

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 45:075. Tanning facilities.

RELATES TO: KRS 217.920-928, 387.010~~[211.005, 211.015, 211.025, 211.180]~~, 21 C.F.R. 1040.20

STATUTORY AUTHORITY: KRS 217.924, 217.926

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.924 requires all indoor tanning facilities to register with the local health department and pay a fee not to exceed administrative costs of the program. KRS 217.926 requires the Cabinet for Health and Family Services to promulgate administrative regulations relating to the registration and monitoring of tanning facilities. This administrative regulation establishes the responsibilities of tanning facilities,~~[and]~~ the procedures for their registration and monitoring, and the required registration fee structure.

Section 1. Definitions. (1) "Consent" means to give assent or approval.

(2) "Guardian" is defined by KRS 387.010(3).

(3) "Minor" is defined by KRS 387.010(1).

(4) "Parent" is defined by KRS 387.010(7)

(5) "Protective eyewear" is defined by 21 C.F.R. 1040.20(6)~~[means any device designed to be worn by users of a product to reduce exposure of the eyes to radiation emitted by the product].~~

(6) "Registration" means the issuance of a document by the local health department to a tanning facility authorizing the person named in the document to engage in the business of operating a tanning facility.

(7) "Tanning device" is defined by KRS 217.920(2).

(8) "Tanning facility" is defined by KRS 217.920(3).

Section 2. Tanning Facilities Registration. (1) A tanning facility shall register with the local health department in accordance with KRS 217.924(3) by submitting a completed application form DFS-303, Application for Certification/Registration, incorporated by reference in 902 KAR 45:065, and a fee of seventy-five (75)~~[twenty (20)]~~ dollars to the district or county health department at the time of registration.

(2) Registration shall be valid for one (1) calendar year and shall expire on December 31st of each year.

Section 3. Use by Minors. Minors shall not use a tanning device except in accordance with KRS 217.922.

Section 4. Facility Responsibilities. (1) A tanning facility shall give each customer a written statement in accordance with KRS 217.924(1) and 21 C.F.R. 1040.20.

(2) Each tanning facility shall maintain written or electronic consent forms and records in accordance with KRS 217.924(2); and

(3) Each tanning facility shall ensure patrons use protective eyewear by:

(a) Providing single use disposable eyewear; or

(b) Requiring patrons to provide their own eyewear.

Section 5. Monitoring. (1) The cabinet or local health department shall conduct on-site monitoring of a tanning facility upon:

- (a) Initial facility registration; or
- (b) Receipt of a complaint through the local health department.

(2) Each monitoring visit ~~shall~~will be recorded ~~using the~~using the ~~[on Form]~~ DFS-400, Tanning Facility Registration/Monitoring (Rev. 2/19) form.

Section 6. Suspension of Registration. (1) If a violation~~[,]~~ is discovered, the local health department shall serve a registered facility with a written notice by providing the ~~[on Form]~~ DFS-400, Tanning Facility Registration/Monitoring (Rev. 2/19) form, specifying the nature of the violation and shall allow the facility thirty (30) days for corrective action.

(2) Reinspection shall be conducted no later than thirty (30) days following the issuance of the DFS-400. If the violation is unresolved, the facility shall receive an additional thirty (30) days to correct the violation.

(3) At the end of sixty (60) days, if the violation has not been corrected, the registration of the tanning facility shall be suspended. The notice of suspension shall be provided in accordance with 902 KAR 1:400 Section 1.

~~(4)[writing on form DFS-214, Enforcement Notice.~~

~~Section 7. Reinstatement of Suspended Registration. (1)] A facility whose registration has been suspended may apply to the local health department for a re-inspection[for the purpose of reinstatement of the registration on the form DFS-215, Application for Reinstatement.~~

~~(2) Within ten (10) days following receipt of an Application for Reinstatement, the local health department shall make a re-inspection.~~

~~(3) If the applicant is found to be in compliance with the requirements of this administrative regulation, the registration shall be reinstated].~~

Section ~~7.~~8. Incorporation by Reference. (1) "DFS-400, Tanning Facility Registration/Monitor" (Rev. 2/19) is incorporated by reference~~[The following material is incorporated by reference:~~

- ~~(a) Form "DFS-400, Tanning Facility Monitoring Form", edition 6/07;~~
- ~~(b) Form "DFS-214, Enforcement Notice", edition 8/96;~~
- ~~(c) Form "DFS-215, Application for Reinstatement", edition 2/95; and~~
- ~~(d) Form "DFS-303, Application for Certification/Registration", edition 11/06].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: April 8, 2019

FILED WITH LRC: April 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 20, 2019, five (5) workdays 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 attends 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 this proposed administrative regulation until May 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks: (502) 564-3970: julied.brooks@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the responsibilities of tanning facilities, the procedures for their registration and monitoring, and the required registration fee structure.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the health and safety of individuals accessing tanning facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217.926 authorizes the cabinet to promulgate administrative regulations to monitor compliance with 21 C.F.R. 1040.20; assist with recordkeeping regarding parental consent for children ages fourteen (14) to eighteen (18), and their frequency of use; the registration of tanning facilities; and to create penalties for violating the provisions of KRS 217.920 to 217.928.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in establishing the registration requirements for a tanning facility; requires parental consent for a minor child seeking to use a tanning facility; provides for the use of protective eyewear by any individual using the tanning facility; and outlines the inspection and complaint investigation process.

(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: This amendment increases the registration fee, updates the process for a facility owner who receives a notice of suspension of a permit, and make other changes necessary to conform to KRS Chapter 13A drafting rules.

(b) The necessity of the amendment to this administrative regulation: House bill 327 enacted during the 2018 legislative session of the general assembly amended KRS 217.924 by removing the registration fee of twenty (20) dollars. This amendment is necessary to increase the registration fee for registering a tanning facility.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes the fee to be paid when registering a tanning facility.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures all tanning facilities are properly registered with the local health department and are providing adequate protective eyewear to all users.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts 364 registered tanning facilities, as well as, 120 local health departments.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: Owners of a registered tanning facility will need to be aware of the increased fee amount. Local health department staff will need to be aware of the change to the process to be followed when a registration is suspended.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Owners of a tanning facility will now be required to pay a seventy-five (75) dollar registration fee, an increase of fifty-five (55) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation a tanning facility will ensure the health and safety of individuals using the facility.

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

(a) Initially: There will be no additional costs to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional ongoing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue received from permitting fees continue to be used to implement and enforce this administrative regulation.

(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 increase in funding necessary to implement this administrative regulation. An increase in the fees associated with registering a tanning facility is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The fee established in this administrative regulation is being increased from twenty (20) dollars to seventy-five (75) dollars. KRS 217.924 requires that the fee not exceed the administrative costs of the program.

The administrative cost to the cabinet is approximately \$150 per hour for inspectors of tanning facilities. This cost includes the salary of the inspector, fiscal year 2018 Kentucky Employee Retirement System (KERS) and Federal Insurance Contributions Act (FICA) contributions, and health and life insurance costs, and other indirect costs.

The initial inspection of a tanning facility takes between one-half (1/2) to one (1) hour to complete. This does not include the time required for travel to and from the facility or the time necessary for processing the registration paperwork. A complaint investigation would also take between one-half (1/2) to one (1) hour to complete. The registration fee increase to seventy-five (75) dollars does not exceed the administrative costs of the program.

(9) TIERING: Is tiering applied? Tiering is not applied. All regulated entities are affected equally by the amendment to this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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? This administrative regulation will impact local health departments as well as the Food Safety Branch in the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.922, 217.924, 217.926, 217.928, 21 C.F.R. 1040.20.

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.

(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? This administrative regulation will generate \$20,020 in revenue in the first year.

(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? This administrative regulation will generate \$27,300 in revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The current cost to administer all programs under the Food Safety Branch within the Division of Public Health Protection and Safety is \$5,524,622. There is no anticipated increase in costs to administer the tanning facilities registration and inspection program this first year.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated increase in costs to administer the tanning facilities registration and inspection program in subsequent years.

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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 1040.20 Sunlamp products and ultraviolet lamps intended for use in sunlamp products.

2. State compliance standards. KRS 217.924(1) requires a tanning facility to provide a written notice to each customer pursuant to 21 C.F.R. 1040.20.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations require labels for sunlamp and ultraviolet lamp products that shall contain a statement regarding the dangers of exposure to ultraviolet radiation, the instructions for avoiding overexposure, and the potential side effects that could result from overexposure.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than those required by 21 C.F.R. 1040.20.