

ARTICLE 177 TANNING FACILITIES

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General Provisions

§177.01 Applicability.

- (a) The requirements of this Article apply to all tanning facilities, as defined in §177.03, including, but not limited to, those located in tanning parlors and salons, hair and nail salons, gymnasias and health establishments, apartment houses, condominiums, country clubs, or hotels.
- (b) This Article does not apply to facilities where ultraviolet radiation devices are used by a qualified health care professional to treat medical conditions.

§177.03 Definitions.

“Adequate” means sufficient to accomplish the purpose for which something is intended, and to such a degree that no reasonable risk to health or safety is presented. An item installed, maintained, designed and assembled, an activity conducted, or an act performed, in accordance with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession, is adequate within the meaning of this Article.

“Approved” means acceptable to the New York City Department of Health and Mental Hygiene based on a determination of conformance with applicable documented standards the Department has determined, or which are set forth by any applicable regulatory agency or recognized standards-issuing body.

“CFR” means the Code of Federal Regulations.

“Disinfect” means adequate antimicrobial treatment by a disinfectant capable of destroying pathogenic non-spore forming bacteria, viruses, fungi, parasites and protozoa on treated surfaces.

“FDA” means the United States Food and Drug Administration.

“Formal training” means a course of instruction approved by the Department, and conducted by a person possessing adequate knowledge, training, and curriculum and certification testing experience pertaining to the correct and safe operation of an ultraviolet radiation device. A formal training course must be at least 4 hours and conclude with an exam of the information presented in the course. Successful completion of such training is dependent on passage of such exam. A course may include classroom instruction, correspondence learning or online certification.

“Operator” means a competent individual who is at least 18 years of age and who either owns a tanning facility or is designated by the owner of a facility to be responsible for operating the facility in compliance with this Article.

“Patron” means a person 17 years of age or older who uses an ultraviolet radiation device at a tanning facility.

“Permit” means a license issued to a tanning facility pursuant to this Article.

“Protective eyewear” means equipment designed to be worn by users of an ultraviolet radiation device to reduce exposure of the eyes to radiation emitted by the product. The spectral transmittance of the eyewear must meet the performance requirements of 21 CFR §1040.20(c)(4)(ii) or any successor regulation.

“Qualified health care professional” means a physician licensed by the State of New York to practice medicine, or a physician assistant or nurse practitioner licensed to practice in New York under the supervision of and/or in collaboration with a licensed physician.

“Sanitize” means adequate antimicrobial treatment by a disinfectant determined to be capable of reducing the number of pathogenic spore forming bacteria on treated surfaces. Exposure to the ultraviolet radiation produced by the ultraviolet radiation device itself is not considered an adequate sanitizing agent.

“State” means the New York State Department of Health.

“Tanning facility” means any establishment located in New York City where one or more ultraviolet radiation devices are used, offered, or made available for use by any human being, whether or not a fee is charged directly or indirectly.

“Timer” means any device incorporated into an ultraviolet radiation device that terminates radiation emission after a preset time interval.

“Ultraviolet radiation device” or *“tanning device”* means any product which is designed to emit electromagnetic radiation in the wavelength interval of two hundred (200) nanometers to four hundred (400) nanometers in air, and which is intended to induce tanning of the human skin through irradiation, including, but not limited to, a sunlamp, tanning booth, or tanning bed.

“Ultraviolet radiation measurement device” means any device the Department deems adequate to measure the physical characteristics of the emissions of an ultraviolet device. The device must conform to FDA-recommended standards and be calibrated according to National Institutes of Standards and Technology (NIST) recommendations.

§177.05 General requirements.

- (a) A tanning facility in the city cannot be in operation unless the facility has been issued a permit by the Department.
- (b) A facility's permit to operate must be conspicuously posted within the tanning facility.
- (c) In addition to the permit fee prescribed in Section 72-1.4(a) of Title 10 of the New York Codes, Rules and Regulations ("NYCRR"), an application for a permit must also be accompanied by payment of an inspection fee, as authorized by 10 NYCRR § 72-1.5(b), in the amount of \$200 for each ultraviolet radiation device at the tanning facility.
- (d) A permit issued pursuant to this Article will be issued to a specific person and will be valid only for a specified location.

§177.07 Enforcement.

- (a) Inspections. Each operator will allow the Department to inspect the tanning facility, its equipment and records when the facility is doing business.
- (b) Inspection reports. The tanning facility will maintain the inspection report provided by the Department in its records until its next inspection.
- (c) Public health hazards. Where one or more of the following public health hazard conditions exists, the Department will order immediate correction, or may order the facility, or any portion of it, to immediately close. Any facility that is ordered to close may not reopen until the hazardous condition(s) that were the basis of the order are corrected to the satisfaction of the Department. Public health hazards that may result in an order to immediately close are:
 - (1) Wiring or electrical system components that have not been maintained, such that an imminent fire or shock hazard exists;
 - (2) Any ultraviolet radiation device that is not adequately labeled;
 - (3) Any ultraviolet radiation device that is not being operated in accordance with its label, FDA-certified manufacturer's recommendations and operating manual, or any provision of this Article;
 - (4) Failure to assure and maintain the accuracy of ultraviolet radiation device timers;
 - (5) Failure to ensure that patrons possess adequate protective eyewear;
 - (6) Failure to provide adequate sanitizing of tanning beds, tanning booths, pillows or headrests; or inadequate disinfection of reusable protective eyewear;
 - (7) Failure to provide timer lockout or remote timer controls; or
 - (8) Any other condition determined by the Department to be an imminent risk to the public's health and safety.
- (d) Violations and penalty. In lieu of revoking, suspending or annulling a permit, the Department may assess a civil penalty of two hundred fifty dollars for any violation of this Article.

§177.09 Modification by Department.

When the Department determines that the strict application of any provision of this Article presents practical difficulties, the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose of this Article and

upon such condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

Facility Operations

§177.11 Operator responsibilities.

- (a) An operator must be present at a tanning facility whenever any ultraviolet radiation device is available for use by a patron. The operator and all employees who are authorized to operate ultraviolet radiation devices must have successfully completed formal training before operating any ultraviolet radiation device.
- (b) The operator must limit patrons' exposure time as recommended by the tanning device manufacturer on the label for such device and in the operating instruction manual such that a patron may not exceed the maximum exposure time within any 24-hour period.
- (c) The operator must perform annual tests on all tanning device timers to ensure that the requirements of section 177.15(c)(2)(i) through (v) are met. Timer tests must be documented and recorded as required by section 177.17 of this Article.
- (d) The operator must inform each patron of the location of the tanning device termination switch.
- (e) The operator must ensure that each patron using an ultraviolet radiation device possesses adequate protective eyewear; such protective eyewear must comply with 21 CFR § 1040.20(c)(4) or any successor regulation.
- (f) Each tanning facility must maintain and make available to the Department upon request a list of its operators and, for each operator, a certificate of formal training showing that the operator was trained in accordance with this section.
 - (1) The Department will approve formal training courses that can issue certificates of formal training for operators. The Department will maintain a list of approved operator training courses on its website.
- (g) If the operator maintains any web page that lists, advertises or otherwise displays the indoor tanning services available at a tanning facility, or any web page through which a prospective patron may reserve an indoor tanning service at a tanning facility, such web page must contain the following disclaimer message, which must be clearly displayed in minimum 10-size font of contrasting color:

UV radiation from indoor tanning devices can cause:

- *Skin Cancer, including melanoma, the type of skin cancer responsible for the most deaths*
- *Eye burns that can cause intense pain and negatively affect vision*
- *Sunburn (discomfort, pain and tenderness on the skin)*
- *Early skin aging, such as wrinkles and age spots*

§177.13 Patron identification and acknowledgements.

- (a) Patron identification and age verification.

- (1) An operator must require that every patron provide a driver's license, or other form of photo identification issued by a government entity or educational institution, indicating that the patron is at least 18 years of age.
- (2) No one under eighteen (18) years of age will be permitted to use an ultraviolet radiation device in a tanning facility.
- (3) The operator must conspicuously post a sign in or near the facility reception area that reads in prominent print:

PERSONS UNDER 18 YEARS OF AGE ARE PROHIBITED FROM USING UV RADIATION DEVICES. PERSONS 18 YEARS OF AGE OR OLDER MUST PROVIDE A DRIVER LICENSE OR OTHER PHOTO IDENTIFICATION ISSUED BY A GOVERNMENT OR EDUCATIONAL INSTITUTION BEFORE USING UV RADIATION DEVICES

- (b) Health Risk Advisory. During the patron's initial visit to the tanning facility, the operator must provide the Department's Health Risk Advisory to the patron. The Health Risk Advisory advises the patron of the health risks associated with the use of an ultraviolet radiation device.
 - (1) The Department will make available a copy of the current Health Risk Advisory with which the operator may make sufficient copies for all patrons. The copies must be the same size of the original Health Risk Advisory provided by the Department.
- (c) Statement of Acknowledgement. No patron may undergo ultraviolet radiation exposure at a tanning facility without reading and signing a Statement of Acknowledgement, in a form prescribed by the Department, that meets the following requirements:
 - (1) The statement of acknowledgement must declare that the patron has read and understands the Health Risk Advisory.
 - (2) The patron agrees to wear adequate protective eyewear during the entire ultraviolet radiation exposure.
 - (3) The operator or a designated employee must also sign and date the statement.
 - (4) The statement of acknowledgement expires twelve (12) months from the date it was signed. The original signed consent form must be retained by the facility for a period of twelve (12) months and may be retained off-premises provided that an electronic image or copy of the original signed consent form is readily available to the owner, operator or employee responsible for the operation of the ultraviolet radiation device of such facility.

§177.15 Facilities and equipment.

Each tanning facility must meet the following minimum requirements:

- (a) Required Signs and Labels.
 - (1) Warning Signs. For each ultraviolet radiation device in the facility, there must be a warning sign posted in the immediate vicinity of the device. The Department will provide the warning signs to the operator. Warning signs must be: within three feet

- of the device, at eye level, readily legible, clearly visible, and not obstructed by any barrier, equipment, or other item present so that the patron can easily view the warning sign before energizing the ultraviolet radiation device.
- (2) Ultraviolet Radiation Device Label. Each ultraviolet radiation device must have a permanent label affixed or inscribed on the exterior of the device, as required by the FDA. The device label must be clearly legible and may not be obscured, altered or tampered with.
- (b) Instruction Manual. For each ultraviolet device in use in the tanning facility, a current manufacturer's operating instruction manual must be maintained onsite by the operator. The operating instruction manual must meet the applicable FDA requirements of 21 CFR §1040.20(e) or any successor regulation.
- (c) All ultraviolet radiation devices must be adequately maintained and operated to meet the manufacturer's recommendations, and to meet the following minimum requirements:
- (1) Label. Each ultraviolet radiation device must be adequately labeled as specified under paragraph (2) of subdivision (a) of this section.
 - (2) Timer. Each ultraviolet radiation device must have a timer that meets the following minimum requirements:
 - (i) Each ultraviolet radiation device must incorporate a timer system with multiple timer settings as specified on the manufacturer's label. The maximum timer interval(s) may not exceed the manufacturer's maximum recommended exposure time.
 - (ii) No timer interval may have an error greater than $\pm 10\%$ of the maximum timer interval for the product.
 - (iii) The timer may not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle when emission from the ultraviolet lamp has been interrupted.
 - (iv) Only the operator or a designated employee is allowed to set the device timer.
 - (v) Facilities must have remote timer controls or a lock out device prior to the operation of ultraviolet radiation devices.
 - (3) Each ultraviolet radiation device must allow the patron using such device to manually terminate ultraviolet radiation emission at any time by using a termination switch and without disconnecting the electrical plug, removing the ultraviolet lamp or leaving the immediate environs of the ultraviolet radiation device.
 - (4) All ultraviolet radiation devices must be free of electrical hazards.
 - (5) All ultraviolet lamps must be shielded according to the manufacturer's specifications to protect patrons from injury caused by touching or breaking lamps.
 - (6) For stand-up booths:
 - (i) There must be physical barriers or other means, such as handrails or floor markings, to indicate the recommended exposure distance between ultraviolet lamps and the patron's skin.
 - (ii) Doors must open outwardly. Handrails and non-slip floors must be provided.

- (7) The temperature within the ultraviolet device must remain below 100 degrees Fahrenheit during the operation of the device.
 - (8) Defective or burned out ultraviolet lamps or filters must be replaced with a type compatible for use in that device, as specified on the product label on the ultraviolet radiation device or as recommended by the manufacturer's original specifications. Replacement lamps or filters must be "compatible" as provided in 21 CFR §1040.20(e) or any successor regulation. Replacement of lamps and compatibility documentation must be recorded as a part of the maintenance log specified in section 177.17 of this Article.
 - (9) Equipment must be regularly maintained according to the manufacturer's recommendations.
 - (10) All ultraviolet radiation devices must meet the irradiance limitations set forth by the FDA performance requirements provided in 21 CFR §1040.20(c)(1) or any successor regulation. All ultraviolet radiation devices may not transmit measurable radiation in wavelengths less than 200 nanometers.
 - (11) All ultraviolet radiation devices must be maintained and operated so that the manufacturer's recommended maximum exposure time does not result in an exposure which exceeds the limits of Minimal Erythema Dose (MED) or Minimal Melanogenic Dose (MMD) as set forth by the FDA and as measured by the Department with an approved measuring device and calculated according to the current FDA procedure (Food and Drug Administration Policy on Maximum Timer Interval and Exposure Schedule for Sunlamp Products, 8/21/86) or its successor.
- (d) Protective eyewear.
- (1) The operator must have available for patron use an adequate number of sets of protective eyewear at no additional charge to patrons. Alternatively, patrons may use their own protective eyewear.
 - (2) The protective eyewear that the operator provides, unless it is single-use disposable eyewear, must be cleaned and then disinfected after each use as specified in subdivision (e) of this section.
- (e) Sanitation. The operator must maintain all facilities in a sanitary condition. The facilities must meet the following minimum requirements:
- (1) Ultraviolet radiation devices and protective eyewear must be cleaned and then sanitized after each use, according to the following minimum provisions:
 - (i) The ultraviolet radiation device
 - A. A clean paper or cloth towel must be used each time the tanning device is cleaned and sanitized; and
 - B. The disinfectant must be one specifically manufactured for sanitizing ultraviolet light-emitting equipment and must be prepared and used according to manufacturer's specifications.
 - (ii) The protective eyewear must be cleaned with disinfectant specifically manufactured for sanitizing ultraviolet radiation protective eyewear and must be prepared and used according to the manufacturer's specifications.

- (iii) Linens and other cloth.
 - A. Pillows and headrests must be covered in an easily cleanable material and must be cleaned and then sanitized with an adequate disinfectant after each use; and
 - B. If towels or other linens are provided for patron use, they must be washed with a detergent in hot water, rinsed, and thoroughly dried after each use.
- (2) When the operator dilutes a concentrated disinfectant instead of using a commercially prepared, full-strength disinfectant, it must be done in accordance with the manufacturer's recommendations. A test kit or other device that accurately measures the concentration of the disinfectant in parts per million (ppm) must be used to measure the strength of the solution. The diluted disinfectant must be tested when initially prepared and at least weekly after that to ensure it continually meets the minimum concentration requirements of the manufacturer's recommendations.
- (3) Written procedures maintained at the facility must include proper mixing and handling instructions for each disinfectant used to ensure proper concentration and safe use of the disinfectant.

§177.17 Record keeping.

- (a) Patron record. The facility must maintain a record of each patron's tanning visits, recording the date, duration of tanning exposure, and ultraviolet radiation device used and the name of person who assisted the patron in use of the ultraviolet radiation device. The facility must maintain each record on a form provided by the Department for a period of at least two (2) years after the date of the patron's last visit.
- (b) The operator must keep and maintain a log of the equipment maintenance required by section 177.15(c)(9) of this Article. The operator must maintain the equipment log for a minimum of two (2) years and must produce such log upon Department inspection of the facility or upon Department request.
- (c) The operator must maintain records showing the results of annual timer tests as detailed in section 177.11(c) of this Article. The operator must maintain each record for a minimum of two (2) years, and such records must be kept on site and made available to the Department immediately upon request, subject to applicable law. If such records are maintained electronically, Department staff must be allowed to access such records while on-site, subject to applicable law.
- (d) The operator must maintain all records and reports required by this Article on the premises of the facility, unless an alternative is provided for in this Article, and must make them available for review by the Department on request.
- (e) Records required by this section may be stored by the operator in electronic format, provided that such format can, upon inspection of the facility or request by the Department, print or produce a file in portable document format (PDF) containing the individual records required by this section.

§177.19 Injury or illness incident reporting.

- (a) Twenty-Four Hour Notification. The operator must report any injury or illness incidents occurring as a result of using an ultraviolet radiation device to the Department within twenty-four (24) hours of its occurrence. Reportable injuries and illnesses include, but are not limited to:
 - (1) all eye injuries requiring medical attention;
 - (2) all burns requiring medical attention;
 - (3) any other injury or illness incident resulting from the use of an ultraviolet radiation device for which medical care has been obtained.
- (b) Report. The incident report required by subdivision (a) of this section must be in the form and manner prescribed by the Department and must include:
 - (1) The name of the operator;
 - (2) The date, time and description of the incident;
 - (3) The name and contact information of the affected individual;
 - (4) Information on the device involved in the injury, including the serial number, model number, and type of ultraviolet lamps installed in the device;
 - (5) The nature, cause, and extent of the alleged injury and the duration of the ultraviolet radiation exposure;
 - (6) The name and address of the health care provider and treatment administered, if known;
 - (7) Actions taken by operator or other employees at the facility; and,
 - (8) Any other information that may be requested by the Department.
- (c) All injury and illness incident reports must be maintained at the tanning facility for a minimum of two (2) years from the date of the injury or illness and must be made available for review by the Department on request.

§177.21 Severability.

If any clause, sentence, paragraph, subdivision, section or part of this Article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to that clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.