

DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? On October 10, 2021 Local Law 108 of 2021 (the “Law”) went into effect. The law amends Administrative Code § 6-141 to require that vehicles in the City Fleet and City contracted vehicles be equipped with side guards by January 1, 2023.

When and where is the hearing? The Department of Citywide Administrative Services (“DCAS”) will hold a public hearing on the proposed rules. The public hearing will take place at 1:00 PM on August 10, 2022. The hearing will be in the Auditorium, 2nd Floor, at 125 Worth Street, New York, NY 10013.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCAS through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to contactdcas@dcas.nyc.gov.
- **Mail.** You can mail comments to the DCAS, c/o Deputy Chief Fleet Management Officer, 23rd Floor, New York, NY 10007.
- **Fax.** You can fax comments to DCAS at (212) 313-3449 (Attn: Deputy Chief Fleet Management Officer).
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 386-0273. You can also sign up in the hearing room before the hearing begins on August 10, 2022. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by August 2, 2022.

Do you need assistance to participate in the hearing? You must tell DCAS by August 2, 2022 if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 386-0297.

Can I review the comments made on the proposed rules? You can review the comments submitted online by visiting <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rules will be available to the public at the Office of the DCAS General Counsel, 1 Centre Street, 19th Floor North, New York, NY 10007.

What authorizes DCAS to make this rule? Section 1043 of the New York City Charter (“City Charter”) and § 6-141 of the Administrative Code of the City of New York (“Administrative

Code”) authorize DCAS to make these proposed rules. These proposed rules were included in DCAS’s regulatory agenda for this Fiscal Year.

Where can I find DCAS’s rules? DCAS’s rules are found in Title 55 of the Rules of the City of New York.

What rules govern the rulemaking process? DCAS must meet the requirements of City Charter § 1043 when creating or changing rules. This Notice is made according to the requirements of City Charter § 1043.

Statement of Basis and Purpose of Proposed Rules

On October 10, 2021 Local Law 108 of 2021 (the “law”) went into effect. The law amends Administrative Code § 6-141 to require that large vehicles in the City Fleet and in City contracted vehicles be equipped with safety enhancing side guards by January 1, 2023, and the law establishes progressive requirements regarding the installation of such side guards.

Administrative Code § 6-141(c) authorizes DCAS to “promulgate any rules necessary to administer the provision[] of this section, including but not limited to rules establishing side guard specifications that depart from the default specifications... when such departure is deemed necessary by the department, as well as rules governing when the installation of side guards on certain city vehicles or city contracted vehicles is impractical or will disrupt provision of public safety or public health services and will not be required.”

The purpose of these Rules includes the following goals:

- To reduce and/or eliminate deaths and serious injuries resulting from traffic crashes caused by large vehicles used by the City Fleet and City contractors and subcontractors while performing work for the City;
- To enhance the City’s “Vision Zero” initiative to prioritize human life and the safety of our streets by reducing traffic crashes that cause death and serious injury, through an equitable distribution of resources and community engagement; and
- To require City contractors and their subcontractors install side guards on vehicles used in the performance City contracts.

DCAS’s authority for these rules is found City Charter §§ 811 and 1043 of the New York City Charter and Administrative Code § 6-141(c)(1).

New material is underlined.

Section 1. Title 55 of the Rules of the City of New York is amended by adding a new Chapter 15, to read as follows:

CHAPTER 15
INSTALLATION OF SIDE GUARDS ON LARGE VEHICLES

§ 15-01 Definitions

§ 15-02 Side Guard Requirements

§ 15-03 City Contracted Vehicles

§ 15-04 Exemptions

§ 15-05 Violations

§ 15-06 Vehicles Regulated by the Business Integrity Commission (BIC)

§ 15-01 Definitions

As used in this chapter, and unless otherwise specified, the following terms have the following meanings:

Agency. The term “Agency” means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury.

BIC. The term “BIC” means the New York City Business Integrity Commission.

Chief Fleet Management Officer. The term “Chief Fleet Management Officer” means the DCAS official appointed by the Commissioner, in accordance with Executive Order 161 of 2012, who is responsible for implementing policies and procedures to ensure safe, reliable, and proper use of City vehicles, or their duly authorized designee.

City. The term “City” means the City of New York.

City Contracted Vehicle. The term “City Contracted Vehicle” means any Large Vehicle that is utilized within the City on a weekly or more frequent basis to fulfill requirements material to the scope of a Contract.

City Fleet: The term “City Fleet” means vehicles owned by Agencies of the City or leased for periods of over one (1) year.

Commissioner. The term “Commissioner” means the Commissioner of the New York City Department of Citywide Administrative Services.

Contract. The term “Contract” means any contract awarded by the City and registered with the New York City Comptroller after the Effective Date and whose cost is to be paid from funds belonging to or administered by the City, where such contract has an estimate value of \$2,000,000 or more. This definition does not include (1) Agency on-call emergency contracts, including on-call storm emergency contracts; (2) the following types of contracts that are

governed by rules of the Procurement Policy Board: emergency procurements; intergovernmental contracts; government to government contracts; and contracts for the provision of work or services by public utilities; and (3) renewals, exemptions or modifications of contracts registered with the Comptroller prior to the Effective Date.

Contractor. The term “Contractor” means any entity that enters into a contract with the City.

DCAS. The term “DCAS” means the New York City Department of Citywide Administrative Services.

Effective Date. The term “Effective Date” means January 1, 2023.

Large Vehicle. The term “Large Vehicle” means a motor vehicle with a manufacturer’s gross vehicle weight rating exceeding 10,000 pounds. Such term does not include street sweepers, fire engines, car carriers, off-road construction vehicles, or any specialized vehicles or vehicle types on which Side Guard installation is deemed impractical by the Department in accordance with Administrative Code § 6-141(c).

Notice to Proceed. The term “Notice to Proceed” means the written direction to a Contractor by an Agency to commence work pursuant to a Contract registered with the New York City Comptroller.

Side Guard. The term “Side Guard” means a lateral protective safety device fit to the side of a Large 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 that meets the requirements of § 15-02 of this chapter.

Subcontractor. The term “Subcontractor” means any entity that enters into a subcontract to perform work on behalf of a Contractor which enters into City contract registered with the City.

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 DCAS.

§ 15-02 Side Guard Requirements

(a) General requirements. Unless prohibited by Federal, State, or City law, or an exemption has been issued pursuant to § 15-04 of this chapter, all Large Vehicles in the City Fleet must be equipped with Side Guards by the Effective Date and all City Contracted Vehicles performing work under a Contract are required to be equipped with Side Guards by the Effective Date or in compliance with the Phase-In Period set forth in § 15-03(b).

(b) Satisfaction of Side Guard requirements. The requirements for Side Guards will be considered satisfied if one or more of the following three situations is present:

(1) The Large Vehicle is equipped with Side Guards that allow for a maximum 13.8 inch ground clearance, a 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”.

(i) Side Guards may include rail style guards, provided that such rails are no less than four inches tall and no more than 11.8 inches apart.

(ii) 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 approval of DCAS.

(2) The Large Vehicle cannot maintain a Side Guard due to the design or operations of the vehicle, subject to the Contractor’s application to DCAS for, and the grant of, an exemption from these rules.

(3) The Large 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 sideguards, subject to the approval of DCAS.

(c) In the case that mandated Federal standards are established for truck Side Guards, DCAS will assess any Federal specification guidelines and issue revised rules relating to the New York City specification(s), if required.

§ 15-03 City Contracted Vehicles

(a) All City Agency Contracts involving City Contracted Vehicles must contain specifications reflecting the requirements set forth in this chapter, including the submission of compliance plans and reports described in subdivision (c) of this section, which specifications will be reviewable by DCAS.

(1) Contracts may include additional charges by the Contractor for the installation of Side Guards at a price not to exceed \$3,000.00 per vehicle unless otherwise approved by DCAS, in its sole discretion.

(2) Contractors must provide a list of vehicles that require retrofits to be performed, as well as an affidavit stating that any add-on fees for Side Guard installations will only be included for trucks not previously equipped with Side Guards under any City contract or otherwise previously fitted and equipped with operational Side Guards.

(b) Phase-in Period for City Contracted Vehicles.

Except when a Contractor or a Subcontractor is granted an exemption pursuant to §15-04 of this chapter, the requirements of this chapter will apply. Side Guards must be installed and fully operational no later than:

- (1) Twelve (12) months from the issuance of a Notice to Proceed pursuant to an individual Contract utilizing ten (10) or fewer Large Vehicles; or
- (2) Eighteen (18) months from the issuance of a Notice to Proceed pursuant to an individual Contract utilizing more than ten (10) Large Vehicles.

(c) Compliance Plan and Reports.

Any Contract entered after the Effective Date must require the Contractor to submit the following to the Chief Fleet Management Officer:

- (1) A written compliance plan within fourteen (14) days following the Notice to Proceed or the placing of the first order under the Contract, as applicable.
- (2) A report that includes the following information, submitted six (6) months following the Notice to Proceed or the placing of the first order under the Contract, as applicable, or when requested by the Chief Fleet Management Officer:
 - (i) the number of Large Vehicles used in the performance of the Contract by the Contractor and any Subcontractor;
 - (ii) the number of Large Vehicles used in the performance of the Contract by the Contractor and any Subcontractor that are retrofitted with safety enhancing equipment as required by these Rules;
 - (iii) one or more photographs of both sides of each Large Vehicle used in the performance of the Contract by the Contractor and any Subcontractor that is retrofitted with safety enhancing equipment as required by these rules. The photographs must also show the Large Vehicle's license plate number with the safety enhancing equipment fitted on the vehicle; and
 - (iv) a certification that the Contractor and any Subcontractor under the Contract have complied with the requirements of these rules.
- (3) The Chief Fleet Management Officer will review written compliance plans and reports to confirm that the Agency or Contractor (including its Subcontractor) meets the requirements of these rules.

(d) Record Retention and Audits

- (1) Contractors and their Subcontractors must keep records of their Compliance Plans and Reports for a period of six (6) years from the date of the Notice to Proceed, or

from the payment of the last invoice pursuant to their Contract with the City, whichever occurs later.

- (2) At any time during a Contract, or during the record retention period set forth in subdivision (d) of § 15-03 of this chapter, DCAS will have, upon reasonable notice, full access to and the right to request and inspect documents and records in accordance with applicable law that are maintained or retained by or on behalf of the Contractor and its Subcontractor pursuant to such subdivision (d).
- (e) DCAS is authorized to request and perform the physical inspection of any Large Vehicle used in the performance by an Agency, Contractor or Subcontractor, in order to ensure compliance with contract provisions required by this chapter, in accordance with applicable law.

§ 15-04 Exemptions

- (a) City Agencies and Contractors (including on behalf of any of its Subcontractors using Large Vehicles in the performance of the Contract) may submit an application, on a form available on DCAS' website, to the Chief Fleet Management Officer for an annual exemption from the requirements of these Rules if they have determined that compliance is impractical; or it will disrupt provision of public safety or public health services; or there are limitations in the capacity of vendors to supply Side Guards; or because the vehicle cannot maintain a Side Guard due to the design or operations of such vehicle.
- (b) Contractors (including on behalf of any of its Subcontractors using Large Vehicles in the performance of the Contract) may also submit requests for an exemption from the timeframes of the installation schedule set forth in §15-03 of this chapter based on a claim of undue financial hardship. However, Contractors will have the opportunity to account for and factor in the costs for Side Guards as part of the bid pricing they submit for a Contract as part of Contract pricing structures. An exemption request based on financial hardship must satisfactorily explain why the financial hardship has remained despite the opportunity for the Contractor to account for the costs in its bid prices.
- (c) Exemptions may be available if one or more of the following circumstances exist and there is sufficient evidence or proof provided with respect to such circumstances:
- (1) Supply chain disruption;
 - (2) Delays in the commencement of work or payments which are not caused by the fault of the Contractor;
 - (3) If removing the vehicle from service would have a material effect on the contractor's ability to perform work under the Contract;

- (4) Natural or man-made emergencies. For purposes of this paragraph, “natural or man-made emergencies” means acts or events beyond the control and without any fault or negligence of the Contractor. Such events may include, but are not limited to, pandemic, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor; or
- (5) Any other circumstance, whether or not anticipated or found to be usual or typical, which is accompanied by supporting information provided pursuant to paragraph (d) of this subdivision.
- (d) The application for an exemption must include all of the following information and statements, to be verified in an affidavit accompanying the application:
- (1) A list of all Large Vehicles that the applicant owns, leases or otherwise controls to conduct the applicant's business; and
- (2) A statement, accompanied by supporting documents, and if applicable, financial statements, that retrofitting the applicant's Large Vehicles in order to comply with these rules is impractical; or would disrupt provision of public safety or public health services; or would cause the applicant to suffer an undue financial hardship.
- (e) The Chief Fleet Management Officer will evaluate an exemption request and make a determination within 90 days of receipt whether to approve or deny such request.
- (f) An annual exemption granted pursuant to this section will expire one year from the date it has been granted, except for exemptions granted pursuant to § 15-02(b)(2). Exemptions granted pursuant to such paragraph will remain applicable as long as the specific vehicle(s) are in operation by the Agency or, as to a Contractor or Subcontractor, the life of the Contract with the City.
- (g) The Chief Fleet Management Officer may renew an exemption for additional one-year periods in the event that the Agency, a Contractor or a Subcontractor submits a written statement verified by affidavit that such Agency, a Contractor or a Subcontractor continues to be eligible for the exemption. The Chief Fleet Management Officer retains the discretion to reject an exemption request if, based on such Officer’s determination, circumstances have changed that would obviate the basis for such previously granted exemption. Applications to renew an exemption must be submitted using the form available on DCAS’ website.
- (h) The Chief Fleet Management Officer shall have the sole authority to grant a exemption of the requirements set forth in these Rules.
- (i) Appeals

- (1) If the Chief Fleet Management Officer denies the request for exemption and/or extension of exemptions from the requirements of these rules, the Contractor or Subcontractor may appeal in writing to the Commissioner or their designee within 30 days of receipt of the Chief Fleet Management Officer's determination, on a form available on DCAS' website. Receipt of notice by the Contractor or Subcontractor shall be deemed to be no later than five (5) days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the Commissioner or their designee.
- (2) The written appeal by the Contractor must briefly state all the facts or other bases upon which the Contractor contests the Chief Fleet Management Officer's determination, and must include supporting documentation.
- (3) The Commissioner or their designee will consider the merits of the Contractor's appeal and provide a written decision no later than 90 days after receipt of such appeal.

§ 15-05 Violations

- (a) A Contractor may be assessed up to \$4,000.00 for each City Contracted Vehicle, including those vehicles used on behalf of the Contractor by its Subcontractor(s), that are found to be out of compliance with the requirements of these Rules.
- (b) In addition to other remedies provided by law or specified in the Contract, any person who knowingly makes a false statement of material fact to any City Agency with respect to the financial condition of the Contractor submitted in connection with a request for an exemption from compliance with these Rules may be fined not less than \$100.00 nor more than \$1,000.00 for each such false statement and the person on whose behalf such false, deceptive or fraudulent representation was made, shall thenceforth be disqualified from bidding on any contracts for the City.
- (c) For purposes of this section, a person knowingly makes a false statement of material fact when such statements regarding the Contractor's financial condition fail to comply with the standards set forth in Administrative Code § 6-112.
- (d) A Contractor shall be responsible and liable for the actions or omissions of its subcontractor(s), and for any assessments imposed upon such subcontractor(s) pursuant to these Rules.

§ 15-06 Vehicles Regulated by the Business Integrity Commission (BIC)

In the event that a City Contracted Vehicle is also a vehicle licensed or regulated by the New York City Business Integrity Commission (BIC), any laws or rules applicable to or promulgated by BIC will govern with respect to Side Guard matters addressed by these rules.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Side Guards on Heavy-Duty Trade Waste Vehicles

REFERENCE NUMBER: DCAS-9

RULEMAKING AGENCY: Department of Citywide Administrative Services

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

June 17, 2022
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Side Guards on City Fleet and City Contracted Vehicles

REFERENCE NUMBER: 22 RG 015

RULEMAKING AGENCY: Department of Citywide Administrative Services

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: June 16, 2022