

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

Notice of Promulgation 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 (“TLC”) promulgates amendments to rules governing for-hire vehicles to implement new state law workers’ compensation provisions for livery drivers.

These rules are proposed pursuant to sections 1043 and 2303 of the Charter and section 19-503 of the Administrative Code of the City of New York. The proposed rules were not included in the TLC’s regulatory agenda for Fiscal Year 2011 as the need for them was not anticipated at the time the agenda was prepared.

A public hearing on these proposed rules will be held by the TLC at its offices at 40 Rector Street, 5th Floor, New York, New York 10006 on Thursday, December 16, 2010, at 10:00 a.m. Persons wishing to testify at the hearing may notify the TLC in advance, either in writing or by telephone to the TLC’s Office of Legal Affairs at the address and telephone given below. Any request for a sign language interpreter or other form of reasonable accommodation for a disability at the hearing must be submitted to the Office of Legal Affairs in writing or by telephone no later than December 9, 2010.

Written comments in connection with these proposed rules must be received no later than December 13, 2010. Comments may be submitted through the NYC Rules website at www.nyc.gov/nycrules, or may be submitted to the Office of Legal Affairs at:

Charles R. Fraser
Deputy Commissioner for Legal Affairs/General Counsel
Taxi and Limousine Commission
40 Rector Street, 5th Floor
New York, New York 10006
Telephone: 212-676-1135
Fax: 212-676-1102
Email: tlcrules@tlc.nyc.gov

Written comments and a transcript of all comments received at the hearing will be available for public inspection at that office.

New material is underlined.

[Material inside brackets indicates deleted material.]

Section 1. It is proposed that section 1-03 of Title 35 of the Rules of the City of New York be amended to add, in alphabetical order, definitions for “Black Car Fund,” “Independent Base Station,” “Independent Livery Driver,” and “Livery Fund,” to read as follows:

Black Car Fund is the New York Black Car Operators’ Injury Compensation Fund, Inc. established under Article 6-F of the NYS Executive Law.

Independent Base Station is a Livery Base Station that is designated as an independent livery base under §18-c of the NYS Workers’ Compensation Law because it has joined the Livery Fund.

Independent Livery Driver is the Driver of a Livery which is affiliated with an Independent Base Station.

Livery Fund is the independent livery driver benefit fund established under Article 6-G of the NYS Executive Law.

Section 2. It is proposed that section 9B-03 of Title 35 of the Rules of the City of New York be amended to add, in alphabetical order, definitions for “Black Car Fund” “Independent Base Station,” “Independent Livery Driver,” and “Livery Fund,” to read as follows:

Black Car Fund is the New York Black Car Operators’ Injury Compensation Fund, Inc. established under Article 6-F of the NYS Executive Law.

Independent Base Station is a Livery Base Station that is designated as an independent livery base under §18-c of the NYS Workers’ Compensation Law because it has joined the Livery Fund.

Independent Livery Driver is the Driver of a Livery which is affiliated with an Independent Base Station.

Livery Fund is the independent livery driver benefit fund established under Article 6-G of the NYS Executive Law.

Section 3. It is proposed to amend the provisions of Section 9B-08 to add a new subdivision (f) to read as follows:

(f) Revocation for Livery Fund violations

(1) No Livery Base Station License will be issued to an Applicant if a Livery Base Station License previously held by Applicant was revoked for violations of Article 6-G of the NYS Executive Law.

(2) A Livery Base Station License previously held by an Applicant includes any Livery Base Station License held by any Licensee in which any of Applicant's Limited Business Entity Persons was also a Limited Business Entity Person.

(3) The ban on issuance will continue for five years following the revocation, and until

(i) Any money owed to the Livery Fund on the account of the revoked License is paid or

(ii) The Livery Fund agrees on a payment plan for money owed to it.

Section 4. It is proposed to amend Section 9B-12(a) of Title 35 of the Rules of the City of New York to read as follows:

(a) *Livery Base Station*

(1) *Compliance with Workers' Compensation Law.* [Every Livery Base Station must comply with all provisions of the New York State Workers' Compensation Law and regulations with respect to coverage and benefits to eligible persons.]

(i) Every Livery Base Station must either

(A) be a member of the Livery Fund or

(B) maintain coverage under the NYS Workers' Compensation Law for all drivers dispatched.

(ii) Every Livery Base Station must maintain either Livery Fund membership or workers' compensation insurance coverage at all times.

(iii) A Livery Base Station that is an Independent Base Station must be a member of Livery Fund. To prove it is a member of the Livery Fund, a Livery Base Station must submit to the Commission

(A) A copy of the affirmation given by the Livery Base Station to the Workers' Compensation Board as required by §18-c(2) of the NYS Workers' Compensation Law and

(B) A copy of any certificate of membership or similar documentation issued by the Livery Fund.

(iv) A Livery Base Station that is not an Independent Base Station must buy insurance providing compensation under the NYS Workers' Compensation Law for all drivers dispatched. To prove that it has bought insurance coverage, a Livery Base Station must submit to the Commission

(A) a current certificate of insurance and

(B) proof that the insurer is licensed by the NYS Insurance Department, together with a list of authorized signatories.

§9B-12(a)(1)	Fine: \$25 for each day of non-compliance <u>up to \$5,000</u> and either suspension until compliance or <u>Livery Base License revocation</u>	<u>Appearance REQUIRED</u>
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(2) Audit of Independent Base Stations. The Commission can audit any Independent Base Station as provided in §18-c(2)(g) of the NYS Workers’ Compensation Law.

(3) Coercion Prohibited. An Independent Base Station must not coerce any driver or vehicle owner into making false statements or refrain from reporting any violation of Article 6-G of the NYS Executive Law.

§9B-12(a)(3)	Fine: \$1,000-\$5,000 and or suspension of <u>Livery Base License and membership in Livery Fund for up to 2 years</u>	<u>Appearance REQUIRED</u>
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(4) Enforcement on Request. The Commission will enforce the provisions of this paragraph (4) only at the request of the Livery Fund or the NYS Workers’ Compensation Board. The Livery Fund or NYS Workers’ Compensation Board can ask the Commission to enforce these rules by filing a complaint against a Livery Base. The complaint will include documentation of the violation.

(i) An Independent Base Station must pay any assessment by the Livery Fund within 30 days of the assessment.

§9B-12(a)(4)(i)	Fine: \$500 for each 30 days after notice <u>payment is overdue, plus payment of the overdue amount plus interest on such amount at 12% per annum, together with either suspension until compliance or revocation of license and Livery Fund membership.</u>	<u>Appearance REQUIRED</u>
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(ii) If an Independent Base Station License is suspended or revoked for failure to pay an assessment, the License cannot be reinstated, and the Independent Base Station cannot apply for a new or renewal license until:

(A) The Independent Base Station pays any money it owes to the Livery Fund or

(B) The Livery Fund agrees on a payment plan for money owed to it.

(iii) An Independent Base Station must not make a materially false statement in the sworn affirmation required by §18-c(2) of the Workers’ Compensation Law.

§9B- 12(a)(4)(iii)	Fine: \$1,000-\$10,000 and/or Livery Base License revocation for up to 5 years for first offense and permanent bar to licensure for second	Appearance REQUIRED
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(iv) Any Independent Base Station found to have made a materially false statement under (iii) of this subparagraph on two separate occasions may not apply for or hold a Livery Base Station License.

(v) An Independent Base Station must not make any material misrepresentation about (A) the number of Vehicles affiliated with the Independent Base Station, (B) the number of owners of such Vehicles, or (C) the number of drivers dispatched by the Independent Base Station. (D) Material misrepresentation includes any temporary alteration of records to reduce the numbers of vehicles or drivers.

§9B- 12(a)(4)(v)	Fine: \$1,000-\$5,000 and/or Livery Base License suspension or Livery Base License revocation for up to 2 years.	Appearance REQUIRED
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~~(2)5~~ *Cessation of Benefits to Drivers.* Upon filing with the Workers’ Compensation Board to end the payment of benefits to the Driver of an affiliated Vehicle who has recovered from a disability and is ready to return to work, a Base Owner must provide the Driver with documentation that benefits have been stopped in order for the Commission to return that Driver’s License.

§9B- 12(a) (2)5	Fine: \$100-\$250	Appearance REQUIRED
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Section 5. It is proposed to amend Section 9B-12(b) of Title 35 of the Rules of the City of New York to read as follows:

(b) *Black Car and Luxury Limousine Bases*

(1) *Membership in the Black Car Operators’ Injury Compensation Fund.*

(i) Every Black Car Base and Luxury Limousine Base must become and remain a member of the [New York Black Car Operators’ Injury Compensation Fund, Inc. (“Fund”)] Black Car Fund and must register with the Department of State as a Member of the Black Car Fund.

(ii) This provision does not apply to a Black Car or Luxury Limousine Base that owns fifty (50%) percent or more of the Vehicles it dispatches.

§9B-12(b)(1)	Fine: \$25 for each day of non-compliance, to a maximum of \$10,000, and either suspension until compliance or Base License revocation	Appearance REQUIRED
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(2) *Submit Certificate of Registration with the Fund.* Every Black Car Base and Luxury Limousine Base must:

(i) Provide the Commission with a copy of its certificate of registration with the Black Car Fund.

(ii) Pay to the Department of State all fees due as required by State law.

§9B-12(b)(2)	Fine: \$25 for each day of non-compliance, to a maximum of \$10,000, and either suspension until compliance or Base License revocation	Appearance REQUIRED
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(3) *Bill and Collect Surcharge.* Every Black Car Base and Luxury Limousine Base member of the Black Car Fund must add the surcharge established by the Black Car Fund and required by State law to each invoice and billing for services and to each credit payment of services performed by a Vehicle affiliated with the Base for every trip:

(i) Originating from a centralized dispatch facility located within the State of New York

(ii) Originating from a point within the State of New York

§9B-12(b)(3)	Fine: \$25 for each day of non-compliance, to a maximum of \$10,000, and either suspension until compliance or Base License revocation, <u>together with revocation of Black Car Fund membership</u>	Appearance REQUIRED
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(4) *Remit Surcharges.* Every Black Car Base and Luxury Limousine Base must forward to the Black Car Fund all surcharges due and owing under paragraph (3), above, no later than the 15th day of the month following the month in which the surcharge is collected.

§9B-12(b)(4)	Fine: \$500-\$5,000 for each 20 days the payment is overdue, and suspension until compliance or revocation, together with restitution to the <u>Black Car Fund</u> of any unpaid amount, together with interest at the rate of 12 percent per annum, <u>together with revocation of Black Car Fund membership.</u>	Appearance REQUIRED
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(5) *Comply with all Rules of the Black Car Fund.* Every Black Car Base and Luxury Limousine Base must comply with all applicable provisions of law governing the [New York Black Car Operators' Injury Compensation Fund, Inc.] Black Car Fund, and all rules and regulations.

§9B-12(b)(5)	Fine: \$500-\$10,000 and suspension until compliance or revocation	Appearance REQUIRED
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(6) *Enforcement at Black Car Fund's Request.* The Black Car Fund can ask the Commission to enforce these rules by filing a complaint against a Black Car Base or Luxury Limousine Base. The complaint will include documentation of the violation.

Statement of Basis and Purpose of Rules

These rules amend the rules of the Taxi and Limousine Commission (“TLC”) in two respects. Primarily, the rules implement the Livery Drivers’ Independent Benefit Fund Law, which provides certain workers’ compensation benefits to livery drivers. Secondly, the rules amend existing TLC rules governing the enforcement of the New York Black Car Operators’ Injury Compensation Fund Law, by correcting a technical omission in those rules.

The TLC’s existing rules were amended by rules approved by the Commission on September 16, 2010 which incorporated these provisions into the Commission’s current rule book, that is, the rule book that will be replaced on April 1, 2011. This rule amends the version of the Commission's rules that becomes effective April 1, 2011.