

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 (“TLC”) is proposing to amend its adjudications rules regarding the conduct of summary suspension hearings for licensees. The proposed rules specify the timeframe for reviewing summary suspensions based upon pending criminal charges and the relevant factors for determining whether such a suspension should continue.

When and where is the hearing? TLC will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 am on October 19, 2020. The public hearing will be held online using Webex. There will be no in person public hearing. To participate in the public hearing, please enter Webex URL on your computer or dial-in via phone. The Webex URL, Meeting Number, Password, and Phone Dial-In number for the public hearing will be posted on TLC’s website at www.nyc.gov/tlc and by notice in the City Record by October 12, 2020.

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

- **Website.** You can submit comments to the TLC through the NYC rules website at <http://rules.cityofnewyork.us>
- **Email.** You can email comments to tlcrules@tlc.nyc.gov
- **Mail.** You can mail comments to Taxi and Limousine Commission, Office of Legal Affairs, 33 Beaver St, 22nd Floor, New York, NY 10004
- **Fax.** You can fax comments to the Taxi and Limousine Commission, Office of Legal Affairs, at 212-676-1102
- **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 or by emailing at tlcrules@tlc.nyc.gov. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by October 19, 2020.

What if I 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 212-676-1055. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by October 14, 2020.

This location has the following accessibility option(s) available: Simultaneous transcription for people who are deaf or hard of hearing and audio only access.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a transcript of the hearing will be available to the public at the Office of Legal Affairs.

What authorizes TLC to make this rule? Sections 1043 and 2303 of the City Charter and section 19-503 of the City Administrative Code authorize TLC to make this proposed rule. This proposed rule was not included in the Commission's regulatory agenda for this Fiscal Year because it was not contemplated when the Commission published the agenda.

Where can I find TLC rules? The Taxi and Limousine Commission rules are in title 35 of the Rules of the City of New York.

What laws govern the rulemaking process? TLC 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 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

TLC rules permit the Chairperson to summarily suspend a Driver's License upon notice of the Driver's criminal arrest or citation if the Chairperson believes that the charges, if true, would demonstrate that continued licensure while awaiting a decision on the criminal charges would constitute a direct and substantial threat to public health or safety. TLC summarily suspends the license of a Driver who is charged with a felony or serious misdemeanor. This practice will not change under the proposed rule.

TLC rules provide that a driver whose license is summarily suspended may request a hearing before an administrative law judge ("ALJ") of the New York City Office of Administrative Trials and Hearings ("OATH"). Following the hearing, the ALJ makes a recommendation to the TLC Chairperson regarding continued suspension based on whether the driver's continued licensure pending resolution of the criminal charges presents a public safety risk. The Chairperson reviews the recommendation and makes a final decision regarding the driver's license suspension.

The proposed rule sets forth updated procedures related to the notices and hearing for drivers following summary suspension. The proposed rule provides guidance to the ALJs and the Chairperson as to the relevant considerations for assessing public safety risk, including the issues that may be addressed in a hearing, and the proper basis for a decision regarding continued suspension. In addition, the proposed rule provides for a quicker return of a license for those drivers whose licensure during the pendency of the criminal proceeding is not deemed to be a direct and substantial threat to public health or safety.

TLC's authority for these rules is found in section 2303 of the New York City Charter and section 19-503 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Paragraph (5) of subdivision (c) of section 68-15 of Title 35 of the Rules of the City of New York is amended to read as follows:

§68-15 SPECIAL PROCEDURES – SUMMARY SUSPENSION PENDING REVOCATION

(c) Conduct of Summary Suspension Hearing.

- (5) [If] Unless otherwise specified, if the Chairperson does not render a decision within 60 calendar days from the end of the Summary Suspension hearing, the suspension must be lifted until the decision is rendered.

Section 2. Paragraphs (2) through (4) of subdivision (d) of section 68-15 of Title 35 of the Rules of the City of New York, relating to summary suspension hearings and the disposition of criminal charges, are REPEALED, paragraph (1) is amended, and new paragraphs (2) through (9) are added, to read as follows:

(d) Summary Suspension for Criminal Charges.

- (1) The Chairperson can summarily suspend a License based upon[an arrest or citation] criminal charges pending against a Licensee 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:
- (i) Any [arrest] charge for a crime which constitutes a felony;
 - (ii) Or any [arrest or citation] charge for the following offenses:
- * * *
- (2) Upon imposing Summary Suspension, the Commission must promptly notify the Respondent by serving written notice specifying the basis for the Summary Suspension, advising the Respondent of the right to a Summary Suspension hearing, and specifying the issue to be decided at the Summary Suspension hearing.
- (3) The Commission need not commence revocation proceedings while the criminal charges are pending. However, the Respondent is entitled to request a Summary Suspension hearing.
- (4) If the Respondent requests a Summary Suspension hearing, the Commission must schedule such hearing to be held within 10 calendar days of receipt of the Respondent's request. If the tenth day falls on a Saturday, Sunday or holiday, the hearing may be held on the next business day.
- (5) At the Summary Suspension hearing, the Commission must prove by a preponderance of the evidence that the charges pending against the Respondent, if true, demonstrate that the continuation of the Respondent's License during the

pendency of criminal charges would pose a direct and substantial threat to public health or safety.

At the hearing, both the Commission and the Respondent may present evidence relevant to the determination, including, but not limited to:

- (a) The particular facts and circumstances underlying the criminal charges, including the connection between the alleged offense and the Respondent's duties and responsibilities as a driver licensed by the Commission;
 - (b) The Respondent's driving record, including any history of serious violations or license suspension under these Rules or applicable provisions of law relating to traffic or Vehicles licensed by the Commission;
 - (c) The Respondent's previous criminal record, or lack thereof;
 - (d) The Respondent's character and standing in the community; and
 - (e) Any other evidence relevant to whether continued licensure of the Respondent during the pendency of criminal charges would pose a direct and substantial threat to public health or safety.
- (6) The Recommended Decision shall be rendered within 15 business days from the close of the record of the Summary Suspension hearing.
- (7) The Chairperson can accept, reject, or modify the Recommended Decision in a written decision that includes the reasons therefor. The Chairperson may not reject or modify the Recommended Decision without setting forth a reasonable basis for doing so.
- (8) (a) Except as further specified in subparagraph (b) of this paragraph, the Chairperson must render a decision on continued suspension within twenty (20) calendar days of the date of the Recommended Decision, but only after providing the Respondent a copy of the Recommended Decision and an opportunity to respond to the Recommended Decision within ten (10) calendar days. If the Chairperson does not render a decision within the 20-day period, the suspension must be lifted until such action is taken by the Chairperson.
- (b) Within seven (7) days of receiving a Recommended Decision recommending that the suspension be lifted, the Chairperson must: (i) accept the recommendation and lift the suspension, or (ii) provide the Respondent notice that the Recommended Decision may be rejected or modified, and the reasons therefor, and ten (10) days to respond in writing to such notice.
- (9) Notwithstanding the procedures for lifting a suspension during the pendency of criminal charges as set forth in this paragraph:

(a) Within one (1) business day of receipt of a certificate of disposition indicating that the charges against the Respondent have been dismissed, withdrawn, reduced to an offense not specified in paragraph (1) of this subdivision, or otherwise disposed of in a similar manner, the Commission must lift the suspension

(b) In all other cases, within five (5) business days of receiving from the Respondent a certificate of disposition of the criminal charges, the Commission must either lift the suspension or commence revocation proceedings.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

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

RULE TITLE: Summary Suspension of License Resulting from Pending Criminal Charges

REFERENCE NUMBER: TLC-115

RULEMAKING AGENCY: Taxi & Limousine Commission

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) The proposed rules provide the procedures necessary for a driver to request an expedited hearing, and what the hearing will consist of.

/s/ Francisco X. Navarro
Mayor's Office of Operations

September 1, 2020
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

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

RULE TITLE: Procedure for Summary Suspension of License Resulting from Pending Criminal Proceedings

REFERENCE NUMBER: 2020 RG 049

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

Date: September 10, 2020

Senior Counsel
Division of Legal Counsel