

## **NEW YORK CITY BUSINESS INTEGRITY COMMISSION**

### **NOTICE OF ADOPTION OF FINAL RULE ON TRAFFIC AND VEHICLE SAFETY IN THE TRADE WASTE INDUSTRY**

**NOTICE IS HEREBY GIVEN** in accordance with the requirements of section 1043 of the New York City Charter and exercising the authority vested in the New York City Business Integrity Commission (“BIC” or the “Commission”) by sections 1043(a) and 2101(b) of the New York City Charter and section 16-504 of the Administrative Code that the Commission adopts the following rule regarding traffic and vehicle safety in the trade waste industry. BIC published a Notice of Public Hearing and Opportunity to Comment on the proposed rule in the *City Record* on March 12, 2021. On April 13, 2021, BIC held a public hearing on the proposed rule.

#### **Statement of Basis and Purpose of Final Rule**

Under Section 2101 of the New York City Charter, the Commission is authorized to regulate the trade waste industry. As provided in Administrative Code Title 16-A, Section 16-504(d), BIC has the authority to establish and enforce standards for service and regulate the conduct of businesses licensed or registered pursuant to this chapter, including but not limited to traffic safety requirements and environmental and safety requirements for vehicles used in the collection, removal, transportation or disposal of trade waste. Under Section 16-504(i),<sup>1</sup> BIC is authorized to promulgate rules BIC deems necessary and appropriate to effectively regulate the trade waste industry.

Since 2010, trucks operated by licensees and registrants have killed at least 51 individuals and injured at least 404 individuals on New York City streets. Some operators repeatedly violate even the most basic traffic safety rules, such as running red lights, speeding, and driving the wrong way. These rule amendments are designed to improve street safety for all street users by improving trade waste vehicle safety, holding licensees and registrants accountable for their drivers’ repeated traffic safety violations, and requiring driver and helper training. Specifically, the new amendments will require licensees and registrants to ensure that vehicles are in safe operating condition by passing inspections conducted by qualified inspectors and undergoing daily inspections by vehicle operators. Moreover, certain types of vehicles will be required to comply with vehicle specifications, including being equipped with a convex mirror positioned on the front of such vehicles. These types of mirrors are commonly referred to as crossover mirrors and are used to reduce the blind spot at the front of the vehicles.

The amendments will also require licensees and registrants to provide annual safety training to all vehicle operators, laborers and helpers who are directly assigned to trade waste duties, including educating workers on workplace safety requirements, operational instructions for equipment,

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<sup>1</sup> Effective May 20, 2021, Section 16-504(i) will be relettered as Section 16-504(h).

safety hazards, state and local traffic laws, and best practices for safety. Vehicle operators will be required to complete a defensive driving course every three years.

The amendments will also require licensees and registrants to maintain various records, including accurate time records for vehicle operators and workers who handle trade waste, inspection and certification of repair forms, daily inspection reports, and records demonstrating compliance with training requirements.

The amendments will also require licensees and registrants to comply with hours of service requirements set forth in Part 395.3 of Title 49 of the Code of Federal Regulations, as well as various traffic safety rules set forth in the New York State Vehicle and Traffic Law and New York City traffic rules and regulations.

### **Timeline and Application of BIC and DSNY Rules**

The Commission and the New York City Department of Sanitation (“DSNY”) are jointly promulgating rules to address industry-wide safety issues and to ensure a uniform baseline between the two agencies’ overlapping regulatory authority. The requirements in the Commission’s rules will apply immediately to all licensees and registrants in the trade waste industry, and will continue to apply to all licensees and registrants until the transition of the commercial waste zones program occurs in each zone, in accordance with the schedule and further details to be provided in an upcoming DSNY rule. Further details on the transition to commercial waste zones will be provided in a forthcoming rulemaking regarding the transition start and end dates.

After the transition to commercial waste zones occurs, the Commission’s requirements regarding the topics contained in these rules will not apply to commercial waste carters, but will continue to apply to licensees and registrants that are hauling forms of trade waste other than commercial waste, such as construction and demolition debris. Once the commercial waste zones program is implemented, commercial waste zone carters will be required to follow DSNY’s applicable rules. Please note that the majority of the Commission’s safety requirements are replicated in DSNY’s proposed rules for commercial waste zone carters. More details regarding the applicability of the Commission’s rules to the commercial waste zones program will be provided in future rulemakings.

BIC’s authority for these rules is found in Sections 1043(a) and 2101(b) of the New York City Charter and in Section 16-504 of the New York City Administrative Code.

New material is underlined; deleted text is in [] brackets.

Section 1. Section 1-01 of Subchapter A of Chapter 1 of Title 17 of the Rules of the City of New York is amended by adding a new definition of “qualified inspector” in alphabetical order to read as follows:

**Qualified Inspector.** The term “qualified inspector” means an individual who meets the qualifications set forth in Part 396.19 of Title 49 of the Code of Federal Regulations.

Section 2. Subdivisions (l), (m) and (n) of Section 5-03 of Subchapter E of Chapter 1 of Title 17 of the Rules of the City of New York are relettered subdivisions (p), (q) and (r) and new Subdivisions (l), (m), (n) and (o) are added to read as follows:

(l) A licensee must maintain accurate time records for each vehicle operator and worker who handles trade waste. Such time records must identify the worker by name and job title, and for each day reflect the time the worker reported to work; the route, truck number or other information used to identify the worker’s daily work assignment; any off-duty breaks; the time the worker was released from duty; and the total number of hours worked per week.

(m) A licensee must maintain copies of all inspection and certification of repair forms required by Section 5-10(e) for at least five (5) years, and copies of such forms (paper or electronic) must be available in the corresponding vehicles at all times for six (6) months.

(n) A licensee must maintain copies of all daily inspection reports required by Section 5-10(f) for at least five (5) years, and copies of such reports (paper or electronic) must be available in the corresponding vehicles at all times for fourteen (14) days.

(o) A licensee must maintain records demonstrating compliance with Section 5-14 that include, at a minimum, the date training was provided, the names of each employee that received the training, and each employee’s job duties.

Section 3. Section 5-04 of Title 17 of the Rules of the City of New York is amended to read as follows:

#### **§ 5-04 Compliance with Applicable Law and Regulation.**

All licensees shall at all times comply with all the laws, rules and regulations of Federal, State and local governmental authorities having jurisdiction over any of the licensees' activities, including, but not limited to, rules and regulations of the Department of Environmental Protection, the Department of Health, the Department of Sanitation and the Department of Transportation concerning [the] environmental, safety and health standards, including but not limited to traffic safety, or relating to the collection, removal, transportation or disposal of trade waste in a safe manner, vehicle specifications, sanitary requirements, or the handling, transport, receipt, transfer or disposal of trade waste, regulated medical waste or waste containing asbestos or other hazardous, toxic or dangerous material. Failure to comply with these laws, rules or regulations shall be grounds for suspension and/or revocation of the license pursuant to Section 16-513 of the Code or refusal to issue a license pursuant to Section 16-509 of the Code and, in addition to any other penalty provided by law, the imposition of penalties pursuant to 17 RCNY § 1-04.

Section 4. Section 5-08 of Title 17 of the Rules of the City of New York is amended by adding new Subdivisions (u) and (v) to read as follows:

(u) A licensee must not permit or require any vehicle operator to drive the licensee's vehicles unless the vehicle operator complies with the hours of service requirements set forth in Part 395.3 of Title 49 of the Code of Federal Regulations.

(v) A licensee must ensure that the trade waste vehicles operated on behalf of the licensee are not engaging in a pattern of unsafe practices. Each such pattern of unsafe practices is a violation of this subdivision. For purposes of this subdivision, "a pattern of unsafe practices" means four instances of prohibited conduct set forth in paragraphs (1) through (6) of this subdivision within a six-month period by the licensee's vehicle operators and helpers, in the aggregate:

(1) A trade waste vehicle must not back up unless such movement can be made safely and without interfering with traffic for the minimum distance to allow for the safe collection of trade waste.

(2) A trade waste vehicle must not make a U turn, except where legally permitted at marked center lines and from designated lanes.

(3) A trade waste vehicle must stop at all steady red lights until such light turns green. A trade waste vehicle must stop at all flashing red lights and stop signs before entering an intersection.

(4) A trade waste vehicle must be driven only in the direction designated for the roadway.

(5) A trade waste vehicle must not obstruct a bike lane, bus stop, sidewalk, crosswalk, or intersection.

(6) Under no circumstances shall an individual ride on or cling to the outside of a trade waste vehicle while the vehicle is operating on a roadway.

Section 5. Section 5-10 of Title 17 of the Rules of the City of New York is amended by amending the heading and adding new Subdivisions (c), (d), (e), (f) and (g) to read as follows:

**§ 5-10 [License Plate and Vehicle Markings] Vehicle Specifications and Inspections.**

(c) Each vehicle having a gross vehicle weight rating of twenty-six thousand pounds or more and a conventional cab configuration in which the engine is mounted in front of the operator must be equipped with a convex mirror positioned on the front of such vehicle. When such vehicle is being operated, such mirror shall be adjusted so as to enable the operator thereof to see all points on an imaginary horizontal line which is three feet above the road, is one foot directly forward from the midpoint of the front of such motor vehicle, and extends the full width of the front of such vehicle or combination of vehicles.

(d) Nothing may be placed or suspended in or on the vehicle or windshield so as to obstruct the operator's vision through the windshield or other windows. Nothing in this subdivision shall be construed to prohibit the placement or suspension of an object in or on the vehicle or windshield in order to comply with or as expressly permitted by federal, state or local law.

(e) A trade waste vehicle must not be operated unless such vehicle is in safe operating condition and has passed an inspection conducted by a qualified inspector demonstrating compliance with the terms of this section at least once during the preceding six months. (1) Each such inspection must be recorded on an inspection report form prescribed by the Commission. Such inspection report must identify any safety defects discovered during the inspection and cover at a minimum, the following parts and accessories: service and parking brakes, steering mechanism, tires, wheels and rims, side guards, coupling devices, mirrors, lighting devices and reflectors, horn, windshield wipers, and emergency equipment. (2) Following an inspection, such vehicle may not be operated unless a qualified inspector certifies on the inspection report that all necessary repairs have been made and that such vehicle has passed the inspection. (3) Copies of such inspection reports must be kept in the corresponding vehicle in accordance with the requirements of subdivision (m) of Section 5-03.

(f) A trade waste vehicle must not be operated unless the operator of such vehicle is satisfied such vehicle is in safe operating condition. A licensee must require the operator of such vehicle to inspect such vehicle following each day's work and to prepare a daily inspection report that identifies such vehicle and any defect that would affect the safety of operation of such vehicle. Such daily inspection report must cover at a minimum the following parts and accessories: service and parking brakes, steering mechanism, tires, wheels and rims, side guards, coupling devices, mirrors, lighting devices and reflectors, horn, windshield wipers, and emergency equipment. Copies of such daily inspection reports must be kept in the corresponding vehicle in accordance with the requirements of subdivision (n) of Section 5-03. The operator of such vehicle must review the most recent daily inspection report and determine whether required repairs have been made when evaluating the condition of such vehicle.

(g) The Commission or a person designated by the Commission may inspect trade waste vehicles, equipment, licenses, registrations, inspection reports, and fleet records of each licensee at any time at its own discretion.

(1) The Commission or a person designated by the Commission may order the licensee to immediately remove any trade waste vehicle or equipment from service and, where appropriate, to take corrective action within a prescribed period of time if the Commission or such person designated by the Commission determines the vehicle or equipment presents an imminent threat to public health or safety or to the environment due to an issue that may include, but need not be limited to, defective brakes, tires or lighting devices, or leaking or spilling of fluids and escaping of trade waste. The licensee shall comply with the order within the time prescribed in the order and shall notify the Commission when compliance has been achieved.

- (2) Within the time specified for compliance in an order issued pursuant to this section or as otherwise specified in such order, the licensee may submit a written statement appealing the order to the Chair in the manner specified in the order.
- (3) Submission of an appeal pursuant to paragraph (2) of this subdivision shall relieve the licensee's obligation to take any corrective action within the time prescribed in the order pending a final determination pursuant to paragraph (4) of this subdivision, provided, however, that in the event the Chair determines that failure to take corrective action within the time prescribed in the order poses a significant risk of imminent harm to public health or safety or to the environment, the licensee will be notified and will be required to take such corrective action within the specified time, or within an alternative time specified by the Chair. Notwithstanding the foregoing, submission of such an appeal shall not relieve the licensee's obligation to remove a trade waste vehicle or equipment from service during the pendency of an appeal.
- (4) The Chair must review appeals and make a final written determination regarding the appeal within a reasonable period of time. The Commission will serve final determinations on the licensee as provided in 17 RCNY § 1-02.
- (5) If the Chair sustains an appeal in whole or in part, then the stated terms of the final determination on appeal will replace the original requirements of the order.
- (6) If an appeal is denied, the final determination will specify a reasonable period of time for compliance with the order based on the circumstances, except in the case of an order where taking corrective action is required within an earlier time pursuant to paragraph (3) of this subdivision. The final determination by the Chair is subject to review pursuant to article 78 of the New York Civil Practice Laws and Rules.

Section 6. Subchapter E of Chapter 1 of Title 17 of the Rules of the City of New York is amended by adding a new Section 5-14 to read as follows:

#### **§ 5-14 Worker Training**

(a) Training. A licensee must provide annual safety training to all vehicle operators and laborers or helpers who are directly assigned to the collection, removal, transport or disposal of trade waste on the public right of way. Such training must include, at a minimum, (1) educating workers on workplace safety requirements; (2) operational instruction on each specific type of equipment used by the employee; and (3) training to address specific public safety hazards associated with collecting, transporting, removing and disposing of trade waste, including but not limited to, training, as applicable, regarding: (a) collision avoidance, including defensive driving and best practices to avoid collisions with pedestrians, cyclists and other vulnerable road users; (b) pre-trip and post-trip vehicle and equipment inspections; (c) state and local traffic laws, including speed limits, yielding, and bus and bicycle lane restrictions; (d) preventing distracted driving; (e) navigating intersections and turns; (f) backing up a trade waste vehicle; (g) best practices for safe collection stops; (h) container management; (i) hopper operation; (j) fire prevention and response; and (k) transporting and disposing of specialized waste or hazardous materials. Such training must

be provided within 90 days after the start of employment or prior to the initial assignment of a worker to a job or task, whichever is earlier.

(b) Additional Driver Training. A licensee must not permit or require any vehicle operator to drive the licensee's vehicles unless, within the past three years, the vehicle operator has completed a defensive driving course approved by the Commission or a state agency that issues driver licenses.

(c) Provided that if a licensee is a designated carter pursuant to an agreement with the Department of Sanitation, compliance with Section 16-1008 satisfies the requirements of subdivisions (a) and (b) of this section.

Section 7. Section 7-02 of Subchapter G of Chapter 1 of Title 17 Rules of the City of New York is amended to read as follows:

**§ 7-02 Compliance with Applicable Law Required.**

All registrants shall at all times comply with all the laws, rules and regulations of Federal, State and local governmental authorities having jurisdiction over any of the registrants' activities, including, but not limited to, rules and regulations of the Department of Environmental Protection, the Department of Health, the Department of Sanitation and the Department of Transportation concerning [the] environmental, safety and health standards, including but not limited to traffic safety, or relating to the collection, removal, transportation or disposal of trade waste in a safe manner, vehicle specifications, sanitary requirements, or the handling, transport, receipt, transfer or disposal of trade waste, regulated medical waste or waste containing asbestos or other hazardous, toxic or dangerous material. Failure to comply with these laws, rules or regulations shall be grounds for suspension and/or revocation of the registration pursuant to Section 16-513 of the Code or refusal to issue a registration pursuant to Section 16-509 of the Code and, in addition to any other penalty provided by law, the imposition of penalties pursuant to 17 RCNY § [1-05] 1-04.

Section 8. Section 7-03 of Title 17 of the Rules of the City of New York is amended by amending the heading and adding new Subdivisions (c), (d), (e), (f) and (g) to read as follows:

**§ 7-03 [License Plates] Vehicle Specifications and Inspections.**

(c) Each vehicle having a gross vehicle weight rating of twenty-six thousand pounds or more and a conventional cab configuration in which the engine is mounted in front of the operator must be equipped with a convex mirror positioned on the front of such vehicle. When such vehicle is being operated, such mirror shall be adjusted so as to enable the operator thereof to see all points on an imaginary horizontal line which is three feet above the road, is one foot directly forward from the midpoint of the front of such motor vehicle, and extends the full width of the front of such vehicle or combination of vehicles.

(d) Nothing may be placed or suspended in or on the vehicle or windshield so as to obstruct the operator's vision through the windshield or other windows. Nothing in this subdivision shall be

construed to prohibit the placement or suspension of an object in or on the vehicle or windshield in order to comply with or as expressly permitted by federal, state or local law.

(e) A trade waste vehicle must not be operated unless such vehicle is in safe operating condition and has passed an inspection conducted by a qualified inspector demonstrating compliance with the terms of this section at least once during the preceding six months. (1) Each such inspection must be recorded on an inspection report form prescribed by the Commission. Such inspection report must identify any safety defects discovered during the inspection and cover at a minimum, the following parts and accessories: service and parking brakes, steering mechanism, tires, wheels and rims, side guards, coupling devices, mirrors, lighting devices and reflectors, horn, windshield wipers, and emergency equipment. (2) Following an inspection, such vehicle may not be operated unless a qualified inspector certifies on the inspection report that all necessary repairs have been made and that such vehicle has passed the inspection. (3) Copies of the most recent inspection report must be kept in the corresponding vehicle in accordance with the requirements of subdivision (e) of Section 7-06.

(f) A trade waste vehicle must not be operated unless the operator of such vehicle is satisfied such vehicle is in safe operating condition. A registrant must require the operator of such vehicle to inspect such vehicle following each day's work and to prepare a daily inspection report that identifies such vehicle and any defect that would affect the safety of operation of the vehicle. Such daily inspection report must cover at a minimum, the following parts and accessories: service and parking brakes, steering mechanism, tires, wheels and rims, side guards, coupling devices, mirrors, lighting devices and reflectors, horn, windshield wipers, and emergency equipment. Copies of such daily inspection reports must be kept in the corresponding vehicle in accordance with the requirements of subdivision (f) of Section 7-06. The operator of such vehicle must review the most recent daily inspection report and determine whether required repairs have been made when evaluating the condition of such vehicle.

(g) The Commission or a person designated by the Commission may inspect trade waste vehicles, equipment, licenses, registrations, inspection reports, and fleet records of each registrant at any time at its own discretion.

- (1) The Commission or a person designated by the Commission may order the registrant to immediately remove any trade waste vehicle or equipment from service and, where appropriate, to take corrective action within a prescribed period of time if the Commission or such person designated by the Commission determines the vehicle or equipment presents an imminent threat to public health or safety or to the environment due to an issue that may include, but need not be limited to, defective brakes, tires or lighting devices, or leaking or spilling of fluids and escaping of trade waste. The registrant shall comply with the order within the time prescribed in the order, and shall notify the Commission when compliance has been achieved.
- (2) Within the time specified for compliance in an order issued pursuant to this section or as otherwise specified in such order, the registrant may submit a written statement appealing the order to the Chair in the manner specified in the order.



- (3) Submission of an appeal pursuant to paragraph (2) of this subdivision shall relieve the registrant's obligation to take any corrective action within the time prescribed in the order pending a final determination pursuant to paragraph (4) of this subdivision, provided, however, that in the event the Chair determines that failure to take corrective action within the time prescribed in the order poses a significant risk of imminent harm to public health or safety or to the environment, the registrant will be notified and will be required to take such corrective action within the specified time, or within an alternative time specified by the Chair. Notwithstanding the foregoing, submission of such an appeal shall not relieve the registrant's obligation to remove a trade waste vehicle or equipment from service during the pendency of an appeal.
- (4) The Chair must review appeals and make a final written determination regarding the appeal within a reasonable period of time. The Commission will serve final determinations on the registrant as provided in 17 RCNY § 1-02.
- (5) If the Chair sustains an appeal in whole or in part, then the stated terms of the final determination on appeal will replace the original requirements of the order.
- (6) If an appeal is denied, the final determination will specify a reasonable period of time for compliance with the order based on the circumstances, except in the case of an order where taking corrective action is required within an earlier time pursuant to paragraph (3) of this subdivision. The final determination by the Chair is subject to review pursuant to article 78 of the New York Civil Practice Laws and Rules.

Section 9. Section 7-05 of Title 17 of the Rules of the City of New York is amended to read as follows:

#### **§ 7-05 Operations.**

A registrant that removes, collects or disposes of trade waste shall keep the sidewalk, flagging, curbstone and roadway abutting any area from which waste is removed free from obstruction, garbage, litter, debris and other offensive material resulting from the removal by the registrant of trade waste and shall comply with the requirements for operation contained in 17 RCNY § 5-11 and subdivisions (a) through (q) and (u) through (v) of 17 RCNY § 5-08 [and 17 RCNY § 5-11] of this chapter.

Section 10. Section 7-06 of Title 17 of the Rules of the City of New York is amended by adding subdivisions (d), (e), (f), (g) and (h) to read as follows:

(d) A registrant must maintain accurate time records for each vehicle operator and worker who handles trade waste. Such time records must identify the worker by name and job title, and for each day reflect the time the worker reported to work; the route, truck number or other information used to identify the worker's daily work assignment; any off-duty breaks; the time the worker was released from duty; and the total number of hours worked per week.

(e) A registrant must maintain copies of all inspection and certification of repair forms required by Section 7-03(e) for at least five (5) years, and copies of such forms (paper or electronic) must be available in the corresponding vehicles at all times for six (6) months.

(f) A registrant must maintain copies of all daily inspection reports required by Section 7-03(f) for at least five (5) years, and copies of such reports (paper or electronic) must be available in the corresponding vehicles at all times for fourteen (14) days.

(g) A registrant must maintain records demonstrating compliance with Section 7-08 that include, at a minimum, the date training was provided, the names of each employee that received the training, and each employee's job duties.

(h) All records that must be maintained pursuant to this section must be maintained for five (5) years unless the Commission directs otherwise.

Section 11. Subchapter G of Chapter 1 of Title 17 of the Rules of the City of New York is amended by adding a new Section 7-08 to read as follows:

### **§ 7-08 Worker Training**

(a) Training. A registrant must provide annual safety training to all vehicle operators and laborers or helpers who are directly assigned to the collection, removal, transport or disposal of trade waste on the public right of way. Such training must include, at a minimum, (1) educating workers on workplace safety requirements; (2) operational instruction on each specific type of equipment used by the employee; and (3) training to address specific public safety hazards associated with collecting, transporting, removing and disposing of trade waste, including but not limited to, training, as applicable, regarding: (a) collision avoidance, including defensive driving and best practices to avoid collisions with pedestrians, cyclists and other vulnerable road users; (b) pre-trip and post-trip vehicle and equipment inspections; (c) state and local traffic laws, including speed limits, yielding, and bus and bicycle lane restrictions; (d) preventing distracted driving; (e) navigating intersections and turns; (f) backing up a trade waste vehicle; (g) best practices for safe collection stops; (h) container management; (i) hopper operation; (j) fire prevention and response; and (k) transporting and disposing of specialized waste or hazardous materials. Such training must be provided within 90 days after the start of employment or prior to the initial assignment of a worker to a job or task, whichever is earlier.

(b) Additional Driver Training. A registrant must not permit or require any vehicle operator to drive the registrant's vehicles unless, within the past three years, the vehicle operator has completed a defensive driving course approved by the Commission or a state agency that issues driver licenses.