

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

**Notice of Adoption of Rules Pursuant to the Emergency Procedures
of Section 1043(i)(1) of the New York City Charter**

Pursuant to the emergency procedures of section 1043(i) of the New York City Charter and pursuant to the rulemaking authority granted to the Taxi and Limousine Commission (TLC) in section 2303 of the Charter and section 19-503 of the New York City Administrative Code, the TLC has promulgated the following rules relating to the vehicle specifications for taxicabs. These rules will take effect immediately.

STATEMENT OF BASIS AND PURPOSE OF PROPOSED RULE

These rules amend the Taxi and Limousine Commission's (the TLC's) vehicle specifications for alternative fuel taxicabs (section 67-05) and unrestricted taxicabs (section 67-05.1), but do not amend the vehicle specifications for accessible taxicabs (section 67-05.2). Alternative fuel taxicabs can be used with alternative fuel medallions and unrestricted medallions; accessible taxicabs can be used with accessible medallions and unrestricted medallions; and unrestricted taxicabs can be used only with unrestricted medallions.

For some years, the only commercially available vehicle model that has complied with the taxicab vehicle specifications in section 67-05.1 of the TLC's rules has been the Ford Crown Victoria. The Ford Motor Company has announced its intention to discontinue production of the Crown Victoria after the 2011 model year. After that, no commercially available vehicle model will comply with the vehicle specifications of section 67-05.1. In addition, the courts have ruled that the TLC cannot rely on its approval of alternative fuel vehicles and accessible vehicles to meet the needs of owners of unrestricted medallions. *See Metropolitan Taxicab Board of Trade v. City of New York*, 633 F.Supp.2d 83 (S.D.N.Y. 2009), *aff'd*, 615 F.3d 152 (2d Cir. 2010), *cert. denied*, 79 U.S.L.W. 3493 (Feb. 28, 2011). Revisions to the standard taxicab vehicle specifications are therefore necessary.

After the Crown Victoria, the most used taxicabs in the New York City fleet are the taxicab models that have been hacked-up pursuant to section 67-05 of the TLC's rules. The first of these taxicabs came into service in 2005, and there are now about 4,600 such taxicabs on the road. Cumulatively, these vehicles have traveled about 400,000,000 miles in taxicab service and have carried about 100,000,000 passengers. These vehicles have proved to be safe, reliable and comfortable taxicabs, equal to the rigors of "24/7" New York City taxicab service.

It has come to the TLC's attention that six of the vehicle models that are listed on the TLC's Web site as approved taxicab vehicles under section 67-05 of the TLC's rules do not comply with the vehicle specifications in section 67-05. Those vehicles are:

Honda Civic
Lexus HS250H
Lexus RX450H
Nissan Altima
Toyota Highlander
Volkswagen Jetta

The Honda Civic has an interior volume of 101.3 cubic feet. The TLC's specifications require a minimum of 101.5 cubic feet. The Civic did not meet the interior volume specification from the promulgation of the existing specifications in 2005, but was allowed to be hacked-up due to a miscalculation of the interior volume by the TLC staff. Only two Civics were ever hacked-up, and none remain in service.

The Lexus RX450H substantially exceeds the maximum horsepower in the TLC's specifications – 295 horsepower versus a maximum in the rules of 268 horsepower. The Lexus

RX450H was erroneously listed on the TLC's Web site as an "approved" taxicab vehicle after the Lexus RX400H was discontinued. Only two Lexus RX450H vehicles have ever been hacked up.

The Lexus HS250H was also erroneously listed on the TLC's Web site as an "approved" taxicab after the Lexus RX400H was discontinued. The HS250H has a rear compartment headroom measurement of 36.8 inches, whereas the TLC's specifications require a minimum measurement of 37.1 inches. In addition, the HS250H has a rear compartment legroom measurement of 34.5 inches, one-tenth of an inch short of the TLC's specifications. No Lexus HS250H vehicles have been hacked up.

The Nissan Altima has a rear compartment headroom measurement of 36.8 inches, whereas the TLC's specifications require a minimum measurement of 37.1 inches. The Altima did not comply with the TLC's specifications from its introduction in 2007, and therefore allowing the Altima to be hacked-up was an error on the part of TLC staff.

The Toyota Highlander has 280 horsepower, more than the maximum of 268 permitted by the TLC's specifications. The Highlander originally complied with the TLC's specifications, at 268 horsepower, but beginning in the 2008 model year the horsepower measurement went to 270, and in the 2011 model year the measurement went to 280, and those increases were not detected by the TLC.

The Volkswagen Jetta is four-tenths of an inch short in its front compartment legroom measurement (41.2 inches versus 41.6); one-half inch short in its front compartment headroom measurement (37.0 inches versus 37.5); and one-tenth of an inch short in its rear compartment headroom measurement (37.0 inches versus 37.1). As to front and rear headroom, the Jetta was in compliance with the TLC specifications through the 2010 model year, but not in the 2011 model year. It appears that the Jetta has never complied with the front legroom requirement, and therefore allowing the Jetta to be hacked-up was an error on the part of TLC staff.

The Altima, the Highlander and the Jetta are out of compliance with TLC's vehicle specifications by small margins, and all three models have proved to be safe, reliable and comfortable taxicab vehicles. Therefore, this rule revises the vehicle specifications to allow these three vehicle models to continue in taxicab service: reducing the front legroom requirement by four-tenths of an inch and the rear headroom requirement by three-tenths of an inch, and increasing the maximum horsepower by 12. Also, this rule clarifies that for a hybrid-electric vehicle, the horsepower measurement is determined by the total output of the electric motor and the gasoline engine as specified by the manufacturer.

However, the Lexus RX450H is substantially out of range of the TLC's specifications, and therefore the specifications are not revised to accommodate that vehicle model. The Honda Civic is out of compliance with the total interior volume requirement by a very small amount. However, the Civic has not been accepted as a taxicab, and therefore the TLC is not changing the total interior volume requirement to accommodate the Civic, thereby eliminating it from the pool of taxicab-eligible vehicles. Similarly, although the Lexus HS250H is out of compliance with two of the TLC's specifications by extremely small margins, one of those specifications is rear

legroom, and the TLC is not willing to reduce the minimum requirement for rear compartment legroom.

In addition to these vehicle models, four recently introduced vehicle models comply with the vehicle specifications of section 67-05: the Ford Fusion, the Hyundai Sonata, the Lincoln MKZ, and the Volkswagen Golf 2.5L TDI four-door. Although these models have not yet seen New York City taxicab service, they comply with the vehicle specifications of section 67-05 and therefore are permitted as-of-right to be used as taxicabs.

Also, this rule clarifies that the term “passenger compartment interior volume index” has the same meaning as the term “interior volume index” and therefore includes trunk space or other luggage space as provided by the relevant federal regulation (40 CFR 600.315-82(b)(2)). This has been the TLC’s understanding, but this clarification eliminates any ambiguity about the point.

Based on these revised specifications, the TLC’s understanding is that the following 2011 model year vehicles comply with these revised specifications in section 67-05:

- Ford Escape
- Ford Fusion
- Hyundai Sonata
- Lincoln MKZ
- Nissan Altima
- Toyota Camry
- Toyota Highlander
- Toyota Prius
- Volkswagen Golf
- Volkswagen Jetta

In addition, four “premium” clean diesel vehicles comply with the specifications in section 67-05, and therefore are permitted as of right: the Audi Q7 3l TDI, Volkswagen Touareg TDI, Mercedes Benz E350 Bluetec, and Mercedes Benz ML350 Bluetec. However, given the pricing of those vehicles, the TLC does not anticipate that any of those models will be put into taxi service in significant numbers.

Similarly, although the Crown Victoria originally complied with the vehicle specifications in section 67-05.1, small changes to successive models over the years increased the Crown Victoria’s horsepower over the specified maximum. The discrepancy is minor (224 horsepower versus 220). Therefore, that specification is revised to accommodate that change.

Vehicles that were hacked-up pursuant to either section 67-05 or section 67-05.1, that did not meet the specifications as described above, but would meet the specifications as modified by this rule, will be permitted to remain in taxicab service. Going forward, the TLC emphasizes that the specifications in the TLC’s rules are controlling, and that listings of “approved” vehicle models, on the TLC Web site or elsewhere, are compiled purely for informational purposes. Those listings do not supersede the TLC’s rules.

Anticipating that the Crown Victoria will very shortly become unavailable, the TLC proposes to replace it with the gasoline-powered equivalent models of taxicabs that can be hacked-up pursuant to section 67-05.1. This change will assure that gasoline-powered vehicle options will be widely available after the Crown Victoria. Also, if the 2011 model of a gasoline-powered vehicle qualifies for hack-up under these revised rules, the 2012 and 2013 models will be permitted to be hacked-up, even if the model qualifying for hack-up under section 67-05 is discontinued. This is intended to help with the taxicab industry's planning, by minimizing changes in the vehicle models that comply with TLC's specifications during the interim time period between the end of production of the Crown Victoria and the introduction of the Taxi of Tomorrow.

The TLC's understanding is that the following 2011 model year gasoline-powered vehicles comply with these revised specifications in section 67-05.1:

- Ford Escape
- Ford Fusion
- Hyundai Sonata
- Lincoln MKZ
- Nissan Altima
- Toyota Camry
- Toyota Highlander
- Volkswagen Golf
- Volkswagen Jetta

In addition, four "premium" gasoline-powered equivalents of clean diesel vehicles comply with the specifications in section 67-05.1, and therefore are permitted as of right: the Audi Q7 3.0I T, Volkswagen Touareg 3.0L FSI, Mercedes Benz E350, and Mercedes Benz ML350. However, given the pricing of those vehicles, the TLC does not anticipate that any of those models will be put into taxi service in significant numbers.

Finally, section 67-05(a)(2) is deleted. That provision authorized a minivan model that otherwise met the specifications of section 67-05 to serve as a taxicab. However, six years after approval of the rule, there are no commercially available hybrid or clean diesel minivans. After the effective date of this rule, only sedans and sport utility vehicles will be permitted to be hacked-up pursuant to section 67-05 and 67-05.1.

The TLC has historically approved vehicle specifications, not vehicle models. Those specifications rely in part on the Environmental Protection Agency's "interior volume index" and the Society of Automotive Engineers' definitions of front and rear compartment dimensions. (The SAE definitions are in Standard J1100, last revised on November 20, 2009.)

The foregoing discussion amply illustrates the shortcomings of the "specifications" approach. It must be noted that, although the taxicab specifications in section 67-05 of the TLC's rules were proposed and promulgated in 2005, were amended in 2007, and were recodified in 2010 as part of the TLC's comprehensive rules revision, it was not until March 2011 that it was brought to the TLC's attention that any existing taxicab might not comply with the vehicle specifications in section 67-05.

The most obvious alternative to vehicle specifications would be competitive selection of taxicab vehicle models. The TLC's Taxi of Tomorrow project embodies that approach. The TLC is aware that some taxicab industry interests have advocated the immediate approval of the Ford Transit Connect. The TLC believes that approval of one of the Taxi of Tomorrow competitors, while the competition is continuing, is inappropriate. Until the Taxi of Tomorrow competition is completed and the Taxi of Tomorrow vehicle becomes available for purchase by medallion owners, the TLC intends to adhere to its traditional practice of approving specifications, not vehicle models.

Section 1. Section 67-05 of chapter 67 of title 35 of the Rules of the City of New York is amended by deleting paragraph (2) of subdivision (a) and renumbering paragraph (3) to as (2).

Section 2. Subdivisions (b), (c) and (d) of section 67-05 of chapter 67 of title 35 of the Rules of the City of New York are amended to read as follows:

(b) *Interior Size.* The vehicle must have an EPA passenger compartment interior volume index of at least 101.5 cubic feet. The passenger compartment interior volume index is calculated as described in 40 CFR § 600.315-82(b)(2), and includes luggage capacity.

(c) *Rear Compartment.* The rear compartment of any vehicle approved for use as a Taxicab Model must meet the following dimensions as defined by the Society of Automotive Engineers:

(1) Effective legroom (L51) must be at least 34.6 inches

(2) Effective headroom (H63) must be at least [37.1] 36.8 inches

(3) Seat depth (L16) must be at least 18 inches

(d) *Front Compartment.* The front compartment of any vehicle approved for use as a Taxicab Model must meet the following dimensions:

(1) Effective headroom (H61) must be at least [37.5] 37.0 inches

(2) Effective legroom (L34) must be at least [41.6] 41.2 inches

(3) Total legroom (the sum of L34 and L51) must be at least 76.2 inches

Section 3. Subdivision (f) of section 67-05 of chapter 67 of title 35 of the Rules of the City of New York is amended to read as follows:

(f) *Engine Size.* The vehicle may not be equipped with an engine in which the maximum horsepower exceeds [268] 280. The horsepower of a hybrid-electric vehicle is determined by combining the electric power and the internal combustion power of the vehicle's engine.

Section 4. Subdivision (g) of section 67-05.1 of title 35 of the Rules of the City of New York is amended to read as follows:

(g) *Engine Size.* The vehicle may not be equipped with an engine in which the maximum horsepower exceeds [220] 224.

Section 5. Section 67-05.1 of chapter 67 of title 35 of the Rules of the City of New York is amended by adding a new subdivision (j) to read as follows:

(j) *Alternative specifications.* If a Taxicab Model that complies with the specifications in §67-05 is also commercially available as a vehicle model powered solely by gasoline, a vehicle of the gasoline-powered model may be hacked-up for use as a Taxicab with an Unrestricted Medallion even if the vehicle does not comply with the vehicle specifications in this section. If a 2011 vehicle model can be hacked-up under this subdivision (i), then subsequent model years of the same vehicle can also be hacked-up under this subdivision (i), even if the vehicle model that complies with the specifications in §67-05 is discontinued.

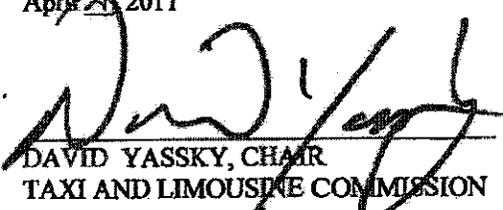
Finding Pursuant to New York City Charter Section 1043(i)(1)

For some years, the only commercially available vehicle model that has complied with the taxicab vehicle specifications in section 67-05.1 of the Taxi and Limousine Commission's (the TLC's) rules has been the Ford Crown Victoria. The Ford Motor Company has announced its intention to discontinue production of the Crown Victoria after the 2011 model year. The TLC's understanding is that Ford is no longer accepting orders for manufacture of additional Crown Victoria vehicles, and that production of the Crown Victoria will end during August 2011. Although Ford dealers that sell the Crown Victoria to the New York City taxicab market have advised the TLC that they have some vehicles on hand, with additional vehicles scheduled for delivery in June and thereafter, the TLC has no way to determine how many of those vehicles have been ordered by medallion owners who may be planning well into the future, and how many will be available for purchase by other medallion owners to meet more immediate needs. In addition, the courts have ruled that the TLC cannot rely on its approval of alternative fuel vehicles and accessible vehicles to meet the needs of owners of unrestricted medallions. *See Metropolitan Taxicab Board of Trade v. City of New York*, 633 F.Supp.2d 83 (S.D.N.Y. 2009), *aff'd*, 615 F.3d 152 (2d Cir. 2010), *cert. denied*, 79 U.S.L.W. 3493 (Feb. 28, 2011). Therefore, in order to maintain a sufficient supply of vehicles for owners of unrestricted medallions in the coming months, it is necessary to act by emergency rulemaking.

Pursuant to section 1043(i)(2) of the Charter, the emergency rule will remain in effect for not more than 120 days while the TLC considers a permanent rule. During that time, the TLC will continue discussions with representatives of the taxicab industry about the permanent rulemaking.

Therefore, I find that the immediate effectiveness of this rule is necessary to address an imminent threat to taxicab service in New York City.

April 21, 2011


DAVID YASSKY, CHAIR
TAXI AND LIMOUSINE COMMISSION

APPROVED:


MICHAEL R. BLOOMBERG
MAYOR