

City of New York

Office of Administrative Trials and Hearings

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Office of Administrative Trials and Hearings (OATH) proposes to amend chapter 5 of title 48 of the Rules of the City of New York to incorporate the requirements set forth in the recently added chapter 10 of title 19 of the Administrative Code of the City of New York, regarding certain procedures to be followed at the OATH Hearings Division in adjudicating summonses issued by the Taxi and Limousine Commission (TLC).

When and where is the Hearing? OATH will hold a public hearing on the proposed rules. The public hearing will take place from **10:00 a.m. through 11:00 a.m. on June 5, 2019**. The hearing will be in the OATH Conference Room located at 66 John Street, 10th Floor, New York, NY 10038.

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

- **Website.** You can submit comments to OATH through the NYC rules website at <http://rules.cityofnewyork.us/>.
- **Email.** You can email written comments to Rules_Oath@oath.nyc.gov.
- **Mail.** You can mail written comments to OATH, Attention: Nicholas Dietz, Assistant General Counsel, 100 Church Street, 12th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to OATH, Attention: Nicholas Dietz, Assistant General Counsel, at 646-500-5742.
- **Hearing.** You can speak 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 OATH at 212-436-0708, or you can also sign up in the hearing room before the hearing begins on **June 5, 2019**. You can speak for up to three (3) minutes.

Is there a deadline to submit written comments? You may submit written comments up to **5:00 p.m. on June 5, 2019**.

What if I need assistance to participate in the Hearing? You must tell us 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 100 Church Street, 12th Floor, New York, NY 10007. You may also tell us by telephone at 212-436-0708. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by **May 29, 2019**.

This location has the following accessibility option(s) available: Wheelchair Accessible.

Can I review the comments made on the proposed rule? You can review the comments that have been submitted online by visiting the NYC rules website at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at OATH, 66 John Street, 10th Floor, New York, NY 10038.

What authorizes OATH to make this rule? Section 1049(2)(a) of the City Charter authorizes OATH to make this proposed rule. This proposed rule was not included in OATH's regulatory agenda for this Fiscal Year as the underlying legislation was not anticipated by OATH.

Where can I find OATH's rules? OATH's rules are in title 48 of the Rules of the City of New York.

What laws govern the rulemaking process? OATH must meet the requirements of Section 1043(b) of the City Charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and 1049(2)(a) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The City of New York recently enacted Local Law 19 of 2019, creating special procedures for the Office of Administrative Trials and Hearings (OATH) in adjudicating summonses issued by the Taxi and Limousine Commission (TLC). The rule proposed by OATH incorporates these new procedures into chapter 5 of title 48 of the Rules of the City of New York, the chapter of OATH's Hearings Division rules solely applicable to TLC-related hearings. OATH proposes the following changes to chapter 5 of title 48: new section 5-01a; new subdivision (a) of section 5-04; an amendment to the title of subdivision (a) of section 5-05; and new subdivision (c) of section 5-06.

Proposed new section 5-01a specifies the times by which a Respondent and a Petitioner must appear at a scheduled OATH hearing in order to constitute an appearance and the consequences for failing to appear in a timely manner.

Proposed new subdivision (a) of section 5-04 would set a fifty (50) day time limit to appeal a Hearing Officer's underlying decision in cases in which the Hearing Officer has reduced the TLC penalty in order to allow such appellants sufficient time to file an appeal with OATH after the TLC Chairperson issues a determination on the Hearing Officer's penalty reduction.

The proposed amended title of subdivision (a) of section 5-05, "Scope of Review of Appeals Unit Decisions," would clarify that this subdivision, which relates to the review authority of the TLC Chairperson, only applies to decisions of the Appeals Unit.

Proposed new subdivision (c) of section 5-06 would grant Hearing Officers the discretion to decrease the penalties imposed for TLC violations if, upon consulting a list of factors, the Hearing Officer determines that a reduction of the penalty would be in the interest of justice. The same subdivision also makes clear that the Chairperson of the TLC may reinstate the full penalty or increase the penalty that the Hearing Officer had reduced.

This proposed rule was not included in OATH's regulatory agenda for this Fiscal Year as the underlying legislation was not anticipated by OATH.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Chapter 5 of title 48 of the Rules of the City of New York is amended by adding a new section 5-01a, to read as follows:

§ 5-01a Appearances

(a) Appearances by Respondent. A Respondent's appearance at a hearing is timely if the Respondent appears and is ready to proceed no more than ninety (90) minutes after the scheduled hearing time.

(b) Appearances by Petitioner. If the Petitioner fails to appear within thirty (30) minutes of the timely appearance of the Respondent and does not make a timely request to reschedule the hearing pursuant to § 6-05 of this title, the Tribunal will dismiss the summons.

(c) If the hearing does not begin within three (3) hours of the timely appearance of both the Respondent and the Petitioner, the Tribunal will either reschedule the hearing or dismiss the summons without prejudice.

§ 2. Subdivisions (a) through (e) of section 5-04 of chapter 5 of title 48 of the Rules of the City of New York are relettered as subdivisions (b) through (f), a new subdivision (a) is added, and subdivisions (b), (c) and (f), as relettered, are amended, to read as follows:

(a) If a Hearing Officer issues a decision imposing a reduced penalty pursuant to § 5-06(c) of this chapter, the party seeking to appeal the Hearing Officer's underlying decision must file an appeal with the Tribunal within fifty (50) days of the date of the decision.

[(a) b] Pursuant to Administrative Code § 19-506.1(c), a Respondent will not be required to pay the fines, penalties, or restitution imposed in the decision in order to file [(an) a timely appeal].

[(b) c] Expedited appeals. Either party may appeal a decision pursuant to section 6-19. Where the appeal involves the suspension or revocation of a TLC-issued license, the Appeals Unit will issue an expedited [(appeal) decision].

[(c) d] A party responding to a request for appeal where the appeal involves the suspension or revocation of a TLC-issued license must file the response with the Tribunal within seven (7) days after being served with the appeal. The responding party must also serve a copy of the response on the appealing party, and file proof of such service with the Tribunal.

[(d) e] Requests for hearing recording. Pursuant to Administrative Code § 19-506.1(d), if a Respondent appealing a decision requests in writing a copy of the hearing recording, the

recording will be produced to the Respondent within thirty (30) days after receipt of the request. If the recording cannot be produced within the thirty (30) day period, the determination being appealed will be dismissed without prejudice.

[e] f) Finality. A decision of the Appeals Unit becomes the final determination [of the Tribunal] in the case, unless either party petitions the TLC Chairperson in accordance with § 68-12(c) of Chapter 68 of Title 35 of the Rules of the City of New York (RCNY).

§ 3. Subdivision (a) of section 5-05 of chapter 5 of Title 48 of the Rules of the City of New York is amended to read as follows:

(a) Scope of Review of Appeals Unit Decisions. The TLC Chairperson or, if designated by the TLC Chairperson, the General Counsel for the TLC, may review any determination of the Appeals Unit that interprets any of the following:

- (1) A rule in Title 35 of the RCNY;
- (2) A provision of law in Chapter 5 of Title 19 of the Administrative Code;
- (3) A provision of law in Chapter 65 of the Charter.

§ 4. Section 5-06 of chapter 5 of title 48 of the Rules of the City of New York is amended by adding a new subdivision (c), to read as follows:

(c) Discretion of Hearing Officers to Reduce Penalties.

- (1) A Hearing Officer may, in the interest of justice, impose a reduced penalty for a violation, except for a violation of § 19-507 of the Administrative Code, after determining that such reduction in penalty is appropriate on the ground that one or more compelling considerations or circumstances clearly demonstrates that imposing such penalty would constitute or result in injustice. In determining whether such compelling consideration or circumstance exists, the Hearing Officer must, to the extent applicable, consider, individually and collectively, the following factors:
 - (i) The seriousness and circumstances of the violation;
 - (ii) The extent of harm caused by the violation;
 - (iii) The evidence supporting or refuting the violation charged, whether admissible or inadmissible at a hearing;
 - (iv) The history, character, and condition of the Respondent;
 - (v) The effect of imposing upon the Respondent the penalty set by the TLC;
 - (vi) The impact of a penalty reduction on the safety or welfare of the community;
 - (vii) The impact of a penalty reduction on public confidence in the TLC, the Tribunal, and the implementation of laws by the city;

(viii) The position of the Petitioner regarding the proposed fine reduction with reference to the specific circumstances of the Respondent and the violation charged; and

(ix) Any other relevant fact indicating whether a decision to impose the penalty set by the TLC on the Respondent would serve a useful purpose.

- (2) Upon determining that a penalty should be reduced, the Hearing Officer will set forth in the decision the monetary penalty, if any, to be imposed on the Respondent, the amount of the reduction, and the reasons for such reduction.
- (3) Within twenty (20) business days of receipt of the Hearing Officer's decision, the TLC Chairperson or the Chairperson's designee may, upon determining that such decision is not in the interest of justice, re-impose the full penalty demanded by the TLC or increase the penalty imposed by the Hearing Officer.

**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: Amendment of Procedural Rules for Adjudicating Violations of Taxi and Limousine Commission Rules

REFERENCE NUMBER: 2019 RG 024

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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: April 26, 2019

**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: Amendment of Procedural Rules for Adjudicating Violations of Taxi and Limousine Commission Rules

REFERENCE NUMBER: OATH-ECB-93

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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 but provides respondents with the ability to request an extension of time to complete community service.

/s/ Swetha Saseedhar
Mayor's Office of Operations

April 29th, 2019
Date