

HEALTH

PUBLIC HEALTH SERVICES BRANCH

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL, AND OCCUPATIONAL

HEALTH

CONSUMER AND ENVIRONMENTAL HEALTH SERVICES

PUBLIC HEALTH SANITATION AND SAFETY PROGRAM

Tanning Facilities

Proposed Readoption with Amendments: N.J.A.C. 8:28

Proposed Repeals: N.J.A.C. 8:28-3.5 and 8:28 Appendix C

Proposed Repeals and New Rules: N.J.A.C. 8:28 Appendices A and B

Authorized By: Cathleen D. Bennett, Acting Commissioner, Department of Health, in consultation with the Department of Environmental Protection, Bob Martin, Commissioner.

Authority: N.J.S.A. 26:2D-81, particularly 26:2D-88.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-029.

Submit electronic comments to <http://www.nj.gov/health/legal/ecomments.shtml>, or written comments to the address below, by May 6, 2016, to:

Joy L. Lindo, Director

Office of Legal and Regulatory Compliance

Office of the Commissioner

Department of Health

PO Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The Department of Health (Department) proposes to readopt with amendments, repeals, and new rules N.J.A.C. 8:28, governing tanning facilities and protecting the public from the health risks associated with exposure to ultraviolet (UV) radiation. This chapter implements the provisions of the Tanning Facilities Act, N.J.S.A. 26:2D-81 et seq. (The Act). The New Jersey Legislature declared at N.J.S.A. 26:2D-81 that overexposure to ultraviolet radiation can cause severe sunburn and eye injury, including cataracts and corneal damage, and that repeated exposure to ultraviolet light in tanning facilities can also cause premature aging of the skin, skin cancers, and abnormal skin sensitivity in persons who may be using certain drugs including some tranquilizers, diuretics, antibiotics, high blood pressure medicines, and birth control pills.

Pursuant to N.J.S.A. 26:2D-88, the Department is authorized and directed to promulgate rules establishing minimum safety standards for the operation of tanning facilities in the State. The Department's Division of Consumer, Environmental, and Occupational Health Service has reviewed N.J.A.C. 8:28 and determined pursuant to Executive Order No. 66 (1978) that, subject to the proposed amendments, repeals, and new rules described below, the chapter remains necessary, adequate, reasonable, efficient, understandable, and responsive to the purpose of implementing the Act. The Department, therefore, proposes to readopt the chapter with amendments, repeals, and new rules.

The Department originally proposed N.J.A.C. 8:28 on March 3, 2008. See 40 N.J.R. 949(a). On January 20, 2009, the Department adopted the rules at N.J.A.C. 8:28 with technical and substantive changes. See 41 N.J.R. 585(a). The Department subsequently learned of an error in the appendices of the rule and proposed corrections on June 1, 2009. See 41 N.J.R.

2189(a). The Department adopted the corrections on June 21, 2010. See 42 N.J.R. 1184(a). Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 8:28 was scheduled to expire on January 20, 2016. As the Department has filed this notice of readoption with the Office of Administrative Law prior to that date, the expiration date is extended 180 days to July 18, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2). As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The following discussion summarizes the proposed changes.

Throughout the chapter, pursuant to N.J.S.A. 26:1A-2.1, the Department proposes to amend its name from “Department of Health and Senior Services” to “Department of Health.” The Department proposes to amend N.J.A.C. 8:28-1.1(a)1 to refer to P.L. 2012, c. 17 and P.L. 2013, c. 39 because both of these laws amended the Act and the Department is required to implement them. The Department proposes to readopt N.J.A.C. 8:28-1.1(a)2 and (b), which would continue to describe the purpose and scope of the chapter, without change. The Department proposes to amend the definitions of “PHSSP,” “PHSSP mailing address,” and “PHSSP webpage” at N.J.A.C. 8:28-1.2 (which contains the definitions of terms used in the chapter) to update the name of the Division within which the Public Health Sanitation and Safety Program resides.

The Department proposes to amend N.J.A.C. 8:28-2.1(a) to establish that no person shall operate a tanning facility prior to registering that tanning facility with the Department, rephrasing the sentence with no substantive change. The Department proposes to readopt N.J.A.C. 8:28-2.1(b), which would continue to govern initial registration, without change. The Department proposes to amend N.J.A.C. 8:28-2.1(c) to delete language referencing January 20, 2009,

because it is no longer necessary. The Department proposes to readopt N.J.A.C. 8:28-2.1(d) through (k), which would continue to govern initial registration, without change.

The Department proposes to amend N.J.A.C. 8:28-2.2(a) to delete language referencing January 20, 2009 because it is no longer necessary. The Department proposes to readopt N.J.A.C. 8:28-2.2(a)1 and (a)2, which would continue to govern issuance of initial Certificate of Registration, without change. The Department proposes to delete N.J.A.C. 8:28-2.2(b) and (b)1 because these provisions refer to facilities established after January 20, 2009, and it would no longer be useful to distinguish between facilities established either before or after January 20, 2009, since the Department would require each tanning facility to register in the same fashion regardless of the date it was established. The Department proposes to recodify existing N.J.A.C. 8:28-2.2(b)2, which would continue to require a satisfactory inspection report issued by the local board of health, as N.J.A.C. 8:28-2.2(a)3. The Department proposes to delete N.J.A.C. 8:28-2.2(b)3 since receipt of the required registration fee would already be required by N.J.A.C. 8:28-2.2(a)2. The Department proposes to recodify existing N.J.A.C. 8:28-2.2(c) through (e), which would continue to govern certificates of registration, as N.J.A.C. 8:28-2.2(b) through (d).

The Department proposes to readopt N.J.A.C. 8:28-2.3, which would continue to govern registration renewal, without change. The Department proposes to readopt N.J.A.C. 8:28-2.4, which would continue to require change of information notification, without change. The Department proposes to readopt N.J.A.C. 8:28-2.5, which would continue to govern inspections, without change.

The Department proposes to readopt N.J.A.C. 8:28-3.1(a) and (b), which would continue to govern tanning equipment, without change. The Department proposes to add new paragraph (b)13, which would require each sunlamp product used in the tanning facility to comply with the

labeling provisions of 21 CFR 878.4635(b)(6)(i)(A). The Department proposes to readopt N.J.A.C. 8:28-3.1(c), which would continue to govern tanning equipment, without change.

The Department proposes to readopt N.J.A.C. 8:28-3.2, which would continue to govern construction of tanning facilities, without change. The Department proposes to readopt N.J.A.C. 8:28-3.3, which would continue to govern sanitation and maintenance of tanning facilities, without change.

The Department proposes to readopt N.J.A.C. 8:28-3.4(a), which would continue to govern the display of a warning sign at tanning facilities, without change. The Department proposes to amend N.J.A.C. 8:28-3.4(b) to update the name and contact information for the Consumer, Environmental, and Occupational Health Service on the required warning sign at tanning facilities.

The Department proposes to repeal N.J.A.C. 8:28-3.5 because this section refers to written Warning Statement and Tanning Authorization form requirements for minors that are no longer applicable due to statutory changes at N.J.S.A. 26:2D-82.1. The Department proposes to reserve this section for future use in the event future statutory changes call for warning statements and/or authorization form requirements in addition to those required under existing law.

The Department proposes to readopt N.J.A.C. 8:28-3.6, which would continue to govern protective eyewear, without change. The Department proposes to readopt N.J.A.C. 8:28-3.7, which would continue to provide general consumer protection provisions, without change.

Pursuant to statutory changes at N.J.S.A. 26:2D-82.1, the Department proposes to amend N.J.A.C. 8:28-3.8(a) to provide that a tanning facility operator shall not permit a minor who is less than 17 years of age to use a sunlamp product and to provide that a minor who is at least 17

years of age may use a sunlamp product provided the minor's parent or legal guardian is present at the tanning facility for the initial consultation. Pursuant to additional statutory changes at N.J.S.A. 26:2D-82.1, the Department is no longer required to provide a Warning Statement and Tanning Authorization form, which the Department provides at existing N.J.A.C. 8:28 Appendix C. The Department proposes to delete N.J.A.C. 8:28-3.8(b) because the reference to N.J.A.C. 8:28 Appendix C would no longer be applicable, and the Department also proposes to recodify existing N.J.A.C. 8:28-3.8(b)1, which would continue to provide an exemption for emancipated minors, as N.J.A.C. 8:28-3.8(a)1. The Department proposes to delete N.J.A.C. 8:28-3.8(c) and (d) because these subsections are no longer applicable pursuant to the above referenced statutory changes at N.J.S.A. 26:2D-82.1. For the same reason, the Department proposes to recodify existing N.J.A.C. 8:28-3.8(e) as (b), and to amend the age reference in this section from 14 to 17 years of age. Accordingly, the Department proposes to amend existing N.J.A.C. 8:28-3.8(e)1 to refer to subsection (b) instead of subsection (e). Recodified N.J.A.C. 8:28-3.8(b)1i and ii and (b)2 and 3, which would continue to govern the protection of minors, are proposed for readoption with no change in text. The Department proposes to amend the signage requirements at recodified N.J.A.C. 8:28-3.8(c) to notify the public that minors under the age of 14 shall not be permitted to use spray tanning at the tanning facility and that persons at least 17 years of age may use the tanning facility if the person's parent or legal guardian is present for the initial consultation. The Department proposes to amend recodified N.J.A.C. 8:28-3.8(d) to specify that the operator of a tanning facility shall prohibit minors under the age of 17 from being present in the sunlamp product room during exposure of others to ultraviolet radiation. The Department proposes new N.J.A.C. 8:28-2.8(e), which would provide a tanning facility operator shall not permit persons under the age of 14 to use spray tanning in the tanning facility.

The Department proposes to readopt N.J.A.C. 8:28-3.9, which would continue to establish UV exposure limits for consumers, without change. The Department proposes to readopt N.J.A.C. 8:28-3.10, which would continue to set forth standards for the protection of tanning facilities personnel, without change. The Department proposes to amend N.J.A.C. 8:28-3.11(a), which pertains to training of personnel, by removing the reference to facilities existing prior to January 20, 2009, because the date is no longer significant. The Department proposes to delete N.J.A.C. 8:28-3.11(b) because the reference to facilities established after January 20, 2009, contained in this subsection is no longer necessary and the reference to training requirements, similar to N.J.A.C. 8:28-3.11(a), would be unnecessarily duplicative. Recodified N.J.A.C. 8:28-3.11(b) and (c), would continue to establish training requirements and are recodified with no change in text. Recodified N.J.A.C. 8:28-3.11(d)1 through 5, which would continue to establish training requirements are proposed for readoption with no change in text. The Department proposes to delete existing N.J.A.C. 8:28-3.11(e)6 and to recodify existing N.J.A.C. 8:28-3.11(e)7, 8, and 9, which would continue to establish training requirements, as paragraphs (d)6, 7, and 8 with no change in text.

The Department proposes to readopt N.J.A.C. 8:28-3.12(a) and (b), which would continue to govern records management and retention, without change. The Department proposes to readopt N.J.A.C. 8:28-3.12(c)1 and 2 and 3i, ii, and iii, which would continue to define required records, without change. The Department proposes to delete existing N.J.A.C. 8:28-3.12(c)3iv because the Warning Statement and Tanning Authorization form would no longer be required and to amend recodified N.J.A.C. 8:28-3.12(c)3iv to refer to N.J.A.C. 8:28-3.8(b). The Department proposes to readopt N.J.A.C. 8:28-3.12(c)4 through 7, which would continue to describe required records, without change.

The Department proposes to readopt N.J.A.C. 8:28-3.13, which would continue to regulate advertising and promotion, without change.

The Department proposes to amend N.J.A.C. 8:28-4.1(a) to provide that in addition to the penalties established at N.J.A.C. 8:28-4.2, the Department may deny, suspend, or revoke a Certificate of Registration for “violation of any of the provisions of the Act, except as provided in N.J.A.C. 8:28-4.2(b),” or if necessary to abate a threat to the public health, safety, or welfare. The Department proposes to readopt N.J.A.C. 8:28-4.1(b), which would continue to establish enforcement actions, without change. The Department proposes to readopt N.J.A.C. 8:28-4.1(c) and (c)1, which would continue to establish enforcement actions, without change. The Department proposes to delete N.J.A.C. 8:28-4.1(c)2, which provides a penalty of suspension of registration for violating the minimum age at which a person may lawfully use a sunlamp product, because N.J.S.A. 26:2D-82.1 now provides an incremental penalty system for such violation, which includes monetary penalties and suspension of registration. The Department proposes to include this new penalty system at N.J.A.C. 8:28-4.2(b). The Department proposes to delete N.J.A.C. 8:28-4.1(c)3 because this paragraph refers to the Warning Statement and Tanning Authorization form, which is no longer required pursuant to statutory amendments at N.J.S.A. 26:2D-82.1. The Department proposes to recodify existing N.J.A.C. 8:28-4.1(c)4 and (c)5, which would continue to regulate enforcement actions, as N.J.A.C. 8:28-4.1(c)2 and (c)3 with no change in text. The Department proposes to amend recodified N.J.A.C. 8:28-4.1(c)4 to change the minimum age at which an operator is required to review the photosensitizing agent list with a person’s parent or guardian from age 14 to age 17, pursuant to N.J.S.A. 26:2D-82.1. The Department proposes to readopt recodified N.J.A.C. 8:28-4.1(c)5, which would continue to regulate inspections, with no change in text. The Department proposes to amend N.J.A.C. 8:28-

4.1(d) to remove the word “immediate” and the phrase “and facility closure,” which would clarify that the Department does not intend this subsection to authorize a summary revocation action or immediate suspension. The Department proposes to readopt N.J.A.C. 8:28-4.1(d)1 and (d)2, which would continue to prescribe enforcement actions, without change. The Department proposes to delete existing N.J.A.C. 8:28-4.1(d)3, which provides for immediate revocation of registration and facility closure if a facility or operator allows a minor who is less than 14 years of age to use a sunlamp product, because N.J.S.A. 26:2D-82.1 now provides an incremental penalty system for such violation, which includes monetary penalties and suspension of registration. The Department proposes to include this new penalty system at N.J.A.C. 8:28-4.2(b). The Department proposes to recodify existing N.J.A.C. 8:28-4.1(d)4 through 8, which would continue to define enforcement actions, as N.J.A.C. 8:28-4.1(d)3 through 7 with no change in text.

The Department proposes to amend N.J.A.C. 8:28-4.2 to delete the phrase “shall be” and replace it with “is,” consistent with N.J.S.A. 26:2D-87, and to codify the subsection as subsection (a), which would continue to define monetary penalties for violation of the Act in accordance with N.J.S.A. 26:2D-87, except as provided by new subsection (b). The Department proposes new N.J.A.C. 8:28-4.2(b), which would add the new penalties for violations of the Act concerning minors imposed by N.J.S.A. 26:2D-87.

The Department proposes to readopt N.J.A.C. 8:28-4.3, which would continue to define appeal rights, without change.

The Department proposes to amend N.J.A.C. 8:28-5.1, which pertains to forms, to delete the reference to N.J.A.C. 8:28 Appendix C because the Warning Statement and Tanning Authorization form provided at N.J.A.C. 8:28 Appendix C would no longer be necessary

pursuant to statutory changes at N.J.S.A. 26:2D-82.1. In addition, the Department proposes to amend N.J.A.C. 8:28-5.1 to update the Department's website address where forms may be found.

The Department proposes to repeal existing N.J.A.C. 8:28 Appendices A and B, which govern tanning facility registration and tanning facility inspection, respectively. The Department proposes new N.J.A.C. 8:28 Appendices A and B, which would govern tanning facility registration and tanning facility inspection, respectively. The proposed new appendices would correct the name of the Department and the division that registers tanning facilities. Proposed new N.J.A.C. 8:28 Appendix B would discontinue references to N.J.A.C. 8:28-3.5 and a Warning Statement and Tanning Authorization form, because pursuant to amendments at N.J.S.A. 26:2D-82.1, the Department is no longer required to provide a Warning Statement and Tanning Authorization form. Proposed new N.J.A.C. 8:28 Appendix B would establish a prefix of "TF" for all tanning facility registration numbers, update language concerning the use of tanning facilities by minors pursuant statutory changes at N.J.S.A. 26:2D-82.1, and update language concerning recordkeeping because pursuant to the amendments at N.J.S.A. 26:2D-82.1, a tanning facility would no longer be required to maintain a Warning Statement and Tanning Authorization form. The Department proposes to repeal existing N.J.A.C. 8:28 Appendix C, which currently establishes a Warning Statement and Tanning Authorization form, because pursuant to amendments at N.J.S.A. 26:2D-82.1, the Department is no longer required to provide a Warning Statement and Tanning Authorization form.

Social Impact

N.J.A.C. 8:28 functions primarily to protect consumers from overexposure to ultra-violet rays (UVR) and the known risks that accompany overexposure, while restricting the access of minors to sunlamp products in tanning facilities. The Department believes that the chapter would

continue to have a positive social impact on tanning facility consumers by regulating the controlled use of sunlamp products in a safe and sanitary environment. The chapter positively impacts patrons of tanning facilities by establishing minimum safety and sanitation standards, corresponding to current best industry practice. Furthermore, the incorporation of Federal labeling requirements on sunlamps and sunlamp products into this chapter would promote an increased awareness by the public of the risks associated with UVR exposure.

Proposed amendments to N.J.A.C. 8:28 would have a positive social impact by restricting UVR sunlamp product use to users who are at least 17 years of age, thereby protecting more teenage users from exposure to ultraviolet light from sunlamp products. Exposure to ultraviolet light from sunlamp products has been linked to an increased risk of skin cancer, including melanoma, and children and teenagers are known to be particularly vulnerable.

Economic Impact

The rules proposed for readoption with amendments, repeals, and new rules would continue to impact tanning facilities through costs resulting from annual registration fees, annual timer tests, personnel training, and recordkeeping requirements. The Department is not proposing any increased registration fees. Annual registration fees would remain \$300.00 for a facility providing up to 10 sunlamp products plus \$10.00 for each sunlamp product that exceeds the first 10 sunlamp products. The Department expects these annual fees to continue to have a minimal financial burden on the regulated industry. Similarly, the Department expects that costs from annual timer tests and personnel training would continue to present a reasonable financial burden for the regulated industry that tanning facilities recover through their self-determined fee structures. The Department anticipates that recordkeeping costs related to staff time and record

storage would decrease because of the proposed elimination of the Warning Statement and Tanning Authorization form, found at N.J.A.C. 8:28 Appendix C.

The statutory prohibition on the use of tanning facilities by persons under the age of 17, imposed by N.J.S.A. 26:2D-82.1 and reflected in the proposed amendments, may have an adverse economic impact on some tanning facilities by restricting teenage use of sunlamp products. The Department does not have sufficient data about tanning facility users upon which to base any definitive conclusions about the full nature of the economic impact of N.J.S.A. 26:2D-82.1. It is reasonable to assume, however, that a smaller pool of potential tanning facility customers may reduce revenues for some tanning facilities. The Department notes that some tanning facilities already restrict sunlamp product use to adults only and others have only a limited number of teenage users.

The Department notes that some tanning facilities may have already incurred costs associated with new Federal Food and Drug Administration (FDA) labeling provisions for sunlamp products imposed by 21 CFR 878.4635(b)(6)(i)(A). The FDA labeling provision required sunlamp manufacturers to affix a new warning label to sunlamp products alerting consumers to the health risks of such products and stating that persons under the age of 18 should not use sunlamp products. Manufacturers that sold sunlamp products to tanning facilities prior to September 2, 2014, the model number of which has been discontinued or was otherwise no longer marketed after that date, must have complied with the labeling requirements at 21 CFR 878.4635(b)(6)(i)(A) by August 26, 2015. If the manufacturer is no longer in business, then the owner of the sunlamp product would have had to apply the required labeling to such sunlamp product by August 26, 2015. The Department does not know the cost of affixing the required label to each sunlamp product, but anticipates that the cost was not significant. The Department

does not know how many of more than 400 registered tanning facilities were required to affix labels to their sunlamp products by the labeling requirements of 21 CFR 878.4635(b)(6)(i)(A), but anticipates that most were not. Since 21 CFR 878.4635(b)(6)(i)(A) is a Federal requirement, the Department proposes to incorporate it by reference, as amended and supplemented, at N.J.A.C. 8:28-3.1(b)13.

The Department notes that N.J.S.A. 26:2D-87 has been amended to provide that a tanning facility operator who fails to abide by the law concerning a minor's use of the tanning facility is subject to new and significant fines of \$1,000 for the first offense and \$2,000 and a five-day suspension of operations for the second offense. The Department is proposing to incorporate the increased fines into the rule at N.J.A.C. 8:28-4.2(b). The Department anticipates that imposition of these fines and the five-day suspension period would have an adverse economic impact on any tanning facility operator that fails to abide by the law.

Federal Standards Statement

The Department is not proposing the readoption with amendments, repeals, and new rules at N.J.A.C. 8:28 under the authority of, or in order to implement, comply with, or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, standards, or requirements. The Department is readopting the rules under the authority of N.J.S.A. 26:2D-81 et seq., particularly 26:2D-88. Therefore, a Federal standards analysis is not required. However, the Department proposes to readopt and incorporate by reference in the chapter, the FDA's performance standard, Sunlamp products and ultraviolet lamps intended for use in sunlamp products, 21 CFR 1040.20. This standard requires manufacturers of sunlamp products and ultraviolet lamps intended for use in sunlamp products to meet certain equipment performance standards and labeling requirements. The Department

regulates only tanning facilities and not manufacturers of sunlamp products and lamps. The Department also proposes to amend N.J.A.C. 8:28 to incorporate by reference in the rules, the FDA's sunlamp product labeling standard, 21 CFR 878.4635(b)(6)(i)(A). The rules proposed for readoption with amendments, repeals, and new rules would require registrants to continue to provide protective eyewear that meets FDA standards. In all cases where the rules incorporate Federal standards by reference, the rules meet but do not exceed the Federal standards.

Jobs Impact

The Department expects that the rules proposed for readoption with amendments, repeals, and new rules would not result in the appreciable generation or loss of jobs in the State.

Agriculture Industry Impact

The Department expects that the rules proposed for readoption with amendments, repeals, and new rules would not have an impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

The Department believes that most of the more than 400 registered New Jersey tanning facilities are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As described in the Summary and the Economic Impact statements above, the rules proposed for readoption with amendments, repeals, and new rules would continue to impose training, recordkeeping, reporting, and other compliance requirements on businesses that, either as a sole service or in conjunction with other services, provide consumers with access to sunlamp products. These requirements represent the minimum sanitation and safety standards necessary to comply with the Act and to continue to protect the public from unsanitary conditions and overexposure to UV light. Since most tanning facilities are small businesses, it would not be possible to adequately protect the public health and safety and to continue to comply with the

Act if the Department did not adhere to these minimum requirements for all tanning facilities. Therefore, the Department has determined that no differentiation based on business size is warranted.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, repeals, and new rules would have no impact on the affordability of housing in New Jersey and the rules proposed for readoption with amendments, repeals, and new rules would not evoke a change in the average costs associated with housing because N.J.A.C. 8:28 only regulates tanning facilities.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, repeals, and new rules would not have an impact on the achievement of smart growth and the rules proposed for readoption with amendments, repeals, and new rules would not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because N.J.A.C. 8:28 only regulates tanning facilities.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:28.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:28-3.5 and 8:28 Appendices A, B, and C.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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; **P.L. 2012, c. 17; and, P.L. 2013, c. 39**); and

2. (No change.)

(b) (No change.)

8:28-1.2 Definitions

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

...

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

...

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

...

"PHSSP" means the Public Health Sanitation and Safety Program in the Division of Consumer[s and], Environmental, **and 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, [and] Environmental, **and 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, [and] Environmental, **and Occupational Health Service** located at www.state.nj.us/health/eoh/phss.

...

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.]

(a) No person shall operate a tanning facility within this State prior to registering the tanning facility with the Department.

(b) (No change.)

(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) - (k) (No change.)

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. - 2. (No change.)

[(b) The Department shall issue an initial Certificate of Registration to a new tanning facility established after 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.] **3.** 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).]

Recodify existing (c)–(e) as **(b)–(d)** (No change in text.)

SUBCHAPTER 3. OPERATION OF TANNING FACILITIES

8:28-3.1 Equipment

(a) (No change.)

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

1. – 12. (No change.)

13. Each sunlamp product has a warning label that complies with the requirements of 21 CFR 878.4635(b)(6)(i)(A).

(c) (No change.)

8:28-3.4 Warning sign

(a) (No change.)

(b) The warning sign shall use upper and lower case letters [which] **that** 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 **and Occupational** Health Service[s], PO Box 369, Trenton, NJ 08625-0369, telephone number: 609-[588-3124]**826-4920**.

8:28-3.5 (Reserved)

8:28-3.8 Protection of consumers--minors

(a) A tanning facility operator shall not permit a minor who is less than [14] **17** years of age to use a sunlamp product in the tanning facility; **a minor who is at least 17 years of age may use a sunlamp product in the tanning facility provided the minor's parent or legal guardian is present at the tanning facility for the initial consultation.**

[(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. (No change.)

[(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)] **(b)** 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] **17**, but less than 18 years of age.

1. Verification described in [(e)] **(b)** above shall be completed by submission of a government-issued photographic identification or at least two of the following documents:

i.-ii. (No change.)

2.-3. (No change.)

[(f)] (c) 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 **SPRAY TANNING IN THIS TANNING FACILITY. PERSONS [BETWEEN 14 AND 18] WHO ARE AT LEAST 17 YEARS OF AGE SHALL [NOT] BE PERMITTED TO USE [THIS] A TANNING BED IN THIS FACILITY [WITHOUT WRITTEN AUTHORIZATION OF] PROVIDED THAT A PARENT OR LEGAL GUARDIAN IS PRESENT FOR THE INITIAL CONSULTATION.**"

1. (No change.)

[(g)] (d) The operator shall prohibit minors **under the age of 17** from being present in the sunlamp product room during exposure of parents, legal guardians, or other accompanying consumers to ultraviolet radiation.

(e) **A tanning facility operator shall not permit persons under the age of 14 to use spray tanning in the tanning facility.**

8:28-3.11 Training of personnel

(a) All tanning facilities [that existed prior to 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.]

Recodify existing (c) and (d) as **(b) and (c)** (No change in text.)

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

1. – 5. (No change.)

[6. Procedures for the use of the Warning Statement Tanning Authorization form and associated identification criteria;]

Recodify existing 7., 8., and 9. as **6., 7., and 8.** (No change in text.)

Recodify existing (f), (g), and (h) as **(e), (f), and (g)** (No change in text.)

8:28-3.12 Records

(a) - (b) (No change.)

(c) Required records shall include:

1. - 2. (No change.)

3. A consumer file that includes the following:

i. - iii. (No change.)

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

4. - 7. (No change.)

SUBCHAPTER 4. ENFORCEMENT

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

(a) [As an alternative to or in] **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] **for violation of**

any of the provisions of the Act, except as provided in N.J.A.C. 8:28-4.2(b), or if necessary to abate a threat to the public health, safety, or welfare.

(b) (No change.)

(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. (No change.)

[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;]

Recodify existing 4. and 5. as **2. and 3.** (No change in text).

[6.] **4.** Failure to review the photosensitizing agent list with consumers, or parents or legal guardians for consumers at least [14] **17**, but less than 18 years of age; or

[7.] **5.** (No change in text).

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

1. - 2. (No change.)

[3. Permitting a minor who is less than 14 years of age to use a sunlamp product in a tanning facility;]

Recodify existing 4.–8. as **3.–7.** (No change in text).

(a) A person who violates any of the provisions of the Act [shall be], **except as provided in (b) below, is** 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.

(b) A person who violates any of the provisions of the Act concerning a minor's use of a tanning facility is subject to a penalty of \$1,000 for the first offense, \$2,000 for the second offense, and \$2,000 and a five-day suspension of the facility's registration and operation for third and subsequent offenses, in accordance with N.J.S.A. 26:2D-87.

SUBCHAPTER 5. FORMS

8:28-5.1 Forms

The Department's forms provided at chapter Appendices A [through C] **and B** 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/>]
<http://web.doh.state.nj.us/apps2/forms/subforms.aspx?pro=eoh/phss>.