

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Taxi and Limousine Commission is considering changing its rules about taxicabs that must be driven by owners. The change will reduce the service requirements for owners of independent taxicabs and change the requirements for who must fulfill the requirement if a medallion has multiple owners. The rules also create a further reduction in service requirements for long term owners who have fulfilled the requirement and enhance penalties for owners who do not meet their requirements.

When and where is the Hearing? The Commission will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 a.m. on Thursday, June 16, 2011. The hearing will be in the Commission hearing room at 33 Beaver Street, 19th Floor, New York, NY 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Mail.** You can mail written comments to the Taxi and Limousine Commission, Office of Legal Affairs, 33 Beaver Street – 22nd Floor, New York, New York 10004.
- **Fax.** You can fax written comments to the Taxi and Limousine Commission, Office of Legal Affairs, at 212-676-1102.
- **Email.** You can email written comments to tlcrules@tlc.nyc.gov.
- **Website.** You can submit comments to the Taxi and Limousine Commission through the NYC Rules Web site at www.nyc.gov/nycrules.
- **By Speaking At the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-676-1135. You can also sign up in the hearing room before the hearing begins on June 16, 2011 at 10:00 a.m. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by June 6, 2011.

Do you need assistance to participate in the Hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-676-1135. You must tell us by Thursday, June 9, 2011.

Can I review the comments made on the proposed rules? A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Office of Legal Affairs at 33 Beaver Street, 22nd Floor, New York, NY 10004.

What authorizes the Commission to make this rule? Sections 1043 and 2303 of the City Charter and section 19-503 of the City Administrative Code authorize the Commission to make this proposed rule. This proposed rule was not included in the Commission’s regulatory agenda for this Fiscal Year because the need for the rule was not anticipated at the time the regulatory agenda was published.

Where can I find the Commission’s rules? The Commission’s rules are in title 35 of the Rules of the City of New York.

What rules govern the rulemaking process? The Commission must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

These proposed rules make six important changes to the Taxi and Limousine Commission’s owner-must-drive requirements.

Background

The Taxi and Limousine Commission’s existing rules require that some owners of independent taxicab medallions who bought their medallions after January 6, 1990 must drive their taxicabs. These owners must drive their taxicabs a minimum of 210 nine-hour shifts per year. The current rules also specify that one owner must fulfill the entire driving requirement, even if ownership is shared by more than one person. This rule is known as the “owner-must-drive” requirement.

The purpose of the owner-must-drive requirement is to promote safety and good customer service. The TLC believes that taxicab drivers who own a medallion will operate the medallion more responsibly than those who do not because of the substantial financial stake an owner/driver has in the taxicab medallion. Studies have shown that owner-driven taxicabs have fewer accidents, fewer violations of rules, and higher vehicle inspection pass rates.

Electronic trip records from the taxicab technology system show widespread non-compliance with the owner-must-drive requirement. Industry advocates contend that the requirement is difficult for many owners to fulfill. In particular, under the current rule, a long-time owner-driver who wishes to retire or to reduce his or her work schedule must either sell the medallion or violate the owner-must-drive rules. Sale of a medallion can trigger capital gains taxes that may exceed the driver’s equity in the medallion.

In November 2010, the Metropolitan Taxicab Board of Trade, the Committee for Taxi Safety, and the League of Mutual Taxicab Owners petitioned the TLC to relax the owner-must-drive requirements. This proposed rule is the result of discussions between the TLC

and those groups about the issues raised in their petition. The TLC's overriding policy goal is to give independent owners a reasonable degree of flexibility while preserving the advantages of owner-driven taxicabs.

Proposed Rule Changes

This proposed rule:

1. Reduces the existing driving requirement for all owner-must-drive medallions from 210 nine-hour shifts per year to 180.
2. Allows individual owners who are at least 62 years old and have driven for at least 10 years to reduce their work schedule to 150 seven-hour shifts per year.
3. Ends the requirement that one owner must satisfy the entire driving requirement and allows driving duties to be divided among up to four owner-drivers, provided that each owns at least 25 percent of the medallion.
4. Creates an alternative service option for many owners. This option permits an owner to stop driving completely, while providing that the medallion is driven by a driver with a stake in the vehicle and a commitment to the industry. An owner must meet all of the following to take this option:
 - Current owners must have owned and driven for at least two years.
 - Future owners must own and drive for at least ten years.
 - An owner must lease the medallion to a driver who either owns the taxicab vehicle or leases it with a conditional purchase agreement.
 - The driver must drive the vehicle an average of at least 120 hours per month.
 - The driver must drive at least 180 nine-hour shifts every calendar year.
 - The owner must sign up for the option for a calendar year before that calendar year begins.
 - The owner must pay a \$5,000 penalty for each calendar year.
5. As noted above, TLC records show that many owners have not complied with the owner- must-drive requirement under the current rule. Because of this, the proposed rule:
 - substantially increases the penalties to ensure compliance with the more relaxed requirements by establishing a range of fines from \$1,000 to \$10,000 based on shifts missed, and,
 - adds penalties for agents who do not comply with owner-must-drive requirements for medallions that they manage by establishing a range of fines from \$1,000 to \$10,000 per medallion and/or suspension until compliance.
6. Finally, this proposed rule permits an owner who buys an independent medallion together with a vehicle previously hacked-up with that medallion to continue to use that vehicle until its scheduled retirement date.

New material is underlined.

[Material inside brackets indicates deleted material.]

Section 1. It is proposed to amend the following definitions set forth in section 51-03 of Chapter 51 of Title 35 of the Rules of the City of New York, to read as follows:

Owner-Must-Drive Rule is a requirement that an owner of an Independent Medallion must personally drive [at least 210 nine-hour] a minimum number of shifts in every calendar year.

Stop-Use Directive is a notice sent to an Owner by the Commission directing the Owner to stop using a designated Agent because that Agent's License has been revoked or suspended or the Agent is not permitted to manage the Owner's Medallion(s).

Section 2. It is proposed to amend section 58-03 of Chapter 58 of Title 35 of the Rules of the City of New York by relettering subdivisions (n) through (kk) as subdivisions (o) through (ll) and adding a new subdivision (n), to read as follows:

(n) Independent Medallion Driver is a Driver who meets the following requirements as to one Independent Medallion:

(1) The Driver drives the Taxicab an average of at least 120 hours per month;

(2) The Driver is either

A. the title owner of the Taxicab vehicle or

B. the lessee of the Taxicab vehicle and the vehicle lease has a conditional purchase agreement for the vehicle; and

(3) The Driver is not an Independent Medallion Driver for any other Independent Medallion.

Section 3. It is proposed to amend section 58-03 of Chapter 58 of Title 35 of the Rules of the City of New York by relettering subdivisions (bb) through (ll) as subdivisions (cc) through (mm) and adding a new subdivision (bb), to read as follows:

25 % Business Entity Person is a Business Entity Person who owns at least 25% of a Business Entity.

Section 4. It is proposed to amend section 58-05(d)(1)(of Title 35 of the Rules of the City of New York to read as follows:

(1) If an Applicant is an Independent Medallion Owner and acquires his or her interest in the Medallion on or after January 7, 1990:

(i) The Applicant, including an Applicant for a renewal License, must also have a Valid Taxicab Driver's License, and

(ii) The Applicant must pledge that he or she will personally drive the Taxicab enough hours to fulfill the applicable Owner-Must-Drive service requirements set forth in §58-20(a)[(2)(ii)] (3) for at least 10 years.

(iii) Exception. A Licensee who is a renewal Applicant and who is providing service with an Independent Medallion Driver as provided in Section 58-20(a)(4) of these rules does not need to maintain a Taxicab Driver's License if all of the following are met:

A. The Applicant acquired the Independent Medallion prior to July 1, 2011 and has owned it continuously;

B. The Applicant held a Taxicab Driver's License for at least two years; and

C. The Applicant met the service requirement specified in Section 58-20(a) (that is at least 210 nine-hour shifts per year or 180 nine-hour shifts per year) for at least two years.

Section 5. It is proposed to amend Section 58-05(d)(2) of Title 35 of the Rules of the City of New York to read as follows:

(2) If the Applicant is a Business Entity,[then one Business Entity Person]one or more 25% Business Entity Persons must fulfill this requirement. One 25% Business Entity Person can provide the complete requirement or more than one 25% Business Entity Persons can divide up the requirement.

Section 6. It is proposed to amend Section 58-20(a) of Title 35 of the Rules of the City of New York to read as follows:

(a) *Hours of Operation*

(1) *Double Shift Requirement.* A Fleet or Minifleet must operate each of its operating Taxicabs for a minimum of two nine-hour shifts per day (for a total operating time of 18 hours per day) including weekends and holidays.

§58-20(a)(1)	Fine: \$75	Appearance NOT REQUIRED
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(2) *Minimum Hours of Operation for Independent Owner before July 1, 2011.*

(i) An Independent Medallion Owner must operate his/her Taxicab a minimum of 210 nine-hour shifts [per] each calendar year (for a total operating time of 1,890 hours per year).

[§58-20(a)(2)(i)]	Fine: \$100–\$350 and/or suspension up to 30 days	Appearance REQUIRED]
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(ii) *Owner-Must-Drive Rule.*

A. If the Owner acquired the Independent Medallion on or after January 7, 1990, the Owner must personally drive the Taxicab the required minimum number of hours.

B. If the Owner is a Business Entity this requirement must be fulfilled by:

1. One shareholder if the Owner is a corporation.
2. One partner if the Owner is a partnership.
3. One member if the Owner is a limited liability company.

§58-20(a)(2)[(ii)]	Fine: \$100–\$350 and/or suspension up to 30 days	Appearance REQUIRED
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(3) *Minimum Hours of Operation for Independent Owner beginning July 1, 2011.*

(i) *General Rule.* From January 1, 2012, an Independent Medallion Owner who acquired the Independent Medallion on or after January 7, 1990 must drive his or her Taxicab a minimum of 180 nine-hour shifts each calendar year (for a total operating time of 1,620 hours per year).

A. *Enforcement.* Penalties for failing to comply with the requirement will be determined by the number of required shifts not driven.

B. *Transition Provisions.* During calendar year 2011, an Independent Medallion Owner must drive his/her Taxicab a minimum 195 nine-hour shifts (for a total operating time of 1755 hours).

(ii) *Who Must Drive.* If the Owner is a Business Entity, the requirement must be filled by one or more 25% Business Entity Persons. One 25% Business Entity Person can provide the complete requirement or more than one 25% Business Entity Persons can divide up the requirement.

A. *Limited Exception as to Business Entity Persons.* For one year, from July 1, 2011 to June 30, 2012, a Business Entity Person who is not a 25% Business Entity Person can fulfill the Owner-Must-Drive requirement.

B. After July 1, 2012, the service requirement must be filled by one or more 25% Business Entity Persons.

(iii) *Special Rule for Individuals only.* An Independent Medallion Owner must drive his/her Taxicab a minimum of 150 seven-hour shifts each calendar year if he/she meets all of the following:

A. He/she is the sole Owner of the Independent Medallion. This exception is not available if an Independent Medallion is owned by a Business Entity with more than one Business Entity Person.

B. He/she is at least 62 years of age at the beginning of the calendar year.

C. He/she has owned the Independent Medallion at least 10 years prior to turning age 62 and has met the Owner-Must-Drive requirements during that period.

1. The Chairperson will use records generated by the Taxicab Technology System to determine whether an Owner has met the Owner-Must-Drive requirements.

2. For periods before the Taxicab Technology System was operating, the Chairperson will assume that the Owner met the Owner-Must-Drive requirements unless the Commission's licensing or adjudication records show that the requirement was not met.

(iv) Special Rule for inheriting spouses. A spouse inheriting an Independent Medallion from the sole Owner of that Medallion will not be required to meet the Owner-Must-Drive requirement for 180 days following the Owner's death.

A. After 180 days, the inheriting spouse is subject to the same requirement the deceased Owner was subject to (that is, 180 nine hour shifts or 150 seven hour shifts).

B. For purposes of determining compliance with the Owner-Must-Drive requirements, those requirements will be pro-rated on a monthly basis in any applicable calendar years to account for the 180 days for which compliance is excused.

Example: An Owner subject to the 150 day driving requirement dies on December 1, 2011. The minimum applicable requirement for calendar year 2011 will be 137 shifts. The minimum applicable requirement for calendar year 2012 will be 87 shifts.

<u>§58-20(a)(3)</u>	<u>Fine: For number of missed shifts in any calendar year</u> <u>\$10,000 if 51 shifts or more missed</u> <u>\$7,500 if at least 26 up to 50 shifts missed</u> <u>\$6,000 if at least 11 up to 25 shifts missed</u> <u>\$1,000 if 1 or more up to 10 shifts missed.</u> <u>Commission can also seek revocation if 51 or more shifts missed</u>	<u>Appearance REQUIRED</u>
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(4) Independent Driver Option: Special Rule for Medallions Leased to Independent Medallion Drivers.

(i) An Owner does not have to personally drive the minimum number of shifts and hours of operation for an Independent Medallion Owner as set forth in Section 58-20(a)(3)(i) of this Chapter if all of the requirements of this Section 58-20(a)(4) are met.

A. An Owner of an Independent Medallion who acquired the Medallion before July 1, 2011 must own the Medallion for at least two years and must meet the driving requirements of Section 58-20(a) during those two years before being able to be excused from the driving requirement under the Independent Driver Option.

B. An Owner of an Independent Medallion who acquires the Medallion on or after July 1, 2011, must own the Medallion for at least ten years and must meet the driving requirements of Section 58-20(a)(3) during those ten years before being able to be excused from the driving requirement under the Independent Driver Option.

C. *Driving History*

1. The Chairperson will use records generated by the Taxicab Technology System to determine whether an Owner has met the Owner-Must-Drive requirements.

2. For periods before the Taxicab Technology System was operating, the Chairperson will assume that the Owner met the Owner-Must-Drive requirements unless the Commission's licensing or adjudication records show that the requirement was not met.

(ii). *Service must be provided by Independent Medallion Driver.*

A. An Independent Medallion Driver designated by the Owner must operate the Taxicab at least 180 nine-hour shifts in each calendar year.

B. A Driver is an Independent Medallion Driver if the Driver meets all of the following as to the Owner's Medallion:

1. The Driver drives the Taxicab an average of at least 120 hours per month;

2. The Driver is either

i. the title owner of the Taxicab vehicle or

ii. the lessee of the Taxicab vehicle and the vehicle lease has a conditional purchase agreement for the vehicle; and

3. The Driver is not an Independent Medallion Driver for any other Independent Medallion.

(iii). *Penalty* An Owner who provides the service required by section 58-20(a)(3) by

electing to use the Independent Driver Option will pay a penalty of \$5,000 each calendar year for failing to provide service personally.

(iv). Designating the Driver.

A. The Owner must designate the Independent Medallion Driver who will provide the 180 nine-hour shifts before an Owner can receive the benefit of this section 58-20(a)(4).

B. The Owner must designate the Independent Medallion Driver on a form specified by the Commission. An Owner will designate another Independent Medallion Driver by revoking the prior designation and filing a new designation.

C. Only one designation can be in effect for any Independent Medallion at any time and there can be only one Independent Medallion Driver for any Independent Medallion at any time.

D. An Owner can change the designated Independent Medallion Driver only one time each calendar year.

E. An Owner can designate no more than two Independent Medallion Drivers for any Independent Medallion in any one calendar year.

F. An Owner must immediately report to the Commission when the Owner has terminated or changed a designation or when a Driver ceases to be an Independent Medallion Driver for the Independent Medallion.

<u>§58-20(a)(4)(iv)(F)</u>	<u>Fine: \$1,000</u>	<u>Appearance NOT required</u>
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(v) Electing the Independent Driver Option provided in this Section

A. An Owner must notify the Commission by no later than December 1 of each year if the Owner elects to use the provisions of this section 58-20(a)(4) to provide service as required by section 58-20(a)(3)(i) in the next calendar year.

B. The Owner must have met the driving requirements of section 58-20(a)(4)(i) in order to be approved to elect the Independent Driver Option.

C. The Owner must use any forms required by the Commission.

D. When providing the Commission with notice that the Owner elects to use the provisions of this section 58-20(a)(4), the Owner must also provide, at the same time:

1. The designation of the Independent Medallion Driver required in section 58-20(a)(4)(iv)

2. The payment for the \$5,000 penalty required in section 58-20(a)(4)(iii).

(vi) Owner Liable for non-performance. If the Owner's designated Independent Medallion Drivers fail to drive the minimum 180 nine-hour shifts, the Owner is liable for a violation of section 58-20(a)(3) for that calendar year.

A. The Owner's penalty will be determined by the number of shifts actually driven by the designated Independent Medallion Drivers plus any shifts driven by the Owner.

(vii) Owner Liable for non-compliance. If the Owner fails to meet and continue to meet all the requirements of this section 58-20(a)(4) for use of the Independent Driver Option at all times in any calendar year, the Owner is liable for a violation of section 58-20(a)(3) for that calendar year.

A. The Owner's penalty will be determined by the number of shifts actually driven by the Owner.

(iii)5) Waivers. Upon written request by an Owner, the [Commission]Chairperson can waive or modify the requirements of the Owner-Must-Drive rule[, for a limited time, for good cause shown].

(i) The Chairperson can grant waivers for up to six months, and can grant extensions of those waivers for up to an additional six months.

(ii) The Chairperson will require an Owner to provide documentation for any requested waiver. Failure to provide required documentation will result in denial of the request for a waiver.

(iii) The Chairperson will grant waivers only for the following reasons and only after considering documentation:

A. Medical reasons.

B. Non-vacation travel for family or business reasons.

C. U.S. military service.

(iv) Waivers will result in a pro-rata reduction in the driving requirement in the calendar years applicable.

Example: A two month waiver will reduce the Owner-Must-Drive service requirement to 150 shifts in the calendar year granted.

[§58-20(a)(2)(iii)]	Fine: \$100–\$350 and/or suspension up to 30 days	Appearance REQUIRED]
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(6) Service Requirement Pro-Rated. Service requirements will be pro-rated on a monthly basis. The Commission will use pro-ration to determine, for example, the service requirements applicable to a buyer and a seller of an Independent Medallion in a year in which the Medallion is sold.

([3]7) Maximum Driving Hours. An Owner must not require a Driver to operate one or more Taxicabs for more than 12 consecutive hours.

§58-20(a)([3]7)	Fine: \$50	Appearance NOT REQUIRED
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Section 7. It is proposed to amend Section 63-11 of Title 35 of the Rules of the City of New York by adding a new subdivision (e) to read as follows:

(e) Owner-Must-Drive Compliance.

(1) An Agent must ensure that each Independent Medallion acquired by an Owner on or after January 7, 1990 must comply with the service requirements which that Medallion must follow under Section 58-20(a) of these Rules in each calendar year or partial calendar year that the Agent manages that Medallion.

§63-11(e)(1)	Fine: \$1,000 -\$10,000 per medallion and/or suspension until compliance	Appearance REQUIRED
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(2) In addition to any penalties the Commission can impose for a violation of this Rule, the Commission can also issue a Stop-Use Directive preventing an Agent from continuing to manage non-complying Independent Medallions.

(3) The Commission will post on its Web site a list of Independent Medallions currently subject to the service requirements of Section 58-20(a) of these Rules.

Section 8. It is proposed to amend f Section 67-06(d) of Title 35 of the Rules of the City of New York by adding a new paragraph (5), to read as follows:

(5) Transfer of Medallion and Vehicle. A vehicle which is in use with an Independent Medallion and is not at its Scheduled Retirement Date can continue in use with that Medallion following the transfer of that Medallion until its Scheduled Retirement Date if it passes all inspections and if the vehicle meets all of the following:

(i) the vehicle is acquired by a Transferee of an Independent Medallion together with that Medallion from the Transferor of that Independent Medallion and

(ii) the vehicle was operated by the Transferor of that Independent Medallion with that Medallion.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1526**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Owner-Driver Rules
REFERENCE NUMBER: TLC-5
RULEMAKING AGENCY: TLC**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because the requirement for a cure period is not practicable under the circumstances and is mitigated by the extensive negotiation with, as well as the notice, outreach, and guidance on compliance to, the regulated individuals and communities.

/s/ Francisco Navarro
Mayor's Office of Operations

--05/02/11--
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Owner-Driver Rules

REFERENCE NUMBER: 2011 RG 032

RULEMAKING AGENCY: Taxi and Limousine Commission

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: May 2, 2011