

CHAPTER 8

ADJUDICATIONS

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§8-01 Definitions.

- (a) **Administrative Law Judge (“ALJ”).** An attorney admitted to practice law in the State of New York and duly appointed by the Commission to conduct administrative hearings for the Commission, or an Administrative Law Judge duly appointed to conduct administrative hearings for the Office of Administrative Trials and Hearings (“OATH”).
- (b) **Appeal.** The procedure for review of a decision of an ALJ pursuant to §8-13 of these Rules, or a decision of the Chairperson pursuant to §8-14(k) of these Rules.
- (c) **Appeals Unit.** A unit of ALJs within the Commission Adjudications Tribunal responsible for deciding cases on Appeal, who do not hear cases in the first instance.
- (d) **Authorized industry representative.** A non-attorney authorized by the Commission to represent respondents before the Commission’s Adjudications Tribunal as a Representative pursuant to 35 RCNY Chapter 7.
- (e) **Chairperson.** The member of the Commission designated by the Mayor as the Chair and Chief Executive Officer pursuant to §2301(c) of the New York City Charter or his or her designee.
- (f) **Commission.** The New York City Taxi and Limousine Commission.
- (g) **Commission Adjudications Tribunal (“Tribunal”).** The administrative tribunal established pursuant to §2303(c) of the New York City Charter and authorized to adjudicate charges of violations of provisions of the Administrative Code and regulations promulgated thereunder.
- (h) **Discretionary revocation.** A penalty of revocation which may be imposed at the option of the Chairperson upon the recommendation of an ALJ of the Commission or by the New York City Office of Administrative Trials and Hearings (OATH).

- (i) **Hearing.** A procedure for the presentation and consideration of evidence before an Administrative Law Judge, after which the ALJ makes findings of fact and conclusions of law.
- (j) **Inquest.** A procedure for the determination of the guilt or innocence of a respondent, and the imposition of penalties in the event of a finding of guilt, wherein the respondent has failed to appear for a scheduled hearing.
- (k) **License.** A license issued by the Commission, including, but not limited to: a license to operate a taxicab, a for-hire vehicle, a commuter van or a paratransit vehicle; to own a taxicab, for-hire vehicle, commuter van, or paratransit vehicle; or to own and/or operate a for-hire vehicle base, a commuter van service, or a taximeter business; or a license to act as a taxicab broker or taxicab agent. Within the context of these Rules a “License” also includes the privilege to accept passengers by prearrangement for trips outside the City of New York, pursuant to 35 RCNY § 6-50, et seq.
- (l) **Licensee.** An individual, partnership or corporation issued a license by the Commission. Unless the context of these rules dictate otherwise, a licensee shall include an individual, partnership or corporation whose license has been suspended.
- (m) **Mandatory revocation.** A penalty of revocation imposed for the violation of any specified Rules or Administrative Code provisions, which penalty may not be reduced or modified by an ALJ. Mandatory revocation includes, but may not be limited to, a revocation mandated by the Administrative Code or the Rules of the Commission, as a result of prior convictions, as a result of an accumulation of points pursuant to the Persistent Violator Program or Critical Driver Program, or as otherwise provided for as a penalty under these Rules or the Administrative Code.
- (n) **Motion to vacate.** A procedure to reconsider a determination resulting from an inquest.
- (o) **Penalty Points.** A penalty point is a non-monetary penalty assessed pursuant to Chapter 6 of Title 35 of the Rules of the City of New York.

- (p) **Persistent Violator Penalty or Persistent Violator Points.** A Persistent Violator Penalty or Persistent Violator Point is a penalty imposed as part of the Persistent Violator Program pursuant to §2-70 or §6-23. This penalty may include the requirement to complete a course, points assessed against a TLC license, suspension or revocation.
- (q) **Respondent.** An individual, partnership or corporation named on a summons, a notice of violation, petition, or any other form of administrative charges wherein the respondent is charged with a violation of the Administrative Code or a Commission Rule. A respondent need not be a licensee of the Commission. In the case of a fitness hearing conducted pursuant to Commission Rules, a respondent may be either a licensee or an applicant for a license who is the subject of a fitness review.
- (r) **Rule.** A rule of the Commission adopted in accordance with §§1043 and 2303 of the New York City Charter.

§8-02 Scope of this Chapter.

- (a) Pursuant to §2303(c) of the New York City Charter, there shall be established a Commission Adjudications Tribunal. Except as otherwise provided herein, this Tribunal shall have conferred upon it original jurisdiction over:
 - (i) violations of Title 19, Chapter 5 of the Administrative Code, including, but not limited to violations where a penalty of license revocation may be imposed;
 - (ii) violations of Commission Rules including, but not limited to violations wherein a penalty of license revocation may be imposed; and
 - (iii) review of the fitness of an applicant or a licensee regarding licensing determinations made by the Commission pursuant to the Administrative Code or Commission Rules.

- (b) The hearing procedures set forth herein apply to all hearings conducted before the Commission Adjudications Tribunal pursuant to this Chapter, as applied to licensees and non-licensees.
- (c) The Commission may, in its discretion, seek the adjudication of any violation of the Administrative Code or Commission Rules before the New York City Office of Administrative Trials and Hearings (OATH). In this event, the Rules governing the procedures for the conduct of such hearings before OATH shall govern. The determination of OATH with respect to penalty shall be a recommendation to the Chairperson.
- (d) ALJs of the Commission Adjudications Tribunal shall render final decisions that shall include findings of fact and conclusions of law, except with respect to the following proceedings, in which case the decision of the ALJ shall be a recommended decision:
 - (i) Licensing determinations as to the fitness of licensees or license applicants, which shall be recommended decisions as set forth in §8-15;
 - (ii) Proceedings pursuant to §19-528(b) of the Administrative Code, which shall be recommended decisions to the Chairperson;
 - (iii) Summary suspension recommendations made pursuant to §8-16, which shall be recommended decisions to the Chairperson;or

§8-03 Penalties.

- (a) Whenever a respondent is charged with a violation of any Commission Rule or Administrative Code Section, he may be subject to civil penalties in accordance with the appropriate schedule of penalties set forth in the Commission Rules or the Administrative Code.
- (b) In the alternative to any of the specific penalties set forth in the Commission Rules, the Commission may, in its discretion, impose a

penalty of license revocation, license suspension of up to six (6) months and/or a fine:

- (i) not to exceed \$10,000 for each violation against the owner of a licensed taxicab or for-hire vehicle, base, commuter van service or vehicle, paratransit service or vehicle, taximeter business, taxicab broker or taxicab agent; or
 - (ii) not to exceed \$1,000 for each violation against a licensed driver.
- (c) Any revocation, suspension, Persistent Violator Penalty or Penalty Points will become effective on the date of the ALJ's decision.
 - (1) If a suspension for a specified period of time is imposed, the suspension period will be calculated from the time when the respondent's license is turned in to the Commission.
- (d) Notwithstanding any other provision of these rules, fines are due within 30 days of the day the respondent is found guilty of the violation.
 - (1) If the respondent files an appeal of the decision imposing the fine within 30 days of the date of the decision, the payment of the fine will be deferred until a decision on the appeal is made.

If the respondent requests a copy of the hearing recording within 7 calendar days of the hearing, the time for either filing an appeal or paying the fine will be the later to occur of either 21 days from the date the recording is issued or 30 days from the day of the decision.
 - (2) If the fine is not paid by the close of business on the date due, the Commission will notify the respondent in writing that the respondent's license will be suspended in ten (10) business days of the date of the notification until the fine is paid, unless the respondent demonstrates to the

Commission, in person or in writing, that the fine has been paid.

§8-04 Preliminary Procedure in the Event of a Violation of the Administrative Code or Commission Rules: Summons or Notice of Violation.

Unless otherwise set forth herein, a respondent shall be served with a summons and/or a notice of violation, setting forth the nature of the violation charged. In the case of a fitness hearing, as described in §8-02(a)(iii), a respondent shall be served with a notice which sets forth the basis for the Commission's charge that the respondent is not fit to possess a license.

§8-05 Service of Summonses and Notices.

- (a) Service of a summons or other notice upon a licensee may be accomplished by any of the following methods:
 - (i) by personal service; or
 - (ii) by first class mail in a postpaid envelope addressed to the last mailing address filed with the Commission; or
 - (iii) if the licensee is the owner of a taxicab, for-hire vehicle, paratransit service vehicle or commuter van, by personal service upon the driver of such licensed vehicle. Said driver shall promptly forward said summons or notice to the owner or agent and the failure to do so shall be considered a failure to comply with a directive of the Commission; or
 - (iv) if the licensee is a commuter van service, for-hire vehicle base, paratransit base, taxicab agent, or taximeter business, by personal service upon a person of suitable age and discretion employed by or acting as an agent of the licensee at the licensee's place of business.

- (b) Service of a summons or other notice upon a respondent who is not a licensee may be accomplished by any of the following methods, consistent with the requirements set forth in the Civil Practice Law and Rules:
 - (i) by personal service; or
 - (ii) by first class mail in a postpaid envelope addressed to the address set forth on the respondent's state issued driver's license or vehicle registration; or
 - (iii) if the respondent is the registered owner of a vehicle, by personal service upon the driver of the vehicle; or
 - (iv) if the respondent is charged with operating an unlicensed commuter van service, for-hire vehicle base, paratransit base, taxicab agent, or taximeter business, by personal service upon a person of suitable age and discretion employed by or acting as an agent of the respondent at the respondent's place of business.

§8-06 Contents of Summons or Notice of Violation.

- (a) A summons or notice of violation shall contain, at a minimum, the following information:
 - (i) the date, time and location of the alleged violation;
 - (ii) a description of the nature of the violation sufficient to inform the respondent of the conduct proscribed;
 - (iii) the Rule or Administrative Code Section alleged to have been violated; provided, however, that if there is a conflict between the Rule or Code Section cited and the description of the violation, the description shall be dispositive.
- (b) A notice for a fitness hearing, as described in §8-15 herein, shall set forth the basis for the Commission's charge that the respondent is not fit to possess or retain a license issued by the Commission.

- (c) If a respondent claims at a hearing that the summons or notice of violation fails to provide the information specified in subdivisions (a) or (b), the respondent will be provided with the missing information and may be granted an adjournment of the hearing if the ALJ determines that the lack of information unduly prejudices the respondent. If the summons or notice of violation is dismissed solely because the information set forth in subdivision (a) has not been provided, the Commission may issue an amended summons or notice of violation.
- (d) If the summons or notice of violation is sworn to under oath or affirmed under penalty of perjury, the summons or a copy of the summons will be admitted into evidence and will constitute prima facie evidence of the violations alleged.

§8-07 Guilty Pleas and Scheduling of Hearings.

- (a) The Commission Rules may set forth violations for which a personal appearance is not required. With respect to any summons issued for such violation, the respondent may plead guilty at or prior to a scheduled hearing, and pay the scheduled fine in person or by mail. By pleading guilty, the respondent admits the charges contained in the summons or notice of violation, and waives any right to appeal the ALJ's determination, including but not limited to the assessment of fines, imposition of points and penalties pursuant to the Persistent Violator or the Critical Driver Programs, or other penalties. If the respondent does not choose to plead guilty prior to the hearing date, he shall be required to appear at the scheduled hearing.
- (b) A summons or notice of violation may inform the respondent of the date, time and location of the scheduled hearing on the summons or notice. In such case, no further notice to the respondent shall be provided. If the respondent does not plead guilty pursuant to subdivision (a), or if the summons or violation requires a personal appearance, the respondent shall appear for a hearing at the location, date and time indicated on the summons or notice of violation.
- (c) If the summons or notice of violation does not inform the respondent of the date, time and location of the scheduled hearing, and if the

violation is one for which a personal appearance is not required, the respondent may request a hearing by pleading not guilty to the summons or by otherwise following the instructions contained on the notice from the Commission. Upon receipt of a not guilty plea, the Commission will schedule a hearing and inform the respondent of the date, time and location of the hearing by first class mail. The failure to enter a plea of not guilty in a timely manner shall constitute a default to the charges and subject the respondent to penalties which may include license suspension or revocation as set forth therein.

§8-08 Failure to Prosecute by the Commission.

If, for one (1) year after the date of the issuance of a summons or notice of violation and without any delay or default on the part of the respondent, there has been no hearing or adjudication, the Commission shall dismiss the charges.

§8-09 Adjournment Requests.

(a) Requests for Adjournments

- (1) A request for an adjournment, which is a request to change the scheduled hearing date, may be made either by the Chairperson or by the respondent, or anyone authorized by this Chapter to appear for the respondent.
- (2) A request to reschedule a hearing must be made at least five business days before the first scheduled hearing date or at the hearing.
 - (i) Good cause is not necessary for an adjournment that is requested at least five business days before the first scheduled hearing date.
 - (ii) A request for an adjournment that is made at least five business days before the first scheduled hearing date may be made ex parte, and may be made by telephone, or in person.
 - (iii) No more than one adjournment requested at least five business days before the first scheduled hearing will be granted.

- (3) An adjournment that is requested at the hearing will only be granted for good cause, as determined in the discretion of the ALJ (see §8-09(b) of these Rules). The adjournment request will be made on the record. On the record means that the ALJ shall conduct a hearing. This hearing shall be recorded. The ALJ will issue a written decision explaining the ALJ's decision to grant or deny the request.
- (4) *Adjournments to Obtain the Testimony of Complaining Witnesses.* The Respondent may request an adjournment at the first scheduled hearing date for the purposes of obtaining the testimony of a complaining witness who has sworn to or affirmed a summons or notice of violation (see §8-06(d) of these Rules). A request for an adjournment for this purpose may not be made at any time other than the first scheduled hearing date.
 - (i) The respondent must explain the subject of the testimony that the respondent intends to obtain from the complaining witness and must explain the relevance of that testimony to either the violations charged or a defense to those charges.
 - (ii) The ALJ will find that there is good cause for the adjournment only if the ALJ concludes that the complaining witness's testimony is reasonably likely to be necessary to a fair hearing of the violations charged or the defenses to those charges.
 - (iii) The non-attendance of the complaining witness who submitted a sworn or affirmed summons or notice of violation at the first scheduled Hearing date shall not be a failure by the Commission to produce a complaining witness (see §8-10(f) of these Rules).
- (b) *Good cause.* In deciding whether there is good cause for an adjournment, the ALJ will consider:
 - (1) Whether granting the adjournment is necessary for the party requesting the adjournment to effectively present the case;
 - (2) Whether granting the adjournment is unfair to the other party;
 - (3) Whether granting the adjournment will cause inconvenience to any witness;

- (4) The age of the case and the number of adjournments previously granted;
- (5) Whether the party requesting the adjournment prepared for the scheduled hearing with reasonable diligence;
- (6) Whether the need for the adjournment is due to facts that are beyond the requesting party's control;
- (7) The balance of the need for efficient and expeditious adjudication of the case and the need for full and fair consideration of the issues relevant to the case; and
- (8) Any other fact that the ALJ considers to be relevant to the request for an adjournment.

§8-10 Attendance at Hearing.

- (a) A respondent who is a licensee may be represented at a hearing by an attorney or by a non-attorney representative duly authorized by the Commission. If the respondent is a corporation, it may also be represented by an officer, director, or employee of the respondent corporation designated as an agent for the respondent. If the respondent is a partnership, it may also be represented by any partner. Any individual appearing who is not a respondent shall provide proof of his relationship to the respondent.
- (b) A respondent who is not a licensee must appear personally at a hearing and provide the ALJ with suitable identification. If the non-licensee respondent is a corporation or partnership, an officer, director, employee or partner must appear with proof of his relationship to the respondent. A non-licensee may be accompanied and represented by an attorney or a non-attorney representative duly authorized by the Commission.
- (c) All hearings shall be conducted in English. A respondent, other than a licensed taxicab driver, who does not speak or understand English, may appear at a hearing with a translator who is not a party, representative of the respondent or a witness to the proceeding.
- (d) A respondent may present witnesses at a hearing. A respondent shall be entitled to be present throughout the entire hearing; however,

witnesses shall be excluded from the hearing room except while actually testifying.

- (e) The Commission may, for cause, deny any non-attorney the opportunity to appear at a hearing.
- (f) In the event that the Commission is unable to produce a complaining witness in person at the hearing, where such witness's credibility is relevant to the charges made in the notice of violation, the Commission shall make reasonable efforts to make such witness available during the hearing by videoconferencing or teleconferencing. If the complaining witness is not available to testify at the hearing in person, or by videoconference or teleconference, the Commission shall produce a statement outlining its efforts to produce such witness. The ALJ must determine whether the Commission's efforts to produce the complaining witness were reasonable and if found to be inadequate, the ALJ shall dismiss the notice of violation.

§ 8-11 Hearing Procedure.

- (a) No licensee shall be permitted to appear at a hearing unless he or she shows a valid photo ID to the Commission prior to the hearing.
- (b) All hearings shall be conducted before an ALJ who shall consider all relevant testimony and review documentary evidence submitted at the hearing. Evidence at a hearing may include affidavits or affirmations submitted under penalties of perjury and may also include the records of the Commission or of another governmental body maintained in the regular course of business. Failure of the respondent to produce at a hearing any document either requested by the Commission or required to be maintained by the respondent pursuant to Commission Rules shall lead to a rebuttable presumption that the document, if produced, would have been adverse to the respondent. Although the formal rules of evidence do not apply, all witnesses shall testify under oath.
- (c) All hearings shall be recorded. The record of the hearing and the written decision of the ALJ shall constitute the only official record of

the hearing. No individual may record or photograph the hearing without prior written permission from the Commission.

- (d) At the conclusion of the hearing, the ALJ shall issue a decision which shall include findings of fact and conclusions of law. If the ALJ finds a violation has been committed, the appropriate penalties shall be imposed, which may include a fine, Persistent Violator or Penalty Points, and/or suspension or revocation of the respondent's license.

§8-12 Procedures in the Event of a Failure to Appear.

- (a) In the event that a respondent fails to appear at a scheduled hearing, the Commission shall conduct an inquest on any violation of the Administrative Code or the Commission Rules. At said inquest, to be conducted on or after the hearing date, the ALJ shall impose any penalties deemed appropriate, including additional penalties for the failure to appear at such hearing imposed upon licensees pursuant to Commission Rules.
- (b) The Commission shall inform the respondent of the determination of the inquest by regular, first class mail to the address of the respondent on file with the Commission. The Commission shall prepare a record containing the name of the person who mailed the notice, and the date and time of the mailing of the notice. The Commission shall make this record available upon request to the respondent.
- (c) Any revocation, suspension, Persistent Violator Penalty or Penalty Points will become effective on the date of the ALJ's decision.
- (d) A respondent may move to vacate the inquest determination within two (2) years of the date of the inquest. This motion must be made on an approved form and must be signed and dated.
 - (1) A motion to vacate filed within 120 days of the date of the inquest must show:
 - (i) reasonable excuse for his failure to appear at the hearing;
and

- (ii) a defense to the charge, which, if established and proven at a hearing, would result in the dismissal of the summons.
- (2) A motion to vacate filed more than 120 days and less than 2 years after the date of inquest must show:
 - (i) reasonable excuse for delay in presenting the motion, reasonable excuse for the respondent's failure to appear at the hearing, and
 - (ii) A defense to the charge which, if established and proved at a hearing, would result in the dismissal of the summons.
- (3) If an inquest decision on the same summons or notice of violation has been previously vacated, and a new inquest decision has been issued, a motion to vacate the second inquest decision must show:
 - (i) An extraordinary and compelling reason for the respondent's failure to appear at the hearing,
 - (ii) A defense to the charge which, if established and proved at a hearing, would result in the dismissal of the summons
- (4) In determining whether respondent has shown a reasonable excuse for failing to appear at a hearing, the ALJ will consider:
 - (i) Whether circumstances that could not be reasonably foreseen prevented the respondent from attending the hearing;
 - (ii) Whether the respondent had an emergency or condition requiring immediate medical attention;
 - (iii) Whether the matter had been previously adjourned by the respondent;
 - (iv) Whether the respondent attempted to attend the hearing with reasonable diligence;
 - (v) Whether the respondent's inability to attend the hearing was due to facts that were beyond the respondent's control;

- (vi) Whether the respondent's failure to appear at the hearing can be attributed to the respondent's failure to maintain current contact information on file with the Chairperson; and
 - (vii) Any other fact that the ALJ considers to be relevant to the motion to vacate.
- (e) If the ALJ determines that the respondent has met the requirements for a motion to vacate, the inquest determination shall be vacated and the respondent shall be entitled to a hearing de novo. Any fines, Persistent Violator or Penalty Points, suspension or revocation imposed at the inquest shall be vacated. Any fines already paid shall be refunded.
- (f) If the ALJ denies the motion to vacate, the penalties imposed at the inquest shall remain in effect
- (g) A respondent may challenge a decision made after an inquest only by moving to vacate the inquest decision.
- (h) The respondent may appeal a decision denying a motion to vacate.

§8-13 Procedures on Appeal.

- (a) The respondent may appeal the decision of an ALJ as follows:
 - (i) Two copies of the appeal must be directed to the Appeals Unit and received within thirty (30) calendar days of the date of the decision to be appealed. If a respondent timely files an appeal, any fines imposed by the decision being appealed from shall be stayed until a decision is made in such appeal; however, the Commission shall not be required to refund any fines paid before respondent made his or her appeal unless such appeal is successful.
 - (ii) The appeal must be accompanied by two copies of the ALJ decision.

- (iii) The respondent may request a copy of the recording of the hearing within seven (7) calendar days of the ALJ's determination. Such request must be made in writing on a form to be prescribed by the Chairperson. Such form shall be completed and submitted in accordance with instructions to be printed on the form. If, for the purposes of appealing a decision, a respondent requests a copy of the hearing recording, such recording shall be produced to such respondent within thirty (30) days after receipt of a written request from such respondent. If the Commission cannot produce the recording to the respondent within the thirty (30) day period the determination being appealed shall be dismissed without prejudice. An appeal must be received by the Commission within twenty-one (21) days of the issuance of the requested copy by the Commission, whether by mailing or otherwise.
- (b) If the ALJ's decision resulted in the suspension or revocation of a license, the determination of the appeal shall be expedited. If the ALJ's decision resulted in the suspension of a license, the Chairperson may, in his discretion, issue a temporary license after an appeal has been filed which may remain in effect pending the determination of the appeal. In making the determination as to whether or not to issue a temporary license, the following factors may be considered: the respondent's record, the seriousness of the charges, the likelihood of the success of the appeal and the significance of the issues raised on appeal.
- (c) The Commission may seek review of a determination by an Administrative Law Judge by filing an appeal with the Appeals Unit within thirty (30) calendar days of such determination. The appeal shall be accompanied by a copy of the ALJ decision. If a Commission appeal is filed, the respondent will be notified by mail. The appeal must include a notation indicating that a copy of the appeal was mailed to the respondent. The appeal will include a written statement setting forth the basis for the appeal. The respondent may respond to the appeal within twenty-one (21) calendar days of the mailing of the appeal. The respondent may request a copy of the recording of the hearing within seven (7) calendar days of the notice of appeal. Such request must be in writing on a form to be prescribed by the Chairperson. Such form shall be completed and submitted in

accordance with instructions to be printed on the form. If a respondent requests a copy of the recording of the hearing, his or her time to respond to the notice of appeal is extended until twenty-one (21) calendar days after the issuance of the requested copy by the Commission, whether by mailing or otherwise.

- (d) Review of an ALJ's decision shall be limited to the issues of law raised in the appeal submitted. Findings of fact may be appealed only on the grounds that the findings of fact are not supported by substantial evidence in the record. Upon appeal, the determination of the ALJ may be affirmed, reversed in whole or in part, or modified. If the record on appeal is insufficient for the Appeals Unit to correct an error of law, the matter may be remanded to the Commission Adjudications Tribunal for a new hearing. Once an appeal has been decided, any outstanding fines imposed by the decision affirmed on appeal must be paid within 30 days.
- (e) Response by the Commission.
 - (i) The Commission may respond to the respondent's appeal within 21 calendar days of the filing of the appeal.
 - (ii) If the appeal is expedited, the Commission may respond within seven days of the filing of the appeal.

§8-14 Discretionary Revocation Proceedings.

- (a) The Commission may institute proceedings to seek the revocation of any license for the violation of any Commission Rule, whether or not the penalty of revocation is provided therein.
- (b) If the Commission seeks the penalty of revocation for a Rule violation not providing for mandatory revocation as a penalty, as provided for in §8-03(b), said proceeding must be commenced before the Office of Administrative Trials and Hearings (OATH). The Commission shall not commence such a proceeding unless the Chairperson makes a determination that the continued licensure of the respondent presents a threat to the public health, safety or welfare.

- (c) The Commission shall notify the respondent of such proceeding by serving a written summons or notice detailing the charged misconduct and warning the respondent that a finding of guilt could result in the revocation of his license.
- (d) Said written charges shall be served upon the respondent in accordance with §8-05, if the hearing is to be conducted before the Commission's Tribunal. If the hearing is to be conducted before OATH, the respondent shall be served with charges according to the procedures adopted by OATH.
- (e) Said charges shall inform the respondent of the location, date and time of any scheduled hearing.
- (f) If the hearing is commenced before OATH, it shall be conducted by an ALJ assigned by OATH, and the procedures of OATH shall govern with respect to the conduct of the hearing. If the hearing is commenced at the Commission's Adjudications Tribunal, the procedures set forth in this Chapter shall apply. The affirmative defenses set forth in subdivision b of §19-512.1 of the Administrative Code may be available in any such hearing.
- (g) If the proceeding is conducted by OATH, the ALJ, upon a finding of guilt, may recommend to the Chairperson license revocation, license suspension for a period up to six (6) months, and/or a fine not to exceed \$1,000 for each offense for which a Licensed Driver is found guilty and/or a fine not to exceed \$10,000 for each offense for which any other licensee is found guilty.
- (h) If the proceeding is conducted by the Commission Adjudications Tribunal, the decision of the ALJ shall be a Recommended Decision to the Chairperson. In such case, the ALJ will prepare and submit to the Chairperson a Recommended Decision containing his findings of fact, conclusions of law and recommended penalties.
- (i) Upon the issuance of a Recommended Decision in accordance with either subsection (g) or (h), containing findings of fact, conclusions of law and any recommended penalty, the respondent shall be provided with an opportunity to provide a written response to said

Recommendation, limited to the record of the hearing and the determination of the ALJ with respect to penalty only.

- (j) The Recommended Decision issued in accordance with either subsection (g) or (h) will be submitted for consideration to the Chairperson. The Chairperson shall consider any written comments submitted pursuant to subsection (i) and shall determine whether to accept, modify or reject the Recommendation of the ALJ.
- (k) A final decision of an ALJ may be appealed to the Deputy Commissioner for Legal Affairs/General Counsel pursuant to the provisions of §8-13. The final decision of the Chairperson, affirming, modifying or rejecting the Recommendation of an ALJ rendered pursuant to this Section may be appealed to the TLC Commissioners. The respondent may appeal the Chairperson's decision within thirty (30) calendar days of the date of the Chairperson's final decision by filing a written appeal, setting forth the basis for the appeal and all statements and arguments made in support thereof, with the Deputy Commissioner for legal Affairs/General Counsel. The Chairperson may prescribe the form for the conduct and filing of such appeals. Review of the Chairperson's decision shall be limited to the issues of law raised in the appeal submitted, and whether the decision of the Chairperson and the recommended decision of the ALJ is supported by substantial evidence. The Commissioners may not review findings of fact or determinations of credibility by an ALJ. The Agency may submit a written response to any appeal received by the Deputy Commissioner for Legal Affairs/General Counsel. The respondent shall be afforded the opportunity to respond in writing to the Agency's written submission. The Commissioners shall receive a copy of the ALJ's Recommendation, the Chairperson's decision, the appeal, and any responses filed by the Commission or the respondent. The Commission shall, by majority vote of the Commission at a meeting at which a quorum is present and in which it is acting in a quasi-judicial capacity, either affirm, modify, or reject the Chairperson's decision and penalty. The Chairperson shall not vote on such appeals. The results of the vote and action taken by the Commission shall be communicated at a public meeting. The Commission shall also have the authority, where appropriate, to remand the matter to the ALJ for further consideration prior to rendering a decision.

§8-15 Special Procedures Relating to Fitness Hearings.

- (a) If the Commission believes that a licensee or applicant for a license (hereinafter referred to as “respondent”) does not meet or does not continue to meet the qualifications for licensure, as set forth in Commission Rules, it may direct that such respondent appear for a fitness hearing. Such hearing shall be conducted by an ALJ. Any requests for an adjournment must be made in accordance with §8-09.
- (b) The Commission shall prepare a notice of hearing which shall be served upon the respondent in accordance with §8-05. Such notice shall set forth, at a minimum, the date, time and location of the hearing and the basis for the Commission’s charge that the respondent fails to meet the minimum requirements for licensure.
- (c) Notwithstanding paragraphs (a) and (b) of this section, the Commission may order the summary suspension of a driver’s license to ensure the public safety in cases where the Commission receives notice that a licensee has failed a required drug test. The Commission shall notify the licensee either by personal service or by first class mail of the summary suspension, within five (5) calendar days of the suspension. An expedited fitness hearing shall be scheduled within ten (10) calendar days of such suspension. The hearing shall be conducted by an ALJ in accordance with paragraphs (d) and (e) of this section, and based upon the ALJ’s findings, either the suspension shall be lifted or the license shall be revoked.
- (d) The hearing shall be conducted before an ALJ who shall review the documentary evidence and testimony submitted by the Commission and afford the respondent an opportunity to respond under oath and to proffer evidence on his or her behalf. The hearing shall be recorded.
- (e) The ALJ shall issue a Recommended Decision which shall include a determination as to the respondent’s fitness to possess a license. The Recommendation shall be issued to the Chairperson. The Chairperson may accept, reject or modify said Recommendation. The decision of the Chairperson shall constitute the final determination of the Commission.

§8-16 Summary Suspension Pending Revocation to Protect the Public Health or Safety.

- (a) If the Chairperson finds that emergency action is required to insure public health or safety, he/she may order the summary suspension of a license or licensee, pending revocation proceedings.
- (b) Such revocation proceedings shall be initiated within five (5) calendar days of the summary suspension.
- (c) Notwithstanding paragraph (b) of this section, the Chairperson may summarily suspend a license subject to the provisions of (a) and (d) through (g) of this section based upon an arrest on criminal charges that the Chairperson determines is relevant to the licensee's qualifications for continued licensure. At the hearing pursuant to subdivision (e) of this section, the issue shall be whether the charges underlying the licensee's arrest, if true, demonstrate that the licensee's continued licensure during the pendency of the criminal charges would pose a direct and substantial threat to the health or safety of the public. Revocation proceedings need not be commenced during the pendency of the criminal charges. In such a case, within five (5) calendar days of the Commission's receipt from the licensee of a certificate of disposition of the criminal charges, the Chairperson shall either lift the suspension or commence revocation proceedings.
- (d) The Commission shall notify the licensee either by personal service or by first class mail of the summary suspension, within five (5) calendar days of the suspension. If the licensee wishes to receive a hearing concerning the suspension, he or she may request a hearing within ten (10) calendar days of receipt of the notice of suspension. Upon receipt of a request for a hearing, the Commission shall schedule a hearing, which shall be held within ten (10) calendar days of the receipt of the request, unless the Commission determines that such hearing will be prejudicial to any ongoing civil or criminal investigation. This paragraph shall not apply, and no summary suspension hearing shall be required, where the Commission schedules the revocation hearing within fifteen (15) calendar days of the suspension.

- (e) A summary suspension hearing conducted pursuant to this section shall be held before an ALJ who shall consider relevant evidence and testimony under oath, according to the hearing procedures set forth in this Chapter. In any such hearing, where applicable, the affirmative defenses may include those set forth in subdivision b of §19-512.1 of the Administrative Code.
- (f) Upon the conclusion of the summary suspension hearing, the ALJ shall issue a written Recommended Decision to the Chairperson, who may accept, reject or modify the recommendation. The decision of the Chairperson shall be the final determination of the Commission with respect to the summary suspension.
- (g) In the event no decision is rendered by the Chairperson within sixty (60) calendar days of the conclusion of the suspension hearing, the suspension shall be thereafter stayed until such decision is rendered.

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

- (a)
 - (i) If the Chairperson or his or her designee determines that a 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 TLC-issued license shall be summarily suspended pending an opportunity to be heard.
 - (ii) Upon a determination made pursuant to paragraph (a)(i) of this subdivision that a TLC-issued 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 TLC-issued 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 TLC-issued 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 TLC-issued 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 may be appealed pursuant to § 8-13 of this chapter. Where an ALJ decision made pursuant to this subdivision lifting a suspension is reversed on appeal, such matter will be remanded for a new hearing pursuant to this subdivision, and the TLC-issued license shall be suspended until final disposition of the case or until compliance as appropriate.

(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.

- (v) 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 TLC-issued license until compliance and may also include a fine.
 - (vi) Suspension of TLC-issued licenses pursuant to this subdivision shall continue until the fines assessed pursuant to paragraph (iii) of this subdivision 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.
 - (vii) 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 TLC-issued 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.
- (b)
- (i) If the Chairperson or his or her designee determines that a licensee is not in compliance with a rule in this title that provides for summary suspension until compliance, such licensee's TLC-issued license may be summarily suspended until compliance pending an opportunity for a hearing.
 - (ii) Upon a determination made pursuant to paragraph (b)(i) of this

section that a TLC-issued license shall be summarily suspended, the Chairperson 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 TLC-issued 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 TLC-issued 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 code section cited and the description of the violation, the description shall be dispositive; and
 - (4) a notice that if the licensee wishes to receive a hearing concerning the suspension, he or she may request a hearing within ten (10) calendar days of receipt of the notice of suspension 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) Upon receipt of request for a hearing, the Commission shall schedule a hearing, which shall be held within ten (10) calendar days of the receipt of the request, unless adjourned upon consent of the licensee or for good cause by the ALJ. Such summary suspension hearing shall be conducted by an ALJ who shall consider relevant evidence and testimony under oath, according to the hearing procedures set forth in this chapter.
- (iv) 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 TLC-issued

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 such decision may be appealed pursuant to section 8-13 of this chapter. Where an ALJ decision made pursuant to this subdivision lifting a suspension is reversed on appeal, such matter will be remanded for a new hearing pursuant to this subdivision, and the TLC-issued license shall be suspended until final disposition of the case or until compliance as appropriate.

- (v) In the event 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.
- (vi) Suspension of TLC-issued licenses pursuant to paragraph (b)(iv) of this section shall continue until the fines assessed pursuant to that paragraph 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.
- (vii) In the event a licensee does not provide the Commission with a request for a hearing regarding 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 on an expedited basis pursuant to this subdivision has been waived and the licensee shall be scheduled for a hearing on the underlying violation pursuant to the procedures in this chapter. In such an event, the summary suspension of the TLC-issued license shall be continued until either lifted by the ALJ in such regularly scheduled hearing, or until the licensee furnishes proof of compliance to the satisfaction of the Chairperson or his or her designee.
- (viii) 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 TLC-issued 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.

§8-18 Special Procedures - Settlements and Withdrawals.

(a) *Settlements.* The Chairperson and a Respondent may dispose of a summons or notice of violation by entering into a settlement agreement.

- (1) The settlement agreement must be in writing.
- (2) The settlement agreement may provide for penalties different than the penalties provided for in these Rules.
- (3) The settlement agreement may provide for canceling an adjudication that is open or that has been completed.
- (4) The settlement agreement may provide for penalties to be imposed, with or without a further Hearing, in the event that the Respondent does not comply with the terms of the settlement agreement.
- (5) Unless the settlement agreement clearly provides otherwise, the License of a Respondent who does not comply with the terms of the settlement agreement may be suspended by the Chairperson without a Hearing until the Respondent complies with the settlement agreement.
- (6) By entering into a settlement agreement, the Chairperson and the Respondent both waive their rights to any further Hearings or appeals on the summons or notice of violation that is disposed of by the settlement agreement.

(b) *Withdrawals.* The Chairperson may withdraw a summons or notice of violation, even if it has been adjudicated. Any fine, suspension, revocation,

or Persistent Violator Points or Penalty Points imposed after the Hearing will be vacated. Any fines paid will be refunded. The Chairperson will notify the Respondent that the summons or notice of violation has been withdrawn. The Chairperson may withdraw a summons or notice of violation if the Chairperson determines that it was

- (1) Written in error.
- (2) Ineffectively served on the Respondent.
- (3) Written in contravention of the Chairperson's enforcement policy.