

ILLINOIS REGISTER

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DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

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

<u>Section Numbers:</u>	<u>Adopted Action:</u>
795.20	Amendment
795.30	Amendment
795.60	Amendment
795.100	Amendment
795.150	Amendment
795.180	Amendment
- 4) Statutory Authority: Tanning Facility Permit Act [210 ILCS 145].
- 5) Effective Date of Amendments:
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposed Amendments Published in Illinois Register: 38 Ill. Reg. 10869; May 23, 2014
- 10) Has JCAR issued a State of Objection to these amendments? No
- 11) Difference(s) between proposal and final version:

"SUBCHAPTER m: FOOD, DRUGS AND COSMETICS" was added to the table of contents page of the rules.

Various typographical, grammatical, and form changes were made in response to the comments from JCAR.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No

ILLINOIS REGISTER

---

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: 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language that has been determined to be unclear by tanning facility owners and operators and facility inspectors or is outdated.
- 16) Information and questions regarding these adopted amendments shall be directed to:

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

217/782-2043  
e-mail: [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov)

The full text of the adopted amendments begins on the next page:

ILLINOIS REGISTER

---

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER m: FOOD, DRUGS AND COSMETICS

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.

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

Reg. 2422, effective February 1, 1996; amended at 38 Ill. Reg. 11802, effective May 21, 2014; amended at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**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 USCU.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 [720 ILCS 5/26-4]1961, 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)

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

7) Tanning Facility Permit Act [210 ILCS 145]

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, NinthSixth Edition, September 2, 2005 July 6, 1987, [http://www.ul.com/global/eng/pages/solutions/standards/accessstandards/catalogofstandards/standard/?id=482\\_9](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 301 et seq.~~), 21 CFR 1040.20, and the Illinois Food, Drug and Cosmetic Act ~~[410 ILCS 620]~~ are applicable to those terms when used in this Part. The following definitions shall also apply:

"Act" means the Tanning Facility Permit Act.

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

"Applicant" means any person who applies to the Department for a permit to

ILLINOIS REGISTER

---

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

maintain and operate a tanning facility.

"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 or her designee. (Section 5 of the Act)*

"Disinfect" or "disinfection" means a process that 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 ~~that~~ which may be present are destroyed so as to prevent transfer) on tanning equipment surfaces and in toilet and hand-washing 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

ILLINOIS REGISTER

---

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

operation with an unexpired tanning facility permit at the same location under the 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 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 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 prompts a consumer to seek [professional](#) medical attention.

"Inspection" means an official examination or observation that includes, but is not limited to, tests, surveys, and monitoring to determine compliance with this Part.

"Licensee" means the same as "permittee".

"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)*

*"Other compensation" means the payment or exchange of goods, or anything of*

ILLINOIS REGISTER

---

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

*value, for use of the tanning facility or facilities.* (Section 5 of the Act)

"Permanent" means a minimum of five years following the last attendance date for record keeping.

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

"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 ~~Illinois~~this State, any other ~~state~~State or political subdivision or agency of any other state or political subdivision, and any legal successor, representative, agent, or agency of any of the entities listed.

"Personal use" means the use of tanning equipment in a private residence for the owner or owners of the residence and other individuals living at the residence.

"Private residence" means a place in which an individual, group or family can live and store personal property, such as a single-family detached home, apartment, duplex or condominium. Private residence does not mean an apartment complex or a condominium complex or community and does not apply to the common or public areas found in the complex or community.

"Photosensitizing agent" means any food, drug, cosmetic, toiletry or other substance, whether ingested or topically applied, that 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 21 CFR 1040.20. ~~The protective~~Protective eyewear shall allow for the required protection to ultraviolet radiation while also allowing for adequate vision to maintain balance and to locate the tanning equipment's "emergency cut-off" switch.

"Radiation" means ultraviolet radiation.

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



ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

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

"Registration" means registration with the Department in accordance with this 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) and equipment that emits ultraviolet (UV) radiation used for tanning of the skin, such as a sunlamp, tanning booth, or tanning bed that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers. "Tanning equipment" includes, but is not limited to, any accompanying equipment, such as protective eyewear, timers, and handrails (Section 25(g)(2) of the Act) as well as, protective barriers, 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~~Fanning facilities" means a room or a booth or a group of rooms or booths, or a 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 200 nanometers and 400 nanometers.

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

**Section 795.60 Application for Permit to Operate a Tanning Facility**

- a) Each person shall apply to the Department for a permit to operate a tanning facility prior to acquiring or establishing the operation of a tanning facility. Application for ~~at~~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 (~~see subsection (c)~~) and any accompanying instructions. Unless otherwise stated, the term "application" as used in this ~~Part~~Section shall include original and renewal applications.

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 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. The Department may issue a provisional permit 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 Application for Permit to Operate a Tanning Facility form:
- 1) Name, physical address, mailing address and telephone number or numbers of the following:
    - A) The tanning facility;
    - B) The applicant (owner or owners) of the tanning facility;
  - 2) 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 primary function of the business in which the tanning facility is located;
  - 4) The geographic areas within the State to be covered, if the facility is mobile;
  - ~~5) Copies of any posted warnings or other notices that are not required by this Part and that address the safe or proper use of tanning equipment and protective devices;~~
  - ~~6) Names and addresses of the tanning equipment supplier or suppliers, installer or installers, and service agent or agents;~~
  - ~~57)~~ A copy of the operating procedures to be used in the tanning facility;
  - ~~68)~~ The hours of operation of the tanning facility; and
  - ~~9)~~ ~~The name of the on-site manager of the tanning facility;~~
  - ~~740)~~ A signed and dated certification that the applicant has received, read and

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

understood the requirements of this Part. Electronic signatures shall be acceptable for online application submission when an online application is made available by the Department.

- d) Each initial application shall be submitted with a nonrefundable \$250 fee.
- e) 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.
- f) 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.
- g) 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 thatwhich 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 thatwhich 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 a description (lamp name, model or serial designation) of all replacement lampsbulbs in each piece of tanning equipment.

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

ILLINOIS REGISTER

---

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

**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

↳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 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.

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 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 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.

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

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 training. Training~~Such 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;

ILLINOIS REGISTER

---

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 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) ~~Effect~~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~~ 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.
  - 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.

ILLINOIS REGISTER

---

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 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~~~~est~~ hospital;
  - 2) ~~Fire~~~~fire~~ department; ~~and~~
  - 3) ~~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~~~~Ne~~ establishment shall ~~not~~ provide for the use of tanning equipment operated via tokens in the absence of a trained operator.
- i) ~~An~~~~Ne~~ 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 \_\_\_\_\_)