

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

**NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT ON
PROPOSED RULES**

RELATING TO SUMMARY SUSPENSION PROCEDURES

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") intends to amend Title 35 of the Rules of the City of New York (RCNY), relating to the establishment of summary suspension and hearing procedures for licensees who are not in compliance with the rules of the Commission. This rule was not included in the TLC's regulatory agenda for Fiscal Year 2006 because the need for the rule changes was not anticipated at the time the agenda was submitted.

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 October 25, 2006, 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 October 18, 2006.

Written comments in connection with these proposed rules should be submitted to the Office of Legal Affairs and must be received no later than October 23, 2006 to:

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: 212-676-1117
Fax: 212-676-1102
TTY/TDD: 212-341-9596

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. Deleted material in brackets.

§ 1. Section 1-07 of Chapter 1 of Title 35 of the Rules of the City of New York is amended by adding a new Subdivision (c):

(c) A taxicab may be operated only while the registration of the vehicle remains valid. Operation of a vehicle without a valid registration shall constitute operation without a Commission-issued license in violation of section 19-506 of the Administrative Code of the City of New York, regardless of whether a Commission-issued license had previously been obtained while a registration was valid.

§ 2. Section 1-10 of Chapter 1 of Title 35 of the Rules of the City of New York is amended to read as follows:

§ 1-10 Taxicab Inspections

(a) No new or replacement taxicab shall operate for hire unless it has been inspected and approved by the Commission.

(b) An owner shall have his taxicab inspected every four months at a date and time designated by the Commission and at any other time deemed necessary by the Commission.

(c) An owner shall comply with all notices and directives to correct defects in taxicabs.

(d) An owner shall repair or replace a taxicab when the Commission determines that the vehicle is unsafe or unfit for use as a taxicab, and directs the owner to remove it from service. [Upon failure to comply with such order within ten (10) days of service thereof, t]The owner shall surrender the medallion and rate card to the Commission for storage and shall be suspended pursuant to section 8-17(b) of this title. [If the owner fails to comply with the order within one hundred and twenty (120) days of service thereof, or in the event the owner has sold his vehicle and has failed to replace it within one hundred and twenty (120) days from the date of sale, the Commission may deem the taxicab license to have been abandoned and may initiate revocation proceedings.]

§ 3. Section 1-86 of Chapter 1 of Title 35 of the Rules of the City of New York is amended by adding the following language, adding a new penalty labeled § 1-07(c) between the penalties labeled § 1-07(b) and § 1-09(a), amending the penalties labeled §1-10(a) through §1-10(d), by removing the penalty labeled §1-11(e) & (f), and amending the penalties labeled §1-22(a) and §1-23(a) to read as follows:

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

<u>Rule No.</u>	<u>Penalty</u>	<u>Personal Appearance Required</u>
	<u>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.</u>	
§ 1-07(b)	\$50 - \$350 and/or suspension up to 30 days	Yes
§ 1-07(c)	\$100 - \$350 and/or suspension up to 30 days; <u>summary suspension until compliance pursuant to section 8-17(b) of this title.</u>	Yes
§ 1-09(a)	\$75	No
1-10(a)	\$100 and <u>seizure of the vehicle</u>	No
§1-10(b)	\$100 and <u>summary suspension until compliance[;] pursuant to section 8-17(b) of this title.</u> If the failure to inspect extends 31 days after the scheduled inspection date or the date of an order to inspect or re-inspect on other than the tri-annual schedule, \$100-250 and <u>summary suspension until compliance pursuant to section 8-17(b) of this title.</u> If the failure to inspect extends 61 days after the scheduled inspection date or the date of an order to inspect or re-inspect on other than the tri-annual schedule, \$250-500 and <u>summary suspension until compliance pursuant to section 8-17(b) of this title.</u> If the failure to inspect extends 121 or more days after the scheduled inspection date or the date of an order to inspect or re-inspect on other than the tri-annual schedule, \$500 and/or revocation.	Yes Rate card must be brought.

For failure to have the vehicle inspected on a tri-annually scheduled date, (or for failure to re-inspect after failing such inspection) an owner could be found in violation of this rule up to four times in the course of 121 days: for failure to inspect within 30 days, within 61-120 days, and for more than 120 days.

In addition, the owner could also and concurrently be found in violation of any order(s) to have the vehicle inspected that may be issued in the course of street enforcement, without limit as to number.

§1-10(c)	\$50 and suspension after the hearing until the defective condition is corrected.	No
§1-10(d)	\$100-350 and/or suspension up to 30 days; <u>summary suspension until compliance pursuant to section 8-17(b) of this title.</u>	Yes
	* * * * *	
[§1-11(e) & (f)]	[\$100 and suspension of the medallion until the defective condition is corrected.]	[No]
	* * * * *	
§1-23(a)	\$250-1,500 and/or suspension up to 30 days. <u>Summary suspension until compliance pursuant to section 8-17(b) of this title.</u>	Yes

§ 4. Subdivision (a) of Section 2-04 of Chapter 2 of Title 35 of the Rules of the City of New York is amended to read as follows:

(a) [All] An applicant[s] will be issued a probationary license valid for a period of one year subsequent to the [last day of the month in which the application was made] date the license was issued. The Commission will evaluate the applicant at the conclusion of the one-year probationary period, and will determine if renewal of the license is appropriate. In making such determination, the Commission may consider the driving record, any violation of the Taxicab Drivers Rules, or any other evidence that suggests that the driver no longer meets all requirements for a license.

§ 5. Subdivision 1 of paragraph (a) of section 2-10 of Chapter 2 of Title 35 of the Rules of the City of New York is amended to read as follows:

(1) A license issued to a new applicant shall expire [two years] one year subsequent to the date the license was issued as provided in section 2-04 of this chapter. [The first year of said license period shall be a probationary period as defined in §2-04.]

§ 6. Paragraph (a) of section 2-11 of Chapter 2 of Title 35 of the Rules of the City of New York is amended to read as follows:

(a) All licensees are required to attend and satisfactorily complete an authorized course of training in taxi-related subjects prior to the [completion] expiration of their probationary [period as defined in §] license pursuant to section 2-04 of this chapter. The course shall be a minimum of four hours and shall include an update of rule changes, a review of driver responsibilities and duties, driver-passenger relations, and an awareness of serving passengers with disabilities. A renewal applicant must successfully complete such course, as verified by the designated school, as a prerequisite to the first renewal of a taxicab driver's license. The course must be completed no sooner than sixty (60) days prior to, and in any event no later than the expiration date of the one-year probationary license.

§ 7. Paragraph (b) of section 2-12 of Chapter 2 of Title 35 of the Rules of the City of New York is amended to read as follows:

(b) A driver shall [net] not operate a taxicab without a valid New York State chauffeur's license or a valid license of similar class of the state of which he is a resident.

§ 8. Section 2-86 of Chapter 2 of Title 35 of the Rules of the City of New York is amended by adding the following language and amending the penalty labeled §2-12(b) to read as follows:

<u>Rule No.</u>	<u>Penalty</u>	<u>Personal Appearance Required</u>
	<u>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.</u>	
§2-12(b)	\$100 – 350 and/or suspension up to 30 days; <u>summary suspension until compliance pursuant to section 8-17(b) of this title.</u> *Presentation of a valid license in effect at the [date] <u>time</u> of the violation shall result in a dismissal of the charge	Yes

§ 9. Section 4-06 of Chapter 4 of Title 35 of the Rules of the City of New York is amended by adding the following language and amending subdivision (d) to read as follows:

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.

(d) A driver shall not operate a paratransit vehicle unless:

(1) he or she possesses a paratransit driver's identification card;

(2) he or she possesses a valid New York State chauffeur's license or appropriate valid license of similar class of the state of which he is a resident;

(3) the vehicle is adequately insured in accordance [to] with New York State Law.

(1) \$100 Personal Appearance Required.

(2) \$100 - \$350 and/or suspension up to 30 days; [for the same period of time imposed by the issuing Department of Motor Vehicles unless exempted by the Commission.

Personal Appearance Required] summary suspension until compliance pursuant to section 8-17(b) of this title.

(3) \$100 Personal Appearance Required.

§ 10. Section 5-09 of Chapter 5 of Title 35 of the Rules of the City of New York is amended by adding the following language:

<u>Rule</u>	<u>Number</u>	<u>Penalty</u>	<u>Personal Appearance Required</u>
		<u>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.</u>	

§ 11. Paragraph 1 of subdivision (a) of section 6-02 of Chapter 6 of Title 35 of the Rules of the City of New York is amended to read as follows:

(1) A license issued to a new applicant for a for-hire vehicle driver’s license shall expire [two years] one year subsequent to the date the license was issued as provided in section 6-14. [The first year of said license period shall be a probationary period as defined in Rule §6-14.]

§ 12. Subdivision (a) of Section 6-14 of Chapter 6 of Title 35 of the Rules of the City of New York is amended to read as follows:

(a) [All] An applicant[s] will be issued a probationary license valid for a period of one-year subsequent to the [last day of the month in which the application was made] date the license was issued. The Commission will evaluate the applicant at the conclusion of the one-year probationary period and will determine if renewal of the license is appropriate. In making such determination, the Commission may consider the driving record, any violation of the For-Hire Vehicle Rules, or any other evidence that suggests that the driver no longer meets all requirements for a license.

§ 13. Section 6-22 of Chapter 6 of Title 35 of the Rules of the City of New York is amended by adding the following language and revising the penalties labeled §6-04(i)(1) through § 6-04(i)(5), §6-04(j), § 6-11(b), and §6-15(a)(2) to read as follows:

<u>Rule No.</u>	<u>Penalty</u>	<u>Personal Appearance Required</u>
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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.

§6-04([i]h)(1)	\$25 for each day of non-compliance, to a maximum of \$10,000, and either suspension until compliance or base license revocation.	Yes
§6-04([i]h)(2)	\$25 for each day of non-compliance, to a maximum of \$10,000, and either suspension until compliance or base license revocation.	Yes
§6-04([i]h)(3)	\$25 for each day of non-compliance, to a maximum of \$10,000, and either suspension until compliance or base license revocation.	Yes
§6-04([i]h)(4)	\$500-\$5,000 for each twenty days said payment is overdue, and suspension until compliance or revocation, together with restitution to the Fund for any unpaid amount, together with interest at the rate of 12 percent per annum.	Yes
§6-04([i]h)(5)	\$500-\$10,000 and suspension until compliance or revocation.	Yes
*	* * * * *	*
§ 6-11(b)	\$100 - \$350 and/or suspension [for the period of time imposed by the issuing Department of Motor Vehicles] <u>up to 30 days; summary suspension until compliance pursuant to section 8-17(b) of this title</u>	Yes
*	* * * * *	*
§6-15(a)(2)	\$100-350, and/or suspension [for the same period of time imposed by the issuing Department of Motor Vehicles unless exempted by the Commission] <u>up to 30 days; summary suspension until compliance pursuant to section 8-17(b) of this title.</u>	Yes

§ 14. Section 8-11 of Chapter 8 of Title 35 of the Rules of the City of New York is amended to read as follows:

§ 8-11 Hearing Procedure.

(a) No licensee shall be permitted to appear at a hearing unless he [has surrendered his license] or she shows a valid photo ID to the Commission prior to the hearing. [The Commission may, in its discretion, accept a bond in lieu of a license for licensed vehicle owners, including owners of taxicabs, for-hire vehicles, paratransit vehicles and commuter vans.]

(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, and/or suspension or revocation of the respondent's license. In the event a suspension for a specified period of time is imposed, such suspension period will not include any period of time during which the respondent's license is not in the possession of the Commission.

[(e) The failure to pay any fines imposed at the conclusion of a hearing shall result in the suspension of the respondent's license until payment is received by the Commission. Such suspension period will not be included in the calculation of any specified suspension period imposed by the ALJ.]

§ 15. Section 8-12 of Chapter 8 of Title 35 of the Rules of the City of New York is amended to read as follows:

§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.

(c) [If the respondent is a licensee, his license shall be suspended following the inquest until either:

(i) The respondent pays all fines imposed at the inquest, as well as all other fines due and owing to the Commission, and has complied with all Commission directives; or

(ii) The inquest is vacated by an Administrative Law Judge.]

If the penalty imposed at the inquest includes the suspension of a license as a result of a violation of a Commission Rule or the Administrative Code, said suspension shall not [be deemed to run concurrently with any suspension imposed under this subdivision. If a summons or notice of violation issued to the owner of a taxicab, for-hire vehicle, paratransit service vehicle or commuter van was served by personal service upon the driver of such vehicle pursuant to §8-05(a)(iii), the suspension imposed following the inquest shall not] commence until ten (10) days after the mailing of the ALJ's decision with respect to the inquest conducted herein.

(d) A respondent may move to vacate the inquest determination within one hundred twenty (120) calendar days 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.

(e) If the ALJ determines that the respondent has established both a valid excuse for his failure to appear at the hearing and a defense to the violation which, if proven, would be legally sufficient, the inquest determination shall be vacated and the respondent shall be entitled to a hearing de novo. Any suspension or revocation imposed at the inquest shall be vacated.

(f) If the ALJ denies the motion to vacate, the penalties imposed at the inquest shall be assessed. In addition, the ALJ shall impose any appropriate penalty required pursuant to §2-70 or §6-23 of the Commission Rules.

§ 16. Section 8-15 of Chapter 8 of Title 35 of the Rules of the City of New York is amended to read as follows:

§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.

(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.

[(c)](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.

[(d)](e) The ALJ shall issue a Recommended Decision which shall include a determination as to the respondent’s fitness to possess a license. If the respondent is or has ever been a licensee, the Recommendation shall be issued to the Chairperson. If the respondent is an applicant who has never held a license issued by the Commission, the Recommendations shall be issued to the Deputy Commissioner for Licensing, his or her designee, or any other person designated by the Chairperson. The Chairperson, Deputy Commissioner for Licensing, or designee, may accept, reject or modify said Recommendation. The decision of the Chairperson, Deputy Commissioner for Licensing, or designee shall constitute the final determination of the Commission.

§ 17. Section 8-16 of Chapter 8 of Title 35 of the Rules of the City of New York is amended to read as follows:

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

(a) If the Chairperson finds that emergency action is required to insure public health[,]or safety [or welfare], 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 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 Chairperson shall notify the licensee either by personal service or by [both] first class [and certified] 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 Chairperson 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.

[d](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 [may be available].

[e](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.

[f](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.

§ 18. Section 8-17 of Chapter 8 of Title 35 of the Rules of the City of New York is amended to read as follows:

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

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

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

(ii) Upon a determination made pursuant to paragraph (i) of this [section] subdivision that a [driver's] 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 [driver'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 [driver's] TLC-issued license is being suspended for a violation of the Commission's [R]rules or applicable Administrative Code [S]section;

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

(3) the [R]rule or Administrative Code [S]section alleged to have been violated; provided, however, that if there is a conflict between the [R]rule or [C]code [S]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 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) All documentation submitted by a licensee refuting the suspension shall be reviewed by an ALJ. Suspension of the [driver's] 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 [a licensee may appeal such decision] may be appealed pursuant to §8-13 of this [C]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 no decision is rendered by the ALJ within sixty (60) calendar days of the receipt of written documentation provided by the licensee, the suspension shall be thereafter stayed until such decision is rendered.

[(b)](v) In the event a licensee does not provide the Commission with written documentation refuting the suspension within ten (10) calendar days of the receipt of the notice

if notice was given by personal service, or fifteen (15) calendar days of the mailing of the notice of suspension if the notice was mailed, it shall be deemed that the opportunity to be heard has been waived and a violation has been committed, and the appropriate penalties shall be imposed, which shall include continued suspension of the [driver's] TLC-issued license until compliance and may also include a fine.

[(c)](vi) Suspension of [driver's] TLC-issued licenses pursuant to this [section] subdivision shall continue until the fines assessed pursuant to paragraph (iii) of this subdivision [(a) of this section] have been paid and until compliance with the underlying Commission [R]rule or Administrative Code [S]section has been shown to the satisfaction of the Chairperson or his or her designee.

[(d)](vii) At any time after a licensee has been notified of suspension, a licensee may pay any applicable fine, comply with the underlying Commission [R]rule or Administrative Code [S]section and furnish proof of such compliance to the satisfaction of the Chairperson or his or her designee. Upon such payment and submission of proof of compliance, the suspension of the [driver's] 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.

§ 19. Section 9-17(a) of Chapter 9 of Title 35 of the Rules of the City of New York is amended by adding the following language:

(a)

<u>Rule No.</u>	<u>Penalty</u>	<u>Personal Appearance Required</u>
	<u>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.</u>	
§9-02(a)	\$500 – first violation \$1,000 – subsequent violation within twenty-four months	Yes
§9-03(c)	\$500 – first violation \$1,000 – subsequent violation within twenty-four months	Yes

§ 20. Section 12-08(a) of Chapter 12 of Title 35 of the Rules of the City of New York is amended by adding the following language:

(a)

<u>Rule No.</u>	<u>Penalty</u>	<u>Personal Appearance Required</u>
	<u>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.</u>	
12-02(a)	\$500-1,000	Yes
12-02(e)	\$500-10,000 and/or revocation	Yes

§ 21. Section 15-43 of Chapter 15 of Title 35 of the Rules of the City of New York is amended by adding the following language:

<u>Rule No.</u>	<u>Penalty</u>	<u>Personal Appearance Required</u>
	<u>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.</u>	
§15-02	\$10,000 and revocation if the taximeter business license is suspended	Yes
§15-08(a)	\$1,000-5,000 and suspension until consent of commission is obtained or change in business ownership is withdrawn, or revocation	Yes

STATEMENT OF BASIS AND PURPOSE

These proposed rules create procedures for suspending licenses pending compliance with applicable rules, as an alternative to the existing procedure for suspending licenses pending revocation of those licenses. This rulemaking follows the pattern of recently promulgated amendments to the Commission's drug testing rules, which provided for suspension of licensees who fail to submit to required annual drug testing – the new rule provides for suspension pending compliance as an alternative to suspension pending revocation. This rulemaking creates the alternative of suspension pending compliance for several rules violations involving pre-hearing suspensions.

Because the suspensions are pre-hearing, prompt post-suspension review of the suspension is provided for in these rules. Section 8-17(a) provides for post-suspension review based on the submission of papers, and is applicable only to a suspension imposed for failure to submit to required annual drug testing. Section 8-17(b) provides for post-suspension hearings, and is applicable to all other summary suspensions that are imposed pending compliance. Both section 8-17(a) and section 8-17(b) provide deadlines within which the suspended licensee may contest the suspension. Where a suspension is imposed and a summons is issued for the same violation, the hearing on the summons will be consolidated with any hearing on the suspension pursuant to section 8-17(b). Each rule that may result in a summary suspension pending compliance includes a reference to 8-17(a) or (b) in the penalty in these proposed rules.

In addition to or instead of contesting a summary suspension that is imposed pending compliance, a licensee has the alternative of complying with the underlying rule, and demonstrating compliance to the Commission, whereupon the suspension will be lifted without a hearing, and regardless of whether a hearing has been scheduled or has been held.

Other substantive changes proposed in these rules include:

- Elimination of suspensions for failure to comply with Commission rules requiring personal appearances at hearing. This requirement is eliminated in anticipation of future rulemaking to substitute fixed fines for “range fines,” which were the reason underlying the personal appearance requirements.
- Amendment of section 8-15 to provide for pre-hearing suspension of a licensee pending a fitness hearing, where the licensee fails a drug test and the licensee's continued operation would pose a threat to the public safety. As with other summary suspensions, the amendment provides for prompt post-suspension process – in this case, a prompt fitness hearing.
- Explicit provision for summary suspension pending revocation where the licensee is arrested on charges that are relevant to the licensee's qualification for licensure and pose a threat to public health or safety. Prompt post-suspension challenges are provided for, and a revocation proceeding must be commenced, or the suspension lifted, promptly upon notice to the Commission of disposition of the criminal proceedings.

- Provision that holders of probationary taxicab driver licensees must complete their continuing education requirements within a prescribed time, and that failure to do so results in expiration of their licenses.
- Elimination of the existing rule requiring surrender of a license as a precondition to appearing at a hearing. The proposed rule would require only that photo identification be shown, in conformance with current practice.
- Rule 8-11(e) is deleted and instead incorporated into each penalty table, to make the requirement of paying fines more clear throughout the rules.

Finally, this rulemaking corrects various typographical errors, eliminates references only to the male pronoun, and provides for more consistent usage of terms.