

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

Notice of Promulgation of Rules

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”) promulgates rules to amend existing rules relating to adjudications of summonses and other enforcement actions.

These rules are promulgated pursuant to sections 1043 and 2303(b) of the Charter and section 19-503 of the Administrative Code of the City of New York.

On August 7, 2014, a public hearing was held by the TLC at the TLC’s offices at 33 Beaver St., 19th Floor, New York, New York. These rules were approved at the hearing on August 7, 2014. These rules will take effect 30 days after publication.

Statement of Basis and Purpose

These rules amend the TLC’s recently-issued rules on the adjudication of summonses and other enforcement actions that reflect the transfer of the administrative tribunal of the TLC (the TLC Tribunal) to the New York City Office of Administrative Trials and Hearings (OATH). The amendments clarify the instances in which the TLC will revoke a probationary license and address technical issues that were identified by TLC staff.

The amendments to Title 35 of the Rules of the City of New York are as follows:

- Corrections of technical problems found in TLC’s adjudication rules;
- Deletion of unnecessary or inconsistent definitions relating to the adjudication of TLC summonses;
- Addition of a definition relating to the adjudication of TLC summonses; and,
- Clarification of when the TLC will revoke a probationary driver’s license.

These rules are authorized by Section 2303 of the Charter and Sections 19-503 and 19-506 of the New York City Administrative Code.

New material is underlined.

[Material inside brackets indicates deleted material.]

§1. Section 51-03 of Title 35 of the Rules of the City of New York is amended by adding the following definition, in alphabetical order:

Final Decision is the decision of the Hearing Officer at the Taxi and Limousine Tribunal at OATH and is subject to the appeals process provided for in Chapter 5 of Title 48 of the Rules of the City of New York and the Chairperson review process provided for in section 68-12.

§2. The introductory matter of paragraph (1) of subdivision (b) of Section 54-05 of Title 35 of the Rules of the City of New York is amended to read as follows:

(b) Automatic Refusal or Revocation.

(1) The Commission will not issue a renewal License following the probationary period, and [can] will revoke an issued Probationary License at any time if any of the following occurs:

§3. The introductory matter of paragraph (1) of subdivision (b) of Section 55-05 of Title 35 of the Rules of the City of New York is amended to read as follows:

(b) Automatic Denial or Revocation.

(1) The Commission will not issue a regular License following the probationary period, and [can] will revoke a Probationary License at any time if any of the following occurs:

§4. Subdivisions (m) and (o) of section 68-03 of Title 35 of the Rules of the City of New York are deleted, subdivisions (e) through (l) are relettered subdivisions (f) through (m), and a new subdivision (e) is added, to read as follows:

(e) **Final Decision** is the decision of the Hearing Officer at the Taxi and Limousine Tribunal at OATH and is subject to the appeals process provided for in chapter 5 of Title 48 of the Rules of the City of New York and the Chairperson review process provided for in section 68-12 of this title.

[(m) Secondary Owner is an individual or Business Entity that has a lien or mortgage or any other type of legal interest in a vehicle.]

[(o) Unlicensed Activity is the provision or advertising of any Commission-regulated for-hire transportation service by any (i) Licensee whose License is suspended, revoked, or expired and not yet renewed, or by any (ii) person who does not hold a Valid License or Authorization for the vehicle, for the driver of the vehicle and, if applicable, for the service. Unlicensed Activity specifically includes the activities specified in sections 19-506 and 19-528 of the Administrative Code and can subject the violator to the seizure and possible forfeiture of his or her vehicle.]

§5. Paragraph (1) of Section 68-05(b) of Title 35 of the Rules of the City of New York is amended to read as follows:

(b) Licensees. Service of a summons upon a Licensee can be accomplished through:
1. personal service; or

§6. Paragraph (1) of Section 68-05(c) of Title 35 of the Rules of the City of New York is amended to read as follows:

- (c) Non-Licensees. Service of a summons upon a Respondent who is not a Licensee can be accomplished through any of the following methods consistent with the requirements set in the Civil Practice Law and Rules:
 - 1. By personal service[.]; or

§7. The introductory matter of subdivision (b) of Section 68-09 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (b) The determination of an ALJ at the OATH Tribunal will be a Recommended Decision, subject to review by the Chairperson for the following matters [. These matters are not subject to the appeals process provided for in Chapter 5 of Title 48 of the Rules of the City of New York and the Chairperson Review process provided for in TLC Rule 68-12]:

§8. Paragraphs (2), (3) and (5) of Section 68-12 (c) of Title 35 of the Rules of the City of New York are amended to read as follows:

- (c) Process for Chairperson Review.
 - (2) If the respondent delivers and mails such a petition, TLC may submit an answer to the petition within 30 days by delivering such an answer to the General Counsel of TLC and serving it on the respondent. Unless the Chairperson takes action on the respondent's petition within 30 days of its delivery, the determination of the appeal by the Appeals Unit shall become the final decision of the [Taxi and Limousine Tribunal] Commission.
 - (3) If TLC delivers and mails such a petition, within 30 days the Chairperson may notify the respondent that he or she is considering the petition, and within 30 days thereof, the respondent may mail an answer to the General Counsel of TLC. If the Chairperson does not notify the respondent that he or she is considering the petition within 30 days of its receipt, or takes no action on the petition within 30 days of the receipt of respondent's answer or within 60 days of its notification to the respondent if no answer is received, the determination of the appeal by the Appeals Unit shall become the final decision of the [Taxi and Limousine Tribunal] Commission.

- (5) The determination of an appeal by the Appeals Unit that is not acted upon by the Chairperson shall become a final decision of the [Taxi and Limousine Tribunal] Commission.

§9. Subdivision (b) of Section 68-14 of Title 35 of the Rules of the City of New York is amended to read as follows:

(b) Prior to the hearing, the Commission must notify the Respondent of the proceeding by serving a written summons specifying the reason the Respondent is not Fit to Hold a License and warning the Respondent that a finding of guilt [could] will result in License revocation.

§10. Paragraphs (a)(1) and (d)(1) of Section 68-15 of Title 35 of the Rules of the City of New York are amended to read as follows:

(a) Summary Suspension.

1. The Chairperson can summarily suspend a License if the Chairperson believes that continued licensure would constitute a direct and substantial threat to public health or safety, pending revocation proceedings. Such direct and substantial threats to public health or safety would include but are not limited to:
 - (A) Any act, as prohibited by these Rules, of driving a TLC licensed vehicle while Impaired by intoxicating liquor (regardless of its alcoholic content), or Drugs;
 - (B) Any act, as prohibited by these Rules, of bribery, fraud, material misrepresentation, theft, threat against a person, harassment, abuse, or use of physical force.
 - (C) Any act, as prohibited by these Rules, involving the possession of a Weapon in a vehicle licensed under these Rules;

(d) Summary Suspension for Criminal Charges.

1. The Chairperson can summarily suspend a License based upon an arrest [on criminal charges] or citation if the Chairperson believes that the charges, if true, would demonstrate that continued licensure would constitute a direct and substantial threat to public health or safety. Such charges include but are not limited to the following:
 - (A) [Any act, as prohibited by these Rules, of driving a TLC licensed vehicle while Impaired by intoxicating liquor (regardless of its alcoholic content), or Drugs;
 - (B) Any act, as prohibited by these Rules, of bribery, fraud, material misrepresentation, theft, threat against a person, harassment, abuse, or use of physical force;
 - (C) Any act, as prohibited by these Rules, involving the possession of a Weapon in a vehicle licensed under these Rules;
 - (D)] Any [felony conviction] arrest for a crime which constitutes a felony;
 - [(E)] (B) Or any [conviction of] arrest or citation for the following [criminal] offenses:
 - A. Assault in the third degree, as set forth in PL § 120.00;

- B. Reckless endangerment in the second degree, as set forth in § 120.20;
- C. Criminal obstruction of breathing, as set forth in § 121.11;
- D. Sexual misconduct, as set forth in PL § 130.20;
- E. Forcible touching, as set forth in PL § 130.52;
- F. Sexual abuse in the third or second degree, as set forth in PL § 130.55 and § 130.60, respectively;
- G. Promoting prostitution in the third, second, or first degree, as set forth in PL § 230.25, § 230.30, and § 230.32, respectively;
- H. Compelling prostitution, as set forth in PL § 230.33;
- I. Sex trafficking, as set forth in PL § 230.34;
- J. Public lewdness, as set forth in PL § 245.00;
- K. Endangering the welfare of a child, as set forth in PL § 260.10;
- L. Criminal possession of a weapon in the fourth degree, as set forth in PL § 265.01;
- M. Overdriving, torturing, and injuring animals or failing to provide proper sustenance, as set forth in AGM § 353;
- N. Leaving the scene of an accident, as set forth in VAT § 600.2;
- O. Driving while ability impaired, as set forth in VAT § 1192.1;
- P. Operation of a motor vehicle while intoxicated, as set forth in VAT § 1192.2;
- Q. Operation of a motor vehicle with an illegal blood-alcohol content, as set forth in VAT § 1192.3;
- R. Driving while ability impaired by drugs, as set forth in VAT § 1192.4.

§11. Subparagraph (c)(2)(A) of Section 68-16 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (c) Respondent's Right to Expedited Hearing.
 - 2. Scheduling a Summary Suspension Hearing.

- (A) Upon receipt of a timely request for an expedited Hearing, the Commission must request a Summary Suspension Hearing (or a Hearing on the underlying violation) to be held within 10 calendar days of the Commission's receipt of the request (if the tenth day falls on a Saturday, Sunday or holiday, the hearing may be held on the next business day).