

New York City Department of Sanitation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Sanitation (“DSNY”) is proposing a rule that would expand organic waste source separation requirements for large commercial food retailers and food service establishments.

When and where is the hearing? DSNY will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 A.M. to 12:00 P.M. on October 31, 2017. The hearing will be in the Second Floor Auditorium at 125 Worth Street, New York, NY 10013 (DSNY Headquarters).

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

- **Website.** You can submit comments to DSNY through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to nycrules@dsny.nyc.gov.
- **Mail.** You can mail comments to DSNY, Bureau of Legal Affairs, 125 Worth Street, Room 710, New York, NY 10013.
- **Fax.** You can fax 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 October 31, 2017.

Is there a deadline to submit comments? Comments will be due to the Department of Sanitation by 5:00 P.M. on October 31, 2017.

What if I need assistance to participate in the hearing? You must tell the Office of Legal Affairs 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 (646) 885-5006. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by October 24, 2017.

This location has the following accessibility option(s) available: Wheelchair and Sign Language Interpretation.

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 on DSNY's website.

What authorizes DSNY to make this rule? Sections 1043 and 753 of the New York City Charter and section 16-306.1 of the New York City Administrative Code authorize DSNY to make this proposed rule. This proposed rule was not included in DSNY's regulatory agenda for this Fiscal Year 2018 because it was not contemplated when DSNY published the agenda.

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

What laws 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

Food scraps and other organic waste make up more than one-third of all commercial waste in New York City. Diverting this material from landfills to use for soil enhancing compost, or as an energy source in aerobic and anaerobic digesters, is a key component of the City's goal of sending zero waste to landfills by the year 2030.

Under Local Law 146 of 2013, codified in §16-306.1 of the New York City Administrative Code, the Sanitation Commissioner must evaluate, at least annually, whether there exists sufficient regional organics waste processing capacity to require that certain food-generating businesses in the City, or a subset of them, must engage in alternative methods for handling organic waste separated by the businesses.

DSNY determined that there is currently sufficient organics processing capacity available to allow for an increase in food waste diversion, and will expand the existing requirement to additional large food-generating businesses in the city. These businesses will be required to separate their organic waste for collection and handling by their private carters, transport organic waste themselves, or manage it on-site using in-vessel composting or aerobic or anaerobic digestion systems (subject to compliance with the City's sewer discharge regulations). A designated covered establishment may also donate food that would otherwise be thrown away to a third party, such as a charity, sell or donate the food to a farmer for feedstock, or sell or donate meat by-products to a rendering company, which converts animal fats into lard. Food disposed of through such donations or sales is not within the meaning of "organic waste" under these proposed rules.

The proposed rule provides that the following types of establishments will be "designated covered establishments" and must comply with the source separation, storage, labelling and set out requirements for organic waste set forth under Section 1-11 of Title 16 of the Rules of the City of New York:

- 1) a food service establishment that has a floor area space of at least seven thousand square feet;

2) a food service establishment that is part of a chain of fifty or more locations in the city of New York and that (i) operate under common ownership or control; (ii) are individually franchised outlets of a parent business; or (iii) do business under the same corporate name; and

3) a retail food store that has a floor area space of at least ten thousand square feet, or any retail food store that is part of a chain of three or more retail food stores that have a combined floor area space of at least ten thousand square feet and that operate under common ownership or control and receive waste collection from the same private carter.

The proposed rules allows for waivers from the requirements under certain circumstances.

The proposed rule also clarifies the term “floor area” of an establishment to have the same meaning as defined by the New York City Department of City Planning under Section 12-10 of Chapter 2 of Article 1 of the Zoning Resolution, which is the sum of the gross areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings.

The proposed rule also amends the registration requirements for designated covered establishments that provide for a beneficial organic waste use on-site at their premises for some or all of the organic waste they generate. Such designated covered establishments would now have to renew annually their registration of any on-site organic waste processing equipment.

Additionally, the term “sign”, as used in the rule, is clarified to include a decal provided to a designated covered establishment by the private carter that collects organic waste from such covered establishment, or a decal issued by the Department of Sanitation when the designated covered establishment manages organic waste on site at its premises. The area where employees undertake food preparation is also amended to read “employee work area”, but this area does not include break rooms or other areas where employees do not prepare food to be offered for sale by the establishment.

DSNY’s authority for these rules is found in sections 753 and 1043 of the New York City Charter, and sections 16-306.1 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. Section 1-11 of Chapter 1 of Title 16 of the Rules of the City of New York is amended relating to the handling of organic waste generated by certain commercial establishments, to read as follows:

§1-11 Organic Waste Generated by Commercial Establishments.

(a) Designated covered establishments. Pursuant to §16-306.1(b) of the New York City Administrative Code, the following commercial establishments are “designated covered establishments” for purposes of this section and shall comply with the requirements set forth in this section:

(1) an arena or stadium having a seating capacity of at least fifteen thousand persons;

(2) a food service establishment that (i) is located within a hotel having at least one hundred fifty sleeping rooms (ii) operates under common ownership or control of such hotel, and (iii) receives waste collection from the same private carter as such hotel.

(3) a food manufacturer that has a floor area of at least twenty-five thousand square feet;
[and]

(4) a food wholesaler that has a floor area of at least twenty thousand square feet[.];

(5) a food service establishment that has a floor area of at least seven thousand square feet;

(6) (i) a food service establishment that is part of a chain of fifty or more locations in the city of New York and that (i) operate under common ownership or control; (ii) are individually franchised outlets of a parent business; or (iii) do business under the same corporate name.

(ii) Any person who owns or operates two or fewer food service establishments may request a waiver from the sanitation commissioner of the requirements of this section if no single food service establishment has a floor area of at least seven thousand square feet, the food service establishment or establishments are individually franchised outlets of a parent business covered by this subparagraph, and the owner or operator establishes that the food service establishment or establishments do not receive private carting services through a general carting agreement between a parent business and private carter; and

(7) a retail food store that has a floor area of at least ten thousand square feet, or any retail food store that is part of a chain of three or more retail food stores that have a combined floor area space of at least ten thousand square feet and that operate under common ownership or control and receive waste collection from the same private carter.

For purposes of this section, the “floor area” of an establishment has the same meaning as defined under Section 12-10 of Chapter 2 of Article 1 of the Zoning Resolution.

(b) Source separation requirements for designated covered establishments.

(1) A designated covered establishment shall source separate organic waste generated at its premises and either:

(i) arrange with a private carter for the separate collection of such organic waste directly from its premises for the purpose of a beneficial organic waste use;

(ii) transport its own organic waste directly to:

A) an organic waste processing facility; or

B) to a transfer station authorized by the New York state department of environmental conservation to receive source separated organic waste that will be removed to another location for beneficial organic waste use, provided that the designated covered establishment first registers with the business integrity commission pursuant to subdivision b of section 16-505 of the administrative code of the city of New York; or

(iii) provide for a beneficial organic waste use on-site at its premises, provided that any on-site composting must be in-vessel, and that it arranges for the collection or transport of the remainder of such organic waste, if any, in accordance with clause (i) or (ii) of this subparagraph.

(2) A designated covered establishment that registers with the business integrity commission pursuant to subdivision b of section 16-505 of the administrative code of the city of New York and transports its own organic waste shall enter into a written agreement with an organic waste processing facility that provides for a beneficial organic waste use. A copy of such written agreement shall be submitted by the covered establishment to the Department upon request within five business days of such request either by postal mail or electronic mail to the Department.

(3) A designated covered establishment that provides for a beneficial organic waste use on-site at its premises for some or all of the organic waste it generates shall:

(i) to the extent practicable, weigh and measure by volume the amount of organic waste disposed of by any such method on-site. A designated covered establishment shall maintain records of such weights and measurements for a period of three years, and the records shall be submitted by the covered establishment to the Department upon request within five business days of such request either by postal mail or electronic mail to the Department;

(ii) provide equipment on site that is properly sized to handle and process organic waste generated at the premises in a safe and sanitary manner, together with a contingency plan for handling the organic waste in the event such system becomes inoperable. The designated covered establishment shall ensure that no organic waste or other solid waste storage problem

or public nuisance or condition hazardous to public health or safety is created during scheduled or unscheduled equipment maintenance, or equipment breakdown;

(iii) ensure that any such organic waste processing system is installed in accordance with the health code, including but not limited to the provisions of article 143, the New York city building code, including but not limited to subchapters twelve and thirteen of chapter one of title twenty-seven of the administrative code, if applicable, and all applicable laws and rules governing the discharge of waste and waste water, including section 19-11 of title 15 of the rules of the city of New York governing the discharge of grease into the city sewer system, and any other applicable regulations enforced by the department of environmental protection or the New York state department of environmental conservation. In accordance with section 413.1 of the New York city plumbing code, a commercial food waste grinder unit cannot be used as an organic waste processing system for purposes of this paragraph; and

(iv) within thirty days of the installation of any on-site organic waste processing equipment, report to the Department the manufacturer, model number, size and the minimum and maximum processing capacity of the equipment and the date of installation of such equipment on a registration form [to be] prescribed by the Department, which shall be renewed annually.

(c) Storage and set-out requirements for containers.

(1) A designated covered establishment shall provide separate containers for the disposal of organic waste in any employee work area where such organic waste is generated by employees during the preparation of food. Containers for the disposal of organic waste to be used by employees shall be labeled to indicate only organic waste may be properly placed therein. For purposes of this paragraph, "label" means a display of words, which may also include graphics, that is affixed to or placed upon a container.

(2) A designated covered establishment that arranges for the collection of organic waste by a private carter shall ensure that it properly stores and maintains its source separated organic waste separately from all other materials generated at the premises, and shall not allow organic waste that is stored and maintained to be commingled with designated or nondesignated recyclable material or solid waste. All such organic waste shall be stored in a manner that does not create a public nuisance.

(3) A designated covered establishment that arranges for the collection of organic waste by a private carter shall separately set out such organic waste in one or more containers that:

(i) have a lid and a latch, lock, or other fastening or sealing mechanism or cord that keeps the lid closed and is resistant to tampering by rodents or other wildlife;

- (ii) have the capacity that meets the disposal needs of the designated covered establishment and its private carter;
- (iii) are compatible with the private carters hauling collection practices; and
- (iv) are closed and latched at the time any such containers are placed out for collection by the carter and are labeled to indicate organic waste is placed inside.

(d) [Sign] Decal and [notice] instruction requirements.

(1) (i) A designated covered establishment shall post a [sign] decal that states clearly and legibly either:

(A) the trade or business name, address, telephone number of, and the day and time of pickup by the private carter that collects the designated covered establishment's organic waste;

(B) the designated covered establishment transports its organic waste to an entity that provides for beneficial organic waste reuse; or

(C) the designated covered establishment provides for on-site processing of organic waste generated at its premises.

(ii) A designated covered establishment shall prominently display such [sign] decal by affixing it to a window near the principal entrance to the designated covered establishment so as to be easily visible from outside the building or, if this is not possible, shall prominently display such [sign] decal inside the designated covered establishment near the principal entrance. If posting a [sign] decal near the designated covered establishment's entrance is not practicable, the owner of such designated covered establishment shall retain a copy of such [sign] decal on its premises and shall furnish a copy to the Department upon request.

(2) A designated covered establishment shall post instructions on the separation requirements for organic waste in an area where such instructions will be visible to employees who are disposing of organic waste. Such instructions shall state that organic waste is required to be source separated and shall explain how to source separate such material.

(e) Enforcement and compliance.

(1) The commissioner, together with the commissioner of the department of mental health and hygiene, and the commissioner of the department of consumer affairs, reserves the right to conduct lawful inspections during business hours to ensure compliance with this section. Such inspections may include, but need not be limited to:

(i) inspections of organic waste set out by a designated covered establishment for collection by his or her private carter to determine whether such material has been set out in accordance with paragraph 2 of subdivision c of this section; and

(ii) inspections of putrescible solid waste transfer stations that are authorized to accept source separated organics by the New York state department of environmental conservation.

(2) Any person that violates any provision of this section shall be liable for civil penalties as provided for under paragraphs one, two and three of subdivision e of section 16-324 of the New York City Administrative Code.

§2. This rule shall take effect six months after the final rule is published in the City Record.

**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: Amendment of Organic Waste Source Separation Rules

REFERENCE NUMBER: DSNY-17

RULEMAKING AGENCY: Department of Sanitation

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) There is no cure period included in the proposed rule. However, DSNY will not enforce the rule for a period of six (6) months from the effective date of the rule in accordance with Local Law 146 of 2013, in order to provide outreach and education to affected businesses.

/s/ Francisco X. Navarro
Mayor's Office of Operations

September 20, 2017
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: Amendment of Organic Waste Source Separation Rules

REFERENCE NUMBER: 2017 RG 082

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: September 20, 2017