New York City Department of Sanitation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing?
Pursuant to Local Law 69 of 2013, the New York City Department of Sanitation (DSNY) is proposing amendments to the rule that sets forth the requirements for a program for the recovery of refrigerants from refrigerant-containing appliances that are disposed of by residential generators.

When and where is the hearing? DSNY will hold a public hearing on the proposed rule on February 27, 2015. The public hearing will take place between 9:30 A.M. – 11:00 A.M. The hearing will be in Room 819 at 125 Worth Street

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

- **Website.** You can submit comments to the DSNY through the NYC rules Web site at http://rules.cityofnewyork.us.
- **Email.** You can email written comments to nycrules@dsny.nyc.gov
- **Mail.** You can mail written comments to DSNY, 125 Worth Street, Room 710, New York, NY 10013.
- **Fax.** You can fax written comments to DSNY at 212-788-3876.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing can sign up in the hearing room before the hearing begins on February 27, 2015.

Is there a deadline to submit written comments? The deadline for submitting written comments shall be February 27, 2015.

Do you need assistance to participate in the hearing? You must contact the Department of Sanitation's Bureau of Legal Affairs if you need a reasonable accommodation at the hearing because of a disability. 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 646-885-5006. You must tell us by February 21, 2015.

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/. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at 125 Worth Street, Room 710, New York, NY 10013.

What authorizes DSNY to make this rule? Sections 753 and 1043(a) of the New York City Charter and Section 16-485 of the New York City Administrative Code, as added by Local Law 69 of 2013, authorize DSNY to make this proposed rule. This proposed rule was not included in DSNY's regulatory agenda for this Fiscal Year because it was not contemplated when DSNY published the agenda.

Where can I find DSNY's rules? DSNY's rules are in Title 16 of the Rules of the City of New York.

What rules govern the rulemaking process? DSNY 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

Local Law 69 of 2013 makes original equipment manufacturers ("OEMs"), as defined by the law, responsible for the lawful recovery of refrigerants from their refrigerant-containing appliances when those appliances are discarded by residents. Local Law 69 was enacted in August 2013. Subsequently, a lawsuit challenging the validity of Local Law 69 was brought against the City of New York. As a result of the settlement of this lawsuit, the City proposes the following amendments to Chapter 17 of Title 16 of the Rules of the City of New York.

Specifically, the proposed rule amendments:

- Add certain new definitions and clarify existing defined terms;
- use the term "responsible party," defined as a brand owner or manufacturer, in place of the term "original equipment manufacturer";
- clarify the responsibilities of a responsible party;
- place additional requirements on the Department of Sanitation (DSNY) with regards to the information that must be contained in the biannual bill sent to a responsible party;
- establish a process by which a responsible party can challenge the biannual bill issued by the department;
- state that it will be a violation, punishable by a fine of $500, for any responsible party to dispose of a refrigerant-containing appliance without arranging for the lawful recovery of the appliance's refrigerants, as provided by Local Law 69; and
- state that enforcement proceedings may be brought as civil actions or in a proceeding before the Environmental Control Board.

DSNY's authority for these rules is found in sections 753 and 1043(a) of the New York City Charter and section 16-485 of the New York City Administrative Code.

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.

Section 1. Chapter 17 of Title 16 of the Rules of the City of New York is amended to read as follows:

Chapter 17

RECOVERY OF REFRIGERANTS

§17-01 Definitions. When used in this chapter:

"Appliance" means any device that contains refrigerants and can be used for household purposes including, but not limited to, room air conditioners, portable air conditioners, dehumidifiers, refrigerators, refrigerator-freezers, water coolers, or freezers.

"Appliance type" means any of the following categories of appliances: air conditioners, dehumidifiers, refrigerators, water coolers, or freezers.

"Brand owner" means a person or entity whose brand name appears on an appliance sold, offered for sale or distributed in the city.

"Manufacturer" means a person or entity who manufactures or has manufactured an appliance sold, offered for sale or distributed in the city.

["Original equipment manufacturer" ("OEM") means (1) a person or entity whose brand name appears on an appliance sold, offered for sale or distributed in the city or (2) a person or entity who manufactures or has manufactured an appliance sold, offered for sale or distributed in the city.]

"Orphaned product" means an appliance for which no brand owner or manufacturer exists.

"Recover" or "recovery" means to remove refrigerants from an appliance in such a way that the refrigerants are not released into the atmosphere pursuant to subpart F of part 82 of title 40 of the code of federal regulations.

"Refrigerants" means any substances consisting in whole or in part of a class I or class II ozone-depleting substance, which are used for heat transfer purposes and provide a cooling effect, including, but not limited, to chlorofluorocarbons, hydro-chlorofluorocarbons, or any other substitute substance as may be defined by the United States environmental protection agency. A class I or class II ozone-depleting substance shall be those substances as defined by the United States environmental protection agency in section 602 of the United States clean air act. A "substitute substance" shall be any environmental protection agency approved replacement for a class I or II ozone-depleting substance in a refrigeration or air-conditioning end-use. Refrigerants shall not include (1) any substance that the administrator for the United States environmental protection agency has determined can be safely vented, released or disposed of pursuant to 42 U.S.C. 7671g(c)(2) or (2) one or more of the following substances used alone or in combination with other compounds: CFC-11, CFC-12, CFC-113, CFC-114 or CFC-115.

"Residential generator" means any person, entity, agency, or institution in the city of New York that receives solid waste or recycling collection service from the department.

"Responsible party" means (1) a brand owner or (2) a manufacturer.

"Room air conditioner" means any electrical appliance that has a compressor, a condenser, an evaporator and a fan to cool and dehumidify the surrounding air and that is capable in ordinary usage of being mounted in a window or through a wall.

"Serviced by the department" means the recovery of refrigerants by the department from appliances that are set out for department collection in the city of New York and in compliance with applicable federal, state and local regulations.

§17-02 [OEM] Responsibility for Recovery.

(a) On or after July first, two thousand fourteen, [OEMs] responsible parties shall be responsible for the lawful recovery of refrigerants from their appliances that are disposed of by residential generators.

(b) [An OEM] A responsible party may elect to (i) establish its own refrigerant recovery program, (ii) participate with other [OEMs] responsible parties in a refrigerant recovery program or (iii) have its appliances serviced by the department under the department's refrigerant recovery program. No program established pursuant to paragraph (i) or (ii) of this subdivision may include curbside collection of appliances. All such programs must comply with applicable federal, state and local regulations regarding the lawful recovery of refrigerants.

§17-03 [OEM] Registration Requirements.

(a) By July first, two thousand fourteen, [OEMs] responsible parties must register with the department on a form provided by the department. Such form may be obtained from the department's website or by written request to:

[Bureau of Waste Prevention, Reuse and Recycling]

Bureau of Recycling and Sustainability
ATTN: Refrigerant Recovery Program
New York City Department of Sanitation
44 Beaver Street, 6th Floor
New York, NY 10004

(b) Such registration shall include:

(1) the name and billing address of the [OEM] responsible party;

(2) a statement indicating whether the [OEM] responsible party has elected to (i) establish its own refrigerant recovery program, (ii) participate with other [OEMs] responsible parties in a refrigerant recovery program, or (iii) have its appliances serviced by the department in the refrigerant recovery program provided pursuant to subdivision a of section 16-482 of the Administrative Code of the City of New York;

(3) a list of all brand names currently owned by and/or licensed to the [OEM] responsible party. If a manufacturer licenses the right to market and sell all models of an appliance type from the brand owner, it shall list all such appliance type(s) by brand;

(4) If [an OEM] a responsible party has elected to establish or participate in a refrigerant recovery program pursuant to paragraph one or two of subdivision b of section 16-481 of the Administrative Code of the City of New York, the registration shall also include:

(i) the name, title and contact information of the person designated by the [OEM] responsible party as the liaison for its refrigerant recovery program;

(ii) a toll-free telephone number and/or the address of a website where residential generators may obtain information regarding the [OEM's] responsible party's refrigerant recovery program; and

(iii) a brief description of the [OEM's] responsible party's refrigerant recovery program.

§17-04 Departmental Refrigerant Recovery Program.

(a) The department shall provide a refrigerant recovery program for appliances set out for department collection by residential generators. The department shall charge [OEMs] the responsible party a fee of [twenty] fifteen dollars for each of their appliances serviced by the department.

(b) The department shall bill [OEMs] responsible parties biannually for their appliances that are serviced by the department. The department shall provide [an OEM] a responsible party with a statement indicating how many of its appliances were serviced by the department. [If practicable,] [t]The department shall also provide the [OEM] responsible party with information indicating the number of the [OEM's] responsible party's appliances the department serviced by type [of appliance], the district where the appliances were serviced, the date on which the appliances were serviced, and [if available,] the serial or model numbers of the appliances serviced by the department. Payment of any fees not challenged in good faith pursuant to paragraph (1) of subdivision (c) of this section shall be due no later than [30] sixty days, plus an additional five days for bills that are mailed for delivery by the United State Postal Service, after the date the department issued the bill. Such date will be included in the bill. [The department shall first seek to bill the OEM whose brand name appears on the appliance sold, offered for sale or distributed in the city. If the department is unable to find the brand name, the department shall seek to bill the OEM who manufactures or has manufactured the appliance sold, offered for sale or distributed in the city.] The department shall first seek to bill the brand owner and then the manufacturer. However, if a manufacturer that licenses the right to market and sell all models of an appliance type from a brand owner (1) registers with the department as a responsible party, (2) lists any such appliance type on its registration form pursuant to paragraph (3) of subdivision (b) of section 17-03 and (3) provides the department a billing address within the United States, the department shall first seek to bill the manufacturer/licensee. If the manufacturer/licensee fails to timely pay a bill pursuant to this paragraph, the department may bill the brand owner. If the department determines that an appliance is an orphaned product or the department does not record a serial or model number for the appliance serviced, then no responsible party shall be billed.

(c) (1) No later than sixty days, plus an additional five days for bills that are mailed for delivery by the United States Postal Service, after a biannual bill is issued by the department, a responsible party may submit a challenge in good faith to fees contained in a biannual bill by sending a letter setting forth the specific reasons why the responsible party believes the fees are inaccurate or without legal basis and any necessary documentation or evidence to substantiate the challenge to:

Deputy Commissioner for Legal Affairs
New York City Department of Sanitation
125 Worth Street, Room 710
New York, NY 10013

(2) The department shall issue an initial response to any timely challenge submitted by a responsible party within sixty days of receipt. Such initial written response may be, but need not be, the Deputy Commissioner for Legal Affairs' final determination. If the department does not respond within sixty days, then the responsible party shall not be obligated to pay the disputed fees. The department shall issue a final determination when, in its discretion, it has determined the merit of the challenge. The department shall notify the responsible party of such final determination and shall make any necessary adjustments or corrections to the bill. Any remaining payments shall be due within thirty days after the date of issuance of such final determination.

[(c)] (d) The department shall provide a list on its website of all [OEMs] responsible parties that elect to (i) establish refrigerant recovery programs, or (ii) participate with other [OEMs] responsible parties in refrigerant recovery programs. Such list shall include a toll-free telephone number and/or a link to the address of a website where residential generators may obtain information regarding the [OEMs'] responsible parties' refrigerant recovery program, if such telephone number or website address has been provided to the department as required by section 17-03 of this chapter. If the department is aware of any appliance take-back program serving city residents that is sponsored by a utility company, it shall provide on such list a link to the address of the website for such utility-sponsored program.

§17-05 Annual Reporting.

(a) By July first, two thousand fifteen and annually thereafter, [an OEM] a responsible party who elects to (i) establish its own refrigerant recovery program or (ii) participate with other [OEMs] responsible parties in a refrigerant recovery program shall submit to the department an annual report on a form provided by the department. Such form may be obtained from the department's website or by written request to:

[Bureau of Waste Prevention, Reuse and Recycling]

Bureau of Recycling and Sustainability
ATTN: Refrigerant Recovery Program
New York City Department of Sanitation
44 Beaver Street, 6th Floor
New York, NY 10004

(b) [An OEM's] A responsible party's annual report shall include:

(1) a brief description of the [OEM's] responsible party's refrigerant recovery program and any changes thereto;

(2) a listing of the [OEM's] responsible party's current brand names;

(3) the number of appliances by appliance type and the total tonnage of appliances by appliance type serviced under the [OEM's] responsible party's refrigerant recovery program; and

(4) the volume of refrigerants by refrigerant type recovered under the [OEM's] responsible party's refrigerant recovery program.

§17-06 Enforcement.

(a) It shall be a violation of this section for [an OEM] a responsible party to fail to submit a registration or annual report required by this chapter. Any such violation shall be punishable by a fine of two hundred [and] fifty dollars per violation.

(b) It shall be a violation of this section for [an OEM] a responsible party or its agent to remove refrigerants from appliances that are serviced pursuant to [an OEM's] a responsible party's refrigerant recovery program in a manner that does not comply with subpart F of part 82 of title 40 of the code of federal regulations. Any such violation shall be punishable by a fine of five hundred dollars per violation.

(c) It shall be a violation for any responsible party or its agent to dispose of an appliance as solid waste in the city unless arrangements have been made for the lawful recovery of refrigerants. Any such violation shall be punishable by a fine of five hundred dollars per violation.

(d) The civil penalties prescribed in this subdivision shall be recoverable in a civil action brought in the name of the Commissioner or in a proceeding returnable before the Environmental Control Board.

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: Recovery of Refrigerants from Discarded Appliances

REFERENCE NUMBER: DSNY- 9

RULEMAKING AGENCY: DSNY

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 for the unlawful disposal of appliances as solid waste because such violations arise from completed events, the consequences of which are immediate, which makes a cure period impracticable under the circumstances.

/s/ Norma N. Ponce
Mayor's Office of Operations

January 15, 2015
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: Recovery of Refrigerants from Discarded Appliances

REFERENCE NUMBER: 2014 RG 103

RULEMAKING AGENCY: Department of Sanitation

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: January 15, 2015