

## NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**Notice is hereby given in accordance with section 1043(b) of the Charter of the City of New York (“Charter”) that the Taxi and Limousine Commission (“TLC”) proposes adoption of rules to implement the provisions of Local Law 16 of 2008 by making several changes to Taxi and Limousine Commission adjudications procedures.**

These rules are proposed pursuant to section 1043 and 2303(b)(11) of the Charter and section 19-503 of the Administrative Code of the City of New York. These proposed rules were included in the TLC’s regulatory agenda for Fiscal Year 2009.

A public hearing on these proposed rules will be held by the TLC at its offices at 40 Rector Street, 5<sup>th</sup> Floor, New York, New York 10006 on August 7, 2008, at 9:30 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 number given below. Any request for a sign language interpreter or other form of reasonable accommodation at the hearing for a disability must be submitted to the Office of Legal Affairs in writing, by email, by telephone, or by TTY/TDD no later than July 31, 2008.

Written comments in connection with these proposed rules should be submitted to the Office of Legal Affairs, addressed as follows, or submitted via email. Comments must be received no later than August 4, 2008.

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New material is underlined.

[Material inside brackets indicates deleted material.]

Section 1. It is hereby proposed that subdivision (a) (definition of “Administrative Law Judge”) of section 8-01 of Chapter 8 of Title 35 of the Rules of the City of New York be amended:

§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”).

Section 2. It is hereby proposed that subdivision (c) of section 8-02 of Chapter 8 of title 35 of the Rules of the City of New York be amended to read as follows:

- (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 [as set forth in § 8-14].

Section 3. It is hereby proposed that paragraph (iv) of subdivision (d) of section 8-02 of Chapter 8 of Title 35 of the Rules of the City of New York relating to discretionary revocation be deleted:

§8-02 Scope of this Chapter.

(d)

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- [(iv) Whenever a penalty of discretionary revocation is imposed, in which case decisions shall be recommended decisions to the Chairperson, pursuant to §8-14.]

Section 4. It is hereby proposed a new subdivision (f) is added to section 8-10 of Chapter 8 of Title 35, of the Rules of the City of New York to read as follows:

§8-10 Attendance at 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.

Section 5. It is hereby proposed that subdivisions (b) and (d) of section 8-12 of Chapter 8 of Title 35 of the Rules of the City of New York be amended as follows:

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

- (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.
- (d) A respondent may move to vacate the inquest determination within [one hundred twenty (120) calendar days] two (2) years of the date of the inquest. Said motion must be made in writing unless otherwise authorized by the Executive Director of Adjudications or his designee and shall be filed in accordance with the Commission procedures for the submission of such motions. In support of this motion to vacate, the respondent shall present written evidence as to:
  - (i) the reasons 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.

If the respondent fails to make a timely motion to vacate the default, any penalties imposed pursuant to Rule 2-70 or 6-23 shall be assessed and the respondent shall be notified of this determination by regular, first class mail.

Section 6. It is hereby proposed that paragraphs (i), (ii), and (iii) of subdivision (a), and subdivision (b) of section 8-13 of Chapter 8 of Title 35 of the Rules of the City of New York be amended to read as follows:

§8-13 Procedures on Appeal.

- (a) The respondent may appeal the decision of an ALJ as follows:

- (i) An appeal must be addressed to the Deputy Commissioner for Legal Affairs/General Counsel 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 Tribunal 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 a copy of the ALJ decision [and proof that all fines imposed have been paid in full].
  - (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 Deputy Commissioner for Legal Affairs/General Counsel or his designee 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.

Section 7. It is hereby proposed that subdivision (b) of section 8-14 of Chapter 8 of Title 35 of the Rules of the City of New York be amended to read as follows:

§8-14 Discretionary Revocation Proceedings.

- (b) If the Commission seeks the penalty of revocation for a Rule violation not providing for [discretionary or] 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. [If the specific rule violation charged provides for the discretionary penalty of revocation, the proceeding shall be commenced before the Commission Adjudications Tribunal and heard by an ALJ.]

Section 8. It is hereby proposed that subdivision (c) of section 8-16 of Chapter 8 of Title 35 of the Rules of the City of New York be amended to read as follows:

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

- (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.

## **Statement of Basis and Purpose of Proposed Rule**

The proposed rules would implement Local Law 16 of 2008 by making several changes to Taxi and Limousine Commission adjudications procedures.

First, the proposed rules would codify the Commission's existing practice of referring discretionary revocation cases to the Office of Administrative Trials and Hearings ("OATH").

Second, the proposed rules would specifically allow Commission prosecutors to call witnesses by teleconference or videoconference when they are unable to appear at the hearing in person. This provision will enhance the credibility determination when, for example, the complainant is a foreign tourist who is unable to travel to New York to appear personally at a hearing.

Third, the proposed rules would codify the Commission's existing practice of summarily suspending a license only when continued licensure poses a direct and substantial threat to public health or safety.

Fourth, the proposed rules would increase the time for respondents to vacate inquest determinations from 120 days to two years and require that the Commission maintain a record detailing how the respondent was informed of the inquest determination. That record will be available to the respondent upon request.

Fifth, the proposed rules would require expedited appeals decisions where the administrative appeal is taken from a decision imposing a license suspension or revocation, and would provide that fines imposed after a hearing are stayed pending decision of the administrative appeal.

Finally, the proposed rules would provide that, if the Commission fails to produce a timely copy of the recording of the hearing in response to a timely request filed by a respondent seeking to appeal, the decision appealed from must be dismissed. Given the Commission's recent conversion from audiocassette recording to digital recording of hearings, copies of recordings are available promptly and reliably.