

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 18 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 2010.

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, 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 10, 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 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 subdivision (c) of section 4-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

(1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.

(2) If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).

If [a respondent] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued (see §18-14(f) of these Rules).

(3) If the fine is not paid by the close of business on the date due, the [violator's] Commission will notify the Respondent in writing that the Respondent's License will be suspended in ten 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 2. It is proposed to amend subdivision (c) of section 5-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines*

(1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.

(2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.] If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).

[(3)] If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the

hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.

- (3) 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 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 3. It is proposed to amend subdivision (c) of section 6-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

- (1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.
- (2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.] If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).
- [(3)] If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date [of the issuance of the recording] the recording is issued.
- (3) 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 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 subdivision (c) of section 7-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

- (1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.

- (2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.]
If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).

If [a respondent] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.

- (3) 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 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 5. It is proposed to amend subdivision (c) of section 8-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

- (1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.

- (2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.]
If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).

- [(3)] If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.

- (3) 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 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 6. It is proposed to amend subdivision (c) of section 9A-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

- (1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.
- (2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.]
If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).
- [(3)] If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.
- (3) 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 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 7. It is proposed to amend subdivision (c) of section 9B-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

- (1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.
- (2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.]
If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).

[(3)] If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.

(3) 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 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 8. It is proposed to amend subdivision (c) of section 10A-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

(1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.

(2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.]
If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).

[(3)] If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.

(3) 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 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 9. It is proposed to amend subdivision (c) of section 10B-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

- (1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.
- (2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.]
If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).
- [(3)] If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.
- (3) 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 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 10. It is proposed to amend subdivision (c) of section 11A-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

- (1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.
- (2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.]
If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).
- [(3)] If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.
- (3) 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 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 11. It is proposed to amend subdivision (c) of section 11B-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

(1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.

(2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.]
If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).

[(3) If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.

(3) 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 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 12. It is proposed to amend subdivision (c) of section 12-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

(1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.

(2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.]

If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).

- [(3)] If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.
- (3) 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 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 13. It is proposed to amend subdivision (c) of section 13-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

- (1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.
- (2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.]
If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).
- [(3)] If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.
- (3) 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 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 14. It is proposed to amend subdivision (c) of section 14-02 of Title 35 of the Rules of the City of New York to read as follows:

(c) *Payment of Fines.*

- (1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.
- (2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.]
If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).
- [(3)] If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.
- (3) 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 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 15. It is proposed to amend subdivision (b) of section 15-02 of Title 35 of the Rules of the City of New York to read as follows:

(b) [~~General Penalty~~]*Payment of Fines.*

- (1) Fines are due within 30 days of the day the [violator] Respondent is found guilty of the violation.
- (2) [If fines are not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.]
If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).
- [(3)] If [a] the Respondent [has made a timely request for] requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the hearing, the time for [payment of fines is extended to] either filing an appeal or

paying the fines will be the later to occur of either 30 days from the date of the decision or 21 days from the date the recording is issued.

- (3) 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 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 16. It is proposed to amend section 18-02 of Title 35 of the Rules of the City of New York by adding a new subdivision (c) to read as follows:

§18-02 Penalties

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

(1) Suspensions. 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

(2) Fines. Fines are due within 30 days of the day the Respondent is found guilty of the violation.

(i) If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §18-14(d) of these Rules).

If the Respondent requests a copy of the Hearing recording (see §18-14(e) of these Rules) within 7 calendar days of the Hearing, the time for either filing an appeal or paying the fines 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 (see §18-14(f) of these Rules).

(ii) 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 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 17. It is proposed to amend section 18-06 of Title 35 of the Rules of the City of New York by adding a new subdivision (c) to read as follows:

§18-06 Contents of Summons or Notice of Violation

- (c) 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 18. It is proposed to amend section 18-09 of Title 35 of the Rules of the City of New York by deleting subdivisions (a), (b) and (c) and by adding new subdivisions (a) and (b), to read as follows:

§18-09 Hearings – Adjournment Requests

[(a) A Respondent who is unable to appear at a scheduled Hearing must:

- (1) Notify the Commission at least five business days in advance of the Hearing; and
- (2) Show why Respondent is unable to attend.

(b) A Respondent will be entitled to only one adjournment.

(c) If a Respondent requests an Adjournment less than five business before the Hearing, he or she must make the request in person. An ALJ must decide whether to grant the adjournment on the day the request is made.]

(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 §18-09(c) 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 §18-06(c) 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 §18-11(c) 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 19. It is proposed to amend subdivision (h) of section 18-11 of Title 35 of the Rules of the City of New York to read as follows:

§18-11 Hearings - Procedures

* * *

- (h) *Findings of Guilt.* If the ALJ finds that a violation has been committed, the ALJ must impose the appropriate penalties, which can include a fine, Persistent Violator Points or Penalty [p]Points, and a suspension or revocation of the Respondent's License. [If a suspension for a specified period of time is imposed, the suspension period will not include any period of time during which the Respondent's License is not in the possession of the Commission.]

Section 20. It is proposed to amend section 18-12 of Title 35 of the Rules of the City of New York by deleting subdivision(d) and by adding a new subdivision (d),to read as follows:

§18-12 Inquests – Hearing Conducted in the Absence of Respondent

* * *

- (d) *[Imposition of Penalties.*

- (1) *Suspension.* All suspension penalties imposed at an Inquest will begin 10 days from the date the ALJ's decision is mailed to the Respondent.
- (2) *Fines.* Fines are due within 30 days of the day the violator is found guilty of the violation. If a respondent has made a timely request for a copy of the Hearing recording under §18-14(e) of these Rules, the time for payment of fines is extended to 21 days from the date the recording is issued. If the fine is not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.
- (3) *Penalties for Persistent Driver Violators.* Penalties imposed as a result of the Program for Persistent Violators will be assessed 10 days from the date the ALJ's decision is mailed to Respondent unless a timely motion to vacate, as provided in §18-13 below, is filed.]

A Respondent may challenge a decision made after an Inquest only by moving to the vacate the Inquest decision (see §18-13 of these Rules).

Section 21. It is proposed to amend section 18-13 of Title 35 of the Rules of the City of New York by deleting subdivision (b) and adding a new subdivision (b), by relettering subdivisions (c) and (d) as subdivisions (g) and (h), by amending subdivision (g) as relettered, and by adding new subdivisions (c), (d), (e), (f) and (i), to read as follows:

(b) [*Content of Motion.* A Respondent’s motion to vacate must present written evidence on both of the following:

- (1) The reasons for his or her failure to appear at the Hearing
- (2) A defense to the charge which, if established and proved at a Hearing, would result in the dismissal of the summons]

Form of Motion. A motion to vacate must be on a form approved by the Chairperson. The motion must be signed and dated.

(c) *Motions Filed Within 120 Days.* A motion to vacate filed within 120 days of the date of the Inquest must show:

- (1) Reasonable excuse for the Respondent’s failure to appear at the Hearing
- (2) A defense to the charge which, if established and proved at a Hearing, would result in the dismissal of the summons

(d) *Motions Filed More than 120 Days and Less Than 2 Years.* A motion to vacate filed more than 120 days and less than 2 years after the date of Inquest must show:

- (1) Reasonable excuse for delay in presenting the motion,
- (2) Reasonable excuse for the Respondent’s failure to appear at the Hearing, and
- (3) A defense to the charge which, if established and proved at a Hearing, would result in the dismissal of the summons.

(e) *Subsequent Motions to Vacate.* 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:

- (1) An extraordinary and compelling reason for the Respondent’s failure to appear at the Hearing,
- (2) A defense to the charge which, if established and proved at a Hearing, would result in the dismissal of the summons

(f) *Reasons for Failing to Appear.* In determining whether Respondent has shown a reasonable excuse for failing to appear at a Hearing, the ALJ will consider:

- (1) Whether circumstances that could not be reasonably foreseen prevented the Respondent from attending the Hearing;
- (2) Whether the Respondent had an emergency or condition requiring immediate medical attention;
- (3) Whether the matter had been previously adjourned by the Respondent;

- (4) Whether the Respondent attempted to attend the Hearing with reasonable diligence;
- (5) Whether the Respondent's inability to attend the Hearing was due to facts that were beyond the Respondent's control;
- (6) 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
- (7) Any other fact that the ALJ considers to be relevant to the motion to vacate.

(g) *Granting of Motion.* If the ALJ determines that the Respondent has [has established both a valid excuse for his or her failure to appear at the Hearing and a defense to the violation that, if proven, would be legally sufficient:] met the requirements for a motion to vacate:

- (1) The Inquest determination [must] will be vacated and the Respondent must be entitled to a new Hearing.
- (2) Any suspension, revocation, Penalty Points or Persistent Violator penalties imposed at the Inquest [must] will be vacated.
- (3) Any fines paid will be refunded.

[(d)h] *Denial of Motion.* If the ALJ denies the motion to vacate, the penalties imposed at the Inquest will remain in force.

(i) *Review of a Denial of Motion to Vacate.* The Respondent may appeal a decision denying a motion to vacate (see §18-14 of these Rules).

Section 22. It is proposed to amend section 18-14 of Title 35 of the Rules of the City of New York by relettering subdivisions (h) and (i) as subdivisions (i) and (j), by adding a new subdivision (h) and by amending subdivisions (c), (g) and (j) as relettered and paragraphs (1) and (3) of subdivision (d), to read as follows:

§18-14 Appeals – By Respondent

(c) *Filing of Appeal.* [The Appeal] Two copies of the appeal, accompanied by two copies of the ALJ decision, must be directed to the [Deputy Commissioner for Legal Affairs/General Counsel] Appeals Unit.

(d) *Payment of Fines Deferred*

(1) If the Respondent files a timely appeal, any fines imposed by the [ALJ] decision being appealed will be deferred until a decision on the appeal is made.

* * *

(3) Once an appeal has been decided, any outstanding fines imposed by the decision affirmed on appeal must be paid within 30 days.

* * *

(g) *Issues of Law on Appeal.* A Respondent's appeal of an ALJ's decision must be limited to the issues of law raised from the determination being appealed. Findings of fact may be appealed only on the grounds that the findings of fact are not supported by substantial evidence in the record.

* * *

(h) Response by the Commission.

(1) The Commission may respond to the Respondent's appeal within 21 calendar days of the filing of the appeal.

(2) If the appeal is expedited (see §18-14(b) of these Rules), the Commission may respond within seven days of the filing of the appeal.

[(h)](i) Results of Appeal. On appeal, the determination of the ALJ can be affirmed, reversed in whole or in part, or modified.

[(i)](j) Temporary License.

(1) If the ALJ's decision results in the suspension of the Respondent's License, the [Deputy Commissioner for Legal Affairs/General Counsel or his designee] Chairperson can, in his or her discretion, issue a temporary license, which will remain in effect pending the determination of the appeal.

* * *

Section 23. It is proposed to amend subdivisions (b), (e) and (f) of section 18-15 of Title 35 of the Rules of the City of New York to read as follows:

§18-15 Appeals – By Commission

* * *

(b) *Filing of the Appeal.* The appeal must be filed with the [Deputy Commissioner for Legal Affairs/General Counsel] Appeals Unit within 30 calendar days from the date of the determination and accompanied by a copy of the ALJ decision. The appeal must include a notation indicating that a copy of the appeal was mailed to the Respondent

* * *

(e) *Issues of Law on Appeal.* A Commission appeal of an ALJ's decision must be limited to the issues of law raised from the determination being appealed. Findings of fact may be appealed only on the grounds that the findings of fact are not supported by substantial evidence in the record.

(f) *Results of Appeal.* On appeal, the determination of the ALJ can be affirmed, reversed in whole or in part, or modified. 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.

[(1) If a decision appealed by the Commission results in the reversal of a decision by an ALJ to dismiss a summons, the matter must be remanded to the Commission Adjudications Tribunal for a new Hearing.

(2) If a decision appealed by the Commission affirms a determination of guilt by an ALJ but modifies a penalty that had been incorrectly imposed, the decision can correct the penalty without remand for a new Hearing.]

Section 24 It is proposed to amend paragraph (7) of subdivision (b) of section 18-19 of Title 35 of the Rules of the City of New York to read as follows:

(b) *Discretionary Revocation.* If the Commission seeks Discretionary Revocation, the following procedure must be followed.

* * *

(7) The OATH ALJ must issue a Recommended Decision to the Chairperson containing findings of fact, conclusions of law, and recommended penalties. These penalties can include License revocation, License suspension for a period up to six months, and a fine, not to exceed \$10,000 for each offense for which a [Taxicab owner, base owner, taximeter business owner, Taxicab broker, or Taxicab agent or a fine not to exceed \$1,000 for each offense for which a any other Licensee] Licensed Driver is found guilty, or a fine not to exceed \$10,000 for each offense for which any other Respondent is found guilty.

Section 25. It is proposed section to amend subdivision (b) of section 18-20 of Title 35 of the Rules of the City of New York to read as follows:

§18-20 Special Procedures – Fitness Hearings

(b) The Notice to Respondent, requests for adjournments and the conduct of the Hearing will be governed by the rules and procedures established in this Chapter.

Section 26. It is proposed that Title 35 of the Rules of the City of New York be amended by adding a new section 18-29 to read as follows:

§18-29 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 amends the version of the Commission's rules that becomes effective January 1, 2011. 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.