

## NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

### Notice of Promulgation Rules

**Notice is hereby given in accordance with section 1043(e) of the Charter of the City of New York (“Charter”) that the Taxi and Limousine Commission (“TLC”) promulgates amendments to rules governing for-hire vehicles to implement new state law workers’ compensation provisions for livery drivers.**

These rules are promulgated pursuant to sections 1043, and 2303(b)(11) of the Charter and section 19-503 of the Administrative Code of the City of New York. These proposed rules were not included in the TLC’s regulatory agenda for Fiscal Year 2010 because the need for such rules was not anticipated at the time the regulatory agenda was published.

A public hearing on these proposed rules was held by the TLC at its offices at 40 Rector Street, 5<sup>th</sup> Floor, New York, New York 10006 on July 15, 2010 at 10:00a.m. and were approved by a vote of the Commission on September 16, 2010. Pursuant to Section 1-43(e)(1)(c) of the Charter, these rules will take effect 30 days following publication in the City Record.

New material is underlined.

[Material inside brackets indicates deleted material.]

**Section 1.** Section 6-01 of Title 35 of the Rules of the City of New York is hereby amended to add, in alphabetical order, definitions for “Independent Base Station,” “Independent Livery Driver,” and “Livery Fund,” to read as follows:

**Independent Base Station.** An independent base station is a base station that is designated as an independent livery base under section 18-c of the New York State Workers’ Compensation Law.

**Independent Livery Driver.** An independent livery driver is the driver of a livery which is affiliated with an independent base station.

**Livery Fund.** The Livery Fund is the independent livery driver benefit fund established under Article 6-G of the New York State Executive Law.

**Section 2.** Section 6-04(c) of Title 35 of the Rules of the City of New York is hereby amended to add a new paragraph (4), to read as follows:

(4) (A)

No license for a base station will be issued to any applicant if a base station license for such applicant was previously revoked for violating the provisions of Article 6-G of the New York State Executive Law.

(B) For purposes of this paragraph, a previously revoked base station license for any applicant shall include any base station license for any entity in which any of applicant’s officers, shareholders controlling the power to vote 10 percent or more of the voting interests, directors, partners, or managing members were also officers, shareholders controlling the power to vote 10 percent or more of the voting interests, directors, partners, or managing members.

(C) The provisions of subparagraph (A) of this paragraph shall apply for a period of five years following revocation and until any monies owed to the Livery Fund by the independent base station whose license was revoked have been paid or the Livery Fund has agreed on a payment plan for such monies.

**Section 3.** Section 6-04(h) of Title 35 of the Rules of the City of New York is hereby amended to add a new paragraph (6), to read to as follows:

(6) The Fund may request that the Chairperson enforce the requirements of this subdivision by filing with the Chairperson a complaint against a black car base or a luxury limousine base, together with sufficient documentation to show a violation of the requirements of this subdivision by such base.

**Section 4.** Section 6-04(i) of the Rules of the City of New York is hereby amended to read as follows:

(i) (1) Every base station [shall comply with all provisions of the New York State Workers' Compensation Law and rules and regulations promulgated thereunder with respect to the provision of coverage and benefits to eligible persons] that is an independent base station must, as a condition of obtaining a license, including a renewal license, provide proof to the Chairperson that it is a member of the Livery Fund. Such proof shall include, but not be limited to, a copy of any sworn affirmation provided by such independent base station to the Workers' Compensation Board as required by section 18-c(2) of the New York State Workers' Compensation Law. It shall also include a copy any certificate of membership or other documentation issued by the Livery Fund.

(2) Every base station that is not an independent base station must, as a condition of obtaining a license, including a renewal license, secure compensation under the New York State Workers' Compensation Law for all drivers of liveries affiliated with and dispatched by the base station, and provide proof to the Chairperson that it has secured such compensation in the form of a current certificate of insurance issued by a provider of workers compensation insurance. Such provider must be licensed by the New York State Insurance Department and must provide to the Commission evidence of such licensure, together with a list of authorized signatories.

**Section 5.** Section 6-07 of Title 35 of the Rules of the City of New York is hereby amended by adding a new subdivision (1), to read as follows:

(1) Workers' Compensation.(1) Each base station must comply with the provisions of Article 6-G of the New York Executive Law.

(2) Each base station that is not an independent base station must secure and maintain compensation under the Workers' Compensation Law for each driver of a vehicle dispatched by the base station .

(3) Independent base stations. (i) Each base station that is an independent base station must maintain membership in the Livery Fund.

(ii) The Chairperson may audit any independent base station as provided in section 18-c(2)(g) of the New York State Workers' Compensation Law.

(iii) An independent base station shall not coerce any driver or vehicle owner into making any false statements or refrain from reporting any violation of Article 6-G of the New York State Executive Law.

(iv) Each independent base station must comply with all of the following obligations, which will be enforced only upon a request made by the Livery Fund or the Workers' Compensation Board, together with sufficient documentation to show a violation of the obligation for which enforcement is sought:

(A) Each independent base station must pay any assessment by the Livery Fund within 30 days of the assessment.

(B) The license of any independent base station which has been suspended or revoked for failure to pay any assessment by the Livery Fund will not be reinstated, and such independent base station can not apply for a new or renewal license, unless the independent base station has either paid all such assessments, interest and penalties imposed by the Livery Fund, or the independent base station has agreed with the Livery Fund on a payment plan.

(C) An independent base station shall not make a materially false statement in the sworn affirmation required by section 18-c(2) of the Workers' Compensation Law.

(D) Any independent base station found to have violated clause (C) of this subparagraph on two separate occasions may not apply for or hold a base station license.

(E) An independent base station shall not make any material misrepresentation regarding the number of for-hire vehicles affiliated with the base station, the number of owners of such vehicles, and/or the number of drivers dispatched by the base station. Material misrepresentation shall include, but not be limited to, any temporary alteration of records to reduce the numbers of vehicles or drivers.

**Section 6.** Section 6-28 of Title 35 of the Rules of the City of New York is hereby amended by amending the penalties for sections 6-04(h)(3) and (4) and by adding new penalties for sections 6-07(l)(1) to (3) to read as follows:

Rule No.	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.	Personal Appearance Required
§ 6-04(h)(3)	\$25 for each day of non-compliance, to a maximum of \$10,000 and either suspension until compliance or base license revocation; <u>together with revocation of</u>	Yes

	<u>Fund membership.</u>	
§ 6-04(h)(4)	\$500-\$5,000 for each twenty days said payment is overdue, and suspension until compliance or revocation, together with restitution to the Fund for any unpaid amount, together with interest at the rate of 12 percent per annum; <u>together with revocation of Fund membership.</u>	Yes
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§ 6-07(1)(2)	<u>\$25 for each day of non-compliance up to \$5,000, and either suspension until compliance or base station revocation.</u>	<u>Yes</u>
§ 6-07(1)(3)(i)	<u>\$25 for each day of non-compliance up to \$5,000, and either suspension until compliance or revocation.</u>	<u>Yes</u>
§ 6-07 (1)(3)(iii)	<u>\$1,000-\$5,000 and/or suspension of base station license and base station membership in Livery Fund for up to two years.</u>	<u>Yes</u>
§ 6-07(1)(3)(iv)(A)	<u>\$500 for each 30 days after notice payment is overdue, plus payment of the overdue amount plus interest on such amount at 12% per annum, together with either suspension until compliance or revocation of license and Livery Fund membership.</u>	<u>Yes</u>
§ 6-07(1)(3)(iv)(C)	<u>\$1,000-\$10,000 and/or revocation for up to five years for first offense and permanent bar to licensure for second.</u>	<u>Yes</u>
§ 6-07(1)(3)(iv)(E)	<u>\$1,000-\$5,000 and/or suspension of base station license and base station</u>	<u>Yes</u>

	<u>membership in Livery Fund for up to two years.</u>	

## **Statement of Basis and Purpose of Rules**

These rules amend chapter 6 of the rules of the Taxi and Limousine Commission (“TLC”) in two respects. Primarily, the rules implement a recently enacted state law, the Workers’ Compensation Law, which provides certain workers’ compensation benefits to livery drivers. Secondly, the rules amend existing TLC rules governing the enforcement of the New York Black Car Operators’ Injury Compensation Fund Law, by correcting a technical omission in those rules.

The Livery Workers’ Compensation Law created the Independent Livery Driver Benefit Fund (the “Livery Fund”), which will act as livery drivers’ employer for purposes of providing workers’ compensation benefits to covered livery drivers.

The Livery Fund, which is funded by assessments on the “independent” bases dispatching covered drivers, provides these drivers with workers’ compensation insurance coverage for statutorily specified injuries, including death, loss of a limb, and injuries resulting from a crime committed against the driver. Coverage for injuries arising from accidents of a less serious nature will not be covered by the Livery Fund but remain compensable through no-fault automobile insurance.

Livery drivers who are not covered by the Livery Fund are those driving for bases not eligible for membership in the Livery Fund. Bases that are ineligible for membership in the Livery Fund must provide workers’ compensation coverage to the drivers they dispatch.

The rules implement the Livery Workers’ Compensation Law by requiring a livery base station to obtain workers’ compensation coverage, either through the Livery Fund or through the base’s own workers’ compensation insurance policy, and to maintain such coverage at all times during its licensure. The rules also implement enforcement procedures provided for by the Livery Workers’ Compensation Law. Penalties for violations include substantial fines and suspension of base license and Livery Fund membership. Enforcement action for not complying with certain Livery Fund requirements regarding payment of assessments and misrepresenting business particulars will be taken only at the request of the Livery Fund or the Workers’ Compensation Board.

In addition, the rules also clarify certain provisions of the TLC’s existing rules regarding the Black Car Fund to provide (as permitted by the law establishing the Black Car Fund) that penalties for a failure by a base required to be a member of the Black Car Fund to collect and remit surcharges to the Black Car Fund can include revocation of membership in the Black Car Fund. The Black Car Fund can request that the TLC bring an

enforcement action to implement those penalties. This rule amends the version of the Commission's rules that will be replaced on January 1, 2011