

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Tanning Facilities Code 795
- 2) Code Citation: 77 Ill. Adm. Code 795
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
795.20	Amend
795.30	Amend
795.60	Amend
795.100	Amend
795.150	Amend
795.180	Amend
- 4) Statutory Authority: Authorized by the Tanning Facility Permit Act [210 ILCS 145]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking is necessary to clean up language that has been determined to be unclear by tanning facility owners and operators and facility inspectors or is outdated.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the Notice in the *Illinois Register*.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Ill. Reg. Citation</u>
795.30	Amend	38 Ill. Reg. 1801; January 17, 2014
795.40	Amend	38 Ill. Reg. 1801; January 17, 2014
795.60	Amend	38 Ill. Reg. 1801; January 17, 2014
795.130	Amend	38 Ill. Reg. 1801; January 17, 2014

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795.190	Amend	38 Ill. Reg. 1801; January 17, 2014
795.220	Amend	38 Ill. Reg. 1801; January 17, 2014

- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand any State mandates on units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Interested persons may present their comments concerning this rulemaking within 45 days after the publication of this issue of the *Illinois Register* to:

Susan Meister
Division of Legal Services
Illinois Department of Public Health
535 W. Jefferson St., 5th floor
Springfield, Illinois 62761

217/782-2043
e-mail: dph.rules@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Tanning facilities and other small businesses that include tanning equipment, such as health clubs, hair salons and video stores.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

The full text of the Proposed Amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

PART 795
TANNING FACILITIES CODE

Section	
795.10	Purpose and Scope
795.20	Incorporated <u>and Referenced</u> Materials
795.30	Definitions
795.40	Exemptions
795.50	Liability
795.60	Application for Permit to Operate a Tanning Facility
795.70	Issuance of Permit to Operate a Tanning Facility
795.80	Expiration of Permit to Operate a Tanning Facility
795.90	Renewal of Permit to Operate a Tanning Facility
795.100	Report of Changes
795.110	Non-Transfer of Permit
795.120	Approval Not Implied
795.130	Denial, Suspension, Revocation or Non-Renewal of a Permit to Operate a Tanning Facility
795.140	Hearings
795.150	Construction and Operation of Tanning Facilities
795.160	Additional Requirements for Stand-Up Booths
795.170	Protective Eyewear
795.180	Operators
795.190	Records
795.200	Injury Reports
795.210	Sanitation
795.220	Enforcement and Penalties
795.APPENDIX A	Examples of Human Skin Types
795.APPENDIX B	Determination of Skin Types

AUTHORITY: Implementing and authorized by the Tanning Facility Permit Act [210 ILCS 145].

SOURCE: Adopted at 16 Ill. Reg. 19895, effective December 7, 1992; emergency amendment at 19 Ill. Reg. 11648, effective August 1, 1995, for a maximum of 150 days; amended at 20 Ill. Reg. 2422, effective February 1, 1996; amended at 38 Ill. Reg. _____, effective

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_____.

Section 795.20 Incorporated and Referenced Materials

The following materials are incorporated or referenced ~~by reference~~ in this Part:

- a) Federal Laws and Rules
 - 1) ~~The~~ Federal Food, Drug and Cosmetic Act (21 USC ~~U.S.C.~~ 301 et seq.)
 - 2) 21 CFR 801 Labeling (1992)
 - 3) 21 CFR Subchapter J Radiological Health (1992)
 - 4) 21 CFR 1003 Notification of Defects and Failure to Comply (1992)
 - 5) 21 CFR 1010 Performance Standards for Electronic Products: General (1992)
 - 6) 21 CFR 1040.20 Sunlamp products and ultraviolet lamps intended for use in sunlamp products (1992)

- b) State Laws and Rules
 - 1) Section 26-4 of the Criminal Code of ~~2012/1961~~ [720 ILCS 5/26-4], ~~as amended by P.A. 87-970, effective July 1, 1992~~
 - 2) ~~The~~ Illinois Food, Drug and Cosmetic Act [410 ILCS 620] (~~Ill. Rev. Stat. 1991, ch. 56½, pars. 501 et seq.~~)
 - 3) ~~The~~ Department of Public Health Act [20 ILCS 2305] (~~Ill. Rev. Stat. 1991, ch. 111½, pars. 22 et seq.~~)
 - 4) ~~The~~ Local Health Protection Grant Rules ~~Departments Program Standard Code~~ (77 Ill. Adm. Code 615)
 - 5) ~~The~~ Illinois Plumbing Code (77 Ill. Adm. Code 890)
 - 6) ~~The~~ Public Area Sanitary Practice Code (77 Ill. Adm. Code 895)

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- c) Codes and Standards
- 1) ~~The National Electrical Code, 1990, National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy MA 02269-9101, telephone 1-800-344-3555.~~
 - 2) Standard for Portable Sun/Heat Lamps, UL 482, ~~Ninth Sixth~~ Edition, ~~September 2, 2005~~ July 6, 1987, http://www.ul.com/global/eng/pages/solutions/standards/accessstandards/catalogofstandards/standard/?id=482_9 Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook IL 60062.
- d) All incorporations by reference of federal regulations and the standards of nationally recognized organizations refer to the regulations and standards on the date specified and do not include any amendments or editions ~~additions or deletions~~ subsequent to the date specified.
- e) Nothing in this Part shall relieve any person of responsibility for compliance with other pertinent Illinois and federal laws and regulations.
- f) Copies of these materials shall be on file and available for inspection by the public at the Department's central office (525 West Jefferson Street, Springfield IL 62761)

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 795.30 Definitions

The definitions and interpretations contained in Section 201 of the Federal Food, Drug and Cosmetic Act (21 USC ~~U.S.C.~~ 301 et seq.), 21 CFR 1040.20, and the Illinois Food, Drug and Cosmetic Act [410 ILCS 620] are applicable to such items when used in this Part. The following definitions shall also apply:

"Act" means the Tanning Facility Permit Act [210 ILCS 145].

"Agent" means a local health department recognized by the Department.

"Applicant" means any person who applies to the Department for a permit to maintain and operate a tanning facility.

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"Change of ownership" means any of the following:

In the case of a tanning facility owned by a corporation, the transfer of the facility by the corporation to another corporation, to a partnership or association, or to a natural person. Transfer of stock in a corporation does not constitute change of ownership.

In the case of a tanning facility owned by a partnership or association, the transfer of the facility by the partnership or association to another partnership or association, to a corporation, or to a natural person. Transfer of interest in the partnership or association or substitution of any or all partners or members of the association does not constitute change of ownership.

In the case of a tanning facility owned by a natural person, the transfer of the facility to any corporation, partnership, association or other natural person whether or not the owner retains any interest in the facility.

"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. (Section 5 of the Act)

"Department" means the Illinois Department of Public Health or other health authority designated as its agent. (Section 5 of the Act)

"Director" means the Director of Public Health or his designee. (Section 5 of the Act)

"Disinfect or disinfection" means a process ~~that which~~ provides an effective concentration of a United States Environmental Protection Agency approved chemical for enough time as specified by the manufacturer to reduce bacterial count, including pathogens, to a safe level (when those disease organisms which may be present are destroyed so as to prevent transfer) on tanning equipment surfaces and in toilet and hand-washing ~~handwashing~~ facilities.

"Existing facility" means a tanning facility that submitted an application for a permit to operate a tanning facility on or before March 8, 1993 and remains in operation with an unexpired tanning facility permit at the same location under the

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same ownership as listed in the original tanning facility permit application.

"Expired facility" means a previously permitted tanning facility that has not renewed its tanning facility permit on or before the expiration date of the said permit except as provided in the definition of new facility.

"Extensively remodeled" means conversion of an existing structure for use as a tanning facility; structural additions or alterations to existing facilities; or changes, modifications or extensions of plumbing or electrical systems, excluding routine maintenance of the such systems.

"Facility" means tanning facility.

"Fee" means the payment or exchange of goods, or anything of value, for the use of the tanning facility or facilities. (Section 5 of the Act)

"Individual" means any human being.

"Injury" means any circumstance or incident, resulting from the use of a tanning device, that which prompts a consumer to seek professional medical attention.

"Inspection" means an official examination or observation that which includes, but is not limited to, tests, surveys, and monitoring to determine compliance with rules, regulations, orders, requirements and conditions of the Department.

"Licensee" means the same as "permittee ~~permitee~~".

"New facility" includes any tanning facility that submitted an initial application for a tanning facility permit on or after March 9, 1993. Previously permitted facilities that have changed location or ownership are considered to be new facilities upon their relocation or change of ownership. Expired facilities that fail to renew their tanning facility permit within 90 days after the permit expiration shall be considered new facilities.

"Operator" means the trained person designated by the licensee for the facility to control the operation of a tanning facility in compliance with the Act and this Part and to assist and instruct the public in the correct operation of the tanning facility and its equipment. (Section 5 of the Act)

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"Other compensation" means the payment or exchange of goods, or anything of value, for use of the tanning facility or facilities. (Section 5 of the Act)

"Permanent" means a minimum of five years for records related to an adult and a minimum of five years past the last attendance date ~~emancipation~~ for records related to a minor.

"Permit" means a permit issued by the Department in accordance with this Part.

"Permittee" ~~"Permittee"~~ means any person who is licensed by the Department in accordance with this Part.

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

"Photosensitizing agent" means any food, drug, cosmetic, toiletry or other substance, whether ingested or topically applied, that ~~which~~ may induce hypersensitivity of an individual to exposure to the sun or other sources of ultraviolet radiation, resulting in inflammation of the skin and its underlying structures, often accompanied by edema.

"Protective eyewear" means eyewear that has been designed and tested in accordance with ~~the provisions set forth in~~ 21 CFR 1040.20. The ~~Such~~ protective eyewear must have been determined to allow for the required protection to ultraviolet radiation while also allowing for adequate vision to maintain balance and location of the tanning equipment's 'emergency cut-off' switch.

"Radiation" means ultraviolet radiation.

"Radiation machine" means any device capable of producing radiation.

"Registrant" means any person who obtains a permit or other entitlement from the Department ~~Agency~~, and who is obligated to obtain the ~~such~~ permit or other entitlement from the Department pursuant to the Act and this Part.

"Registration" means registration with the Department in accordance with this

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Part.

"Tanning equipment" means sunlamp products and ultraviolet lamps intended to induce skin tanning through the irradiation of any part of the living body.

(Section 5 of the Act) Tanning equipment includes, but is not limited to, protective eyewear, accurate timers, original equipment lamp type, protective barriers, handrails, warning labels, recommended exposure schedules, and recommended exposure distances. Tanning equipment shall be manufactured in accordance with 21 CFR 1040.20.

"Tanning facility" or "Tanning facilities" means a room or a booth or a group of rooms or booths, structure or business that houses ultraviolet lamps or products containing lamps intended for the irradiation of any part of the living body for cosmetic or nonmedical related purposes but does not include any hotel or motel guest rooms where sunlamps are installed in the restroom area. (Section 5 of the Act)

"Ultraviolet radiation" means electromagnetic radiation with wavelengths in air between two hundred (200) nanometers and four hundred (400) nanometers.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 795.60 Application for Permit to Operate a Tanning Facility

- a) ~~Prior~~ Each person having a tanning facility in operation on the effective date of this Part shall apply to the Department for a permit to operate such facility within 90 days following the effective date of this Part or, thereafter, prior to acquiring or establishing the operation of a tanning facility. application. Application for a the permit shall be completed on forms prescribed by and available from the Department and shall contain all of the information required by the form and any accompanying instructions. Unless otherwise stated, the term "application" as used in this Part herein shall include original and renewal applications.
- b) ~~If In the event~~ of a change of ownership occurs, the new owner shall apply for a permit to operate a tanning facility prior to taking possession of the property. A provisional permit may be issued by the Department until an initial inspection for a permit can be performed by the Department or its designated agent.
- c) The Department shall require at least the following information on the

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Application for Permit to Operate a Tanning Facility form:

- 1) Name ~~name~~, physical address, mailing address and telephone number or numbers ~~number(s)~~ of the following:
 - A) The ~~the~~ tanning facility;
 - B) The ~~the~~ applicant (owner or owners ~~owner[s]~~) of the tanning facility;
- 2) The ~~the~~ manufacturer, model number, serial number, and year ~~and month~~ of manufacture, ~~and type of each ultraviolet lamp or piece~~ of tanning equipment located within the facility;
- 3) The ~~the~~ primary function of the business in which the tanning facility is located;
- 4) The ~~the~~ geographic areas within the State to be covered, if the facility is mobile;
- 5) ~~copies of any posted warnings or other notices which are not required by this Part and which address the safe or proper use of tanning equipment and protective devices;~~
- 6) ~~copies of consent forms and statements which consumers, parents or guardians will be required to sign pursuant to this Part;~~
- 7) ~~names and addresses of the tanning equipment supplier(s), installer(s), and service agent(s);~~
- 5)8) A a copy of the operating procedures to be used in the tanning facility;
- 6)9) The ~~the~~ hours of operation of the tanning facility; and
- 10) ~~the name of the on-site manager of the tanning facility;~~
- 7)11) A a signed and dated certification that the applicant has received, read and understood the requirements of this Part. Electronic signatures shall be acceptable for online application submission when an online application is

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made available by the Department.

- d) Each applicant shall provide ~~such~~ additional information as the Department may reasonably require.
- e) Each initial application shall be submitted with a nonrefundable \$250 fee.
- f) Each annual renewal application shall be submitted with a nonrefundable \$150 fee, except that each expired facility shall pay a nonrefundable \$250 fee for renewal of the permit.
- g) If the owner owns or operates more than one tanning facility, the owner shall file a separate application and submit a separate fee for each facility owned and operated.
- h) Expired facilities that fail to pay a nonrefundable \$250 permit renewal fee within 90 days after the permit expiration shall submit a new permit application and comply with requirements for new facilities in order to receive a tanning facility permit.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 795.100 Report of Changes

- a) The facility owner shall notify the Department in writing before making any change that ~~which~~ would render the information in the application, reported pursuant to Section 795.60, no longer accurate. This requirement shall not apply to changes involving replacement of the original equipment lamp types that ~~which~~ have been determined to be compliant or lamps designed to meet the criteria as being "compatible" with the provisions set forth in 21 CFR 1040.20.
- b) The facility owner shall maintain, at the facility, manufacturer's literature or federal Food and Drug Administration certification demonstrating the equivalency of any replacement lamps.
- c) The facility shall maintain a log noting the date of installation, the location in the unit, and the lamp description (name, model or serial designation) being used as a replacement of all replacement lamps in each piece of tanning equipment.

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(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 795.150 Construction and Operation of Tanning Facilities

~~Each~~ Unless otherwise ordered or approved by the Department, each tanning facility shall be constructed, operated, and maintained to meet the following minimum requirements:

a) Physical facilities

- 4) The following warning sign, provided by the Department, shall be conspicuously posted ~~in the immediate proximity~~ (within 3 feet) of each piece of tanning equipment; it shall be readily legible, clearly visible, and not obstructed by any barrier, equipment, or other item so that the user can easily view the warning sign before energizing the ultraviolet light generating equipment:

Danger – Ultraviolet Radiation. (This indented heading must be in upper case letters.)

- Follow instructions.
- Avoid too frequent or lengthy exposure. As with natural sunlight, exposure to a sunlamp may cause eye and skin injury, sunburn and allergic reactions. Repeated overexposure may cause chronic damage characterized by wrinkling, dryness, 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 eyes. (This sentence must be in upper case letters.)
- Ultraviolet radiation from sunlamps enhances the effects of the sun. Do not sunbathe before or after exposure to ultraviolet radiation.
- Abnormal or increased skin sensitivity or burning may be caused by certain foods, medications (including, but not

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limited to tranquilizers, diuretics, antibiotics, high blood pressure medication, birth control pills, and skin creams), cosmetics or toiletries. Consult a physician or pharmacist before using a sunlamp if you are using prescription or non-prescription medications, have a history of skin problems, or believe yourself especially sensitive to sunlight. Pregnant women and women on birth control pills who use a tanning device may develop discolored skin.

- If you do not tan in the sun, you are unlikely to tan from the use of this product.
- Use of a tanning device may not provide a protective base in regard ~~regards~~ to sun exposure.

2) ~~The lettering on each warning sign shall be at least $\frac{1}{4}$ inches high for all words shown in capital letters and at least $\frac{3}{16}$ inches high for all lower-case letters.~~

b) Requirements for Tanning Devices

- 1) Only tanning equipment manufactured in accordance with ~~the provisions set forth in the Code of Federal Regulations (CFR) 21 CFR 1040.20, entitled "Sunlamp products and ultraviolet lamps intended for use in sunlamp products,"~~ shall be used in tanning facilities.
- 2) Each piece of tanning equipment shall have a timer that ~~which~~ complies with ~~the requirements of 21 CFR 1040.20(c)(2).~~ The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. A ~~No~~ timer interval shall not have an error greater than plus or minus 10% of the maximum timer interval for the product.
- 3) Each piece of tanning equipment shall have ~~incorporate~~ a control ~~on the device~~ to enable the consumer to manually terminate radiation without physically disengaging the electrical power or having contact with the ultraviolet lamp or lamp sockets.
- 4) All tanning equipment electrical circuits shall be labeled with the symbol of ~~listed by~~ the Underwriters Laboratory (UL), Electrical Testing

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Laboratories (ETL), Applied Research Laboratories (ARL) or Canadian Standards Association (CSA) or an its equivalent.

- 5) ~~Tanning equipment shall meet the requirements of the National Fire Protection Association's National Electrical Code and shall have been inspected and have satisfied all the local electrical code requirements.~~
- 56) Physical ~~There shall be physical barriers~~ shall be in place to protect consumers from injury induced by touching or breaking the lamps. Each ultraviolet lamp shall be shielded to prevent contact with the consumer. Plastic sheaths inserted over individual lamps are not acceptable physical barriers ~~to ensure that consumers do not come into contact with lamps.~~
- 67) Each tanning facility shall be ~~so~~ equipped to dissipate heat so that the ambient temperature does not exceed ~~one hundred degrees Fahrenheit (100° F.) or thirty eight degrees Celsius (38° C.).~~
- 78) Defective or burned-out lamps, bulbs or filters shall be replaced with a lamp, bulb or filter type of the same spectral ultraviolet distribution intended for use in that device as specified on the product label on the tanning equipment, or, with equivalent lamps, bulbs or filters that have been determined to meet the requirements and specifications of as being ~~"equivalent" in accordance with~~ 21 CFR 1040.20.
- 89) Floors in rooms containing tanning equipment are to be constructed of nonabsorbent, easily cleanable materials. New tanning facilities shall not include carpeting in rooms containing tanning equipment. Existing facilities with carpeting in rooms containing tanning equipment shall remove the carpeting ~~from such rooms~~ whenever the facilities are extensively remodeled.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 795.180 Operators

- a) All employees designated as operators shall be trained on the correct and compliant operation of the facility and its equipment. ~~All operators shall have received training by July 1, 1993.~~ Employees ~~hired on or after July 1, 1993,~~ shall not be allowed to work as operators until they have completed the required

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training. ~~Such training~~ Training shall include:

- 1) Knowledge ~~knowledge~~ of the requirements of this Part and of 21 CFR 1040.20;
 - 2) Interpretation of recommended exposure schedules as included by manufacturers on equipment labels; proper use of U.S.F.D.A. Recommended Exposure Schedule;
 - 3) Procedures ~~procedures~~ for correct operation of the tanning facility;
 - 4) Recognition ~~recognition~~ of injuries and the facility's procedures of handling ~~such~~ injuries from overexposure to ultraviolet radiation;
 - 5) Manufacturer's ~~manufacturer's~~ procedures for operation and maintenance of the tanning device;
 - 6) Use ~~use~~ of protective eyewear;
 - 7) Emergency ~~emergency~~ procedures in case of injury;
 - 8) Effects ~~effects~~ of ultraviolet radiation, effects of acute and chronic exposure, biological effects, and health risks;
 - 9) Photosensitizing ~~photosensitizing~~ agents; and
 - 10) The ~~the~~ six different skin types, in accordance with Appendices A and B of this Part.
- b) The facility shall maintain a ~~A~~ list of the facility's operators who have been trained in accordance with subsection ~~Section~~ 795.180(a), noting the date of training, hours spent in training and specific materials used in training. The list shall be maintained and ~~maintained and~~ available at the facility for inspection by the Department or its designated agent.
- c) A trained operator shall be present at the tanning facility during all operating hours, ~~and/or~~ while tanning equipment is in operation. Consumers ~~No consumer~~ shall not be allowed to use the tanning equipment in the absence of a trained operator.

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- d) The operator shall instruct the consumer in the proper position to be maintained in relation to the tanning lamps; the position of the safety railing, if applicable; the manual switching device to terminate the radiation in case of emergency and reasonable exposure time.
- e) Operators shall limit each consumer to the maximum exposure time as recommended by the manufacturer, taking the consumer's skin type into consideration. Operators shall not allow use of tanning equipment by consumers who have used the services of a tanning facility within the immediately previous ~~twenty-four (24)~~ hours.
- f) Operators shall keep a list of emergency telephone numbers in view at each tanning facility. This list shall include the telephone numbers of the following:
 - 1) ~~Closest~~ Closest hospital;
 - 2) ~~Fire fire~~ Fire department; and
 - 3) ~~Emergency emergency~~ Emergency medical services or 911 service, if available.
- g) The operator shall maintain a list of common photosensitizing agents available for inspection by consumers.
- h) ~~An~~ An establishment shall not provide for the use of tanning equipment operated via tokens in the absence of a trained operator.
- i) ~~A~~ A facility shall not sell, or otherwise make available to any individual, tokens used to operate tanning equipment in quantities greater than the tanning equipment manufacturer's maximum recommended exposure time for the individual.

(Source: Amended at 38 Ill. Reg. _____, effective _____)