

Subpart 72-1

Tanning Facilities

(Statutory Authority: Public Health Law, Article 35-A)

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GENERAL PROVISIONS

Section 72-1.1 Definitions.

- (a) Adequate means sufficient to accomplish the purpose for which something is intended, and to such a degree that no reasonable risk to health or safety is presented. An item installed, maintained, designed and assembled, an activity conducted, or act performed, in accordance with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession, is adequate within the meaning of this Subpart.
- (b) Department means the New York State Department of Health.
- (c) FDA means United States Food and Drug Administration.
- (d) Permit issuing official (PIO) shall mean the State Commissioner of Health, or where authorization is requested and received from the State Commissioner of Health, the health commissioner or health officer of a city of 50,000 population or over, the health commissioner or health officer of a county or part-county health district, the State regional health director or district director having jurisdiction, or any county or public health director having all the powers and duties prescribed in Section 352 of the Public Health Law. The PIO may designate additional persons to act in his/her behalf to issue permits or perform inspections as required by this Subpart.

- (e) Permit means a license issued to a tanning facility operator pursuant to these rules.
- (f) Person means an individual, corporation, partnership, joint venture or any business entity.
- (g) Protective eyewear means any adequate equipment designed to be worn by users of an ultraviolet radiation-emitting device to reduce exposure of the eyes to radiation emitted by the product.
- (h) Qualified health care professional means a physician licensed by the State of New York to practice medicine, or a physician assistant or nurse practitioner licensed to practice in New York in collaboration with and under the supervision of a licensed physician.
- (i) Sanitize means adequate antimicrobial treatment by a disinfectant determined to be capable of destroying pathogenic organisms on treated surfaces. Exposure to the ultraviolet radiation produced by the ultraviolet radiation device itself is not considered an adequate sanitizing agent.
- (j) Tanning facility means any establishment where one or more ultraviolet radiation devices are used, offered, or made available for use by any human being, for which a fee is charged, directly or indirectly, excluding a facility where such device is used by a qualified health care professional for treatment of medical conditions.
- (k) Ultraviolet radiation device means any product which is designed to emit electromagnetic radiation in the wavelength interval of two hundred (200) nanometers to four hundred (400) nanometers in air, and which is intended to induce tanning of the human skin through irradiation, including but not limited to, a sunlamp, tanning booth, or tanning bed.

72-1.2 Application.

The requirements of this Subpart shall apply to all tanning facilities except where ultraviolet radiation devices are used by a qualified health care professional for treatment of medical conditions.

72-1.3 Enforcement, public health hazards and other violations.

(a) Enforcement.

- (1) Operation of a tanning facility without a permit is a violation of this Subpart. The PIO may order any tanning facility operating without a permit to close and remain closed until the facility obtains and displays a valid permit.
- (2) Operators in violation of these regulations are subject to the enforcement provisions delineated in the Public Health Law. Where a public health hazard is found, the tanning facility or portion of the facility constituting the hazard shall be placarded to prohibit use until the hazard is corrected in order to protect the public health or safety of the patrons. When a placard is used, it shall be conspicuously posted at each entrance to the tanning facility or portion of the facility constituting the hazard. The placard shall state the authority for its placement and indicate that concealment, mutilation, alteration or removal of it by any person without permission of the PIO shall constitute a violation of this Chapter and the Public Health Law.
- (3) Within fifteen (15) days of placarding a facility or portion of the facility, the operator shall be provided with an opportunity to be heard and present proof that continued operation of the facility does not constitute a danger to the public health.

- (4) The PIO or his/her designated representative may inspect the premises, within two (2) working days of notification that the hazard has been eliminated, to remove the placards after verifying the correction, or upon notification of correction, may provide verbal authorization for the operator to remove the placard and resume use.

(b) Public health hazards.

Any of the following violations are public health hazards, which require the PIO or a designated representative to order immediate correction or to immediately institute action as provided in the law and/or in this Subpart:

- (1) The condition of the wiring or electrical system components of tanning equipment is such that an imminent fire or shock hazard exists;
- (2) An ultraviolet radiation device does not have an adequate label;
- (3) Failure to operate an ultraviolet radiation device in accordance with the label;
- (4) Failure to assure and maintain the accuracy of ultraviolet radiation device timers;
- (5) Failure to ensure that patrons possess adequate protective eyewear;
- (6) Failure to provide adequate protective eyewear at no additional charge to patrons not possessing their own adequate protective eyewear;
- (7) Inadequate sanitizing of tanning beds, tanning booths, pillows, headrests or reusable protective eyewear;
- (8) Failure to provide timer lockout or remote timer controls; or
- (9) Any other condition determined by the PIO to be an imminent risk to the public's health and safety.

(c) Other violations.

Failure to comply with other sections of this Subpart or other parts of this title may be subject to a penalty.

72-1.4 Permits and fees.

- (a) The PIO shall issue a permit to a person who meets the requirements of these rules and submits an application on a form prescribed by the State Commissioner of Health along with payment of a \$30 registration fee per biennial registration period and an inspection fee as specified in section 72-1.5(b) of this Subpart.
- (b) A permit issued pursuant to these rules shall be issued to a specific applicant for a specified location and shall be effective for no more than two (2) years from the date of issuance.
- (c) Permits may be issued for a period of less than two years, with appropriate proration of the registration fee at the rate of \$1.25 per month or each portion of a month thereof.
- (d) The PIO may stagger biennial registration periods among tanning facilities as needed to effectively administer permits within their jurisdiction. The PIO may choose to stagger periods by date of application, by size of regulated facility, by geographic location, or by some other classification or grouping determined by the PIO.
- (e) When registration periods are staggered, the first registration period shall be January 1 through June 30 and the second period shall be July 1 through December 31, or some other scheme may be used as determined by the PIO to effectively administer permits within their jurisdiction.

- (f) Operators of facilities doing business on the effective date of these rules shall apply for a permit within 60 days of the effective date of these rules. Operators of tanning facilities that will begin operation after the effective date of these rules shall obtain a permit before beginning operation.
- (g) Each permit shall include but not be limited to the following: one facility name, one facility location, name of owner/operator, registration period and name of PIO.
- (h) A permit is not transferable from one person to another or from one establishment location to another.
- (i) The permit shall be conspicuously posted within the tanning facility.

72-1.5 Inspection and inspection fees.

- (a) A person operating a tanning facility shall allow the Department and PIO representatives access to conduct inspections and access to all equipment and records as may be necessary to determine compliance with these rules, provided such inspections are conducted during normal business hours.
- (b) An inspection fee not to exceed \$50 per ultraviolet radiation device will be charged once per biennial licensing period.

72-1.6 Variances and waivers.

- (a) Variance.
In order to allow time to comply with certain provisions of this Subpart, an operator may submit a written request to the PIO for a variance from a specific provision(s) when the health and safety of the public will not be prejudiced by the variance, and where there are substantial practical difficulties or substantial fiscal hardships in immediate compliance with the provision(s). An operator must meet all terms of an approved variance including the effective date, the time period for which the variance is granted, the requirements being varied and any special conditions the PIO specifies.
- (b) Waivers.
In order to obtain a waiver allowing alternative arrangements that do not meet the provisions of this Subpart but do protect the health and safety of the public, an operator may submit a written request to the PIO for a waiver from a specific provision(s) of this Subpart. Such requests must demonstrate that the alternate arrangements provide adequate protection of the health and safety of the public. The PIO shall obtain and be guided by the recommendation of the Department prior to granting or denying a waiver. An operator must meet all terms of an approved waiver. A waiver will remain in effect indefinitely unless revoked by the PIO or the facility changes operators.

72-1.7 Injury and illness reporting and record keeping requirements.

- (a) A full report of specific injuries or illnesses occurring as a result of using an ultraviolet radiation device shall be made by the operator to the PIO within twenty-four (24) hours of notification of its occurrence. Reportable injuries and illnesses shall include:
 - (1) all eye injuries requiring medical attention;

- (2) all burns requiring medical attention;
 - (3) any other injury or illness incident resulting from the use of an ultraviolet radiation device for which medical care has been obtained.
- (b) Details of any reportable injury or illness shall be entered on a form prescribed by the Department. Forms shall be maintained at the tanning facility for a minimum of two (2) years and must be available for review by the PIO.

FACILITY OPERATIONS

72-1.8 Patron identification, acknowledgements and consent requirements.

- (a) Age verification.
- (1) The operator shall require each patron to provide a driver's license or other photo identification issued by a government entity or educational institution indicating that the patron is at least eighteen (18) years of age.
 - (2) No person under fourteen (14) years of age shall be permitted to use an ultraviolet radiation device. Persons fourteen (14) years of age to eighteen (18) years of age must provide a consent form as described in Section 72-1.8 (d) of the Subpart.
- (b) The operator shall provide to all patrons the Department's information sheet which advises of health risks and conditions under which the use of ultraviolet radiation is contraindicated, such as the use of photosensitizing drugs. Prior to initial exposure, each patron shall also be provided the opportunity to read a copy of the warning specified in Section 72-1.9(a)(2) of these rules.
- (c) Statement of acknowledgement.
- (1) During the initial visit to the tanning facility, the operator shall require that each patron eighteen (18) years of age and older sign a statement that the warning and informational pamphlet has been read and understood prior to using any ultraviolet radiation device, and that the patron agrees to wear adequate protective eyewear.
 - (2) No person shall undergo ultraviolet radiation exposure without such a signed statement on file.
 - (3) The operator or a designated employee shall also sign and date the statement.
- (d) Consent form.
- The operator shall not permit persons fourteen (14) years of age to eighteen (18) years of age to use ultraviolet radiation devices until such persons provide the tanning facility operator or an employee responsible for the operation of the ultraviolet radiation device of such facility (per § 3555(2) of PHL) with the written consent form, prescribed by the Commissioner, indicating the following conditions have been met:
- (1) Prior to the initial ultraviolet radiation exposure, the parent or legal guardian shall sign and date the consent form in the presence of the operator or an employee responsible for the operation of the ultraviolet radiation device of such facility (per § 3555(2) of PHL).
 - (2) By signing the consent form, the parent or legal guardian and persons fourteen (14) years of age to eighteen (18) years of age acknowledges that they have read the warnings required in Section 72-1.9(a) of these rules and have received the information specified in Section 72-1.8(b) of these rules.

- (3) By signing the consent form, the parent or legal guardian acknowledges that the person(s) fourteen (14) years of age to eighteen (18) years of age has agreed to wear protective eyewear.
- (4) The operator or a designated employee shall also sign and date the form.
- (5) The written consent form signed by a parent or legal guardian shall expire twelve (12) months from the date it was signed.

72-1.9 Physical facilities and equipment.

Each tanning facility shall be constructed, operated and maintained to meet the following minimum requirements:

(a) Required warning signs

- (1) Warning signs shall be readily legible, clearly visible, and not obstructed by any barrier, equipment, or other item present so that the patron can easily view the warning sign before energizing the ultraviolet radiation device. This sign is in addition to manufacturer's signs affixed to the device.
- (2) Each warning sign shall be at least 8.5 inches by 11 inches, and use upper and lower case letters which are at least 10 mm (0.39 inches) and 5 mm (0.20 inches) in height, respectively. Lettering shall be bolded as in the text below. Signs shall have the following wording:

WARNING ULTRAVIOLET RADIATION

FOLLOW INSTRUCTIONS.

AVOID OVEREXPOSURE.

The manufacturer's maximum exposure time for this device is (specify) minutes.

As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer.

WEAR PROTECTIVE EYEWEAR. FAILURE TO USE PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYE.

MEDICATIONS OR COSMETICS MAY INCREASE YOUR SENSITIVITY TO ULTRAVIOLET RADIATION. Consult a physician before using tanning equipment if you are using medications or have a history of skin problems or believe yourself to be especially sensitive to sunlight.

IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM THE USE OF THIS PRODUCT.

(b) Posting of required warnings.

A warning sign shall be posted in the immediate proximity (within three feet) of each ultraviolet radiation device. The operator shall enter the manufacturer's maximum exposure time on the sign for the device it is posted near.

(c) Equipment.

- (1) Only adequately labeled ultraviolet radiation devices shall be used in tanning facilities.

- (2) Each ultraviolet radiation device shall incorporate a timer system with multiple timer settings as specified on the manufacturer's label. The maximum timer interval(s) shall not exceed the manufacturer's maximum recommended exposure time.
 - (i) No timer interval shall have an error greater than $\pm 10\%$ of the maximum timer interval for the product.
 - (ii) The operator shall perform annual testing on all timers to ensure that this standard is met.
 - (iii) The timer must not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle, when emission from the ultraviolet lamp has been interrupted.
- (3) Each ultraviolet radiation device shall allow the patron using the ultraviolet radiation device to terminate ultraviolet radiation emission manually at any time without disconnecting the electrical plug, removing the ultraviolet lamp or leaving the immediate environs of the ultraviolet radiation device.
- (4) Timers shall be set by the operator or by a designated employee.
- (5) No later than two years after the effective date of this Subpart, existing ultraviolet radiation devices not equipped with a remote timer control system are required to have remote timer controls or a lock out device installed, such that patrons can not reset the timer.
- (6) New facilities (including existing facilities with change of ownership) shall install remote timer controls or a lock out device prior to the operation of ultraviolet radiation devices.
- (7) All ultraviolet radiation devices shall be free of electrical hazards.
- (8) All ultraviolet lamps must be shielded with an acrylic cover to protect patrons from injury caused by touching or breaking lamps.
- (9) Additional requirements for stand-up booths:
 - (i) There shall be physical barriers or other means such as handrails or floor markings to indicate the recommended exposure distance between ultraviolet lamps and the patron's skin.
 - (ii) Doors shall open outwardly. Handrails and non-slip floors shall be provided.
- (10) Defective or burned out ultraviolet lamps or filters shall be replaced with a type compatible for use in that device as specified on the product label on the ultraviolet radiation device, or as recommended by the manufacturer.
- (11) Equipment maintenance records must be maintained for a minimum of two (2) years. The operator must be able to produce such records upon inspection of the facility by the Department or the PIO's representative.

(d) Sanitation.

- (1) Ultraviolet radiation devices and protective eyewear shall be cleaned with an adequate disinfectant after each use.
- (2) The ultraviolet light produced by the ultraviolet radiation device shall not be considered an adequate sanitizing agent.
- (3) When the operator dilutes a concentrated disinfectant in lieu of using a commercially prepared, full strength disinfectant, a test kit or other device that accurately measures the concentration of the disinfectant in parts per million (ppm) shall be used to measure the strength of the solution. The diluted disinfectant shall be tested when initially prepared and at least weekly thereafter to ensure sufficient strength of the disinfectant.
- (4) The ultraviolet radiation device shall be cleaned and sanitized according to the following minimum provisions:

- (i) A clean paper or cloth towel shall be used each time the tanning device is cleaned and sanitized;
- (ii) The disinfectant shall be one specifically manufactured for sanitizing ultraviolet light-emitting equipment and shall be prepared and used according to manufacturer's specifications;
- (5) The disinfectant used to clean and sanitize protective eyewear shall be one specifically manufactured for sanitizing ultraviolet radiation protective eyewear and shall be prepared and used according to the manufacturer's specifications.
- (6) Written procedures maintained at the facility shall include proper mixing and handling instructions for each disinfectant used to ensure proper concentration and safe use of the disinfectant.
- (7) Pillows and headrests shall be covered in an easily cleanable material and shall be sanitized with an adequate disinfectant after each use.
- (8) If towels or other linens are provided for patron use, they shall be washed with a detergent in hot water, rinsed and thoroughly dried after each use.

72-1.10 Protective eyewear.

- (a) The operator shall assure that each patron using an ultraviolet radiation device possesses adequate protective eyewear.
- (b) Adequate protective eyewear shall be provided at no additional charge to patrons not possessing their own protective eyewear.
- (c) The operator shall have available for patron use an adequate number of sets of protective eyewear.
- (d) The protective eyewear provided by the operator other than single-use disposable eyewear shall be disinfected after each use according to provisions detailed in section 72-1.9(d)(5) of this Subpart.

72-1.11 Operator responsibilities.

- (a) The operator shall maintain a record of each patron's tanning visits, recording the date, duration of tanning exposure, and ultraviolet radiation device used. Each record shall be maintained for a minimum of two (2) years.
- (b) The operator must report certain injuries and illnesses to the PIO, and to keep a record of reportable injuries and illnesses on a form prescribed by the Department, as detailed in section 72-1.7 of this Subpart. Each record shall be maintained for a minimum of two (2) years.
- (c) The operator must keep and maintain an equipment maintenance log as detailed in section 72-1.9 (c)(11) of this Subpart.
- (d) The operator must maintain records showing the results of annual timer tests as detailed in section 72-1.9 (c)(2)(ii) of this Subpart. Each record shall be maintained for a minimum of two (2) years.