

New York City Department of Sanitation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing?

DSNY is proposing to amend its rules governing source separation and handling requirements for organic waste generated by certain commercial establishments that have their refuse and recycling collected by private carters, based on Local Law 146 of 2013, codified in § 16-306.1 of the New York City Administrative Code.

When and where is the Hearing? DSNY will hold a public hearing on the proposed rule. The public hearing will take place from 10:00 A.M. to 12:00 P.M. on October 5, 2015. The hearing will be in the 2nd Floor Auditorium at 125 Worth Street, New York, New York 10013.

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 October 5, 2015.

Is there a deadline to submit written comments? The deadline for submitting written comments shall be October 5, 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 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 September 28, 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) and 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 rule was included in DSNY's agenda for this fiscal year.

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

Organic waste makes up approximately one-third of the waste generated by food-generating businesses in New York City. This material can be converted into soil enhancing compost, or used as an energy source in aerobic and anaerobic digesters, but most of it is currently disposed of in landfills outside the City. 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 beginning July 1, 2015, whether there exists sufficient regional organics waste processing capacity to require that certain food-generating businesses in the City, or a sub-set of them, arrange with their private carters to engage in alternative methods for handling organic waste separated by the businesses. These methods include in-vessel composting, aerobic or anaerobic digestion, or any other method for processing organic waste approved by DSNY rule. The Department of Environmental Protection will separately promulgate additional rules regulating the use of onsite aerobic and anaerobic digestion equipment.

Following site visits and surveys of active private organics waste processing facilities in the region and an evaluation of organic waste quantities generated by various food industry sectors in the city, DSNY identifies that there is organics processing capacity available to a limited extent, and will require a subset of food-generating businesses in the city to separate their organic waste for collection and handling by their private carters. 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. Food disposed of through such donations or sales is not within the meaning of "organic waste" under these proposed rules.

The proposed rules:

- Amend §1-01 by adding new definitions to effectuate the purpose of the rule;
- Provides that the following types of establishments will be "designated covered establishments" and must comply with the requirements set forth in the rule:
 - Any arena or stadium that has a seating capacity of at least 15,000
 - Any food service establishment that is located in a hotel with at least 150 sleeping rooms, is under common control with such hotel, and receives waste collection from the same private carter as such hotel
 - Any food manufacturer that has a floor area of at least 25,000 square feet
 - Any food wholesaler that has a floor area of at least 20,000 square feet
- Requires designated covered establishments to source separate their organic waste and arrange for proper processing of this material through collection by a private carter licensed by the New York City Business Integrity Commission (BIC), or alternatively, by registering with BIC and transporting their own organic waste for proper processing;

- Allows covered establishments to separately donate their organic waste to a third party, donate or sell organic waste to a farmer for feedstock, and donate or sell meat by-products to a rendering company;
- Prohibits the commingling of organic waste with designated recyclable material or solid waste;
- Requires the storage and set-out at the curb of organic waste in one or more containers that have a lid and latch, which must be closed and latched when they are set out for collection by a private carter;
- Requires a designated covered establishment to post a sign identifying its private carter that will collect source separate organic waste;
- Sets forth requirements for designated covered establishments that choose to process their organic waste on-site;
- Requires designated covered establishments to post instructions for their employees and customers on how to properly source separate organic waste;
- Sets forth reporting responsibilities of operators of putrescible solid waste transfer stations authorized by the New York State Department of Environmental Conservation to receive source-separated organic waste; and
- Provides for the enforcement of such rules in accordance with the New York City Administrative Code.

DSNY's authority for these rules is found in sections 753 and 1043(a) of the New York City Charter and section 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. New definitions are added in section 1-01 of Title 16 of the Rules of the City of New York, in alphabetical order, to read as follows:

§1-01 Definitions

Beneficial Organic Waste Use. “Beneficial organic waste use” means the processing of organic waste by composting, aerobic digestion, or anaerobic digestion.

Covered Establishment. "Covered establishment" shall have the same meaning as set forth in section 16-306.1(a) of the administrative code of the city of New York.

Organic Waste. "Organic Waste" shall have the same meaning as set forth in section 16-303 of the administrative code of the city of New York, except that organic waste shall not include food that is donated to a third party, food that is sold to farmers for feedstock, and meat by-products that are sold to a rendering company.

Organic Waste Processing Facility. "Organic waste processing facility" means a combination of managed processes, structures, machinery or devices utilized to alter the physical characteristics of organic waste by turning it into a product, at which source-separated organic waste is received and processed through a beneficial organic waste use for the purpose of reuse or sale, that is authorized to operate by the New York state department of environmental conservation if located in the state of New York, or authorized to operate by the applicable state or local authority, if located outside of the state of New York.

§2. Chapter 1 of Title 16 of the Rules of the City of New York is amended by adding a new Section 1-11, 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.

(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; and

(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 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.

(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 area where such organic waste is generated and discarded. Containers for the disposal of organic waste to be used by employees, customers, or others lawfully on the premises shall be labeled to indicate only organic waste may be properly placed therein.

(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 his or her premises, and shall not allow organic waste that is stored and maintained to be commingled with designated or non-designated 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 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 carter's hauling collection practices; and

(iv) are closed and latched at the time any such containers are placed out for collection by the carter.

(d) Sign and notice requirements. (1) (i) A designated covered establishment shall post a sign 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 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 inside the designated covered establishment near the principal entrance. If posting a sign near the designated covered establishment's entrance is not practicable, the owner of such designated covered establishment shall retain a copy of such sign 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 persons who are disposing of organic waste, including employees, customers or others lawfully on the premises. 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.

§3. Subdivision f of section 4-17(f) of Subchapter B of Chapter 4 of Title 16 of the Rules of the City of New York, relating to the handling of organic waste received by putrescible waste transfer stations, is amended to read as follows:

§4-17 Operation and Maintenance of Putrescible Solid Waste Transfer Stations.

(f) (1) The Permittee shall maintain operational records including, but not limited to, all asset liability and capital and proprietary accounts, operating expenses, administrative expenses, tax returns and equipment expenses. Such records shall also include a clear and legible daily log of the quantity of solid waste received and removed, specifying the point of origin and destination of the solid waste transported daily, as well as the quantity and type of material which has been brought to the putrescible solid waste transfer station for separation and/or processing. The daily log shall also include the names and addresses of the owner and/or operator of transport vehicles entering or exiting the transfer station. Such records shall be maintained on the premises and be readily available for inspection by representatives of the Department. An annual report shall be provided to the Department with any application for renewal of any permit required under these Rules. This report shall contain the daily weight and volume of solid waste received, according to type, daily point of origin of the solid waste, daily destination of the solid waste, daily weight and volume and type of material recovered, any changes in operation that have occurred during the previous year, and all other information specified to be included by this subchapter, including that required by subsections (c) and (e) of

this section, and paragraph ii of this subsection. The Permittee shall submit to the Department a copy of any annual or quarterly report required to be filed with the New York State Department of Environmental Conservation pursuant to 6 NYCRR Part 360.

(2) A permittee that is authorized by the New York state department of environmental conservation to receive source separated organic waste and that receives such waste in accordance with subdivision d of section 16-306.1 of the administrative code and rules promulgated pursuant thereto, and that is not authorized to process organic waste at its own facility, shall deliver such organic waste or have such organic waste delivered directly to an organic waste processing facility, excluding waste that cannot be processed at an organic waste processing facility. Unless the permittee is authorized to process organic waste at its own facility, the permittee shall enter into a written agreement with an organics processing facility, or other transfer facility, at which organic waste will be received. A copy of such written agreement shall be available to the Department for inspection upon request. Operators of putrescible solid waste transfer stations that receive organic waste shall maintain the separation of organic waste before its transfer to another location. A permittee that receives source separated organic waste shall include in the quarterly reports submitted to the Department pursuant to paragraph (i) of this subsection the following information, calculated on a monthly basis by weight or volume: the total amount of organic waste received; the origin of such organic waste; and the destination facility of the organic waste removed, together with the name of the owner of such facility and his or her business contact information. Such quarterly reports shall be submitted on forms prescribed by or acceptable to the Department. The report for the quarter ending on March 31 shall be due on April 30; the report for the quarter ending on June 30 shall be due on July 30; the report for the quarter ending September 30 shall be due on October 30; and the report for the quarter ending December 31 shall be due on January 30.

§4. This rule shall take effect thirty days after the final rule is published in the City Record. All designated covered establishments must comply with the requirements of the final rule beginning no later than six months after the effective date of the rule.

**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: Recycling of Commercial Organic Waste

REFERENCE NUMBER: 2015 RG 084

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: August 19, 2015

**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: Recycling of Commercial Organic Waste

REFERENCE NUMBER: DSNY-10

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

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

August 19, 2015
Date