



New York State Department of Environmental Conservation Issues Regulations Implementing the Food Donation and Food Scraps Recycling Law — Impacting a Broad Range of Businesses

New York State passed a law in April 2019 that requires many food scraps generators to donate and recycle excess food waste; the New York State Department of Environmental Conservation (DEC) recently issued regulations implementing this law. The Food Donation and Food Scraps Recycling Law becomes effective January 1, 2022, and mandates a designated food scraps generator (DFSG or “generator”)—that produces an annual average of at least two tons of organic waste per week—must donate excess edible food “to the maximum extent practicable.”

This list specifies which types of DFSGs need to comply with the donation requirements, or both the donation and recycling requirements under the law. If you are in one of these categories, you should check the list¹ to see if you have been identified by the DEC as subject to this law:

- Colleges and Universities
- Correctional Facilities and Jails
- Grocery and Specialty Food
- Hospitality
- Restaurants
 - Full Service
 - Limited Service
- Supercenters
- Other Generators
 - Amusement and Theme Parks
 - Casinos and Racetracks
 - Malls
 - Military Bases
 - Sporting Venues
 - Wholesale and Distribution

This law excludes the following:

- Hospitals
- Nursing Homes
- Adult Care Facilities
- K-12 Schools
- Farms
- Cities with a population of one million or more, such as New York City, which already has a local law in place requiring the diversion of food scraps from disposal.

In addition, certain food scraps generators must divert food scraps that can’t be donated from their regular solid waste disposal and, instead, recycle those wastes in several specific ways. The new law stems from growing national and state concerns over food waste and hunger. In the United States, 72 billion pounds of food is wasted annually, with over 40% of food produced going uneaten and, according to [Feeding New York State](#), 2.8 million New Yorkers are food insecure. It is also driven by efforts to reduce the generation of greenhouse gasses from landfills via diversion of waste streams that significantly contribute to those emissions.

WHAT THE LAW SAYS

The Food Donation and Food Scraps Recycling Law has three primary components that could materially impact food businesses. The first component is the food donation requirement. According to the DEC, food donation entails the separating of edible food for human consumption from non-edible food scraps. By working with local food relief and food banks, organizations can help their communities

1 List of Designated Food Scraps Generators https://www.dec.ny.gov/docs/materials_minerals_pdf/dfsglistfinal.pdf.



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while minimizing landfill emissions caused by decomposing food waste. Any generator producing over two tons of organic waste per week is required to donate excess edible food “to the maximum extent practicable.” There is no set amount that a generator must donate. Instead, the DEC emphasizes that generators should donate to the extent they can by seeking increased avenues for food donation.

The second component of the new law requires that all DFSGs producing over two tons of organic waste per week, and operating within a 25-mile radius of an organic recycling facility or transfer station, must make arrangements for the transport and recycling of their non-edible waste. A complete list of designated recyclers can be found on the [DEC website](#). Note, this list is not static, and new recycling operations will lead to more companies and organizations having to recycle food scraps in addition to donating.

Finally, all DFSGs must also submit an annual report on their donation and recycling practices. Annual reports will be due by March 1 of each year starting in 2023.

EXEMPTIONS AND WAIVERS

As there will undoubtedly be cases where food scrap donation and/or recycling is unfeasible, the DEC has created a waiver process. In the event that food donation is excessively impractical, the DEC clarified that they are willing to work with generators to provide exemptions. Unlike food scraps recycling, there is no physical waiver required for donation exemption, so generators will be required to work with the DEC to describe the particular challenges of separating or transporting their foods. DFSGs

may seek a temporary year-to-year waiver in the event that food recycling is problematic. The five justifications for a recycling waiver are as follows:

- Generator does not produce two tons of food scraps per week (average);
- Total cost of solid waste management including organics recycling is at least 10% greater than the total cost of disposal without organics recycling;
- Organics recycler within 25 miles does NOT have available capacity for waste;
- Food scraps transporter not available to the generator; or
- Other unique circumstances (needing greater explanation).

CONCLUSION

The evolving demands of the new Food Donation and Food Scraps Recycling Law may place significant financial and operational stress on many New York State food waste generators and related businesses. These requirements go into effect in less than six months.

Additional Assistance

Significant research and editorial assistance provided by Nate Rich, University of Richmond (B.A. expected in 2022). Should you have any questions or concerns related to the Food Donation and Food Scraps Recycling Law, please contact David P. Flynn, Partner and Environmental Practice Team Leader, at dflynn@phillipslytle.com, (716) 847-5473, or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



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