

Mandatory Food Waste Recycling Laws: What Businesses in New York and New Jersey Need to Know

How does food waste impact New York and New Jersey? New York State generates [3.9 million tons](#) of food waste every year; while New Jersey estimates that its residents throw out [1.3 million tons](#). Based on estimates from ReFED, the food wasted in New York and New Jersey has an economic value of more than [\\$10 billion](#). New York and New Jersey also face significant food insecurity and climate change issues.

To put these numbers in context, can you envision [130 billion meals](#) of food wasted annually in the USA? Or, can you visualize [400 pounds of food waste per person per year](#)?

As a result, New Jersey and New York, which do not always see eye to eye, are moving almost in lock step to implement food waste recycling mandates within the next year. These mandates will require certain commercial and institutional enterprises to address food waste through a combination of food donation and recycling.

There are key differences between the mandates in New York and New Jersey; for instance, New York's mandate will require food donation whenever possible, but New Jersey's only implicitly incentivizes food donation. However, there also are many similarities between the two mandates; in fact, both mandates apply to large quantity food waste generators (i.e., entities that generate more than a specified amount of food waste), and both apply only if there is an organics recycler with sufficient capacity within 25 miles.

Entities that may be subject to the mandates should begin now to evaluate their compliance obligations, which likely will involve evaluation of waste disposal history and conducting waste audits, reviewing waste disposal arrangement and contracting, establishing partnerships with food rescue organizations and organics recyclers, evaluating the necessary infrastructure and financial investments, and preparing employee and customer training programs.

Additionally, whether or not your entity will be subject to the mandates, there are many reports building the "business case" for voluntary food waste reduction efforts. Did you know that the cost of food waste to the food industry is estimated at about [\\$250 billion per year](#)?

Overview of New York State Mandate

- **Timeline.** New York's food waste recycling mandate is scheduled to take effect on January 1, 2022. The New York State Department of Environmental Conservation has proposed (but not yet adopted) regulations to guide the implementation of the mandate. The comment period on these regulations closes April 27, 2021, and the regulations are expected to be adopted in summer/fall 2021.

- **Waste Threshold.** New York’s mandate applies to businesses that generate 2 or more tons of food waste per week at a single location. Potentially subject businesses include: supermarkets, large foodservice businesses, higher education institutions, hotels, correctional facilities and sports and entertainment venues. It also is important to note that co-located businesses, for example two stores in the same shopping mall, that transport and dispose of food waste together are counted as a single business for purposes of the 2-ton waste threshold.
- **Food Donation and Recycling Requirement.** Businesses that meet the 2-ton per week waste generation threshold are required to donate edible food to the maximum extent practicable. Businesses that meet the threshold and are within 25 miles of an organics recycling facility (or intermediary, such as a regional de-packaging facility) with sufficient capacity will also be required to recycle their food waste. (For the sake of clarity, an “organics recycling facility” is a facility that accepts and recycles organic waste, such as food scraps, vegetative and/or yard waste, and other natural materials, while an “intermediary facility” is a facility that receives food waste for aggregation and/or prepackaging before the waste is sent to a recycling facility.)
- **Business Notifications.** The New York State Department of Environmental Conservation (“NYSDEC”) will notify businesses that are required to comply with the mandate by July 1 of each year, and businesses must come into compliance by December 31 of the same year. (NYSDEC has said it will notify generators this year on June 1.) This annual determination by the NYSDEC will be based on proxy calculations (i.e., calculations based on information about the business and not actual waste data), although the agency may use site-specific data if available. (In fact, in the event that the proxy calculation suggests a business will generate more than 2 tons of food waste per week, a business can use site-specific data to establish that it actually is below the waste threshold and therefore obtain a waiver of the requirements of the mandate, but there are specific procedures that apply to waiver requests.) Businesses that may be close to the threshold may want to generate site-specific data now so they are prepared to evaluate whether they actually need to comply with the mandate.
- **Waivers.** Subject businesses can request a waiver of the mandate’s requirements based on “undue hardship,” including by showing that 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. The NYSDEC has proposed specific requirements and procedures for any entity wishing to take advantage of the undue hardship exemption. Initial waiver requests will be accepted between June 1, 2021 and September 1, 2021.
- **Exemptions.** Exempt businesses automatically include hospitals, nursing homes, adult care facilities and elementary and secondary schools across New York State, as well as all businesses within New York City, given that the Big Apple already imposes a food waste recycling requirement.

- **Requirements for Organics Industry.** New York’s proposed implementing regulations also contain a few new requirements for organics recyclers and waste haulers, such as additional reporting requirements.

Overview of New Jersey Mandate

- **Timeline.** New Jersey’s food waste recycling mandate is scheduled to take effect on October 14, 2021; New Jersey has not yet proposed regulations to implement the law, leading some to speculation that the effective date of the mandate will be delayed. However, representatives of the New Jersey Department of Environmental Protection (“NJDEP”) have not suggested that the mandate will be delayed and have stated they expect to provide guidance to businesses that may be subject to the mandate in spring/summer 2021.
- **Waste Threshold.** New Jersey’s mandate applies to businesses that generate 52 tons or more per year (i.e., 1 or more ton per week on average) of pre-consumer food waste. It is important to note that New Jersey’s mandate has a lower waste threshold than New York’s, but New Jersey’s mandate counts only pre-consumer food waste (i.e., food that has not been issued or sold to a consumer) while New York’s includes pre- and post-consumer food waste. New Jersey’s mandate also does not explain how co-located businesses will be treated.
- **Recycling Requirement.** New Jersey’s mandate requires businesses that exceed the 1-ton per week threshold to recycle food waste if the business is located within 25 road miles of an authorized food waste recycling facility. This aspect of the New Jersey mandate is interesting in two respects; first, it limits the scope of the organics recycling facilities that trigger the mandate to only authorized food waste recycling facilities, as opposed to all facilities licensed to accept organic waste, and it determines the distance based on road miles, as opposed to a simple distance calculation. Both of these factors will increase the complexity of determining compliance with the mandate. (New Jersey maintains a list of [authorized food waste recycling facilities](#), i.e., facilities with a specific permit known as a “Class C Permit” that accept food waste; additional facilities are under development by private and public parties. We do not yet know whether New Jersey will notify generators that are subject to the mandate, as New York plans to do.)
- **Waivers.** New Jersey is required to draft regulations that will govern waivers of the requirements of the mandate. Like the New York mandate, New Jersey has said it will waive the requirements of the mandate if the cost of the recycling requirement is at least 10 percent greater than the cost of disposal without organics recycling. In each case, it would be helpful to have a little more clarity from the regulators on how this comparison will be made.

Beyond the Mandates: The Business Case and Impact

New Jersey's and New York's mandates follow a half dozen similar laws in other states, including several in the Northeastern United States. A mandate, however, is a governmental tool to build awareness and drive change, and is the proverbial tip of the iceberg. When you go beneath the surface of the iceberg, the issues raised by wasted food are broader and deeper than simply reducing food waste from being incinerated or going to landfill, and there are many more reasons than compliance with the mandate to address food waste.

Food is one of the most important, fundamental *LIFE* priorities. Food waste solutions will have the best value and significant impact when we work together to create an integrated strategy that incorporates all five P's in these sustainability dimensions: people, planet, prosperity, peace and partnerships.

The entire food ecosystem will benefit from addressing the imbalance of food scarcity and food waste. Innovation, behavior change, policy, state mandates, financial investments, and climate impact are change factors along with trends such as food scarcity awareness, food waste management, food pantries, community refrigerators, ghost kitchens, food waste upcycling toward a circular economy and food consumption trends like slow food movement, mindful eating, plant-based and sustainably or locally sourced food options and targeted nutrition plans for well-being and good health.

Consider your organization's cultural shift from a "Food Waste to Food Value" mindset and how to align your efforts to drive the broad spectrum of changes that are necessary to meet the 2030 global goal to halve the world's food waste. In other words, think about whether your business can treat excess food as a resource, rather than as a waste. For instance, what if the tomato residue from creating tomato juice could be re-used to create healthy and delicious tomato sauce? What if inedible food scraps could be sent to an organics recycler and the remaining nutrients returned to the soil through compost to continue to support agriculture in the region? The possibilities are endless.

Bring your curiosity, business sense, innovative mindset, collaborative thinking, change orientation and environmental and social conscience to explore the wide variety of solutions to build a more sustainable, circular, food ecosystem for your organization. Can you re-imagine the future of your organization by using a systemic review of your end-to-end processes to identify benefits in a multitude of ways? Will your organization desire to work toward an integrated strategy of the five P's to maximize food value and minimize food waste?

Everyone will benefit from pursuing efficiencies in this more sustainable food ecosystem. A few of the likely benefits for your organization may include:

- Innovation, business process improvements, more effective infrastructure, operational cost efficiencies;
- Environmental, social, governance (ESG) visibility;

- Corporate Social Responsibility (CSR) initiatives, including public-private partnerships for food bank donations, sponsoring start-ups and entrepreneurs, non-profits, etc.;
- Corporate Sustainability Branding;
- Employee engagement and retention for “Doing Good” actions, driving behavior change, new job creation and employee training designed with a quality job strategy to manage your new approach to a food value system;
- Sustainability Reports with metrics dashboards to show key metrics such as GHG emission reduction, water usage, cropland and landfill reductions.

New statistics and studies continually support the business case for food waste reduction efforts. Did you know that, for every \$1 invested in food waste reduction efforts, [the median return on investment is \\$14](#)? In other words, many businesses may be able to realize an even greater return on investment in food waste reduction efforts.

Conclusion

New York and New Jersey are moving ahead with food waste recycling mandates to address the environmental and social ills of wasted food. In order to comply with the mandates, there are a wide variety of tasks that must be completed, as highlighted above, from evaluating current waste generation and contracting, to employee and customer training.

Experts can help you review your organization’s circumstances in light of the mandates, and create a roadmap for your compliance that identifies and implements appropriate solution options with your vision of a more sustainable food ecosystem.

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