



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Title 24 of the Rules of the City of New York

What are we proposing? The Department of Health and Mental Hygiene (the “Department”) is proposing to add a new Chapter 14 (“Cleaning Park Playground Equipment”) to Title 24 of the Rules of the City of New York. The chapter would establish rules setting forth how far away from a spraying of pesticides park playground equipment must be in order to not have to be cleaned by the Department of Parks. These rules implement the new requirements set forth in Section 18-148 of Chapter 1 of Title 18 of the Administrative Code of the City of New York (the “Administrative Code”).

When and where is the hearing? The Department will hold a public hearing on the proposed Health Code amendments from 10AM to 12PM on May 29, 2019. The hearing will be at:

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, Room 8-25
Long Island City, NY 11101-4132

How do I comment on the proposal? Anyone can comment on the proposal by:

- **Website.** You can submit comments to the Department through the NYC rules Web site at <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail written comments to:
New York City Department of Health and Mental Hygiene
Office of General Counsel
Attn: Svetlana Burdeynik
42-09 28th Street, 14th Floor
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the New York City Department of Health and Mental Hygiene at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposal at the public hearing must sign up to speak. You can sign up before the hearing by calling at 347-396-6078/6116. You can also sign up in the hearing room before or during the hearing on May 29, 2019. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on May 29, 2019.

What if I need assistance to participate in the hearing? You must tell us 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. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by May 15, 2019.

This location is wheelchair-accessible.

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

What authorizes the Department to make these amendments? Section 556 of the Charter broadly authorizes the Department of Health and Mental Hygiene ("the Department") to regulate all matters pertaining to the health of the City. Section 1043 grants the Department rulemaking authority. Moreover, Local Law 71 of 2018 added a new Section 18-148 to Chapter 1 of Title 18 of the Administrative Code regarding cleaning of park playground equipment. The Department is authorized to promulgate rules necessary for implementation of this local law. These rules were not included in the Department's regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Where can I find the Department's rules? The rules of the Department of Health and Mental Hygiene can be found in Title 24 of the Rules of the City of New York.

What laws govern the rulemaking process? This notice is made according to the requirements of City Charter §1043.

Statement of Basis and Purpose

Background

Local Law 71 of 2018 added a new Section 18-148 to Chapter 1 of Title 18 of the Administrative Code to require that, within 24 hours of the City spraying a pesticide near a playground operated by or under the jurisdiction of the New York City Department of Parks and Recreation ("Parks Department"), the Parks Department clean the playground equipment located in that playground. Local Law 71 requires the Department of Health and Mental Hygiene (the "Department") to prescribe by rule the distance between the spraying and the playground equipment that will trigger the cleaning requirement.

Citywide policy and Chapter 12 of Title 17 of the Administrative Code, as added by Local Law 37 of 2005, promote the reduction of pesticide use by City agencies. Utilizing an integrated pest management ("IPM") approach at all times, City agencies implement a variety of strategies to control pests, and when pesticides are necessary to protect public health, use the least toxic products in the smallest amounts possible. As agencies rely on IPM techniques, the Department is aware of few circumstances when City agencies spray pesticides that have even the possibility of depositing on Parks Department playground equipment. Those circumstances include, for example, spraying to control mosquitoes to protect the public from West Nile virus and other mosquito-borne disease; to control stinging insects, such as wasps and hornets; and, starting in 2019, to assess approaches to control ticks. In addition, the Parks Department uses a variety of techniques to control weeds such as poison ivy. For example, when poison ivy is growing inside or within the area immediately outside of a playground, the Parks Department either manually removes the poison ivy or cuts the vine at the base and then paints the cut stem with herbicide. Spray is only used to control poison ivy in areas outside a playground.

The Department is not aware of any standard or guidance addressing whether and when to clean playground equipment in order to protect health following the spraying of pesticide. Two types of standards, however, are relevant and provide guidance for this proposed rule. First, the U.S. Environmental Protection Agency (EPA) uses the “no-observed-adverse-effect level” (“NOAEL”) as a benchmark for risk classification and assessment of pesticides. The NOAEL is set based on research demonstrating that there are pesticide exposure amounts that do not result in an observed harmful effect. Where a pesticide is applied in an amount that could not reasonably exceed the NOAEL, there is no public health basis to clean playground equipment. Applying the NOAEL to the circumstances here, the Department is proposing that the Parks Department not be required to clean playground equipment where the pesticide is sprayed in an amount that could not reasonably exceed the NOAEL.

Second, EPA pesticide labeling requirements and U.S. Fish and Wildlife Service (“FWS”) guidance set out buffer zones, which are areas within which pesticides must not or should not be sprayed in order to avoid pesticide drift into waterways, agricultural fields, and other areas that could result in exposures that could be toxic to living organisms. Buffer zones of 30 feet—or 80 feet for ultra-low volume application—have been established in a context that could be considered analogous to this one.¹ In the absence of specific standards or guidance regarding cleaning of playground equipment following pesticide spraying, the Department is proposing to apply these analogous standards regarding buffer zones.

The Proposed Amendment

The Department is proposing to add a new Chapter 14 to Title 24 of the Rules of the City of New York to implement the provisions of Section 18-148 of Chapter 1 of Title 18 of the Administrative Code, as added by Local Law 71 of 2018.

The proposed changes are as follows:

Underlined material is new.

Section 1. Title 24 of the Rules of the City of New York is amended by adding a new Chapter 14 (“Cleaning Park Playground Equipment”) to read as follows:

¹ See, e.g., US EPA (2008). Updated spray drift language for pyrethroid agricultural use products U.S. Environmental Protection Agency, Washington, DC. See, <https://www.epa.gov/sites/production/files/2015-08/documents/epapyrethroidletter.pdf>; US EPA (2014). Final Registration of Enlist Duo™ Herbicide. Washington, DC. EPA docket, EPA-HQ-OPP-2014-0195. See, <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OPP-2014-0195-0010&contentType=pdf>; White, J.A. 2004. Recommended Protection Measures for Pesticide Applications in Region 2 of the U.S. Fish and Wildlife Service, U.S. Fish and Wildlife Service, Region 2, Environmental Contaminants Program. 203p. See: https://www.fws.gov/southwest/es/arizona/documents/ecreports/rpmpa_2007.pdf.

CHAPTER 14

CLEANING PARK PLAYGROUND EQUIPMENT

§ 14-01 Scope and applicability. This Chapter applies to park playground equipment that is located within a playground operated by or under the jurisdiction of the New York City Department of Parks and Recreation (hereinafter referred to as “Department of Parks”).

§ 14-02 Definitions. When used in this Chapter, the following terms have the following meanings:

Minimum Distance from the Application of Pesticide. The term “minimum distance from the application of pesticide” means how near park playground equipment can be to the spraying of a pesticide without requiring the park playground equipment to be cleaned pursuant to § 18-148 of the Administrative Code.

No observed adverse effect level. The term “no observed adverse effect level” means the highest exposure level of a chemical at which no harmful effects have been seen in research and scientific studies, and which represents the common benchmark used by the federal environmental protection agency and the food and drug administration for risk classification and assessment of chemicals, including pesticides.

Playground. The term “playground” means an outdoor area open to the public where children play, which contains play equipment such as a sliding board, swing, jungle gym, or see-saw, or which is designated as a play area.

Park playground equipment. The term “park playground equipment” means playground equipment which is located within a playground operated by or under the jurisdiction of the department of parks, including those for which the department of parks has an agreement with a conservancy or other not-for-profit organization with respect to operation of any aspect of a playground.

Pesticide. The term “pesticide” means:

- i. any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; and

- ii. any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

§14-03 Minimum Distance from Application of Pesticides. Park playground equipment located less than a minimum distance of 30 feet from the application of pesticides using standard ground spraying equipment or 80 feet from the application of pesticides using ultra low volume spraying must be cleaned; except that such cleaning is not necessary if the pesticide is applied in an amount that could not reasonably exceed any “no observed adverse effect levels” associated with its chemical ingredients.

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

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

RULE TITLE: Cleaning of Playground Equipment in Parks

REFERENCE NUMBER: DOHMH-97

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Jacob Watkins
Mayor's Office of Operations

April 8, 2019
Date

**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: Cleaning of Playground Equipment in Parks

REFERENCE NUMBER: 2019 RG 002

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: March 29, 2019