

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 sections 1043(b) and 2303 of the Charter of the City of New York (“Charter”) that the Taxi and Limousine Commission (“TLC”) proposes amendments to rules governing lease rates charged to lessees of taxicab medallions and certain taxicab vehicle requirements.

These rules are proposed pursuant to sections 1043 and 2303 of the Charter of the City of New York. These proposed rules were not included in the TLC’s regulatory agenda for Fiscal Year 2009 because the need for such rules was not anticipated at the time the regulatory agenda was published.

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 March 26, 2009 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 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, by telephone, or by TTY/TDD no later than March 23, 2009.

Written comments in connection with these proposed rules should be submitted to the Office of Legal Affairs and must be received no later than March 25, 2009 to:

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Taxi and Limousine Commission
40 Rector Street, 5th Floor
New York, New York 10006
Telephone: 212-676-1117
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Written comments and a summary of all comments received at the hearing will be available for public inspection at that office.

New Material is underlined.
[Brackets indicate deleted material.]

Section 1. It is hereby proposed that title 35, section 1-78 of the rules of the City of New York be amended to read as follows:

§1-78 Limitations on Standard Lease Rates Charged to Drivers.

(a) *Standard Lease Cap.* An owner of a taxicab may charge a lease rate to a driver that is not greater than the Standard Lease Cap.

(1) The Standard Lease Cap for a medallion and vehicle for one twelve-hour shift shall not exceed:

- (i) \$105, for all day shifts;
- (ii) \$115, for the night shift on Sunday, Monday and Tuesday;
- (iii) \$120, for the night shift on Wednesday;
- (iv) \$129, for the night shifts on Thursday, Friday and Saturday.

(2) The Standard Lease Cap for a medallion and vehicle for one shift for a week or longer shall not exceed \$666 weekly.

(3) Cost adjustments. The Standard Lease Caps set forth in paragraphs one and two of this subdivision shall be adjusted as follows:

- (i) For a vehicle that is hacked up pursuant to section 3-03.1 of this title, including a vehicle that is authorized by section 3-03(c)(10) of this title, the Standard Lease Cap shall be adjusted upward by \$3 per shift (\$21 per week).
- (ii) For a vehicle that is hacked up pursuant to section 3-03 of this title, excluding section 3-03(c)(10) of this title, the Standard Lease Cap shall be adjusted downward by \$6 per shift (\$42 per week) beginning on May 1, 2009, and by \$12 per shift (\$84 per week) beginning on May 1, 2010.

(4) (i) The Standard Lease Cap for a medallion only, covering the entire time during a week or longer, shall not exceed \$800 weekly.

(ii) Cost adjustment. The Standard Lease Cap set forth in subparagraph (i) of this paragraph shall be adjusted as follows:

For a vehicle that is hacked up pursuant to section 3-03.1 of this title, including a vehicle that is authorized by section 3-03(c)(10) of this title, the Standard Lease Cap shall be adjusted upward by \$42 per week.

(b) No owner may charge to or accept from a driver any payment of any kind, whether a

tax, surcharge, pass-along, tip or fee of any kind, for the lease of a medallion or of a medallion and a vehicle, other than a lease amount no greater than the applicable Standard Lease Caps set forth in subdivision (a) of this section, plus

- (1) a credit card pass-along no greater than permitted by section 1-85(b) of this chapter;
- (2) a security deposit no greater than permitted by section 1-79(c) of this chapter,.
- (3) the discount toll amount for use of the EZ-Pass as permitted by sections 1-37 and 1-83 of this chapter;
- (4) a late charge not to exceed \$25 for any shift;
- (5) a reasonable cancellation charge, subject to the provisions of section 1-79.1(c) of this chapter ; and
- (6) if an owner leases the medallion pursuant to paragraph (4) of subdivision (a) of this section and the owner is a party to the financing agreement for the driver or driver's purchase of the vehicle, the owner may impose vehicle financing charges in addition to the Standard Lease Cap for a medallion lease.

(c) [The complaining witness for a violation of this rule must be a driver who was subject to a lease prohibited by this rule, or a Commission employee.

(d)] The provisions of this rule do not apply to owners and lease drivers whose business relationship is governed by the terms of a collective bargaining agreement which regulates the subject of lease prices.

[(e) The Commission shall not lower any upper limitation of lease rates established in Rule 1-78 herein, unless in the view of the Commission, the record before the Commission includes substantial evidence of reduced operating expenses of the affected medallion owners. The Commission shall not raise any upper limitation of lease rates established in Rule 1-78 herein, unless in the view of the Commission, the record before the Commission includes substantial evidence of increased operating expenses of the affected medallion owners. The factors to be reviewed in consideration of any proposed increase in the upper limitation of lease rates shall also include, but not limited to, the effects on driver earnings and the retention of experienced drivers.

(f) As relates to lease caps, the Commission shall periodically hold a public hearing and solicit written comment as to operating expenses, driver earnings and the retention of experienced drivers in the taxi industry. The first such public hearing shall be held no later than March 31, 1998. Thereafter, the Commission shall hold such a hearing no later than two years subsequent to the previous hearing.]

(d) Credit Card Charges. An owner or the owner's agent must pay a driver daily in cash the driver's receipts that are charged to a credit card on that day, less only a credit card pass-along no greater than permitted by section 1-85(b) of this chapter.

Section 2. It is hereby proposed that chapter 1 of title 35 of the Rules of the City of New York be amended by the addition of new section 1-78.1, to read as follows:

§1-78.1 Changes to Lease Caps.

(a) During March of each even-numbered year, the Commission shall hold a public hearing and solicit written comment as to operating expenses, driver earnings, the retention of experienced drivers in the taxi industry, and other matters relevant to the setting of lease caps, for purposes of considering changes to the Standard Lease Caps set forth in section 1-78 of this chapter.

(b) Notwithstanding the provisions of subdivision (a) of this section, the Commission may initiate lease cap changes at any time, based on the Commission's assessment of appropriate policy considerations.

Section 3. It is hereby proposed that chapter 1 of title 35 of the Rules of the City of New York be amended by the addition of new sections 1-79.1, 1-79.2 and 1-79.3, to read as follows:

§1-79.1 Lease Terms and Form of Lease.

(a) Every lease entered into pursuant to section 1-78 of this chapter, including any amendment to such lease, must be in writing, and must be signed by the owner or a person duly authorized to act on behalf of the owner, and by the leasing driver or drivers.

(b) Every such lease must contain the following terms:

(1) *The length of the lease.* The lease must state the beginning date and time of the lease and the ending date and time of the lease. A weekly lease must run for seven consecutive calendar days. A shift must run for 12 consecutive hours.

(2) *Itemization of the costs covered by the lease.* The lease must state the total lease amount, and an itemization of that total cost. The itemization must separately state the amount of the lease that applies to the medallion and the amount if any that applies to the vehicle.

(3) *Other costs.* The lease must state the amounts if any of the security deposit, the percentage credit card pass-along and any other costs that the driver will be charged.

(4) *Notices.* For each cost itemized pursuant to paragraphs two and three of this subdivision, the lease must include a reference to the Commission rule authorizing the imposition of such cost on the driver. The lease must either recite the complete text of each such rule or state the address of the Commission's Web page on which the rule is published.

(5) Overcharges. Every lease must contain clearly legible notice that overcharges are prohibited by the Commission’s rules, and that complaints of overcharges may be made in writing to the Commission or by telephone call to 311.

(6) Cancellation charges. Any cancellation charge contained in the lease must be reasonable, and will not be permitted unless the lease also provides that

(i) no cancellation charge may be charged to driver if the medallion owner or its agent demands the return of the medallion and the driver is not late in making lease payments at the time of such demand;

(ii) if an agent demands the return of a medallion upon the request of an owner, the driver has the right to request that the agent supply a replacement medallion and, if a medallion is provided through the agent, the driver will not be responsible for the costs of hacking up a replacement vehicle; and

(iii) when a cancellation payment is made, the driver’s obligation to make lease payments terminates upon such payment.

§1-79.2 Receipts.

A driver shall be given a written receipt for every payment made to or deduction taken by the owner, or any person acting on behalf of the owner. The receipt shall clearly state the date of the payment or deduction, the name of the person who accepted the payment or the deduction, the amount of the payment or deduction, the purpose of the payment or the deduction, and the number of the section of this chapter that authorizes the payment or deduction.

§1-79.3 Retaliation.

An owner may not act in retaliation against any driver for making a good faith complaint against any owner for violation of sections 1-78 through section 1-79.3 of this chapter. “Retaliation” shall be broadly construed, and shall include imposing any adverse condition or consequence on the driver or withholding or withdrawing any beneficial condition or consequence from the driver.

Section 4. It is hereby proposed that the title of section 1-86 of title 35 of the rules of the City of New York be amended to read as follows:

§1-86 Penalties for Violation of Rules Governing Owners of Medallion Taxicabs [and Coaches].

Section 5. It is hereby proposed that the provisions of title 35, section 1-86 of the rules of the City of New York be amended by deleting the penalties for violation of section 1-78(b)(i) and 1-78(b)(3) and adding new penalties for violation of sections 1-78(b), 1-78(d), 1-79.1, 1-79.2 and 1-79.3, to read as follows:

Rule No.	Penalty All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	Personal Appearance Required
		Yes
[§1-78(b)(i)]	[First violation \$500 Second and subsequent violations: \$1000 and/or suspension of the medallion for up to thirty days. In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess that was charged to the driver.]	[Yes]
[§1-78(b)(3)]	[First violation: \$250 Second violation: \$350 Third and subsequent violations: \$500 and/or suspension of the medallion for up to thirty days. It shall be a determination after hearing as to whether multiple contracts constitute a single violation and whether a violation is subsequent to notice of a prior violation. In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay	[Yes]

	restitution to the driver, equal to the excess that was charged to the driver.]	
<u>§ 1-78(b)</u>	<u>First violation \$500</u> <u>Second and subsequent violations: \$1000 and/or suspension of the medallion for up to thirty days.</u> <u>In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess that was charged to the driver.</u>	<u>Yes</u>
<u>§ 1-78(d)</u>	<u>\$100</u>	<u>No</u>
<u>§1-79.1(a)</u>	<u>\$500</u>	<u>No</u>
<u>§1-79.1(b)</u>	<u>First violation \$500</u> <u>Second and subsequent violations: \$1000 and/or suspension of the medallion for up to thirty days.</u> <u>In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess or non-authorized charge that was charged to the driver.</u>	<u>Yes</u>
<u>§1-79.2</u>	<u>\$50 plus driver gets free shift.</u>	
<u>§1-79.3</u>	<u>\$1,000</u>	<u>No</u>

Section 6. It is hereby proposed that the title of section 3-03 of title 35 of the rules of the City of New York be amended to read as follows:

§3-03 Taxicab Specifications [on or after May 1, 1996].

Section 7. It is hereby proposed that paragraphs (10) and (11) of subdivision (c) of section 3-03 of title 35 of the rules of the City of New York be amended to read as follows:

(c) *Vehicle Specifications.*

* * *

- (10) Notwithstanding the foregoing provisions of this subdivision 3-03(c), [beginning on October 1, 2008, no taxicab shall] a vehicle may be hacked up [unless] as a taxicab if the [taxicab] vehicle is powered by diesel fuel, and the vehicle otherwise meets [either the requirements of an accessible taxicab pursuant to section 3-03.2 of this chapter or both of the following:
- (i) a minimum city rating of twenty-five (25) miles per gallon as labeled pursuant to title 49, section 32908 of the United States Code and regulations promulgated pursuant thereto, and
 - (ii)] the vehicle specifications provided in section 3-03.1(c) of this chapter, whether or not the taxicab is a hybrid electric vehicle.
- [(11) Notwithstanding the foregoing provision of this subdivision 3-03(c), beginning on October 1, 2009, no taxicab shall be hacked up unless the taxicab meets either the requirements of an accessible taxicab pursuant to section 3-03.2 of this chapter or both of the following:
- (i) a minimum city rating of thirty (30) miles per gallon as labeled pursuant to title 49, section 32908 of the United States Code and regulations promulgated pursuant thereto, and
 - (ii) the vehicle specifications provided in section 3-03.1(c) of this chapter, whether or not the taxicab is a hybrid electric vehicle.]

STATEMENT OF BASIS AND PURPOSE

These proposed rules would modify existing Taxi and Limousine Commission rules governing taxicab leasing in several respects.

In light of the determination in *Metropolitan Taxicab Board of Trade v. City of New York*, 08 Civ. 7837 (PAC) (Oct. 31, 2008), these proposed rules would rescind the existing rules mandating that taxicabs hacked up beginning on October 1, 2008, must be city-rated at or above 25 miles per gallon, and that taxicabs hacked up beginning on October 1, 2009, must be city-rated at or above 30 miles per gallon.

In the place of that rescinded requirement, the proposed rules would alter the maximum lease rates in such a way as to create incentives for taxicab owners to buy cleaner vehicles. Specifically, the proposed rules would permit owners of medallions used for hybrid electric taxicabs and “clean diesel” taxicabs to charge \$3.00 per shift more than the maximum lease rate that would otherwise be allowed. Similarly, owners of less clean taxicabs will, after a phase-in period, be permitted to charge \$12.00 per shift less than the maximum lease rate that would otherwise be allowed. Lease rates for wheelchair accessible taxicabs will remain unchanged.

Under existing rules, a taxicab owner who purchases a vehicle that is costly to run does not bear the gasoline costs incurred in the operation of that vehicle. Instead, gasoline costs are borne by the drivers, who may have no voice in the owner’s choice of vehicles. These proposed rules are intended to place gasoline costs on the owner who chooses the vehicle. An owner who chooses a vehicle which is also a fuel efficient vehicle will be able to realize greater lease income than an owner who chooses a less efficient vehicle, while the expenses of leasing drivers will be roughly equal regardless of the taxicab owner’s vehicle choice.

The proposed rules would also specify that owners and agents may not add costs to the lease, other than charges specifically provided for by Commission rules. Therefore, under the proposed rules, the maximum lease rates cap the total of all charges, other than the credit card pass-along and the security deposit, a late charge and a reasonable cancellation charge (subject to certain required contract provisions) that an owner or agent may charge to a leasing driver. In addition, the proposed rules specify that owners and agents must settle credit card charges with drivers, in cash, on a daily basis.

The proposed rules would formalize the leasing relationship in several respects. A lease, including any amendment to a lease, would be required to be in writing and signed by the leasing driver; to contain an itemization of all charges; and to clearly state a lease term; and, if a cancellation charge is permitted, to contain certain provisions regarding cancellation. Similarly, the proposed rules would require that owners and agents provide leasing drivers with receipts for all payments made leasing drivers.

The proposed rules would further expressly prohibit retaliation by an owner

against a driver for filing a complaint alleging in good faith an owner's violation of the TLC's lease rules. In view of TLC's experience that drivers are extremely reluctant to file such complaints for fear of such retaliation, the proposed penalty for retaliation is \$1,000.

Finally, the proposed rules would make two procedural changes in the Commission's existing rules. While owners and drivers could continue to petition for changes to lease caps, the Commission, on its own initiative, would be able to modify lease caps, by rulemaking, on the basis of its assessment of appropriate policy considerations.

The proposed rules would also eliminate the requirement that a complaint for a violation of a lease cap provision can be made only by the driver subject to the lease. Drivers may be reluctant to report lease cap violations due to concerns about retribution and blacklisting. Effective enforcement of lease caps requires that complaints of violations be investigated actively, regardless of the source of the information.