NEW YORK CITY BUSINESS INTEGRITY COMMISSION

NOTICE OF ADOPTION OF FINAL RULE REGARDING SIDE GUARDS ON HEAVY-DUTY TRADE WASTE VEHICLES

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 16-509(f), 16-513(a) and 16-526(b) of the Administrative Code that the Commission adopts the following rules regarding side guard requirements. BIC published a Notice of Public Hearing and Opportunity to Comment on the proposed rules in the *City Record* on July 6, 2022. On August 10, 2022, BIC held a public hearing on the proposed rules. BIC considered the comments received in connection with the hearing, and has determined that no changes to the rules are necessary.

Statement of Basis and Purpose of Final Rule

Administrative Code sections 16-509(f), 16-513(a) and 16-526(b) were added and amended by Local Law 56 of 2015 and Local Law 108 of 2021, respectively. They require any vehicle with a manufacturer's gross vehicle weight rating of more than 10,000 pounds owned or operated by an entity that is licensed or registered by the Commission and that is operated in New York City for the collection, removal, transportation, or disposal of trade waste to install side guards no later than January 1, 2023. The Commission is promulgating these rules to implement this requirement. Specifically, beginning on January 1, 2023, the Commission will not issue Commission license plates to vehicles without side guards and will require proof that side guards are installed on all vehicles disclosed to the Commission prior to January 1, 2023. Additionally, the rules establish a process in which a licensee or registrant may apply to the Commission for a waiver of these requirements if the licensee or registrant can establish that installation of a side guard on a particular vehicle is impractical.

New material is underlined
Asterisks (***) indicate unamended material.

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 new definitions of "side guard," "trade waste hauling vehicle," and "Volpe Side Guard Standard" to read as follows:

Side guard. The term "side guard" means a lateral protective safety device fit to the side of a trade waste hauling vehicle that is designed to prevent pedestrians and bicyclists from falling into the exposed space between the front axle and the rear axle of such vehicles and with additional specifications as may be established by the Commission pursuant to Administrative Code section 16-526(c)(3).

Trade Waste Hauling Vehicle. The term "trade waste hauling vehicle" means any motor vehicle with a manufacturer's gross vehicle weight rating exceeding 10,000 pounds that is owned or operated by an entity that is required to be licensed or registered by the Commission pursuant to § 16-505 of the Administrative Code, and that is operated in New York City for the collection, removal, transportation or disposal of trade waste. "Trade waste hauling vehicle" does not include any specialized vehicle or vehicle type on which side guard installation is deemed impractical by the Commission in accordance with Administrative Code section 16-526(c)(3).

Volpe Side Guard Standard. The term "Volpe Side Guard Standard" means the United States Department of Transportation's Volpe Side Guard standard published and referred to as "U.S. DOT Standard DOT-VNTSC-OSTR-16-05", as amended, or a functionally equivalent national vehicle Side Guard standard, as determined by the Commission.

§ 2. Subdivision (a) of section 5-10 of Subchapter E of Chapter 1 of Title 17 of the Rules of the City of New York is amended and a new subdivision (h) is added to read as follows:

(a) Upon issuance of a license, the Commission shall issue to the licensee two (2) license plates for each vehicle that will transport trade waste, pursuant to such license and for which a fee has been paid, pursuant to 17 RCNY §2-07. Beginning on January 1, 2020, the Commission will not issue license plates for any vehicle that does not comply with the requirements set forth in §24-163.11(b) of the Administrative Code. Beginning on January 1, 2023, the Commission will not issue license plates for any vehicle that does not comply with the requirements set forth in § 16-526 of the Administrative Code. License plates issued by the Commission must at all times be affixed as prescribed by the Commission to a visible and conspicuous part of each such vehicle. A licensee must not permit a vehicle to be used in the course of collecting, removing, or disposing of waste that has not been identified and covered by the license and for which a fee has not been paid. A license plate issued by the Commission for such a covered and identified vehicle must not be transferred to any other vehicle. Upon the sale or dissolution of the business of a licensee, or upon the suspension, revocation, or expiration of a Commission-issued license, such plates must be immediately surrendered to the Commission. All license plates issued by the Commission are the property of the Commission, and the Commission reserves the right to reclaim such plates at any time.

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(h) No later than January 1, 2023, every trade waste hauling vehicle must have side guards, except where the Commission has granted a waiver in accordance with paragraph (3) of this subdivision.

(1) At the time a licensee discloses a trade waste hauling vehicle to the Commission, such licensee must submit proof in the form and manner determined by the Commission that side guards are installed on such trade waste hauling vehicle. For all trade waste hauling vehicles disclosed to

the Commission prior to January 1, 2023, such proof must be submitted to the Commission no later than January 1, 2023.

(2) A trade waste hauling vehicle will be considered equipped with side guards as required by § 16-526 of the Administrative Code if one or more of the following three situations is present:

(i) The trade waste hauling vehicle is equipped with side guards that allow for a maximum 13.8 inch ground clearance, maximum 13.8 inch top clearance up to four feet in height, and a minimum 440 pound impact strength that achieves a smooth and continuous longitudinal (forward to backward) impact surface flush with the vehicle sidewall, known as the "NYC Side Guard Standard."

Side guards may include rail style guards, provided that such rails be no less than four inches tall and no more than 11.8 inches apart.

Side guards may incorporate other vehicle features such as toolboxes and ladders, or the function of a side guard may be performed by those features, subject to the Commission's approval.

(ii) The trade waste hauling vehicle cannot maintain a side guard due to the design or operations of the vehicle, subject to the licensee's application to the Commission for, and the grant of, a waiver in accordance with paragraph (3) of this subdivision

(iii) The trade waste hauling vehicle is designed or equipped on each side of the unit such that, by virtue of its shape and characteristics, its component parts can be regarded as replacing or functioning as side guards in accordance with the Volpe Side Guard Standard or will perform the function of side guards with modifications separate from installation of Volpe Standard side guards, subject to the Commission's approval.

(3) A licensee may apply to the Chair of the Commission for a waiver of the requirements of this subdivision where the licensee can demonstrate that installation of side guards is impractical, in accordance with Administrative Code section 16-526(a) and (c)(3). Such request must be submitted in writing to the Commission in a form and manner determined by the Commission. Such request must be submitted at the time the trade waste hauling vehicle is disclosed to the Commission or, if such trade waste hauling vehicle was disclosed to the Commission prior to the effective date of this paragraph, such request must be submitted to the Commission no later than November 1, 2022. A waiver from the side guard requirement shall be valid for up to two (2) years.

(i) The Chair of the Commission or their designee will evaluate a waiver request and make a determination within 90 days of receipt whether to approve or deny such request.

(ii) A licensee may apply for renewal of a waiver of the requirements of this subdivision for additional periods of up to two (2) years, where the licensee can demonstrate that installation of side guards continues to be impractical, in accordance with Administrative Code section 16-526(a) and (c)(3). Such request must be submitted in writing to the

Commission, in a form and manner determined by the Commission, at least 30 days before the expiration of the previous waiver period.

(iii) If the Commission denies a licensee's waiver application or denies a licensee's request to renew a waiver, the licensee may apply for reconsideration of the denial in writing, in a form and manner determined by the Commission, within 30 days of the denial determination. The Chair of the Commission or their designee shall review the application for reconsideration and, within 90 days after receipt of the application for reconsideration, shall issue a written notification affirming or reversing the denial of the licensee's waiver application or renewal request.

§ 3. Subdivision (a) of Section 7-03 of Subchapter E of Chapter 1 of Title 17 of the Rules of the City of New York is amended and a new subdivision (h) is added to read as follows:

(a) Upon issuance of a registration, the Commission shall issue to a registrant who removes trade waste generated in the course of operation of his or her business and to a registrant exempt from the licensing requirements of this chapter two (2) license plates for each vehicle that will transport trade waste, pursuant to such registration and for which a fee has been paid to the Commission, pursuant to 17 RCNY § 2-07. Beginning on January 1, 2020, the Commission will not issue license plates for any vehicle that does not comply with the requirements set forth in § 24-163.11(b) of the Administrative Code. Beginning on January 1, 2023, the Commission will not issue license plates for any vehicle that does not comply with the requirements set forth in § 16-526 of the Administrative Code. A registrant shall not permit a vehicle to be used in the course of collecting, removing, or disposing of waste that has not been identified and covered by the registration and for which a fee has not been paid. A license plate issued by the Commission for such a covered and identified vehicle must not be transferred to any other vehicle. Upon the sale or dissolution of the business of a registrant, or upon the suspension, revocation, or expiration of a Commission-issued registration, such plates must be immediately surrendered to the Commission. All license plates issued by the Commission are the property of the Commission, and the Commission reserves the right to reclaim such plates at any time. Notwithstanding any other provision of this chapter, the penalty for violation of this section shall not exceed five thousand dollars ($5,000) for each such violation.

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(h) No later than January 1, 2023, every trade waste hauling vehicle must have side guards, except where the Commission has granted a waiver in accordance with paragraph (3) of this subdivision.

(1) At the time a registrant discloses a trade waste hauling vehicle to the Commission, such registrant must submit proof in the form and manner determined by the Commission that side guards are installed on such trade waste hauling vehicle. For all trade waste hauling vehicles disclosed to the Commission prior to January 1, 2023, such proof must be submitted to the Commission no later than January 1, 2023.

(2) A trade waste hauling vehicle will be considered equipped with side guards as required by § 16-526 of the Administrative Code if one or more of the following three situations is present:

(i) The trade waste hauling vehicle is equipped with side guards that allow for a maximum 13.8 inch ground clearance, maximum 13.8 inch top clearance up to four feet in height, and a minimum 440 pound impact strength that achieves a smooth and continuous longitudinal (forward to backward) impact surface flush with the vehicle sidewall, known as the "NYC Side Guard Standard."

Side guards may include rail style guards, provided that such rails be no less than four inches tall and no more than 11.8 inches apart.

Side guards may incorporate other vehicle features such as toolboxes and ladders, or the function of a side guard may be performed by those features, subject to the Commission's approval.

(ii) The trade waste hauling vehicle cannot maintain a side guard due to the design or operations of the vehicle, subject to the registrant's application to the Commission for, and the grant of, a waiver in accordance with paragraph (3) of this subdivision.

(iii) The trade waste hauling vehicle is designed or equipped on each side of the unit such that, by virtue of its shape and characteristics, its component parts can be regarded as replacing or functioning as side guards in accordance with the Volpe Side Guard Standard or will perform the function of side guards with modifications separate from installation of Volpe Standard side guards, subject to the Commission's approval.

(3) A registrant may apply to the Chair of the Commission for a waiver of the requirements of this subdivision where the registrant can demonstrate that installation of side guards is impractical, in accordance with Administrative Code section 16-526(a) and (c)(3). Such request must be submitted in writing to the Commission in a form and manner determined by the Commission. Such request must be submitted at the time the trade waste hauling vehicle is disclosed to the Commission or, if such trade waste hauling vehicle was disclosed to the Commission prior to the effective date of this paragraph, such request must be submitted to the Commission no later than November 1, 2022. A waiver from the side guard requirement shall be valid for up to two (2) years.

(i) The Chair of the Commission or their designee will evaluate a waiver request and make a determination within 90 days of receipt whether to approve or deny such request.

(ii) A registrant may apply for renewal of a waiver of the requirements of this subdivision for additional periods of up to two (2) years, where the registrant can demonstrate that installation of side guards continues to be impractical, in accordance with Administrative Code section 16-526(a) and (c)(3). Such request must be submitted in writing to the Commission, in a form and manner determined by the Commission, at least 30 days before the expiration of the previous waiver period.

(iii) If the Commission denies a registrant's waiver application or denies a registrant's request to renew a waiver, the registrant may apply for reconsideration of the denial in

writing, in a form and manner determined by the Commission, within 30 days of the denial determination. The Chair of the Commission or their designee shall review the application for reconsideration and, within 90 days after receipt of the application for reconsideration, shall issue a written notification affirming or reversing the denial of the registrant's waiver application or renewal request.