

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 135.37, the Iowa Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 22, "Practice of Tattooing," Iowa Administrative Code, and adopt new Chapter 22 with the same title.

The proposed rules describe the requirements for tattoo artists and establishments in Iowa. The rules also include the procedures and fees for the practice of tattooing.

The following is a summary of the major changes from the existing rules:

Definitions for "inspection agency," "residential dwelling," "tattoo mobile unit," "temporary establishment permit," and "temporary event" were added.

The definition for "tattoo artist" was revised.

Subrule 22.3(6) was revised to no longer permit tattoo facilities to operate in a residential dwelling.

In subrule 22.4(2), the phrase "or directly adjacent to," in reference to a sink for handwashing, was omitted.

In subrule 22.4(4), the phrase "including the immediate area where the tattoo procedure is to be performed" was omitted and "150 square feet" was changed to "300 square feet."

In subrule 22.4(5), "have" was changed to "be finished with an."

In subrule 22.4(9), more detailed language was added concerning prohibitions.

In subrule 22.4(10), "guide dogs" was changed to "service dogs," and language was added to allow aquariums in the waiting room and nonprocedural areas of the tattoo facility.

In subrule 22.5(3), "and needles" was deleted.

In subrule 22.5(6), a three-year requirement for maintenance of records regarding sterilizer monitoring was added, and language regarding disposable equipment and instruments was added.

In subrule 22.5(7), more detailed language for sterilizer requirements was added.

In subrule 22.5(10), language regarding use of clippers for removal of unwanted hair was deleted, and language contained in former subrule 22.5(11) was incorporated into subrule 22.5(10).

New subrule 22.6(1) was added to require facilities to establish a written standard operating procedure for tattooing. Renumbering of subsequent subrules was necessary.

In subrule 22.6(4) (formerly subrule 22.6(3)), the phrase "it is recommended that" was deleted.

In subrule 22.6(6) (formerly subrule 22.6(5)), the phrases "an antiseptic such as" and "10 percent iodophor solution" were deleted, and the word "solution" was added.

In rule 641—22.7(135), the catchwords "Application for permit—fees" were changed to "Establishment permit requirements." This rule was reorganized to reflect requirements for tattoo establishments.

In subrule 22.7(4) (formerly 22.7(5)), the application fee of \$25 was changed to \$150 to be more in line with fees in surrounding states.

In subrule 22.7(5) (formerly subrule 22.7(7)), the phrase "tattoo artist permits" was deleted.

New subrules 22.7(6) and 22.7(7) add language to reflect requirements for change of ownership of a facility and change in location of a facility.

In rule 641—22.8(135), language for variances was deleted and the rule was reorganized to reflect requirements only for tattoo artists. Fees for artist permits were changed from \$40 to \$100. Educational requirements were added for tattoo artists. A requirement that tattoo artists be at least 18 years of age was also added.

Rule 641—22.9(135), formerly titled “Adverse actions and the appeal process,” is now titled “Permit issuance and renewal.” This rule outlines requirements and deadlines for tattoo permit applications. A fee of \$25 per each month delinquent was added for delinquent renewal applications. A requirement that the Department screen applicants for criminal convictions was also added.

New rule 641—22.10(135) outlines the inspection requirements for tattoo establishments. The inspection fee of \$200 was changed to \$250, and language was added to allow the local inspection agency to charge tattoo facilities a late fee of \$30 and additional fees when a special inspection is determined necessary. A requirement for facilities to establish material safety data sheets (MSDS) was also added.

New rule 641—22.11(135) requires tattoo inspectors to complete a bloodborne pathogen certification course from the American Red Cross.

New rule 641—22.12(135) requires tattoo facilities to keep and maintain specific records of clients.

New rule 641—22.13(135) adds temporary establishment permits. This rule outlines specifications for a facility to obtain a temporary establishment permit for a temporary event. The rule also includes an application fee of \$50 and an inspection fee of \$50 for each booth to be set up at a temporary event.

New rule 641—22.14(135) adds mobile unit permits and outlines specifications for mobile units.

New rule 641—22.15(135) (formerly rule 641—22.9(135)) now includes criminal penalties as well as civil penalties.

Any interested person may make written suggestions or comments on the proposed rules on or before February 18, 2009. Written materials should be directed to Talisa Miller, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-4529; E-mail tmiller@idph.state.ia.us.

Also, there will be a public hearing on February 18, 2009, from 2 to 4 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

This hearing will originate from the Iowa Communications Network (ICN) Room on the 6th floor of the Lucas State Office Building and will be accessible over the ICN from the following locations:

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| Trospar-Hoyt County Services Bldg. Fourth Floor 822 Douglas Street Sioux City | Davenport Public Library 321 Main Davenport |
| Loess Hills AEA 13 24997 Hwy 92 Council Bluffs | Burlington National Guard Armory 2500 Summer Street Burlington |
| Hawkeye Community College 1 Tama Hall, Room 110 1501 East Orange Road Waterloo | Keystone AEA 1, Room 2 2310 Chaney Road Dubuque |
| Indian Hills Community College 5 Videoconferencing & Training Center Building 14 651 Indian Hills Drive Ottumwa | Orchard Place 925 Porter Avenue Des Moines |
| Iowa Lakes Community College Room 118 1900 North Grand Avenue Spencer | Newman Catholic High School 2445 19th Street SW Mason City |

Prairie Lakes AEA 8, Room 204
330 Avenue M
Fort Dodge

Green Valley AEA, Turner Room
1405 North Lincoln
Creston

Kirkendall Public Library
1210 NW Prairie Ridge Drive
Ankeny

Decorah High School
100 East Claiborne Drive
Decorah

Jefferson High School
1243 20th Street SW
Cedar Rapids

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Department of Public Health and advise of specific needs.

These rules are intended to implement Iowa Code section 135.37.

The following amendment is proposed.

Rescind 641—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22 PRACTICE OF TATTOOING

641—22.1(135) Purpose. The purpose of this chapter is to stipulate the permit and operational requirements for tattoo artists and tattoo establishments.

641—22.2(135) Definitions. For the purpose of these rules, the following definitions shall apply:

“Department” means the Iowa department of public health.

“Director” means the director of the Iowa department of public health.

“Inspection agency” means the department or a city, county or district board of health that has executed an agreement with the department pursuant to the authority of a city, county or district board of health to inspect tattoo establishments and enforce these rules. The authority of a city, county or district board of health is limited to the geographic area defined in the agreement executed with the department. Within the defined geographic area, the city, county or district board of health is the “local inspection agency.”

“Minor” means a person who is under the age of 18 years.

“Permanent color technology” means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin so as to form indelible marks for cosmetic purposes.

“Residential dwelling” is a place or structure intended to be occupied as a residence.

“Tattoo artist” means any person, including a permanent color technologist, engaged in the practice of tattooing within the state of Iowa.

“Tattoo establishment” means the building or mobile unit where tattooing is practiced.

“Tattooing” means to puncture the skin of a person with a needle and insert indelible permanent colors through the puncture to leave permanent marks or designs.

“Tattoo mobile unit” means a mobile establishment or unit which is self-propelled or otherwise movable from place to place, is self-sufficient for utilities such as gas, water, electricity and liquid waste disposal, and operates at a fixed location where a permitted artist performs tattooing procedures for no more than 14 days in conjunction with a single event.

“Temporary establishment permit” means a permit issued by the department to perform tattoo procedures at a temporary event.

“Temporary event” means any place or premises operating at a fixed location where a tattoo artist performs tattooing procedures for no more than seven days consecutively in conjunction with a single event or celebration.

641—22.3(135) General provisions.

22.3(1) Tattoo artists and tattoo establishments that fail to meet the requirements of Iowa Code section 135.37 or these rules shall be guilty of a serious misdemeanor.

22.3(2) No person shall tattoo a minor. Violators shall be guilty of a serious misdemeanor.

22.3(3) No tattoo artist shall engage in the practice of tattooing without first obtaining a tattoo artist permit from the department.

22.3(4) Tattoo artists and tattoo establishments that are in compliance with Iowa Code section 135.37 and these rules are not relieved from the requirements of any other applicable state laws or local ordinances.

22.3(5) Tattooing shall be practiced only in facilities that have received a tattoo establishment permit from the department.

22.3(6) Tattooing shall not be practiced in a residential dwelling, inclusive of an attached garage, pursuant to local zoning codes. (NOTE: Establishments that are currently home-based will have one year from June 1, 2009, to establish a commercial-based tattoo establishment.)

22.3(7) Tattoo establishments shall be inspected annually.

641—22.4(135) Sanitation and infection control.

22.4(1) Tables, chairs, and other general-use equipment shall be constructed of impervious or smooth and easily cleanable material.

22.4(2) A sink for hand washing supplied with potable hot and cold running water shall be available in the tattooing area. Hand-washing facilities shall be supplied with liquid soap and single-use paper towels.

22.4(3) Toilet facilities must be available for employee use and patron use.

22.4(4) The tattoo establishment shall have an area of not less than 300 square feet and shall be adequately lighted and ventilated.

22.4(5) Floors in the immediate area where the tattoo procedure is to be performed shall be finished with an impervious, smooth, washable surface.

22.4(6) The entire premises and all facilities used in connection therewith shall be maintained in a clean, sanitary, vermin-free condition and in good repair.

22.4(7) All refuse shall be stored in rigid containers with plastic liners which are emptied at least once each business day.

22.4(8) Closed cabinets shall be used for the exclusive storage of instruments, dyes, pigments, stencils, tattoo machines, and other equipment.

22.4(9) The following prohibitions apply to tattoo establishments:

a. Smoking shall not be allowed pursuant to 641—Chapter 153 and 2008 Iowa Acts, House File 2212.

b. Consumption of food or drink shall not be allowed in any area where the actual tattoo procedure is being performed.

c. The owner or tattoo artist must not use, consume or serve intoxicating beverages or controlled substances on the establishment's premises during the hours the establishment is open to the public or while any procedure is being performed.

d. The owner or tattoo artist must not allow any other person to use, consume, or serve intoxicating beverages or controlled substances on the establishment's premises during the hours the establishment is open to the public or while any procedure is being performed.

e. The owner or tattoo artist shall not in any manner possess or distribute or allow any other person to possess or distribute intoxicating beverages or controlled substances on the establishment's premises during the hours the establishment is open to the public or while any procedure is being performed.

22.4(10) No animals, except service dogs for visually or hearing-impaired persons, shall be permitted in a tattoo establishment. Aquariums shall be allowed in waiting rooms and nonprocedural areas.

641—22.5(135) Equipment. All equipment shall be maintained in a clean and sanitary condition.

22.5(1) Cups to hold ink or dye shall be for single-patron use.

22.5(2) Any dye or ink in which needles were dipped shall not be used on another person.

22.5(3) All tubes and needle bars used for the tattoo procedure which are not sterile, for single-patron use, and disposable shall be physically cleaned with a detergent according to manufacturers' recommendations and then steam-sterilized or dry-heat sterilized before use on another patron.

22.5(4) Steam sterilization shall be at 250 degrees Fahrenheit (121 degrees Celsius) for 15 minutes at a minimum pressure of 15 pounds per square inch.

22.5(5) Dry-heat sterilization shall be at 350 degrees Fahrenheit (170 degrees Celsius) for one hour.

22.5(6) Sterilizers shall be monitored monthly for spores of *Bacillus subtilis*, and records of results shall be maintained for three years. If all equipment and instruments used are disposable, a sterilizer is not required.

22.5(7) Each tattoo establishment shall maintain written procedures to follow in the event of positive spore tests.

a. In the event of a positive spore test, materials processed in that sterilizer, dating from the sterilization cycle having the positive biological indicator to the next cycle showing satisfactory biologic indicator challenge results, must be considered nonsterile and must be reprocessed before being used.

b. A sterilizer that has received a positive spore test must be immediately removed from service.

c. Prior to putting a sterilizer that has received a positive spore test back into service, the owner must ensure that there is evidence of one negative spore test.

d. The owner must notify the inspection agency of a positive spore test within 24 hours of the test result.

22.5(8) Each tattoo establishment shall be equipped with a container designated for disposal of used needles and other sharps. A written plan for disposal shall be maintained in the establishment and be made available upon request by the inspection agency.

22.5(9) Any bottles of solution shall be labeled as to contents and used according to manufacturers' directions.

22.5(10) Razors for removal of unwanted hair shall be for single-patron use and shall be disposable.

22.5(11) Topical ointments shall be for single-patron use.

641—22.6(135) Procedures.

22.6(1) Each tattoo establishment shall establish a written standard operating procedure (SOP), which shall include the process for setup and tear down of tattoo procedures. The SOP shall focus on procedures of hygiene and cross-contamination control.

22.6(2) For privacy purposes and at the patron's request, there shall be in place or readily available a panel or other barrier of sufficient height and width to effectively separate the patron from any unwanted observers or waiting patrons. Panels or other barriers shall be nontransparent and may be fixed or movable, rigid or flexible.

22.6(3) Tattoo artists shall scrub their hands thoroughly before beginning the tattoo procedure. Tattoo artists shall dry their hands with individual single-use towels.

22.6(4) Tattoo artists shall wear clean garments when performing tattoo procedures. Tattoo artists shall wear gloves during the tattoo procedure. Gloves shall be changed after each tattoo. Tattoo artists shall wash their hands before and after each tattoo procedure.

22.6(5) The skin area to be tattooed shall first be cleansed with soap and water. Single-use towels or sponges (gauze) shall be used during the cleansing procedure.

22.6(6) Before placing the tattoo design on the patron's skin, the tattoo artist shall prepare the skin with 70 percent ethyl or isopropyl alcohol solution or an equally effective antiseptic or antimicrobial.

22.6(7) Tattooing shall not be performed on any area where there is evidence of skin infection.

22.6(8) After the tattooing is completed, an adequate dressing shall be applied to the tattoo area.

22.6(9) Persons tattooed shall be provided with printed instructions regarding tattoo care during the healing process and shall be instructed to consult a physician if signs and symptoms of an infection develop.

641—22.7(135) Establishment permit requirements.

22.7(1) No tattoo establishment shall be operated in the state without having a permit to operate issued by the department.

22.7(2) Each person acquiring or establishing a tattoo establishment shall apply for a permit prior to beginning operation.

22.7(3) A permit to operate shall be issued to a new establishment when the department or its representative has successfully completed an on-site inspection. Permits shall be posted in a conspicuous place in the tattoo establishment.

22.7(4) An annual, nonrefundable application fee of \$150, payable to the Iowa Department of Public Health, shall be remitted with the initial or renewal tattoo establishment permit application.

22.7(5) Tattoo establishment permits are nontransferable.

22.7(6) Change in ownership. Within 30 days of a change in ownership of a tattoo establishment, the new owner shall submit an application and fee for a new permit.

22.7(7) Change in location. Within 30 days of a change of location of a tattoo establishment, the owner shall submit a new application and a nonrefundable fee of \$25 for a new permit.

641—22.8(135) Tattoo artist permit requirements.

22.8(1) An annual, nonrefundable application fee of \$100, payable to the Iowa Department of Public Health, shall be remitted with the initial or renewal tattoo artist permit application.

22.8(2) Persons shall be at least 18 years of age and must submit a photocopy of a birth certificate or other equivalent document to show proof of attaining the age of 18 years.

22.8(3) Persons must have a high school diploma or general educational development certificate (GED).

22.8(4) Upon initial application and permit renewal application, tattoo artists must complete and be current in the following American Red Cross certifications:

- a. Bloodborne pathogens; and
- b. Standard first aid.

22.8(5) Applicants must submit proof of successful completion of the certification programs listed in subrules 22.8(3) and 22.8(4). (NOTE: Artists that were permitted before [insert effective date of these rules] will not be required to obtain a high school diploma or GED.)

22.8(6) Tattoo artist permits are nontransferable.

22.8(7) Each permit issued will be in effect solely for the artist named thereon and shall remain with the artist upon change of employment.

641—22.9(135) Permit issuance and renewal.

22.9(1) Applications may be obtained from the department's Web site at <http://www.idph.state.ia.us/eh/tattoo.asp> or are available upon request from the Iowa Department of Public Health, Division of Environmental Health, Tattoo Permit Program, Lucas State Office Building, Des Moines, Iowa 50319-0075.

22.9(2) The department will act within 60 days upon receiving a completed application. If an applicant satisfies permit requirements, satisfies the requirements of this chapter, and complies with inspection requirements, the department will issue a permit.

22.9(3) If the applicant has been convicted of a felony or misdemeanor, the department shall review evidence including but not limited to the following:

- a. Official court record, which includes charges and disposition;
- b. Copies of arrest records;
- c. A letter from the applicant explaining the nature of the conviction;
- d. All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug- or alcohol-related offense and if treatment was obtained or required; and
- e. A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.

22.9(4) All permits expire on December 31 of each year, regardless of date of issuance. Permits shall be renewed annually upon acceptance of a renewal application provided by the department and receipt of the renewal fee. Applicants who submit applications for renewal received after December 31 will be required to pay an additional \$25 for each month delinquent.

22.9(5) The department shall send a renewal notice by regular mail to each permit holder at the address on record at least 60 days prior to the expiration of the permit.

22.9(6) The permit holder is responsible for renewing the permit prior to its expiration. Failure of the permit holder to receive the notice does not relieve the permit holder of the responsibility for renewing the permit.

641—22.10(135) Inspection requirements.

22.10(1) The inspection agency shall bill the owner of a tattoo establishment \$250 upon completion of an inspection. Inspection fees are due upon receipt of a notice of payment due.

22.10(2) Tattoo establishments shall be inspected annually.

22.10(3) When the tattoo establishment is located within the jurisdiction of a local inspection agency, the local inspection agency may establish fees needed to defray the costs of inspection and enforcement under this chapter. Inspection fees billed by a local inspection agency shall be paid to the local inspection agency or its designee.

22.10(4) When an inspection agency determines that a special inspection is required, such as a follow-up inspection or an inspection generated by complaints, the inspection agency may charge a special inspection fee which shall be based on the actual cost of providing the inspection.

22.10(5) Unpaid inspection fees will be considered delinquent 30 days after the date of the bill. A late fee of \$30 will be assessed to the establishment owner after a 30-day notice. If inspection fees remain unpaid after 60 days, an order to cease and desist operations will be issued by the department.

22.10(6) Failure to permit an inspection is grounds for denial of an initial tattoo establishment permit or for issuance of an order requiring suspension of a tattoo establishment's existing operations.

22.10(7) If an imminent health hazard exists, the inspection agency or the department may, pursuant to Iowa Code section 17A.18A, order the establishment to cease operation immediately. Operation shall not be resumed until authorized by the inspection agency or the department.

22.10(8) Material safety data sheets (MSDS) for the chemicals used at the tattoo establishment shall be maintained at the establishment in a location known and readily accessible to the establishment staff and shall be made available upon request of the inspection agency.

22.10(9) An establishment inspected under this chapter shall post the most recent routine inspection report, along with any current complaint or reinspection reports, in a location at the establishment that is readily visible to the public.

641—22.11(135) Tattoo inspector qualifications. Each person designated as a tattoo inspector shall have successfully completed a bloodborne pathogen certification course from the American Red Cross. A copy of current certification shall be maintained by the local inspection agency.

641—22.12(135) Client records. A tattoo establishment shall keep a record of all persons who have had tattoo procedures performed.

22.12(1) Records shall include the client name, date of birth, photocopy of identification, date of the procedure, name of the tattoo artist who performed the procedure(s), and signature of client.

22.12(2) Records shall be retained in a confidential manner for a minimum of three years and shall be available to the department and the inspection agency upon request.

641—22.13(135) Temporary establishment permits.

22.13(1) A person who wishes to obtain a temporary establishment permit must submit a nonrefundable application fee of \$50, payable to the Iowa Department of Public Health, and submit floor plan(s) of the facility at least 30 days prior to the event. The request shall specify the following:

- a. The purpose for which the permit is requested;

- b. The period of time during which the permit is needed (not to exceed 7 calendar days per event, without reapplication);
- c. The fulfillment of operator requirements as specified in 641—22.8(135); and
- d. The location for which the temporary permit will be used.

22.13(2) The temporary event must be contained in a completely enclosed, nonmobile facility such as inside a permanent building.

22.13(3) The temporary establishment shall comply with the following:

- a. Conveniently located hand-washing facilities with liquid soap, single-use towels and hot and cold water under adequate pressure shall be provided. Drainage in accordance with local plumbing codes shall be provided. Tuberculocidal single-use hand wipes to augment the hand-washing requirements of this paragraph must be available in each booth.

- b. A minimum of 80 square feet of floor space shall be provided for each booth.

- c. There shall be at least 100 foot-candles of light at the level where the tattoo procedure is being performed.

- d. Facilities to properly sterilize instruments and evidence of a spore test performed on sterilization equipment 30 days or less prior to the date of the event must be provided; or only single-use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers will be allowed.

- e. Tattoo artists must properly clean and sanitize the area used for tattoo procedures.

- f. Floors of the facility shall be smooth and impervious or be covered with an impermeable barrier.

22.13(4) The facility where the temporary establishment permit is needed must be inspected by the designated inspection agency and issued a permit prior to the performance of any tattoo procedures. A \$50 inspection fee for each booth shall be made payable to the inspection agency.

22.13(5) Temporary establishment permits issued under the provisions of these rules may be suspended by the department for failure of the holder to comply with the requirements of these rules.

22.13(6) All establishment and artist permits and the disclosure notice must be readily seen by clients.

641—22.14(135) Mobile unit permits.

22.14(1) Mobile unit permits shall comply with all of the requirements of these rules. Tattoo mobile units and tattoo artists working from a mobile unit shall also comply with all of the following requirements.

22.14(2) Mobile units are permitted for use only at special events, lasting 14 calendar days or less. Permits must be obtained at least 14 days prior to the event, and no tattoo procedures shall be performed before a permit is issued. Permit holders are responsible for compliance with all other local regulations including but not limited to zoning and business license requirements.

22.14(3) The mobile unit shall be maintained in a clean and sanitary condition at all times. Doors shall be self-closing and tight-fitting. Openable windows shall have tight-fitting screens.

22.14(4) Mobile units must have approved sterilization equipment available, in accordance with all requirements of 641—22.5(135).

22.14(5) Mobile units shall be used only for the purpose of performing tattoo procedures. No habitation or food preparation is permitted inside the vehicle unless the tattoo work station is separated by walls, floor to ceiling, from culinary or domicile areas.

22.14(6) Mobile units shall be equipped with an equipment-washing sink and a separate hand sink for the exclusive use of the tattoo artist for hand washing and preparing the client for the tattoo procedures.

- a. The hand sink shall be supplied with hot and cold running water under pressure to a mixing-type faucet, as well as liquid soap and single-use towels in dispensers.

- b. An adequate supply of potable water shall be maintained for the mobile unit at all times during operation.

- c. The source of the water and storage of the tank(s) shall also be identified.

- d. Tuberculocidal single-use hand wipes to augment the hand-washing requirements of this subrule must be available.

22.14(7) All liquid wastes shall be stored in an adequate storage tank with a capacity at least 50 percent greater than the capacity of the on-board potable water supply. Liquid wastes shall be disposed of at a publicly owned treatment works site approved by the department of natural resources (IDNR).

22.14(8) Restroom facilities must be available within the mobile unit.

- a.* A hand sink must be available inside the restroom cubicle.
- b.* The hand sink shall be supplied with hot and cold running water under pressure to a mixing-type faucet, as well as liquid soap and single-use towels in dispensers.
- c.* Restroom doors must be self-closing, and adequate ventilation must be available.

22.14(9) All tattoo artists working in a mobile unit must have a permit and must comply with the permit requirements of these rules.

22.14(10) No animals, except service animals of clients, shall be allowed in the mobile unit at any time.

22.14(11) All applicable permits shall be posted in a location where the public can view such permits.

641—22.15(135) Adverse actions and the appeal process.

22.15(1) The department may deny an application for a permit, may order that a tattoo establishment not be operated, or may refer the case to the office of the county attorney or attorney general for possible criminal penalties when the department finds that an establishment is not operated in accordance with these rules or that a permitted person or a person who is not permitted has committed any of the following acts:

- a.* Any material misstatement in the application or in any supplementary statement.
- b.* Any material misstatement in the renewal application or in any supplementary statement received upon renewal.
- c.* Failure to pay the required renewal fee or late fee.
- d.* Failure to submit a complete, legible, and accurate renewal application form before the end of the renewal period.
- e.* Any condition revealed by an inspection of the applicant, the application, or supplementary statement received upon renewal.
- f.* Falsification of approval records, qualifications, or other information or documentation related to permitting approval.
- g.* Any violation or failure to observe any of the applicable terms or provisions of permitting, public health law, or any other applicable rule, ordinance, regulation, code or order.
- h.* Failure to correct any violation of department rules that was found during an inspection or any violation found on an initial inspection which, as determined by the department, jeopardizes the safety of the public.
- i.* Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Acts which may constitute unethical conduct include, but are not limited to:
 - (1) Verbally or physically abusing a patron.
 - (2) Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patron.
 - (3) Betrayal of a professional confidence.
 - (4) Engaging in a professional conflict of interest.
 - (5) Falsification of records.
- j.* Engaging in any conduct that subverts or attempts to subvert a department investigation.
- k.* Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.
- l.* Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.
- m.* Knowingly aiding, assisting or advising a person to unlawfully practice tattooing.

- n.* Representing oneself as a tattoo artist when one's permit has been denied, suspended or revoked, or when one's permit is lapsed or has been placed on inactive status.
- o.* Permitting the use of a permit by a nonpermitted person for any purpose.
- p.* Mental or physical inability reasonably related to and adversely affecting the tattoo artist's ability to practice in a safe and competent manner.
- q.* Being adjudged mentally incompetent by a court of competent jurisdiction.
- r.* Sexually harassing a patron. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- s.* Habitual intoxication or addiction to drugs.
 - (1) The inability of a tattoo artist to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.
 - (2) The excessive use of drugs which may impair a tattoo artist's ability to practice with reasonable skill or safety.
 - (3) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.
- t.* Fraud in representation as to skill, ability, or certification.
- u.* Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to the provision of tattooing, including but not limited to a crime involving dishonesty, fraud, theft, embezzlement, controlled substances, substance abuse, assault, sexual abuse, sexual misconduct, or homicide. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.
- v.* Having certification or permit to practice tattooing suspended or revoked, or having other disciplinary action taken by a licensing, certifying, or permitting authority of this state or another state, territory or country. A copy of the record or order of suspension, revocation or disciplinary action is conclusive or prima facie evidence.
- w.* Acceptance of any fee by fraud or misrepresentation.
- x.* Failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.
- y.* Failure to respond within 30 days of receipt, unless otherwise specified, of communication from the department which was sent by registered or certified mail.

22.15(2) Notice of issuance of a denial or order to cease operations shall be served by certified mail, return receipt requested, or by personal service.

22.15(3) Upon receipt of the order, the aggrieved party may request an appeal. The appeal shall be made in writing to the department within 20 days from the date of the aggrieved party's receipt of the department's order. The appeal shall be addressed to Iowa Department of Public Health, Division of Environmental Health, Tattoo Permit Program, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 20-day time period, the order shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the order upon satisfaction that the reason for the order has been or will be removed. After the hearing, or upon default of the aggrieved party, the administrative law judge shall affirm, modify or set aside the order. If no request for appeal is received within the 20-day time period, the department's order shall become the department's final agency action.

22.15(4) Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

22.15(5) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

22.15(6) When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and

order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 22.15(7).

22.15(7) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

22.15(8) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a.* All pleadings, motions, and rules.
- b.* All evidence received or considered and all other submissions by recording or transcript.
- c.* A statement of all matters officially noticed.
- d.* All questions and offers of proof, objections and rulings thereon.
- e.* All proposed findings and exceptions.
- f.* The proposed decision and order of the administrative law judge.

22.15(9) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

22.15(10) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of the action pursuant to Iowa Code chapter 17A.

22.15(11) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The copy shall be directed to Iowa Department of Public Health, Division of Environmental Health, Tattoo Permit Program, Lucas State Office Building, Des Moines, Iowa 50319-0075.

22.15(12) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

These rules are intended to implement Iowa Code section 135.37.