A new 6 NYCRR Part 350 is proposed to be adopted to implement the Food Donation and Scraps Recycling Law enacted in 2019 in Title 22 of Article 27 of the Environmental Conservation Law.

Subpart 350-1 provides the general provisions that apply to the Part including purpose, exemptions, prohibitions, definitions, inspection, and severability. In accordance with the law, the exemptions include cities with a population of one million or more, hospitals, nursing homes, adult care facilities, and elementary and secondary schools.

Subpart 350-2 outlines the requirements that apply to designated food scraps generators. The Subpart outlines how designated food scraps generators are determined and the requirements for those generators. The requirements include the need to donate excess food, to recycle food scraps if an organics facility is available, and annual reporting. The Subpart also includes a temporary waiver provision for generators that can demonstrate a need to be excluded from the requirements of the law.

Subpart 350-3 clarifies that the lists of generators, organic recyclers, and transporters will be maintained by the Department.

Subpart 350-4 outlines the requirements that apply to transporters, organic recyclers, transfer facilities, landfills, and combustion facilities. These requirements mandate that once the food scraps are separated by the generator they must be ultimately recycled and not disposed.
A new Part 350 is being added as follows:

**PART 350**

**FOOD DONATION AND FOOD SCRAPS RECYCLING**

Statutory authority: Environmental Conservation Law title 1 of article 1; title 3 of article 3; title 22 of article 27, and title 27 of article 71.

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SUBPART 350-1

GENERAL

350-1.1 Purpose and Applicability
350-1.2 Exemptions
350-1.3 Prohibitions
350-1.4 Definitions
350-1.5 Inspection
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Section 350-1.1 Purpose and applicability

(a) Purpose
This Part sets forth criteria to increase the donation of wholesome food to those in need and to increase the recycling of food scraps.

(b) Applicability
(1) This Part applies to entities that generate two tons of food scraps (wet weight basis) per week or more and related solid waste management operations and facilities, including, but not limited to, waste transporters, transfer facilities, combustion facilities, and landfills.

(2) The design and operational criteria for solid waste management facilities and transporters, including organics recyclers, landfills, transfer facilities, combustion facilities, and transporters are found in Parts 360 – 364 of this Title.

Section 350-1.2 Exemptions

This Part does not apply to:
(a) any designated food scraps generators located in a city with a population of one million or more which has enacted a local law, ordinance or regulation at least as stringent as, or more stringent than, the requirements of this Part that requires the diversion of edible food and food scraps from disposal; or
(b) hospitals, nursing homes, adult care facilities, and elementary and secondary schools.

Section 350-1.3 Prohibitions

(a) Animal feed must not include prohibited items, such as offal or carcasses, as set forth in section 72-a of Article 5 of the New York State Department of Agriculture and Markets Law.
(b) The resultant material or product of the organics recycler must be used in a beneficial manner (e.g., soil amendment, source of animal feed, etc.) as determined by the department and cannot be landfilled or combusted. If the food scraps are sent to a facility that accepts multiple waste streams (an anaerobic digester, for example), the portion of the resultant material or product derived from food scraps must be used in a beneficial manner and not landfilled or combusted, unless otherwise approved by the department.

Section 350-1.4 Definitions

(a) Capacity means the amount of food scraps that an organics recycler is able to receive based on available space, permitting limitations, and the facility’s desire and ability to manage the waste.

(b) Combustion facility means a facility for the thermal treatment of waste, as defined in Part 360 of this Title.

(c) Department means the New York State Department of Environmental Conservation.

(d) Designated food scraps generator means a person who generates at a single location an annual average of two tons per week or more of food scraps, on a wet weight basis. These entities include, but are not limited to, supermarkets, food service businesses such as restaurants, higher education institutions, hotels, food processors, correctional facilities, and sports or entertainment venues.

For a location with multiple independent food service businesses, such as a mall or college campus, the entity responsible for contracting for solid waste transportation services is responsible for managing food scraps from the independent businesses. The quantity of food scraps generated is determined by amount of food scraps collected by each waste transporter servicing the location. If any transporter collects more than an annual average of two tons per week or more of food scraps, on a wet weight basis, all the food service businesses at a single location using that transporter are required to comply with this Part.

(e) Edible food means food that is suitable and safe for humans to eat.

(f) Food processing waste means food waste components from manufacturing, as defined in Part 360 of this Title.

(g) Food scraps means inedible food, trimmings from the preparation of food, food-soiled paper, edible food that is not donated, and food processing waste. Food scraps does not include used cooking oil, yellow grease, or any food which is subject to a recall or seizure due to the presence of pathogens.

(h) Intermediary facility means a facility that is not located at the point of generation, such a regional depackaging facility, that is used to process or manage food scraps prior to subsequent acceptance at an organics recycling facility.

(i) Landfill means a disposal facility, as defined in Part 360 of this Title.
(j) **Maximum extent practicable** means the degree to which the maximum amount of edible food can be donated for human consumption, without jeopardizing human health and the environment, by implementing best management practices, taking into account cost-effectiveness and feasibility.

(k) **On-site** means the same or geographically contiguous property under the control or ownership of the same person. It may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is gained by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which that person controls and to which the public does not have access are also considered on-site property.

(l) **Organics recycler** means a facility that recycles food scraps through use as animal feed or a feed ingredient, rendering, land application, composting, aerobic digestion, anaerobic digestion, fermentation, ethanol production, other processes approved by the department.

(m) **Person** means any business entity, partnership, company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation, public authority, firm, or organization.

(n) **Single location** means contiguous property under common ownership, which may include one or more buildings.

(o) **Transfer facility** means a facility for the transfer of waste, as defined in Part 360 of this Title.

(p) **Transporter** means a person engaged in the transportation of waste, as defined in Part 360 of this Title.

(q) **Vector** means a carrier organism that is capable of transmitting a pathogen to another organism and includes, but is not limited to, flies and other insects, rodents, birds, and vermin.

**Section 350-1.5 Inspection**

Department personnel can enter any designated food scraps generator’s property or inspect records, at all reasonable times and locations, whether announced or unannounced, for the purpose of determining compliance with this Part. For solid waste management facilities, the department may inspect the facility to determine compliance with this Part, in accordance with the criteria outlined in section 360.7 of this Title.

**Section 350-1.6 Severability**

If any provision of this Part or the application of any provision of this Part to any person or circumstance is held invalid, the remainder of this Part and the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.
SUBPART 350-2

DESIGNATED FOOD SCRAPS GENERATORS

350-2.1 Food Scraps Generation Calculations
350-2.2 List of Designated Food Scraps Generators
350-2.3 Separation of Edible Food for Donation
350-2.4 Separation of Food Scraps for Recycling
350-2.5 Annual Reporting
350-2.6 Temporary Waiver Criteria

Section 350-2.1 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. If more accurate site-specific data, such as weight receipts are available for a certain generator, that data may be used by the department.

Section 350-2.2 List of designated food scraps generators

The department will maintain a list of all designated food scraps generators and make the list available on or before June 1 of each year, beginning in 2021. The department will notify all designated food scraps generators by July 1 of each year if they are required to comply with some or all of the requirements in sections 350-2.3, 2.4, and 2.5 of this Part. This determination shall be based on the department’s assessment of the quantity of food scraps that can be accepted at each organics recycler. A designated food scraps generator has until December 31 of the year they are first placed on the list to comply with this Part.

Section 350-2.3 Separation of edible food for donation

On or after January 1, 2022, all designated food scraps generators must separate their edible food for donation for human consumption from food scraps designated for recycling or disposal to the maximum extent practicable, as determined by the department using comparable data from similar generators. Food donation must be in accordance with applicable laws, rules and regulations. Designated food scraps generators must work with local food relief organizations to comply with the donation criteria required by those organizations and to minimize the amount of food that will lead to waste at the relief organization.
Section 350-2.4 Separation of food scraps for recycling

(a) Except as provided in subdivision (c) of this section, on or after January 1, 2022, any designated food scraps generator that is within 25 miles (measured in a straight line) of an organics recycler(s) or an intermediary used prior to recycling such as a regional depackaging facility or a transfer facility, to the extent that the facility has capacity to accept all of the generator's food scraps based on the department's yearly estimate of an organic recyclers' capacity in accordance with this part, must do the following:

(1) Separate its food scraps from other solid waste. The materials separated will depend on the capabilities of the organics recycler used by the generator. For example, post-consumer food scraps do not have to be collected by the generator unless the organics recycling facility is capable of removing contaminants (plastics, etc.) that are likely to be present with the food scraps. The generator may determine the most efficient and appropriate separation methods for their operation.

(2) Ensure proper storage of food scraps on-site to prevent scraps from becoming odorous or attracting vectors. Proper storage includes, for example, a container that has a lid and a latch that keeps the lid closed and is resistant to tampering by rodents or other wildlife and has sufficient capacity.

(3) Follow applicable New York State Department of Health and New York State Department of Agriculture and Markets regulations and standards.

(4) Have information available and provide training for employees concerning the proper methods to separate and store food scraps.

(5) Obtain the services of a transporter that will deliver food scraps to an organics recycler, self-haul its food scraps to an organics recycler, or provide for organics recycling on-site. Self-hauling or recycling on-site are not required to comply with this Part.

(b) Use of on-site recycling systems. If a designated food scraps generator is required to recycle under subdivision (a) of this section and chooses to use an on-site system, the following criteria apply.

(1) If the on-site system does not treat at least 80 percent, by volume, of the food scraps generated annually, the remainder must be sent to an off-site organics recycler with sufficient capacity if one exists within a 25-mile radius of the generator, measured in a straight line.

(2) For systems that discharge to the public sewer system, the food scraps generator must obtain approval in writing to utilize the public sewer system for this purpose, including applying for and obtaining any necessary permits or other authorizations.

(3) The residuals generated from an on-site treatment system must be recycled.

(4) If the on-site system does not significantly reduce the volatile solids content of the food scraps and grinds the waste or otherwise transfers it to a sewer system or treatment plant with little or no biological treatment, the proportion of the resultant solids from the treatment plant that are generated from the food scraps must be recycled.
(c) Separation of food scraps by the generator is not required for a designated food scraps generator that sends all of its food scraps to be processed in a solid waste composting facility, solid waste anaerobic digestion facility, or other organics recycler capable of managing the waste without source separation.

Section 350-2.5 Annual reporting

All designated food scraps generators must submit an annual report to the department on or before March 1 of each year, beginning in 2023, in an electronic format acceptable to the department. The annual report must include, at a minimum, the following information:

(a) the amount of edible food donated;
(b) the amount of food scraps recycled;
(c) the name of any transporter used for food scraps;
(d) the name of the organics recycler(s) where the food scraps were processed; and
(e) a description of any implementation issues (e.g., contamination in food scraps, inconsistent pick-ups, odors.) and actions taken to address those issues.

Section 350-2.6 Temporary waiver

(a) General

(1) A designated food scraps generator may petition the department for a temporary waiver from some or all requirements of this Part, on forms acceptable to the department. The petition must include evidence of one or more of the justifications identified in subdivision (b) of this section.

(2) A waiver petition must be submitted to the department by November 1 of the year prior to the calendar year for which the waiver is requested. If approved, the waiver will be valid from January 1 through December 31 of the following year.

(b) Justifications. Acceptable justifications include the following.

(1) Justification 1. Even though the generator is listed as a designated food scraps generator by the department, the generator does not produce two tons (on a wet weight basis) or more of food scraps per week based on an annual average. Increased food donation cannot be used to reduce the calculation of food scraps produced by the generator for purposes of this justification.

(2) Justification 2. The total cost of solid waste management including organics recycling is at least 10 percent greater than the total cost of disposal without organics recycling.

(3) Justification 3. The organics recycler(s) within 25 miles (measured in a straight line), as identified by the department in the list, does not have available capacity.
(4) Justification 4. A food scraps transporter is not available to the generator.

(5) Justification 5. Other circumstances unique to the generator.

(c) Information that must be submitted with the petition. The petition must include at least one justification along with the documentation (at a minimum) set forth in this subdivision.

(1) Justification 1. The following information must be submitted.

   (i) If food scraps are not separated from other wastes at the point of generation:
       (a) documentation from the transporter or other verified source that indicates the amount of total waste removed from the generator for the previous year;
       (b) documentation that indicates the quantity of food donated for the previous year;
       (c) an estimate of the proportion of food scraps (including food-soiled paper) in the waste stream to the nearest 10% (waste is 60% food scraps, as an example);
       (d) calculations showing the annual average weekly food scraps generation;
       (e) a description of any seasonal variation expected in the waste stream quantity and food scraps content, if applicable; and
       (f) other relevant information to justify the amount of food scraps generated.

   (ii) If food scraps are separated from other wastes at the point of generation:
       (a) documentation, e.g., email, invoice from the transporter or other verified source that indicates the amount of food scraps removed from the generator for the previous year;
       (b) a description of any seasonal variation expected in the food scraps quantity produced, if applicable;
       (c) calculations showing the annual average weekly food scraps generation; and
       (d) other relevant information to justify the amount of food scraps generated.

(2) Justification 2. The following information must be submitted.

   (i) An analysis of the cost of disposal including documentation from the transporter or other verified source that indicates the total cost for disposal of all solid waste removed from the generator for the previous year.

   (ii) An analysis of the cost of recycling of food scraps including documentation from all food scraps transporters available to the generator, indicating the average monthly cost, as measured over a calendar year, for recycling of food scraps and managing the remainder of the waste stream removed from the generator. The analysis must include:
       (a) an evaluation of the amount of waste reduced through increased food donation and
(b) an evaluation of the cost savings by reducing the frequency of waste collection and reducing the cost of waste disposal since food scraps are removed from the waste stream.

(iii) An analysis with supporting calculations showing the cost of recycling food scraps compared to the cost of disposing of the food scraps as solid waste for the generator.

(3) Justification 3. The following information must be submitted.

(i) documentation from any transporter and/or organics recycler contacted by the generator indicating why the organics recycler cannot accept the generator’s food scraps at the present time and whether they will be able to do so during the coming calendar year when the waiver would be in effect.

(4) Justification 4. The following information must be submitted.

(i) documentation from the transporter currently used by the generator indicating that they do not provide food scraps transport; and

(ii) documentation (email, etc.) from each food scraps transporter available in the generator’s area indicating that they cannot provide food scraps transport for the generator during the coming calendar year when the waiver would be in effect.

(5) Justification 5. The food scraps generator must submit a detailed explanation of the unique circumstances, and why it is seeking a waiver from compliance with this part.

(d) Emergency waivers

A designated food scraps generator may petition the department to obtain a waiver without submitting the information outlined in subdivisions (a) – (c) of this section for situations that require immediate relief, such as unexpected closure of an organics recycler or an emergency response event. An emergency waiver request may be submitted at any time of the year.
SUBPART 350-3 Generators, Organics Recyclers, and Transporters Lists

350-3.1 Designated Food Scraps Generators List
350-3.2 Organics Recyclers List
350-3.3 Food Scraps Transporters List

Section 350-3.1 Designated food scraps generators list
The department will maintain a list of all designated food scraps generators and make an updated list available on or before June 1 of each year, beginning in 2021.

Section 350-3.2 Organics recyclers list
The department will maintain a list of organics recyclers and make an updated list available on or before June 1 of each year, beginning in 2021.

Section 350-3.3 Food scraps transporters list
The department will maintain a list of transporters that handle source separated food scraps and make an updated list available on or before June 1 of each year, beginning in 2021.
SUBPART 350-4

Transporter and Solid Waste Management Facility Responsibilities

350-4.1 Waste Transporters
350-4.2 Organics Recyclers
350-4.3 Transfer Facilities and Other Intermediaries
350-4.4 Landfills and Combustion Facilities

Section 350-4.1 Waste transporters

Any waste transporter that collects food scraps from a designated food scraps generator required to send its food scraps to an organics recycler or from an intermediary facility used prior to recycling such as a depackaging facility or a transfer facility must comply with the following:

(a) transport the food scraps directly to an organics recycler or to a transfer facility or other intermediary facility, and notify the facility of the requirement to deliver the food scraps to an organics recycler;

(b) take all reasonable precautions to not deliver the food scraps to a combustion facility or a landfill;

(c) keep the food scraps separate from other solid waste unless the comingled waste can be processed by an organics recycler or unless such generator has received a temporary waiver pursuant to this Part; and

(d) comply with the requirements of Part 364 of this Title.

Section 350-4.2 Organics recyclers

(a) The product or material created by the recycling of food scraps must be used in a beneficial manner, and cannot be landfilled or combusted, unless otherwise approved by the department. If the food scraps are sent to a facility that accepts multiple waste streams (an anaerobic digester, for example), the portion of the resultant material or product derived from food scraps must be used in a beneficial manner, and cannot be landfilled or combusted, unless otherwise approved by the department.

(b) Upon request, any organics recycler must provide information to the department concerning the amount of food scraps they are processing at the time of the department’s request, the additional capacity (if any) available for food scraps, the types of food scraps accepted, the amount of food scraps accepted from designated food scraps generators, and the names and locations of those designated food scraps generators. This requirement applies to exempt, registered, and permitted solid waste management facilities under Parts 360 and 361 of this Title.
Section 350-4.3 Transfer facilities and other intermediaries

Any transfer facility or other intermediary facility that receives notification that food scraps are required to be sent to an organics recycler must ensure that the food scraps are taken to an organics recycler. A transfer facility must take all reasonable precautions to not commingle the material with any other solid waste unless such commingled waste can be processed by the organics recycler.

Section 350-4.4 Landfills and combustion facilities

Combustion facilities and landfills must take all reasonable precautions to not accept food scraps from designated food scraps generators who are required to send their food scraps to an organics recycler.
Introduction

The Department is proposing to adopt 6 NYCRR Part 350 to implement the Food Donation and Scraps Recycling Law, which was enacted in 2019. The law takes effect on January 1, 2022 and requires large generators of food scraps to donate excess edible food and recycle all remaining food scraps if they are located within 25 miles of an organics recycler. Food scraps generators may petition the Department for a one-year waiver from these requirements.

1. Statutory Authority

The proposed regulations are derived directly from Title 22 of Article 27 of the Environmental Conservation Law (ECL). The statutory authority to implement the regulations is found under ECL title 1 of article 1; title 3 of article 3; and title 27 of article 71. The relevant statutory provisions are summarized below.

ECL section 1-0101 declares a policy of the State to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution in order to enhance the health, safety and welfare of the people and their overall economic and social well-being.

ECL Section 3-0301 empowers the Department to adopt regulations as may be necessary to carry out the environmental policy of the State set forth in Section 1-0101.
ECL Article 27, Title 22 Food Donation and Food Scraps Recycling

Section 27-2201. Definitions. This section provides the definitions needed to implement the statute including capacity, combustion facility, department, designated food scraps generator, food processing waste, food scraps, intermediary facility, landfill, maximum extent practicable, onsite, organic recycler, person, single location, transfer facility, transporter, and vector.

Section 27-2203. Designated food scraps generator responsibilities. Effective January 1, 2022, this section outlines the responsibilities of the generators including the requirement to donate excess edible food to the maximum extent practicable; the requirement to separate food scraps from other waste and to send food scraps to an organics recycler if one exists within 25 miles with sufficient capacity; and an exclusion from the separation requirement if the recycler to whom food scraps are sent can process municipal waste.

This section also requires generators to submit an annual report to the Department, beginning on March 1, 2023. The annual report is submitted electronically and must summarize the food donated and information concerning food scraps recycling.

To ensure that a generator is not unduly burdened financially by the statute, this section also includes a waiver provision. A generator can petition the Department for a waiver from compliance due to cost, the availability of an organics recycler and other factors.
Section 27-2205. Waste transporter responsibilities. This section requires waste transporters that collect food scraps from designated food scraps generators to deliver the food scraps to an organics recycling facility or to an intermediary such as a depackaging facility or a transfer facility that will then send the food scraps to a recycler.

Section 27-2207. Transfer facility. This section requires transfer facilities that accept food scraps from designated food scraps generators to send the food scraps to an organics recycler.

Section 27-2209. Food scraps disposal prohibition. This section requires incinerators and landfills to take all reasonable precautions to not accept food scraps from designated food scraps generators.

Section 27-2211. Department responsibilities. This section outlines the responsibility of the Department. The Department must publish information on its website concerning how designated food scraps generators are determined, how the waiver process works, how odors and vectors can be minimized, and a list of all facilities and transporters.

The Department is required to assess the capacity of all organics recyclers annually and to notify generator if they qualify as designated food scraps generators.

The Department must also develop educational materials for the affected generators and on waste minimization.
Section 27-2213. Regulations. The Department must promulgate regulations that include the methodology the department will use to determine who is a designated food scraps generator; the waiver process; procedures to minimize odors and vectors; a list of all designated food scraps generators, organics recyclers, and all waste transporters that manage source-separated organics; and how designated food scraps generators will comply.

Section 27-2215. Exclusions. Cities with a population of one million or more (if they continue to implement their own law), hospitals, nursing homes, adult care facilities, and elementary and secondary schools are not subject to Article 27, Title 22 of the ECL or this Part.

Section 27-2217. Annual Report. Beginning January 1, 2023, requires the Department to report annually to the Governor and Legislature concerning the implementation of the statute.

2. Legislative Objectives

The New York State Legislature included the following introduction to the enabling legislation for the proposed regulations, outlining the objectives:

Approximately 40 percent of the food produced in the United States today goes uneaten. Much of this organic waste is disposed of in solid waste landfills, where its decomposition accounts for over 12 percent of our nation's emissions of methane, a potent greenhouse gas. Meanwhile, an estimated 2.8 million New Yorkers are facing hunger and food insecurity. Recognizing the importance of food scraps to our environment, economy, and the health of New Yorkers, the Food
Donation and Food Scraps Recycling act establishes a food scraps hierarchy for the state of New York. The first tier of the hierarchy is source reduction, reducing the volume of surplus food generated. The second tier is recovery, feeding wholesome food to hungry people. Third is repurposing, feeding animals. Fourth is recycling, processing any leftover food such as by composting or anaerobic digestion to create a nutrient-rich soil amendment. This rulemaking will implement the legislative objectives to address each tier of the hierarchy by facilitating the prevention of food waste generation by commercial generators and residents; directing the recovery of excess edible food from high-volume commercial food waste generators; and ensuring that a significant portion of inedible food waste from large volume food waste generators is managed in a sustainable manner and is not disposed in landfills or sent to combustors. In addition, the Department has supported the recovery of wholesome food by providing grants from the environmental protection fund to increase capacity of food banks and other emergency food providers, conduct food scraps audits of high-volume generators of food scraps, support implementation of pollution prevention projects identified by food scraps audits and expand capacity of generators and municipalities to donate and recycle food.

3. Needs and Benefits

The proposed rulemaking is mandatory and required by statute.

Proposed Part 350 affects large generators of food scraps including some grocery stores, restaurants, and colleges. These designated food scraps generators are those that generate at a single location an annual average of two tons per week or more of food scraps. All designated food scraps generators must donate excess edible food and must also send food scraps to an organics
recycler if one is available with 25 miles of the generator. The increase in food donation will help those in need and will result in job creation to assist the non-profits that handle food donations. The requirement that generators must recycle their food scraps by using organics recyclers, such as composting facilities, anaerobic digesters, or depackaging facilities, will reduce the amount of food scraps that end up in landfills and ultimately produce methane, a potent greenhouse gas. Composting facilities and other organics recyclers also produce beneficial organics soil conditioners that are needed to improve the quality of poor soils and reduce erosion.

4. Costs

a. Costs to the Regulated Parties

The proposed regulations require designated food scraps generators to donate wholesome food. Increasing food donation from large food generators will not only help those in need, it will be a financial advantage for the food establishment, such as a grocery store or restaurant. Cost savings will be realized through tax deductions and through a reduction in the cost of waste disposal since the food will no longer be disposed.

The statute and the proposed Part 350 regulations also require designated food scraps generators to send their food scraps to an organics recycler if one exists within 25 miles of the generator and the recycler has capacity, as long as the cost is reasonably competitive with disposal. Experience in other states and for some generators in New York State has shown that the cost for sending food scraps to an organics recycler compared to sending those scraps for disposal can vary greatly. The statute and the proposed regulations limit the potential cost increase on the generators. The statute allows any designated food scraps generator to seek a waiver from the Department from the need to send their food scraps to an organics recycler if the cost to recycle is not reasonably competitive with the
cost of disposal. The proposed regulations define reasonably competitive to equate to a ten percent difference. Therefore, if the cost to send their food scraps to an organics recycler is more than ten percent higher than the cost for disposal, the generator can obtain a waiver from the Department. Therefore, if there is a cost increase to the generators it will be limited to an amount consistent with the requirements of the statute. In some cases, cost savings will be realized.

The statute and the proposed Part 350 regulations require the designated food scraps generators to report annually to the Department. There will be a cost associated with obtaining and maintaining the data and providing it to the Department. The cost for obtaining and maintaining the data should not increase with this proposed rulemaking because the data is already maintained by the generators for other purposes – donation data for tax purposes and waste management data for business cost management. For reporting, the proposed Part 350 follows the statute by requiring electronic reporting to decrease the burden on the generators. The Department will also provide the electronic reporting forms to be used. Therefore, the overall increased cost to the generators for recordkeeping and reporting should be minimal.

b. Costs to the Department, State and Local Governments

The Department, State and local governments will not incur additional costs due to the issuance of the proposed regulations. The Department will implement the regulations and develop and provide outreach and education on those requirements with existing staff.

5. Local Government Mandates
There are no mandates that need to be addressed by local governments since the proposed regulations do not apply to these entities.

6. Paperwork

The proposed regulations, consistent with the underlying statute, requires the designated food scraps generators to report annually to the Department, beginning on March 1, 2023. The annual report must summarize the amount of food donated with the destination and the amount of food recycled with the transporter and organics recycler used. The Department will develop a simple electronic reporting form to assist the generators in submitting the required information. The information should be readily available to the generators from Food Banks and other emergency food providers, and the food scraps haulers.

7. Duplication

The proposed regulations do not duplicate, overlap, or conflict with any other State or federal requirements.

8. Alternatives

The Department is required by State legislation under Title 22 of Article 27, to promulgate rules and regulations necessary to implement the provisions of the statute. Therefore, there are no other alternatives for this proposed rulemaking.
9. Federal Standards

No federal standards will be exceeded by promulgating the proposed rule.

10. Compliance Schedule

The statutory requirements set forth in Article 22 of the ECL take effect on January 1, 2022. The rule will be effective 30 days after filing the Notice of Adoption with the Department of State.
Job Impact Exemption Statement – 6 NYCRR Part 350

Food Donation and Food Scraps Recycling

Part 350 will increase the donation of edible food to those in need and increase the recycling of food scraps through composting and other means. This will cause job creation.

In accordance with Section 201-a(2)(a) of the State Administrative Procedure Act, a Job Impact Statement has not been prepared for this rule making, as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State (the State). To the contrary, proposed 6 NYCRR Part 350 is expected to create, as set forth below, a positive impact on employment opportunities.

The New York State Department of Environmental Conservation (DEC) has determined that the proposed Food Donation and Food Scraps Recycling regulations will have a positive impact on jobs and employment opportunities throughout the State. The purpose of the regulations, based on a State statute of the same name, is to increase edible food donation and food scraps recycling from generators that produce two tons or more of food scraps per week. An increase in food donation will help those in need. It will also increase the number of jobs in the non-profit sector related to the collection, storage, and distribution of wholesome food as well as those organics recycling facilities that are developed or expanded.

The following outline provides information about each section of the proposed regulations and the impact on potential employment opportunities in food donation and food scraps recycling.
Section A contains a description of the purpose and applicability, definitions, inspection criteria, and severability of Part 350. The purpose of this section is to provide background information needed for the administration of Article 27, Title 22 of the Environmental Conservation Law (ECL). There is no negative effect on the generation of employment opportunities under this section.

Section B contains the criteria applicable to designated food scraps generators (those that generate two tons or more of food scraps per week). All designated food scraps generators must donate excess edible food and must also send food scraps to an organics recycler if one is available within 25 miles of the generator. The increase in food donation will help those in need and will result in job creation to assist the non-profits that handle food donations. The requirement that generators must recycle their food scraps by using organics recyclers such as composting facilities, anaerobic digesters, or depackagers, will increase the need for transporters and recycling facilities for the food scraps. These activities will also result in job increases and economic growth.

Section C outlines the lists that will be maintained by DEC, enumerating the designated food scraps generators, food scraps transporters, and organics recycling facilities. Existing DEC staff will maintain these lists.

Section D outlines the responsibilities of the various entities involved in food scraps management including the transporters, recyclers, transfer facilities, combustors, and landfills. The requirements do not represent a significant change to these operations and will not result in job creation, reduction, or elimination.
In consideration of the foregoing, DEC concludes that adoption of this regulatory proposal for food donation and food scraps recycling will not have substantial adverse impacts on jobs within the State. Rather, with the operation of new transporters and organics recycling facilities, various employment opportunities will be created throughout the State.
Rural Area Flexibility Analysis – 6 NYCRR Part 350

Food Donation and Food Scraps Recycling

1. Types and Estimated Number of Rural Areas

For purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means those portions of the state so defined by Executive Law section 481(7). SAPA section 102(10). Under Executive Law section 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein." There are 44 counties in New York State (State) that have populations of less than 200,000 people and 71 towns in non-rural counties where the population densities are less than 150 people per square mile.

Proposed Part 350 affects large generators of food scraps including some grocery stores, restaurants, and colleges. The majority of these generators will not be located in rural areas. They are likely to be found in urban and suburban locations. However, there may be a few larger generators, such as a regional grocery store, that are located in rural areas of the State.

2. Reporting, Recordkeeping, Other Compliance Requirements, and Need for Professional Services

Large food scraps generators are required to report annually to the Department concerning how much food was donated and food scraps were recycled. This reporting will be done electronically to
minimize the burden on the generators. Electronic forms for reporting will be provided by the Department.

The few generators that are located in rural areas will need to begin or increase food donation. Increasing food donation will provide additional food to those in need in the rural areas and will reduce waste disposal costs for the generators.

If a rural generator has a composting facility or other organics recycler within 25 miles, the generator must send their food scraps to the recycler. However, the cost of recycling must be competitive with the cost of disposal, so there should not be an economic burden on the generator.

No professional services are required for compliance with the regulations.

3. Costs

a. Costs to the Regulated Parties

The proposed regulations require designated food scraps generators to donate wholesome edible food. Increasing food donation from large food generators will not only help those in need, it will be a financial advantage for the food establishment, such as a grocery store or restaurant. Cost savings will be realized through tax deductions and through a reduction in the cost of waste disposal since the food will no longer be disposed.

The statute and the proposed Part 350 regulations also require designated food scraps generators to send their food scraps to an organics recycler if one exists within 25 miles of the generator and the
recycler has capacity, as long as the cost is reasonably competitive with disposal. Experience in other states and for some generators in New York State has shown that the cost for sending food scraps to an organics recycler compared to sending those scraps for disposal can vary greatly. The statute and the proposed regulations limit the potential cost increase on the generators. The statute allows any designated food scraps generator to seek a waiver from the Department from the need to send their food scraps to an organics recycler if the cost to recycle is not reasonably competitive with the cost of disposal. The proposed regulations define reasonably competitive to equate to a ten percent difference. Therefore, if the cost to send their food scraps to an organics recycler is more than ten percent higher than the cost for disposal, the generator can obtain a waiver from the Department. Therefore, if there is a cost increase to the generators it will be limited to an amount consistent with the requirements of the statute. In some cases, cost savings will be realized.

The statute and the proposed Part 350 regulations require the designated food scraps generators to report annually to the Department. There will be a cost associated with obtaining and maintaining the data and providing it to the Department. The cost for obtaining and maintaining the data should not increase with this proposed rulemaking because the data is already maintained by the generators for other purposes – donation data for tax purposes and waste management data for business cost management. For reporting, the proposed Part 350 follows the statute by requiring electronic reporting to decrease the burden on the generators. The Department will also provide the electronic reporting forms to be used. Therefore, the overall increased cost to the generators for recordkeeping and reporting should be minimal.

b. Costs to the Department, State and Local Governments
The Department, State and local governments will not incur additional costs due to the issuance of the proposed regulations. The Department will implement the regulations and develop and provide outreach and education on those requirements with existing staff.

The regulations may spur the growth of composting facilities or other organics recycling facilities in rural areas. These facilities will increase economic growth and employment opportunities in those rural areas.

4. Minimizing Adverse Impact

As outlined in this analysis, it is the Department’s belief that the proposed regulations will not cause a significant economic burden, place any additional burdens on rural areas, or increase the universe of regulatory requirements applicable to such rural areas.

5. Rural Area Participation

The Department has provided significant outreach and will continue to provide a statewide outreach program to all entities affected by the regulations and other interested parties, including public and private interests in rural areas. For the generators in rural areas that may be affected the regulations, the Department has already reached out through their organizations, such as the Restaurant Association or the Food Industry Alliance, and through direct mailings and meetings. An extended public comment period for the rulemaking will be used to allow additional time for the public to review and comment on the regulations.
Since the passing of the law, the Department has held five stakeholder meetings with various stakeholder groups, including: transporters, organics recyclers, municipalities, food recovery, and environmental advocacy organizations. The Department will be presenting at the NYS Organics Summit as well as the NYS Solid Waste Federation Conference on the Food Donation & Food Scraps Recycling Law. The Department intends to continue to engage stakeholders through presentations, association meetings, and other outreach. Even before the passage of the law, the Department worked to engage stakeholders and provide guidance on food waste reduction, food donation, and food scraps recycling.

The Department’s website has been updated to include a webpage on the Food Donation and Food Scraps Recycling Law in addition to the creation of a law specific email address encourages interested parties to sign up to a listserv to receive information from the Department concerning the law. The Department also releases the Solid Waste & Recycling Newsletter (minimum frequency biweekly), through the use of DECDelivers, where important updates pertaining to the law are shared with subscribers.
1. Effect of rule

Proposed Part 350 affects large generators of food scraps including some grocery stores, restaurants, and colleges. These designated food scraps generators are those that generate two tons or more of food scraps per week. All designated food scraps generators must donate excess edible food and must also send food scraps to an organics recycler if one is available within 25 miles of the generator. The increase in food donation will help those in need and will result in job creation to assist the non-profits that receive and distribute food donations. The requirement that generators must recycle their food scraps by using organics recyclers, such as composting facilities, anaerobic digesters, or depackaging facilities, will increase the need for transporters and recycling facilities for the food scraps.

There are no requirements in proposed Part 350 that directly affect small businesses and local governments. The regulations may increase opportunities for the development of new small businesses, as more organics recycling facilities are needed to handle the food scraps from large generators.

2. Compliance Requirements

The implementation of these regulations will not adversely affect small businesses or local governments since there are no standards or reporting and record keeping requirements for small
businesses or local governments. The reporting obligations contained in the regulations apply only to large generators of food scraps.

3. Professional Services

There are no professional services required for small businesses and local government

4. Compliance Costs

The proposed regulations will have no compliance costs for small businesses and local governments because the regulations do not apply to these entities.

5. Economic and Technological Feasibility

There are no economic or technological feasibility issues that need to be addressed by small businesses and local governments since the proposed regulations do not apply to these entities.

6. Minimizing Adverse Impact

The proposed regulations will have no adverse economic impacts on small businesses and local governments because the regulations do not apply to these entities.

7. Small Business and Local Government Participation
The Department has provided significant outreach and will continue to provide a statewide outreach program to all entities affected by the regulations and other interested parties, including public and private interests in rural areas. For the generators in rural areas that may be affected the regulations, the Department has already reached out through their organizations, such as the Restaurant Association or the Food Industry Alliance, and through direct mailings and meetings. An extended public comment period for the rulemaking will be used to allow additional time for the public to review and comment on the regulations.

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8. Cure Period or Other Opportunity for Ameliorative Action
No cure period is needed since the proposed regulations do not apply to small businesses or local governments.