

NEW YORK CITY BUSINESS INTEGRITY COMMISSION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Sanitation of New York (“DSNY”) has previously proposed to enact rules that will expand organic waste source separation requirements for large commercial food retailers and food service establishments. The New York City Business Integrity Commission (the “Commission” or “BIC”) is proposing to amend Title 17 of the Rules of the City of New York to reflect these changes as applicable to private carters.

When and where is the hearing? BIC will hold a public hearing on the proposed rule. The public hearing will take place from 10:00 a.m. to 11:00 a.m. on March 13, 2018. The hearing will be on the 2nd Floor, conference room number 2-160C at 100 Church Street, New York, New York, 10007. This location has the following accessibility option(s) available: Wheelchair Accessible.

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

- **Website.** You can submit comments to BIC through the NYC rules website at <http://rules.cityofnewyork.us>.
- **E-mail.** You can e-mail written comments to sarrona@bic.nyc.gov.
- **Mail.** You can mail written comments to Business Integrity Commission, 100 Church Street, 20th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to BIC at (646) 500-7113.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-0523. You can also sign up in the hearing room before the hearing begins on March 13, 2018. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by March 13, 2018.

What if I need assistance to participate in the hearing? You must contact the Business Integrity Commission 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 100 Church Street, 20th Floor, New York, NY 10007. You may also tell us by telephone at 212-437-0523 or e-mail at sarrona@bic.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by March 6, 2018.

This location has the following accessibility option(s) available: Wheelchair Accessible.

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, a transcript of the hearing and copies of the written comments will be available to the public at BIC's offices.

What authorizes BIC to make this rule? Sections 1043(a) and 2101(b) of the City Charter authorize BIC to make these proposed rules. These proposed rules were not included in BIC's regulatory agenda for this Fiscal Year because they were not contemplated when BIC published the agenda.

Where can I find BIC's rules? BIC's rules are in Title 17 of the Rules of the City of New York.

What laws govern the rulemaking process? BIC 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

Businesses, also known as commercial establishments, in New York City are required to recycle in accordance with the Department of Sanitation's ("DSNY") commercial recycling rules following the passage of Local Law No. 87 of 1992, which amended § 16-306 of the Administrative Code ("the Code"). BIC regulates private carters who collect and dispose of putrescible (commonly referred to as "garbage") and non-putrescible (commonly referred to as "recyclables") waste from commercial establishments in New York City that must recycle designated recyclable materials, including paper, cardboard, metal, glass, and plastic.

Under Local Law 146 of 2013, codified in § 16-306.1 of the 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 businesses.

If based on its annual evaluation, DSNY determines that there is sufficient organics processing capacity available to allow for an increase in food waste diversion, DSNY may expand existing requirements to include more large food-generating businesses in the city, known as "designated covered establishments". In 2017, DSNY determined that there is currently sufficient organics processing capacity available to allow for an increase in food waste diversion, and, through its own rulemaking, will expand the existing requirement to additional large food-generating businesses in the city.

Businesses added by the new DSNY requirements must separate their organic waste for collection and handling by their private carters (which BIC regulates), 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).

The proposed rule also includes some plain language revisions.

DSNY's rules regarding the definition of "designated covered establishments" is set forth under § 1-11 of Chapter 1 of Title 16 of the Rules of the City of New York.

The proposed BIC rule reflects the proposed DSNY rule regarding the definition of "designated covered establishment."

Additionally, BIC proposes to amend the rules regarding requirements for containers and decals that may be provided by licensees to designated covered establishments.

BIC's authority for these rules is found in sections 1043(a) and 2101(b) of the New York City Charter.

New material is underlined; deleted text is in [] brackets.

Section 1. The definitions of the terms “Container”, “Designated Covered Establishment”, and “Trade waste or waste”, as set forth in Section 1-01 of Subchapter E of Chapter 1 of Title 17 of the Rules of the City of New York, are amended to read as follows:

Container. The term "container" means any receptacle that is used to collect waste or recyclables for disposal and which generally is not disposed of after such use.

Designated Covered Establishment. The term “Designated Covered Establishment” means any commercial establishment identified by the Department of Sanitation in Subdivision (a) of Section 1-11 of Chapter 1 of Title 16 of the Rules of the City of New York as being a “designated covered establishment” pursuant to Section 16-306.1(b) of the Code.

[The following commercial establishments are “designated covered establishments”:

- (1) an arena or stadium having a seating capacity of at least fifteen thousand (15,000) persons;
- (2) a food service establishment that (i) is located within a hotel having at least one hundred and fifty (150) 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 (25,000) square feet; and
- (4) a food wholesaler that has a floor area of at least twenty thousand (20,000) square feet.]

Trade waste or waste. The term "trade waste" or "waste" means:

(1) all putrescible and non-putrescible materials or substances, except as described in paragraph (2) of this subdivision, that are discarded or rejected by a commercial establishment required to provide for the removal of its waste pursuant to section 16-116 of the Code as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, street sweepings, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, medical waste, offal and any other offensive or noxious material. Such term shall also include recyclable materials and organic waste as defined in section 16-303 of the Code that are generated by such commercial establishments.

(2) The following are not "trade waste" or "waste" for purposes of this chapter: sewage; industrial wastewater discharges; irrigation return flows; radioactive materials that are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 41 U.S.C. §§ 2011 et

seq.; materials subject to in-situ mining techniques which are not removed from the ground as part of the extraction process; and hazardous waste as defined in section 27-0901 of the Environmental Conservation Law.

Section 2. Section 5-01 of Subchapter E of Chapter 1 of Title 17 of the Rules of the City of New York is amended to read as follows:

§ 5-01. Sign or Decal Required; Display of License.

(a) Every licensee [shall] must provide to every recipient of its services a sign or decal which the licensee [shall] must obtain from the Commission. A licensee [shall] must not provide such a sign or decal to a business unless such licensee has entered into an agreement with such business to provide waste removal services. Such sign or decal [shall] must conspicuously and legibly display the name, address, telephone number, number of license and the day and approximate time of waste collection. Such sign or decal must also identify, by type, each designated recyclable material (as defined in section 1-01 of title 16) that will be collected by a licensee and, if applicable, whether a licensee will be using single stream recycling collection [and recycling] (as defined in section 1-01 of title 16) or co-collection of recyclables (as defined in section 1-01 of title 16). [Any licensee that provides organic waste removal services to a designated covered establishment shall also provide a sign or decal that provides the name of the licensee that collects the designated covered establishment's organic waste.] Any licensee that provides organic waste removal services to a designated covered establishment [shall] must also provide the designated covered establishment with a sign or decal that states (i) the name, address, telephone number, number of license and the day and approximate time of organic waste collection [of the licensee that collects] from the designated covered [establishment's organic waste] establishment; or (ii) the name, address, telephone number, number of license and the day and approximate time of organic waste collection and a statement that the licensee transports its organic waste to an entity that provides for beneficial organic waste reuse; or (iii) the name, address, telephone number, number of license and the day and approximate time of organic waste collection and a statement that the licensee provides for on-site processing of organic waste generated at its premises.

(b) Such sign(s) or decal(s) [shall] must be conspicuously posted as prescribed in section 16-116(b) of the Code by the owner, lessee or person in control of the commercial establishment which receives the licensee's services. The licensee [shall] must provide each sign or decal to the customer and [shall] must inform the customer of its obligation to post the sign or decal in accordance with the requirements of section 16-116(b) of the Code.

(c) A licensee [shall] must not charge a fee to any business for a sign or decal issued by the Commission.

(d) A licensee [shall] must conspicuously display its license in its place of business.

(e) All written communications with a customer or potential customer (including, without limitation, receipts and correspondence), all advertisements and the letterhead of a licensee must contain the license number assigned to the licensee by the Commission. The license number must be clearly identified as a Commission license number. Any listing consisting solely of the name, address and telephone number of the licensee need not include the licensee's license number.

Section 3. Subdivision (r) of Section 5-08 of Subchapter E of Chapter 1 of Title 17 of the Rules of the City of New York is amended to read as follows.

§ 5-08. Operations.

(r) Any container provided by a licensee to a designated covered establishment for the collection of organic waste [shall] must:

- (1) meet the labeling requirements set forth in section 5-11 of this Chapter;
- (2) 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; and
- (3) have the capacity to meet the disposal needs of the designated covered establishment.

**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: Organic Waste Source Separation Requirements for Private Carters

REFERENCE NUMBER: 2018 RG 008

RULEMAKING AGENCY: Business Integrity Commission

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 29, 2018

**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: Organic Waste Source Separation Requirements for Private Carters

REFERENCE NUMBER: BIC-7

RULEMAKING AGENCY: Business Integrity Commission

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

January 29, 2018
Date