

OFFICE OF ATTORNEY GENERAL
Office of Consumer Protection
(Amendment)

40 KAR 2:150. Cremation forms and inspections.

RELATES TO: KRS 213.081, 213.098, 367.93103, 367.93105, 367.93115, 367.93117, 367.97501, 367.97504, 367.97507, 367.97511, 367.97514, 367.97517, 367.97521, 367.97524, 367.97527, 391.010

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.97501, 367.97504, 367.97534

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.180 authorizes the Attorney General to promulgate administrative regulations that will facilitate performing the duties and exercising the authority vested in the Attorney General and the Department of Law. KRS 367.150(4) requires the Department of Law to recommend administrative regulations in the consumers' interest. KRS 367.97501 and 367.97504 require the Attorney General to promulgate an administrative regulation to establish an application for a crematory authority license and report forms. KRS 367.97524 requires crematory authorities to obtain signed cremation authorization forms before conducting any cremations. KRS 367.97534(5) authorizes the Attorney General to promulgate administrative regulations necessary to carry out the provisions of KRS 367.97501 to 367.97537, pertaining to crematory authorities. This administrative regulation prescribes the license application form, and other forms, to be used by crematory authorities~~[establishes forms related to cremation as required by KRS 367.97501, 367.97504, and 367.97514].~~ This administrative regulation establishes the records and information that shall be retained by ~~the~~ crematory authorities~~[operator as identified in KRS 367.97504(5),]~~ and permits crematory inspections by the Attorney General~~[establishes guidelines for crematory inspections regarding KRS 367.97504(1) and (5), 367.97511(4), 367.97514(5), and 367.97534].~~

Section 1. Crematory Authority License Application Form. An applicant for a crematory authority license shall complete and submit a Crematory Authority License Application Form to the Office of Attorney General before commencing business.

Section 2. ~~Section 1.~~ Cremation Authorization Form. Licensed crematory authorities shall complete and keep a Cremation Authorization Form for every cremation of human remains performed by them.~~[The Cremation Authorization, Form CR-1, required by KRS 367.97524, shall contain:]~~

~~[(1)] [The name of the crematory authority;]~~

~~[(2)] [The address of the crematory authority, including the city, state, and zip code;]~~

~~[(3)] [The telephone number of the crematory authority;]~~

~~[(4)] [A statement informing the authorizing agent that it is the policy of the crematory authority that it will accept a declarant or decedent for cremation only after all necessary authorizations have been obtained, and all prerequisites to be performed by the state regarding the death have taken place and any required forms or permits are attached;]~~

~~[(5)] [The name, address (including the city, state, and zip code), age, date of birth, and gender of the declarant or decedent, and the place and date of death;]~~

~~[(6)] [Whether or not the declarant's or decedent's death was due to an infectious disease and, if so, an explanation;]~~

~~[(7)] [A statement that pacemakers, radioactive, silicon or other implants, mechanical devices or prosthesis may create a hazardous condition if placed in cremation chamber and subjected to heat, and that the authorizing agent instructs the crematory authority or funeral home to remove all devices that may become hazardous during the cremation process;]~~

~~[(8)] [Whether the declarant's or decedent's remains contain any devices, including mechanical, prosthetic, implants or materials, which may have been implanted in or attached to the declarant or decedent, or any other device that may become hazardous during the cremation process;]~~

~~[(9)] [A description of any devices, including mechanical, prosthetic, implants, or materials, which may have been implanted in or attached to the declarant or decedent, or any other device that may become hazardous during the cremation process;]~~

~~[(10)] [A statement informing the authorizing agent of the following concerning identification of the declarant or decedent:]~~

~~[(a)] [Kentucky law requires the individual's remains to be identified before cremation can take place; and]~~

~~[(b)] [The individual making the identification may be the authorizing agent, a family member, friend, coroner, or any other person who has personal knowledge of the decedent or the ability to make positive identification and who accepts any liability arising from the identification;]~~

~~[(11)] [The name of the individual identifying the decedent's remains prior to cremation, the relationship of that individual to the decedent, and the signature of the individual identifying the body for cremation;]~~

~~[(12)] [Statements informing the authorizing agent of the following regarding cremation authorization:]~~

~~[(a)] [The person legally entitled to order the cremation of a declarant or decedent is the authorizing agent; and]~~

~~[(b)] [The right to control the disposition of the remains of a declarant or decedent devolves according to the order of authority of classes of authorizing agents listed in subsection (13) of this section;]~~

~~[(13)] [The selection of the class of authorizing agents having the right to authorize the cremation of the declarant's or decedent's body, in the following order of authority:]~~

~~[(a)] [The individual executing a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145, and that the original Funeral Planning Declaration shall be attached;]~~

~~[(b)] [The person named as the designee or alternate designee in a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145, and that the original Funeral Planning Declaration shall be attached;]~~

~~[(c)] [The person named in a United States Department of Defense form Record of Emergency Data (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces, and the original form shall be attached;]~~

~~[(d)] [The decedent through a Preneed Cremation Authorization, Form CR-3 completed and executed before July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3, and that the original Preneed Cremation Authorization, Form CR-3 shall be attached;]~~

~~[(e)] [The surviving spouse of the declarant or decedent;]~~

~~[(f)] [The surviving adult child of the declarant or decedent, or a majority of the adult children if more than one (1) adult child is surviving, or less than a majority of the surviving adult children by attesting in writing showing the reasonable efforts to notify the other adult surviving children of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children. The number of surviving adult children shall be written in the completed Cremation Authorization, Form CR-1;]~~

~~[(g)] [The surviving parent or parents of the declarant or decedent, or if one (1) parent is absent, the parent who is present has the right to control the disposition by attesting~~

~~in writing showing the reasonable efforts to notify the absent parent. The number of surviving parents shall be written in the completed Cremation Authorization, Form CR-1;~~

~~[(h)] [The surviving adult grandchild of the declarant or decedent, or a majority of the adult grandchildren if more than one (1) adult grandchild is surviving, or less than a majority of the surviving adult grandchildren by attesting in writing showing the reasonable efforts to notify the other adult surviving grandchildren of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult grandchildren. The number of surviving adult grandchildren shall be written in the completed Cremation Authorization, Form CR-1;]~~

~~[(i)] [The surviving adult sibling of the declarant or decedent, or a majority of the adult siblings if more than one (1) adult sibling is surviving, or less than a majority of the surviving adult siblings by attesting in writing showing the reasonable efforts to notify the other adult surviving siblings of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult siblings. The number of surviving adult siblings shall be written in the completed Cremation Authorization, Form CR-1;]~~

~~[(j)] [The surviving individual or individuals of the next degree of kinship under KRS 391.010 to inherit the estate of the declarant or decedent, or a majority of those in the same degree of kinship if more than one (1) individual of the same degree is surviving, or less than a majority of the surviving individuals of the same degree of kinship by attesting in writing showing the reasonable efforts to notify the other individuals of the same degree of kinship of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the individuals of the same degree of kinship. The number of surviving individuals of the same degree of kinship, and a description of the relationship to the declarant or decedent, shall be written in the completed Cremation Authorization, Form CR-1;]~~

~~[(k)] [If none of the persons listed in paragraphs (a) through (j) of this subsection are available, one (1) of the following who attests in writing showing the good faith effort made to contact any living individuals in an order of authority class described in paragraphs (a) to (j) of this subsection:]~~

~~[1.] [A person willing to act and arrange for the final disposition of the decedent; or]~~

~~[2.] [A funeral home that has a valid prepaid funeral plan that makes arrangements for the disposition of the decedent's remains, if the funeral director makes the written attestation described in this subsection; and]~~

~~[(l)] [The district court in the county of the decedent's residence or the county in which the funeral home or the crematory is located;]~~

~~[(14)] [Statements informing the authorizing agent of the following regarding other rights and responsibilities concerning cremations:]~~

~~[(a)] [The declarant or authorizing agent shall carefully read and understand the statements described in this subsection before signing the authorization;]~~

~~[(b)] [The declarant or authorizing agent shall direct the crematory authority on the final disposition of the cremated remains;]~~

~~[(c)] [The crematory authority shall not conduct any cremation nor accept a body for cremation unless it has a Cremation Authorization, Form CR-1 signed by the authorizing agent clearly stating the final disposition;]~~

~~[(d)] [The original form shall be attached to the Cremation Authorization, Form CR-1 if:]~~

~~[1.] [The cremation is being performed pursuant to a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145; or]~~

~~[2.] [A Preneed Cremation Authorization, Form CR-3 that was completed and executed before July 15, 2016, which was the effective date of the amendments to~~

~~KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3;~~

~~[(c)] [All cremations are performed individually and it is unlawful to cremate the remains of more than one (1) individual within the same cremation chamber at the same time;]~~

~~[(f)] [The consumer may choose cremation without choosing embalming services;]~~

~~[(g)] [If the crematory authority does not have a refrigerated holding facility, it shall not accept human remains for anything other than immediate cremation;]~~

~~[(h)] [The consumer is not required to purchase a casket for the purpose of cremation;]~~

~~[(i)] [The crematory authority requires that the body of the declarant or decedent shall be delivered for cremation in a suitable, closed container that shall be either a casket or an alternative cremation container for cremation, but the crematory authority shall not require that the body be placed in a casket before cremation or that the body be cremated in a casket, nor shall a crematory authority refuse to accept human remains for cremation because the remains are not in a casket;]~~

~~[(j)] [The container in which the body is delivered to the crematory for cremation shall be:]~~

~~[1.] [Composed of readily combustible materials suitable for cremation;]~~

~~[2.] [Able to be closed to provide a complete covering for the human remains;]~~

~~[3.] [Resistant to leakage or spillage; and]~~

~~[4.] [Rigid enough to support the weight of the declarant or decedent;]~~

~~[(k)] [The crematory authority may inspect the casket or alternative container, including opening it if necessary, and the crematory authority shall not accept for holding a cremation container from which there is any evidence of leakage of the body fluids from the human remains in the container;]~~

~~[(l)] [The type of casket or cremation container selected for cremation;]~~

~~[(m)] [Due to the nature of the cremation process any personal possessions or valuable materials, such as dental gold or jewelry, as well as any body prostheses or dental bridgework, that are left with the declarant or decedent and not removed from the casket or alternative cremation container prior to cremation shall be destroyed or shall otherwise not be recoverable, unless authority to do so otherwise is specifically granted in writing;]~~

~~[(n)] [As the casket or alternative container will usually not be opened by the crematory authority to remove valuables, to allow for final viewing or for any other reason unless there is leakage or damage, the authorizing agent understands that arrangements shall be made to remove any possessions or valuables prior to the time the declarant or decedent is transported to the crematory authority;]~~

~~[(o)] [Cremated remains, to the extent possible, shall not be contaminated with foreign material;]~~

~~[(p)] [All noncombustible materials, such as dental bridgework, and materials from the casket or alternative cremation container, such as hinges, latches, and nails, shall be separated and removed, to the extent possible, by visible or magnetic selection and shall be disposed of by the crematory authority with similar materials from other cremations in a nonrecoverable manner, so that only human bone fragments and organic ash, including both human remains and container remains, remain, unless those objects are used for identification or as may be requested by the authorizing agent;]~~

~~[(q)] [As the cremated remains often contain recognizable bone fragments, unless otherwise specified, after bone fragments have been separated from the other material, they shall be mechanically processed or pulverized, which includes crushing or grinding into granulated particles of unidentifiable dimensions, virtually unrecognizable as human remains, prior to placement into the designated container; and]~~

- ~~[(r)] [While every effort shall be made to avoid commingling of cremated remains, inadvertent or incidental commingling of minute particles of cremated remains from the residue of previous cremations is a possibility, and the authorizing agent understands and accepts this fact;]~~
- ~~[(15)] [Instructions on disposition of the cremated remains, indicating whether the cremated remains will be:]~~
- ~~[(a)] [Interred and, if so, where;]~~
 - ~~[(b)] [Scattered in a scattering area or garden and, if so, where;]~~
 - ~~[(c)] [In any manner on private property with the permission of the owner and, if so, where;]~~
 - ~~[(d)] [Delivered either in person or by a method that has an internal tracking system that provides a receipt signed by the person accepting delivery and, if so, to whom; or]~~
 - ~~[(e)] [Picked up at the crematory office and, if so, by whom;]~~
- ~~[(16)] [The date the remains were received by the crematory authority, the cremation number, the date of cremation, and the name of the person performing the cremation;]~~
- ~~[(17)] [A statement informing the declarant or authorizing agent of the following regarding execution of the Cremation Authorization, Form CR-1:]~~
- ~~[(a)] [Executing the Cremation Authorization, Form CR-1 as authorizing agent, or as declarant, designee, or alternate designee if using a Funeral Planning Declaration, Form FPD-1, grants consent to the cremation of the decedent;]~~
 - ~~[(b)] [Executing the Cremation Authorization, Form CR-1 as authorizing agent, or as declarant, designee, or alternate designee if using a Funeral Planning Declaration, Form FPD-1, warrants:]~~
 - ~~[1.] [That all representations and statements contained on the Cremation Authorization, Form CR-1 are true and correct;]~~
 - ~~[2.] [That the statements contained on the Cremation Authorization, Form CR-1 were made to induce the crematory authority to cremate the human remains of the declarant or decedent; and]~~
 - ~~[3.] [That the person executing the Cremation Authorization, Form CR-1 has read and understands the provisions contained on the Cremation Authorization, Form CR-1; and]~~
 - ~~[(c)] [If a written attestation is required, the authorizing agent shall select and complete an attestation:]~~
 - ~~[1.] [For authorizing agent or agents listed in subsection (13)(f), (h), (i), or (j) of this section, an attestation that reasonable efforts have been made to notify the other members of the authorizing class and the authorizing agent or agents are not aware of any opposition to the final instructions, and stating the number of individuals in the authorizing class, the number of authorizing agents authorizing the cremation, the name of the decedent, a description of the reasonable efforts, and the number of other members of the authorizing class;]~~
 - ~~[2.] [For an authorizing agent listed in subsection (13)(g) of this section, an attestation that reasonable efforts have been made to notify the other parent, and a description of the reasonable efforts; or]~~
 - ~~[3.] [For authorizing agent or agents listed in subsection (13)(k) of this section, an attestation that a good-faith effort has been made to contact any living individual described in subsection (13)(a) through (j) of this section, and a description of the good-faith effort;]~~
- ~~[(18)] [Signature of each authorizing agent granting consent to the cremation of the decedent;]~~
- ~~[(19)] [The name of each authorizing agent and the relationship of the authorizing agent to the declarant or decedent;]~~
- ~~[(20)] [The address of the authorizing agent, including the city, state, and zip code;]~~

- ~~[(21)] [The telephone number of the authorizing agent;]~~
- ~~[(22)] [The name, address, city, state, zip code, telephone number, and signature of the funeral director or other individual as witness for the authorizing agent; and]~~
- ~~[(23)] [The date and location where the authorizing agent signed the Cremation Authorization, Form CR-1.]~~

Section 3. ~~[Section 2.] Crematory Annual Report Form. Licensed crematory authorities shall complete and submit a Crematory Annual Report Form for each calendar year beginning January 1 and ending December 31. The completed Crematory Annual Report Form shall be filed with the Attorney General's Office by March 31 of the year following the calendar year reported.~~

Section 4. Statement of Supervision Form. Licensed crematory authorities shall complete and submit a Statement of Supervision for Registered Crematory Retort Operators Form for each trained retort operator before permitting the trained operator to operate a retort. ~~[The Crematory Annual Report, Form CR-2, required by KRS 367.97504(6), shall contain:]~~

- ~~[(1)] [The name of the crematory authority;]~~
- ~~[(2)] [The address of the crematory authority, including the city, state, and zip code;]~~
- ~~[(3)] [The number of retorts operated by the crematory authority;]~~
- ~~[(4)] [The number of cremations performed by the crematory authority in each retort during the preceding calendar year;]~~
- ~~[(5)] [The total number of cremations performed by the crematory authority during the preceding calendar year;]~~
- ~~[(6)] [A numerical breakdown of the disposition of cremated remains in the preceding year, indicating the number:]~~
 - ~~[(a)] [Scattered;]~~
 - ~~[(b)] [Interred, either in a niche or in-ground burial;]~~
 - ~~[(c)] [Returned to the family or funeral home; or]~~
 - ~~[(d)] [With other means of disposition. The other means of disposition used shall be briefly described;]~~
- ~~[(7)] [A list of the names and registration numbers of all crematory operators who worked for the crematory authority during the preceding year;]~~
- ~~[(8)] [The signature of the individual completing the form and the date on which the form was completed; and]~~
- ~~[(9)] [A statement requiring the remittance of a ten (10) dollar check or money order for the annual registration fee.]~~

~~[Section 3.] [Preneed Cremation Authorization Form.]~~

- ~~[(1)] [The Preneed Cremation Authorization, Form CR-3, shall not be completed or executed on or after July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3.]~~
- ~~[(2)] [A Preneed Cremation Authorization, Form CR-3, completed and executed prior to July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3, shall contain:]~~
 - ~~[(a)] [The name of the crematory authority;]~~
 - ~~[(b)] [The address, including the city, state, and zip code;]~~
 - ~~[(c)] [The telephone number of the crematory authority;]~~
 - ~~[(d)] [The name of the authorizing agent;]~~
 - ~~[(e)] [The address of the authorizing agent, including the city, state, and zip code;]~~
 - ~~[(f)] [The home telephone number of the authorizing agent;]~~
 - ~~[(g)] [The age and gender of the authorizing agent;]~~

~~[(h)] [Whether the decedent authorizing agent has any infectious or contagious disease and, if so, an explanation;]~~

~~[(i)] [Whether the decedent authorizing agent's body contains a pacemaker, prosthesis, radioactive implant, or any other device that could be explosive;]~~

~~[(j)] [Whether the decedent authorizing agent has been treated with therapeutic radionuclides such as Strontium 89 or any other treatment that would result in residual radioactive material remaining as part of the decedent authorizing agent's remains and, if so, what the treatment was and the last date it was administered;]~~

~~[(k)] [A statement specifying that all cremations are performed individually and that it is unlawful to cremate the remains of more than one (1) individual within the same cremation chamber at the same time;]~~

~~[(l)] [A statement informing the authorizing agent that the agent may choose cremation without choosing embalming services and that if the crematory chosen does not have a refrigerated holding facility it shall not accept human remains for anything other than immediate cremation;]~~

~~[(m)] [A statement informing the authorizing agent that:]~~

~~[1.] [The agent is not required to purchase a casket for the purpose of cremation;]~~

~~[2.] [The crematory authority shall require the decedent authorizing agent to be delivered for cremation in a suitable container, which shall be either a casket or an alternative cremation container; and]~~

~~[3.] [An alternative cremation container shall be:]~~

~~[a.] [Composed of readily combustible materials suitable for cremation;]~~

~~[b.] [Able to be closed to provide a complete covering for the human remains;]~~

~~[c.] [Resistant to leakage or spillage; and]~~

~~[d.] [Rigid enough to support the weight of the decedent;]~~

~~[(n)] [A statement informing the authorizing agent that the crematory may inspect the casket or alternative container, including opening if necessary, and if there is leakage or damage, the crematory shall refuse to accept the decedent authorizing agent's remains for the purpose of cremation or refrigeration;]~~

~~[(o)] [The type of casket or alternative container selected for cremation;]~~

~~[(p)] [A statement informing the authorizing agent that:]~~

~~[1.] [Due to the nature of the cremation process any personal possessions or valuable materials, such as dental gold or jewelry, as well as any body prostheses or dental bridgework, that are left with the decedent authorizing agent and not removed from the casket or alternative container prior to cremation shall be destroyed or shall otherwise not be recoverable; and]~~

~~[2.] [The casket or alternative container will usually not be opened by the crematory authority to permit the removal of valuables, to allow for final viewing or for any other reason unless there is leakage or damage, so the authorizing agent shall make arrangements to have any possessions or valuables removed prior to the time the remains are transported to the crematory authority;]~~

~~[(q)] [A statement informing the authorizing agent that:]~~

~~[1.] [To the extent possible, cremated remains shall not be contaminated with foreign material;]~~

~~[2.] [All noncombustible materials such as dental bridgework, and materials from the casket or alternative container, such as hinges, latches, and nails, shall be separated and removed, to the extent possible, by visible or magnetic selection and shall be disposed of by the crematory authority with similar materials from other cremations in a nonrecoverable manner, so that only human bone fragments and organic ash, including both human remains and container remains, remain;]~~

~~[3.] [As the cremated remains often contain recognizable bone fragments, unless otherwise specified, after the bone fragments have been separated from the other~~

~~material, they shall be mechanically processed or pulverized, which includes crushing or grinding into granulated particles of unidentifiable dimensions, virtually unrecognizable as human remains, prior to placement into the designated container; and}~~

~~{4.} [While every effort shall be made to avoid commingling of cremated remains, inadvertent or incidental commingling of minute particles of cremated remains from the residue of previous cremations is a possibility, and the authorizing agent understands and accepts this fact;]~~

~~{(r)} [A statement informing the authorizing agent that:]~~

~~{1.} [The original copy of the Preneed Cremation Authorization, Form CR-3 shall be retained by the firm or person with which the arrangements are being made and a copy shall be provided to the authorizing agent; and]~~

~~{2.} [A person arranging his or her own cremation shall have the right to transfer or cancel this authorization at any time prior to death by notifying by certified mail, the firm or person with which the preneed authorization form is filed;]~~

~~{(s)} [A statement informing the authorizing agent that if there are not different or inconsistent instructions provided to the crematory authority at the time of death, the crematory authority shall release or dispose of the cremated remains as indicated on this Preneed Cremation Authorization, Form CR-3;]~~

~~{(t)} [A statement informing the authorizing agent that:]~~

~~{1.} [If there is a conflict between the authorizing agent's preneed authorization and the demands of the next class of authorizing agent, the crematory authority shall not accept for cremation the authorizing agent's remains without an order deciding the issues entered by the district court of the county of the decedent authorizing agent's residence or the county where the funeral home or the crematory authority is located;]~~

~~{2.} [The order may be issued by the court after a petition for a resolution has been initiated by any natural person in the next class of authorizing agent or the crematory authority; and]~~

~~{3.} [Unless extraordinary circumstances exist, the court shall give due deference to the desires of the decedent authorizing agent as expressed in the Preneed Cremation Authorization, Form CR-3;]~~

~~{(u)} [Instructions on the disposition of the cremated remains, indicating whether the cremated remains will be:]~~

~~{1.} [Interred and, if so, where;]~~

~~{2.} [Scattered in a scattering area or garden and, if so, where;]~~

~~{3.} [Scattered on private property with the permission of the owner and, if so, where;]~~

~~{4.} [Delivered either in person or by registered mail and, if so, to whom; or]~~

~~{5.} [Picked up at the crematory office and, if so, by whom;]~~

~~{(v)} [The printed name, signature, address (including city, state, and zip code) and home telephone of the authorizing agent, explicitly authorizing the crematory authority to cremate the human remains of the authorizing agent;]~~

~~{(w)} [The date and location where the authorizing agent signed the Preneed Cremation Authorization, Form CR-3;]~~

~~{(x)} [The signature of the funeral director or other individual as witness for the authorizing agent;]~~

~~{(y)} [The name of the funeral director or other individual acting as witness for the authorizing agent;]~~

~~{(z)} [The address of the funeral director or other individual acting as witness for the authorizing agent, including the city, state, and zip code; and]~~

~~[(aa)] [The telephone number of the funeral director or other individual acting as witness for the authorizing agent.]~~

~~[Section 4.] [Statement of Supervision Form. The Statement of Supervision for Registered Crematory Retort Operators, Form CR-4, required by KRS 367.97514(6), shall contain the:]~~

- ~~[(1)] [Name of the crematory retort operator who was supervised;]~~
- ~~[(2)] [Name of the employer crematory authority;]~~
- ~~[(3)] [Name of the supervising crematory operator, verifying that the crematory retort operator completed forty-eight (48) hours of on the job training supervised by the crematory operator;]~~
- ~~[(4)] [Date on which the form was signed;]~~
- ~~[(5)] [Signature of the crematory retort operator;]~~
- ~~[(6)] [Signature of the crematory operator who supervised the crematory retort operator; and]~~
- ~~[(7)] [Registration number of the crematory operator.]~~

~~[Section 5.] [Crematory Authority License Application Form. The Crematory Authority License Application, Form CR-5 required by KRS 367.97504(1), shall contain:]~~

- ~~[(1)] [A statement informing the applicant that a crematory authority license shall be obtained from the Attorney General at least thirty (30) days prior to the opening of the crematory authority to conduct cremations;]~~
- ~~[(2)] [A statement informing the applicant that a \$100 registration fee shall accompany the application, and that the application shall be signed by a person, officer, or agent with authority to do so, under oath, and the signature shall be notarized;]~~
- ~~[(3)] [The date of the application;]~~
- ~~[(4)] [The full legal name of the applicant;]~~
- ~~[(5)] [The crematory name, if different from the applicant;]~~
- ~~[(6)] [The business telephone number;]~~
- ~~[(7)] [The physical address of the crematory, including the city, county, state, and zip code;]~~
- ~~[(8)] [Mailing address, including city, state, and zip code, of the crematory authority, if different from the physical address;]~~
- ~~[(9)] [The form of organization of the crematory, indicating whether it is a:]~~
 - ~~[(a)] [Corporation, and if so indicate the state of incorporation;]~~
 - ~~[(b)] [Limited liability company, and if so indicate the state of organization;]~~
 - ~~[(c)] [Partnership, and if so indicate the state of formation;]~~
 - ~~[(d)] [Individual; or]~~
 - ~~[(e)] [Other, and if so, please explain and indicate the state of formation;]~~
- ~~[(10)] [Evidence of authority to transact business in the Commonwealth of Kentucky, including a copy of the applicant's certificate of authority to transact business in the Commonwealth of Kentucky issued by the Kentucky Secretary of State, or other evidence of authority to transact business in the Commonwealth of Kentucky and describing the other evidence;]~~
- ~~[(11)] [The name, position, home address, including the city, state, and zip code, driver's license number and state of issuance, and date of birth, of every owner of the applicant, or if the applicant is a business entity, every member, officer, and director of the applicant;]~~
- ~~[(12)] [The name, address, including city, state, and zip code, and account number, if applicable, of one (1) financial reference. Suitable financial references shall include financial institutions and industry suppliers. Personal references shall not be acceptable;]~~
- ~~[(13)] [The name and address, including city, state, and zip code, of the financial institution at which the applicant has its business bank account;]~~
- ~~[(14)] [The account number of the business bank account;]~~

~~[(15)] [Whether the applicant intends to solicit preneed funeral contracts. If yes, a completed application for a Preneed Merchandise Sellers Application, Form CPN-6, incorporated by reference in 40 KAR 2:155, shall be attached;]~~

~~[(16)] [A statement from the applicant's retort manufacturer, which shall include:]~~

~~[(a)] [The date on which the manufacturer delivered the retort to the applicant;]~~

~~[(b)] [Whether the manufacturer installed the retort and, if so, when the installation occurred; and]~~

~~[(c)] [Whether the retort was tested upon installation and, if so, the results of those tests;]~~

~~[(17)] [A statement informing the applicant that by submitting the application, the applicant represents, agrees to, and states under penalty of law, that:]~~

~~[(a)] [The information provided is true and accurate to the best of the applicant's knowledge;]~~

~~[(b)] [The applicant is required to notify the Attorney General immediately of any change in the information required by this section and that KRS 367.97504(2) governs when a new license application form is required to be filed;]~~

~~[(c)] [The applicant is not insolvent, has not conducted business in a fraudulent manner, and is duly authorized to do business in the state;]~~

~~[(d)] [The applicant is in a position to commence operating a crematory and that all relevant state and local permits required have been issued;]~~

~~[(e)] [Final judgment or conviction for any crime involving moral turpitude has not been entered against the applicant;]~~

~~[(f)] [The license may be denied pursuant to KRS 367.97504, and may be denied, suspended, or revoked pursuant to KRS 367.97534;]~~

~~[(g)] [The applicant understands that, pursuant to KRS 367.97504(2), changes in the persons, firm, partnership, ownership, association, or corporate structure as originally named in the application render the license, if granted, void, and that the crematory authority shall file a new application before the changes shall be official; and]~~

~~[(h)] [The applicant is authorized to complete the application on behalf of the applicant crematory; and]~~

~~[(18)] [A dated and notarized signature of the person making the application on behalf of the crematory, and that person's title or position held].~~

Section 5. [Section 6.] Required Records of the Crematory Authority. To comply with KRS 367.97504(5), a crematory authority shall keep and maintain the following records for all cremations occurring within the prior ten (10) years [The records maintained by the crematory authority required by KRS 367.97504(5) shall include]:

(1) The original or a [For all cremations occurring within the last ten (10) years:]

[(a)] [A] copy of the completed Cremation Authorization, Form CR-1; [and, if applicable, the]

(2) Any discontinued Preneed Cremation Authorization, Form CR-3 completed and executed prior to July 15, 2016 [which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3; or]; and

(3) [(b)] Any [The] Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145. [;]

[(2)] [A copy of the identification required to be attached to the outside of the cremation container by KRS 367.97507(2) and 367.97514(2); and]

[(3)] [A copy of any stainless steel identification tag that is placed with the human remains prior to cremation, is subjected to the cremation process with the human remains, survives the cremation process, and is left with the cremated remains after the cremation process is complete.]

Section 6. ~~[Section 7.]~~ Inspection of Crematory Authorities. The Attorney General may conduct announced and unannounced inspections of applicants' and licensed crematory authorities' premises during normal business hours to review records and ensure compliance with KRS 367.97501 to 367.97537 and related regulations. Applicants and licensed crematory authorities shall permit such inspections and make all requested records readily available to the Attorney General upon request.~~[An inspection of the crematory authority and its records, as required by KRS 367.97504(5), shall include annual, unannounced inspections of all crematory authority facilities and records and may include:]~~

~~[(1)] [An inspection of the crematory authority to determine if it is in active operation or is in a position to commence operation;]~~

~~[(2)] [An inspection of the retort for proper operation;]~~

~~[(3)] [An inspection of the crematory authority facility to determine if it is secure from unauthorized access;]~~

~~[(4)] [An inspection of the crematory authority facility to determine if the crematory authority license is displayed in a conspicuous place;]~~

~~[(5)] [An inspection of the refrigerated holding facility used for holding human remains to determine if it is secure from unauthorized access and functioning properly; and]~~

~~[(6)] [An inspection of crematory records for all cremations occurring within ten (10) years of the date of the inspection, including all information required to be kept by KRS 367.97504(5) and this administrative regulation.]~~

Section 7. Material Changes in Application and Reports. A licensed crematory authority shall notify the Attorney General within fourteen (14) days of any material change in the information provided in its applications or reports.

Section 8. Human Remains of Deceased Pregnant Mother. A licensed crematory may cremate the remains of a deceased pregnant woman together with the fetal remains of her unborn child(ren) within the same cremation chamber. Completion of a Cremation Authorization Form authorizing cremation of the deceased pregnant woman shall also authorize cremation of her unborn child(ren).

~~[Section 8.] [Inspection Completion Certificate. Each crematory authority that successfully passes an annual inspection shall receive an Inspection Completion Certificate, which] [shall contain:]~~

~~[(1)] [The name of the crematory authority;]~~

~~[(2)] [The address of the crematory authority, including city, state, and zip code;]~~

~~[(3)] [A certified statement that an inspection has been performed by the Kentucky Attorney General's Office;]~~

~~[(4)] [The date on which the inspection was performed; and]~~

~~[(5)] [The signature of an authorized representative of the Attorney General's Office.]~~

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Cremation Authorization", Form CR-1, Oct. 2022~~[04-17]~~;

(b) "Crematory Authority Annual Report", Form CR-2, Oct. 2022~~[11-02]~~;

(c) ~~["Preneed Cremation Authorization", Form CR-3, 11-02;]~~

~~[(d)]~~ "Statement of Supervision for Registered Crematory Retort Operators", Form CR-4, Oct. 2022~~[11-02]~~; and

(d) ~~[(e)]~~ "Crematory Authority License Application", Form CR-5, Oct. 2022~~[07-16]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the Office's Web site, <https://ag.ky.gov/Pages/default.aspx>.

PHILIP R. HELERINGER, Executive Director
DANIEL CAMERON, Attorney General

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 2:00 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 29, 2022 at 10:00 a.m. Eastern Time at the Kentucky Office of Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Office in writing at least five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen B. Humphress, Asst. Attorney General, Office of Consumer Protection, Kentucky Office of Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone 502-696-5408, fax (502) 573-8317, email steve.humphress@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen B. Humphress

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation prescribes the license application form, annual report, cremation authorization form, and crematory retort training report to be used, kept, and filed by crematory authorities. This administrative regulation establishes the records and information to be retained by crematory authorities and establishes guidelines for crematory inspections.

(b) The necessity of this administrative regulation:

This regulation is necessary to provide the methods by which the Office of Attorney General, Office of Consumer Protection (â€œOfficeâ€), may perform its statutory obligations.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 15.180 directs the Attorney General to promulgate administrative regulations that will facilitate the performance of duties vested in the Attorney General and the Department of Law. KRS 367.150(4) requires the Department of Law to study the operation of all laws, rules, administrative regulations, orders, and state policies affecting consumers and to recommend administrative regulations in the consumersâ€™ interest. KRS 367.97501 and 367.97504 require the Attorney General to promulgate an administrative regulation to establish an application for a crematory authority license and annual reports. KRS 367.97534(5) authorizes the Attorney General to promulgate administrative regulations necessary to carry out the provisions of KRS 367.97501 to 367.97537, pertaining to crematory authorities. KRS 367.97524(1) requires crematory authorities to possess signed cremation authorization forms before accepting or cremating any human remains.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation prescribes the license application form, annual report, cremation authorization form, and crematory retort training report to be used, kept, and filed by crematory authorities, establishes the records and information that shall be retained by crematory authorities, and establishes guidelines for inspection of those records and crematories.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

Through this amendment, the Office is revising the regulation to remove unnecessary language from the regulation as duplicative and which is already incorporated by reference in forms. The amendment includes updates incorporated forms that are easier to understand and consistent in appearance. It is intended that the new forms are easier for regulated crematory authorities to complete. The amended regulation provides better notice about when crematory authorities must file required forms. The regulation expressly permits the cremation of a deceased pregnant woman with the fetal remains of her unborn child.

(b) The necessity of the amendment to this administrative regulation:

The crematory authorization form needs to be updated to reflect statutory changes resulting from HB 3 (2022), Senate Bill 38 (2020), and Senate Bill 66 (2020). The Office needs to update its regulations and forms to conform to KRS Chapter 13A drafting requirements. The Office also needs to update its regulation and forms to make both easier to understand by crematory authorities and consumers.

(c) How the amendment conforms to the content of the authorizing statutes:

As previously explained, KRS 15.180, 367.150(4), 367.97501, 367.97504, and 367.97534(5) authorize the administrative regulation amendments.

(d) How the amendment will assist in the effective administration of the statutes:

The regulation amendments will cause the regulations to be more easily understood by regulated entities. The regulation amendments will cause the crematory authority forms to be more easily understood and completed, provide better notice to consumers, allow easier processing by Office staff, and save administrative resources.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This regulation amendment affects forty-six (46) licensed crematory authorities, individuals desiring to have human remains cremated, and the Office.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Licensed crematory authorities will be required to use the new forms incorporated into this regulation. The Office will review the new forms for compliance with law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Licensed crematory authorities will have no additional costs. They will be able to download the new forms from the Office's website at no cost. The Office will have no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The regulation amendments are intended to make the regulations more easily understood. In addition, it is intended that the required forms are more easily understood and completed, that the forms provide better notice to consumers, and that the forms allow easier processing by the Office.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There are no costs to implement this administrative regulation amendment.

(b) On a continuing basis:

There are no continuing costs to implement this administrative regulation amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

There are no additional costs associated with implementing this administrative regulation amendment so no funding is needed.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There is no anticipated increase in fees or funding necessary to amend this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation amendment does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

No. This administrative regulation applies equally to all crematory authorities.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Office is the only government agency expected to be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 15.180, 367.150(4), 367.97501, 367.97504, and 367.97534(5) authorize the administrative regulation amendments.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

The Office does not expect that this amendment will require any additional government expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue will be generated by this administrative regulation amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue will be generated by this administrative regulation amendment.

(c) How much will it cost to administer this program for the first year?

There are no additional costs to administer this administrative regulation amendment for the first year.

(d) How much will it cost to administer this program for subsequent years?

There are no additional costs to administer this administrative regulation amendment for each subsequent year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

There are no expected costs to administer this amendment.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

There are no expected cost savings generated by this administrative regulation amendment for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

There are no expected cost savings generated by this administrative regulation amendment for subsequent years.

(c) How much will it cost the regulated entities for the first year?

There are no expected costs generated by this administrative regulation amendment for the first year.

(d) How much will it cost the regulated entities for subsequent years?

There are no expected costs generated by this administrative regulation amendment for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

There are no expected costs generated by this administrative regulation amendment.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] There is not an expected major economic impact from this regulation as it does not create costs for the Office or regulated entities.