

NEW YORK CITY BUSINESS INTEGRITY COMMISSION

**NOTICE OF ADOPTION OF FINAL RULE ON FINANCIAL HARDSHIP WAIVERS FROM
VEHICLE EMISSIONS COMPLIANCE**

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 Commission by sections 1043(a) and 2101(b) of the New York City Charter that the New York City Business Integrity Commission (“BIC” or the “Commission”) adopts the following rule governing Financial Hardship Waivers from Vehicle Emission Compliance. BIC published a Notice of Opportunity to Comment on the proposed rule in the *City Record* on May 21, 2018. On June 20, 2018, BIC held a public hearing on the proposed rule.

Statement of Basis and Purpose of Rule

Under section 2101 of the New York City Charter, the Business Integrity Commission is authorized to regulate the trade waste industry and, among other things, ensure that businesses are able to operate in an honest and competitive environment, free from the influences of organized crime and criminality. Among other things, Local Law 145 of 2013 gave the Commission the authority to refuse to issue a license or registration to an applicant that has failed to demonstrate that it will meet requirements designed to reduce the emission of pollutants from trade waste vehicles.

Local Law 145 of 2013, which added § 24-163.11 of the Administrative Code, requires that every heavy duty trade waste hauling vehicle that is owned or operated by an entity required to be licensed or registered by the Commission and operating in New York City be equipped with either (1) an EPA certified 2007 (or later) engine or (2) utilize “Best Available Retrofit Technology,” as defined by the New York City Department of Environmental Protection before January 1, 2020. Under § 24-163.11(c) of the Administrative Code, the chairperson of the Commission may issue a waiver of this requirement if the chairperson of the Commission finds that the applicant for such waiver has demonstrated that compliance with such requirements would cause undue financial hardship on the applicant. Under § 24-163.11(d)(5) of the Administrative Code, the Commission may set by rule the criteria for the issuance of financial hardship waivers in connection with this engine requirement.

The rule provides the process for licensees and registrants to apply to the Commission’s chairperson for a temporary waiver of the above engine requirements based on an undue financial hardship.

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.

Section 1. Title 17 of the Rules of the City of New York is amended by adding a new Section 2-09 to read as follows:

§ 2-09. Financial Hardship Waiver from Vehicle Emissions Compliance.

- (a) Pursuant to § 24-163.11(c) of the Administrative Code, the chairperson of the Commission may issue a waiver from the requirements of Administrative Code § 24-163.11(b)(1) to a licensee, registrant or applicant for a license or registration if compliance with the requirements of Administrative Code § 24-163.11(b)(1) would create an undue financial hardship on that licensee, registrant or applicant for a license or registration.

(b) To qualify for a waiver from the requirements of Administrative Code § 24-163.11(b)(1), the applicant for the waiver must demonstrate to the Commission that complying with Administrative Code § 24-163.11(b)(1) would create an undue financial hardship. The waiver applicant must submit to the Commission an undue financial hardship waiver application as proscribed by the Commission, which will require the following information:

1. All actions the waiver applicant has taken up to the date of the application to bring its fleet into compliance with § 24-163.11(b)(1) of the Administrative Code;
2. Information demonstrating that bringing the waiver applicant's truck fleet into compliance with § 24-163.11(b)(1) of the Administrative Code would cost more than 30 percent of the company's average gross revenue from the previous three years;
3. Information demonstrating that the waiver applicant has made a good faith effort to secure financing to cover the costs of bringing its truck fleet into compliance with § 24-163.11(b)(1) of the Administrative Code but has been unable to secure such financing, together with an explanation as to why the applicant could not secure financing; and
4. A written plan demonstrating how the waiver applicant will bring its truck fleet into compliance with the requirements of § 24-163.11(b)(1) of the Administrative Code and when it will do so.

(c) Any entity applying for a license or registration for the first time after January 1, 2019 and seeking a financial hardship waiver must provide all of the information set forth in § 2-09(b)1-4, and explain why any trucks that were purchased prior to applying for the financial hardship waiver were not compliant with Local Law 145/2013 when purchased.

(d) The chairperson of the Commission may deny a waiver for undue financial hardship where the applicant for such waiver fails to provide the information required by the Commission on the waiver application, for failure to demonstrate a good faith effort to comply with the requirements of § 24-163.11(b)(1) of the Administrative Code without a need for a waiver, for failure to demonstrate the ability to come into compliance with the requirements of § 24-163.11(b)(1) within a maximum of two years if granted a financial hardship waiver, or for failure to demonstrate the ability to come into compliance with the requirements of § 24-163.11(b)(1) by January 1, 2025.

(e) Financial hardship waivers granted pursuant to § 24-163.11(c) of the Administrative Code will specify the length of the waiver and will be valid for a period of no more than 2 years. Any entity granted a financial hardship waiver may apply to the chairperson of the Commission to renew the waiver no later than 180 days before the expiration of the waiver. All financial hardship waivers will expire no later than January 1, 2025.