

## **CHAPTER 64E-17 TANNING FACILITIES**

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### **64E-17.001 Definitions.**

- (1) "Customer" – Means any person who is provided access to a tanning facility in exchange for a fee or other compensation, or any person 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.
- (2) "Employee" – Means someone who is working in or for a tanning establishment whether fixed or mobile, who is in direct contact with the customer for the purposes of cleaning, sanitizing, maintenance of tanning devices, determining human skin types and maximum allowable time of exposure; and assisting the customer in the proper use of tanning devices.
- (3) "Formal training" – Means a course of instruction approved by the department conducted or presented under formal classroom conditions by a person possessing adequate knowledge and experience to offer a curriculum, associated training, and certification testing pertaining to and associated with the correct use of tanning equipment. Training shall cover ultraviolet radiation and effects on the skin, skin typing, exposure time, photosensitivity, FDA and State regulations, eye protection, and equipment and maintenance.
- (4) "Operator" – A tanning facility owner or a person who operates a tanning facility.
- (5) "Override timer control" – Means a separate electrical timer, switch, or similar device which may be used by the operator to start, stop, or reset the timer system for a tanning machine. The term does not include electric service panels which control the entire electrical system for a building or a portion of a building.
- (6) "Person" – Means any individual, corporation, partnership, association, political subdivision of this state, any other state or political subdivision or department thereof, and any legal successor, representative, agent, or department of the foregoing.
- (7) "Phototherapy device" – A piece of equipment that emits ultraviolet radiation and that is used by a licensed health care professional in the treatment of disease.
- (8) "Reconditioning" – Means a process or procedure by which distressed tanning devices can be brought into compliance with federal and state standards for use by the public.
- (9) "Safe level" – Means not more than 50 colony-forming units per four (4) square inches of equipment surface.

(10) "Sanitize" – Means the effective bactericidal treatment of surfaces of equipment and devices, which provides a sufficient concentration of chemicals and enough time to reduce the bacterial count, including pathogens, to a safe level.

(11) "Stop-use order" – Means a notice written to a tanning facility by the department to remove a tanning device from service because the device does not meet the requirements of this rule, or the device is not being operated in accordance with the requirements of this rule. This is a proposed agency action issued pursuant to Section 120.54, F.S. The notice shall include a statement of an individual's right to request a hearing on the proposed action.

*Specific Authority 381.011(13), 381.89(13) FS. Law Implemented 381.89(10), (12) FS. History– New 1-12-93, Amended 8-7-96, Formerly 10D-112.003, Amended 5-10-05.*

### **64E-17.002 Design and Safety Requirements.**

Each tanning facility shall be designed, operated, and maintained to meet the following minimum requirements:

(1) Prior to the use of a structure as a tanning facility, plans of the facility and its proposed operation shall be submitted to and approved by the local county health department. All plans shall be legible, drawn to scale and shall comply with the requirements of this chapter. Plans shall show the location of all tanning devices and sanitary facilities. Applicant shall also submit the manufacturer, model number and serial number for all tanning devices and lamps being used within the facility, as well as the tanning equipment supplier. All plans shall be processed in accordance with the requirements of Section 120.60, F.S.

(2) Physical facilities.

(a) The warning sign required by Section 381.89(4)(b), F.S., shall be readily legible, clearly visible, and not obstructed by any barrier, equipment, or other item present so that the user can easily view the warning sign before energizing the ultraviolet light generating equipment.

(b) Only tanning equipment manufactured, certified and legibly labeled to comply with 21 Code of Federal Regulations (C.F.R.), Part 1040, Section 1040.20, "Sunlamp Products and Ultraviolet Lamps Intended For Use In Sunlamp Products", April 1, 1999, incorporated herein by reference, shall be used in tanning facilities. Tanning devices that have been reconditioned must comply with federal and state requirements. Compliance shall be based on the federal standard in effect at the time of manufacture as shown on the device identification label.

(c) Each tanning device shall have a timer, which complies with the requirements of 21 C.F.R. Part 1040, Section 1040.20(c)(2)(3). The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. No timer interval shall have an error greater than plus or minus 10% of the maximum timer interval for the product. The tanning device timer shall be set by a trained operator or other trained facility employee. All tanning equipment shall be provided with an override timer control installed outside of the room in which a tanning device is located and operated only by tanning facility personnel.

Each tanning device must be equipped with an emergency shut-off mechanism on the tanning device allowing manual termination of the UV exposure by the consumer, as required by 21 C.F.R. 1040.

(d) There shall be physical barriers to protect customers from injury through contact with hot or broken lamps.

(e) There shall be physical barriers around each tanning device which is in use, such as permanent or portable partitions, to protect people who are not using the device from line-of-sight accidental ultraviolet radiation exposures.

(f) A trained operator or other trained facility employee shall clean and properly sanitize any reusable protective eyewear and body contact surfaces of tanning devices after each use.

(g) When sanitizing tanning equipment and protective eyewear, the facility shall use a sanitizer capable of providing a safe level of microorganisms, as required by this rule. A clean paper or cloth towel shall be used each time the bed or other equipment is cleaned. The sanitizer, as described in this chapter, is one specifically manufactured for sanitizing ultraviolet light emitting equipment, protective eyewear, is registered with the U.S. Environmental Protection Agency (EPA), and does not damage the acrylic plastic surface of the unit.

(h) A test kit or other device that accurately measures the concentration of the sanitizing solution in parts per million shall be used to measure the strength of the sanitizing solution at least twice per day of tanning facility operation to ensure sufficient strength of the sanitizing solution.

(i) Each customer shall be provided with protective eyewear that meets the requirement of 21 C.F.R. Part 1040, subsection 1040.20(c)(4), April 1, 1999 and instructions for their use. The operator or employee shall not allow any person to use a tanning device if that person refuses to use protective eyewear.

(j) There shall be sufficient protective eyewear on the premises of a tanning facility to equal the maximum number of persons that are able to use the tanning devices at the same time.

(k) Exposure to the ultraviolet radiation produced by the tanning equipment itself is not considered a sanitizing agent for protective eyewear or tanning devices.

(l) In addition to the requirements in subsection 381.89(6)(c), F.S., each person using a tanning device shall be instructed by the operator or a trained employee on the maximum exposure time, as recommended by the manufacturer of the device. The operator or a trained employee shall instruct the customer as to the location and proper operation of the tanning device's emergency shut-off mechanism.

(m) The operator must ensure that no individual is allowed to use a tanning device more than once every 24 hours.

*Specific Authority 381.89(13) FS. Law Implemented 381.89(4)(a) FS. History--New 1-12-93, Amended 8-7-96, Formerly 10D-112.004, Amended 5-10-05.*

#### **64E-17.003 Requirements for Stand-up Booths.**

(1) There shall be floor markings or other means to indicate the proper exposure distance between ultraviolet lamps and the user's skin.

(2) The upright booth shall be of rigid construction and so designed as to withstand the stress of use and the impact of a falling person. The doors shall open outwardly and be designed for rapid exit from the booth in emergencies.

(3) Non-slip floors shall be provided to reduce the potential for injuries from falls. Floors shall be constructed of easily cleanable surfaces and of such material, finish and so fabricated that residue may be effectively removed by normal cleaning methods. The temperature in enclosed booths shall be maintained below 100°F (38°C).

*Specific Authority 381.89(13) FS. Law Implemented 381.89(6)(c) FS. History--New 1-12 93, Amended 8-7-96, Formerly 10D-112.005, Amended 5-10-05.*

#### **64E-17.004 Operation and Training.**

(1) Each tanning facility shall have an operator who possesses a certificate of formal training, as defined in Rule 64E-17.001, F.A.C. Formal training courses for operators must meet the requirements of subsection 64E-17.001(3), F.A.C. When formal training courses are not available within a sixty-mile radius of a tanning facility in the time frame specified in subsection 64E-17.004(4), F.A.C., then the operator of that facility may substitute the successful completion of a correspondence training course. Correspondence courses must meet the subject matter requirements of subsection 64E-17.001(3), F.A.C., and be approved by the department in order to qualify as training for operators.

(2) In addition to the requirements of subsection 64E-17.001(3), F.A.C., each formal training course shall meet the following requirements.

(a) Each course shall be at least 4 hours in length and conclude with an exam over the information presented in the course. These 4 hours shall not include items such as registration, breaks, lunch, marketing, profit-making strategies, advertising and accounting, taking a test, or similar functions.

(b) Training shall include the following study topics for the minimum hours indicated:

1. Ultraviolet radiation and effects on the skin,
2. Skin typing,
3. Exposure time,
4. Photosensitivity,
5. Statute 381.89, FDA-Title 21 C.F.R. Part 1040 (April 1, 1999) and State Chapter 64E 17, F.A.C.,
6. Eye protection,
7. Equipment and maintenance.

(c) Each course shall cover the required subjects and include written material, such as a core training manual; audio-visual presentations; slides or videos; copies of the department's statute, rules and copies of Title 21, Code of Federal Regulations, Part 1040, Section 1040.20; and a question and answer period for trainees.

(3) Each employee who assists the customer or operates tanning devices must be trained on the proper operation and maintenance of tanning devices. The operator of the tanning facility is responsible for training those employees and ensuring that those employees take an approved training course. Proof of training must be maintained within the facility and be available for inspection. When the operator provides employee training, that training shall include:

- (a) Review of the requirements of these rules;
- (b) Procedures for correct cleaning, sanitizing and operation of the device;
- (c) Recognition of overexposure or similar injury;
- (d) Review of manufacturer's procedures for operation and maintenance of tanning devices;
- (e) Medical aspects of ultraviolet radiation, photosensitivity, maximum allowable time of exposure, and determination of human skin types as it relates to compliance use of the FDA exposure schedule; and
- (f) Emergency procedures in case of overexposure or injury.

(4) Operators and other facility personnel, who must comply with the training requirements of this chapter, must complete the required training according to the following:

(a) Operators hired on or after the effective date of this chapter must complete the required training prior to taking charge of a facility. Other facility personnel hired on or after the effective date of this chapter shall have a period of 30 days after the effective date of employment to successfully complete the required training; however, such persons shall work under the direct supervision of a trained operator, until they have successfully completed the required training;

(b) All personnel hired before the effective date of this chapter shall have a period of 30 days after the effective date of this chapter to successfully complete the required training.

(5) Any individual or organization requesting the department to review their training courses for compliance with the requirements of this rule, shall submit copies of their training materials to the department prior to providing that training in the state. The materials submitted should include credentials of trainers and persons compiling the training materials, a copy of the classroom, Internet or correspondence course curriculum, copies of written materials to be received by trainees, a copy of the test to be given and answers to the test questions, and a statement indicating the length of time a classroom course will be conducted. The department shall review the materials and inform the applicant of its findings within 30 days from receipt of all training materials. When changes are made to a training course that has been reviewed and accepted by the department, those changes shall also be submitted to the department for review prior to making the changes permanent in the training literature.

(6) In order to inform and assist the customer in the proper use of tanning devices and suitable physical aids, such as handrails and floor markings, an operator or facility employee who has been trained in accordance with the requirements of this rule must be present when tanning equipment is used. Prior to initial exposure, each customer must be given a copy of a written warning and shall be provided the opportunity to read the copy of the warning specified in paragraph 64E-17.002(2)(a), F.A.C. The operator or employee shall then request that the customer sign a statement that the information has been read and understood and agrees to use protective eyewear. For illiterate or visually handicapped persons, the warning statement shall be read by the operator or employee in the presence of a witness. Both the witness and the operator or employee shall sign the statement. The customer must be informed whether the facility has liability insurance and the amount of such liability insurance shall be stated when requested.

(7) A written and/or electronic record shall be kept for a period of four years by the facility operator of each customer's signature, age, date of tanning visits, total number of tanning visits, tanning time exposures, and the name of the operator or employee who assisted the customer.

(8) A written report of any alleged tanning injury shall be forwarded to the local county health department which issued the license within five working days of its occurrence or knowledge thereof. The report shall include:

- (a) The date of alleged injury and name and contact information of the affected individual;
- (b) The name, location and license number of the tanning facility involved and the name of the operator or employee who assisted the customer;
- (c) The nature of the alleged injury and duration of the tanning exposure;
- (d) Name and address of the health care provider, and treatment, if any; and
- (e) Information on the device involved, such as the manufacturer, model number, lamp used, and any other information considered relevant to the situation by the local county health department.

(9) Burned-out or defective lamps or defective filters shall be replaced with a type intended for use in that device as specified on the product label on the tanning equipment or with lamps or filters that are equivalent under 21 C.F.R. 1040.20. When substitute lamps are being used, a statement from the manufacturer stating the replacement lamps are FDA equivalent must be kept within the facility and be available for review. If a tanning device has been reconditioned, a statement from the manufacturer or FDA stating the replacement lamps are equivalent must be kept within the facility and be available for review.

(10) The owner's manual for each tanning device shall be on file at the tanning facility.

*Specific Authority 381.89(6), (13) FS. Law Implemented 381.89(13) FS. History—New 1-12-93, Amended 8-7-96, Formerly 10D-112.006, Amended 5-10-05.*

#### **64E-17.005 Sanitary Facilities.**

(1) The water supply for the tanning facility shall comply with the provisions of Chapter 64E-8 or 62-550, F.A.C.

(2) Sewage disposal shall comply with the provisions of Chapter 64E-6 or 62-600, F.A.C.

(3) The sanitary facilities shall be kept clean, maintained and in compliance with Chapter 64E-10, F.A.C., and local building and plumbing codes.

*Specific Authority 381.89(13) FS. Law Implemented 381.89(13) FS. History—New 1-12-93, Amended 8-7-96, Formerly 10D-112.007.*

#### **64E-17.006 Licenses and Fees.**

(1) License required.

(a) Each tanning facility shall obtain a license from the department annually.

(b) Licenses for tanning facilities shall not be transferable from one location or person to another.

(c) All tanning facility licenses shall expire on September 30 of each year.

(d) Licenses shall be posted in a conspicuous location on the premises.

(2) License application.

(a) Each person who plans to construct, purchase, reopen, or operate a tanning facility shall apply for and receive a license from the department prior to the commencement of operation.

(b) Applications for initial licenses shall be accompanied by the annual or prorated fee required in subsection (5) and shall contain at least the following information:

1. Name, address and telephone number of the tanning facility and the owners and manager of the tanning facility.

2. The number and type of tanning devices located within the facility.

3. The geographic areas within the state to be covered, if the facility is mobile.

4. A statement that the applicant has read and understands the requirements of these rules.

5. A copy of the facility's operating and safety procedures.

6. A certificate of insurance or the name and policy number of the insurance company that provides liability insurance must be provided by facilities that have liability insurance, including the limits of liability.

(c) Persons with licenses for tanning facilities that have changed ownership, or that have licenses reinstated after revocation, or that have facility information changes, excluding name changes, compared to the original application, must comply with paragraph (b).

(3) License, Renewal, and Transfer.

(a) Before a license is issued to a newly constructed or remodeled tanning facility, an inspection shall be made by a representative of the department for the determination of compliance with the requirements of this rule.

(b) An application for renewal of an existing tanning facility license is not required except as provided in paragraph (2)(c) above.

(4) Reporting Changes.

(a) The licensee shall report changes to the department in writing before making any change which would render the information reported pursuant to subsection (2) above and contained in the application for license no longer accurate.

(b) This requirement shall not apply to changes involving the replacement of lamps with designated original equipment replacements or lamps which have been certified for use on those devices as equivalent lamps as specified by the product warning label and FDA policies applicable at the time of replacement of the lamps for tanning devices.

(c) The facility owner or manager shall maintain a copy on file of any manufacturer's literature demonstrating the equivalency of any replacement lamps for tanning devices.

(5) Fees.

(a) A person applying for an annual license shall pay the full fee. All other applicants, such as for a change of ownership, reinstatement after revocation of license or a new license after the first quarter shall pay a prorated fee on a quarterly basis. Annual fees must be received by the department within 30 days of written notification or a late renewal fee will be assessed. All tanning facilities shall pay an annual or prorated fee to the county health department according to the following:

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|------------------------------------|----------|
| 1. Annual License Fee (one device) | \$150.00 |
| Each additional device             | \$55.00  |
| Total fee not to exceed            | \$315.00 |
| 2. Late renewal of license         | \$25.00  |

(b) All fees collected pursuant to this rule shall be placed in the county health department trust fund to be used to meet the cost of carrying out the provisions of this rule. All fees submitted to the department are nonrefundable, once action has been taken on the application.



*Specific Authority 381.89(13) FS. Law Implemented 381.89(3)(a), (b), (c), (13) FS. History—New 1-12-93, Amended 8-7-96, Formerly 10D-112.008, Amended 5-10-05.*

**64E-17.007 Inspection, Enforcement and Penalties.**

(1) The result of each department inspection shall be recorded on DOH Form 4097, incorporated herein by reference, and a legible copy shall be provided to the operator. A copy of the latest inspection report shall remain on the premises and be available to any consumer who asks to see it.

(2) For violations of this chapter, the department shall issue a stop-use order to any tanning facility or pursue other enforcement action authorized by law.

(3) A facility's license shall not be suspended under this section for a period of more than 12 months. At the end of such period of suspension, the tanning facility may apply for reinstatement or reissuance of the license. A tanning facility which has had its license revoked must reapply to the department for a new license for that location.

(4) Whenever a license is denied, suspended, or revoked, or the department takes similar action that affects the substantial interests of a tanning facility, the department shall notify applicants of their right to request a hearing on the matter. Notification shall be in writing and it shall indicate that a hearing must be requested within 30 days of the applicant's receipt of the notice. The department shall grant or deny the hearing request within 10 days of receipt of said request. All hearings shall be conducted in accordance with the provisions of Chapter 120, F.S.

*Specific Authority 381.011(13), 381.89(13) FS. Law Implemented 381.89(3), (10), (12) FS. History—New 1-12-93, Amended 8-7-96, Formerly 10D-112.009*