

## Chapter DHS 161

### TANNING FACILITIES

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**Note:** Chapter HFS 161 was created as an emergency rule effective November 1, 1992. Chapter HSS 161 was renumbered chapter HFS 161 under s. 13.93 (2m) (b) 1., Stats., and correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1997, No. 502. **Chapter HFS 161 was renumbered chapter DHS 161 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.**

**DHS 161.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 254.34 (1) (a) and 255.08 (2) (b) and (12), Stats., to regulate the use of tanning devices in the interests of helping prevent injury and skin cancer caused or promoted by ultraviolet radiation emitted by tanning devices. The standards in this chapter conform generally to nationally accepted standards for protection against the harmful effects of ultraviolet radiation.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; correction made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476.

**DHS 161.02 Applicability.** This chapter applies to all persons who possess or operate tanning devices available to the public for the purpose of artificial light skin tanning, including those offered for use as part of a membership or premium offer in a health club, condominium ownership, apartment complex activity center, hotel or motel room rental.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93.

**DHS 161.03 Definitions.** In this chapter:

(1) "Applicant" means any person who applies to the department for a permit to operate a tanning facility.

(2) "Customer" means any member of the public who is provided access to a tanning device 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 device as a benefit of membership in or access to a health club, condominium ownership, apartment complex activity center, hotel or motel room rental or other offer.

(3) "Department" means the Wisconsin department of health services.

(4) "Operator" means an individual designated by the permit holder to manage the tanning facility and to assist and instruct the public in the correct operation of the tanning devices.

(5) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group or agency, or a representative or agent of any of these.

(6) "Protective eyewear" means any apparatus designed to be worn over the eyes by a user of tanning devices which absorbs all UV-A, UV-B and visible light up to 500 nanometers but permits sufficient light to pass through to allow a user to safely negotiate obstacles, and that complies with the standards set forth in 21 CFR 1040.20.

(7) "Radiation" means ultraviolet radiation.

(8) "Tanning device" means any equipment that emits electromagnetic radiation having wavelengths in air 200 to 400 nanometers and that is used for tanning of human skin and any equipment used with that equipment, including but not limited to protective

eyewear, timers and handrails, except that "tanning device" does not include a phototherapy device used by a physician.

(9) "Tanning facility" or "facility" means a place or business that provides access to a tanning device, which may be a room or booth or a group of rooms or booths housing ultraviolet lamps or products containing lamps intended for the irradiation of any part of the body for cosmetic or nonmedical-related purposes but does not include any sunlamp located in a bathroom or dressing room or any germicidal lamp used for bacteria control.

(10) "Ultraviolet radiation" means electromagnetic radiation with a wavelength in air of 200 to 400 nanometers.

(11) "UV-A" means ultraviolet radiation having a wavelength in air of 320 to 400 nanometers.

(12) "UV-B" means ultraviolet radiation having a wavelength in air of 290 to 320 nanometers.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; correction in (3) made under s. 13.93 (2m) (b) 6., Stats., Register, October, 1997, No. 502; correction in (3) made under s. 13.92 (4) (b) 6., Stats., Register January 2009 No. 637.

**DHS 161.04 Permit.** (1) No person may operate a tanning facility without a permit issued by the department.

(2) Application for a permit shall be made on a form provided by the department and shall be accompanied by a permit fee of \$15.00 for the period from November 1, 1992 to June 30, 1993, or for any part of that period, and \$10.00 annually after June 30, 1993.

**Note:** To obtain a copy of the application form for a permit to operate a tanning facility, write to the Radiation Protection Unit, Division of Public Health, P.O. Box 2659, Madison, WI 53701-2659.

(3) An application for a permit shall include all of the following:

(a) The name and complete mailing address of the tanning facility.

(b) The name of the facility operator.

(c) The phone number of the facility.

(d) The brand and model number of tanning devices.

(e) The primary type of business in which the facility is located.

(f) Any other information required by the department.

(4) Within 60 days after it receives a complete application for a permit, the department shall either approve the application and issue the permit or deny the application. If the application is denied the department shall give the applicant reasons, in writing, for the denial.

(5) Permits issued by the department shall expire annually on June 30.

(6) A permit holder shall notify the department in writing of any change in information that appears on the permit, such as facility ownership, business status or address. That notification shall be sent to the department within 30 days after the change is made.

**Note:** Send notice of change in permit information to the Radiation Protection Unit, Division of Public Health, P.O. Box 2659, Madison, WI 53701-2659.

(7) No permit issued by the department may be transferred from one person to another or from one facility to another.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93.

**DHS 161.05 Advertising.** (1) No tanning facility may state in any advertising, written or verbal, that the tanning facility holds a license or permit issued by the department to operate the tanning facility.

(2) No tanning facility may state in any advertising, written or verbal, that tanning has any health benefit or the tanning device is free of hazards from ultraviolet radiation.

(3) No person may state or imply that any activity under a permit has been approved by the department.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93.

**DHS 161.06 Public information.** (1) NOTICE. A tanning facility shall give written notice to each customer, before the customer uses a tanning device, of all of the following:

(a) Failure to wear protective eyewear provided by the tanning facility may result in damage to the customer's eyes and cause cataracts or other eye injury.

(b) Overexposure to a tanning device causes burns.

(c) Repeated exposure to a tanning device may cause premature aging of the skin and skin cancer.

(d) Abnormal skin sensitivity or burning of the skin while using a tanning device may be caused by any of the following:

1. Certain foods.

2. Certain cosmetics.

3. Certain medications, including but not limited to tranquilizers, diuretics, antibiotics, high blood pressure medications and birth control pills. The notice shall include a statement that any person who is taking medication should consult with a physician before using a tanning device.

(2) LISTS OF CERTAIN FOODS, CHEMICALS AND MEDICATIONS. Literature containing lists of known photosensitizing foods and medications shall be available at the facility for customer review.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93.

**DHS 161.07 Warning sign.** (1) LOCATION AND CONTENT. Tanning facilities shall prominently display a warning sign in each area where a tanning device is used. A sign shall be located within one meter of each device. The sign shall be readily legible, clearly visible and not obstructed by any barrier, equipment or other item present so that the customer can easily view the warning sign before turning on the tanning device. The sign shall convey the following directions and information:

(a) Follow instructions.

(b) Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of a tanning device can cause eye and skin injury and allergic reactions. Repeated exposure can cause chronic sun damage which is characterized by wrinkling, dryness, fragility and bruising of the skin and skin cancer.

(c) Wear protective eyewear. FAILURE TO USE PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.

(d) Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the 24 hours immediately preceding or immediately following the use of a tanning device.

(e) Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using tanning devices if you are using medications or have a history of skin problems, or believe yourself especially sensitive to sunlight. Women who are pregnant or using birth control pills and who use a tanning device may develop discolored skin.

(f) If you do not tan in the sun, you are unlikely to tan from the use of this device.

(2) LETTERING. The lettering on each warning sign shall be at least one centimeter high for the word "WARNING". All capital letters shall be at least 4 millimeters high and all lower case letters shall be at least 3 millimeters high.

**Note:** The department will provide one sign for each facility for duplication and placement as required.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93.

**DHS 161.08 Lamp replacement.** (1) A tanning facility shall post a sign in each area where a tanning device is used which states the date at which tubes, bulbs or lamps in that tanning device were replaced. The tanning facility shall maintain a record of the dates on which the tubes, bulbs or lamps were replaced.

(2) The tubes, bulbs or lamps shall be replaced at the frequency recommended by the manufacturer or when the tubes, bulbs or lamps become damaged or defective. A replacement lamp for a tanning unit shall be compatible with the original lamp as specified by the manufacturer of the unit or shall be substantially equivalent to the manufacturer's original lamp type. In this subsection, "substantially equivalent" means within 10% of the UV-B emission of the original lamp and meeting the performance requirements of the U.S. food and drug administration in 21 CFR 1040.20 (c) (1).

(3) A facility may only use tubes, bulbs or lamps which meet the standards of the U.S. food and drug administration in 21 CFR 1040.20. This applies to original or replacement tubes, bulbs or lamps.

(4) The facility shall maintain the device manufacturer's literature indicating the rating, output or intensity of the tube, lamp or bulb required for replacement.

(5) No tube, bulb or lamp designated for medical use only may be used.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93.

**DHS 161.09 Liability.** A tanning facility's compliance with ss. DHS 161.06 and 161.07 does not relieve the owner or any employee of the tanning facility from liability for an injury sustained by a customer from use of a tanning device.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93.

**DHS 161.10 Duties of the owner.** The owner of a tanning facility shall ensure that all of the following requirements are fulfilled:

(1) No customer under 16 years of age may be permitted to use a tanning device.

(2) During operating hours there shall be present at the tanning facility, in the tanning area, a trained operator who is able to inform customers about the tanning devices and assist customers in the proper use of the tanning devices. Training of the operator shall include:

(a) The requirements of this chapter.

(b) Procedures for correct operation of tanning devices.

(c) Recognition of injury and overexposure.

(d) Manufacturer's procedures for operation and maintenance of the tanning equipment.

(e) Determination of the customer's skin type using the skin types outlined in Appendix A of this chapter, and appropriate spacing of sequential exposures and maximum exposure times as recommended by the device manufacturer.

(f) Knowledge of potential photosensitizing agents.

(g) Procedures for sanitizing protective eyewear and tanning equipment.

(h) Emergency procedures in case of injury.

(3) Each tanning device shall be properly sanitized after each use with sanitizing agents approved by the manufacturer of the tanning device as safe and effective.

(4) Each customer, before he or she begins using a tanning device, shall be provided with properly sanitized and securely fitting protective eyewear that protects the wearer's eyes from ultra-

violet radiation and allows enough vision to maintain balance. The eyewear shall meet the requirement of 21 CFR 1040.20 (c) (4).

(5) A customer shall not be permitted to use a device unless the customer uses protective eyewear.

(6) For stand-up booths, there shall be physical barriers or other means such as handrails or floor markings to indicate the proper exposure distance between ultraviolet source and the customer's skin. Customers shall be shown how to use these aids. Access to a booth shall be of rigid construction. Doors shall open outwardly. Handrails and non-slip floor covering shall be provided.

(7) A timing device shall be provided for each tanning device that is accurate to within 10% of the maximum exposure. If the timing device is token operated, no customer may be issued more tokens than is required for that session.

(8) Each tanning device shall be equipped with a mechanism that allows the customer to turn the tanning device off when the customer is using the device.

(9) A customer shall be limited to the maximum exposure time recommended by the manufacturer for the type of tubes, bulbs or lamps in the device.

(10) A customer shall not be permitted to use a tanning device more than once every 24 hours.

(11) The temperature shall not exceed 100° F in the room in which the tanning device is located.

(12) A customer's statement of agreement required under s. 255.08 (10) (a), Stats., shall be retained for 3 years or until the customer signs a new statement.

(13) Only tanning equipment manufactured in accordance with the specifications set forth in 21 CFR 1040.20 may be used in tanning facilities.

(14) Protective acrylic sheets shall be in place when a tanning device is in use, except that the protective acrylic may be sleeves over the lamps in the upper portion of a device or over lamps in booth devices.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; correction in (12) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

**DHS 161.11 Reports of injury.** (1) If a person requires medical attention due to use of a tanning device, the permit holder or operator of the facility shall report that injury to the department in writing and send a copy of the report to the injured person. The permit holder of the tanning facility shall retain a copy of the report for 3 years. The report shall include all of the following:

(a) The name of the affected individual and date of the actual or alleged injury.

(b) The name and location of the tanning facility.

(c) The nature of the injury and identification of the tanning device and duration of the exposure.

(d) Any other information considered relevant to the situation.

(2) The department shall inspect a facility upon receipt of a notice of injury.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93.

**DHS 161.12 Denial, suspension or revocation of permit.** (1) **ACTION.** The department may deny issuance of a permit or suspend or revoke a permit issued under s. DHS 161.04 if the applicant or permit holder does not comply with or violates s. 255.08, Stats., or any provision of this chapter or if the applicant or permit holder does any of the following:

(a) Submits false or misleading information in the application or in reports.

(b) Fails to construct, operate or maintain the tanning facility in accordance with the application.

(c) Operates the tanning facility in a way that causes or creates a nuisance or hazard to the public health or safety.

(d) Violates any condition upon which the permit was issued.

(e) Fails to allow the department or a duly authorized agent to inspect the facility at a reasonable hour and in a reasonable manner for the purpose of determining compliance with this chapter.

(f) Fails to pay the permit fee.

(2) **NOTICE.** The department shall give written notice to the applicant or permit holder of its decision to not renew or to suspend or revoke a permit, with reasons for that decision and information that the applicant or permit holder may appeal the decision under sub. (3).

(3) **APPEAL OF DECISION TO DENY, REVOKE OR SUSPEND A PERMIT.** (a) Any person aggrieved by the department's decision to deny issuance of a permit or renewal of a permit or to suspend or revoke a permit may request a hearing on that decision under s. 227.42, Stats., which shall be limited to the issues stated as the basis for denial, suspension or revocation in the notice under s. DHS 161.04 (4) or sub. (2).

(b) The request for hearing shall be in writing, shall be filed with the department's office of administrative hearings, and shall be sent to that office so that it is received there within 30 days after the date of the notice under s. DHS 161.04 (4) or sub. (2). A request for a hearing is considered filed upon its receipt by the office of administrative hearings. Review is not available if the request is received more than 30 days after the date of the notice under s. DHS 161.04 (4) or sub. (2).

**Note:** The mailing address of the Office of Administrative Hearings is P.O. Box 7875, Madison, Wisconsin 53707.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; correction made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476.

**DHS 161.13 Penalties.** Any person who violates s. 255.08, Stats., or any requirement of this chapter may be required to forfeit not less than \$50 or more than \$250.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; correction made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476.