

THE NEW YORK STATE FOOD DONATION AND FOOD SCRAPS RECYCLING LAW: WHAT DO YOU NEED TO KNOW?

Hodgson Russ Food & Beverage Alert
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While restaurants, grocery stores, hotels & motels, colleges & universities, malls, and event centers continue to face significant challenges while operating in the global pandemic, New York State's mandate regarding food donation and recycling, effective January 1, 2022, cannot be ignored. See N.Y. Env'tl. Conserv. Law § 27-2201-2219. This law comes into effect at a time when food insecurity is skyrocketing throughout New York State and nationwide. The Department of Environmental Conservation (DEC) estimates that 2.8 million New Yorkers are food insecure and that 40% of food produced in this country goes uneaten. See N.Y. Dep't of Env'tl. Conserv. Food Donation and Food Scraps Recycling Law Legis. Guidance (2020). This law aims to reduce edible food waste and the accompanying decomposition of food that produces greenhouse gases.

The law requires large generators of food scraps, defined as having an annual average of 2 tons of scraps per week or more, to separate and donate edible food, or separate and recycle all remaining food scraps if located within 25 miles of an organics recycler. "Edible food" means food that is suitable and safe for humans to eat. "Food scraps" is defined as inedible food, food contaminated papers, edible food that is not donated, and food processing waste, and does not include recalled or seized food. "Organics recycling" includes animal feed producers, composting, and fermentation.

These "large generators" will be designated by the DEC on or before June 1, 2021. In addition to having to separate excess food for donation or recycling food scraps, these entities will also be required to train workers; obtain an appropriate transporter (or self-haul or recycle on-site); and submit an annual report to the DEC. Notably, the law does not apply to hospitals, nursing homes, adult care facilities, elementary and secondary schools, and food scrap generators in a city with one million people or more that has a local law requiring food donation and recycling (*i.e.* New York City).

For those with a proven hardship, a temporary waiver of compliance may be granted for up to 1 year for the following reasons: the generator does not produce 2 tons of food scraps per week; the total cost of organic recycling is at least 10% greater than the total cost of landfilling or combustion; there are no organic recyclers within 25 miles with sufficient capacity; a food scraps transporter is not available; or other "unique circumstances" apply. **Hardship waivers must be submitted to the DEC**

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between June and September this year.

Currently, the DEC has proposed regulations, viewable [here](#), to implement this law. The proposed regulations are, in certain respects, a work in progress. For example, specifically as to food scraps generation methodology, the “department will use proxy calculations, such as number of employees or college students, equated to food scraps generation, to estimate the amount of food scraps generated from a source and will make those calculations available on its website. If proxy calculations are not available or are not appropriate, the department will use other information, such as phone interviews and publicized research, to determine food scraps generation.” Written comments on the proposed regulations may be submitted until April 27, 2021, and two public hearings are scheduled for April 7, 2021.

One bright spot worth noting is the opportunity to obtain funding to offset some program costs through the Food Waste Reduction and Diversion Reimbursement Program. This fund, operated by the NYS Pollution and Prevention Institute (“Institute”), offers financial assistance between \$15,000- \$50,000. This funding, however, may not be used for capital expenses. Additional information about the Institute and this specific program may be found [here](#).

Hodgson Russ Insights: Don’t wait to prepare for these major responsibilities. Now is the time to begin setting up the infrastructure for compliance, including training workers, implementing educational programs regarding food waste and composting, or partnering with food scrap haulers and recyclers. Alternatively, consider applying for a hardship waiver, if these responsibilities are more than your business can handle at this time. Whatever course you choose, don’t ignore this law or the significant compliance responsibilities it imposes. Our Food & Beverage Practice remains willing and able to assist you.

Hodgson Russ can help guide you through the requirements described in this alert, and other aspects of the New York State Donation and Food Scraps Recycling Law. For assistance, please contact [Andrew Freedman](#) (716.848.1332) or [Reena Dutta](#) (716.848.1626), or any member of our [Food and Beverage Practice](#).