NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

Notice of Promulgation of Rules

Notice is hereby given in accordance with section 1043(e) of the Charter of the City of New York ("Charter") that the Taxi and Limousine Commission hereby promulgates rules relating to drug testing of taxicab and for-hire vehicle drivers.

The rules are promulgated pursuant to section 2303(a) and (b)(5) of the Charter and title 19, chapter 5, of the Administrative Code of the City of New York.

These rules were published for comment in The City Record on January 6, 2006, and a public hearing in connection with these proposed rules was held on February 9, 2006, before the Taxi and Limousine Commission. Pursuant to section 1043(e)(1)(c) of the Charter, these rules will take effect 30 days following publication in The City Record.

New material is underlined. Deletions are indicated by brackets.

Section 1. Section 2-19 of chapter 2 of title 35 of the Rules of the City of New York is amended to read as follows:

§ 2-19 Drug Testing of Licensed Taxicab Drivers.

(a) If the Commission has reasonable suspicion to believe that a driver has a drug or controlled substance impairment that renders him or her unfit for the safe operation of a taxicab, it may direct that the driver be tested or examined for such impairment, at the driver's expense, by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. If the results of said test(s) or examination(s) are positive, the driver's license may be revoked after a hearing. Failure of a driver to be tested or examined as directed may lead to suspension or revocation of such driver's license in accordance with [§2-85] §8-16 of this title.

(b)(1) Notwithstanding the foregoing, each licensee, other than a licensee who is a City of New York Police Officer, also shall be tested annually, at the licensee's expense, for drugs or controlled substances, as set forth in § 3306 of the Public Health Law [annually, within]. For licensees in the first year of a two-year license, such testing must occur no sooner than thirty (30) days [of the anniversary of the issuance of either a new or renewal] prior to, and in any event no later than, the date one year prior to the expiration date of such license. For licensees in the second year of a two-year license, such testing must occur no sooner than thirty (30) days prior to, and in any event no later than the expiration date of such license. Such testing shall be performed by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. [The licensee shall be afforded an opportunity of a hearing as to the licensee's fitness where a positive test result has been reported to the

Commission.]

(2) If the results of said test are positive, the driver's license may be revoked after a hearing in accordance with §8-15 of this title.

(3) Failure of a licensee in the first year of a two-year license to be tested no sooner than thirty (30) days prior to, and in any event no later than, the date one year prior to the expiration date of such license shall result in suspension of the driver's license in accordance with §8-17 of this title. If such licensee undergoes the required testing within thirty (30) days after the date one year prior to the expiration date of the current license, the suspension of the driver's license shall be lifted. If such licensee undergoes the required testing more than thirty (30) days after the date one year prior to the expiration date of the current license, such licensee shall also be required to pay a penalty of $200 to have the suspension of the driver's license lifted.

(4) Failure of a licensee in the second year of a two-year license to be tested by the expiration date of such license shall result in denial of a license renewal application, if any, and expiration of the license.

§ 2. Section 2-86 of chapter 2 of title 35 of the Rules of the City of New York is amended by adding a new penalty labeled §2-19(b)(3) between §2-17(a) and § 2-20(a) to read as follows:

Rule No.	Penalty	Personal Appearance Required
. . . . .		
§ 2-17(a)	$25-350 and / or suspension up to 30 days	Yes
§2-19(b)(3)	Suspension until compliance (If compliance after 30 days, $200 penalty for reinstatement)	N/A**
§2-20(a)	Revocation	Yes

§ 3. Subdivision (s) of section 6-16 of chapter 6 of title 35 of the Rules of the City of New York is amended to read as follows:

(s) If the Commission has reasonable suspicion to believe that a driver has a drug or controlled substance impairment that renders him or her unfit for the safe operation of a for-hire vehicle, it may direct that the driver be tested or examined for such impairment, at the driver's expense, by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. If the results of said test(s) or examination(s) are positive, the driver's license may be revoked

after a hearing. Failure of a driver to be tested or examined as directed may lead to suspension or revocation of such driver's license in accordance with [§6-21] §8-16 of this title.

§ 4. Subdivision (v) of section 6-16 of chapter 6 of title 35 of the Rules of the City of New York is amended to read as follows:

(v)(1) Notwithstanding the foregoing, each licensee, other than a licensee who is a City of New York Police Officer, also shall be tested annually, at the licensee's expense, for drugs or controlled substances, as set forth in §3306 of the Public Health Law [annually, within]. For licensees in the first year of a two-year license, such testing must occur no sooner than thirty (30) days [of the anniversary of the issuance of either a new or renewal] prior to, and in any event no later than, the date one year prior to the expiration date of such license. For licensees in the second year of a two-year license, such testing must occur no sooner than thirty (30) days prior to, and in any event no later than the expiration date of such license. Such testing shall be performed by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. [The licensee shall be afforded an opportunity of a hearing as to the licensee's fitness where a positive test result has been reported to the Commission.]

(2) If the results of said test are positive, the driver's license may be revoked after a hearing in accordance with §8-15 of this title.

(3) Failure of a licensee in the first year of a two-year license to be tested no sooner than thirty (30) days prior to, and in any event no later than, the date one year prior to the expiration date of such license shall result in suspension of the driver's license in accordance with §8-17 of this title. If such licensee undergoes the required testing within thirty (30) days after the date one year prior to the expiration date of the current license, the suspension of the driver's license shall be lifted. If such licensee undergoes the required testing more than thirty (30) days after the date one year prior to the expiration date of the current license, such licensee shall also be required to pay a penalty of $200 to have the suspension of the driver's license lifted.

(4) Failure of a licensee in the second year of a two-year license to be tested by the expiration date of such license shall result in denial of a license renewal application, if any, and expiration of the license.

§ 5. Section 6-22 of chapter 6 of title 35 of the Rules of the City of New York is amended by adding a new penalty labeled §6-16(v)(3) between §6-16(u) and § 6-18(a) and a new endnote to read as follows:

Rule No.	Penalty	Personal Appearance Required

. . . . .		
§ 6-16(u)	$200	No
§6-16(v)(3)	Suspension until compliance (If compliance after 30 days, $200 penalty for reinstatement)	N/A**
§6-18(a)	Revocation and $10,000	Yes
. . . . .		

**Not Applicable

§ 6. Subdivision (i) of section 2-02 of **c**hapter 2 of title 35 of the Rules of the City of New York is amended to read as follows

(i) An applicant for a taxicab driver's license, other than an applicant who is a City of New York Police Officer, shall be tested, at the applicant's expense, for drugs or controlled substances, as set forth in §3306 of the Public Health Law. Such testing shall be performed by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. A positive test shall result in the denial of a new application. Said determination shall be a final agency decision. A renewal applicant must be tested for drugs in accordance with §2-19(b) of this chapter.

§ 7. Paragraph (3) of subdivision (a) of section 6-15of chapter 6 of title 35 of the Rules of the City of New York is amended to read as follows:

(a)(3) An applicant for a for-hire vehicle driver's license, other than an applicant who is a City of New York Police Officer, shall be tested, at the applicant's expense, for drugs or controlled substances, as set forth in §3306 of the Public Health Law. Such testing shall be performed by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. A positive test shall result in the denial of a new application. Said determination shall be a final agency decision. A renewal applicant must be tested for drugs in accordance with §6-16(v) of this chapter.

§ 8. Chapter 8 of title 35 of the Rules of the City of New York is amended by adding a new section 8-17 to read as follows:

§8-17 Summary Suspension Pending Compliance with Commission Rules.

(a)(i) If the Chairperson or his or her designee determines that the licensee is not

in compliance with the requirements of §2-19(b)(3) or of §6-16(v)(3) of this title, such licensee's driver's license shall be summarily suspended pending an opportunity to be heard.

(ii) Upon a determination made pursuant to paragraph (a)(i) of this section that a driver's license shall be summarily suspended, the Commission shall notify the licensee either by personal service or by first class mail to the last mailing address filed with the Commission that the licensee's driver's license shall be suspended either immediately upon service of such notice if made by personal service, or five (5) days after the date of the mailing of such notice if mailed. Such notice shall contain, at a minimum the following information:

(1) a notice that the licensee's driver's license is being suspended for a violation of the Commission's rules or applicable Administrative Code section;

(2) a description of the nature of the violation;

(3) the rule or Administrative Code section alleged to have been violated; provided, however, that if there is a conflict between the rule or Administrative Code section cited and the description of the violation, the description shall be dispositive; and

(4) a notice that if the licensee wishes to be heard concerning the suspension, he or she may provide the Commission with a single submission of written documentation refuting the suspension of his or her license within ten (10) calendar days of the receipt of the notice if notice was given by personal service, or fifteen (15) calendar days of the mailing of the notice of suspension if the notice was mailed.

(iii) The documentation submitted by a licensee refuting the suspension shall be reviewed by an ALJ. Suspension of the driver's license shall continue while documentation is under review by the ALJ. After review of the documentary evidence, the ALJ shall issue a decision which shall include findings of fact and conclusions of law. If the ALJ finds that a violation has been committed, the appropriate penalties shall be imposed, which shall include continued suspension of the driver's license until compliance and may also include a fine. If the ALJ finds that no violation has been committed, the suspension shall be vacated. The decision of the ALJ shall be final, and a licensee may appeal such decision pursuant to § 8-13 of this chapter.

(iv) In the event that no decision is rendered by the ALJ within sixty (60) calendar days of the receipt of written documentation provided by the licensee, the suspension shall be thereafter stayed until such decision is rendered.

(b) In the event that a licensee does not provide the Commission with written documentation refuting the suspension within ten (10) calendar days of the receipt of the notice if notice was given by personal service, or fifteen (15) calendar days of the mailing of the notice of suspension if the notice was mailed, it shall be deemed that the opportunity to be heard has been waived and a violation has been committed, and the

appropriate penalties shall be imposed, which shall include continued suspension of the driver's license until compliance and may also include a fine.

(c) Suspension of drivers' licenses pursuant to this section shall continue until the fines assessed pursuant to paragraph (a)(iii) of this section have been paid and until compliance with the underlying Commission rule or Administrative Code section has been shown to the satisfaction of the Chairperson or his or her designee.

(d) At any time after a licensee has been notified of suspension, a licensee may pay any applicable fine, comply with the underlying Commission rule or Administrative Code section and furnish proof of such compliance to the satisfaction of the Chairperson or his or her designee. Upon such payment and submission of proof of compliance, the suspension of the driver's license shall be lifted. If the licensee pays any applicable fine and furnishes proof of compliance either in lieu of submitting documentation or after documentation has been submitted but before a decision has been rendered, the suspension shall be lifted and the opportunity to be heard shall be deemed to have been waived.

STATEMENT OF BASIS AND PURPOSE

This rulemaking makes permanent the expedited rules promulgated pursuant to section 1043(h)(1) of the New York City Charter on November 17, 2005. The rules empower the Taxi and Limousine Commission ("Commission") to impose fines on taxicab and for-hire vehicle drivers (collectively "licensees") for failure to take an annual drug test as required under the Commission's Rules. This rulemaking also establishes the procedure for suspension of licensees' driver's licenses following failure to comply with the annual drug test requirement. In addition, the rules clarify the requirement that renewal applicants take a drug test no later than the expiration date of their driver's licenses, and the procedures that result from a failure to do so.

The rule provides that licensees in the first year of a two-year license who fail to undergo annual drug testing shall have their driver's licenses suspended. Upon failure to be tested by the date one year prior to the expiration date of the current license, a licensee is not allowed to operate a taxicab or a for-hire vehicle until he or she complies with the annual requirement and undergoes a drug test. This rule further clarifies that if the drug test result is positive, the licensee will undergo a fitness hearing to determine whether the license should be revoked.

The rule establishes that if a licensee in the first year of a two-year license fails to timely take a drug test, the driver's license shall be summarily suspended. The Commission is required to notify the licensee either by personal service or by first class mail to the last mailing address filed with the Commission that the licensee's driver's license shall be suspended either immediately upon service of such notice if made by personal service, or five (5) days after the date of the mailing of such notice if mailed. The licensee is then given the opportunity to refute that suspension within ten (10) calendar days of such notice if such notice is given by personal service, or within fifteen (15) calendar days of the date of mailing of the notice if such notice is sent by mail. Alternatively, instead of submitting documentation, a licensee may submit a guilty plea to the Commission, pay any applicable fine, comply with the underlying Rule or Administrative Code Section, and furnish proof of such compliance to the satisfaction of the Chairperson or his or her designee. If the licensee chooses to plead guilty, his or her opportunity to be heard shall be waived, and his or her suspension will be lifted upon the furnishing of the proof of compliance and the payment of a fine if applicable.

If an ALJ determines that the licensee committed a violation by failing to take the drug test, or if the licensee waives the opportunity to be heard by failing to respond within ten (10) calendar days of personal service or fifteen (15) calendar days of the date of mailing if service is by mail, the penalty will be imposed and the suspension shall remain until the licensee complies with the requirement. An ALJ's determination is final, and the licensee may appeal the decision pursuant to §8-13 of the Commission Rules.

To encourage prompt compliance with the drug test requirements, the rule provides that if a licensee who has failed to take his or her annual drug test one year prior to the expiration date of the current license subsequently submits to such test within thirty

(30) days of such anniversary, the suspension will be lifted, though a conviction will remain on the licensee's record. If a licensee waits to take the drug test until more than thirty (30) days after the anniversary of the issuance of the current license, the suspension will be lifted only after the licensee also pays a penalty of $200.

Finally, the rule provides that failure of a licensee in the second year of a two-year license to be tested by the expiration date of such license shall result in denial of any license renewal application and expiration of the license.