

**THE CITY OF NEW YORK
DEPARTMENT OF SANITATION**

**NOTICE OF ADOPTION OF FINAL RULES GOVERNING THE RECOVERY OF
REFRIGERANTS**

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 and 1043(a) of the New York City Charter and section 16-485 of the New York City Administrative Code that the Department adopts the following rule governing the recovery of refrigerants from appliances. This rule also repeals the current Chapter 17 of Title 16 of the Rules of the City of New York, which relates to the collection, recycling and reuse of electronic equipment, because the local laws that authorized Chapter 17, Local Laws 13 and 21 of 2008, were preempted by New York State law through Chapter 99 of 2010. DSNY's authority for this repeal is found in sections 753 and 1043(a) of the New York City Charter. The Department published a Notice of Opportunity to Comment on the proposed rules in the *City Record* on December 30, 2013. On February 13, 2013 the Department held a public hearing on the proposed rules. Due to inclement weather on the date of that hearing, the Department subsequently published a second Notice of Opportunity to Comment on the proposed rules in the *City Record* on February 25, 2014. The Department held a second public hearing on the proposed rules on March 27, 2014.

Statement of Basis and Purpose

Local Law 69 of 2013 makes original equipment manufacturers (“OEMs”) responsible for the lawful recovery of refrigerants from their refrigerant-containing appliances when their appliances are discarded by residents. Despite this requirement, the Department will continue to provide its own refrigerant removal program in which OEMs can participate for a fee. OEMs can also choose to establish their own recovery program or participate with other OEMs in a refrigerant recovery program. The fee imposed by this rule will allow the Department to recover a portion of the program costs incurred through servicing OEMs’ appliances.

The purpose of the rule is to carry out the requirements of Local Law 69 of 2013 by establishing the requirements for OEMs’ refrigerant recovery programs for appliances that are being disposed of by “residential generators” in the city of New York. “Residential generators” are any person, entity, agency, or institution in the city of New York that receives solid waste or recycling collection service from the department.

Specifically, the rule:

- Establishes the registration requirements for OEMs of refrigerant-containing appliances,
- Requires that OEMs indicate whether they plan to establish their own refrigerant recovery program, participate with other OEMs in a refrigerant recovery program, or have their appliances serviced by the Department’s refrigerant recovery program,
- Establishes the fee that an OEM must pay if refrigerant is removed from an OEM’s appliance by the department,
- Establishes annual reporting requirements for any OEM who establishes its own refrigerant recovery program or participates with OEMs in a refrigerant recovery program, and,
- Establishes violations and fines for failure to comply with certain requirements of the rule.

DSNY’s authority for these rules is found in sections 753 and 1043(a) of the New York City Charter and section 16-485 of the New York City Administrative Code.

This rule also repeals the current Chapter 17 of Title 16 of the Rules of the City of New York, which relates to the collection, recycling and reuse of electronic equipment, because the local laws that authorized Chapter 17, Local Laws 13 and 21 of 2008, were preempted by New York State law through Chapter 99 of 2010. DSNY’s authority for this repeal is found in sections 753 and 1043(a) of the New York City Charter.

After careful consideration of all public comments regarding this rule, DSNY decided to modify the rule in order to clarify the information that DSNY will include, if practicable, in the biannual bill that it sends to OEMs.

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. Chapter 17 of Title 16 of the Rules of the City of New York, relating to the collection, recycling and reuse of electronic equipment, is REPEALED.

§ 2. Title 16 of the Rules of the City of New York is amended by adding a new Chapter 17 to read as follows:

Chapter 17

RECOVERY OF REFRIGERANTS

§17-01 Definitions. When used in this chapter:

"Appliance" means any device that contains refrigerants and can be used for household purposes including, but not limited to, room air conditioners, refrigerators, water coolers, or freezers.

"Original equipment manufacturer" ("OEM") means (1) a person or entity whose brand name appears on an appliance sold, offered for sale or distributed in the city or (2) a person or entity who manufactures or has manufactured an appliance sold, offered for sale or distributed in the city.

"Recover" or "recovery" means to remove refrigerants from an appliance in such a way that the refrigerants are not released into the atmosphere pursuant to subpart F of part 82 of title 40 of the code of federal regulations.

"Refrigerants" means any substances consisting in whole or in part of a class I or class II ozone-depleting substance, which are used for heat transfer purposes and provide a cooling effect, including, but not limited, to chlorofluorocarbons, hydro-chlorofluorocarbons, or any other substitute substance as may be defined by the United States environmental protection agency. A class I or class II ozone-depleting substance shall be those substances as defined by the United States environmental protection agency in section 602 of the United States clean air act. A "substitute substance" shall be any environmental protection agency approved replacement for a class I or II ozone-depleting substance in a refrigeration or air-conditioning end-use.

"Residential generator" means any person, entity, agency, or institution in the city of New York that receives solid waste or recycling collection service from the department.

"Room air conditioner" means any electrical appliance that has a compressor, a condenser, an evaporator and a fan to cool and dehumidify the surrounding air and that is capable in ordinary usage of being mounted in a window or through a wall.

"Serviced by the department" means the recovery of refrigerants by the department from appliances that are set out for department collection in the city of New York.

§17-02 OEM Responsibility for Recovery.

(a) On or after July first, two thousand fourteen, OEMs shall be responsible for the lawful recovery of refrigerants from their appliances that are disposed of by residential generators.

(b) An OEM may elect to (i) establish its own refrigerant recovery program, (ii) participate with other OEMs in a refrigerant recovery program or (iii) have its appliances serviced by the department under the department's refrigerant recovery program. No program established pursuant to paragraph (i) or (ii) of this subdivision may include curbside collection of appliances. All such programs must comply with applicable federal, state and local regulations regarding the lawful recovery of refrigerants.

§17-03 OEM Registration Requirements.

(a) By July first, two thousand fourteen, OEMs must register with the department on a form provided by the department. Such form may be obtained from the department's website or by written request to:

Bureau of Waste Prevention, Reuse and Recycling
New York City Department of Sanitation
44 Beaver Street, 6th Floor
New York, NY 10004

(b) Such registration shall include:

(1) the name and billing address of the OEM;

(2) a statement indicating whether the OEM has elected to (i) establish its own refrigerant recovery program, (ii) participate with other OEMs in a refrigerant recovery program, or (iii) have its appliances serviced by the department in the refrigerant recovery program provided pursuant to subdivision a of section 16-482 of the Administrative Code of the City of New York;

(3) a list of all brand names owned by the OEM;

(4) If an OEM has elected to establish or participate in a refrigerant recovery program pursuant to paragraph one or two of subdivision b of section 16-481 of the Administrative Code of the City of New York, the registration shall also include:

(i) the name, title and contact information of the person designated by the OEM as the liaison for its refrigerant recovery program;

(ii) a toll-free telephone number and/or the address of a website where residential generators may obtain information regarding the OEM's refrigerant recovery program; and

(iii) a brief description of the OEM's refrigerant recovery program.

§17-04 Departmental Refrigerant Recovery Program.

(a) The department shall provide a refrigerant recovery program for appliances set out for department collection by residential generators. The department shall charge OEMs a fee of twenty dollars for each of their appliances serviced by the department.

(b) The department shall bill OEMs biannually for their appliances that are serviced by the department. The department shall provide an OEM with a statement indicating how many of its appliances were serviced by the department. If practicable, the department shall also provide the OEM with information indicating the number of the OEM's appliances the department serviced by type of appliance, the district where the appliances were serviced, the date on which the appliances were serviced, and if available, the serial numbers of the appliances serviced by the department. Payment shall be due no later than 30 days after the date the department issued the bill. Such date will be included in the bill. The department shall first seek to bill the OEM whose brand name appears on the appliance sold, offered for sale or distributed in the city. If the department is unable to find the brand name, the department shall seek to bill the OEM who manufactures or has manufactured the appliance sold, offered for sale or distributed in the city.

(c) The department shall provide a list on its website of all OEMs that elect to (i) establish refrigerant recovery programs, or (ii) participate with other OEMs in refrigerant recovery programs. Such list shall include a toll-free telephone number and/or a link to the address of a website where residential generators may obtain information regarding the OEMs' refrigerant recovery program, if such telephone number or website address has been provided to the department as required by section 17-03 of this chapter.

§17-05 Annual Reporting.

(a) By July first, two thousand fifteen and annually thereafter, an OEM who elects to (i) establish its own refrigerant recovery program or (ii) participate with other OEMs in a refrigerant recovery program shall submit to the department an annual report on a form provided by the department. Such form may be obtained from the department's website or by written request to:

Bureau of Waste Prevention, Reuse and Recycling
New York City Department of Sanitation
44 Beaver Street, 6th Floor
New York, NY 10004

(b) An OEM's annual report shall include:

(1) a brief description of the OEM's refrigerant recovery program and any changes thereto;

(2) a listing of the OEM's current brand names;

(3) the number of appliances by appliance type and the total tonnage of appliances by appliance type serviced under the OEM's refrigerant recovery program; and

(4) the volume of refrigerants by refrigerant type recovered under the OEM's refrigerant recovery program.

§17-06 Enforcement.

(a) It shall be a violation of this section for an OEM to fail to submit a registration or annual report required by this chapter. Any such violation shall be punishable by a fine of two hundred and fifty dollars per violation.

(b) It shall be a violation of this section for an OEM to remove refrigerants from appliances that are serviced pursuant to an OEM's refrigerant recovery program in a manner that does not comply with subpart F of part 82 of title 40 of the code of federal regulations. Any such violation shall be punishable by a fine of five hundred dollars per violation.