New York City Department of Sanitation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules
(AMENDED NOTICE)

What are we proposing?
Pursuant to Local Law 69 of 2013, DSNY is proposing a rule that sets forth a program for the recovery of refrigerants from refrigerant-containing appliances that are being disposed of by residential generators in the city of New York.

When and where is the Hearing? Due to inclement weather on the date of the first hearing, DSNY is holding a second hearing to allow another opportunity for public comment. The public hearing will take place 2:00 P.M. – 4:00 P.M. on March 27, 2014. The hearing will be in the 3rd Floor hearing room at 125 Worth Street (Room 330).

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 March 27, 2014.

Is there a deadline to submit written comments? The deadline for submitting written comments shall be March 27, 2014.

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 because 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. You must tell us by March 20, 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/. 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) and 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") responsible for the lawful recovery of refrigerants from their refrigerant-containing appliances when their appliances are discarded by residents. Despite this requirement, the Department will continue to provide its own refrigerant removal program in which OEMs can participate for a fee. OEMs can also choose to establish their own recovery program or participate with other OEMs in a refrigerant recovery program. The fee imposed by this rule will allow the Department to recover a portion of the program costs incurred through servicing OEMs' appliances.

The purpose of the proposed rule is to carry out the requirements of Local Law 69 of 2013 by establishing the requirements for OEMs' refrigerant recovery programs for appliances that are being disposed of by "residential generators" in the city of New York. "Residential generators" are any person, entity, agency, or institution in the city of New York that receives solid waste or recycling collection service from the department.

Specifically the proposed rule:

- Establishes the registration requirements for OEMs of refrigerant-containing appliances,
- Requires that OEMs indicate whether they plan to establish their own refrigerant recovery program, participate with other OEMs in a refrigerant recovery program, or have their appliances serviced by the Department's refrigerant recovery program,
- Establishes the fee that an OEM must pay if refrigerant is removed from an OEM's appliance by the department,
- Establishes annual reporting requirements for any OEM who establishes its own refrigerant recovery program or participates with OEMs in a refrigerant recovery program, and,
- Establishes violations and fines for failure to comply with certain requirements of the proposed rule.

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.

This proposed rule also repeals the current Chapter 17 of Title 16 of the Rules of the City of New York, which relates to the collection, recycling and reuse of electronic equipment, because the local laws that authorized Chapter 17, Local Laws 13 and 21 of 2008, were preempted by New York State law through Chapter 99 of 2010. DSNY's authority for this repeal is found in sections 753 and 1043(a) of the New York City Charter.

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, relating to the collection, recycling and reuse of electronic equipment, is REPEALED.

§ 2. Title 16 of the Rules of the City of New York is amended by adding a new Chapter 17 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, refrigerators, water coolers, or freezers.

"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.

"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.

"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.

"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.

§17-02 OEM Responsibility for Recovery.

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

(b) An OEM may elect to (i) establish its own refrigerant recovery program, (ii) participate with other OEMs 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 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
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;

(2) a statement indicating whether the OEM has elected to (i) establish its own refrigerant recovery program, (ii) participate with other OEMs 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 owned by the OEM;

(4) If an OEM 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 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 refrigerant recovery program; and

(iii) a brief description of the OEM'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 who contact the department to arrange for the department's recovery of refrigerants. The department shall charge OEMs a fee of twenty dollars for each of their appliances serviced by the department.

(b) The department shall bill OEMs bi-annually for appliances serviced by the department. The department shall provide OEMs with a statement indicating how many appliances were serviced by the department. Payment shall be due no later than 30 days after the date of 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.

(c) The department shall provide a list on its website of all OEMs that elect to (i) establish a refrigerant recovery program, or (ii) participate with other OEMs in a refrigerant recovery program. 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' 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.

§17-05 Annual Reporting.

(a) By July first, two thousand fifteen and annually thereafter, an OEM who elects to (i) establish its own refrigerant recovery program or (ii) participate with other OEMs 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
New York City Department of Sanitation
44 Beaver Street, 6th Floor
New York, NY 10004

(b) An OEM's annual report shall include:

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

(2) a listing of the OEM'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 refrigerant recovery program; and

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

§17-06 Enforcement.

(a) It shall be a violation of this section for an OEM 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 to unlawfully recover refrigerants from appliances that are serviced pursuant to an OEM's refrigerant recovery program. Any such violation shall be punishable by a fine of five hundred dollars per violation.

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 Appliances

REFERENCE NUMBER: DSNY-5

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 unlawful recovery of refrigerants because such violations arise from completed events, the consequences of which are immediate, which makes a cure period impracticable under the circumstances. Does not provide a cure period for failure to submit a registration or annual report because it is impractical under the circumstances.

/s/ Francisco Navarro
Mayor's Office of Operations

December 23, 2013
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 Appliances

REFERENCE NUMBER: 2013 RG 109

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: December 23, 2013