the retort. Each cremation box or urn into which the cremated remains are placed after removal from the cremation chamber shall be labeled clearly with the full name of the deceased and the name of the Missouri licensed funeral establishment with whom the arrangements were made.

[(17)] (15) The remains of only one (1) body shall be in the cremation chamber at one (1) time unless simultaneous cremation has been authorized in writing by the person(s) entitled to custody or control of each body.

[(18)] (16) Following the completion of the cremation process, all residual of the cremation process including the cremated remains and any other matter shall be thoroughly removed from the cremation chamber prior to placing another body in the cremation chamber.

[(19)] (17) If the cremated remains do not fill the interior of the cremation box adequately, the extra space may be filled with shredded paper or clean absorbent cotton.

[(20)] (18) If the cremated remains will not fit within the receptacle designated in the arrangements, the remainder shall be placed in a separate receptacle or, if written permission is obtained from the person entitled to custody or control of the body, disposed of in some other manner.]

[(21)] (18) The cremation box shall be composed of rigid materials which shall be sealed in order to prevent the leakage of cremated remains or the entry of foreign objects.

[(22)] (19) If the cremated remains are to be shipped, the cremation box shall be packed securely in a **sturdy shipping container such as a plastic or** corrugated cardboard box which is securely **[closed] sealed** with **adhesive seal [tape]** acceptable to the shipper.

[(23)] (20) Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery.

[(24)] (21) Each urn into which cremated remains are placed **by a licensee or funeral establishment** shall be made of a durable material which shall enclose the cremated remains entirely.

[(25)] (22) Each Missouri licensed funeral establishment which comes into possession of cremated remains, whether or not it is the Missouri licensed funeral establishment at which the cremation occurred, shall retain the cremated remains until they are delivered, placed, or shipped pursuant to the instructions of the person(s) entitled to custody or control of the body. However, nothing in this rule shall prohibit a Missouri licensed funeral establishment from disposing of cremated remains in another fashion if the Missouri licensed funeral establishment has obtained written permission for other disposition contingent upon the Missouri licensed funeral establishment attempting to dispose of the cremated remains according to instructions but being unable to do so through no fault of the Missouri licensed funeral establishment and provided that other disposition shall not occur prior to thirty (30) days after cremation. **Any Missouri licensed funeral establishment that comes into possession of unclaimed cremated remains may also dispose of these remains pursuant to chapter 194.**

[(26)] (23) Nothing in this rule shall be construed to prohibit a Missouri licensed funeral establishment which contains a crematory area from establishing more restrictive standards for its own operation.

**[(27)] (24)** The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

*AUTHORITY: section[s] 333.061[and 333.121], RSMo Supp. [2008] 2009, section 333.330, SB1, Ninety-fifth General Assembly 2009 and sections 333.111 and 333.145, RSMo 2000.\* This rule originally filed as 4 CSR 120-2.071. Original rule filed May 29, 1987, effective Sept. 11, 1987. Amended: Filed Jan. 15, 1988, effective April 11, 1988. Amended: Filed April 16, 1990, effective Sept. 28, 1990. Amended: Filed Nov. 15, 1991, effective April 4, 1992. Amended: Filed Sept. 3, 1996, effective April 30, 1997. Amended: Filed Dec. 22, 1997, effective June 30, 1998. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.071, effective Aug. 28, 2006. Amended: Filed Jan. 30, 2007, effective July 30, 2007. Amended: Filed April 8, 2009, effective Oct. 30, 2009.*

*\*Original authority: 333.061, RSMo 1965, amended 1981, 2001; 333.111, RSMo 1965, amended 1981, 1993, 1995; 333.121, RSMo 1965 amended 1981, 2007; and 333.145, RSMo 1981.*

## 20 CSR 2120-2.090 Preparation Rooms/Embalming Room

**PURPOSE:** This rule outlines the laws and rules governing the standards required of funeral establishment preparation rooms.

(1) Whenever used in this rule, the phrase preparation room refers to that room in a Missouri licensed funeral establishment where dead human bodies are embalmed.

(2) The following requirements for the maintenance and cleanliness of preparation rooms apply at all times, regardless of whether a dead human body is being embalmed or not.

(3) Floors, Walls and Ceilings. All preparation room floor surfaces shall be smooth, nonabsorbent materials and so constructed as to be kept clean easily. **[Floor drains shall be provided where the floor is to be subjected to cleaning by flooding.]** All walls and ceilings shall be easily cleanable and light colored, and shall be kept and maintained in good repair. All walls shall have washable surfaces.

(4) Each Missouri licensed establishment shall comply with Missouri Department of Health and Senior Services rules and regulations, Missouri Department of Natural Resources rules and regulations, and all other applicable county, city, municipal and state rules and regulations relating to **containment backflow prevention devices**, plumbing, sewage and liquid waste, solid waste disposal and disposal of body parts.

(5) Sewage and Liquid Waste Disposal.

(A) All sewage and water-carried wastes from the entire Missouri licensed funeral establishment, including the preparation room, shall be disposed of in a public sewage system or an approved disposal system which is constructed, operated and maintained in conformance with the minimum standards of the Department of Health and Senior Services **and Department of Natural Resources**.

(B) The following aspirators are approved for preparation rooms:

1. Electric aspirators;

2. Water-operated aspirators. All water-operated aspirators shall be protected from back siphonage by the minimum of an atmospheric vacuum breaker **that is installed a minimum of six (6) inches above the highest point of the embalming table and is approved by the American Society of Sanitary Engineering (ASSE) or by the Uniform Plumbing Code. [and installed a minimum of twelve inches (12") above the maximum possible height of the embalming table];** and

3. Water-controlled unit. All water-controlled units shall be installed and maintained according to the Uniform Plumbing Code, and properly protected from back siphonage with a backflow prevention device approved by the American Society of Sanitary Engineering or the Uniform Plumbing Code.

(6) Solid Waste Disposal.

**[(A) All waste materials [R] refuse, bandages, cotton and other solid waste materials shall be kept in leakproof, nonabsorbent containers which shall be covered with tight-fitting lids [prior to disposal].**

**(B) All waste materials, refuse, and used bandage and cotton shall be destroyed by reducing to ashes through incineration or shall be sterilized and buried. Sterilization may be accomplished by soaking for thirty (30) minutes in a solution of five percent (5%) formaldehyde, one (1) pint of formalin to seven (7) pints of water.]**

(7) Disposal of Body Parts. Human body parts not buried within the casket shall be disposed of by incineration in a commercial or industrial-type incinerator or buried to a depth which will insure a minimum of three feet (3') of compacted earth cover (overlay).

(8) A mechanical exhaust system is required. Care shall be taken to prevent the discharge of exhaust air into an area where odors may create nuisance problems.

(9) All preparation rooms and all articles stored in them shall be kept and maintained in a clean and sanitary condition. All embalming tables, hoppers, sinks, receptacles, instruments and other appliances used in embalming or other preparation of dead human bodies shall be so constructed that they can be kept and maintained in a clean and sanitary condition. The following minimum standards shall apply:

(A) An eye wash kit (bank) or suitable facilities for quick drenching or flushing of the eyes shall be provided within the area for immediate emergency use;

- (B) Facilities shall exist for the proper disinfection of embalming instruments and the embalming table;
- (C) Facilities for the proper storage of embalming instruments shall be maintained. At a minimum, a chest or cabinet shall be used for the storage of embalming instruments;
- (D) All types of blocks used in positioning a dead human body on an embalming table shall be made of nonabsorbent material. All wooden blocks shall be sealed and painted with enamel; and
- (E) When not in use, embalming tables shall be cleaned, disinfected and covered with a sheet.

(10) Food and Beverages.

(A) There may be no direct opening between the preparation room and any room where food and beverages are prepared or served.

(B) [The Department of Health and Senior Services sanitation laws and rules governing food sanitation apply to the operation, construction and sanitation of food service facilities, where provided for the comfort and convenience of a funeral party; provided, however, that coffee service utilizing single-service cups and spoons and a coffeemaker of easily cleanable construction shall be deemed acceptable where this service is the only food service offered.

(C)] A Missouri licensed funeral home providing coffee service utilizing single-service items and coffeemakers of easily cleanable construction shall provide a water supply faucet at a suitable sink of easily cleanable construction for the filling and cleaning of this equipment in an area separate from the preparation room and restrooms.

(11) A separate wash sink (separate from slop drain sink) shall be present or in close proximity to the preparation room for a personal hand wash facility [for Missouri licensed embalmers] and the disinfecting of embalming equipment. If the wash sink is not present in the preparation room, it shall be in a location close to the preparation room which is not accessible to the public and it shall be at a distance of no further than ten feet (10') from the door of the preparation room.

(12) Preparation rooms shall contain only the articles, instruments, and items that are necessary for the preparation, embalming, and final disposition of dead human bodies.

(13) Preparation rooms shall be secured with a functional lock so as to prevent entrance by unauthorized persons.

(14) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.111.1, RSMo 2000 and 192.020 and 333.061, RSMo Supp. 2006.\* *This rule originally filed as 4 CSR 120-2.090. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. Refiled March 24, 1976. Emergency rule filed Nov. 9, 1978, effective Nov. 20, 1978, expired Feb. 11, 1979. Rescinded and readopted: Filed Nov. 8, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Jan. 13, 1982, effective April 11, 1982. Amended: Filed Aug. 13, 1984, effective Jan. 13, 1985. Amended: Filed June 2, 1986, effective Sept. 1, 1986. Amended: Filed Nov. 15, 1991, effective April 4, 1992. Amended: Filed May 26, 1993, effective Nov. 8, 1993. Amended: Filed May 16, 1995, effective Dec. 30, 1995. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.090, effective Aug. 28, 2006. Amended: Filed Jan. 30, 2007, effective July 30, 2007.*

\*Original authority: 192.020, RSMo 1939, amended 1945, 1951, 2004; 333.061, RSMo 1965, amended 1981, 2001; and 333.111, RSMo 1965, amended 1981, 1993, 1995.

## 20 CSR 2120-2.100 Fees

*PURPOSE: This rule establishes and fixes the various fees and charges authorized by Chapter 333, RSMo.*

(1) The following fees hereby are established by the State Board of Embalmers and Funeral Directors:

|  |                    |
|--|--------------------|
| (A) Embalmer Practicum Student Registration Fee  | \$ 25              |
| (B) Embalmer Application Fee – <b>Apprentice, Reciprocity</b>  | <b>[\$200] 250</b> |
| [(C) Embalmer Oral Examination Fee   | <b>\$125</b>       |
| (D) Embalmer Reciprocity Application Fee   | <b>\$300]</b>      |
| [(E)] (C) Embalmer Biennial Renewal Fee  | \$200              |
| [(F)] (D) Funeral Director Application Fee – <b>Apprentice, Education, Reciprocity, Limited</b>  | <b>[\$200] 250</b> |
| [(G) Funeral Director Limited License Application Fee  | <b>\$200</b>       |
| (H) Funeral Director Reciprocity Application Fee   | <b>\$300]</b>      |
| [(I)] (E) Funeral Director Biennial Renewal Fee  | \$200              |
| [(J)] (F) <b>Funeral Director, Embalmer, Establishment</b> Reactivation Fee (up to one (1) year after <b>date license lapsed</b> )             | \$100              |
| [(K)] (G) <b>Funeral Director, Embalmer, Establishment</b> Reactivation Fee (up to two (2) years after <b>date license lapsed</b> )            | \$200              |
| [(L)] (H) Establishment Application Fee  | \$300              |
| [(M)] (I) Amended Establishment Application Fee  | \$ 25              |
| [(N)] (J) Establishment Biennial Renewal Fee   | \$250              |
| [(O)] (K) Reciprocity Certification Fee  | \$ 10              |
| [(P)] (L) Duplicate Wallhanging Fee  | \$ 10              |
| [(Q)] (M) Collection Fee for Bad Checks  | \$ 25              |
| [(R)] (N) Law Book Requests  | \$ 5[*]            |
| [(S) Examination Review Fee  | <b>\$ 25</b>       |
| (T) (O) Background Check Fee (amount determined by the Missouri State Highway Patrol)  |                    |
| [(U)] (P) Provider License Application Fee (if no Funeral Establishment license)   | \$200              |
| [(V)] (Q) Provider License Application Fee (if also Funeral Establishment license)   | \$100              |
| [(W)] (R) Provider Annual Renewal Fee  | \$ 0               |
| [(X)] (S) Provider Delinquent Renewal Fee – <b>In addition to annual renewal fee (up to one (1) year after the date license lapsed)</b>        | \$100              |
| (T) <b>Provider Delinquent Renewal Fee - In addition to annual renewal fee (up to two (2) years after the date license lapsed)</b>             | <b>\$200</b>       |
| [(Y)] (U) Seller License Application Fee   | \$200              |
| [(Z)] (V) Seller Annual Renewal Fee  | \$200              |
| [(AA)] (W) Seller Delinquent Renewal Fee – <b>In addition to annual renewal fee (up to one (1) year after the date license lapsed)</b>         | \$200              |
| (X) Seller Delinquent Renewal Fee – <b>In addition to annual renewal fee (up to two (2) years after the date license lapsed)</b>               | <b>[\$200] 400</b> |
| [(BB)] (Y) Preneed Agent Registration Fee  | \$ 50              |
| [(CC)] (Z) Preneed Agent Annual Registration Renewal Fee   | \$ 50              |
| [(DD)] (AA) Preneed Agent Delinquent Renewal Fee - <b>In addition to annual renewal fee (up to one (1) year after the date license lapsed)</b> | \$ 50              |
| (BB) <b>Preneed Agent Delinquent Renewal Fee - In addition to annual renewal fee (up to one (1) year after the date license lapsed)</b>        | <b>\$100</b>       |
| [(EE) Preneed Seller Agent Law Examination Fee   | <b>\$ **]</b>      |
| [(FF)] (CC) Seller per Contract Annual Reporting Fee [(for contracts executed on or after August 28, 2009)]                                    | \$ 36              |
| [(HH)] (DD) Amended Provider Application Fee   | \$ 25              |
| [(II)] (EE) Amended Seller Application Fee   | \$ 25              |

\*This fee will not apply to the initial copy of the law book which is automatically mailed to all applicants for licensure and to educational institutions of mortuary science. Furthermore, this fee will not be charged to licensees or any other individual, for additions or corrections to the law book after the initial copy is mailed.

\*\*This fee is not yet determined by the board.

(2) All fees are nonrefundable.

(3) The provisions of this rule are severable. If any fee fixed by this rule is held invalid by a court of competent jurisdiction, the remaining provisions of this rule shall remain in full force, unless otherwise determined by a court of competent jurisdiction.

*AUTHORITY: section 333.111.1, RSMo 2000 and section 333.340, RSMo Supp. 2010.\* This rule originally filed as 4 CSR 120-2.100. Emergency rule filed June 30, 1981, effective July 9, 1981, expired Nov. 11, 1981. Original rule filed June 30, 1981, effective Oct. 12, 1981. Emergency amendment filed April 7, 1982, effective April 17, 1982, expired Aug. 14, 1982. Amended: Filed April 13, 1982, effective July 11, 1982. Amended: Filed June 9, 1982, effective Sept. 12, 1982. Amended: Filed Aug. 9, 1982, effective Nov. 11, 1982. Amended: Filed Jan. 13, 1984, effective April 12, 1984. Amended: Filed Aug. 9, 1984, effective Jan. 13, 1985. Amended: Filed Feb. 7, 1985, effective May 11, 1985. Amended: Filed Sept. 12, 1985, effective Dec. 26, 1985. Amended: Filed Oct. 3, 1986, effective Jan. 12, 1987. Amended: Filed Dec. 2, 1986, effective March 12, 1987. Amended: Filed March 2, 1987, effective May 25, 1987. Amended: Filed March 16, 1988, effective July 28, 1988. Amended: Filed Sept. 6, 1988, effective Dec. 11, 1988. Amended: Filed Dec. 2, 1988, effective March 11, 1989. Amended: Filed July 17, 1989, effective Oct. 12, 1989. Amended: Filed Dec. 4, 1989, effective March 11, 1990. Amended: Filed March 12, 1991, effective Aug. 30, 1991. Amended: Filed Oct. 16, 1991, effective May 14, 1992. Amended: Filed Feb. 1, 1994, effective July 30, 1994. Amended: Filed June 9, 1995, effective Dec. 30, 1995. Rescinded and readopted: Filed April 16, 1996, effective Nov. 30, 1996. Amended: Filed Dec. 22, 1997, effective June 30, 1998. Amended: Filed Sept. 8, 1998, effective Jan. 30, 1999. Amended: Filed March 24, 1999, effective Oct. 30, 1999. Amended: Filed July 26, 1999, effective Jan. 30, 2000. Amended: Filed Dec. 30, 1999, effective June 30, 2000. Amended: Filed Aug. 18, 2000, effective Feb. 28, 2001. Amended: Filed April 6, 2001, effective Oct. 30, 2001. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.100, effective Aug. 28, 2006. Amended: Filed Jan. 30, 2007, effective July 30, 2007. Emergency amendment filed Sept. 24, 2009, effective Oct. 4, 2009, expired April 1, 2010. Amended: Filed Sept. 24, 2009, effective April 30, 2010. Emergency amendment filed July 26, 2010, effective Aug. 5, 2010, expired Feb. 24, 2011. Amended: Filed July 26, 2010, effective Jan. 30, 2011.*

*\*Original authority: 333.111, RSMo 1965, amended 1981, 1993, 1995 and 333.340, RSMo 2009.*

## **20 CSR 2120-3.105 Filing of Annual Reports**

*PURPOSE: This rule prescribes the board's process for the filing of annual reports under the revised sections of Chapters 333 and 436, RSMo.*

**[(1) For sellers:**

(A) For the annual report due on October 31, 2009, sellers registered with the board prior to August 28, 2009, in lieu of filing the annual report required by section 436.460, RSMo, may file an annual report, on the form provided by the board, containing all the information required by section 436.021.2, RSMo 2000. This report shall report all preneed contracts executed since the reporting period the seller reported in its report due on October 31, 2008, through August 27, 2009. This annual report shall be accompanied by a fee of two dollars (\$2) per preneed contract sold for the reporting period; and

(B) For the annual report due on October 31, 2010, sellers shall report all contracts executed from August 28, 2009, through August 31, 2010. Thereafter, the annual report shall report all contracts sold between September 1 of the year preceding the annual report through August 31 of the reporting year. Each annual report filed for reporting years ending October 31, 2010, and thereafter shall also be accompanied by the annual fee as established in 20 CSR 2120-2.100.

**(2) For providers:**

(A) For the annual report due as set out below, providers shall file an annual report as provided by section 333.315.3(4), RSMo, covering the reporting period as set out below:

1. For report due October 31, 2009, the reporting period shall be from the date of the provider's last annual report though August 27, 2009. No annual fee shall be required for this reporting period;

2. For report due October 31, 2010, the reporting period shall be August 28, 2009, through August 31, 2010, and accompanied by the renewal fee in 20 CSR 2120-2.100; and

3. For reports due successive years, reporting period shall be September 1 through August 31 and shall be accompanied by the renewal fee established in 20 CSR 2120-2.100.

*AUTHORITY: sections 333.315, 333.320, 333.340, 436.460, and 436.520, RSMo Supp. 2009.\*  
Emergency rule filed Sept. 24, 2009, effective Oct. 4, 2009, expired April 1, 2010. Original rule filed Sept. 24, 2009, effective April 30, 2010.*

*\*Original authority: 333.315, RSMo 2009; 333.320, RSMo 2009; 333.340, RSMo 2009; 436.460, RSMo 2009; and 436.520, RSMo 2009.]*

**(1) For sellers:**

**(A) Each preneed seller shall file a completed renewal on or by October 31<sup>st</sup> each year. If the license is not renewed by this date the license shall expire.**

**(B) Each preneed seller shall file a completed annual report by October 31<sup>st</sup> each year. If this is not filed the license shall be automatically suspended until the time the completed annual report is filed and all applicable fees have been paid.**

**(C) In completing the seller annual report the following is applicable:**

**(1) The number of preneed contracts sold in the reporting year (including those written that were cancelled, fulfilled, transferred or serviced in the same reporting year);**

**(2) If a consumer has more than one preneed contract with the same or different preneed sellers the contract should be identified on the annual report and the per contract fee is required for each preneed contract;**

**(3) If a consumer has one (1) preneed contract with multiple funding sources the contract should be identified on the annual report and one (1) per contract fee is to be submitted.**

**(D) For the seller annual report, if the seller is unable to validate the status and face value of the insurance policy and unable to obtain the certification from the insurance company, the following information shall meet the requirements of Section 436.460.4 for the reporting requirements for insurance funded preneed contracts:**

**(1) The name and address of the company issuing the policy or annuity funding the preneed;**

**(2) The amount of the policy or balance on account at the time the preneed contract was sold, and;**

**(3) An attestation from the seller that since these accounts are funded by insurance or annuity beneficiary or assignment, the seller has no ability to confirm the existence or amount of the policies or accounts.**

**(E) If the license is suspended the applicant must file the annual report and renewal and pay the delinquent fee established by the board before the license is issued.**

**(F) If the licensee fails to file the renewal from every reporting period and pay the renewal and delinquent fee within two (2) years from date of expiration the license shall become void and the licensee will have to reapply.**

**(G) If the license is not current the licensee shall not act as a preneed seller in any capacity, such as maintaining an active trust account or paying providers for fulfilled preneed contracts.**

**(2) For providers:**

**(A) Each preneed provider shall file a completed annual report on or by October 31<sup>st</sup> each year. If the license is not renewed by this date the license shall expire.**

**(B) If the license expires the applicant must file the annual report pay the renewal and delinquent fee established by the board before the license is issued.**

**(C) If the licensee fails to file the annual report from every reporting period and pay the delinquent fee within two (2) years from date of expiration the license shall become void and the licensee will have to reapply.**

**(D) If the license is not current the licensee shall not act as a preneed provider in any capacity, such as servicing preneed contracts or being named as a provider on such.**

## PUBLIC COMMENTS

### **Meierhoffer Funeral Home & Crematory**

20 CSR 2120-3.105

*(2) If a consumer has more than one preneed contract with the same or different preneed sellers the contract should be identified on the annual report and the per contract fee is required for each preneed contract;*

It is common for consumers with limited funds to start a pre-arrangement for partial services and merchandise and then as they pay the contract in full to add to the original contract again, in a small amount. We also serve our county's public administrator's clients in the same manner, often in increments of \$500 at time. To classify each of these as an individual pre-arranged contract and to charge the audit fee represents, at this point a 7.2% tax on a \$500 transaction. Prior to this proposal, add-ons to contracts in this manner were considered a part of the original contract.

### **Preneed Resource Company**

#### **2120-3.105 Annual Reports –**

Other regulation proposals use the phrase “on a form provided by the board”, while this one does not. Is this an oversight, or intentional? Will substitute schedules be accepted? As we have suggested to the board in the past, the annual renewal form is problematic because of the short window for processing payments and reporting that data as of August 31<sup>st</sup>. Under SB1, the seller has 60 days to make deposits. The staff has warned that sellers run a risk if they wait until late October to submit renewal paperwork. Such artificial deadlines conflict with the deposit provisions of SB1.

Paragraph (D) refers to when the insurance funded preneed contract was sold, whereas funeral homes may only know the policy benefit when issued.

Are all providers required to file an annual report? Even those that are their own seller?

## 20 CSR 2120-3.205 Mandatory Consumer Disclosures (rule number is proposed number)

*PURPOSE: This rule sets forth the mandatory consumer disclosures that must be provided to each purchaser of a preneed contract.*

**(1) Each purchaser of a preneed contract shall be provided the following written mandatory consumer disclosures at or before the time the consumer signs the contract unless otherwise provided by rule:**

**(A) This Contract is a Legally Binding Document**

**1. Before you sign this contract, you should read it and make sure you understand all terms and conditions. You may wish to consult with your legal counsel before you sign this contract.**

**(B) Right to Receive a Copy of this Contract**

**1. You have a right to receive a copy of this contract and any accompanying documents related to this contract such as any life insurance policies or evidence of a joint account.**

**(C) Right to Change Providers**

**1. The law gives you the right to change the provider named in this contract. The provider is the funeral home or other service provider who will provide the goods and services at the time of your death. If you want to change providers, you must provide both the seller and provider named in this contract with written notice that you wish to change providers and you must include the name and address of who you want to be your new provider. You may NOT be billed for any additional fees or charges to change providers. A change in providers requires the agreement of the new provider and may require a new preneed contract. Your seller and provider can help you determine whether a new contract is required or not.**

**(D) Qualifying for Public Assistance**

**1. If you decide to seek qualification to receive Medicaid or other public assistance, you may sign an agreement to make this contract irrevocable at any time. Even if you have agreed to make this contract irrevocable as part of your qualification for public assistance, you still may change providers at any time and make changes to the goods and services at any time. However, you cannot cancel this contract and cannot receive any refund.**

**(E) Your Right to Cancel this Contract**

**1. You have a right to cancel this contract at any time before your death. If you cancel this contract, you may not be entitled to receive all funds paid on this contract. If you want to cancel this contract, you must give the seller named in this contract written notice that you wish to cancel this contract.**

**2. If your contract is funded with a joint account, you must also provide written notice to the financial institution where your account is held. The financial institution must give you the principal in the account within fifteen (15) days of your request. Interest will be distributed as provided in this contract.**

**3. If your contract is funded with an insurance policy, canceling the contract will NOT cancel the insurance policy. You must follow the policies of the insurance company to cancel the insurance policy. If you cancel the insurance policy, you will receive only the cash surrender value of the policy which may be less than what you have paid into the policy.**

**4. If your contract is funded with a trust, you must also provide written notice to the trustee. The trustee shall then distribute all funds held on your behalf in the trust within fifteen (15) days.**

**(F) Seller's Right to Cancel This Contract**

**1. The seller may cancel this contract if you fail to make any installment payment within sixty (60) days of when it is due. Before the seller can cancel the contract, the seller must provide you with written notice of the intent to cancel the contract and you may bring your account current within thirty (30) days of notice. If you don't pay the balance within thirty (30) days, then the seller can provide the funds to the provider at the time of death to be credited towards your funeral services or the seller can cancel the contract and will refund you eighty-five percent (85%) of your contract payments made.**

**(G) What Happens if I Die Before My Contract is Paid in Full?**

- 1. If you die before the contract is paid in full, your survivors have the option in trust funded or joint account funded contracts to pay the balance due on the contract and receive all goods and services that have been price guaranteed. If the balance is not paid, the amount paid on your contract will be applied to the price of your funeral based on the provider's current prices.**
- 2. If your preneed contract is funded through an insurance policy, you should consult your insurance policy.**

*AUTHORITY: sections 333.340, 436.425, 436.456, 436.457 and 436.520, as amended by Senate Bill 1 (2009)*

## PUBLIC COMMENTS

### Preneed Resource Company

#### 2120-3.205 Mandatory Consumer Disclosures – Change Providers

This overlooks that the new provider may not have an agreement with the trustee. What if the provider does not have a trust?

### Mark Warren – Combined Comments from Homesteaders Life Insurance Company, Forethought Life Insurance Company, National Guardian Life Insurance Company

| RULE                    | COMMENTS   | PROPOSED CHANGE  |
|-------------------------|--|--|
| 20 CSR 2120-3.205(1)(C) | Need to add language that has the policy owner notify the insurance company for a re-assignment of the policy. | (C)...Your seller and provider can help you determine whether a new contract is required or not. <u>If the contract is funded by a life insurance policy, you must notify the insurance provider and complete all appropriate forms.</u> |
| 20 CSR 2120-3.205(1)(F) | This section applies for a trust or joint-account only, not insurance. Clarifying language should be added.    | (F) <u>For a trust funded or joint-account funded contract,</u> the seller may cancel this contract...   |

## **Meierhoffer Funeral Home & Crematory**

20 CSR 2120-3.205

**PURPOSE:** This rule sets forth the mandatory consumer disclosures that must be provided to each purchaser of a preneed contract.

(1) Each purchaser of a preneed contract shall be provided the following written mandatory consumer disclosures at or before the time the consumer signs the contract unless otherwise provided by rule:

**(A) This Contract is a Legally Binding Document**

1. Before you sign this contract, you should read it and make sure you understand all terms and conditions. You may wish to consult with your legal counsel before you sign this contract.

**(B) Right to Receive a Copy of this Contract**

1. You have a right to receive a copy of this contract and any accompanying documents related to this contract such as any life insurance policies or evidence of a joint account.

**(C) Right to Change Providers**

1. The law gives you the right to change the provider named in this contract. The provider is the funeral home or other service provider who will provide the goods and services at the time of your death. If you want to change providers, you must provide both the seller and provider named in this contract with written notice that you wish to change providers and you must include the name and address of who you want to be your new provider. You may NOT be billed for any additional fees or charges to change providers. A change in providers requires the agreement of the new provider and may require a new preneed contract. Your seller and provider can help you determine whether a new contract is required or not.

**(D) Qualifying for Public Assistance**

1. If you decide to seek qualification to receive Medicaid or other public assistance, you may sign an agreement to make this contract irrevocable at any time. Even if you have agreed to make this contract irrevocable as part of your qualification for public assistance, you still may change providers at any time and make changes to the goods and services at any time. However, you cannot cancel this contract and cannot receive any refund.

**(E) Your Right to Cancel this Contract**

1. You have a right to cancel this contract at any time before your death. If you cancel this contract, you may not be entitled to receive all funds paid on this contract. If you want to cancel this contract, you must give the seller named in this contract written notice that you wish to cancel this contract.

2. If your contract is funded with a joint account, you must also provide written notice to the financial institution where your account is held. The financial institution must give you the principal in the account within fifteen (15) days of your request. Interest will be distributed as provided in this contract.

3. If your contract is funded with an insurance policy, canceling the contract will NOT cancel the insurance policy. You must follow the policies of the insurance companies to cancel the insurance policy. If you cancel the insurance policy, you will receive only the cash surrender value of the policy which may be less than what you have paid into the policy.

4. If your contract is funded with a trust, you must also provide written notice to the trustee. The trustee shall then distribute all funds held on your behalf in the trust within fifteen (15) days.

**(F) Seller's Right to Cancel This Contract**

1. The seller may cancel this contract if you fail to make any installment payment within sixty (60) days of when it is due. Before the seller can cancel the contract, the seller must provide you with written notice of the intent to cancel the contract and you may bring your account current within thirty (30) days of notice. If you don't pay the balance within thirty (30) days, then the seller can provide the funds to the provider at the time of death to be credited towards your funeral services or the seller can cancel the contract and will refund you eighty-five percent (85%) of your contract payments made.

**(G) What Happens if I Die Before My Contract is Paid in Full?**

1. If you die before the contract is paid in full, your survivors have the option in trust funded or joint account funded contracts to pay the balance due on the contract and receive all goods and services that have been price guaranteed. If the balance is not paid, the amount paid on your contract will be applied to the price of your funeral based on the provider's current prices.

2. If your preneed contract is funded through an insurance policy, you should consult your insurance

A question to clarify this rule: Is the State Board mandating this exact language on all pre-need contracts, or are these the items that the Board is requiring each seller to address in their own language? If so, please cite the authority to do so.

**20 CSR 2120-3.525 [Independent Financial Advisor is Agent of Trustee] External Investment Advisor**

*PURPOSE: [This rule clarifies that an independent financial advisor is an agent of the trustee in a trust-funded preneed contract.] To set forth the qualifications and duties of an authorized external investment advisor for a preneed trust.*

- (1) An [independent financial advisor] **authorized external investment advisor**, as provided in section 436.440.6 **and 436.445**, RSMo, is an agent, as provided in section 436.440, RSMo, of the trustee.
- (2) **A preneed trust may utilize the services of an authorized external investment advisor as provided in Sections 436.435, .440 and .445, RSMo.**
- (3) **Any authorized external investment advisor utilized by a preneed trustee must have a current and active federal or Missouri license as an investment advisor at all times when he or she serves as an investment advisor for a preneed trust.**
- (4) **Any authorized external investment advisor shall exercise his or her duties in compliance with the provisions of applicable state and federal laws including compliance with his or her fiduciary duties including the duties of loyalty and of care.**
- (5) **Except as provided in Chapter 436, RSMo, only a preneed trustee may retain the services of an authorized external investment advisor to assist the preneed trustee with the investment of preneed trust assets.**
- (6) **Any independent financial advisor, in place before August 28, 2009 in compliance with the provisions of Section 436.440.6, RSMo, must be either a federally registered or Missouri registered independent qualified investment advisor at all times when acting as an investment advisor for a preneed trust.**

*AUTHORITY: sections 333.340, 436.440.6, **436.445**, and 436.520, RSMo Supp. 2009.\* Emergency rule filed Dec. 4, 2009, effective Dec. 14, 2009, expired June 11, 2010. Original rule filed Dec. 4, 2009, effective June 30, 2010.*

*\*Original authority: 333.340, RSMo 2009; 436.440, RSMo 2009; and 436.520, RSMo 2009.*

**20 CSR 2120-3.535 Financial Examination Committee** (rule number is a proposed number)

**Purpose:**

(1) The board shall have as a standing committee a committee known as the “Financial Examination Committee.” The purpose of the Financial Examination Committee shall be to provide timely and expedited review of financial examination files as they are prepared by the board staff.

(2) The Financial Examination Committee shall meet, as needed, but at least once between each regularly scheduled board meeting.

(3) The members of the Financial Examination Committee shall be appointed by the board chair and shall be at least 2, but no more than 3, board members, one of whom shall be the public member. Financial Examination Committee members shall be appointed each year by the board chair at the meeting in which the board holds its election of officers. Once appointed, a committee member shall serve until the next election of officers, unless the committee member resigns or if they are no longer a member of the board. In the case of a vacancy, the board chair shall appoint a new member to the Financial Examination Committee as soon as is practical to do so.

(4) The board delegates the following duties and authorities of the Financial Examination Committee:

(A) To review completed financial examination reports along with the licensee response and take one or more of the following actions:

(1) Direct staff to close the examination file and send a letter to licensee informing the licensee that the financial examination is being closed;

(2) Request additional information from the licensee and request the licensee to take steps necessary to resolve any exceptions discovered during the financial examination;

(3) Allow a licensee additional time to respond to requests for more information or time to complete steps necessary to meet requests of the Financial Examination Committee;

(4) Request the licensee to appear before the board;

(5) Refer the financial examination for review by the board; and

(6) Other duties as assigned by the board and/or the board chair.

(B) If a financial examination file reveals unresolved violations and/or reveals significant shortages of consumer funds held in trust and/or joint accounts or other significant misconduct by the licensee, as determined by the Financial Examination Committee, the committee shall refer the examination file to the board for review.

(3) Only the board may authorize action to seek legal action against a licensee.

Authority: Section 436.470, 436.520, 333.111, RSMo

## PUBLIC COMMENTS

### Preneed Resource Company

#### **2120-3.535 Financial Examination Committee –**

How will the criteria set by the Board for examinations be documented? Hasn't the Board gotten into trouble in the past for informal guidelines that were not published to the industry?

What authority does the Board have to delegate authority to the Committee to send matters to the Administrative Hearing Commission?

**20 CSR 2120-3.540 Financial Examination-Audit Process and Procedures** (rule number is a proposed number)

**Purpose:**

(1) The board shall conduct a financial examination of the books and records of each seller at least once every five years, subject to available funding. The board shall take no action to reduce fees to intentionally reduce funding so as to eliminate financial examinations.

(2) The board shall conduct financial examinations or audits as a means to ensure compliance with the provisions of Missouri statutes and regulations under Chapters 333 and 436, RSMo, as those statutes relate to preneed funeral contracts.

(3) A seller may, at the board's discretion, be subject to financial examination more frequently than once every five years.

(4) Periodically, the board shall set the scope of financial examinations.

(5) Upon determining that a financial examination or audit of a seller is to be conducted, the board shall issue a notice to the assigned examiner that will instruct the examiner as to the scope of the financial examination or audit.

(6) Before the board begins a financial examination or audit, the board may provide notice to the seller that the board will be conducting a financial examination. This notice shall contain the following:

(A) Notice to the seller that the board will be conducting a financial examination or audit;

(B) A request of the seller to submit to the board specified records the board will require to begin the financial examination or audit and a date by which those records are due to the board. The board may request copies of statements showing trust balances and assets, joint account statements, verification of insurance for insurance funded preneed contracts, copies of ledgers or reports detailing all active preneed contracts, copies of agreements with providers, agents, trustees, and any other records the board deems relevant to conduct the financial examination or audit.

(7) A financial examination or audit may consist of the following phases:

(A) Phase I – The assigned examiner shall be given the notice of examination or audit assignment and shall review and analyze the records relevant to the financial examination or audit as provided;

(B) Phase II – If instructed, the assigned examiner shall conduct an on-site visit to the seller. During this on-site visit, the seller shall provide the examiner with all books and records requested by the examiner and shall fully cooperate with the examination or audit;

(C) Phase III – The board may conduct any additional inspections, investigations and examinations as deemed necessary to complete financial examination or audit. This may include mailing letters to purchasers, beneficiaries, financial institutions, preneed providers, persons acting on behalf of the seller, and other persons as deemed necessary to complete the financial examination or audit;

(D) Phase IV – Upon completion of Phases I through III, the examiner shall prepare a financial or audit examination report that shall summarize the findings of the financial examination or audit and shall include, at a minimum, the following information:

(1) The name, address and license number of the seller;

(2) The date(s) the examination was conducted;

(3) The name(s) of the examiner(s) conducting the examination or audit;

(4) The date(s) the financial examination or audit report was submitted to the board by the examiner;

(5) The name(s) of the person(s) providing information to the examiner on behalf of the seller;

(6) A listing of exceptions, if any, found during the financial examination or audit and provide sufficient detail of the exceptions to put the seller on notice as to any potential violations of law, and sufficient identifying information about the contract or funds held so that the seller will know which contracts are at issue. It shall be deemed sufficient identifying information if the examination or audit report contains, at a minimum, the initials of the purchaser or beneficiary, the number of the preneed contract, the date of the contract, the amount of the contract and the type of funding source of the preneed contract, if that information is known to the examiner;

(7) A copy of the signed attestation from the seller on the form provided the board, if applicable;

**(8) Any exhibits that will assist in identifying and review of the exceptions;**

**(9) Any and all other information that is directed by the board to be included or is relevant to evaluate the seller's compliance with law.**

**(8) Upon submission of the financial examination or audit report by the examiner, the board shall provide a copy of the financial examination or audit report to the seller for review and comment, unless other provisions of law apply to authorize and/or mandate the board to take other action. The seller shall provide response within the timeframe provided by the board.**

**(9) After the time has expired for the seller to comment on the examination or audit report, the examination or audit report and any information received from the seller in response to the financial examination or audit report will be reviewed.**

**(10) Upon the board's determination that all exceptions identified in a financial examination or audit have been resolved, the board will provide written notice to the seller that the financial examination or audit has been closed by the board.**

**Authority: Sections 333.330, 333.340, 436.470, 436.520, RSMo**

## PUBLIC COMMENTS

### Preneed Resource Company

#### 2120-3.540 Audit Process and Procedures –

Does paragraph (1) preclude the Board from defining the scope of financial examinations such that the contract fee can be reduced?

Regarding paragraph (3), would this authorize financial exams of a seller before the board has concluded an examination of all other sellers?

Regarding paragraph (6)(B) and (7)(B), does the term “and any other records the board deems relevant” assume such records must have a reasonable basis to Chapter 436?

Regarding paragraph (7)(C), what type of “persons acting on behalf of the seller” ?

Regarding paragraph (8), the term ‘typically’ seems a little vague. The phrase “not less than” would seem a bit more definitive.

### Meierhoffer Funeral Home & Crematory

#### 20 CSR 2120-3.540

*(1) The board shall conduct a financial examination of the books and records of each seller at least once every five years, subject to available funding. The board shall take no action to reduce fees to intentionally reduce funding so as to eliminate financial examinations.*

The restriction on the board to take no action to intentionally reduce fees is restrictive. Any reduction could be argued as intentional by the State. The board should have the latitude to operate and make decisions at this level. If not, in effect, there could never be a fee reduction.

#### 20 CSR 2120-3.540

*(C) Phase III – The board may conduct any additional inspections, investigations and examinations as deemed necessary to complete financial examination or audit. This may include mailing letters to purchasers, beneficiaries, financial institutions, preneed providers, persons acting on behalf of the seller, and other persons as deemed necessary to complete the financial examination or audit;*

Is the scope of an audit defined? It seems from the firms we have heard from the recent audits have been more along the line of intense investigations of every contract, which seem burdensome in time and resources on the seller and on the State. Is a representative sampling of contracts to ascertain whether a further investigation should be conducted not more in order with an audit?

As indicated by this rule, the Board may send letters to a variety of individuals following an audit. Are these letters and their contents shared with the seller?

Are there any time lines for the Board and its auditors to complete their work and submit their report to the seller?

**Mark Warren – Combined Comments from Homesteaders Life Insurance Company, Forethought Life Insurance Company, National Guardian Life Insurance Company**

| RULE                        | COMMENTS  | PROPOSED CHANGE  |
|-----------------------------|---|--|
| 20 CSR 2120-3.540(4)        | The “scope of the exams” should be fixed to the parameters of Chapters 436 and 333. The Board does not have authority to examine insurance companies and using a back door to get at them is not acceptable.  | (4) Periodically, the board shall set the scope of financial examinations <u>of sellers within the parameters of Chapters 333 and 436.</u>   |
| 20 CSR 2120-3.540(6)(B)     | This portion of the rule is broad and overreaching granting the Board powers beyond what is stated in Chapter 333 and 436 and allows them to overreach on what records they may require to conduct the exam. This overreach could be a way for them to get at an insurance company’s records. | (6)(B)...copies of agreements with providers, agents, <u>and</u> trustees, <del>and any other records the board deems relevant</del> to conduct the financial examination or audit.  |
| 20 CSR 2120-3.540(7)(C)     | This portion of the rule is broad and overreaching granting the Board powers beyond what is stated in Chapter 333 and 436. It would allow the Board to ask insurance companies for records when they have no authority over insurance companies.  | (7)(C) The board may conduct any additional inspections, investigations and examinations <u>of a seller as deemed necessary</u> to complete the financial...include mailing letters to purchasers, beneficiaries, <del>financial institutions,</del> preneed providers, <u>and</u> persons acting on behalf of the seller, <del>and other persons as deemed necessary...</del> |
| 20 CSR 2120-3.540(8)-(10)   | The way the rules are currently written they seem to remove a seller’s due process rights to appeal the examination findings.   | Remove the language that limits the seller’s due process rights (i.e. timing) and add language that allows the seller to appeal the examination findings.  |
| New 20 CSR 2120-3.540(2)(B) | In order to make sure they only apply the examination to the seller a subsection should be added under (2) that specifically limits who they can examine.   | <u>(2)(B) The financial examination shall only be conducted on a seller. The Board has no authority to conduct an examination on any entity regulated by another administrative department.</u>  |

*Recommendation of staff is to not pursue at this time.*

### **Abandoned preneed funds, duty of seller**

**(1) It shall be the duty of the seller to periodically, at least once a year, review its active preneed contracts and make a good faith effort to determine whether any preneed beneficiaries have died with no claim made for the preneed funds held either in joint account or trust.**

**(2) If a preneed beneficiary has died and no claim for the preneed funds has been made to the seller within one year from the date of the death of the beneficiary, the seller shall notify, in writing, the trustee or financial institution holding the funds of this potential abandonment and request the trustee to distribute the preneed funds being held to the estate of the beneficiary, to MoHealthNet as repayment for state funds received by the beneficiary per Chapter 208, RSMo, and/or to the State Treasurer as unclaimed property in accord with the provisions of Chapter 447, RSMo, or in accord with any other law, as applicable.**

**(3) The seller shall maintain records evidencing the periodic review and also maintain a copy of all notifications of potential abandonment made to all trustees or financial institutions.**

## PUBLIC COMMENTS

### Mark Warren – Combined Comments from Homesteaders Life Insurance Company, Forethought Life Insurance Company, National Guardian Life Insurance Company

| RULE   | COMMENTS   | PROPOSED CHANGE                  |
|--|--|----------------------------------|
| Proposed Rule:<br>Abandoned preneed funds,<br>duty of seller | This rule attempts to bring the unclaimed property issues into the funeral homes and preneed arena. This rule changes the requirements of the Unclaimed Property laws which change can only be done statutorily. | Delete the rule in its entirety. |

MODEL UNCLAIMED PREPAID FUNERAL BENEFITS ACT

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**Section 1.**     **Short Title**

This Act shall be known as the Unclaimed Prepaid Funeral Benefits Act.

**Section 2.**     **Purpose**

Due to the unique nature of Prepaid Funeral Contracts, the following Act has been proposed to provide Funeral Establishment owners with specific guidance related to the identification of funds associated with these Prepaid Funeral Contracts as unclaimed and thus subject to escheatment to the State. This Act shall require the complete and proper disclosure, transparency, and accountability relating to payment for Prepaid Funeral Contract Funds.

**Section 3.**     **Definitions**

- A.     “Beneficiary” shall mean an individual expressly identified in a Prepaid Funeral Contract as the person for whom funeral merchandise or services are intended.
- B.     “Contract Dormancy Period” shall mean at least 65 years after the date the Prepaid Funeral Contract was executed or 105 years after the date of birth of the Beneficiary.
- C.     “Death Master File” shall mean the United States Social Security Administration’s Death Master File or any other database or service that is at least as comprehensive as the United States Social Security Administration’s Death Master File for determining that a person has reportedly died.
- D.     “Death Master File Match” shall mean a search of the Death Master File that results in a match of any two of the following: the Beneficiary’s social security number, full name or date of birth.
- E.     “Funeral Establishment” shall mean a funeral establishment licensed pursuant to *[Insert relevant state code]*.
- F.     “Prepaid Funeral Contract” shall mean any contract between a Purchaser and Funeral Establishment which is paid in full, whereby the funds are required to be held in *[insert applicable account referenced in that state, e.g. “trust” “escrow” etc.]* and whereby the Funeral Establishment agrees to furnish funeral merchandise or services in the future.
- G.     “Prepaid Funeral Contract Funds” shall mean the amount of money paid by the Purchaser and required to be held in *[insert applicable account referenced in that state, e.g. “trust” “escrow” etc.]*.
- H.     “Purchaser” shall mean an individual who has executed a Prepaid Funeral Contract with a Funeral Establishment.
- I.     “Unclaimed” shall include Prepaid Funeral Contracts which have not been serviced and whereby there is either a Death Master File Match or a confirmation of the expiration of the Contract Dormancy Period.

*Drafting note: All other terms used in this Act shall be interpreted in a manner consistent with the definitions used in [Insert relevant state code].*

**Section 4. Funeral Establishment Conduct**

- A. A Funeral Establishment shall perform a comparison of its Prepaid Funeral Contracts against a Death Master File at least once every two years to identify potential matches of its Beneficiaries with the Death Master File.
- B. A Funeral Establishment shall also confirm if the Contract Dormancy Period has expired with respect to any of its Prepaid Funeral Contracts at least once every two years.
- C. Within ninety (90) days of either a Death Master File Match or confirmation of the expiration of the Contract Dormancy Period of a Prepaid Funeral Contract, the Funeral Establishment shall complete a good faith effort to confirm the death of the Beneficiary by attempting to contact the Beneficiary and the Purchaser, if contact information is reasonably accessible.
  - 1. To the extent permitted by law, the Funeral Establishment may disclose necessary personal information about the Beneficiary to a person who the Funeral Establishment reasonably believes may be able to assist the Funeral Establishment in locating the Beneficiary.
- D. A Funeral Establishment or its service provider shall not charge Purchasers or Beneficiaries any fees or costs associated with a search or verification conducted pursuant to this section.
- E. In the event the Beneficiary and Purchaser cannot be contacted and a Death Master File Match has been confirmed or the Contract Dormancy Period has elapsed, the Funeral Establishment shall escheat the Prepaid Funeral Contract Funds to the State as unclaimed property pursuant to *[Cite state statute for unclaimed property]*.
- F. Any Funeral Establishment which complies with this Act shall be entitled to retain any earnings associated with Prepaid Funeral Contract Funds which have been escheated in connection with this Act.
- G. No Funeral Establishment or Funeral Establishment employee who acts in good faith to comply with this Act shall be subject to criminal or civil liability or subject to disciplinary action for escheating Prepaid Funeral Contract Funds to the State.

**Section 5. Effective Date**

This Act shall take effect on or after August 1, 2016.

*Drafting note: Due to the fact that the provisions of this Act may necessitate significant changes to Funeral Establishment compliance programs, states should consider up to a two-year delayed effective date.*