Pursuant to the authority vested in the Commissioner of Health by Sections 3551 and 3554 of the Public Health Law, Subpart 72-1 of Title 10 of the official compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

New subdivision (c) of Section 72-1.1 is added and subdivisions (c)-(k) are re-lettered (d) - (l) as follows:

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

Re-lettered subdivision (j) of Section 72-1.1 is amended as follows:

(j) **Sanitize** means adequate antimicrobial treatment by a disinfectant [determined to be] capable of [destroying] reducing the number of pathogenic [organisms] non-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.

Re-lettered subdivision (k) of Section 72-1.1 is amended as follows:

(k) **Tanning facility** means any establishment where one or more ultraviolet radiation devices are used, offered, or made available for use by any human being, [for which] whether or not a fee is charged, directly or indirectly, excluding a facility where such device is used by a qualified health care professional for treatment of medical conditions.
Paragraphs (1), (4) and (7) of subdivision (c) of Section 72-1.2(c) are amended and a new paragraph (8) is added as follows:

(1) the conspicuous posting of the tanning facility's [license] permit and appropriate warning signs;

* * *

(4) the requirement that each tanning facility provide [safety goggles] adequate protective eyewear and any other safety-related devices to customers without additional charge therefor;

* * *

(7) requiring patrons to provide identification and sign a statement of acknowledgment prior to undergoing ultraviolet radiation exposure at a tanning facility[.]; and

(8) requiring tanning facilities to restrict the use of ultraviolet radiation devices by persons under eighteen (18) years of age.

Paragraphs (4) and (7) of subdivision (b) of Section 72-1.3 is amended as follows:

(4) Failure to [assure and] maintain the accuracy of ultraviolet radiation device timers;

* * *

(7) Inadequate sanitizing of tanning beds, tanning booths, pillows, or headrests [or] and inadequate disinfection of reusable protective eyewear;
Subdivision (f) of Section 72-1.4 is amended as follows:

(f) [Operators of facilities doing business on the effective date of these rules shall apply for a permit within 60 days of the effective date of these rules.] Operators of tanning facilities [that will begin operation after the effective date of these rules] shall obtain a permit before beginning operation.

Subdivision (a) of Section 72-1.5 is amended as follows:

(a) A person operating a tanning facility shall allow the department and PIO representatives access to conduct inspections and access to all equipment and records as may be necessary to determine compliance with these rules [, provided such inspections are conducted during normal business hours] at any time, provided the tanning facility is in operation.

The title of Section 72-1.8 is amended as follows:

72-1.8 Patron identification[,] and acknowledgements [and consent requirements].

Paragraph (2) of subdivision (a) of Section 72-1.8 is amended as follows:

(2) No person under [17] eighteen (18) years of age shall be permitted to use an ultraviolet radiation device. [Persons 17 years of age to 18 years of age must provide a consent form as described in subdivision (d) of this section.]
Subdivision (b) of Section 72-1.8 is amended as follows:

(b) The operator shall provide to all patrons the department’s [information sheet] **Tanning Hazards Information Sheet** which advises of health risks and conditions under which the use of ultraviolet radiation is contraindicated, such as the use of photosensitizing drugs. Prior to initial exposure, each patron shall also be provided the opportunity to read a copy of the warning sign specified in Section 72-1.9(a)(2) of this Subpart.

Paragraph (1) of Subdivision (c) of Section 72-1.8 is amended as follows:

(1) During the initial visit to the tanning facility, the operator shall require that each patron [18 years of age and older] sign a statement that the warning sign and [informational pamphlet] **Tanning Hazard Information Sheet** has been read and understood prior to using any ultraviolet radiation device, and that the patron agrees to wear adequate protective eyewear.

Subdivision (d) of Section 72-1.8 is repealed.

Subdivision (a) of Section 72-1.9 is amended as follows:

Each tanning facility shall be constructed, operated and maintained [to] in good repair and shall meet the following minimum requirements:

(a) **Required warning sign[s].** (1) [Warning signs] The warning sign shall be 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. This sign is in addition to manufacturer’s signs affixed to the device.
(2) Each warning sign shall be at least [8.5] 11 inches by [11] 17 inches, and use upper and lower case letters which are at least 10 mm (0.39 inches) and 5 mm (0.20 inches) in height, respectively. Lettering shall be bolded as in the text below. Signs shall have the following wording:

* * * *

Subdivision (b) of section 72-1.9 is amended as follows:

*Posting of required [warnings] warning.* A warning sign shall be posted in the immediate proximity (within three feet) of each ultraviolet radiation device. The operator shall enter the manufacturer's maximum exposure time on the sign for the device it is posted near.

Paragraphs (1) and (4) of subdivision (c) of Section 72-1.9(c) is amended as follows:

(1) Only [adequately labeled] ultraviolet radiation devices labeled in accordance with all applicable federal regulations shall be used in tanning facilities.

(4) Timers shall be set by the operator or by a designated employee and patrons shall not have the ability to reset timers.

Paragraphs (5) and (6) of subdivision (c) of Section 72-1.9(c) are repealed and numbers (7) – (11) are renumbered (5) – (9).

Re-lettered paragraph (5) of subdivision (c) of Section 72-1.9(c) is amended as follows:
(5) All ultraviolet radiation devices and electrical components of such devices shall be [free of electrical hazards] maintained in good repair.

Paragraphs (1), (4), (5), (6) and (7) of subdivision (d) of Section 72-1.9 are amended as follows:

(1) Ultraviolet radiation devices [and protective eyewear] shall be cleaned and then sanitized with an adequate disinfectant after each use and protective eyewear shall be cleaned and then disinfected with an adequate disinfectant after each use.

* * *

(4) The ultraviolet radiation device shall be cleaned and then sanitized according to the following minimum provisions:

   (i) A clean paper or cloth towel shall be used each time the tanning device is cleaned [and sanitized];

   (ii) The disinfectant shall be one specifically manufactured for sanitizing ultraviolet light-emitting equipment and shall be prepared and used according to manufacturer’s [specifications] instructions found on the product label[;]

(5) [the disinfectant used to clean and sanitize protective eyewear shall be one specifically manufactured for sanitizing ultraviolet radiation protective eyewear and shall be prepared and used according to the manufacturer’s specifications.] Protective eyewear shall be cleaned and then disinfected according to the following minimum provisions:
(i) A clean paper or cloth towel shall be used each time the protective eyewear is cleaned; and

(ii) The disinfectant shall be one specifically manufactured for disinfecting protective eyewear and shall be prepared and used according to manufacturer’s instructions found on the product label.

(6) Each container of disinfectant shall be adequately labeled as to its contents. Written procedures maintained at the facility shall include proper mixing and handling instructions for each disinfectant used to ensure proper concentration and safe use of the disinfectant.

(7) [pillows] Pillows and headrests shall be covered in an easily cleanable material and shall be cleaned and then sanitized with an adequate disinfectant after each use.

Subdivision (a) and (d) of Section 72-1.10 is amended as follows:

(a) The operator shall ensure that each patron using an ultraviolet radiation device possesses adequate protective eyewear, and that such protective eyewear shall meet all applicable federal standards and regulations.

   *   *   *

(d) The protective eyewear provided by the operator other than single-use disposable eyewear shall be cleaned and then disinfected after each use according to provisions detailed in section 72-1.9(d)(5) of this Subpart.
Section 72-1.11 is amended as follows:


(a) The operator shall maintain a record of each patron’s tanning visits, recording the date, duration of tanning exposure, and ultraviolet radiation device used. Each record shall be maintained for a minimum of two (2) years and made available to the Permit Issuing Official or representative upon request.

(b) The operator [must] shall report certain injuries and illnesses to the PIO, and [to] keep a record of reportable injuries and illnesses on a form prescribed by the Department, as detailed in section 72-1.7 of this Subpart. Each record shall be maintained for a minimum of two (2) years and made available to the Permit Issuing Official or representative upon request.

(c) The operator [must] shall [keep and] maintain an equipment maintenance log as detailed in section 72-1.9(c)[(11)] of this Subpart. Each record shall be maintained for a minimum of two (2) years and made available to the Permit Issuing Official or representative upon request.

(d) The operator [must] shall maintain records showing the results of annual timer tests as detailed in section 72-1.9 (c), [(2)(i)] of this Subpart. Each record shall be maintained for a minimum of two (2) years and made available to the Permit Issuing Official or representative upon request.

(e) The operator shall maintain each patron’s signed Statement of Acknowledgement, as
detailed in section 72-1.8(c) of this Subpart, and make such documents available to the Permit
Issuing Official or representative upon request.
Regulatory Impact Statement

Statutory Authority:

The Commissioner of Health is authorized by Sections 3551 and 3554 of the Public Health Law (PHL) to promulgate rules and regulations necessary to carry out the provisions of Article 35-A of the PHL, which governs ultraviolet radiation devices.

Legislative Objectives:

The legislative objective of Article 35-A of the PHL is to ensure patrons of tanning facilities and ultraviolet radiation devices understand the dangers associated with such items and to limit the risks associated with the use of such devices and facilities.

Needs and Benefits:

Chapter 194 of the Laws of 2018 amended PHL Article 35-A, prohibiting children under 18 years of age from using tanning facilities and changing the definition of Tanning Facility to include all facilities, whether or not a fee is charged. The regulatory amendments reflect these statutory amendments. Additional proposed amendments are included to require a larger warning sign to accommodate the currently required notification and to enhance the consistency and clarity of the regulations.

Costs to Regulated Parties:

The proposed amendments ensure consistency between regulatory requirement and the PHL and do not impose any costs on permitted facilities. Chapter 194 of the laws of 2018 was
effective on August 16, 2018, and prohibited tanning facilities from allowing seventeen-year-old patrons to use tanning devices.

**Cost to State and Local Government:**

The proposed amendments will not result in any costs to local governments. The printing and distribution of the updated warning sign, tanning hazard information sheet, and acknowledgement form will be managed by the Department within existing resources.

**Paperwork:**

The proposed amendments will impose no additional paperwork on tanning facility operators.

**Local Government Mandates:**

The proposed regulations do not impose any new programs, services, duties or responsibilities on local government.

**Duplication:**

The proposed rule ensures consistency with state law. There are no duplicative or conflicting federal requirements.

**Alternatives Considered:**

No alternatives were considered as the proposed regulation conforms to requirements established in the PHL.
Federal Standards:

There are no federal standards pertaining to tanning facilities. There are federal standards governing the labeling and performance requirements of ultraviolet radiation devices. The proposed regulations do not conflict with or duplicate these requirements.

Compliance Schedule:

The proposed regulation will be effective upon publication of the Notice of Adoption in the New York State Register.

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STATEMENT IN LIEU OF

REGULATORY FLEXIBILITY ANALYSIS

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose any significant reporting, record keeping or other compliance requirements on small businesses or local governments.
STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.
STATEMENT IN LIEU OF JOB IMPACT STATEMENT

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.