

**NEW YORK CITY TAXI AND LIMOUSINE COMMISSION**

**Notice of Final Rulemaking**

Notice is hereby given in accordance with section 1043(b) of the New York City Charter (“Charter”) that the Taxi and Limousine Commission (“TLC”) has amended the provisions of Chapters 2,4, 6 and 9 of Title 35 of the Rules of the City of New York to extend the ban against licensees using a telephone while operating a vehicle to include portable and hands-free electronic devices; clarify the term “use” as it relates to portable and hands-free electronic devices; and requires violators to attend a mandatory driver education course emphasizing the dangers of distracted driving.

These rules are promulgated pursuant to sections 1043 and 2303 of the Charter and section 19-503 of the Administrative Code of the City of New York. The Notice of Rulemaking was published in the City Record on November 16, 2009. A public hearing was held on the proposed rulemaking on December 17, 2009, and the rules were adopted by the TLC on such date.

New material is underlined.

[Material inside brackets indicates deleted material.]

Section 1. Title 35, section 1-36, Marking Specifications for Taxicabs, is amended by adding a subdivision (p) to read as follows:

§1-36 Marking Specifications for Taxicabs.

<u>INSCRIPTION</u>	<u>LOCATION</u>	<u>SIZE</u>
	* * *	
<u>(p) Drivers are not allowed to use cell phones or handheld electronics. Decal or sticker shall be issued by the Commission.</u>	<u>Interior of passenger compartment, plainly visible to passengers.</u>	<u>As issued by the Commission.</u>

Section 2. Title 35, section 2-01, Definitions, by adding a definition for Portable or Hands-Free Electronic Device is amended to read as follows:

§2-01 Definitions.

\* \* \*

**Portable or hands-free electronic device.** A “portable or hands-free electronic device” is any electronic device able to:

1. make a wireless telephone call
2. send or receive a text message
3. allow its user to speak on the telephone hands-free or operate a device by voice command, even when otherwise allowed by New York State law
4. act as a personal assistant (PDA)
5. send and or receive data from the internet or from a wireless network
6. act as a laptop computer or portable computer
7. receive or send pages
8. allow two-way communications between different people or parties
9. play electronic games
10. play music or video; or
11. make or display images; or
12. any combination of the above

This definition is to be liberally construed in light of its purpose to minimize the distraction of drivers, and in recognition of the rapid development of electronic technologies and proliferation of electronic devices that may be made available in the future that similarly transfer digital images, sounds or messages.

“Portable or hands-free electronic device” does not include: (1) any device the use of which while driving is specifically authorized by TLC rules, or (2) the use of a global positioning navigation system (“GPS”) which uses voice functions to convey directions, so long as the driver is not inputting data unless legally standing or parked and the GPS is not capable of being used as a cell phone or other portable or hands-free electronic device.

Section 3. Title 35, section 2-25, subdivision (h), is amended to read as follows:

§2-25 Driver's Shift Responsibilities.

\* \* \*

(h) A driver shall not use a [telephone] portable or hands-free electronic device while operating a taxicab, unless such taxicab shall be lawfully standing or parked. “Use” of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver’s ear.

A driver may offer as an affirmative defense that he or she was using a portable or hands-free electronic device while operating a taxicab for the sole purpose of communicating with an emergency response operator that there exists an imminent threat to life or property, and that it was impossible for the driver to safely stop the vehicle before placing the call. The driver must provide documentary proof that the electronic communication was to an emergency response operator.

Section 4. Title 35 is amended by adding a new section 2-25.1, as follows:

§2-25.1 Additional penalties for use of a portable or hands-free electronic device while operating a taxicab.

(a) For purposes of this section, “portable or hands-free electronic device violation” shall mean a violation of section 2-25(h) of this chapter or a violation of any state law or rule prohibiting or restricting the use of a portable or hands-free electronic device while driving, such violation having been adjudicated by a court or other tribunal having jurisdiction over such violations.

(b) Any taxicab driver who commits a portable or hands-free electronic device violation is required to attend and satisfactorily complete an authorized course of training in the dangers of driving while distracted by portable or hands-free electronic devices. The course shall be a minimum of one hour and shall include a review of the rules governing the use of portable or hands-free devices, and the dangers of driving while distracted. The course must be completed and verification of course completion provided by the designated school within sixty days of TLC’s issuance of a directive to the taxicab driver that he or she is required to take such course.

Section 5. Title 35, section 2-70, subdivision (h), is amended by revising the number of points to be assessed for violation of section 2-25(h), as follows:

§2-70 Program for Persistent Violators of Taxicab Drivers Rules (*effective date, October 15, 1989*).

\* \* \*

(h) The Schedule of Points is as follows:

<u>Rule No.</u>	<u>Points</u>	<u>Reference Description</u>
§2-25(h)	[2]3	Use of [telephone] <u>portable or hands-free electronic device while operating taxicab; first offense or second offense committed within any 15-month period</u>

Use of portable or hands-free electronic device while operating taxicab; third offense committed within any 15-month period

Section 6. Title 35, section 4-01, Definitions, is amended by adding a definition for Portable or Hands-Free Electronic Device to read as follows:

§4-01 Definitions.

\* \* \*

**Portable or hands-free electronic device.** A “portable or hands-free electronic device” is any electronic device able to:

1. make a wireless telephone call
2. send or receive a text message
3. allow its user to speak on the telephone hands-free or operate a device by voice command, even when otherwise allowed by New York State law
4. act as a personal assistant (PDA)
5. send and or receive data from the internet or from a wireless network
6. act as a laptop computer or portable computer
7. receive or send pages
8. allow two-way communications between different people or parties
9. play electronic games
10. play music or video; or
11. make or display images; or
12. any combination of the above

This definition is to be liberally construed in light of its purpose to minimize the distraction of drivers, and in recognition of the rapid development of electronic technologies and proliferation of electronic devices that may be made available in the future that similarly transfer digital images, sounds or messages.

“Portable or hands-free electronic device” does not include: (1) any device the use of which while driving is specifically authorized by TLC rules, or (2) the use of a global positioning navigation system (“GPS”) which uses voice functions to convey directions, so long as the driver is not inputting data unless legally standing or parked and the GPS is not capable of being used as a cell phone or other portable or hands-free electronic device.

Section 7. Title 35, section 4-06, subdivision (z) is amended to read as follows:

§4-06 Paratransit Driver's Responsibility to the Commission.

Penalty

All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.

(z) (1) A driver shall not use a [telephone] portable or hands-free electronic device while operating a paratransit vehicle, unless such paratransit vehicle shall be lawfully standing or parked. “Use” of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver’s ear.

\$200  
Personal Appearance not Required.

A driver may offer as an affirmative defense that he or she was using a portable or hands-free electronic device while operating a paratransit vehicle for the sole purpose of communicating with an emergency response operator that there exists an imminent threat to life or property, and that it was impossible for the driver to safely stop the vehicle before placing the call. The driver must provide documentary proof that the electronic communication was to an emergency response operator.

(2) Additional penalties for use of a portable or hands-free electronic device while operating a paratransit vehicle.  
For purposes of this paragraph (z)(2), “portable or hands-free electronic device violation” shall mean a violation of section 4-06(z)(1) of this chapter or a violation of any state law or rule prohibiting or restricting the use of a portable or hands-free electronic device while driving, such violation having been adjudicated by a court or other tribunal having jurisdiction over such violations.

Any paratransit driver who commits a portable or hands-free electronic device violation is required to attend and satisfactorily complete an authorized course of training in the dangers of driving while distracted by portable or hands-free electronic devices. The course shall be a minimum of one hour and shall include a review of the rules governing the use of portable or hands-free devices, and the dangers of driving while distracted. The course must be completed and verification of course completion provided by the designated school within sixty days of TLC's issuance of a directive to the paratransit driver that he or she is required to take such course.

Section 8. Title 35, section 6-01, Definitions, by adding a definition for Portable or Hands-Free Electronic Device is amended to read as follows:

§6-01 Definitions.

\* \* \*

**Portable or hands-free electronic device.** A “portable or hands-free electronic device” is any electronic device able to:

1. make a wireless telephone call
2. send or receive a text message
3. allow its user to speak on the telephone hands-free or operate a device by voice command, even when otherwise allowed by New York State law
4. act as a personal assistant (PDA)
5. send and or receive data from the internet or from a wireless network
6. act as a laptop computer or portable computer
7. receive or send pages
8. allow two-way communications between different people or parties
9. play electronic games
10. play music or video; or
11. make or display images; or
12. any combination of the above

This definition is to be liberally construed in light of its purpose to minimize the distraction of drivers, and in recognition of the rapid development of electronic technologies and proliferation of electronic devices that may be made available in the future that similarly transfer digital images, sounds or messages.

“Portable or hands-free electronic device” does not include: (1) any device the use of which while driving is specifically authorized by TLC rules, or (2) the use of a global positioning navigation system (“GPS”) which uses voice functions to convey directions, so long as the driver is not inputting data unless legally standing or parked and the GPS is not capable of being used as a cell phone or other portable or hands-free electronic device.

Section 9. Title 35, section 6-16, subdivision (u), is amended to read as follows:

§6-16 Conditions of Operation for For-Hire Vehicle Drivers.

\* \* \*

(u) (1) A driver shall not use a [telephone] portable or hands-free electronic device while operating a for-hire vehicle, unless such for-hire vehicle shall be lawfully standing or parked. “Use” of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver’s ear. “Use” of a portable or hands-free electronic device by a driver does not include a short, solely business-related communication in connection with a dispatch from a base using a FCC-licensed commercial two-way radio or if the electronic device used is mounted in a fixed position in the vehicle and is not hand-held, and if the communication is by voice or by use of one-touch pre-programmed buttons or function keys.

A driver may offer as an affirmative defense that he or she was using a portable or hands-free electronic device while operating a for-hire vehicle for the sole purpose of communicating with an emergency response operator that there exists an imminent threat to life or property, and that it was impossible for the driver to safely stop the vehicle before placing the call. The driver must provide documentary proof that the electronic communication was to an emergency response operator.

(2) Additional penalties for use of a portable or hands-free electronic device while operating a for-hire vehicle.

(i) For purposes of this paragraph (u)(2), “portable or hands-free electronic device violation” shall mean a violation of section 6-16(u)(1) of this chapter or a violation of any state law or rule prohibiting or restricting the use of a portable or hands-free electronic device while driving, such violation having been adjudicated by a court or other tribunal having jurisdiction over such violations.

(ii) Any for hire vehicle driver who commits a portable or hands-free electronic device violation is required to attend and satisfactorily complete an authorized course of training in the dangers of driving while distracted by portable or hands-free electronic devices. The course shall be a minimum of one hour and shall include a review of the rules governing the use of portable or hands-free devices, and the dangers of driving while distracted. The course must be completed and verification of course completion provided by the designated school within sixty days of TLC's issuance of a directive to the for hire vehicle driver that he or she is required to take such course.

Section 10. Title 35, section 6-22, is amended by revising the fine to be assessed for violation of section 6-16(u), as follows:

§6-22 Penalties for Violation of For-Hire Vehicle Rules.

<u>Rule No.</u>	<u>Penalty</u>	<u>Personal Appearance Required</u>
	All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	
§6-16(u)(1)	\$200	No

Section 11. Title 35, section 6-23, is amended by revising the number of points to be assessed for violation of section 6-16(u), as follows:

§6-23 Program for Persistent Violators of For-Hire Vehicle Rules.

\* \* \*

(g) The Schedule of Points is as follows:

<u>Rule No.</u>	<u>Points</u>	<u>Reference Description</u>
§6-16(u)(1)	[2]3	<u>Prohibited use of [telephone]portable or hands-free electronic device; first offense or second offense within any 15-month period</u>

4 Prohibited use of portable or hands-free electronic device; third offense committed within any 15-month period

Section 12. Title 35, section 9-01, Definitions, is amended by adding a definition for Portable or Hands-Free Electronic Device to read as follows:

§9-01 Definitions.

\* \* \*

**Portable or hands-free electronic device.** A “portable or hands-free electronic device” is any electronic device able to:

1. make a wireless telephone call
2. send or receive a text message
3. allow its user to speak on the telephone hands-free or operate a device by voice command, even when otherwise allowed by New York State law
4. act as a personal assistant (PDA)
5. send and or receive data from the internet or from a wireless network
6. act as a laptop computer or portable computer
7. receive or send pages
8. allow two-way communications between different people or parties
9. play electronic games
10. play music or video; or
11. make or display images; or
12. any combination of the above

This definition is to be liberally construed in light of its purpose to minimize the distraction of drivers, and in recognition of the rapid development of electronic technologies and proliferation of electronic devices that may be made available in the future that similarly transfer digital images, sounds or messages.

“Portable or hands-free electronic device” does not include: (1) any device the use of which while driving is specifically authorized by TLC rules, or (2) the use of a global positioning navigation system (“GPS”) which uses voice functions to convey directions, so long as the driver is not inputting data unless legally standing or parked and the GPS is not capable of being used as a cell phone or other portable or hands-free electronic device.

Section 13 Title 35, section 9-10, subdivision (n) is amended, and subdivision (o) is added to read as follows:

§9-10 Conditions of Operation for Commuter Van Drivers.

\* \* \*

(n) (1) A driver shall not use a [telephone] portable or hands-free electronic device while operating a commuter van, unless such commuter van shall be lawfully standing or parked. “Use” of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver’s ear.

A driver may offer as an affirmative defense that he or she was using a portable or hands-free electronic device while operating a commuter van for the sole purpose of communicating with an emergency response operator that there exists an imminent threat to life or property, and that it was impossible for the driver to safely stop the vehicle before placing the call. The driver must provide documentary proof that the electronic communication was to an emergency response operator.

(2) Additional penalties for use of a portable or hands-free electronic device while operating a commuter van.

(i) For purposes of this paragraph (n)(2), “portable or hands-free electronic device violation” shall mean a violation of section 9-10(n)(1) of this chapter or a violation of any state law or rule prohibiting or restricting the use of a portable or hands-free electronic device while driving, such violation having been adjudicated by a court or other tribunal having jurisdiction over such violations.

(ii) Any commuter van driver who commits a portable or hands-free electronic device violation is required to attend and satisfactorily complete an authorized course of training in the dangers of driving while distracted by portable or hands-free electronic devices. The course shall be a minimum of one hour and shall include a review of the rules governing the use of portable or hands-free devices, and the dangers of driving while distracted. The course must be completed and verification of course completion provided by the designated school within sixty days of TLC’s issuance of a directive to the commuter van driver that he or she is required to take such course.

Section 14. Title 35, section 9-17, subdivision (a), is amended by revising the fine to be assessed for violation of section 9-10(n) as follows:

§9-17 Penalties for Violation of Rules Governing Commuter Vans.

(a)

<u>Rule No.</u>	<u>Penalty</u>	<u>Personal Appearance Required</u>
	All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	
§9-10(n)(1)	\$200	No

## **Statement of Basis and Purpose of Proposed Rule**

For more than ten years, Taxi and Limousine Commission rules have prohibited the Commission's licensed drivers from using cell phones while driving. In May, 1999, the Commission was the first regulator in the country to ban hands-free cell phone use while driving. Despite enforcement of those rules, cell phone use remains a significant problem in the for-hire transportation industries. Moreover, the proliferation of both portable electronic devices and hands-free electronic devices in recent years demands that the Commission expand the prohibition beyond cell phones to other electronic devices. This rulemaking prohibits the use of portable or hands-free electronic devices while driving, and clarifies what constitutes use of such a device.

Recent studies have quantified the long-known dangers of driving while distracted by portable or hands-free electronic devices. Just one example is the Virginia Tech Transportation Institute's recently released study demonstrating that texting while driving increases a driver's collision risk 23-fold. In addition, the U.S. Department of Transportation's National Highway Traffic Safety Administration, as well as a study published by University of Utah psychologists, found that hands-free use of cell phones was no safer than handheld use. The studies concluded that the distracting effects of phone conversation are not mitigated by the use of hands-free devices.

This rule makes five changes to existing rules:

- The rule expands the Commission's prohibition of electronic devices from telephones to all portable and hands-free electronic devices.
- The rule expands the definition of "use" from using a telephone to using any of the functions of any portable or hands-free electronic device, or having a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver's ear.
- The rule increases the assessment of persistent violator points against taxicab and for-hire vehicle drivers who use portable or hands-free electronic devices. The base penalty is increased from two to three persistent violator points, which would apply to first and second offenses. For a third offense, the driver would be assessed four points. As a result, even if the driver had no other persistent violator points, the driver's license would be suspended for 30 days after a second violation, and the driver's license would be revoked after a third violation committed within 15 months.
- The rule requires a driver who commits a violation to take a new driver education course emphasizing the dangers of driving while distracted by portable or hands-free electronic devices.

- The rule requires a passenger information decal in taxicabs, highlighting the new restrictions against driver use of portable or hands-free electronic devices.

Following publication of the proposed rule, Commission staff concluded a number of meetings about the proposed rules with a number of industry groups, representing taxicab, livery, black car and luxury limousine businesses. The staff has concluded that, unlike the taxicab, paratransit and commuter van industries, the for-hire industries rely on industries of a requirement that the use of electronic devices must be deferred until the vehicle is standing or parked would substantially impair the operation of those businesses. Furthermore, staff research indicates that short, simple conversations regarding specific issues, such as vehicle dispatch, do not adversely affect the driver's ability to maintain road position (Briem & Hedman, *Behavioral Effects of Mobile Phone Use During Simulated Driving*, 1995; Rakauskas, Gugerty & Ward, *Effects of a Naturalistic Cell Phone Conversations on Driving Performance*, 2004). Other studies have shown that listening to verbal material, by itself, does not interfere with a driver's safe operation of the vehicle (Strayer & Johnston, *Dual-Task Studies of Simulated Driving and Conversing on a Cellular Telephone*, 2001). The scientific literature distinguishes such communications from conversations of greater duration and intensity, which dangerously distract drivers and slow their reaction times, whether the conversation is conducted by handheld or hands-free device.

Some for-hire vehicle bases rely on two-way radios, while others have upgraded to devices that are voice-activated or that use pre-programmed function keys. Based on a review of the scientific literature and the unique business needs of the for-hire vehicle industries, the proposed rule was revised to allow for-hire vehicle drivers to engage in short, solely business-related communications in connection with a dispatch from a base, by means of two-way radios, or by means of a device that is mounted in a fixed position and utilizes one-touch pre-programmed buttons or voice communications.

In addition, in response to a large number of comments regarding the requirement that the engine must be turned off in order to use a portable or electronic device, Commission staff concluded that it is sufficient that the vehicle be lawfully parked or standing. (Of course, laws limiting vehicle idling still apply.) Staff also responded to comments regarding the requirement that a GPS device may only be used if the device does not use video or image functions; the rule now permits GPS devices which use voice functions so long as the device is not being used as a cell phone or other portable or hands-free electronic device. These changes in the rule apply to all industries.

The Commission intends to deploy these rule revisions in combination with enhanced enforcement efforts, to address the continuing problem of driving while distracted by the use of portable or hands-free electronic devices.