

TITLE 172                    PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 69                CREMATORIES

69-001 SCOPE AND AUTHORITY: These regulations govern the licensing of crematories under Neb. Rev. Stat. §§ 71-1355 to 71-1385.

69-002 DEFINITIONS

1.     Alternative Container means a container in which human remains are placed in a cremation chamber for cremation.
2.     Attest or Attestation means that the individual declares that all statements on the application are true and complete.
3.     Authorizing Agent means a person vested with the right to control the disposition of human remains pursuant to Neb. Rev. Stat. § 38-1425.
4.     Body parts means limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion of bodies that have been donated to science for medical research purposes.
5.     Casket means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains.
6.     Change of Crematory Authority means a transfer of more than 50% of the stock or assets of a crematory authority.
7.     Closed Container means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of the remains or the entrance of foreign material.
8.     Complete Application means an application that contains all of the information requested on the application, with attestation to its truth and completeness, and that is submitted with the required fees and all required documentation.

9. Cremated Remains means the residue of human remains recovered after cremation and the processing of such remains by pulverization, leaving only bone fragments reduced to unidentifiable dimensions, and the unrecoverable residue of any foreign matter, such as eyeglasses, bridgework, or other similar material, that was cremated with the human remains.
10. Cremated Remains Receipt Form means a form provided by a crematory authority to an authorizing agent or his or her representative that identifies cremated remains and the person authorized to receive such remains.
11. Cremation means the technical process that uses heat and evaporation to reduce human remains to bone fragments.
12. Cremation Chamber means the enclosed space within which a cremation takes place. A cremation chamber is also referred to as a retort.
13. Crematory means a building or portion of a building which contains a cremation chamber and holding facility.
14. Crematory Authority means the legal entity subject to licensure by the Department to maintain and operate a crematory and perform cremation.
15. Crematory Operator means a person who is responsible for the operation of a crematory.
16. Delivery Receipt Form means a form provided by a funeral establishment to a crematory authority to document the receipt of human remains by such authority for the purpose of cremation.
17. Department means the Division of Public Health of the Department of Health and Human Services.
18. Director means the Director of Public Health of the Division of Public Health or his or her designee.
19. Funeral Director means a person licensed under section 38-1414 or an employee of such a person with responsibility for transport or handling of a deceased human.
20. Funeral Establishment means a place of business situated at a specific street address or location devoted to the care and preparation of dead human bodies for burial, disposition, or cremation or to conducting or arranging funeral services for dead human bodies.
21. Holding Facility means the area of a crematory designated for the retention of human remains prior to cremation and includes a refrigerated facility.

22. Human Remains means the body of a deceased person, or a human body part, in any stage of decomposition and includes limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research.
23. Permanent Container means a receptacle made of durable material for the long-term placement of cremated remains.
24. Pulverization means the reduction of identifiable bone fragments after the completion of the cremation and processing to granulated particles by manual or mechanical means.
25. Temporary Container means a receptacle made of cardboard, plastic, or other similar material in which cremated remains are placed prior to the placement of such remains in an urn or other permanent container.

69-003 CREMATORY LICENSE: Any crematory authority who wishes to operate a crematory must obtain a license.

69-003.01 Qualifications: To receive a license to operate a crematory, the crematory authority must meet the following qualifications:

1. Conform to all building codes and environmental regulations;
2. Be constructed at a location consistent with applicable zoning and environmental regulations;
3. Provide a certificate confirming the crematory operator has attended a training course provided by the Cremation Association of North America or by the manufacturer of the cremation chamber maintained and operated by the crematory authority;
4. Provide affirmative evidence of the applicant's ability to comply with the operational and physical plant standards contained in 172 NAC 69-006 and 172 NAC 69-007;
5. Complete a self-evaluation inspection report showing compliance with 172 NAC 69-005.01.

69-003.02 Application: To apply for a license to operate a crematory, a crematory authority must submit a complete application to the Department. A complete application includes all required documentation, the required fee, and a written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written Application:

a. Information:

- (1) The full name and address of the crematory to be licensed;
- (2) The name of the crematory operator;
- (3) The full name and address of the crematory authority of the crematory;
- (4) The Social Security Number of the crematory authority if the applicant is a sole proprietorship;
- (5) Telephone number including area code (optional);
- (6) E-Mail Address (optional);
- (7) Fax Number (optional);
- (8) Signature of:
  - (a) The crematory authority or crematory authorities if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;
  - (b) Two of its members if the applicant is a limited liability company that has more than one member;
  - (c) Two of its officers if the applicant is a corporation;
  - (d) The head of the governmental unit having jurisdiction over the crematory if the applicant is a governmental unit; or
  - (e) If the applicant is not an entity described in items (a) through (d), the crematory authority or crematory authorities or, if there is no crematory authority, the chief executive officer or comparable official;
- (9) The planned opening date of the crematory;

b. Attestation: The applicant must attest that:

- (1) S/he has read the application or has had the application read to him/her;
- (2) All statements on the application are true and complete; and
- (3) If the applicant is a sole proprietorship, that s/he is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act, for the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request;

c. Signature of:

- (1) The owner or owners if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;
  - (2) Two of its members if the applicant is a limited liability company that has more than one member;
  - (3) Two of its officers if the applicant is a corporation;
  - (4) The head of the governmental unit having jurisdiction over the crematory if the applicant is a governmental unit; or
  - (5) If the applicant is not an entity described in items (1) through (4), the owner or owners or, if there is no owner, the chief executive officer or comparable official;
2. Documentation: The applicant must submit the following documentation with the application:
- a. Copies of zoning approval from the relevant jurisdiction;
  - b. A certificate confirming the crematory operator has attended a training course provided by the Cremation Association of North American or by the manufacturer of the cremation chamber maintained and operated by the crematory authority; and
  - c. A copy of the completed self-inspection report;
  - d. If the applicant is a sole proprietorship, that s/he is a citizen of the United States or qualified alien under the Federal Immigration and Nationality Act, for the purposes of complying with Neb. Rev. Stat. §§ 4-108 to 4-114. Evidence may include a copy of:
    - (1) A U.S. Passport (unexpired or expired);
    - (2) A birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;
    - (3) An American Indian Card (I-872);
    - (4) A Certificate of Naturalization (N-550 or N-570);
    - (5) A Certificate of Citizenship (N-560 or N-561);
    - (6) Certification of Report of Birth (DS-1350);
    - (7) A Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240);
    - (8) Certification of Birth Abroad (FS-545 or DS-1350);
    - (9) A United States Citizen Identification Card (I-197 or I-179);
    - (10) A Northern Mariana Card (I-873);
    - (11) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
    - (12) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;

- (13) A document showing an Alien Registration Number (“A#”). An Employment Authorization Card/Document is not acceptable; or
  - (14) A Form I-94 (Arrival-Departure Record); and
3. Fee: The applicant must submit the required license fee along with the application and all required documentation.

69-003.03 Department Review: The Department will act within 150 days upon all completed applications for initial licensing.

69-003.04 Denial of Initial License: If an applicant for an initial license to operate a crematory does not meet all of the requirements for the license or if the applicant is found to have done any of the grounds listed in 172 NAC 69-009 or 69-010, the Department will deny issuance of a license. To deny a license, the Department will notify the applicant in writing of the denial and the reasons for the determination. The denial will become final 30 days after mailing the notice unless the applicant, within the 30-day period, requests a hearing in writing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department’s Rules of Practice and Procedure for Administrative Hearings.

69-003.05 Withdrawn Applications: An applicant for a crematory who withdraws his/her application or whose application is rejected by the Department will be allowed the return of his/her fee, except for a \$25 administrative fee to be retained by the Department. If the inspection has been completed prior to the withdrawal of the application or denial of the application, the entire license fee will be retained.

69-003.06 Confidentiality: Social Security Numbers obtained under this section are not public information but may be shared by the Department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to this information.

69-003.07 Provisional License: A provisional license may be issued to a crematory authority that substantially complies with the requirements for licensure under 172 NAC 69-003. If a provisional license is issued, it will be valid for a period of up to one year, may not be renewed, and may be converted to a regular license upon showing that the crematory authority fully complies with all requirements under 172 NAC 62-003.

## 69-004 GENERAL REQUIREMENTS

69-004.01 Effective Date and Term of License: A crematory license expires five years after the date of issuance.

69-004.02 License Not Transferable: A license is issued only for the premises and persons named in the application and is not transferable or assignable. If there is a change of crematory authority and the crematory remains on the same premises, the

inspection in 172 NAC 69-005 is not required. If a crematory changes premises, it must pass the inspection specified in 172 NAC 69-005.

69-004.03 Change of Crematory Authority: The licensee must submit an application to Department within 30 days of the designated date of a change in crematory authority. The application must be accompanied by the fee found in 172 NAC 004.07.

69-004.04 Change in Location: The licensee must submit an application to the Department at least 30 days prior to the designated date of a change in location. The application must be accompanied by the fee found in 172 NAC 004.07.

69-004.05 Change in Name: The licensee must submit an application to the Department at least 30 days prior to the change in name. The application must be accompanied by the fee found in 172 NAC 004.07.

69-004.06 Address Information: Each license holder must notify the Department of any change to the address of record.

69-004.07 Information Available to Public: The licensee must make available for public inspection, upon request, licenses, license record information, and inspection reports. This information may be displayed on the licensed premises.

69-004.08 License Display: The crematory license must be conspicuously displayed in the crematory.

69-005 INSPECTIONS: All crematories will receive an initial and thereafter, a renewal inspection. The criteria for inspection required by the Department are set forth below.

69-005.01 Initial Self-Evaluation Inspection: Pursuant to 172 NAC 69-003, the applicant must conduct a self-evaluation inspection prior to the proposed opening date of the crematory.

69-005.02 Initial On-Site Inspection: The Department or its agent will conduct an on-site unannounced inspection within 180 days following issuance of an initial crematory license. The inspections are limited to ascertaining whether:

1. All persons providing cremation services on the premises are properly trained;
2. The equipment and sanitation requirements in 172 NAC 69-006 are met; and
3. The physical structure requirements in 172 NAC 69-006 are met.

69-005.03 Initial Inspection Rating:

69-005.03A The Department or its agent will issue a rating of "Satisfactory" on all initial inspections when the crematory receives an overall inspection rating of 100

percent. The Department or its agent will issue an inspection report and provide a copy of the report to the crematory authority within 10 working days after the completion of the inspection.

69-005.03B The Department or its agent will issue a rating of "Unsatisfactory" on all initial inspections when the crematory receives an overall inspection rating of less than 100 percent.

1. The Department or its agent will issue an inspection report and provide a copy of the report to the crematory authority within 10 working days after the completion of an inspection. The Department will review any findings of noncompliance contained in this report within 20 working days after such inspection.
2. If the Department determines, after such review, that the evidence supports a finding of noncompliance by a crematory authority with any applicable provisions of the Cremation of Human Remains Act or rules and regulations, the Department may send a letter to the crematory authority requesting a statement of compliance. The letter will include a description of each alleged violation, a request that the crematory authority submit a statement of compliance within 10 working days, and a notice that the Department may take further action if the statement of compliance is not submitted. The statement of compliance must include any actions by the crematory authority which have been or will be taken and the period of time estimated to be necessary to correct each alleged violation.
3. If the crematory authority fails to submit such statement of compliance or fails to make a good faith effort to correct the alleged violations, the Department may take further action as provided in Neb. Rev. Stat. §§ 71-1366 to 71-1369.
4. The Department or its agent will conduct a re-inspection of the crematory within 30 days of receipt of verification that all corrections cited on the inspection report are corrected.
  - a. If the crematory meets the requirements at the time of re-inspection, the Department or its agent will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.
  - b. If the crematory receives an "Unsatisfactory" rating, after the re-inspection, the Department may take further action as provided in Neb. Rev. Stat. §§ 71-1366 to 71-1369.

69-005.03C Failure to permit an inspection for the purposes set out in 172 NAC 69-005 is grounds for denial of an initial crematory license or other action as specified in Neb. Rev. Stat. §§ 71-1366 to 71-1369.

69-005.04 Routine Inspection: The Department or its agent will conduct an on-site inspection of each crematory.

69-005.04A The inspection will be unannounced and it will occur at least once every six years.

69-005.04B The inspection is limited to the following purposes:

1. To ascertain whether all persons providing cremation services on the premises are properly trained;
2. To ascertain whether the equipment and sanitation requirements in 172 NAC 69-006 met; and
3. To ascertain whether the physical structure requirements in 172 NAC 69-006 are met.

69-005.04C The Department or its agent will issue a rating of "Satisfactory" on all initial inspections when the crematory receives an overall inspection rating of 100 percent. The Department or its agent will issue an inspection report and provide a copy of the report to the crematory authority within 10 working days after the completion of the inspection.

69-005.04D The Department or its agent will issue a rating of "Unsatisfactory" on all initial inspections when the crematory receives an overall inspection rating of less than 100 percent.

1. The Department or its agent will issue an inspection report and provide a copy of the report to the crematory authority within 10 working days after the completion of an inspection. The Department will review any findings of noncompliance contained in this report within 20 working days after such inspection.
2. If the Department determines, after such review, that the evidence supports a finding of noncompliance by a crematory authority with any applicable provisions of the Cremation of Human Remains Act or rules and regulations, the Department may send a letter to the crematory authority requesting a statement of compliance. The letter will include a description of each alleged violation, a request that the crematory authority submit a statement of compliance within 10 working days, and a notice that the Department may take further action if the statement of compliance is not submitted. The statement of compliance must include any actions by the crematory authority which have been or will be taken and the

period of time estimated to be necessary to correct each alleged violation.

3. If the crematory authority fails to submit such statement of compliance or fails to make a good faith effort to correct the alleged violations, the Department may take further action as provided in Neb. Rev. Stat. §§ 71-1366 to 71-1369.
4. The Department or its agent will conduct a re-inspection of the crematory within 30 days of receipt of verification that all corrections cited on the inspection report are corrected.
  - a. If the crematory meets the requirements at the time of re-inspection, the Department or its agent will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.
  - b. If the crematory receives an "Unsatisfactory" rating, after the re-inspection, the Department may take further action as provided in Neb. Rev. Stat. §§ 71-1366 to 71-1369.

69-005.04E Failure to permit an inspection for the purposes set out in 172 NAC 69-005 is grounds for denial of an initial crematory license or other action as specified in Neb. Rev. Stat. §§ 71-1366 to 71-1369.

69-005.05 Timing of Inspections: The Department may conduct an on-site inspection at any time it deems necessary.

69-005.06 Focused Selection Inspections: The Department may conduct an inspection of a crematory when the Department is informed of one or more of the following:

1. The passage of six years without an inspection;
2. A complaint alleging a violation of 172 NAC 69-006;
3. Change of services or location; and
4. Any other event that raises concerns about the maintenance or management of the crematory.

69-006 STANDARDS OF OPERATION: A crematory authority must ensure that all operators/employees follow the general operational standards outlined in this section.

69-006.01 Crematory Authority Responsibilities: The crematory authority must determine, implement and monitor policies to assure that the crematory is administered and managed appropriately. The crematory authority's responsibilities include:

1. Monitoring policies to assure appropriate administration and management of the crematory;

2. Ensuring the crematory's compliance with all applicable state statutes and regulations; and
3. Ensuring the quality of all services.

69-006.02 Training: The crematory authority must provide staff with sufficient training to operate the cremation chamber/retort.

69-006.03 Infection Control: The crematory authority must have a system for management of identified infections within the crematory for staff, which includes the use of standard precautions for prevention of transmission of infectious diseases among staff.

69-006.04 Safety Plan: The crematory authority must have a system to identify and prevent the occurrence of hazards to employees. Examples of hazards to be identified and prevented are: dangerous substances, sharp objects, unprotected electrical outlets, extreme water temperatures, and unsafe smoking practices.

69-006.05 Environmental Services: The crematory authority must provide a safe, clean, and comfortable environment.

69-006.05A Maintenance: The crematory authority must provide maintenance necessary to protect the health and safety of employees as follows:

1. Crematory buildings and grounds must be kept clean, safe and in good repair.
2. All garbage and rubbish must be disposed of in a manner as to prevent the attraction of rodents, flies, and all other insects and vermin. Garbage and rubbish must be disposed in a manner as to minimize the transmission of infectious diseases and minimize odor.
3. Adequate lighting and environmental temperatures must be maintained.
4. The premises must be maintained and equipped to prevent the entrance, harborage, or breeding of rodents, flies, and all other insects and vermin.

69-006.05B Equipment, Fixtures, Furnishings, Tools and Supplies: The crematory authority must provide equipment, fixtures, furnishings, tools and supplies, and maintain these things so they are clean, safe and in good repair.

The crematory must have the following:

1. Heat resistant gloves;

2. Filter mask;
3. Cremation chamber built by professional crematory manufacturer, and must be operational; and
4. Designated processing area for pulverization.

The crematory authority must establish and implement a process designed for routine and preventative maintenance of equipment and furnishings to ensure that the equipment and furnishings are safe and functional to meet their intended use.

69-006.07 Safety: The crematory authority is responsible for maintaining the crematory in a manner that minimizes accidents.

69-006.07A The environment must be maintained to protect the health and safety of employees by keeping surfaces smooth and free of sharp edges and mold and dirt, keeping floors free of unsafe objects and slippery or uneven surfaces, and keeping the environment free of other conditions which may pose a potential risk to the health and safety of the employees

69-006.07B All doors, stairways, passageways, aisles or other means of exit must be maintained in a manner that provides safe and adequate access.

69-006.07C Establish and implement policies and procedures to ensure hazardous/poisonous materials are properly handled and stored to prevent accidental ingestion, inhalation, or consumption of the hazardous/poisonous materials.

69-006.07D Restrict access to mechanical equipment which may pose a danger to the public.

#### 69-006.08 Codes and Guidelines

69-006.08A All crematories must comply with the following codes and guidelines to provide a safe and accessible environment:

1. Building: the Building Construction Act, Neb. Rev. Stat. §§ 71-6401 to 71-6407;
2. Electrical: the State Electrical Act, Neb. Rev. Stat. §§ 81-2101 to 81-2143;
3. The Nebraska State Fire Code Regulations found at 153 NAC 1;
4. The Nebraska Department of Environmental Quality's Rules and Regulations regarding incineration construction and operating requirements; and
5. The applicable zoning and environmental regulations.

69-006.08B The building must meet the building codes of the city/county where it is located.

69-006.09 Record Keeping: A crematory authority shall retain, for at least seven years after the cremation, in printed or electronic format, copies of:

1. The cremation authorization form;
2. Permit for transit or cremation as provided by the Department or cremation permit;
3. Delivery receipt form;
4. Cremated remains receipt form; and
5. Any other records required under the Cremation of Human Remains Act.

69-006.09A Cremation Authorization Form: A crematory authority must not cremate human remains until it has received a cremation authorization form which must be signed by the authorizing agent and includes, but is not limited to, the following information:

1. The name of the deceased;
2. Date and place of death;
3. The identity of the funeral director involved in the preparation of the human remains for cremation, if any;
4. Notification that the death did or did not occur from a disease declared by the Department to be infectious, contagious, communicable, or dangerous to the public health;
5. The name of the authorizing agent and the relationship between the authorizing agent and the deceased;
6. Authorization by the authorizing agent for the crematory authority to cremate the human remains;
7. A representation that the authorizing agent is aware of no objection to the human remains being cremated by any person who has a right to control the disposition of the human remains;
8. A representation that the human remains do not contain any material, implants, or conditions that may be potentially hazardous to equipment or persons performing the cremation;
9. The name of the person authorized to claim the cremated remains from the crematory authority; and
10. The intended disposition of the cremated remains.

Any person signing a cremation authorization form is deemed to warrant the truthfulness of any facts set forth on such form, including the identity of the deceased whose remains are sought to be cremated and the authority of the person to authorize such cremation. Any person signing a cremation authorization form is personally liable for all damages resulting from false, incorrect, or misleading information contained on such form.

69-006.09B Delivery Receipt Forms: This form must be provided by a funeral establishment to a crematory authority to document the receipt of human remains for cremation. The delivery receipt form must include the following:

1. Name and address of the funeral home;
2. Name and address of the crematory;
3. Name of the deceased;
4. A list of any personal effects which accompanies the cremated remains;
5. Date and time of delivery of the remains;
6. Signature of the funeral director or his/her representative; and
7. Signature of the person receiving the dead human body for cremation.

69-006.09C Cremated Remains Receipt Form: The crematory authority must provide a cremated remains receipt to an authorizing agent or his/her representative that identifies cremated remains and the person authorized to receive such remains. The cremated remains receipt form must include:

1. The name of the deceased;
2. The name of the authorizing agent or his/her representative;
3. The date, time, and place of receipt of the cremated remains;
4. Date of release;
5. Metallic ID disk number;
6. Name and address of the crematory; and
7. The signatures of the crematory authority of the crematory or his or her representative.

69-006.09D Cremation Logbook: A cremation logbook must be kept for each cremation performed and include the following:

1. Name of the deceased;
2. Date the deceased was brought to the crematory;
3. Date of the start of the cremation;
4. Metallic ID disk number;
5. Cremation unit number;
6. Name of the person performing the cremation; and
7. Date and disposition of the ashes.

69-007 CREMATION PROCESSES AND PROCEDURES: A crematory authority must ensure that the cremation processes and procedures outlined in this section are followed.

69-007.01 Authorization to Cremate: Cremation of human remains must not occur until the crematory authority has received the following:

1. The cremation authorization form;
2. Permit for transit or cremation as provided by the Department; and
3. The delivery receipt form.

A permit for cremation is not required for crematories under the authority of the State Anatomical Board (Neb. Rev. Stat. §§ 71-1001 to 71-1007).

69-007.02 Cremation Process Upon Receipt of Cremation Authorization

69-007.02A A crematory authority may cremate human remains upon compliance with 69-007.01.

1. A crematory authority must not accept human remains for cremation without a proper label indicating the name of the deceased and the name and location of the funeral establishment placed on the exterior of the alternative container or casket.
2. No crematory authority will make or enforce any rules requiring that human remains be placed in a casket before cremation or that human remains be cremated in a casket. No crematory authority will refuse to accept human remains for cremation if the human remains are not in a casket.
3. No crematory authority will accept human remains for cremation unless the human remains are delivered to the crematory authority in an alternative container or casket or delivered to the crematory authority's holding crematory to be placed in an alternative container or casket. Human remains delivered to a crematory in an alternative container must not be removed from the alternative container, and the alternative container must be cremated with the human remains.

69-007.02B A crematory authority may refuse:

1. A noncombustible casket or any other container that is not an alternative container; or
2. A casket or container that is not labeled as required under 69-007.02A, item 1.

An alternative container is not required for crematories under the authority of the State Anatomical Board (Neb. Rev. Stat. §§ 71-1001 to 71-1007).

69-007.02C Alternative Containers: An alternative container must be:

1. Composed of readily combustible materials suitable for cremation;
2. Able to be closed to provide for complete encasement of the human remains;
3. Resistant to leakage or spillage;
4. Rigid enough for easy handling; and
5. Able to provide protection for the health and safety of persons handling such container.

69-007.03 Pacemakers, Hazardous Implants, Jewelry or Other Valuables. A crematory authority must not cremate human remains that contain pacemakers, hazardous implants, jewelry or other valuables.

1. No human remains will be cremated with the knowledge that the human remains contain a pacemaker or defibrillator or other potentially hazardous implant or condition. The authorizing agent must take all necessary steps to ensure that any such hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of such potentially hazardous implant or condition in the human remains, the funeral director must ensure that all necessary steps have been taken to remove or correct the implant or condition before delivering the human remains to the crematory.

A funeral director who knowingly fails to ensure the removal or correction of the hazardous implant or condition prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with hazardous implants or conditions are in the custody of a crematory authority, such authority must have the hazardous implants or conditions removed or corrected by a licensed funeral director and embalmer or a licensed embalmer at a funeral establishment within an embalming preparation room or at a medical facility by appropriate medical personnel.

2. No human remains will be cremated with the knowledge that the human remains contain jewelry or other valuables. The authorizing agent must take all necessary steps to ensure that any jewelry or other valuables are removed prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of jewelry or other valuables on the human remains, the funeral director must ensure that all necessary steps have been taken to remove the jewelry or other valuables before delivering the human remains to the crematory.

A funeral director who knowingly fails to ensure the removal of the jewelry or other valuables prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with jewelry or other valuables are in the custody of a crematory authority, such authority must provide for the removal of such jewelry or other valuables by a licensed funeral director and embalmer or his or her agent.

69-007.04 Holding Facility: A crematory authority, upon receiving human remains, must sign a delivery receipt form and must hold the human remains until cremation. If a

crematory authority is unable to cremate the human remains immediately upon receipt, the crematory authority must place the remains in a holding facility.

69-007.04A Crematories with Holding Facilities: The body may be delivered to the crematory without an alternative container or casket; however, the body must be delivered directly to the holding facility for placing the body in the alternative container or casket. The holding facility must:

1. Comply with all applicable public health law;
2. Provide for the health and safety of persons employed at the facility;
3. Prevent unauthorized access to the facility;
4. Be large enough to hold a casket and be able to transport the body from cot to container;
5. Be out of the public's view (except family may view); and
6. Be clean, safe and secure.

69-007.04B Crematories Without Holding Facilities: If a crematory does not have a holding facility, the crematory must cremate the body immediately and the body must have been delivered to the crematory in an alternative container or casket.

69-007.04C Refuse to Accept: A crematory authority may refuse to accept for holding an alternative container or casket if there is evidence of leakage of body fluids of the human remains.

69-007.04D Un-embalmed Bodies: If the human remains are not embalmed, they must be held no longer than 24 hours from the time of death unless the human remains are placed in a refrigerated facility.

1. Refrigeration: If a crematory does have refrigeration, the crematory may hold a body in refrigeration at a constant temperature of less than 40 degrees Fahrenheit for up to 96 hours following the time of death, and then must cremate within 24 hours following removal from refrigeration.
2. No Refrigeration: If a crematory does not have refrigeration, un-embalmed bodies must be cremated within 24 hours from the time of death.

69-007.05 Crematory Operation Limitations: The crematory operator and crematory authority must adhere to the following operation limitations:

1. No persons may be in a crematory while human remains are awaiting cremation, being cremated, or being removed from the cremation chamber.

2. No more than one person must be simultaneously cremated within the same cremation chamber unless the crematory authority has received specific written authorization from the authorizing agent for the human remains to be cremated.

69-007.06 Handling of Remains Following Cremation: The crematory operator must adhere to the following procedures for handling remains following cremation:

1. The recoverable residue of the cremation must be moved from the cremation chamber and any foreign matter or anything other than bone fragments removed from the cremation chamber and disposed. The remaining bone fragments must be pulverized. This does not apply when there was commingling of human remains during cremation as authorized. The presence of incidental and unavoidable residue in the cremation chamber from a prior cremation does not violate this section.
2. The cremated remains with proper identification must be placed in a temporary container or permanent container selected or provided by the authorizing agent. The cremated remains must not be contaminated with any other object unless specific written authorization to the contrary has been received from the authorizing agent.
3. If the entirety of the cremated remains will not fit within a temporary container or permanent container, then the remainder of such remains shall be returned to the authorizing agent or his or her representative in a separate container with proper identification.
4. If the cremated remains are to be shipped, the temporary container or permanent container shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Unless otherwise directed in writing by the authorizing agent, cremated remains must be shipped only by a method which includes an internal tracking system and which provides a receipt signed by the person accepting delivery of such remains.

69-007.07 Disposition of Cremated Remains: A crematory authority must adhere to the following procedures for the disposition of cremated remains:

1. The delivery of the cremated remains to the authorizing agent or his or her representative will constitute final disposition. If, after a period of 60 days after the date of cremation, the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of the cremated remains or claimed the cremated remains for final disposition as provided in this section, the crematory authority or the funeral establishment in possession of the cremated remains may dispose of the cremated remains after making a reasonable attempt to contact the authorizing agent or his or her representative. This method of

disposition may be used by any crematory authority or funeral establishment to dispose of all cremated remains in the possession of a crematory authority or funeral establishment.

2. Cremated remains must be delivered or released by the crematory authority to the representative specified by the authorizing agent on the cremation authorization form. The crematory authority of the crematory authority or his or her representative and the party receiving the cremated remains must sign a cremated remains receipt form. If the cremated remains are shipped, a form used by the shipper under subsection (4) of Neb. Rev. Stat. § 71-1381 may be used in lieu of a completed cremated remains receipt form if the shipper's form contains the information required for a cremated remains receipt form. Both the party delivering such remains and the party receiving such remains shall retain a copy of the cremated remains receipt form or shipper's form. Upon delivery, the cremated remains may be further transported within this state in any manner without a permit.

69-007.08 Disputes Regarding Cremation: The crematory authority must adhere to the following procedures when there is a dispute regarding cremation:

1. If a crematory authority or funeral establishment (a) is aware of any dispute concerning the cremation of human remains or (b) has a reasonable basis to believe that such a dispute exists or to question any of the representations made by the authorizing agent with respect to such remains, until the crematory authority receives a court order that a dispute with respect to such remains has been settled, the crematory authority or funeral establishment may refuse to accept such human remains for cremation or to perform a cremation of such remains.
2. If a crematory authority or funeral establishment is aware of any dispute concerning the release or disposition of cremated remains, the crematory authority or funeral establishment may refuse to release cremated remains until the dispute has been resolved or the crematory authority or funeral establishment has been provided with a court order authorizing the release or disposition of the cremated remains.

69-008 RENEWAL: To renew a crematory license, the crematory must request renewal and complete the renewal requirements specified in 172 NAC 69-008.02. All crematory licenses issued by the Department expire five years after the date of issuance.

69-008.01 Renewal Notice: At least 30 days before the expiration of a license, the Department will notify the licensed crematory at the last known address of record. The renewal notice will include:

1. The type of license;

2. The license number;
3. The expiration date; and
4. The amount of the renewal fee;

69-008.02 Renewal Procedures: The request for renewal may be submitted in person, by mail, or by Internet, and must include all required documentation and the renewal fee, which must be paid no later than the expiration date. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written Application:

- a. The full name and address of the crematory;
- b. The name of the crematory operator;
- c. The full name and address of the crematory authority of the crematory, i.e. crematory authority(s);
- d. The Social Security Number of the crematory authority if the applicant is a sole proprietorship;
- e. Telephone number including area code (optional);
- f. E-Mail Address (optional);
- g. Fax Number (optional);
- h. Attestation: The applicant must attest that:
  - (1) S/he has read the application or has had the application read to him/her;
  - (2) All statements on the application are true and complete; and
  - (3) If the applicant is a sole proprietorship, that s/he is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act, for the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request;
- i. Signature of:
  - (1) The crematory authority or crematory authorities if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;
  - (2) Two of its members if the applicant is a limited liability company that has more than one member;
  - (3) Two of its officers if the applicant is a corporation;
  - (4) The head of the governmental unit having jurisdiction over the crematory if the applicant is a governmental unit; or
  - (5) If the applicant is not an entity described in items (1) through (4), the crematory authority or crematory authorities or, if there is no crematory authority, the chief executive officer or comparable official; and

2. Documentation: If the applicant is not a United States citizen, s/he must submit evidence of lawful admission or presence in the United States, which may include a copy of:
  - a. A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
  - b. An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
  - c. A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or
  - d. A Form I-94 (Arrival-Departure Record);
3. Fee: The renewal fee as specified in 172 NAC 69-015. The renewal fee must be paid no later than the date of the expiration of the license.

69-008.03 Expiration of a Crematory License: A crematory license will expire if a crematory fails to:

1. Meet the requirements for renewal on or before the date of expiration of the crematory license; and or
2. Renew the crematory license.

69-008.03A Right to Operate: When a crematory license expires, the right to operate the crematory terminates without further notice or hearing.

69-008.03B Re-Application for a Crematory License: When a crematory fails to renew its license by the expiration date, a crematory may apply to the Department for and obtain another license as specified in 172 NAC 69-003.

69-009 DISCIPLINARY ACTION: A license to operate a crematory may have disciplinary actions taken against it in accordance with 172 NAC 69-009.03 on any of the following grounds:

1. Failing an inspection specified in 172 NAC 69-005;
2. Having had a license revoked within the five-year period preceding an application;  
or
3. Any of the grounds specified in 172 NAC 69-009.01.

69-009.01 A license issued under the Cremation of Human Remains Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with 172 NAC 69-009.03 when the applicant or licensee is found guilty of any of the following:

1. Violation of the Cremation of Human Remains Act or these regulations;
2. Conviction of any crime involving moral turpitude;
3. Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would

have constituted a misdemeanor or felony and which has a rational connection with the fitness or capacity of the crematory authority to operate a crematory;

4. Conviction of a violation pursuant to Neb. Rev. Stat. § 71-1371;
5. Obtaining a license as a crematory authority by false representation or fraud;
6. Misrepresentation or fraud in the operation of a crematory; or
7. Failure to allow access by an agency or employee of the Department of Health and Human Services to a crematory operated by the crematory authority for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department.

#### 69-009.02 Procedures for Denial, Refusal to Renew, or Disciplinary Action

69-009.02A If the Department determines to deny, refuse renewal of, or take disciplinary action against a license, the Department must send a notice to the applicant or licensee, by certified mail to the last address shown on its records. The notice must state the determination, including a specific description of the nature of the violation and the statute or regulation violated, and the type of disciplinary action pending.

#### 69-009.03 Types of Disciplinary Action

69-009.03A The Department may impose any one or a combination of the following types of disciplinary action against the license:

1. A fine not to exceed \$500 per violation;
2. A limitation on the license and upon the right of the crematory authority to operate a crematory to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper;
3. Placement of the license on probation for a period not to exceed two years during which the crematory may continue to operate under terms and conditions fixed by the order of probation;
4. Suspension of the license for a period not to exceed two years during which the crematory may not operate; and
5. Revocation and permanent termination of the license.

Any fine imposed and unpaid under the Cremation of Human Remains Act constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the crematory is located. The Department will, within 30 days after receipt, remit any such fines to the State Treasurer for credit to the permanent school fund.

69-009.03B In determining the type of disciplinary action to impose, the Department must consider:

1. The gravity of the violation;
2. The severity of the actual or potential harm;
3. The extent to which the provisions of applicable statutes, rules, and regulations were violated;
4. The reasonableness of the diligence exercised by the Crematory in identifying or correcting the violation;
5. Any previous violations committed by the Crematory; and

69-009.03C If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action as described in 172 NAC 69-009.03.

#### 69-010 NUISANCE AND ABATEMENT PENALTIES

1. Maintaining or operating a crematory in violation of the Cremation of Human Remains Act or any rules and regulations of the Department adopted and promulgated under the act is a public nuisance and may be abated as a nuisance as provided by law.
2. It is a Class III misdemeanor to (a) establish, operate, or maintain a crematory subject to the Cremation of Human Remains Act without being licensed as a crematory authority under the act, (b) hold oneself out to the public as a crematory authority without being licensed under the act, or (c) perform a cremation without a cremation authorization form signed by the authorizing agent and a completed permit for transit or cremation as provided by the Department or a cremation permit.
3. Signing a cremation authorization form with actual knowledge that the form contains false, incorrect, or misleading information is a Class III misdemeanor.
4. A violation of any other provision of the Cremation of Human Remains Act is a Class III misdemeanor.

69-011 INJUNCTION: The Department may maintain an action in the name of the State of Nebraska for an injunction against any person for establishing, operating, or maintaining a crematory without first obtaining a license as a crematory authority under the Cremation of Human Remains Act. In charging any defendant in a complaint in such action, it is sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a crematory without obtaining a license as a crematory authority under the act, without alleging any further or more particular facts concerning the same.

#### 69-012 REINSTATEMENT

69-012.01 Non-payment of Fees: If the license of a crematory authority has lapsed for nonpayment of fees, such license is eligible for reinstatement at any time upon application to the Department and payment of the applicable fee as provided in 69-015.

69-012.02 End of the Period of Probation: If the license of a crematory authority has been placed on probation, such license is eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the Department determines an inspection is warranted.

69-012.03 End of the Period of Suspension: If the license of a crematory authority has been suspended, such license is eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable fee as provided in 69-015. A license may be reinstated following:

1. Submission of an application to the Department for renewal that conforms to the requirements of 172 NAC 69-003.02;
2. Payment of the renewal fee as specified in 172 NAC 69-004.10; and
3. Successful completion of an inspection as provided for in 172 NAC 69-005 and compliance with the operation, care, treatment, and physical plant requirements of 172 NAC 69-006 and 69-007.

69-012.04 Prior to the Completion of the Term of Suspension: If the license of a crematory authority has been suspended, such license may be reinstated by the Department prior to the completion of the term of suspension upon petition by the licensee.

69-012.04A The licensee must:

1. Submit a petition to the Department stating:
  - a. The reasons why the license should be reinstated prior to the suspension completion date; and
  - b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the suspension;
2. Submit a written renewal application to the Department as specified in 172 NAC 69-003.02;
3. Pay the renewal fee as specified in 172 NAC 69-004.10; and
4. Successfully complete an inspection.

69-012.04B After reviewing such petition and any material submitted by the licensee with such petition, the Department may order an inspection or investigation of the licensee. Based on such review and such inspection or investigation, if any, the director will:

1. Grant full reinstatement of the license;
2. Modify the probation or suspension; or
3. Deny the petition for reinstatement.

69-012.04C The Director's decision is final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within the 30-day period.

The requested hearing must be held according to rules and regulations of the Department for administrative hearings in contested cases.

69-012.04D Revocation: If the license of a crematory authority has been revoked, such crematory authority will not be eligible for relicensure until 5 years after the date of such revocation. A reapplication for an initial license may be made in accordance with 172 NAC 69-003 by the crematory authority at the end of such 5-year period.

69-013 CREMATORY AUTHORITY BYLAWS: A crematory authority may enact reasonable bylaws not inconsistent with the Cremation of Human Remains Act for the management and operation of a crematory operated by such authority. Nothing in 172 NAC 69 prevents a crematory authority from enacting bylaws which contain more stringent requirements than those provided in these regulations.

69-014 FEES: The licensee must pay fees for licensure as set forth below:

69-014.01 Administrative Fees

1. \$25 will be retained by the Department from the licensing fee when a license is denied or an application is withdrawn. If the licensing fee is less than \$25, the fee is forfeited.
  - a. If the Department did not perform an inspection, it will refund the license fee except for an administrative fee of \$25.
  - b. If the Department performed an inspection, the fee is not refunded.
2. \$10 for a duplicate original or reissued license.
3. \$25 for certification of a license. This includes a certified statement that provides information regarding the basis on which a license was issued, the date of issuance, and whether disciplinary action has been taken against the license.
4. \$5 for verification of a license. This includes written confirmation as to whether a license is valid at the time the request is made.

69-014.02 Licensing Fees

1. \$300 for an Initial and Renewed Crematory License.
2. \$300 for reinstatement of a license that has lapsed or has been suspended.
3. \$75 for a change in location.
4. \$10 for a change in name.
5. \$10 for a change in crematory authority.