

NEW YORK CITY BUSINESS INTEGRITY COMMISSION

NOTICE OF ADOPTION OF FINAL RULES GOVERNING MICRO-HAULERS

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 rules governing micro-haulers, a sub-class of licensees who solely collect a prescribed annual tonnage of organic waste by bicycle or zero emissions vehicles. BIC published a Notice of Public Hearing and Opportunity to Comment on the proposed rule in the *City Record* on March 30, 2021. On May 4, 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 Business Integrity Commission (BIC) 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. Under Section 16-504(i), BIC is authorized to establish fees and promulgate rules BIC deems necessary and appropriate to effectively regulate the trade waste industry.

Under Section 16-505 of the Administrative Code, any business engaged in the collection, removal or disposal of trade waste from a commercial establishment must first obtain a trade waste removal license from BIC. Trade waste includes organic waste. These rule amendments create a sub-class of BIC’s trade waste removal license and various requirements for organic waste micro-haulers. A “micro-hauler” is defined as “any person that does not dispose of waste at a solid waste transfer station and either (1) collects less than 2,600 tons of source separated organic waste from commercial establishments per year and collects such waste exclusively using bicycles; or (2) collects less than 500 tons of source separated organic waste from commercial establishments per year and collects such waste using exclusively (i) a zero emissions vehicle that has a gross vehicle weight rating of not more than 14,000 pounds or (ii) any other mode of transport specified in the rules of the Department of Sanitation.”

These rules include the definition of a “micro-hauler licensee,” establish the requirements for maintaining a micro-hauler license, and set forth liability limits for various types of insurance required for micro-hauler licensees. The rules also specify various investigation fees that apply to micro-hauler license applicants (for the investigation of a micro-hauler license applicant, disclosures of managerial employees, and disclosures of employees, agents, or prospective employees or agents of micro-hauler licensees that the Commission has reasonable cause to believe lack good character, honesty and integrity).

The rules also modify and add recordkeeping and reporting requirements for licensees and micro-hauler licensees.

BIC's authority for these rules is found in sections 1043(a) and 2101(b) of the New York City Charter.

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

Section 1. Section 1-01 of title 17 of the rules of the city of New York is amended by adding the following definitions:

Bicycle. The term “bicycle” means: (i) a two or three wheeled device upon which a person or persons may ride, propelled by human power through a belt, a chain or gears; (ii) a “pedal-assist bicycle” as defined in section 4-01 of title 34 of the rules of the city of New York or as otherwise defined by the Department of Transportation; or (iii) any other device upon which a person or persons may ride, as defined by the rules of the Department of Sanitation.

Micro-hauler. The term “micro-hauler” means any person that does not dispose of waste at a solid waste transfer station and either: (1) collects less than 2,600 tons of source separated organic waste from commercial establishments per year and collects such waste exclusively using bicycles; or (2) collects less than 500 tons of source separated organic waste from commercial establishments per year and collects such waste using exclusively (i) a zero emissions vehicle that has a gross vehicle weight rating of not more than 14,000 pounds or (ii) any other mode of transport specified in the rules of the Department of Sanitation.

Micro-hauler licensee. The term “micro-hauler licensee” means a licensee that is issued a micro-hauler license by the Commission.

Vehicle. The term “vehicle” does not include any bicycle used by a micro-hauler to collect organic waste from a commercial establishment.

§ 2. Subdivision (d) of section 1-06 of title 17 of the rules of the city of New York is added to read as follows:

(d) Paragraphs a, b, and c of this section do not apply to an applicant for a micro-hauler license.

§ 3. Section 1-13 of title 17 of the rules of the city of New York is renumbered section 1-14, and a new section 1-13 is added, to read as follows:

§ 1-13 Micro-haulers.

An applicant for a micro-hauler license and a micro-hauler licensee must comply with all requirements of this chapter unless otherwise stated.

§ 4. Subdivisions (b) and (f) of section 2-02 of title 17 of the rules of the city of New York are amended to read as follows:

(b) [A disclosure form completed by the applicant business and disclosure] Disclosure forms completed by all of the principals of the business[, except] as provided in [Subdivisions (b) and (c) of] 17 RCNY § 2-01, and disclosure forms completed by employees and agents or prospective employees or agents in the categories specified in Appendix A to this chapter.

(f) Before a license is issued, an applicant must submit proof that the following insurance policies have been secured:

(4) Commercial General Liability Insurance with liability limits of no less than five million dollars (\$5,000,000) combined single limit per occurrence for bodily injury and property damage. The maximum deductible for such insurance shall be no more than fifty thousand dollars (\$50,000). Except that a micro-hauler licensee must submit proof of a policy with liability limits of no less than one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage. The maximum deductible shall be no more than ten thousand dollars (\$10,000).

(5) Business Automobile Liability Insurance covering every vehicle operated by the licensee in his or her business, whether or not owned by the applicant, and every vehicle hired by the licensee with liability limits of no less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage. Except that a micro-hauler licensee must submit proof of a policy with liability limits of no less than five hundred thousand dollars (\$500,000) combined single limit per accident for bodily injury and property damage covering every zero emissions vehicle operated by the micro-hauler licensee in his or her business, whether or not owned by the applicant, and every zero emissions vehicle hired by the micro-hauler licensee.

(6) Employers' Liability Insurance in accordance with the laws of the state of New York, provided that a licensee that is not a micro-hauler licensee must maintain such insurance with limits of no less than one million five hundred thousand dollars (\$1,500,000) per accident.

(7) The policy or policies of insurance required by these rules must name the Commission as Certificate Holder and [must be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except upon sixty (60) days prior written notice to the Commission] additional insured, where applicable. Failure to maintain continuous insurance coverage meeting the requirements of these rules will result in revocation of the license. Such policy or policies of insurance must be obtained from a company, or companies, duly authorized to do business in the State of New York with [a] an A.M. Best's rating of [no less than A:X] at least A-/VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A, or a similar rating by any other nationally recognized statistical rating organization acceptable to the Commission, unless specific approval has been granted by the Mayor's Office of Operations to accept a company with a lower rating. Two (2) certificates of insurance effecting the required coverage and signed by a person authorized by the insurer to bind coverage on its behalf, must be delivered to the Commission prior to the effective date of the license. A licensee must demonstrate that he or she has secured the insurance coverage

required pursuant to this section and must maintain such required insurance coverage throughout the term of the license.

§ 5. Section 2-07 of title 17 of the rules of the city of New York is amended to read as follows:

The term of a license or Class 1 or Class 2 registration shall be two (2) years. The fee for investigation of a license applicant shall be five thousand dollars (\$5,000), the fee for an investigation of a micro-hauler license applicant shall be six hundred dollars (\$600), and the fee for each vehicle in excess of one (1) operated, pursuant to a license or micro-hauler license, shall be five hundred dollars (\$500). The fee for investigation of a Class 2 registration applicant, pursuant to 17 RCNY § 2-03 shall be three thousand and five hundred dollars (\$3,500), and the fee for each vehicle operated, pursuant to a Class 2 registration shall be five hundred dollars (\$500). The fee for investigation of a Class 1 registration applicant shall be one thousand dollars (\$1,000), and the fee for each vehicle operated, pursuant to a Class 1 registration shall be four hundred dollars (\$400). There shall be no fee for a Class 1 registrant that is a Not-For-Profit Corporation. The fee for investigation of a trade waste broker registration application shall be five thousand dollars (\$5,000). The term of a Class 3 registration shall be five (5) years. The fee for investigation of a Class 3 registration applicant shall be four thousand dollars (\$4,000).

§ 6. Subdivision (a) of section 3-01 of title 17 of the rules of the city of New York is amended to read as follows:

(a) Each person not otherwise a principal as defined in 17 RCNY § 1-02 who is an employee or agent or prospective employee or agent of an applicant for a license or a licensee and who is in a managerial capacity or in a job category listed in Appendix A to this subchapter, shall: (i) be fingerprinted by a person designated for such purpose by the Commission and pay the fee prescribed by the Division of Criminal Justice Services for the purpose of obtaining criminal history records; and (ii) be photographed by the Commission and provide the disclosure set forth in subparagraphs (b) through (n) of paragraph (ii) of subdivision b of section 16-508 of the Code on the form provided by the Commission and pay the fee of six hundred (\$600) dollars for the investigation of such information, except that such employee or agent or prospective employee or agent of an applicant for a micro-hauler license or a micro-hauler licensee shall pay a fee of one hundred dollars (\$100) for the investigation of such information. Following receipt of such disclosure, the Commission may require such additional information, including without limitation documents and deposition testimony, as the Commission determines is necessary to render determination.

§ 7. Subdivision (a) of section 3-02 of title 17 of the rules of the city of New York is amended to read as follows:

(a) Where the Commission has reasonable cause to believe that an employee or agent or prospective employee or agent of a licensee or an applicant for a license not subject to the provisions of 17 RCNY § 3-01 lacks good character, honesty and integrity, the Commission shall notify such employee or agent or prospective employee or agent that he or she shall: (i) be fingerprinted by a person designated for such purpose by the Commission and pay the fee prescribed by the Division of Criminal Justice Services for the purpose of obtaining criminal

history records; and (ii) provide the disclosure required in subparagraphs (b) through (n) of paragraph (ii) of subdivision b of section 16-508 of the Code on the form provided by the Commission and pay the fee of six hundred (\$600) dollars for the investigation of such information, except that such employee or agent or prospective employee or agent of an applicant for a micro-hauler license or a micro-hauler licensee shall pay a fee of one hundred dollars (\$100) for the investigation of such information. Following receipt of such disclosure, the Commission may require such additional information related to such disclosure including without limitation documents and deposition testimony, as the Commission determines is necessary to render determination.

§ 8. Appendix A to subchapter C of title 17 of the rules of the city of New York is amended to read as follows:

Employees who perform the following functions shall be subject to disclosure pursuant to 17 RCNY § 3-01:

- Solicitation of Businesses;
- Bill Collection;
- Evaluation of Trade Waste Stream of Customers;
- Dispatchers who have regular contacts with customers;
- Persons who have authority to agree or refuse to service customers;
- Persons who have authority to resolve complaints.

Except that for micro-hauler licensees, employees subject to disclosure pursuant to 17 RCNY § 3-01 are limited to managerial employees.

§ 9. Subdivisions (a), (e) and (f) of section 5-03 of title 17 of the rules of the city of New York are amended, and a new subdivision (a-1) is added, as follows:

(a) Except as provided in subdivision a-1, [A] a licensee must maintain records concerning its business including but not limited to:

(xvii) customer contracts and invoices,

(xxvii) submissions to and notices from the Commission, [and]

(xxviii) a schedule of contributions, gifts, and grants received by the licensee,

(xxix) dump tickets, scale tickets, invoices, and receipts from transfer stations, material recovery facilities, and compost facilities, and

[(xxviii)] (xxx) all documents supporting, evidencing, or used to create the reports, books, journals, registers, and ledgers that the licensee is required to maintain, pursuant to this section.

(a-1) A micro-hauler licensee must maintain only the records set forth in paragraphs (i)-(vi), (viii), (xvii), (xix), and (xxviii)-(xxx) of subdivision a.

(e) A licensee must maintain annual financial statements in a form or computer format prescribed by the Commission. The Commission may require that such financial statements be audited by an independent certified public accountant who is not employed by or related to the licensee or any principal of the licensee and has no financial interest in the licensee or any principal of the licensee. The financial statements must include a balance sheet, an income statement, a statement of cash flows, and a statement of retained earnings or (if the licensee is a sole proprietorship or partnership) capital. The auditor shall render an opinion as to whether the financial statements accurately reflect the financial position of the licensee as of the balance sheet date and the results of its operations and cash flows for the year ended, except that the auditor need not opine on Paragraphs (3) and (4) of this Subdivision. The auditor shall also issue a supplemental opinion on the licensee's compliance with the financial record-keeping and reporting requirements of the Commission. Such supplemental opinion shall detail each and every variance or deviation from the Commission's requirements noted during the auditor's examination of the licensee's financial books and records. The licensee must certify, and the principal responsible for the licensee's financial affairs must swear under oath upon penalty of perjury, that the financial statement accurately reflects the licensee's accounts and financial operations. At the completion of the audit, the licensee must obtain from the auditor copies of the accountant's work papers and must retain such papers with the licensee's records. Except that a micro-hauler licensee may satisfy the requirements of this Subdivision by maintaining tax returns prepared by a certified public accountant. The Commission is not precluded from requiring a micro-hauler licensee to prepare a financial statement required by this Subdivision upon the Commission's request.

(f) On or before June 30 of each year but not later than six (6) months following the end of the licensee's fiscal year, all licensees must file a report on a form or computer format prescribed by the Commission, provided, however, that a micro-hauler licensee may satisfy this requirement by submitting such licensee's tax returns prepared by a certified public accountant. If the Commission requires a revision of the report after review by an auditor on the Commission's staff, an amended report must be submitted to the Commission no later than the date specified by the Commission. The Commission may require that the annual report include the financial statement described in subdivision (e) of this section and other information and documents concerning the licensee's operations, including but not limited to: financial information reported on a calendar year basis, the management letter issued by the licensee's auditor to the licensee, and information concerning: affiliations with other licensees; organization and control of the licensee, corporate control over the licensee; corporations controlled by the licensee; officers and directors of the licensee; allocation of recyclables and non-recyclables; security holders of and voting powers within the licensee; subcontracting, management, engineering, and contracts of the licensee.

§ 10. Subdivisions (c) and (e) of section 5-11 of title 17 of the rules of the city of New York are amended to read as follows:

(c) Any container provided by a licensee to a [designated covered establishment] customer for the collection of organic waste shall be labeled to indicate that only organic waste may be placed in that container.

(e) If organic waste is collected from a [designated covered establishment] customer in a container that does not have a label indicating that the container contains only organic waste, the licensee collecting waste from such container shall report the exact location of such container to the Commission within three (3) business days of the time it had actual or constructive knowledge of the improper labeling.