

## 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 Chapter 8 of Title 35 of the Rules of the City of New York to amend the TLC’s adjudication rules.

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, 5<sup>th</sup> Floor, New York, New York 10006 on Thursday, November 18, 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 November 12, 2010.

Written comments in connection with these proposed rules must be received no later than November 15, 2010. Comments may be submitted through the NYC Rules website at [www.nyc.gov/nycrules](http://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, 5<sup>th</sup> Floor  
New York, New York 10006  
Telephone: 212-676-1135  
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Email: [tlcrules@tlc.nyc.gov](mailto: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 to amend the prefatory language of Sections 1-86, 2-86, 4-06, 5-09, 6-22, 9-17, subdivision (a) of 12-08, and 15-43 of Chapters 1, 2, 4, 5, 6, 9, 12 and 15 of Title 35 of the Rules of the City of New York to read as follows:

Section 2. It is proposed to amend section 8-01 of Title 35 of the Rules of the City of New York by adding new subdivisions (c), (o), and (p), relettering subdivisions (c) through (m) as subdivisions (d) through (n) and subdivisions (n) and (o) as subdivisions (q) and (r), and amending subdivisions (e) and (i), as relettered by this rule, to read as follows:

§8-01 Definitions.

- (c) **Appeals Unit.** A unit of ALJs within the Commission Adjudications Tribunal responsible for deciding cases on Appeal, who do not hear cases in the first instance.
- (e) **Chairperson.** The member of the Commission designated by the Mayor as the Chair and Chief Executive Officer pursuant to §2301(c) of the New York City Charter or his or her designee.
- (i) **Hearing.** A procedure for the presentation and consideration of evidence before an Administrative Law Judge, after which the ALJ makes findings of fact and conclusions of law [regarding any charge alleging a violation of the Administrative Code or any Commission Rule].
- (o) **Penalty Points.** A penalty point is a non-monetary penalty assessed pursuant to Chapter 6 of Title 35 of the Rules of the City of New York.
- (p) **Persistent Violator Penalty or Persistent Violator Points.** A Persistent Violator Penalty or Persistent Violator Point is a penalty imposed as part of the Persistent Violator Program pursuant to §2-70 or §6-23. This penalty may include the requirement to complete a course, points assessed against a TLC license, suspension or revocation.

Section 3. It is proposed to amend section 8-03 of Title 35 of the Rules of the City of New York by adding new subdivisions (c) and (d) to read as follows:

§8-03 Penalties.

- (c) **Any revocation, suspension, Persistent Violator Penalty or Penalty Points will become effective on the date of the ALJ's decision.**

- (1) If a suspension for a specified period of time is imposed, the suspension period will be calculated from the time when the respondent's license is turned in to the Commission.
- (d) Notwithstanding any other provision of these rules, fines are due within 30 days of the day the respondent is found guilty of the violation.
- (1) If the respondent files an appeal of the decision imposing the fine within 30 days of the date of the decision, the payment of the fine will be deferred until a decision on the appeal is made.
- If the respondent requests a copy of the hearing recording within 7 calendar days of the hearing, the time for either filing an appeal or paying the fine will be the later to occur of either 21 days from the date the recording is issued or 30 days from the day of the decision.
- (2) If the fine is not paid by the close of business on the date due, the Commission will notify the respondent in writing that the respondent's license will be suspended in ten (10) business days of the date of the notification until the fine is paid, unless the respondent demonstrates to the Commission, in person or in writing, that the fine has been paid.

Section 4. It is proposed to amend section 8-06 of Title 35 of the Rules of the City of New York by adding a new subdivision (d) to read as follows:

§8-06 Contents of Summons or Notice of Violation

- (d) If the summons or notice of violation is sworn to under oath or affirmed under penalty of perjury, the summons or a copy of the summons will be admitted into evidence and will constitute prima facie proof of the violations alleged.

Section 5. It is proposed to REPEAL section 8-09 of Title 35 of the Rules of the City of New York, relating to adjournment requests, and to add a new section 8-09, to read as follows:

§8-09 Adjournment Requests

[A respondent who is unable to appear at a scheduled hearing must notify the Commission at least five (5) business days in advance of the hearing in order to request an adjournment. An adjournment will be granted only upon a showing of an inability to attend the scheduled hearing. A respondent shall be entitled to only one adjournment. Adjournment requests made upon less than five (5) business days notice shall be made in person by the respondent and decided by an ALJ on the date of the request.]

- (a) Requests for Adjournments

- (1) A request for an adjournment, which is a request to change the scheduled hearing date, may be made either by the Chairperson or by the respondent, or anyone authorized by this Chapter to appear for the respondent.
- (2) A request to reschedule a hearing must be made at least five business days before the first scheduled hearing date or at the hearing.
  - (i) Good cause is not necessary for an adjournment that is requested at least five business days before the first scheduled hearing date.
  - (ii) A request for an adjournment that is made at least five business days before the first scheduled hearing date may be made ex parte, and may be made by telephone, or in person.
  - (iii) No more than one adjournment requested at least five business days before the first scheduled hearing will be granted.
- (3) An adjournment that is requested at the hearing will only be granted for good cause, as determined in the discretion of the ALJ (see §8-09(b) of these Rules). The adjournment request will be made on the record. On the record means that the ALJ shall conduct a hearing. This hearing shall be recorded. The ALJ will issue a written decision explaining the ALJ's decision to grant or deny the request.
- (4) *Adjournments to Obtain the Testimony of Complaining Witnesses.* The Respondent may request an adjournment at the first scheduled hearing date for the purposes of obtaining the testimony of a complaining witness who has sworn to or affirmed a summons or notice of violation (see §8-06(d) of these Rules). A request for an adjournment for this purpose may not be made at any time other than the first scheduled hearing date.
  - (i) The respondent must explain the subject of the testimony that the respondent intends to obtain from the complaining witness and must explain the relevance of that testimony to either the violations charged or a defense to those charges.
  - (ii) The ALJ will find that there is good cause for the adjournment only if the ALJ concludes that the complaining witness's testimony is reasonably likely to be necessary to a fair hearing of the violations charged or the defenses to those charges.
  - (iii) The non-attendance of the complaining witness who submitted a sworn or affirmed summons or notice of violation at the first scheduled Hearing date shall not be a failure by the Commission to produce a complaining witness (see §8-10(f) of these Rules).

- (b) Good cause. In deciding whether there is good cause for an adjournment, the ALJ will consider:
- (1) Whether granting the adjournment is necessary for the party requesting the adjournment to effectively present the case;
  - (2) Whether granting the adjournment is unfair to the other party;
  - (3) Whether granting the adjournment will cause inconvenience to any witness;
  - (4) The age of the case and the number of adjournments previously granted;
  - (5) Whether the party requesting the adjournment prepared for the scheduled hearing with reasonable diligence;
  - (6) Whether the need for the adjournment is due to facts that are beyond the requesting party's control;
  - (7) The balance of the need for efficient and expeditious adjudication of the case and the need for full and fair consideration of the issues relevant to the case; and
  - (8) Any other fact that the ALJ considers to be relevant to the request for an adjournment.

Section 6. It is proposed to amend subdivision (d) of section 8-11 of Title 35 of the Rules of the City of New York to read as follows:

§8-11 Hearings - Procedure

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- (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, Persistent Violator or Penalty Points, 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.]

Section 7. It is proposed to amend section 8-12 of Title 35 of the Rules of the City of New York by deleting subdivision (c) and adding a new subdivision (c), by amending subdivisions (d), (e), and (f), and by adding new subdivisions (g) and (h), to read as follows:

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

- (c) [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 commence until ten (10) days after the mailing of the ALJ's decision with respect to the inquest conducted herein.]

Any revocation, suspension, Persistent Violator Penalty or Penalty Points will become effective on the date of the ALJ's decision.

- (d) A respondent may move to vacate the inquest determination within two (2) years of the date of the inquest. [Said] This motion must be made [in writing unless otherwise authorized by the Executive Director of Adjudications or his designee shall be filed in accordance with the Commission procedures for the submission of such motions] on an approved form and must be signed and dated. [In support of this motion to vacate, the respondent shall present written evidence as to:]

(1) A motion to vacate filed within 120 days of the date of the inquest must show:

- (i) [the reasons] reasonable excuse for his or her 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.]

(2) A motion to vacate filed more than 120 days and less than 2 years after the date of inquest must show:

- (i) reasonable excuse for delay in presenting the motion, reasonable excuse for the respondent's failure to appear at the hearing, and
- (ii) A defense to the charge which, if established and proved at a hearing, would result in the dismissal of the summons.

(3) If an inquest decision on the same summons or notice of violation has been previously vacated, and a new inquest decision has been issued, a motion to vacate the second inquest decision must show:

- (i) An extraordinary and compelling reason for the respondent's failure to appear at the hearing.
- (ii) A defense to the charge which, if established and proved at a hearing, would result in the dismissal of the summons

(4) In determining whether respondent has shown a reasonable excuse for failing to appear at a hearing, the ALJ will consider:

- (i) Whether circumstances that could not be reasonably foreseen prevented the respondent from attending the hearing;
- (ii) Whether the respondent had an emergency or condition requiring immediate medical attention;

- (iii) Whether the matter had been previously adjourned by the respondent;
- (iv) Whether the respondent attempted to attend the hearing with reasonable diligence;
- (v) Whether the respondent's inability to attend the hearing was due to facts that were beyond the respondent's control;
- (vi) Whether the respondent's failure to appear at the hearing can be attributed to the respondent's failure to maintain current contact information on file with the Chairperson; and
- (vii) Any other fact that the ALJ considers to be relevant to the motion to vacate.

- (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] met the requirements for a motion to vacate, the inquest determination shall be vacated and the respondent shall be entitled to a hearing de novo. Any fines, Persistent Violator or Penalty Points, suspension or revocation imposed at the inquest shall be vacated. Any fines already paid shall be refunded.
- (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] remain in effect.
- (g) A respondent may challenge a decision made after an inquest only by moving to vacate the inquest decision.
- (h) The respondent may appeal a decision denying a motion to vacate.

Section 8. It is proposed to amend subdivisions (a), (b), (c), and (d) of section 8-13 of Title 35 of the Rules of the City of New York and to add a new subdivision (e), 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] Two copies of the appeal must be directed to the [Deputy Commissioner for Legal Affairs/General Counsel] Appeals Unit 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] decision being appealed from 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] two copies of the ALJ decision.

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- (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] Chairperson 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.
- (c) The Commission may seek review of a determination by an Administrative Law Judge by filing an appeal with the [Deputy Commissioner for Legal Affairs/General Counsel] Appeals Unit within thirty (30) calendar days of such determination. The appeal shall be accompanied by a copy of the ALJ decision. If a Commission appeal is filed, the respondent will be notified by mail. The appeal must include a notation indicating that a copy of the appeal was mailed to the respondent. The appeal will include a written statement setting forth the basis for the appeal. The respondent may respond to the appeal within twenty-one (21) calendar days of the mailing of the appeal. The respondent may request a copy of the recording of the hearing within seven (7) calendar days of the notice of appeal. Such request must be 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 a respondent requests a copy of the recording of the hearing, his or her time to respond to the notice of appeal is extended until twenty-one (21) calendar days after the issuance of the requested copy by the Commission, whether by mailing or otherwise.
- (d) Review of an ALJ's decision shall be limited to the issues of law raised in the appeal submitted. Findings of fact may be appealed only on the grounds that the findings of fact are not supported by substantial evidence in the record. Upon appeal, the determination of the ALJ may be affirmed, reversed in whole or in part, or modified. [In the event that a decision on appeal results in the reversal of a decision by an ALJ to dismiss a summons, the matter shall be remanded to the Commission Adjudications Tribunal for a new hearing. If a decision on appeal affirms a determination of guilt by an ALJ, but modifies a penalty which had been incorrectly imposed, the decision may correct the penalty, without remand for a new hearing.] If the record on appeal is insufficient for the Appeals Unit to correct an error of law, the matter may be remanded to the Commission Adjudications Tribunal for a new hearing. Once an appeal has been decided, any outstanding fines imposed by the decision affirmed on appeal must be paid within 30 days.
- (e) Response by the Commission.



- (i) The Commission may respond to the respondent's appeal within 21 calendar days of the filing of the appeal.
- (ii) If the appeal is expedited, the Commission may respond within seven days of the filing of the appeal.

Section 9. It is proposed to amend subdivision (g) of section 8-14 of Title 35 of the Rules of the City of New York to read as follows:

§8-14 Discretionary Revocation Proceedings.

- (g) If the proceeding is conducted by OATH, the ALJ, upon a finding of guilt, may recommend to the Chairperson license revocation, license suspension for a period up to six (6) months, and/or a fine not to exceed [~~\$10,000~~]\$1,000 for each offense for which a [taxicab owner, base owner, taximeter business owner, taxicab broker or taxicab agent] Licensed Driver is found guilty and/or a fine not to exceed [~~\$1,000~~]\$10,000 for each offense for which any other licensee is found guilty.

Section 10. It is proposed to amend subdivisions (a) and (e) of section 8-15 of Title 35 of the Rules of the City of New York 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. Any requests for an adjournment must be made in accordance with §8-09.

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- (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, t]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.

Section 11. It is proposed that Title 35 of the Rules of the City of New York be amended by adding a new section 8-18 to read as follows:

§8-18            Special Procedures - Settlements and Withdrawals

- (a) Settlements. The Chairperson and a Respondent may dispose of a summons or notice of violation by entering into a settlement agreement.
- (1) The settlement agreement must be in writing.
  - (2) The settlement agreement may provide for penalties different than the penalties provided for in these Rules.
  - (3) The settlement agreement may provide for canceling an adjudication that is open or that has been completed.
  - (4) The settlement agreement may provide for penalties to be imposed, with or without a further Hearing, in the event that the Respondent does not comply with the terms of the settlement agreement.
  - (5) Unless the settlement agreement clearly provides otherwise, the License of a Respondent who does not comply with the terms of the settlement agreement may be suspended by the Chairperson without a Hearing until the Respondent complies with the settlement agreement.
  - (6) By entering into a settlement agreement, the Chairperson and the Respondent both waive their rights to any further Hearings or appeals on the summons or notice of violation that is disposed of by the settlement agreement.
- (b) Withdrawals. The Chairperson may withdraw a summons or notice of violation, even if it has been adjudicated. Any fine, suspension, revocation, or Persistent Violator Points or Penalty Points imposed after the Hearing will be vacated. Any fines paid will be refunded. The Chairperson will notify the Respondent that the summons or notice of violation has been withdrawn. The Chairperson may withdraw a summons or notice of violation if the Chairperson determines that it was
- (1) Written in error.
  - (2) Ineffectively served on the Respondent.
  - (3) Written in contravention of the Chairperson's enforcement policy.

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

This rule makes a number of changes to the rules governing the Taxi and Limousine Commission's (TLC) adjudications:

- The proposed rules would give the TLC the ability to submit a sworn summons or notice of violations in lieu of the testimony of the issuing witness at the hearing, freeing these witnesses to attend to other matters. A Respondent who wants to contest the factual allegations in the summonses or notice retains the right to ask the ALJ to call the issuing witness to testify. This change in adjudication procedures conforms to procedures used at other tribunals in the City, including the Environmental Control Board.
- The proposed rules would refine existing rules governing motions to vacate inquest decisions and requests for adjournments. Experience with the existing rules suggests that providing more detailed guidance in the rules will be useful both to the TLC's administrative law judges and to the parties to the adjudications.
- The proposed rules would streamline the appeals process by routing appeals directly to the Appeals Unit, instead of the General Counsel's Office, thereby eliminating an unnecessary step, and require the appealing party to submit a copy of the decision being appealed from. Additionally, the rules eliminate unnecessary hearings after successful appeals.
- The proposed rules would codify procedures for withdrawal or settlement of summonses and notices of violations.
- The proposed rules would clarify the timing of the imposition of penalties after a hearing decision.
- These proposed rules would clarify that fines are due within 30 days following a Hearing unless the Respondent files a timely appeal of the decision imposing the fines, and this deadline may be extended if the Respondent makes a timely request for an audio recording.