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

902 KAR 45:065. Tattooing.

RELATES TO: KRS [~~194A.050, 211.005, 211.015, 211.025, 211.760, 383.085,~~]387.010, 28 C.F.R. 36.104, 29 C.F.R. 1910.1030

STATUTORY AUTHORITY: KRS 194A.050(1), 211.760

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.760(2) requires nonmedical persons who engage in or carry on any business of tattooing to register with a local health department. KRS 211.760(3) requires the cabinet to promulgate administrative regulations relating to places of business that provide tattooing, tattooing equipment, the control of disease, parental consent and age restrictions for tattooing, and other matters necessary to protect public health[~~: (a) health and cleanliness of places of business; (b) sterilization of tattooing instruments and equipment; (c) procedures to prevent the spread of disease; (d) procedures to prevent tattooing of minors without the written notarized consent of a custodial parent or legal guardian; and (e) other administrative regulations as may be necessary to protect public health~~]. This administrative regulation establishes the standards for tattooing.

Section 1. Definitions.

(1) "Antiseptic" means a substance applied to the skin that reduces the number of microorganisms.

(2) "Autoclave" means a device intended to sterilize products by means of pressurized steam.

(3) "Blood" is defined by 29 C.F.R. 1910.1030.

(4) "Bloodborne pathogen training" means training that meets the requirements established in 29 C.F.R. 1910.1030.

(5) "Contaminated" is defined by 29 C.F.R. 1910.1030.

(6) "Contaminated sharps" is defined by 29 C.F.R. 1910.1030.

(7) [~~"Contaminated waste" means any material to be disposed of that has been soiled by blood or other potentially infectious material in the process of tattooing.~~]

[~~(8)~~] "Disinfectant" means a product that is tuberculocidal and registered with the federal Environmental Protection Agency as indicated on the label for use in disinfection.

(8) [~~(9)~~] "Hand washing" means the act of cleaning the hands for the purpose of removing dirt, soil, or microorganisms through the use of soap, warm water, and friction.

(9) [~~(10)~~] "Instrument" means any tattooing implement that comes into contact with blood or skin to be tattooed such as needles, needle bars, needle tubes, or other implements used to insert pigment.

(10) [~~(11)~~] "Minor" is defined by KRS 387.010(1).

(11) [~~(12)~~] "Mobile studio" means a tattooing studio that is designed to be readily movable.

(12) [~~(13)~~] "Purchased presterilized" means procedure set-ups that are sold individually packaged, processed, and marked with a sterilization lot number, and expiration date[~~,~~] to render them free of all microorganisms.

(13) [~~(14)~~] "Registration" means the issuance of a document by the local health department to a tattoo artist authorizing the tattoo artist to engage in the business of tattooing.

(14) "Regulated waste" is defined by 29 C.F.R. 1910.1030.
(15) "Service animal" is defined by 28 C.F.R. 36.104.
(16) "Sterilization" means a validated process used to render a product free from viable microorganisms.
(17) "Studio" means a facility as defined by KRS 211.760(1)(b).
(18) "Studio certificate[certification]" means the [issuance of a]document issued by the local health department to a studio owner certifying that the studio, after inspection, was in compliance with the applicable provisions of this administrative regulation.
(19) "Studio owner" means:
(a) An owner of a facility where tattooing is conducted;
(b) A sole proprietor who performs tattooing; or
(c) A person who employs tattoo artists.
(20) "Tattoo artist" means a person registered by the local health department to engage in tattooing.
(21) "Tattooing" is defined by KRS 211.760(1)(c).
(22) "Temporary permit" means a permit to operate at a fixed location for no more than seven (7) calendar days, and that:
(a) Is nontransferable; and
(b) Cannot be renewed for ninety (90) days after the expiration.
(23) "Ultrasonic cleaner" means a device that transmits high-energy, high-frequency sound waves into a fluid-filled container, used to remove deposits from instruments and appliances.

Section 2. Registration of Tattoo Artist.
(1) A person shall not advertise or solicit business with the intent to perform tattooing, or use or assume the title of tattooist, unless registered with the local health department in the district or county where the person is to tattoo.
(2) All tattooing shall be under the auspices of a Kentucky certified studio.
(3) A tattoo artist shall not engage in the act of tattooing unless that person has proof of completion of bloodborne pathogen training.
(4) The artist shall maintain documentation of completion of bloodborne pathogen training at the studio.
(5) An applicant for registration as a tattoo artist shall be at least eighteen (18) years of age at the time of application.
(6) An applicant for registration shall submit to the local health department in the district or county where the applicant intends to perform tattooing:
(a) A completed DFS-303, Application for Certification or Registration available at https://www.chfs.ky.gov/agencies/dph/dafm/Pages/lhddocuments.aspx;
(b) Payment of $100 registration fee; and
(c) Proof of completion of approved bloodborne pathogen training as required by subsection (3) of this section.
(7) The tattoo artist registration shall be:
(a) Mailed to the owner of the Kentucky certified studio listed on the application for registration;
(b) Prominently displayed to the public in the workstation; and
(c) Nontransferable from one (1) person to another, or from one (1) district or county to another.
(8) Each registration shall be valid for one (1) calendar year and expire on December 31st of each year.
(9) A late renewal fee of fifty (50) dollars shall be assessed on each tattoo artist registration renewal application not received by January 31st each year.

Section 3. Studio Certification.

(1) A person shall not engage in the business of tattooing unless the owner of the facility holds a studio certificate~~[certification]~~ issued by the local health department in the district or county where the person is to tattoo.

(2) A holder of a studio certificate~~[certification]~~ issued under this administrative regulation shall not allow a person to tattoo unless the individual is registered in accordance with Section 2 of this administrative regulation.

(3) An application for a studio certificate~~[certification]~~ shall be:

(a) On DFS-200, Application for Permit or License available at https://www.chfs.ky.gov/agencies/dph/dafm/gendocs/DFS200.pdf;

(b) Submitted to the local health department in the district or county where the studio is located; and

(c) Accompanied by an annual inspection fee of:

1. $400 for the studio with one (1) to four (4) work stations; and

2. An additional fifty (50) dollars for each additional work station over four (4).

(4) A studio certificate~~[certification]~~ shall not be issued or renewed unless the studio has been inspected and found to be in compliance with the provisions of this administrative regulation.

(5) The studio certificate~~[certification]~~ shall be:

(a) Prominently displayed to the public in the studio; and

(b) Nontransferable from one (1) person to another, or from one (1) location to another.

(6) The studio certificate~~[certification]~~ shall expire December 31st each year.

(7) A late renewal fee of $100 shall be assessed on each studio certificate~~[certification]~~ renewal application not received by January 31st each year.

Section 4. Studio Requirements.

(1) A studio shall:

(a) Be kept clean and in good repair;

(b) Be free of insect and rodent infestation;

(c) Store only items necessary to its operation and maintenance;

(d) Provide artificial light of at least twenty (20) foot-candles;

(e) Be well ventilated;

(f) Not permit the presence of a pet or other animal in the studio, except for a service animal;

(g) Not use a room otherwise used as living or sleeping quarters;

(h) Use a solid, self-closing door to separate living or sleeping quarters from the business operation;

(i) Have convenient, clean, and sanitary toilet and hand-washing facilities for the use of clientele with liquid soap, single-use paper towels from a sanitary dispenser or air dryer, covered waste receptacle, and self-closing door;

(j) Be organized to keep clean areas separate from contaminated areas;

(k) Have a utility sink that shall only be used to wash contaminated instruments;

(l) Use, clean, and maintain equipment according to manufacturers' recommendations;

(m) Use an approved disinfectant;

(n) Have plumbing sized, installed, and maintained in accordance with 815 KAR Chapter 20;

(o) Have sufficient potable water supply for the needs of the studio provided from a source constructed, maintained, and operated pursuant to the applicable requirements established in 401 KAR Chapter 8; and

(p) Dispose of sewage, including liquid waste, by connection to:

1. A public sewer system, if available; or

2. A private sewer system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10.

(2) A workstation shall:

(a) Have nonporous, smooth, easy-to-clean floors and walls;

(b) Have surfaces, including counters, cabinets, chairs, and dispensers, composed of smooth, nonporous material able to withstand repeated cleaning and disinfecting;

(c) Be kept clean, organized, and in good repair;

(d)

1. Have all product containers clearly labeled with common product name in English; and

2. If filling a product container from a larger bulk container, retain the original container on the studio premises;

(e) Have at least sixty (60) square feet of floor space with permanent walls a minimum of four (4) feet high between workstations;

(f) Have 100 foot-candles of light at the procedure level;

(g) Have unimpeded access to a hand sink;

(h) Have a sink for each artist with hot and cold water, delivered by a faucet, operated by wrist, knee, or foot action, or other hands-free method;

1. Each sink shall be supplied with:

a. Liquid soap; and

b. Single-use paper towels dispensed from a sanitary dispenser; and

2. A hand sink shall not be used for any other purpose;

(i) Be designated as a tattoo workstation, and shall not be used for any other purpose;

(j) Have plastic or metal waste receptacles:

1. With or without a lid; and

2. If the waste receptacle has a lid, the lid shall be foot operated; and

(k) Have a container for disposable sharps that:

1. Is rigid, puncture proof, and leak proof on sides and bottom;

2. Is closeable and sealable; and

3. If sealed, is leak resistant and incapable of being opened without great difficulty.

Section 5. Cleaning and Sterilization.

(1) A studio using any reusable instruments, materials, or supplies may have a one (1) room or two (2) room cleaning and sterilization arrangement.

(a) A two (2) room arrangement shall have:

1. One (1) room for contaminated items, equipped with:

a. A utility sink with minimum dimensions of 18 in. x 18 in. x 12 in.;

b. A hand sink;

c. A presoak container;

d. An ultrasonic cleaner; and

e. Autoclaving packaging materials; and

2. A second room for autoclave sterilization of instruments and equipment.

(b) A one (1) room cleaning and sterilization process shall be arranged to provide two (2) distinct areas.

1. Nonporous barriers may be utilized to delineate the two (2) distinct areas.

2. The cleaning area shall be equipped in accordance with paragraph (a)1. of this subsection.

3. The ultrasonic cleaner shall be as far away as possible from the autoclave to prevent contamination of sterile instruments, equipment, or other items.

(2) A studio that uses only presterilized~~[pre-sterilized]~~ disposable instruments, materials, and supplies shall not be required to have a separate room or area for autoclave, ultrasonic cleaner, and sterilization.

(3) All instruments shall be disposable or be made of surgical implant stainless steel and shall have only rubber gripping that can be removed and sanitized on the handles.

(4) Instruments shall be processed as follows:

(a) Soak contaminated reusable instruments in a covered container of cool water with detergent until ready to be cleaned and sterilized;

(b) Wash hands and forearms;

(c) Use disposable, single-use gloves, such as examination or surgical gloves;

(d) Prepare the ultrasonic cleaner according to manufacturer's instructions;

(e) Take instruments apart and rinse in warm water;

(f) Load the ultrasonic cleaner and process according to manufacturer's recommendations, disposing of the ultrasonic cleaner liquid after each use;

(g) Wash hands and forearms;

(h) Wearing examination gloves, remove instruments from the ultrasonic cleaner, rinse with clean water, allow to air dry; and

(i) Store cleaned instruments in a labeled, covered, nonporous container until packaged for sterilization.

(5) Autoclave equipment. Equipment used to sterilize instruments shall meet the following requirements:

(a) The equipment was sold as sterilizing equipment for medical instruments;

(b) The equipment is used, cleaned, and maintained to manufacturer's instructions; and

(c) The equipment meets the minimum requirements for sterilization as verified by a negative spore test.

(6)

(a) Reusable instruments placed in contact with skin that is tattooed shall be cleaned and sterilized;

(b) Disinfection shall not be used in place of cleaning and sterilization; and

(c) Liquid sterilants shall not be used for sterilization of reusable instruments.

(7) Instrument sterilization. Instruments that touch skin to be tattooed shall be sterilized as follows:

(a) Wash hands and forearms;

(b) Use clean disposable, single-use gloves, such as surgical or examination gloves;

(c) Package cleaned instruments individually in:

1. Paper-and-plastic peel-pack with color change indicator; or
2. Package as set-ups with color change indicator;

(d) Label with content, date, lot number, and preparer's initials;

(e) Load the sterilizer and process according to the manufacturer's directions;

(f) Remove the items from autoclave only when completely dry and cool;

(g) Store the items in a nonporous, clean, dry, labeled container, cabinet, or other place that is protected from dust and contamination; and

(h)

1. Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization; and
2. New packaging shall be used when instruments are resterilized.

(8) Sterilization equipment monitoring.

(a) Sterilization equipment shall be tested:

1. During the initial installation;
2. After any major repair; and
3. At least monthly by using a commercial biological monitoring system;

(b) Biological indicator test results for each sterilization unit used in the studio shall be kept on site, and made available for inspection at time of inspection; and

(c) Sterilization monitoring shall be noted on sterilizer log.

(9) Sterilizer recordkeeping. A sterilizer log system shall be maintained for each sterilizer in the studio. For each sterilization cycle the following information shall be documented:

(a) Date of load;

(b) Lot number;
(c) Preparer's name;
(d) The general contents of the load;
(e) The exposure time and temperature or the sterilizer recording chart or tape; and
(f) The results of the chemical indicator.

Section 6. Studio Owner Responsibilities. The owner of a certified studio shall:

(1) Exclude any tattoo artist who is:
(a) Infected with a disease in a communicable form that can be transmitted by blood;
(b) A carrier of organisms that cause disease;
(c) Infected with a boil or an infected wound; or
(d) Diagnosed with an acute respiratory infection;

(2) Report any accident involving exposure to body fluids to the local or district health department;

(3) Receive, review, and distribute tattoo artist registrations for artists registered with~~[issued for employees of]~~ the certified studio. If the artist is no longer registered with~~[employed by]~~ the certified studio, the registration shall be returned to the district or local health department where the certified studio is located;

(4) Maintain a record of all persons performing any activity within the studio that is regulated by the cabinet. The record shall include at a minimum the following information:
(a) Full name;
(b) Date of birth;
(c) Home address;
(d) Phone number;
(e) Email address if available;
(f) Photograph of tattoo artist; and
(g) Complete description of all tattooing procedures performed by the tattoo artist;

(5) Maintain a current copy of this administrative regulation at the studio for use by tattoo artists;

(6) Maintain an adequate supply of sterilized needles and tubes for each artist;

(7) Not resterilize or reuse single-use, disposable components; and

(8) If presterilized, disposable instruments are utilized, the following records shall be maintained and made available at all times to the local health department:
(a) An accurate inventory of all purchased presterilized instruments by name with the date purchased and the quantity on hand; and
(b) Invoices for the purchase of all purchased presterilized instruments.

Section 7. Tattooing of Minors.

(1) A person shall not perform any tattoo procedure on a minor without custodial parent or legal guardian~~[parental]~~ consent.

(2) A minor shall be at least sixteen (16) years old with custodial parent or legal guardian consent prior to tattooing.

(3) Consent shall be provided by a written notarized statement that contains an official seal or assigned identification of the notary.

(4) The notarized statement shall contain:
(a) The printed name of the custodial parent or legal guardian;
(b) The government issued photo identification number of the custodial parent or legal guardian;
(c) The address and phone number of the custodial parent or legal guardian;
(d) The printed name of the minor child;
(e) The date of birth of the minor child;

(f) The government issued photo identification number of the minor child, if applicable;

(g) A statement that the custodial parent or legal guardian is fully aware of the tattoo procedure and gives his or her consent for the procedure to be performed;

(h) The signature of the custodial parent or legal guardian; and

(i) The date of the signature of the custodial parent or legal guardian.

(5) The custodial parent or legal guardian, and minor client shall complete the attestation requirements of Section 8(3)(g) of this administrative regulation.

Section 8. Client Information and Records.

(1) Before receiving a tattoo, the client shall be provided written information that:

(a) Tattooing poses a risk of infection;~~[, that]~~

(b) Tattooing is permanent;~~[,]~~ and~~[that]~~

(c) Removal of a tattoo may leave scars.

(2) Before the application of a tattoo, the client shall be provided written, verbal, or electronic aftercare instructions that includes~~[the following information]~~:

(a) Information on the care of the site of the tattoo;

(b) Instructions on possible side effects;

(c) Information on any restrictions;

(d) Information on signs and symptoms of infection; and

(e) Instructions to consult a physician if signs and symptoms of infection, such as fever, excessive swelling, excessive redness, or drainage occur.

(3) A record of all clients who have received any tattoos shall be kept by the studio owner. The record shall include~~[the following information]~~:

(a) Studio name and certificate~~[certification]~~ number;

(b) The date the procedure was performed;

(c) Client's name, date of birth, address, and phone number;

(d)

1. Copy of client's government issued photo ID, if applicable; or
2. Copy of custodial parent or legal guardian's government issued photo ID;

(e) Name of the tattoo artist who performed the procedure;

(f) The type, location, and description of the procedure; and

(g) Client's attestation to the fact that the client:

1. Is not intoxicated or under the influence of drugs or alcohol;
2. Is not pregnant; and
3. Has not ingested an anticoagulant that thins the blood or interferes with blood clotting within the past twenty-four (24) hours.

(4) Records of each client shall be maintained for two (2) years.

(5) Client records and consent and other required records shall be made readily available to inspectors.

Section 9. Disposal of Regulated~~[Contaminated]~~ Wastes. All wastes produced during the process of tattooing shall be separated for disposal into two (2) classifications as established in this section.

(1) Contaminated sharps shall be disposed of by using a licensed medical waste disposal company.

(2) Regulated ~~[Contaminated]~~ waste shall be bagged, securely tied, and disposed of daily in a trash container that prevents unauthorized access. This material shall be disposed of in an approved site by a general trash hauler.

Section 10. Standard Operating Procedures for Tattooing.

(1) Tattooing shall not be applied on skin that has a rash, pimples, evidence of infection, open lesions, sunburn, or manifests any evidence of an unhealthy condition without

written clearance by a licensed medical provider.

(2) The tattoo artist shall follow the procedures listed in this section in preparation for tattooing.

(a) The tattoo artist and the client shall not eat, drink, or use tobacco products, an electronic cigarette, or other vapor producing product in the workstation.

(b) The tattoo artist shall wash hands and forearms prior to and after every procedure.

(c) The tattoo artist shall wear new clean disposable examination gloves for every client. If a glove is pierced, torn, or contaminated in any way, or if there is an interruption in the application of the tattoo:

1. Both gloves shall be removed immediately and discarded;
2. The hands and forearms shall be washed; and
3. New, clean examination gloves shall be used.

(d) The tattoo artist shall use a new disposable lap cloth, drape, or apron for each client. All lap cloths, drapes, and aprons shall be stored in a closed cabinet or container until used.

(e) The tattoo artist shall wear clean clothing.

(3) All instruments, equipment, and items to be used in the procedure shall be placed on plastic film or a disposable, plastic backed towel.

(4) All inks, dyes, and pigments used in a procedure shall be:

(a) Nontoxic;

(b) Dispensed from containers in a manner to prevent contamination of the unused portion in the supply bottle; and

(c) Discarded:

1. After the procedure; or
2. When the original container label becomes unreadable.

(5) Inks, dyes, and pigments transferred from bulk containers shall be labeled with:

(a) Manufacturer name;

(b) Lot number; and

(c) A statement of nontoxicity.

(6) All devices used to apply inks, dyes, or pigments shall be designed to prevent backflow of inks or pigments into the machine.

(7) If a workstation rinse cup is used, a fresh cup shall be used for each client and discarded immediately upon completion of the procedure.

(8) All single-use ointment tubes, applicators, and supplies placed on the plastic backed towel shall be discarded immediately after use.

(9) Tattoo needles shall be used once and discarded.

(10) If the tattoo artist uses any reusable components, autoclave equipment shall be required.

(11) The sharps container and waste receptacle shall be positioned to be within easy reach and in a manner to prevent contamination.

Section 11. Application of the Tattoo. The tattoo artist shall use the procedure in this section when applying a tattoo.

(1) Disinfect the chair or table and tray.

(2) Position the client.

(3) Arrange all instruments and supplies to be used in the procedure on plastic film or on a clean, disposable plastic backed towel within easy reach.

(4) Wash hands and forearms, and use new, clean examination gloves.

(5) Gently clean the client's skin with soap and water and apply an antiseptic that is appropriate for the area where the tattoo is to be applied. If shaving is necessary, use a new, single-use disposable razor.

(6) Acetate or other reusable stencils shall not be used. Place the design on the skin by one (1) of the following methods:

(a) Free-hand drawing using a new disposable marker; or

(b) Apply a single-use hectographic or tissue stencil using an approved product dispensed from a container in a manner that does not contaminate the unused portion.

(7) Remove gloves, wash hands, and use new clean examination gloves.

(8) Open sterile needles in front of the client and place them into the tattoo machine without touching the end of the needles.

(9) Apply the tattoo.

(10) Apply a thin layer of suitable cream and if appropriate, cover the area with a suitable nonstick dressing. Plastic film intended for household use shall not be used.

(11) When the tattooing is complete, the tattoo artist shall answer any questions and provide the client with instructions regarding the tattoo and aftercare.

(12) Immediately after the client leaves the workstation, the tattoo artist shall break down the workstation, properly dispose of any sharps, soak any reusable instruments for later cleaning, and clean and disinfect any surface that may have become contaminated.

Section 12. Standard Operating Procedures for a Mobile Studio.

(1) An application for mobile studio certificate~~[certification]~~ shall be:

(a) On DFS-200, Application for Permit or License;

(b) Submitted to the local health department in the district or county where the mobile studio owner resides; and

(c) Accompanied by a fee of:

1. $400 for the studio with one (1) to four (4) workstations~~[work stations]~~; and

2. An additional fifty (50) dollars for each additional workstation~~[work station]~~ over four (4).

(2) The mobile studio certificate~~[certification]~~ shall be:

(a) Valid for statewide operation;

(b) Prominently displayed to the public in the mobile studio; and

(c) Nontransferable from one (1) person to another.

(3) The mobile studio certificate shall expire December 31 each year.

(4) A late renewal fee of $100 shall be assessed on each mobile studio registration renewal application not received by January 31 each year.

(5) If not currently registered in accordance with Section 2(6) of this administrative regulation, the tattoo artist shall be registered with the local health department in each district or county where the mobile studio is operated, and pay the appropriate fees.

(6) The mobile studio shall be used exclusively for performing tattooing. Habitation, cooking, and animals, except service animals, shall not be allowed in the mobile studio.

(7) The mobile studio shall:

(a) Meet the sterilization, operating, and clientele requirements, and tattoo performance procedures as a stationary studio; and

(b) Be inspected by the local health department prior to operation.

(8) Any on-board restroom shall be supplied with hot running water and cold running water and shall be supplied with toilet paper, liquid soap, single-use paper towels from a sanitary dispenser, a covered waste receptacle, and a self-closing door.

(9) If the vehicle lacks an on-board restroom, the owner shall not operate the studio unless it is within 200 feet of a public restroom with hand-washing facilities.

(10) All plumbing shall comply with the requirements of 815 KAR Chapter 20.

(11)

(a) Each mobile studio shall have a potable water system under pressure.

(b) The system shall be of sufficient capability to furnish enough hot and cold water for hand washing, instrument cleaning, and sanitization pursuant to the requirements of

this administrative regulation.

(c) The water inlet shall be:

1. Located in a position that it will not be contaminated by waste discharge, road dust, oil, or grease; and

2. Provided with a transition connection of a size or type that will prevent its use for any other service.

(d) All water distribution pipes or tubing shall be constructed and installed in accordance with 815 KAR Chapter 20.

(e) Hoses, if used, shall bear the National Sanitation Foundation potable water (NSF-pw) mark and be fitted with a backflow prevention device.

(12)

(a) Each mobile studio shall have a permanently installed retention tank that is at least fifty (50) percent larger than the potable water supply tank.

(b) Wastewater shall be discharged into a public sewage system.

(c) Liquid wastewater shall not be discharged from the retention tank if the mobile studio is in motion.

(d) All connections on the vehicle for servicing the mobile studio waste disposal shall be of a different size or type than those used for supplying potable water to the mobile studio.

(e) The wastewater connection shall be located below the water connection to preclude contamination of the potable water system.

Section 13. Standard Operating Procedures for a Temporary Permit.

(1) The event organizer or studio owner for the event shall submit to the local health department in the district or county where the temporary studio is to be located:

(a) A DFS-200, Application for Permit or License, accompanied by a $100 permit fee for each workstation;

(b) A layout of the event floor showing where the tattoo artists will be tattooing;

(c) A list of all tattoo artists participating in the event that includes:

1. Name of tattoo artist;
2. Artist date of birth;
3. Home address;
4. Phone number;
5. Email address;
6. Proof of artist completion of bloodborne pathogen training;
7. Studio name;
8. Studio address;
9. Studio owner name; and
10. Description of procedures to be performed at the event; and

(d) A copy of the client consent form to be used during the event.

(2) The event organizer or studio owner for the event shall:

(a) Be responsible for ensuring that the event is run in a manner that is safe for the tattoo artists and the general public;

(b) Provide a separate cleaning and sterilization room as a backup, unless only presterilized~~[pre-sterilized]~~ disposables are used for the event;

(c) Provide an approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event;

(d) Arrange for pick-up and disposal of regulated~~[contaminated]~~ waste in accordance with Section 9 of this administrative regulation; and

(e) Ensure the cleaning and sterilization room, if used, is disinfected at the close of the event.

(3) Prior to the event, the tattoo artist participating in the event shall:

(a) Be registered in accordance with Section 2 of this administrative regulation with the local health department in the district or county where the temporary studio is operated;

(b) Submit the $100 registration fee required by Section 2(6)(b) of this administrative regulation; and

(c)

1. Ensure an adequate supply of presterilized instruments and supplies are available to last the length of the event; or

2. Provide certification of an autoclave negative spore test completed within thirty (30) days prior to the event if tattooing with reusable instruments.

(4) The temporary workstation shall meet the following minimum conditions:

(a) Be at least 5 ft. x 10 ft., and be constructed in a manner to separate the tattoo artist from the public in such a way as to protect the procedure area from contamination, and to prevent accidental exposure of the public to potentially-infectious materials created during tattooing;

(b) Have a floor and sides that are:

1. Smooth, nonporous, and easy to clean; or

2. Covered in plastic if the floor and sides are not smooth, nonporous, and easy to clean;

(c) Have at least 100 foot-candles of light available at the procedure level; and

(d) Be equipped with a hand-wash facility that shall be:

1.

a. A portable hand-washing station; or

b. A minimum of a one (1) gallon container with a lever-type spigot, filled with warm potable water that:

(i) Is placed at least thirty (30) inches off the floor to allow for easy use;

(ii) Is supplied with a bucket to catch the wastewater; and

(iii) Has a minimum reserve of five (5) gallons warm potable water available; and

2. Supplied with:

a. Liquid soap; and

b. Single-use paper towels from a sanitary dispenser.

(5) Wastewater shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10.

Section 14. Inspection of Studios.

(1) At least twice per year, the cabinet or the local or district health department shall inspect each studio and shall make as many additional inspections and re-inspections as are necessary for the enforcement of this administrative regulation.

(2)

(a) The cabinet or the local or district health department inspector shall record the inspection findings on an inspection report form DFS-342.

(b) The inspection report form shall:

1. Summarize the requirements of this administrative regulation; and

2. Set forth a weighted point value for each requirement.

(3) The rating score of the studio shall be the total of the weighted point value for all violations, subtracted from 100.

(4) The inspector shall provide the original inspection report to the certificate holder or the holder's designee. The findings shall:

(a) Set forth the specific violations if found; and

(b) Establish a period of time for the correction of the violations specified, pursuant to the provisions established in this paragraph.

1. If the rating score of the studio is eighty-five (85) or more, all violations of one (1) and two (2) point weighted items shall be corrected before the next routine inspection.

2. If the rating score of the studio is at least seventy (70) but not more than eighty-four (84), all violations of one (1) and two (2) point weighted items shall be corrected within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the studio, all violations of three (3) or four (4) point weighted items shall be corrected within ten (10) days.

4. If the rating score of the studio is less than seventy (70), the studio shall be issued a notice of intent to suspend the studio certification. The certification shall be suspended within ten (10) days after receipt of the notice unless a written request to an administrative conference is filed with the local or district health department within the ten (10) day period.

(5) Notices provided for under this administrative regulation shall be deemed to have been properly served if the original of the inspection report form or other notice has been delivered personally to the certificate holder or person in charge, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of the certificate holder.

(6) Failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the certificate or the individual's registration.

(7) Temporary and mobile studios shall correct any violative conditions within twenty-four (24) hours.

Section 15. Suspension of Studio Certificates or Individual's Registration.

(1) The studio certificate or the individual's registration shall be suspended immediately upon notice to the certificate holder or registered individual if:

(a) The cabinet or the local or district health department has reason to believe that an imminent public health hazard exists;

(b) The studio certificate holder or registered individual has interfered with the cabinet or the local or district health department in the performance of its duties; or

(c) An inspection of a studio reveals a rating score of less than sixty (60).

(2) The studio certificate holder or individual registration holder whose certificate or registration has been suspended may request an administrative conference in accordance with 902 KAR 1:400.

(3) The cabinet or the local or district health department shall notify, in writing, the studio certificate holder or registered individual who fails to comply with a written notice issued under the provisions of this section, that the studio certificate or individual's registration shall be suspended at the end of ten (10) days following service of this notice unless a request for an administrative conference is requested.

~~[(4)] [A person whose studio certificate or individual registration has been suspended may, at any time, make application for reinstatement of the certification or registration in accordance with 902 KAR 1:400, Section 2.]~~

Section 16. Revocation of a Studio Certificate or an Individual's Registration.

(1) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with agents of the cabinet or the local or district health department in the performance of its duties, a studio certificate or an individual's registration may be permanently revoked.

(2) Prior to this action, the cabinet or the local or district health department shall notify the studio certificate holder or registered artist~~[individual]~~, in writing, stating the reasons

[for which]the studio certificate[certification] or individual registration is subject to revocation and advising that the studio certificate[certification] or individual registration shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative conference is filed with the cabinet by the certificate[certification] or registration holder within the ten (10) day period.

(3) A studio certificate[certification] or individual registration may be suspended for cause pending its revocation or an administrative conference relative to the revocation.

Section 17. [Appeals. A studio certificate or individual registration holder or an applicant aggrieved by a decision of the cabinet or the local or district health department may request an administrative hearing in accordance with 902 KAR 1:400.]

[Section 18.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) [DFS-200, "Application for Permit or License", 07/19;]

[(b)] DFS-303, "Application for Certification or Registration", Rev. 9/23[2/19]; and

(b) [(c)] DFS-342, "Tattoo and Body Piercing Studio Inspection Report", Rev. 2/19.

(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, Public[Food] Safety Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. and available online at https://chfs.ky.gov/agencies/dph/dafm/Pages/lhddocuments.aspx.

STEVEN J. STACK, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 16, 2023

FILED WITH LRC: September 13, 2023 at 1 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 27, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 16, 2023, 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 virtually 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 November 30, 2023. 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: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:
This administrative regulation establishes the standards for tattooing.

(b) The necessity of this administrative regulation:
This administrative regulation is necessary to ensure all tattooing performed in Kentucky is done by an artist registered with the local or district health department. This administrative regulation also ensures that all tattoo studios are certified and inspected by the local or district health department.

(c) How this administrative regulation conforms to the content of the authorizing statutes:
KRS 211.760(3) requires the cabinet to promulgate administrative regulations relating to: (a) health and cleanliness of places of business; (b) sterilization of tattooing instruments and equipment; (c) procedures to prevent the spread of disease; (d) procedures to prevent tattooing of minors without the written notarized consent of a custodial parent or legal guardian; and (e) other administrative regulations as may be necessary to protect public health.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
This administrative regulation ensures all tattooing is done in a safe and sanitary manner.

(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:
The amendment to this administrative regulation clarifies that a studio owner is required to maintain the registration for the tattoo artist even if that individual is not considered an employee of the studio, and updates the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation:
The amendment to this administrative regulation is necessary to ensure that all tattoo artists are properly registered with the local or district health department, and to update the material incorporated by reference. The "Application for a Permit or License", submitted by a studio owner, is incorporated by reference in 902 KAR 10:040, and the amendment to this administrative regulation removes this form from the list of material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes:
KRS 211.760(2) requires that no person shall engage in, offer to engage in, or carry on any business of tattooing of humans by nonmedical personnel without first registering with the local health department in the district or county in which the person is to perform tattooing.

(d) How the amendment will assist in the effective administration of the statutes:
The amendment to this administrative regulation will ensure the local or district health department is aware of all registered tattoo artists should there be a complaint or other issue.

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

The amendment to this administrative regulation will impact registered tattoo studio owners and registered tattoo artists as well as local health department inspectors. There are 599 registered tattoo studios and 1,640 registered tattoo artists.

(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:

Tattoo artists and studio owners will need to be aware of the registration process.

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

There will be no change in the cost to the registered tattoo artist or studio owner.

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

Tattoo artists and studio owners will operate under a uniform standard for tattooing.

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

(a) Initially:

This is an ongoing program, there are no initial costs.

(b) On a continuing basis:

There will be no continual cost to implement the amendment to this administrative regulation.

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

State general fund dollars, local tax dollars, and revenue received from permit fees are the sources of funding for 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:

An increase in fees or funding is not necessary to implement the amendment to this administrative regulation.

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

The fees established in this administrative regulation are not being increased. There are no new fees established in this administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is applied to the studio certification fee. Studios that have more than four (4) workstations will pay an additional fee for each workstation.

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?

This administrative regulation impacts all local and district health departments, and the Public 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 194A.050(1) and 211.760.

(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?

The combined revenue received from the tattoo artist registration and the studio certification is approximately $403,600 per 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?

The combined revenue received from the tattoo artist registration and the studio certification is approximately $403,600 per year.

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

The total cost to the cabinet and local health departments is approximately $417,600 per year.

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

The total cost to the cabinet and local health departments is approximately $417,600 per 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:

(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?

This administrative regulation does not generate cost savings for the regulated entities.

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

This administrative regulation does not generate cost savings for the regulated entities.

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

Studio owners will pay a minimum of $400 per year for certification. Tattoo artists will pay $100 per year to register with the local health department.

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

There will be no increase in costs to studio owners or tattoo artists in 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:

(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)] This administrative regulation does not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

28 C.F.R. Part 36 – Nondiscrimination on the basis of disability by public accommodations and in commercial facilities under the Americans with Disabilities Act (ADA); and 29 C.F.R. 1910.1030 Occupation Safety and Health Standards.

(2) State compliance standards.

KRS 211.760 authorizes the cabinet to promulgate administrative regulations relating to the health and cleanliness of places of business in which tattooing, body piercing or both are performed, procedures to prevent the spread of disease or infection during or relating to tattooing and body piercing procedures, and such other administrative regulations as may be necessary to protect public health.

(3) Minimum or uniform standards contained in the federal mandate.

The ADA requires a public accommodation to take the steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently. The federal regulations regarding bloodborne pathogens applies to all occupational exposure to blood or other potentially infections materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No, this administrative regulation does not impose any stricter requirements, or additional or different responsibilities or requirements.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable.