

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 New York City Charter (“Charter”) that the Taxi and Limousine Commission (“TLC”) proposes amending the provisions of Chapters 4, 5, 6 and 7 of Title 35 of the Rules of the City of New York to amend the rules regarding use of electronic communication devices by drivers. The proposed rule would eliminate the counting of electronic communication violations committed under a similar state law toward TLC penalty points, and would clarify when the distracted driving course for violators needs to be taken.

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 included in the TLC’s regulatory agenda for Fiscal Year 2011.

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, October 21, 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 October 14, 2010.

Written comments in connection with these proposed rules must be received no later than October 18, 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 copy of the transcript of 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 to amend section 4-14(e) of Title 35 of the Rules of the City of New York to read as follows:

§4-14 **Operations – Passenger and Driver Safety**

(e) Use of Electronic Communication Device.

- (1) A Driver must not Use an Electronic Communication Device while operating a Vehicle. A Driver can Use an Electronic Communication Device only while the Vehicle is lawfully standing or parked.

[NOTE: A Driver convicted of a violation of any similar state law or rule will get points under this Rule just as if he or she had been convicted of a violation of this Rule.]

§4-14(e)(1)	Fine: \$200 <u>and suspension. The suspension is deferred for 60 days; if the driver completes a Distracted Driving Course within the 60-day period then the driver will not be suspended.</u> Points: 3 for the first offense and for the second offense in any 15-month period; 4 for the third offense in any 15-month period.	Appearance NOT REQUIRED
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- (2) In addition to the penalties provided above for any violation of this Rule, a Driver convicted of a violation of this Rule[, or any similar state law or rule,] must [take] complete a Distracted Driving Course no later than 60 days after the date of conviction. The license of a Driver who does not complete the Distracted Driving Course within the 60 day period will be suspended until compliance. In instances where the Chairperson has not received proof of completion of a Distracted Driving Course from a Distracted Driving Course provider, the Chairperson will provide notice to the Driver prior to suspension that the Driver has a specified time of no less than 10 days from the date of the notice to provide proof of completion of a Distracted Driving Course to the Chairperson by mail.

- [(i) The Commission will issue a directive to a Driver to take the Distracted Driving Course.

- (ii) The Driver must complete the Distracted Driving Course and provide proof of completion to the Chairperson no later than 60 days after the directive is issued.]
- (3) *Affirmative Defense.* A Driver can offer an affirmative defense to a charge of Using an Electronic Communication Device under this Rule if all of the following are true:
 - (i) The communication was to an emergency response operator;
 - (ii) The communication reports an imminent threat to life or property;
 - (iii) The Driver could not safely stop the Vehicle to make the report; and
 - (iv) The Driver provides documentary proof of communication with an emergency response provider.

Section 2. It is proposed to amend section 5-14(g) of Title 35 of the Rules of the City of New York to read as follows:

§5-14 **Operations – Passenger and Driver Safety**

(g) Use of an Electronic Communication Device.

- (1) A Driver must not Use an Electronic Communication Device while operating a Vehicle. A Driver can use an Electronic Communication Device only while the Vehicle is lawfully standing or parked.

[NOTE: A Driver convicted of a violation of any similar state law or rule will get points under this Rule just as if he or she had been convicted of a violation of this Rule.]

§5-14(g)(1)	Fine: \$200 <u>and suspension. The suspension is deferred for 60 days; if the driver completes a Distracted Driving Course within the 60-day period then the driver will not be suspended.</u> Points: 3 for the first offense and for the second offense in any 15-month period; 4 for third offense in any 15-month period.	Appearance NOT REQUIRED
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- (2) In addition to the penalties provided above for any violation of this Rule, a Driver convicted of a violation of this Rule[, or any similar state law or rule,] must [take] complete a Distracted Driving Course no later than 60

days after the date of conviction. The license of a Driver who does not complete the Distracted Driving Course within the 60 day period will be suspended until compliance. In instances where the Chairperson has not received proof of completion of a Distracted Driving Course from a Distracted Driving Course provider, the Chairperson will provide notice to the Driver prior to suspension that the Driver has a specified time of no less than 10 days from the date of the notice to provide proof of completion of a Distracted Driving Course to the Chairperson by mail.

- (i) The Commission will issue a directive to a Driver to take the Distracted Driving Course.
- (ii) The Driver must complete the Distracted Driving Course and provide proof of completion to the Chairperson no later than 60 days after the directive is issued.]
- (3) *Affirmative Defense.* A Driver can offer an affirmative defense to a charge of Using an Electronic Communication Device under this Rule if all of the following are true:
 - (i) The communication was to an emergency response operator;
 - (ii) The communication reports an imminent threat to life or property;
 - (iii) The Driver could not safely stop the Vehicle to make the report; and
 - (iv) The Driver provides documentary proof of communication with an emergency response provider.

Section 3. It is proposed to amend section 6-14(i) of Title 35 of the Rules of the City of New York to read as follows:

§6-14 **Operations – Passenger and Driver Safety**

(i) *Use of an Electronic Communication Device.*

- (1) A Driver must not Use an Electronic Communication Device while operating a Vehicle. A Driver can Use an Electronic Communication Device only while the Vehicle is lawfully standing or parked.

[NOTE: A Driver convicted of a violation of any similar state law or rule will get points under this Rule just as if he or she had been convicted of a violation of this Rule.]

§6-14(i)(1)	Fine: \$200 and suspension. <u>The suspension is deferred for 60 days; if the driver completes a Distracted Driving Course within the 60-day period then the driver will not be suspended.</u>	Appearance NOT REQUIRED
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(2) In addition to the penalties provided above for any violation of this Rule, a Driver convicted of a violation of this Rule[, or any similar state law or rule,] must [take] complete a Distracted Driving Course no later than 60 days after the date of conviction. The license of a Driver who does not complete the Distracted Driving Course within the 60 day period will be suspended until compliance. In instances where the Chairperson has not received proof of completion of a Distracted Driving Course from a Distracted Driving Course provider, the Chairperson will provide notice to the Driver prior to suspension that the Driver has a specified time of no less than 10 days from the date of the notice to provide proof of completion of a Distracted Driving Course to the Chairperson by mail.

- (i) The Commission will issue a directive to a Driver to take the Distracted Driving Course.
- (ii) The Driver must complete the Distracted Driving Course and provide proof of completion to the Chairperson no later than 60 days after the directive is issued.]

(3) *Affirmative Defense.* A Driver can offer an affirmative defense to a charge of Using an Electronic Communication Device under this Rule if all of the following are true:

- (i) The communication was to an emergency response operator;
- (ii) The communication reports an imminent threat to life or property;
- (iii) The Driver could not safely stop the Vehicle to make the report; and
- (iv) The Driver provides documentary proof of communication with an emergency response provider.

Section 4. It is proposed to amend section 7-13(b) of Title 35 of the Rules of the City of New York to read as follows:

§7-13 **Operations – Passenger and Driver Safety**

(b) Use of an Electronic Communication Device.

- (1) A Driver must not Use an Electronic Communication Device while operating a Vehicle. A Driver can Use an Electronic Communication Device only while the Vehicle is lawfully standing or parked.

[NOTE: A Driver convicted of a violation of any similar state law or rule will get points under this Rule just as if he or she had been convicted of a violation of this Rule.]

§7-13(b)(1)	Fine: \$200 <u>and suspension. The suspension is deferred for 60 days; if the driver completes a Distracted Driving Course within the 60-day period then the driver will not be suspended.</u>	Appearance NOT REQUIRED
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- (2) In addition to the penalties provided above for any violation of this Rule, a Driver convicted of a violation of this Rule[, or any similar state law or rule,] must [take] complete a Distracted Driving Course no later than 60 days after the date of conviction. The license of a Driver who does not complete the Distracted Driving Course within the 60 day period will be suspended until compliance. In instances where the Chairperson has not received proof of completion of a Distracted Driving Course from a Distracted Driving Course provider, the Chairperson will provide notice to the Driver prior to suspension that the Driver has a specified time of no less than 10 days from the date of the notice to provide proof of completion of a Distracted Driving Course to the Chairperson by mail.

- (i) The Commission will issue a directive to a Driver to take the Distracted Driving Course.
- (ii) The Driver must complete the Distracted Driving Course and provide proof of completion to the Chairperson no later than 60 days after the directive is issued.]

- (3) *Affirmative Defense.* A Driver can offer an affirmative defense to a charge of Using an Electronic Communication Device under this Rule if all of the following are true:

- (i) The communication was to an emergency response operator;
- (ii) The communication reports an imminent threat to life or property;
- (iii) The Driver could not safely stop the Vehicle to make the report; and
- (iv) The Driver provides documentary proof of communication with an emergency response provider.

Statement of Basis and Purpose of Proposed Rule

The Taxi and Limousine Commission proposes changes to its rules governing the use of portable electronic devices by drivers. The proposed rulemaking would clarify that violators of the rule would be required to take a Distracted Driving Course as part of their penalty; it is not necessary for TLC to issue a directive.

In addition, the proposed rulemaking eliminates the counting of violations of state laws regarding portable electronic devices towards the driver's TLC violation count.

The purpose of the proposed rulemaking is to enhance and simplify the enforcement and adjudication of summonses issued in accordance with the Use of Electronic Communication Device rules, and therefore to enhance the rule's contribution to public safety. This rule amends the version of the Commission's rules that becomes effective January 1, 2011.