



**NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
BOARD OF HEALTH**

**Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** The New York City Department of Health and Mental Hygiene (DOHMH) is proposing that the Board of Health amend the New York City Health Code to create a new Article 177, "Tanning Facilities." The Department intends to assume regulatory authority over indoor tanning facilities operating in New York City from the New York State Department of Health. Article 177 will include rules regulating the licensure, operation and inspection of these facilities.

**When and where is the Hearing?** The New York City Department of Health and Mental Hygiene will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM until 12:00 PM on November 18, 2013. The hearing will be in the New York City Department of Health and Mental Hygiene at 42-09 28<sup>th</sup> Street, 14th Floor, Room 14-34, Long Island City, NY 11101-4132.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the New York City Department of Health and Mental Hygiene through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [resolutioncomments@health.nyc.gov](mailto:resolutioncomments@health.nyc.gov).
- **Mail.** You can mail written comments to:  
New York City Department of Health and Mental Hygiene  
Board of Health  
42-09 28th Street, 14th Floor, CN31  
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to New York City Department of Health and Mental Hygiene at (347) 396-6088.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at (347) 396-6078. You can also sign up in the hearing room before the hearing begins on November 18, 2013. You can speak for up to five minutes.

**Is there a deadline to submit written comments?** Comments submitted by 5:00PM on November 18, 2013 will be considered.

**Do you need assistance to participate in the Hearing?** You must tell the Office of the General Counsel if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (347) 396-6078. You must tell us by November 4, 2013.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by DOHMH will be made available to the public within a reasonable period of time by the DOHMH Office of General Counsel.

**What authorizes the New York City Department of Health and Mental Hygiene to make this rule?** Sections 556, 558 and 1043 of the City Charter and section §3554(3) of the New York State Public Health Law authorize the New York City Department of Health and Mental Hygiene to make this proposed rule. This rule was included in the Department's Fiscal Year 2013 Regulatory Agenda.

**Where can I find the New York City Department of Health and Mental Hygiene rules?** The New York City Department of Health and Mental Hygiene's rules are in title 24 of the Rules of the City of New York.

**What rules govern the rulemaking process?** The New York City Department of Health and Mental Hygiene must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

## **Statement of Basis and Purpose of Proposed Rule**

### *Statutory Authority*

This amendment to the New York City Health Code (“Health Code”) is proposed pursuant to Sections 556, 558 and 1043 of the New York City Charter (“Charter”). Section 556 of the Charter grants the New York City Department of Health and Mental Hygiene (“Department”) jurisdiction to regulate all matters affecting health in the City of New York. Sections 558 (b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043 of the Charter grants rule-making powers to the Department. It also is being proposed pursuant to §3554(3) of the Public Health Law and 10 NYCRR §§72-1.1(d) and 72-1.2(b) and (c)<sup>i</sup>, which allow the New York State Department of Health to authorize local jurisdictions, such as the Department, to enact and enforce local regulations concerning tanning facilities.

### *Background*

As the U.S. Food and Drug Administration (FDA) has warned, “There is no such thing as a safe tan.”<sup>ii</sup> Tans are caused by the skin’s reaction to ultraviolet (UV) radiation and any exposure to UV rays can lead to skin cancer and other diseases. Ultraviolet radiation devices, or “indoor tanning devices,” are devices available at many facilities for members of the public to use to tan. In the State of New York, they generally are regulated by the New York State Department of Health under Article 35-A of the Public Health Law. Pursuant to State Department of Health regulations, local health departments, however, may request and be given authority by the State to regulate their operation locally.<sup>iii</sup> The Department has made such a request to regulate indoor tanning devices in the City of New York.

### *Tanning and Cancer*

Users of indoor tanning devices are at risk for multiple adverse health consequences. The World Health Organization’s International Agency for Research on Cancer (IARC) classifies indoor tanning devices, which emit UV radiation, as “Group 1”<sup>iv</sup> carcinogens because there is “sufficient evidence” that their use causes “carcinogenicity in humans.”<sup>v</sup> The IARC based its classification on evidence showing associations between indoor tanning and skin cancer (both melanoma and carcinoma) and eye cancer (ocular cancer).<sup>vi</sup> It observed that the risk of melanoma is “increased by 75% when the use of tanning devices starts before 30 years of age.”<sup>vii</sup> The U.S. Department of Health and Human Services’ National Toxicology Program similarly classifies tanning devices as, “known to be human carcinogens.”<sup>viii</sup> Skin cancer is the most common form of cancer in the United States, and annually costs the country an estimated \$1.7 billion in medical costs and results in \$3.8 billion in lost productivity.<sup>ix</sup> In New York State, approximately 2,000 men and 1,500 women are diagnosed with melanoma each year (averaged over 2005 through 2009)<sup>x</sup>.

### *Other Risks of Tanning*

In addition to increasing the risk of certain cancers, the use of indoor tanning devices can also cause ocular damage, premature aging of the skin, immune system repression and exacerbation of pre-existing medical conditions.<sup>xi</sup> Indoor tanners may also experience serious burns requiring emergency medical treatment. In the U.S., according to the FDA, an average of 1,800 emergency department visits are caused by UV tanning devices every year,

and the number of burn cases treated by doctors or urgent care clinics is probably significantly higher.<sup>xii</sup> A study of adolescent indoor tanning practices between 1998 and 2004 found that over 60% of indoor tanners between the ages of 16 and 18 years old reported experiencing erythema, or burns, after indoor tanning sessions.<sup>xiii</sup>

### *Frequency and Risk*

The earlier a person begins indoor tanning and the more frequently they tan, the greater the risk is that they will develop skin cancer. Research has demonstrated a strong “dose response” relationship between melanoma risk and the total hours of indoor tanning over a lifetime. This means the risk of cancer from indoor tanning is cumulative and increases with every use.<sup>xiv</sup> Early and frequent use of indoor tanning devices, however, is not uncommon. While minors under the age 17 are legally prohibited from tanning in the state of New York, (Chapter 105, Laws of 2012), the use of tanning among older adolescents and young adults is prevalent and frequent. The most recent national Youth Risk Behavior Survey (YRBS, 2011) found that approximately 40% of non-Hispanic white females ages 17-18 have used a tanning device in the last year *and* that approximately 24-30% of that group reporting tanning at least 10 times in the last 12 months.<sup>xv</sup> A similar study of adults (the National Health Interview Survey, 2010) found that approximately 30% of non-Hispanic white females between the ages of 18-25 reported indoor tanning at least once annually.<sup>xvi</sup> Among adults who tan, approximately 50 percent reported using tanning devices more than 10 times in a year, with women reporting that they use them an average of 20 times per year.<sup>xvii</sup> Among youths ages 16 to 18 who tan indoors, the average number of visits is approximately nine times per year.<sup>xviii</sup> Multiple studies have shown that the repeated use of indoor tanning may result in behavioral consequences, including physical and psychological addiction to tanning. In other words, the more people tan, the more they feel compelled to tan, increasing their health risks.<sup>xix</sup>

### *Efforts to Reduce Tanning*

Despite the large body of evidence documenting the health risks associated with indoor tanning, indoor tanning rates have continued to increase.<sup>xx</sup>

A study of university-age students found that the students’ general understanding of the health risks associated with indoor tanning did not influence their decision to indoor tan.<sup>xxi</sup> A study by the FDA of its own warning material found that a modified warning message “may more effectively convey [the] risks [of indoor tanning] than the current labeling requirements,” which mandate that labels state factual information about the dangers of indoor tanning devices.

### *Proposed Rule Elements and Goals*

The Department would, if approved, assume regulatory authority of tanning facilities within New York City from the New York State Department of Health. Consistent with State law, these rules are being proposed as part of that oversight.

The proposed rules are intended to reduce the risk of tanning-related health effects among tanning facility patrons by increasing the awareness of the risks of indoor tanning and establishing the safer and more sanitary operation of tanning facilities. These rules: 1) provide definitions and requirements for permit issuance, inspection and operation of

tanning facilities, and 2) would enable the Department to apply successful strategies used successfully to change risky behavior.

The New York City Department of Health and Mental Hygiene’s authority for these rules is found in sections 556, 558 and 1043 of the City Charter and section §3554(3) of the New York State Public Health Law.

New material is underlined.  
[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

The proposal is as follows:

**RESOLVED**, that the Table of Contents of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, be amended by adding a new Article 177, titled “Tanning Facilities,” providing for rules and requirements for the operation of tanning facilities, to be listed as follows:

**HEALTH CODE OF THE CITY OF NEW YORK**

- TITLE I SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS
- TITLE II CONTROL OF DISEASE
- TITLE III MATERNAL, INFANT, CHILD AND SCHOOL HEALTH SERVICES
- TITLE IV ENVIRONMENTAL SANITATION
  - PART A FOOD AND DRUGS
  - PART B CONTROL OF ENVIRONMENT

\*\*\*  
**ARTICLE 177 TANNING FACILITIES**

- TITLE V VITAL STATISTICS
- \*\*\*  
\*\*\*

*Notes: The Department proposes that the Board of Health create a new Article 177 of the Health Code, titled “Tanning Facilities,” in order for the Department to assume regulatory authority over tanning facilities in New York City from the New York State Department of Health and to provide for appropriate rules and requirements for their operation.*

**RESOLVED**, that Title IV of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, be amended to include a new Article 177, titled “Tanning Facilities,” providing for rules and requirements for the operation of tanning facilities, to be printed together with explanatory notes, to read as follows:

**ARTICLE 177**  
**TANNING FACILITIES**

## **General Provisions**

§177.01 Applicability.

§177.03 Definitions.

§177.05 General Requirements.

§177.07 Enforcement.

§177.09 Modifications.

## **Facility Operations**

§177.11 Operator Responsibilities.

§177.13 Patron Identification, Acknowledgements and Consent.

§177.15 Facilities and Equipment.

§177.17 Record Keeping.

§177.19 Injury or Illness Incident Reporting.

§177.21 Severability.

## **General Provisions**

### **§177.01 Applicability.**

(a) The requirements of this Article apply to all tanning facilities, as defined in §177.03, including, but not limited to, those located in tanning parlors and salons, hair and nail salons, gymnasia and health establishments, apartment houses, condominiums, country clubs, or hotels.

(b) This Article does not apply to facilities where ultraviolet radiation devices are used by a qualified health care professional to treat medical conditions.

### **§177.03 Definitions.**

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

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

“CFR” means the Code of Federal Regulations.

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

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

such exam. A course may include classroom instruction, correspondence learning or online certification.

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

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

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

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

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

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

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

“Tanning facility” means any establishment where one or more ultraviolet radiation devices are used, offered, or made available for use by any human being, for which a fee is charged, directly or indirectly.

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

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

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

### **§177.05 General Requirements.**

(a) Except as provided for in subdivision (b) of this section, a tanning facility in the city cannot be in operation unless the facility has been issued a permit by the Department.

(b) A facility in possession of a State-issued permit on the effective date of this Article will be deemed in compliance with this section and must continue to operate in compliance with the terms of its State-issued permit. Upon the expiration of the facility’s State-issued permit,

the facility must apply to the Department for a permit as specified in this section. Upon the expiration of its State-issued license, any such facility may not continue to operate unless it has been issued a permit by the Department.

(c) A facility's permit to operate must be conspicuously posted within the tanning facility. Upon the effective date of this Article and until its State-issued license expires, a facility operating pursuant to a State-issued license must conspicuously post such license within the tanning facility.

(d) In addition to the application fee prescribed in Article 5 of this Code, an application for a permit must also be accompanied by payment of an inspection fee in the amount of \$50 for each ultraviolet radiation device at the tanning facility.

(e) A permit issued pursuant to this Article will be issued to a specific person and will be valid only for a specified location.

### **§177.07 Enforcement.**

(a) Inspections. Each operator will allow the Department to inspect the tanning facility, its equipment and records when the facility is doing business.

(b) Inspection reports. The tanning facility will maintain the inspection report provided by the Department in its records until its next inspection.

(c) Public health hazards. Where one or more of the following public health hazard conditions exists, the Department will order immediate correction or may order the facility, or any portion of it, to immediately close. Any facility that is ordered to close may not reopen until the hazardous condition(s) that were the basis of the order are corrected to the satisfaction of the Department. Public health hazards that may result in an order to immediately close are:

(1) Wiring or electrical system components that have not been maintained, such that an imminent fire or shock hazard exists;

(2) Any ultraviolet radiation device that is not adequately labeled;

(3) Any ultraviolet radiation device that is not being operated in accordance with its label, FDA-certified manufacturer's recommendations and operating manual, or any provision of this Article;

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

(5) Failure to ensure that patrons possess adequate protective eyewear;

(6) Failure to provide adequate sanitizing of tanning beds, tanning booths, pillows, headrests or reusable protective eyewear;

(7) Failure to provide timer lockout or remote timer controls; or

(8) Any other condition determined by the Department to be an imminent risk to the public's health and safety.

(d) Violations and Penalty. In lieu of revoking, suspending or annulling a permit, the Department may assess a civil penalty of two hundred fifty dollars for any violation of this Article.

### **§177.09 Modifications.**

(a) An operator may submit a written request to the Department for a modification of any provision of this Article where there are unusual or substantial practical difficulties with the strict compliance with such provision, provided that the health and safety of the public will not be adversely affected.

(b) The Department may approve, on written application and after review, a request for modification when strict application of any provision of this Article presents unusual hardships. The Commissioner, in a specific instance, may modify the application of such provision(s) consistent with the general purpose of this Article and upon such conditions as, in his or her opinion, which are necessary to protect the health or safety of the public. An operator must meet all terms of an approved modification, including the effective date, the time period for which the modification is granted, the requirements being varied and any other conditions specified by the Department.

### **Facility Operations**

#### **§177.11 Operator Responsibilities.**

(a) An operator must be present at a tanning facility whenever any ultraviolet radiation device is available for use by a patron. The operator and all employees who are authorized to operate ultraviolet radiation devices must have successfully completed formal training before operating any ultraviolet radiation device.

(b) The operator must limit patrons' exposure time as recommended by the tanning device manufacturer on the label for such device and in the operating instruction manual such that a patron may not exceed the maximum exposure time within any 24-hour period.

(c) The operator must perform annual tests on all tanning device timers to ensure that the requirements of section 177.15(c)(2)(i) through (v) are met. Timer tests must be documented and recorded as required by section 177.17 of this Article.

(d) The operator must inform each patron of the location of the tanning device termination switch.

(e) The operator must ensure that each patron using an ultraviolet radiation device possesses adequate protective eyewear.

(f) Each tanning facility must maintain and make available to the Department upon request a list of its operators and, for each operator, a certificate of formal training showing that the operator was trained in accordance with this section.

(1) The Department will approve formal training courses that can issue certificates of formal training for operators. The Department will maintain a list of approved operator training courses on its website.

#### **§177.13 Patron Identification, Acknowledgements and Consent.**

(a) Patron Identification and Age Verification.

(1) An operator must require that every patron provide a driver's license, or other form of photo identification issued by a government entity or educational institution, indicating that the patron is at least 18 years of age.

(2) No one under seventeen (17) years of age will be permitted to use an ultraviolet radiation device in a tanning facility. Any patron who is seventeen (17) years of age must provide the operator with a parental consent form as described in subdivision (b) of this section before being allowed to use an ultraviolet radiation device.

(3) The operator must conspicuously post a sign in or near the facility reception area that reads in prominent print:

IF YOU ARE UNDER THE AGE OF 17, YOU ARE PROHIBITED FROM TANNING.  
IF YOU ARE 17 YEARS OLD, YOU MUST HAVE YOUR PARENT OR LEGAL  
GUARDIAN SIGN A WRITTEN CONSENT FORM, IN FRONT OF A TANNING  
FACILITY OPERATOR, BEFORE YOU CAN TAN.

(b) Consent Form Required for Patrons Aged 17. The operator may not permit anyone who is seventeen (17) years of age to use an ultraviolet radiation device at the operator's tanning facility unless that person provides the operator with a written consent form prescribed by the State. The written consent form must:

- (1) Be signed and dated by the person's parent or legal guardian in the presence of the operator or designated employee;;
- (2) Be signed and dated by the operator or designated employee.
- (3) Indicate that by signing, the person's parent or legal guardian acknowledge that he or she has received and read the Health Risk Advisory, as described in subdivision (c) of this section, and the Statement of Acknowledgment, as described in subdivision (d) of this section; and
- (4) Indicate that by signing, the parent or legal guardian acknowledges that the person has agreed to wear protective eyewear;

The form expires twelve (12) months from the date it was signed and, after expiration, a new form must be signed before such person may use an ultraviolet radiation device. The original signed consent form must be retained by the facility for a period of twelve (12) months and may be retained off-premises provided that an electronic image or copy of the original signed consent form is readily available to the owner, operator or employee responsible for the operation of the ultraviolet radiation device of such facility.

(c) Health Risk Advisory. During the patron's initial visit to the tanning facility, the operator must provide the Department's Health Risk Advisory to the patron. The Health Risk Advisory advises the patron of the health risks associated with the use of an ultraviolet radiation device.

(1) The Department will make available a copy of the current Health Risk Advisory with which the operator may make sufficient copies for all patrons. The copies must be the same size of the original Health Risk Advisory provided by the Department.

(d) Statement of Acknowledgement. No patron may undergo ultraviolet radiation exposure at a tanning facility without reading and signing a Statement of Acknowledgement, in a form prescribed by the State, that meets the following requirements:

(1) The statement of acknowledgement must declare that the patron has read and understands the Health Risk Advisory.

(2) The patron agrees to wear adequate protective eyewear during the entire ultraviolet radiation exposure.

(3) The operator or a designated employee must also sign and date the statement.

(4) The statement of acknowledgement expires twelve (12) months from the date it was signed. The original signed consent form must be retained by the facility for a period of twelve (12) months and may be retained off-premises provided that an electronic image or copy of the original signed consent form is readily available to the owner, operator or employee responsible for the operation of the ultraviolet radiation device of such facility.

### **§177.15 Facilities and Equipment.**

Each tanning facility must meet the following minimum requirements:

(a) Required Signs and Labels.

(1) Warning Signs. For each ultraviolet radiation device in the facility, there must be a warning sign posted in the immediate vicinity of the device. The Department will provide the warning signs to the operator. Warning signs must be: within three feet of the device, at eye level, readily legible, clearly visible, and not obstructed by any barrier, equipment, or other item present so that the patron can easily view the warning sign before energizing the ultraviolet radiation device.

(2) Ultraviolet Radiation Device Label. Each ultraviolet radiation device must have a permanent label affixed or inscribed on the exterior of the device, as required by the FDA. The device label must be clearly legible and may not be obscured, altered or tampered with.

(b) Instruction Manual. For each ultraviolet device in use in the tanning facility, a current manufacturer's operating instruction manual must be maintained onsite by the operator. The operating instruction manual must meet the applicable FDA requirements of 21 CFR §1040.20(e) or any successor regulation.

(c) All ultraviolet radiation devices must be adequately maintained and operated to meet the manufacturer's recommendations, and to meet the following minimum requirements:

(1) Label. Each ultraviolet radiation device must be adequately labeled as specified under paragraph (2) of subdivision (a) of this section.

(2) Timer. Each ultraviolet radiation device must have a timer that meets the following minimum requirements:

(i) Each ultraviolet radiation device must incorporate a timer system with multiple timer settings as specified on the manufacturer's label. The maximum timer interval(s) may not exceed the manufacturer's maximum recommended exposure time.

(ii) No timer interval may have an error greater than  $\pm 10\%$  of the maximum timer interval for the product.

(iii) The timer may not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle when emission from the ultraviolet lamp has been interrupted.

(iv) Only the operator or a designated employee is allowed to set the device timer.

(v) Facilities must have remote timer controls or a lock out device prior to the operation of ultraviolet radiation devices.

(3) Each ultraviolet radiation device must allow the patron using such device to manually terminate ultraviolet radiation emission at any time by using a termination switch and without disconnecting the electrical plug, removing the ultraviolet lamp or leaving the immediate environs of the ultraviolet radiation device.

(4) All ultraviolet radiation devices must be free of electrical hazards.

(5) All ultraviolet lamps must be shielded according to the manufacturer's specifications to protect patrons from injury caused by touching or breaking lamps.

(6) For stand-up booths:

(i) There must be physical barriers or other means, such as handrails or floor markings, to indicate the recommended exposure distance between ultraviolet lamps and the patron's skin.

(ii) Doors must open outwardly. Handrails and non-slip floors must be provided.

(7) The temperature within the ultraviolet device must remain below 100 degrees Fahrenheit during the operation of the device.

(8) Defective or burned out ultraviolet lamps or filters must be replaced with a type compatible for use in that device, as specified on the product label on the ultraviolet radiation device or as recommended by the manufacturer's original specifications. Replacement lamps or filters must be "compatible" as provided in 21 CFR §1040.20(e) or any successor regulation. Replacement of lamps and compatibility documentation must be recorded as a part of the maintenance log specified in section 177.17 of this Article.

(9) Equipment must be regularly maintained according to the manufacturer's recommendations.

(10) All ultraviolet radiation devices must meet the irradiance limitations set forth by the FDA performance requirements provided in 21 CFR §1040.20(c)(1) or any successor regulation. All ultraviolet radiation devices may not transmit measurable radiation in wavelengths less than 200 nanometers.

(11) All ultraviolet radiation devices must be maintained and operated so that the manufacturer's recommended maximum exposure time does not result in an exposure which exceeds the limits of Minimal Erythema Dose (MED) or Minimal Melanogenic Dose (MMD) as set forth by the FDA and as measured by the Department with an approved measuring device and calculated according to the current FDA procedure (Food and Drug Administration Policy on Maximum Timer Interval and Exposure Schedule for Sunlamp Products, 8/21/86) or its successor.

(d) Protective eyewear.

(1) The operator must have available for patron use an adequate number of sets of protective eyewear at no additional charge to patrons. Alternatively, patrons may use their own protective eyewear.

(2) The protective eyewear that the operator provides, unless it is single-use disposable eyewear, must be disinfected after each use as specified in subdivision (e) of this section.

(e) Sanitation. The operator must maintain all facilities in a sanitary condition. The facilities must meet the following minimum requirements:

(1) Ultraviolet radiation devices and protective eyewear must be cleaned with an adequate disinfectant or sanitizer after each use, according to the following minimum provisions:

(i) The ultraviolet radiation device

A. A clean paper or cloth towel must be used each time the tanning device is cleaned and sanitized; and

B. The disinfectant must be one specifically manufactured for sanitizing ultraviolet light-emitting equipment and must be prepared and used according to manufacturer's specifications.

(ii) The protective eyewear must be cleaned with disinfectant specifically manufactured for sanitizing ultraviolet radiation protective eyewear and must be prepared and used according to the manufacturer's specifications.

(iii) Linens and other cloth.

A. Pillows and headrests must be covered in an easily cleanable material and must be sanitized with an adequate disinfectant after each use; and

B. If towels or other linens are provided for patron use, they must be washed with a detergent in hot water, rinsed, and thoroughly dried after each use.

(2) When the operator dilutes a concentrated disinfectant instead of using a commercially prepared, full-strength disinfectant, it must be done in accordance with the manufacturer's recommendations. A test kit or other device that accurately measures the concentration of the disinfectant in parts per million (ppm) must be used to measure the strength of the solution. The diluted disinfectant must be tested when initially prepared and at least weekly after that to ensure it continually meets the minimum concentration requirements of the manufacturer's recommendations.

(3) Written procedures maintained at the facility must include proper mixing and handling instructions for each disinfectant used to ensure proper concentration and safe use of the disinfectant.

### **§177.17 Record Keeping.**

(a) Patron record. The facility must maintain a record of each patron's tanning visits, recording the date, duration of tanning exposure, and ultraviolet radiation device used and the name of person who assisted the patron in use of the ultraviolet radiation device. The facility must maintain each record on a form provided by the Department for a period of at least two (2) years after the date of the patron's last visit.

(b) The operator must keep and maintain a log of the equipment maintenance required by section 177.15(c)(9) of this Article. The operator must maintain the equipment log for a minimum of two (2) years and must produce such log upon Department inspection of the facility or upon Department request.

(c) The operator must maintain records showing the results of annual timer tests as detailed in section 177.11(c) of this Article. The operator must maintain each record for a minimum of two (2) years.

(d) The operator must maintain all records and reports required by this Article on the premises of the facility, unless an alternative is provided for in this Article, and must make them available for review by the Department on request.

### **§177.19 Injury or Illness Incident Reporting.**

(a) Twenty-Four Hour Notification. The operator must report any injury or illness incidents occurring as a result of using an ultraviolet radiation device to the Department within twenty-four (24) hours of its occurrence. Reportable injuries and illnesses include, but are not limited to:

- (1) all eye injuries requiring medical attention;
- (2) all burns requiring medical attention;
- (3) any other injury or illness incident resulting from the use of an ultraviolet radiation device for which medical care has been obtained.

(b) Report. The incident report required by subdivision (a) of this section must be in the form and manner prescribed by the Department and must include:

- (1) The name of the operator;
- (2) The date, time and description of the incident;
- (3) The name and contact information of the affected individual;
- (4) Information on the device involved in the injury, including the serial number, model number, and type of ultraviolet lamps installed in the device;
- (5) The nature, cause, and extent of the alleged injury and the duration of the ultraviolet radiation exposure;
- (6) The name and address of the health care provider and treatment administered, if known;
- (7) Actions taken by operator or other employees at the facility; and,
- (8) Any other information that may be requested by the Department.

(c) All injury and illness incident reports must be maintained at the tanning facility for a minimum of two (2) years from the date of the injury or illness and must be made available for review by the Department on request.

### **§177.21 Severability.**

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

\*\*\*

*Notes: The Department proposes that the Board of Health create a new Article 177 of the Health Code, titled "Tanning Facilities", in order for the Department to assume regulatory authority over tanning facilities in New York City from the New York State Department of Health and to provide for appropriate rules and requirements for their operation.*

**RESOLVED**, that Section 5.07 of Article 5 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, as last amended by resolution on September 13, 2012, is amended to add new and renewal permit fees for tanning facilities, to be printed together with explanatory notes, to read as follows:

**§ 5.07 Expiration dates; fees.**

(a) \*\*\*

Description of Activity Under Permit Certificate of Qualification	Section Reference	Fee	Date Expiration
***	***	***	***
<u>TANNING FACILITY</u> <u>Permit to operate a tanning facility</u>	<u>§177.05(a)</u>	<u>\$30.00</u> <u>(\$1.25 per</u> <u>month or</u> <u>each portion</u> <u>of a month</u> <u>thereof)</u>	<u>Up to 2 years</u> <u>from date of</u> <u>issuance</u>

\*\*\*  
\*\*\*

*Notes: The Department proposes that the Board of Health amend §5.07 to add new and renewal tanning facility permit fees.*

\*\*\*  
\*\*\*

<sup>i</sup> New York Codes, Rules and Regulations, (NYCRR), Title 10, Part 72, Subpart 72-1. Electronic version:

[http://www.health.ny.gov/regulations/nycrr/title\\_10/part\\_72/subpart\\_72-1.htm](http://www.health.ny.gov/regulations/nycrr/title_10/part_72/subpart_72-1.htm)

<sup>ii</sup> FDA, The Risks of Tanning: <http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/Tanning/ucm116432.htm>.

<sup>iii</sup> New York Codes, Rules and Regulations, (NYCRR), Title 10, Part 72, Subpart 72-1.

<sup>iv</sup> Group 1 is the IARC's highest cancer risk category and includes other well-established carcinogens like asbestos, arsenic and tobacco smoke. IARC, Agents Classified by the IARC Monographs, Volume 1-104: <http://monographs.iarc.fr/ENG/Classification/ClassificationsGroupOrder.pdf>.

<sup>v</sup> IARC, Preamble: <http://monographs.iarc.fr/ENG/Preamble/CurrentPreamble.pdf>.

- 
- <sup>vi</sup> IARC Monographs on the Evaluations of Carcinogenic Risks to Humans, Volume 100, Part D: Radiation. WHO Press, 2009. See also, Special Report: Policy, A Review of Human Carcinogens – Part D: Radiation. *The Lancet*, August, 2009; and Zhang et al., Use of Tanning Beds and Incidence of Skin Cancer, *Journal of Clinical Oncology*, May 10, 2012.
- <sup>vii</sup> IARC, 2009; See also, Dennis K. Woo and Melody J. Eide. Tanning Beds, Skin Cancer, and Vitamin D: An Examination of the Scientific Evidence and Public Health Implications, *Dermatologic Therapy*, 2010.
- <sup>viii</sup> U.S. Department of Health and Human Services, Public Health Services, National Toxicology Program, *Report on Carcinogens*, 12<sup>th</sup> ed.: Exposure to Sunlamps or Sunbeds (2011).
- <sup>ix</sup> CDC Morbidity and Mortality Weekly Report, Use of Indoor Tanning Devices by Adults – United States, 2010. Volume 61, Number 18. May 11, 2012; see also Bickers et al., The Burden of Skin Disease. *Journal of American Academy of Dermatology*. 2006.
- <sup>x</sup> New York State Department of Health, New York State Cancer Registry. Skin Cancer in New York State, Fifth Annual Report to the Governor of New York, the Temporary President of the Senate, and Speaker of the Assembly, 2012. Report available at: [http://www.health.ny.gov/statistics/diseases/cancer/skin/report/docs/2012\\_report.pdf](http://www.health.ny.gov/statistics/diseases/cancer/skin/report/docs/2012_report.pdf).
- <sup>xi</sup> James M. Spencer and Rex A. Amonette. Indoor Tanning: Risks, Benefits, and Future Trends, *Journal of the American Academy of Dermatology* (1995).
- <sup>xii</sup> National Electronic Injury Surveillance System, CDC. Reported on FDA website: <http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/ucm116447.htm>
- <sup>xiii</sup> Cokkinides et al. Indoor Tanning among Adolescents in the US, 1998 to 2004. *Cancer*, January 2009.
- <sup>xiv</sup> Lazovich et al.. Indoor tanning and risk of melanoma: a case-control study in a highly exposed population. *Cancer Epidemiol Biomarkers Prev*. June, 2010.
- <sup>xv</sup> Guy et al. Indoor Tanning Among Young Non-Hispanic White Females. *Journal of the American Medical Association, Internal Medicine, Letters*. Published online August 19, 2013; See also, Mayer et al.. Adolescents' Use of Indoor Tanning: A Large-Scale Evaluation of Psychosocial, Environment, and Policy-Level Correlates. *American Journal of Public Health*. May, 2011. See also Cokkinides et al.. Use of indoor Tanning Sunlamps by US Youths, Ages 11-18 Years, and by their Parent or Guardian Caregivers: Prevalence and Correlates. *Pediatrics*. 2002. *American Journal of Public Health*. May, 2011.
- <sup>xvi</sup> Guy et al., 2013; See also reference ix, CDC MMWR, 2012.
- <sup>xvii</sup> See reference ix, CDC MMWR, 2012.
- <sup>xviii</sup> See reference xiii, Cokkinides et al., 2009.
- <sup>xix</sup> David E. Fisher and William D. James. Indoor Tanning – Science, Behavior, and Policy. *New England Journal of Medicine*. September 2010; see also, Catherine E. Mosher and Sharon Danoff-Burg. Addiction to Indoor Tanning: Relation to Anxiety, Depression, and Substance Use. *Arch Dermatol*, April, 2010.
- <sup>xx</sup> See reference vii Woo et al.; See also Purdue et al.. Recent Trends in incidence of cutaneous melanoma among U.S. Caucasian young adults. *Journal of Investigative Dermatology*. December. 2008: 128(12), 2905-2908
- <sup>xxi</sup> Knight et al.. Awareness of the Risks of Tanning lamps Does Not Influence Behavior Among College Students. *Arch Dermatol*. October, 2002.

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Rules Governing Tanning Establishments (Health Code Article 177)

**REFERENCE NUMBER:** 2012 RG 079

**RULEMAKING AGENCY:** Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: October 8, 2013

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE:** Rules Governing Tanning Establishments (Health Code Article 177)

**REFERENCE NUMBER:** DOHMH-24

**RULEMAKING AGENCY:** Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because the Health Code requires immediate compliance with its requirements to protect public health.

/s/ Ruby B. Choi  
Mayor's Office of Operations

10/8/2013  
Date