



NEW JERSEY STATE SANITARY CODE TANNING FACILITIES

NEW JERSEY DEPARTMENT
OF HEALTH AND SENIOR SERVICES
P.O. BOX 369
TRENTON, NJ 08625-0369

N.J.A.C. 8:28
Authority: N.J.S.A. 26: 2D-81

Effective Date: January 20, 2009
Expiration Date: January 20, 2014

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SUBCHAPTER 1. GENERAL PROVISIONS

8:28-1.1 Purpose and scope

(a) The purpose of this chapter is to:

1. Implement N.J.S.A. 26:2D-81 et seq. (P.L. 1989, c. 234, amended and supplemented by P.L. 2006, c. 48); and
2. Establish minimum safety and sanitation standards for the operation of tanning facilities in order to protect the health and safety of consumers that patronize tanning facilities.

(b) The provisions of this chapter shall apply to all tanning facilities and the local boards of health for the municipalities in which the tanning facilities are located.

1. This chapter establishes the registration and inspection requirements for tanning facilities, standards for the operation of the facilities, and enforcement provisions.

8:22-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means N.J.S.A. 26:2D-81 et seq. and this chapter.

"Commissioner" means the Commissioner of the New Jersey Department of Health and Senior Services, or his or her designee.

"Communicable disease" means diseases or conditions as defined in N.J.A.C. 8:57-1.

"Consumer" means any member of the public who is provided access to a tanning facility in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning facility as a condition or benefit of membership or access.

"Department" means the New Jersey Department of Health and Senior Services.

"EPA" means the U.S. Environmental Protection Agency."

"Equivalent" or "equivalency" means equal to the sunlamp product's original equipment manufacturer's specifications within irradiance tolerances allowed by the FDA.

1. Equivalent replacement parts are fully compatible with the sunlamp products for which they are used, and do not significantly alter the irradiance output of the sunlamp products at the consumer exposure distance, in accordance with the manufacturer's specifications.

"FDA" means the U.S. Food and Drug Administration.

"Handholds" means a physical aid that will help to maintain consumer safety and proper exposure distance, constructed pursuant to N.J.A.C. 8:28-3.1(b) 4 and 5.

"Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to

determine compliance with rules, orders, requirements and conditions of the Department, established pursuant to this chapter.

"Minor" means any individual less than 18 years of age.

"Operator" means a trained person, no less than 16 years of age, designated by the registrant to control operation of the tanning facility and to instruct and assist a consumer in the proper operation of the tanning equipment.

"Operator training" means a course of instruction conducted or presented under formal classroom conditions, a correspondence program, or through a computer-based program by a person possessing adequate knowledge and experience to offer the curriculum, associated training, and certification testing pertaining to and associated with the safe use of tanning equipment, as established in N.J.A.C. 8:28-3.11.

"Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this State, or any other state and any legal successor, representative or agent of the foregoing.

"PHSSP" means the Public Health Sanitation and Safety Program in the Division of Consumer, Environmental & Occupational Health Service at the New Jersey Department of Health and Senior Services.

"PHSSP mailing address" means the following mailing address for the Public Health Sanitation and Safety Program of the Department's Consumer, Environmental & Occupational Health Service, PO Box 369, Trenton, NJ 08625-0369.

"PHSSP webpage" means the internet webpage for the Public Health Sanitation and Safety Program of the Department's Consumer, Environmental & Occupational Health Service located at www.state.nj.us/health/phss.

"Protective eyewear" means any FDA-compliant device designed to be worn by users of a sunlamp product to reduce exposure of the eyes to radiation emitted by the product.

"Registrant" means any person who is registered with the Department and who is legally obligated to register with the Department pursuant to the provisions of the Act.

"Sunlamp product" means any electronic product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body, by ultraviolet radiation within a range of wavelengths, specified by the manufacturer, to induce skin tanning.

"Tanning equipment" means any equipment used during the process of skin tanning with a sunlamp

product, including, but not limited to, protective eyewear, timers, ballasts, starters, ultraviolet lamps, reflectors, cooling fans, acrylics, comfort pillows, and handholds.

"Tanning facility" or "facility" means any location, place, area, structure or business that, either as a sole service or in conjunction with other services, provides consumers with access to sunlamp products, ultraviolet lamps or other equipment intended to induce skin tanning through the irradiation of any part of the human body for cosmetic or non-medical purposes.

"Timer" means any device incorporated into a product that terminates radiation emission after a preset time interval.

"Ultraviolet lamp" means any lamp intended for use in sunlamp products that produces ultraviolet radiation within a range of wavelengths, specified by the manufacturer.

"Ultraviolet radiation" means electromagnetic radiation with wavelength in air between 200 nanometers and 400 nanometers.

SUBCHAPTER 2. REGISTRATION AND INSPECTION

8:28-2.1 Initial registration

(a) Any person that wants to operate a tanning facility within this State shall register the facility with the Department pursuant to the Act.

(b) If a person owns or operates more than one tanning facility, the person shall file a separate application for registration for each tanning facility.

(c) A person that owns or operates a tanning facility shall apply for registration of each facility with the Department as follows:

1. By **April 20, 2009**, for a facility in existence on **January 20, 2009**; and
2. Prior to operation of the facility, for a new facility established after **January 20, 2009**.

(d) Each applicant for registration shall complete an Application for Tanning Facilities Registration form, incorporated herein by reference, as set forth at chapter Appendix A.

(e) Each applicant shall submit with the registration application form an annual, non-refundable, registration fee, in accordance with the following fee schedule.

1. All sunlamp products provided in a tanning facility shall be subject to the registration fee schedule.
2. A tanning facility that provides up to and including 10 sunlamp products shall pay an annual fee of \$ 300.00.
3. A tanning facility that provides more than 10 sunlamp products shall pay an additional registration fee of \$ 10.00 for each sunlamp product that exceeds the first 10 sunlamp products.

4. The applicant shall submit the registration application form and a single certified check (for example, a cashier's check) or money order, payable to "Treasurer, State of New Jersey."

i. The Department shall not accept personal checks.

(f) Each applicant shall fully and accurately complete all relevant parts of the registration application form.

(g) The Department may request additional information based on the information the registrant provides in the registration application form.

(h) The Department shall deny any applicant that fails to submit a fully and accurately completed registration application form to the Department.

(i) If the Department denies an applicant pursuant to (h) Above, the Department shall inform the applicant in writing and provide the applicant an opportunity to complete the application.

(j) If an applicant knowingly supplies incomplete or inaccurate information to the Department in connection with his or her application, the Department shall deny the applicant, bar the applicant from reapplying for registration for a period of up to one year from the date of receipt of a denial notice, and/or subject the applicant to other penalties established at N.J.A.C. 8:28-4.2.

(k) Applicants that are denied registration by the Department may appeal the denial in accordance with N.J.A.C. 8:28-4.3.

8:28-2.2 Issuance and term of Certificate of Registration

(a) The Department shall issue an initial Certificate of Registration to a tanning facility in existence on **January 20, 2009** after:

1. Receipt and review of a fully and accurately completed initial registration application form pursuant to N.J.A.C. 8:28-2.1(d); and
2. Receipt of the required registration fee established at N.J.A.C. 8:28-2.1(e).

(b) The Department shall issue an initial Certificate of Registration to a new tanning facility established **January 20, 2009**, after:

1. Receipt and review of a fully and accurately completed initial registration application form pursuant to N.J.A.C. 8:28-2.1(d);
2. Receipt and review of a satisfactory inspection report as determined and issued by the local board of health, certifying the facility's substantial compliance with this chapter; and
3. Receipt of the required registration fee established at N.J.A.C. 8:28-2.1(e).

(c) A Certificate of Registration shall be valid for a period of one calendar year from the date of registration.

(d) A Certificate of Registration issued by the Department shall not be transferable from one person to another or from one tanning facility to another.

(e) The registrant shall display the Certificate of Registration issued by the Department in a conspicuous location that is visible to the consumer, near the reception area of the facility.

8:28-2.3 Renewal of registration

(a) The Department shall renew a registered tanning facility's Certificate of Registration after:

1. Receipt and review of a fully and accurately completed registration application form with the annual renewal registration box checked off;

i. The registrant shall submit a registration application form with the annual renewal registration box checked off to the Department no less than 30 calendar days prior to the expiration of the existing Certificate of Registration;

2. Receipt and review of a satisfactory inspection report as determined and issued by the local board of health within the previous calendar year, certifying the facility's substantial compliance with this chapter; and

3. Receipt of the required registration fee established at N.J.A.C. 8:28-2.1(e).

(b) If a registrant has filed a renewal registration application form in accordance with (a) above and no less than 30 days prior to the expiration of his or her existing Certificate of Registration, such existing Certificate of Registration shall not expire until the Department makes a final determination of the renewal application's status.

(c) If a registrant allows his or her registration to expire prior to initiating renewal, then the registrant shall subsequently apply for a Certificate of Registration as if for the first time.

(d) A registrant's failure to renew registration of an operating tanning facility shall subject the registrant to the penalties established in N.J.A.C. 8:28-4.2.

(e) If a registrant knowingly supplies incomplete or inaccurate information to the Department in connection with his or her renewal application form, the Department shall deny the application, bar the registrant from reapplying for registration for a period of up to one year from the date of receipt of the denial notice, and/or subject the applicant to other penalties established at N.J.A.C. 8:28-4.2.

(f) Applicants that are denied registration by the Department may appeal the denial in accordance with N.J.A.C. 8:28-4.3.

8:28-2.4 Change of information notification

(a) A registrant shall notify the Department in writing, by checking off the change of registration information box on the registration application form, within 30 calendar days of

making any change that would render the information previously reported in the registration application form, or the Certificate of Registration, no longer accurate.

1. This change of information notification requirement shall not apply to changes involving replacement of designated original ultraviolet lamps and other tanning equipment with equipment that the manufacturer has certified as equivalent replacement.

8:28-2.5 Inspections

(a) An operator shall permit, after provision of proper identification, agents of the Department or local board of health to enter the tanning facility during business hours for the purposes of making inspections, investigating complaints, and determining whether the tanning facility is in compliance with the standards established pursuant to the Act.

(b) Each registrant shall make available, upon request, to the Department or local board of health any and all records and documents retained pursuant to N.J.A.C. 8:28-3.12.

(c) The local board of health with direct jurisdiction over the municipality in which a tanning facility is located shall:

1. Inspect the facility at least annually to ensure continued substantial compliance with the safety standards;

2. Conduct inspections using the Tanning Facility Inspection Checklist form, incorporated herein by reference, and set forth at chapter Appendix B; and

3. Certify that the facility is in substantial compliance with the safety standards at N.J.S.A. 26:2D-83 and this chapter; and

i. The local board of health shall certify substantial compliance through the issuance of a satisfactory inspection report.

(d) The Department or local board of health shall embargo any device pursuant to N.J.S.A. 24:4-12, whenever there is probable cause to believe that a device is dangerous, adulterated or misbranded.

SUBCHAPTER 3. OPERATION OF TANNING FACILITIES

8:28-3.1 Equipment

(a) Tanning facilities shall use only sunlamp products and tanning equipment that are manufactured and certified in compliance with 21 CFR 1040.20, Sunlamp products and ultraviolet lamps intended for use in sunlamp products, incorporated herein by reference, as amended and supplemented.

1. The Department or local board of health shall use the standard in effect at the time of

manufacture, as shown on the device identification label required by 21 CFR 1010.3 to satisfy the facility's compliance with 21 CFR 1040.20.

(b) The registrant shall ensure that the facility's sunlamp products meet the following requirements:

1. Each sunlamp product shall have physical barriers to protect consumers from injury induced by touching or breaking the lamps;
2. Each sunlamp product shall be constructed to withstand the stress of use and the impact of a falling person;
3. If the sunlamp product is not in an individual cubicle, then a suitable screen, curtain, or other shield, shall be maintained and used to prevent unnecessary exposure to ultraviolet radiation of persons not using the sunlamp product;
4. Each stand-up tanning booth shall have a secure handhold and non-slip floors;
5. Each stand-up tanning booth shall have physical barriers, or other means, such as handholds or floor markings, to indicate the proper exposure distance between ultraviolet lamps and the consumer's skin;
6. Each stand-up tanning booth shall have rigid construction with doors that open outwardly;
7. Doors to tanning rooms and stand-up booths can be readily opened from both interior and exterior sides in an emergency;
8. Each sunlamp product has a timer that complies with the requirements of 21 CFR 1040.20(c)(2);
 - i. The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time.
9. A properly trained operator shall control each sunlamp product timer using a remote timer control system;
10. Each tanning device shall be equipped with an emergency shut-off mechanism to allow manual termination of the UV exposure by the consumer, as required by 21 CFR 1040.20(c)(3);
11. Each sunlamp product timer shall be functional and accurate to within +/- 10 percent of the maximum timer interval for the product; and
12. Each timer shall be tested annually for accuracy.
 - i. The New Jersey Office of Weights and Measures in the Department of Law and Public Safety requires that all timing devices be registered and tested annually in accordance with N.J.A.C. 13:47F-1.4.

(c) Both registrants and operators shall ensure that ultraviolet lamps and other tanning equipment are replaced only with a type intended for use in the sunlamp product, as specified by the manufacturer.

8:28-3.2 Construction of tanning facilities

(a) Each registrant shall ensure that the tanning facility is equipped with convenient restroom facilities and dressing rooms.

1. At a minimum, restroom facilities shall include a toilet, a hand-washing sink, liquid hand soap, sanitary hand drying towels or devices, and a safe and sanitary supply of water.
2. Restrooms and dressing rooms shall be properly constructed and maintained in accordance with all applicable State and local codes.

(b) The registrant shall ensure that the physical facility is constructed and maintained in accordance with all applicable State and local codes, such that:

1. All areas of the tanning facility are well ventilated; and
2. Tanning bed and booth air temperatures are maintained below 100 degrees Fahrenheit (38 degrees Centigrade) during sunlamp product operation.

8:28-3.3 Sanitation and maintenance of tanning facilities

(a) The operator shall ensure that all areas of the tanning facility, including all tanning equipment, are maintained in a clean and sanitary manner and in accordance with the manufacturers' instructions.

(b) The operator shall ensure that facility personnel thoroughly clean and sanitize all tanning equipment surfaces in contact with consumers with an appropriate EPA-registered hospital grade disinfectant agent after each use, in accordance with the product label.

1. Single use, disposable eyewear and consumer-owned eyewear are exempt from the requirement in (b) above, provided that no other consumers use the eyewear.
2. The operator shall ensure that all tanning equipment is cleaned and disinfected according to the following minimum requirements:
 - i. A clean paper or cloth towel, or disposable wipe, shall be used each time the tanning equipment is cleaned and disinfected;
 - ii. Cleaning and disinfecting agents shall be specifically manufactured for cleaning and sanitizing ultraviolet light-emitting equipment and protective eyewear that will not damage the eyewear or the acrylic lamp covers of the sunlamp product; and
 - iii. If the disinfectant agent is not ready-to-use, the registrant shall provide written procedures at the tanning facility that include mixing, testing and handling instructions, to ensure

proper concentration and efficacy of the disinfecting solution, along with an appropriate test kit for verifying the solution concentration.

(c) The operator shall provide clean towels to all consumers using tanning facilities.

1. The operator shall handle and store clean and soiled towels separately.
 - i. The operator shall follow an established cleaning procedure to reduce the number of microorganisms in towels;
 - ii. The operator shall sanitize equipment surfaces with which towels come into contact; and
 - iii. The operator shall provide a hamper or other covered receptacle for all soiled towels.

2. Consumers are permitted to use their own towels, if they maintain possession of the towels at all times.

(d) The operator shall ensure that no pets or other animals are permitted in the tanning facility at any time, other than seeing-eye dogs or hearing-assistance dogs.

8:28-3.4 Warning sign

(a) The registrant shall conspicuously display, in each area with sunlamp products, the warning sign described in (b) below.

1. The warning sign shall be displayed in such a manner that the sign is clearly visible, not obstructed by any barrier, equipment or other object, and easily viewed by the consumer before operating the sunlamp product.

(b) The warning sign shall use upper and lower case letters which are at least 10 millimeters (0.39 inches) and five millimeters (0.20 inches) in height, respectively, as follows:

DANGER - ULTRAVIOLET RADIATION

- Follow instructions.
- As with natural sunlight, overexposure may cause eye and skin injury and allergic reactions. Repeated overexposure may cause premature aging of the skin and/or skin cancer.
- Wear Food and Drug Administration compliant protective eyewear. Failure to use protective eyewear may result in severe burns and/or long-term injury to the eyes.
- Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using sunlamp indoor tanning beds or booths if you are pregnant, using medications or have a history of skin problems or believe yourself especially sensitive to sunlight.
- If you do not tan in the sun, you are unlikely to tan from the use of this product.
- If you believe that you have been injured by this tanning equipment, you should contact: New Jersey Department of Health and Senior Services, Consumer and Environmental

Health Services, PO Box 369, Trenton, NJ 08625-0369, telephone number: 609-826-4941.

8:28-3.5 Warning statement and tanning authorization

(a) At the initial visit to a tanning facility and at least annually thereafter, the tanning facility operator shall provide the consumer, or the consumer's parent or legal guardian, if the consumer is a minor at least 14 but less than 18 years of age, a written Warning Statement and Tanning Authorization form incorporated herein by reference, as set forth at chapter Appendix C, to review and sign.

1. The Department shall provide the Warning Statement and Tanning Authorization form to the registrants.

(b) The operator shall provide a copy of the signed and dated Warning Statement and Tanning Authorization form, established in (a) above, to the consumer, or the consumer's parent or legal guardian if the consumer is a minor at least 14 but less than 18 years of age, and retain a copy in the consumer's record, as specified in N.J.A.C. 8:28-3.12.

1. If the consumer is a minor who is at least 14 but less than 18 years of age, the parent or legal guardian shall sign the Warning Statement and Tanning Authorization form.

2. If the consumer is illiterate or sight-impaired, the operator shall read the statement to the consumer and document the consumer's understanding of and consent to the information in the Warning Statement and Tanning Authorization form.

8:28-3.6 Protective eyewear

(a) The operator shall require that each consumer wear protective eyewear when using sunlamp products.

(b) The operator shall make available protective eyewear and instructions for use to each consumer, unless the consumer furnishes his or her own protective eyewear that meets the requirements in this section.

(c) The operator shall be responsible for ensuring that each consumer has the protective eyewear required by this section before each tanning session and shall make a reasonable effort to ensure that each consumer uses protective eyewear when tanning.

(d) The protective eyewear required by this section shall meet the standards established at 21 CFR 1040.20(c)(4).

(e) Tanning facility personnel shall be responsible for disinfecting any reusable protective eyewear furnished by the registrant to a consumer in accordance with N.J.A.C. 8:28-3.3(b).

8:28-3.7 Protection of consumers--general

(a) The registrant shall ensure that at least one trained operator is present and available in the tanning facility at all times when the tanning facility is in operation.

(b) The registrant shall develop and provide a procedure manual to assist tanning facility operators in the provision of a safe and sanitary facility and in the protection of consumers from excessive or unnecessary exposure to ultraviolet radiation.

1. The procedure manual shall be specific to the tanning facility and shall include this chapter and guidance regarding all other activities necessary for the proper and safe operation of the tanning facility.
2. The registrant shall ensure that a copy of the procedure manual is kept onsite and readily available at all times during operation of the tanning facility.

(c) The registrant shall maintain a list of the common photosensitizing agents, such as Medications That Increase Sensitivity to Light: a 1990 Listing, prepared by Jerome I. Levine, MS, RPh, December 1990 for the FDA's Center for Devices and Radiological Health, HHS Publication FDA 91-8280 (24 pages), available by written request to the PHSSP mailing address or online through the PHSSP website.

1. The operator shall review the photosensitizing agent list with consumers, parents or legal guardians upon their initial visit and annually thereafter.
 - i. The operator shall instruct consumers, parents or legal guardians that the list may not be all-inclusive and that they should consult a physician or pharmacist with any medication photosensitivity questions.

2. The operator shall ensure that the list of photosensitizing agents is readily accessible in the facility for review by consumers.

(d) The registrant shall provide means to enable a consumer to summon and receive assistance from the exposure position in an emergency, such as:

1. Periodic rounds by facility staff through the facility; or
2. Provision of alarm devices accessible to consumers.

(e) At each tanning facility, the registrant shall keep a readily accessible list of emergency contact numbers appropriate for the community, in which the facility is located, including, but not limited to, emergency 9-1-1 service.

8:28-3.8 Protection of consumers--minors

(a) A tanning facility operator shall not permit a minor who is less than 14 years of age to use a sunlamp product in the tanning facility.

(b) A tanning facility operator shall not permit a minor who is at least 14 but less than 18 years of age to use a sunlamp product in the tanning facility unless the minor's parent or legal guardian provides written authorization for the minor's

use of the tanning facility, in accordance with the Department's Warning Statement and Tanning Authorization form, which is available at chapter Appendix C.

1. An emancipated minor shall be exempt from the authorization requirement upon legal proof documenting the minor's emancipation status.

(c) At the initial visit to a tanning facility and at least annually thereafter, the operator shall provide the parent or legal guardian of a minor who is at least 14 but less than 18 years of age:

1. A copy of the Warning Statement and Authorization form; and
2. A copy of the tanning facility safety standards using either:
 - i. The Department's document entitled Safety Standards for Tanning Facilities, available by written request to the PHSSP mailing address or online through the PHSSP website;
 - ii. A photocopy of this chapter; or
 - iii. Any facility created document, which includes the safety standards set forth in this chapter.

(d) The parent or legal guardian shall provide written authorization using the Warning Statement and Tanning Authorization form in person at the facility in the presence of a trained operator upon the initial visit and at least annually thereafter.

(e) The operator shall verify the age and identity of all consumers under age 27 and of the parent or legal guardian for minors at least 14 but less than 18 years of age.

1. Verification described in (e) above shall be completed by submission of a government-issued photographic identification or at least two of the following documents:
 - i. One of the following documents confirming age, such as, but not limited to, driver's license (non photograph), birth certificate, or voter registration card; and
 - ii. One of the following documents confirming identity, such as, but not limited to, credit card, school ID, company ID, library card, organization ID (such as athletic club), social security card, or proof of auto insurance.

2. The operator shall photocopy and retain verification documentation for consumers, parents, and legal guardians on file in the consumer's record in accordance with N.J.A.C. 8:28-3.12.

3. The operator shall prohibit a consumer from using a sunlamp product if the consumer does not provide identification.

(f) The registrant shall post a sign in conspicuous view at or near the reception area with the following text: "PERSONS UNDER AGE 14 SHALL NOT BE PERMITTED TO USE THIS TANNING FACILITY. PERSONS BETWEEN 14 AND 18 YEARS OF AGE SHALL NOT BE PERMITTED TO USE THIS TANNING FACILITY WITHOUT WRITTEN AUTHORIZATION OF A PARENT OR LEGAL GUARDIAN."

1. The sign shall meet the size specifications described in N.J.A.C. 8:28-3.4(b).

(g) The operator shall prohibit minors from being present in the sunlamp product room during exposure of parents, legal guardians, or other accompanying consumers to ultraviolet radiation.

8:28-3.9 Protection of consumers--exposure limits

(a) Prior to an initial tanning session with any sunlamp product, the operator, in consultation with each consumer, shall 41 N.J.R. 585(a) develop an individualized skin phototype evaluation to be used in determining the consumer's exposure schedule for the sunlamp product that the consumer will use, in accordance with the manufacturer's product label and user instruction recommendations.

1. The facility's skin phototype classification system shall be able to determine the consumer's skin type at least as accurately as the standard established in the Fitzpatrick Classification Scale, developed by Thomas Fitzpatrick, MD, PhD, incorporated herein by reference, as amended and supplemented, and available by written request to the PHSSP mailing address or online through the PHSSP website.

(b) Prior to each tanning session, the operator shall instruct each consumer using a sunlamp product regarding the maximum exposure time for his or her skin phototype and the proper exposure distance, as recommended by the manufacturer of the sunlamp product.

(c) The operator shall ensure that each consumer does not exceed the maximum exposure time for his or her skin phototype, as recommended by the sunlamp product manufacturer and specified in the sunlamp product label and the user instructions.

1. For consumers with tanning packages, the registrant shall ensure that package maximums do not exceed the maximum amount of exposure recommended by the product manufacturer.

(d) The operator shall instruct each consumer as to the location and proper operation of the sunlamp product's emergency shut-off switch.

8:28-3.10 Protection of personnel

(a) The registrant shall not require tanning facility personnel to use sunlamp products as a condition of employment, or permit the use of sunlamp products as a form of compensation for work.

(b) Tanning facility personnel shall comply with all the requirements of this chapter when using the facility's sunlamp products.

(c) The registrant shall ensure that tanning facility personnel are provided with necessary personal protective equipment when performing tanning equipment maintenance and when using cleaning and disinfecting agents, in accordance with product user instructions and labels.

(d) The registrant shall ensure that tanning facility personnel are not unnecessarily exposed to ultraviolet radiation from sunlamp products as a result of their employment.

1. The registrant shall ensure that any necessary exposure to ultraviolet radiation resulting from routine maintenance requirements, such as bulb maintenance, is kept to the minimum duration required to perform the task.

8:28-3.11 Training of personnel

(a) All tanning facilities that existed prior **January 20, 2009** shall complete the operator training requirements established in this section, within 30 calendar days of initial registration.

(b) Operators of new tanning facilities established after **January 20, 2009** shall complete the training requirements established in this section prior to operation of the tanning facility.

(c) All newly hired operators shall complete the training requirements prior to assuming independent operator responsibilities.

(d) The registrant shall ensure that all tanning facility operators are adequately trained using the training curriculum developed for that facility.

(e) The contents of the training curriculum shall include, but not be limited to, the following:

1. This chapter and 21 CFR 1040.20;
2. The procedure manual for proper operation of the tanning facility, sunlamp products, and tanning equipment;
3. The user instructions provided by the sunlamp manufacturer for operation and maintenance of the sunlamp products, including replacement part compatibility requirements;
4. A summary of the biological effects of ultraviolet radiation, maximum allowable time of exposure, photosensitivity, and determination of human skin phototypes as it relates to compliant use of the exposure schedule;
5. Guidelines for operators regarding recognition of injury or overexposure to ultraviolet radiation;
6. Procedures for the use of the Warning Statement Tanning Authorization form and associated identification criteria;

7. Potential photosensitizing agents and medical conditions that contraindicate exposure to ultraviolet radiation or necessitate prior consultation with a physician;

8. Requirements for the proper use of protective eyewear; and

9. Procedures implemented in the event of an emergency situation, such as a fire.

(f) The training curriculum may include vendor-provided material and audio/visual or computer presentations.

(g) The registrant shall establish a competency evaluation that each operator must satisfactorily complete following training.

(h) The registrant shall document operator training, including:

1. The dates and times of training;
2. The signatures of the trainers and operators;
3. The subjects covered in each training session; and
4. The results of competency testing.

8:28-3.12 Records

(a) The registrant shall be responsible for maintaining all records described in this section.

(b) The registrant shall be responsible for:

1. Retaining required records for a minimum of three years;
2. Retaining required records in either an electronic (with backup) or a printed format; and
3. Making required records available for onsite review by the Department or local board of health.

(c) Required records shall include:

1. Copies of all of the registrant's Application for Tanning Facilities registration application forms;
2. Copies of the registrant's Certificates of Registration;
3. A consumer file that includes the following:
 - i. A copy of each consumer's skin phototype evaluation;
 - ii. A record of all sunlamp products used by the consumer with the corresponding exposure schedules;
 - iii. A record of each consumer's tanning sessions with the dates and times of each session and the duration of each tanning exposure;

iv. A copy of a current, annually signed Warning Statement and Tanning Authorization form established at N.J.A.C. 8:28-3.5, from each consumer, or a parent or legal guardian if the consumer is a minor at least 14 but less than 18 years of age; and

v. Age and identity documentation for consumers, and parents or legal guardians, in accordance with N.J.A.C. 8:28-3.8(e);

4. A list of trained operators for the facility;

5. Documentation of staff training as required at N.J.A.C. 8:28-3.11;

6. The results of annual tests for sunlamp product timers.

i. The presence of an annual Weights and Measures seal or Certificate of Inspection current as of the date of inspection on the timing device shall be sufficient documentation of annual testing; and

7. The following information for each sunlamp product:

i. User instructions provided by the product manufacturer and any other service-related materials or instruction;

ii. The exposure schedule specified by the manufacturer;

iii. Records of repairs and modifications performed on sunlamp products, including the names of persons performing such services and the dates of service;

iv. Ultraviolet lamp replacement logs; and

v. Documentation of equivalency certification provided by the replacement part manufacturer, if appropriate. 8:28-3.13 advertising and promotion.

(a) No person or tanning facility shall advertise the use of any sunlamp product using wording, such as "safe," "safer," "safe tanning," "no harmful rays," "no adverse effect," or similar wording or concepts.

(b) No person or tanning facility shall use, cause to be used, or promote the use of any advertising, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which is false or misleading.

(c) No person, in any advertisement, shall refer to the fact that a tanning facility, is registered with the Department or is certified as in compliance with this chapter by the local board of health.

(d) No person or tanning facility shall state or imply that the Department or the local board of health

approve of any activity performed in a facility registered by the Department.

SUBCHAPTER 4. ENFORCEMENT

8:28-4.1 Denial, suspension or revocation of registration

(a) As an alternative to or in addition to sanctions provided in N.J.A.C. 8:28-4.2, the Department may deny, suspend or revoke a Certificate of Registration at any time, when such action is necessary to abate a present or threatened menace to the public health.

(b) The Department shall deny a Certificate of Registration to an applicant or registrant in accordance with the provisions of N.J.A.C. 8:28-2.1(h) through (k) and 2.3(e) and (f).

(c) The following actions or inactions by a registrant or operator(s) shall be cause for suspension of registration and facility operation for a period of time determined to be appropriate by the Department to ensure correction of cited deficiencies:

1. Failure to maintain the tanning facility in substantial compliance with the requirements set forth in this chapter;
2. Permitting a minor who is at least 14 but less than 18 years of age to use a sunlamp product in a tanning facility, without authorization from a parent or legal guardian;
3. Failure to ensure that all consumers receive the required Warning Statement and Tanning Authorization form;
4. Failure to ensure that all consumers follow their individualized exposure schedules for the sunlamp product used;
5. Failure to ensure that consumers have FDA-compliant eyewear prior to using a sunlamp product;
6. Failure to review the photosensitizing agent list with consumers, or parents or legal guardians for consumers at least 14 but less than 18 years of age; or
7. Failure to allow duly authorized agents of the Department or local board of health to conduct inspections pursuant to N.J.A.C. 8:28-2.5(a) and (b).

(d) The following actions or inactions by the registrant or operator(s) shall be cause for immediate revocation of registration and facility closure:

1. Use of sunlamp products or tanning equipment that is not manufactured and certified to comply with 21 CFR 41 N.J.R. 585(a)1040.20, Sunlamp products and ultraviolet lamps intended for use in sunlamp products;
2. Repeated failure to maintain the tanning facility in substantial compliance with the requirements set forth in this chapter;
3. Permitting a minor who is less than 14 years of age to use a sunlamp product in a tanning facility;

4. Permitting unsanitary or unsafe conditions that may adversely affect the health of the public;

5. Providing the Department reasonable cause to suspect that a communicable disease is being transmitted within the facility;

6. Demonstrated gross incompetence by the registrant or operator(s) in the operation of a tanning facility;

7. Acquisition or attempted acquisition of a Certificate of Registration by means of fraud, misrepresentation or concealment; or

8. Conviction in this or any other state of a crime directly related to the use of a sunlamp product.

8:28-4.2 Penalties

A person who violates any of the provisions of the Act shall be subject to a penalty of \$ 100.00 for the first offense and \$ 200.00 for each subsequent offense, in accordance with N.J.S.A. 26:2D-87.

8:28-4.3 Appeals

(a) Whenever the Department shall find cause to deny, suspend or revoke a certificate of registration, it shall notify the registrant of the reasons for such action, in writing, and provide opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) The registrant shall file a request for a hearing within 10 business days from the date of receipt of the notice.

1. All requests for hearing shall be in writing and shall be directed to the Commissioner.

(c) The Commissioner or his or her designee shall issue the final decision in accordance with N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1.

SUBCHAPTER 5. FORMS

8:28-5.1 Forms

The Department's forms provided at chapter Appendices A through C are available by written request to the PHSSP mailing address or online through the PHSSP webpage or the Department's "Forms" webpage at <http://web.doh.state.nj.us/forms/>.