

New York City Department of Sanitation

NOTICE OF ADOPTION OF FINAL RULE ESTABLISHING REQUIREMENTS RELATING TO COMMERCIAL WASTE GENERATION AUDITS FOR COMMERCIAL WASTE ZONES

NOTICE IS HEREBY GIVEN in accordance with the requirements of Section 1043 of the New York City Charter and pursuant to the authority vested in the Commissioner of the Department of Sanitation by sections 753 of the New York City Charter and Title 16-B of the New York City Administrative Code that the Department adopts the following rule establishing requirements relating to commercial waste generation audits for the Commercial Waste Zones program. The Department published a Notice of Opportunity to Comment on the proposed rule in the City Record on August 12, 2021. On September 15, 2021 the Department held a public hearing on the proposed rules.

Statement of Basis and Purpose of Final Rule

DSNY is publishing final rules that establish requirements for carters selected to operate under the commercial waste zones system to reimburse customers for the cost of a commercial waste generation audit. These rules also establish fees for the commercial waste zones program and amend definitions.

Commercial Waste Zones Program

Typically in New York City, more than 100,000 commercial establishments generate more than 3 million tons of refuse and recyclables. Approximately 90 private carters collect this waste from commercial establishments across the City. The current system for collecting commercial waste from the City's businesses has been plagued by dangerous driving and insufficient attention to public safety, harmful environmental impacts, and poor customer service.

In some parts of the city, more than 50 carters service a single neighborhood, and an individual commercial block may see dozens of different private waste collection trucks on a given night. This has resulted in millions of excess truck miles driven every year that harm the City's air quality, increase greenhouse gas emissions, create noise pollution and negatively impact public health. Additionally, the industry has lacked strong customer service standards, and pricing has remained unclear and confusing to most customers, putting small businesses at a significant disadvantage.

In response to these documented problems in the commercial waste collection industry, the Department released a comprehensive plan for reforming the private carting industry in

November 2018 (“the Plan”), available at <http://www.nyc.gov/commercialwaste>. The Plan proposed the establishment of commercial waste zones - a safe and efficient collection system to provide high quality, low cost service to New York City businesses while advancing the City’s zero waste and sustainability goals. The Department developed this plan after years of extensive public outreach and engagement with a wide variety of stakeholders.

On November 20, 2019, Local Law number 199 for the year 2019 was enacted, which authorizes the Department to create a commercial waste zones system. Under Local Law 199, codified in Title 16-b of the New York City Administrative Code, the Sanitation Commissioner has divided the geographic area of New York City into 20 “commercial waste zones.”

The Department will use a competitive Request for Proposals (RFP) process to select up to three private carters to service businesses within each commercial waste zone. The competitive solicitation process will also be used to select up to five carters to provide containerized commercial waste collection services citywide. This process will identify the carters that can provide high quality service at low prices. The resulting contracts will include standards for pricing, customer service, safety, environmental health, and requirements to promote the City’s commitment to recycling and sustainability. The RFP will be issued in two parts. Part 1 was issued on November 19, 2020, and responses were due on February 19, 2021. Part 2 of the RFP is being released concurrently with these final rules.

Commercial waste zones will apply to the collection of commercial refuse, recyclables, and source-separated organic waste. It will exclude specialized or intermittent waste streams, such as construction and demolition debris, medical waste, hazardous waste and other types of waste that will continue to be collected and managed under existing City and State regulations.

Under the new commercial waste zones system, instead of dozens of different carters operating in a City neighborhood on a given night, only a few carters will operate in each area. With fewer trucks on the streets and shorter routes, zoned collection will also mean improved traffic and air quality and less unsafe driving behavior and worker fatigue. Citywide, the adoption of the commercial waste zones system will dramatically reduce truck traffic associated with this industry by more than 50 percent. This system will improve the quality of life of all New Yorkers, serve the needs of the City’s local businesses, and support the City’s short and long-term goals for a cleaner, safer, and more sustainable city.

Related DSNY Commercial Waste Zones Rulemakings

On February 14, 2020, the Department published the final rules creating the 20 commercial waste zones. Per Administrative Code Section 16-1002(e)(3), the Department will set the implementation schedule for when the commercial waste zone system will take effect in each zone in a future rulemaking.

On December 18, 2020, DSNY published proposed rules addressing customer service requirements, requirements for collecting recyclable materials and source separated organics,

and operations requirements for commercial waste carters, and held a hearing on those proposed rules on January 26, 2021. The comment period for those proposed rules closed on February 9, 2021. On March 12, 2021, DSNY published proposed rules addressing public safety. DSNY held a joint hearing with the Business Integrity Commission (BIC) on the safety rules on April 13, 2021. DSNY is publishing final customer service, recycling, operations and safety rules for commercial waste carters in coordination with this final rule.

Commercial Waste Generation Audits

In this rulemaking, the Department is establishing requirements for carters selected to operate under the commercial waste zones system to reimburse customers for the cost of a commercial waste generation audit. The purpose of such an audit is to determine the amount of commercial waste that the commercial establishment is generating, broken down by waste stream: refuse, designated recyclable materials, and source separated organic waste.

A commercial waste generation audit provides a concrete picture of the types and amount of waste that a commercial establishment is generating. The commercial establishment can then use the audit to negotiate a fair price with their commercial waste zone carter. The audit will also provide the commercial establishment with information about the level of contamination for each waste stream, recommendations for waste reduction by waste stream, and recommendations about how to divert more waste from refuse to designated recyclable materials and source separated organic waste. This will assist the commercial establishment in complying with the City's recycling requirements and help further the City's zero waste goals.

Under these final rules, each awardee must include in its Zero Waste Plan, a specific plan for how it will provide or reimburse customers for commercial waste generation audits..

These final rules establish a basic definition of "commercial waste generation audit," including a requirement that the auditor must be registered with BIC as a trade waste broker.

The proposed rules required each awardee to reimburse each customer for at least one commercial waste generation audit, included a specific formula under which awardees must reimburse commercial establishments for such audits, specific methodology for how the audits must be conducted, and a procedure to resolve disputes between carters and customers regarding a waste generation audit, including the option of bringing unresolved disputes to DSNY for review. After reviewing the large number of public comments received from carters, customers, and advocates raising concerns regarding the Department's proposed approach to reimbursement for commercial waste generation audits, the Department has removed such provisions from the final rule. For example, some commenters raised concerns that the Department's approach was overly prescriptive, and commented that the reimbursement rates established would lower the standard of audit that customers would seek, thus undermining the Department's sustainability goals. Other commenters raised concerns with the prescribed methodology for measuring waste in a 24-hour period.

In response to such concerns, the Department will require Proposers responding to the Commercial Waste Zones RFP to include in their proposed Zero Waste Plan their own plans to offer commercial waste generation audit services or to provide reimbursement to customers for commercial waste generation audits, with a specific requirement that the Proposer consider how it will promote access to such audits across a broad range of customers in the zone and offer tools to support the Department's zero waste goals. The Department will then consider this element of the Proposer's Zero Waste Plan when selecting awardees. This approach will allow more flexibility in the use of commercial waste generation audits and address several of the concerns raised by public commenters.

The Department is still considering whether to promulgate rules regarding a dispute resolution process for disputes between customers and awardees about the amount of waste generated, or whether to add additional requirements regarding commercial waste generation audits at a future date.

Additional Rule Provisions

These rules also establish a definition of "bicycle," which is relevant to the program definition of microhauler and to the number of designated carters that an awardee may subcontract with under the program. Local Law 199 provides that there is no limitation on the number of designated carters hauling waste exclusively by bicycle. The definition of bicycle takes into account the definition of "bicycle" in Local Law 199 as well as recent changes in state and local laws relating to e-bikes.

These rules also establish an annual fee for awardees and include vehicle maintenance requirements.

Finally, these rules establish requirements for an awardee's Zero Waste Plan more generally.

These new DSNY rule requirements will take effect in each zone when the commercial waste zones system is introduced in that particular zone, according to the implementation schedule that the Department will publish in a future rulemaking.

DSNY's authority to promulgate these rules is found in New York City Charter §§ 753 and 1043, and Title 16-b of the 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. Subdivision b of section 20-01 of title 16 of the rules of the city of New York is amended by adding new definitions of “bicycle,” “commercial waste generation audit” and “zero waste plan” in alphabetical order as follows:

Bicycle. The term "bicycle" means: (i) a two or three wheeled device upon which a person or persons may ride, propelled by human power through a belt, a chain or gears; (ii) a "pedal-assist bicycle" as defined in section 4-01 of title 34 of the rules of the city of New York or as otherwise defined by the department of transportation; (iii) any electric scooter as defined in section 114-e of the vehicle and traffic law; or (iv) any bicycle with electric assist as defined in section 102-c of the vehicle and traffic law.

Commercial Waste Generation Audit. The term “commercial waste generation audit” means an assessment of the commercial waste generated by a commercial establishment that:

1. Is performed by a person registered by the business integrity commission as a trade waste broker;
2. Separately assesses the commercial waste generated, disaggregated by waste stream as follows:
 - i. *Refuse*: Total amount of refuse at each premises;
 - ii. *Designated recyclable materials*: (1) Total amount of designated recyclable paper at each premises; and (2) total amount of designated recyclable metal, glass, and plastic at each premises; and
 - iii. *Source separated organics*: If the commercial establishment is a designated covered establishment, total amount of source separated organics at each premises; and
3. Includes a report with information on:
 - i. The actual measurements of all waste streams assessed, as recorded on-site;
 - ii. Estimates of the amount of each waste stream generated on a monthly basis;
 - iii. Contamination levels for each waste stream assessed; and
 - iv. Recommendations for waste reduction by waste stream and diversion from refuse to designated recyclable materials and source separated organic waste.

Zero waste plan. The term “zero waste plan” means an awardee’s plan describing practices to support waste reduction, reuse and recycling among commercial establishments, as set forth in the awardee’s Agreement with the Department pursuant to section 16-1002 of the Administrative Code.

§ 2. Subchapter A of chapter 20 of title 16 of the rules of the city of New York is amended by adding a new section 20-03 to read as follows:

§ 20-03 Fees

The annual fee that each awardee must pay pursuant to section 16-1013 of the Administrative Code shall be:

- a. \$107,148.73 per zone award, and
- b. \$107,148.73 per citywide containerized commercial waste award.

§ 3. Subchapter B of chapter 20 of title 16 of the rules of the city of New York is amended by adding a new section 20-29 to read as follows:

§ 20-29 Commercial Waste Generation Audits

An awardee must provide to its customers commercial waste generation audit services and/or reimbursement for commercial waste generation audits by a third party in accordance with the requirements of the awardee's Zero Waste Plan.

§ 4. Subchapter C of chapter 20 of title 16 of the rules of the city of New York is amended by adding a new section 20-33 to read as follows:

§ 20-33 Zero Waste Plan

Each awardee and its designated carters must comply with the terms of the awardee's zero waste plan. Such plan must, at a minimum:

- a. Detail the awardee's practices to support waste reduction, reuse and recycling among commercial establishments within the zone or zones covered by the Agreement with the Department under which the awardee is operating, including but not limited to partnerships with local organizations, waste reduction or diversion targets, customer outreach and education or other practices to further such goals;
- b. Detail how the awardee will work with customers to promote compliance with the City's recycling laws and rules, increase the amount and quality of designated recyclable material diverted from the refuse stream, and increase overall diversion through waste reduction, reuse and recycling;
- c. Include a protocol for notifying a customer of significant designated recyclable material content in the customer's refuse and recommending to the customer steps to improve compliance with the City's recycling requirements and to increase diversion of designated recyclable material from the refuse stream;

- d. Include plans for offering organics collection services to a broad range of establishments within the zone, including the awardee's specific plans for providing organic waste collection services to customers that are not designated covered establishments pursuant to section 16-306.1(b) of the Administrative Code in accordance with the requirements of section 16-1002(c)(5) of such code; and
- e. Include a plan to provide commercial waste generation audit services to customers and/or reimbursement to customers for commercial waste generation audits performed by a third party, including but not limited to:
 - i. A description of whether the awardee will contract directly with a third party waste audit company or offer reimbursement to customers;
 - ii. The awardee's prices for third party waste audit services and/or reimbursement rates for such services;
 - iii. How the awardee will promote access to commercial waste generation audit services to a broad range of commercial establishments including small businesses, in the zone or zones covered by the Agreement with the Department under which the awardee is operating; and
 - iv. Specific methods, if any, of utilizing commercial waste generation audit services to support the Department's zero waste goals.

§ 5. This rule shall take effect as follows:

1. The rule shall take effect in each commercial waste zone on the implementation start date for such zone set by rule of the department of sanitation pursuant to paragraph 3 of subdivision e of section 16-1002 of the Administrative Code; and
2. The rule shall take effect with respect to Citywide containerized commercial waste collection on the implementation start date for Citywide containerized commercial waste collection set by rule of the department of sanitation.