

**NEW YORK CITY TRANSIT AUTHORITY
TRANSIT ADJUDICATION BUREAU**



**GUIDELINES GOVERNING PROCEEDINGS
BEFORE THE
TRANSIT ADJUDICATION BUREAU**



**Adopted Pursuant to Section 1209-a
of the
Public Authorities Law of the State of New York**

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE NUMBER</u>
PART I - GENERAL GUIDELINES	1
PART II - PRE-HEARING PROCEDURES	4
PART III - HEARINGS	10
PART IV - FINES AND PENALTIES	22

PART I - GENERAL GUIDELINES

1.1 Scope of Guidelines - These Guidelines govern proceedings before the Transit Adjudication Bureau ("TAB") of the New York City Transit Authority and the Manhattan and Bronx Surface Transit Operating Authority in accordance with Public Authorities Law (PAL) Section 1209-a (4)(d). These Guidelines are subject to periodic revision.

1.2 TAB Policy - It is the policy of TAB that, to the extent practicable and consistent with the requirements of law, such proceedings shall be conducted expeditiously. In the conduct of such proceedings, the hearing officers, the parties, their representatives, and their counsel are under an affirmative obligation to avoid unnecessary delay.

1.3 Definitions - The following terms shall have the meanings specified.

(a) "Authority" means collectively the New York City Transit Authority and its subsidiary Manhattan and Bronx Surface Transit Operating Authority, public benefit corporations of the State of New York.

(b) "TAB" means the Transit Adjudication Bureau.

(c) "President" means the President of the New York City Transit Authority.

(d) "Executive Director" means the executive director of the Transit Adjudication Bureau.

(e) "Legal Director" means the legal director of the Transit Adjudication Bureau.

(f) "Hearing Officer" means a person designated by the President as a hearing officer.

(g) "Transit Infraction" means any violation of the Rules Governing the Conduct and Safety of the Public in the Use of the Facilities of the Authority, 21 NYCRR Section 1050 et seq.

(h) "Issuing Authority" means a person authorized by the President, or any law, to issue a TAB Notice of Violation and Hearing.

(i) "Party" as used herein shall mean the Transit Authority and any person in any TAB proceeding, including the named respondent.

(j) "Person" means any individual.

(k) "Respondent" means any person, sixteen years of age or older, charged with a transit infraction.

(l) "Fine" means the civil penalty imposed by TAB upon a respondent found guilty or admitting the commission of a transit infraction.

(m) "Default penalties" means additional penalties, not to exceed a total of fifty dollars for each transit infraction, imposed upon any respondent as a result of his/her failure to make a timely response or appearance, or to make timely payment of a fine in connection with a Notice of Violation and Hearing in which a transit infraction is charged, or to any subsequent notice or order issued by TAB in connection with such proceeding.

(n) "NOV" means a Notice of Violation and Hearing.

1.4 Filing of Documents with the TAB - All documents permitted or required to be filed in a matter pending before TAB shall be filed at the office of the Transit Adjudication Bureau, 29 Gallatin Place, Brooklyn, New York 11201. Where the filing is made by mail, such filing is not complete until received by TAB.

1.5 Form of Documents

(a) All documents must contain a caption setting forth the name of the respondent and the NOV number.

(b) All documents should be typewritten or written legibly in ink on white paper measuring 8 1/2 x 11 inches. All copies reproduced on copying machines should be legible black on white copies. All documents containing more than one page should be securely fastened on the left side or in the upper left hand corner.

(c) All documents filed with TAB must be signed by the party, his/her attorney, or other duly authorized representative. The signature of an attorney constitutes certification by him/her that s/he has read the document; that to the best of his/her knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed, or is signed with intent to defeat the purpose of this Part, it may be stricken as a sham and false, and the action may proceed as though it had not been filed.

(d) All documents other than NOVs (provision for which is made in Part 2.1 below) served on the other party shall be accompanied by an affidavit of service which will be filed with TAB. Such affidavit shall recite the date and manner of service as to each party and be executed by the serving party.

1.6 Computation of Time - Unless otherwise specified, computation of any period of time prescribed in these Guidelines, or any ordinance administered by TAB, shall begin with the calendar day on which the act, event, or development initiating such period of time occurs, and shall run until the end of the last calendar day in said period, or the next following business day if the last day falls on a Saturday, Sunday, or legal holiday. Where the period of time is two days or less, Saturdays, Sundays and legal holidays shall be excluded from the reckoning if they are intervening days between the day from which the reckoning

is made and the last day of the period. Service of any document by TAB which is mailed to an opposing party shall be deemed to be complete when mailed.

1.7 Appearances - An individual may appear on his/her own behalf, or by a duly authorized representative, including, but not limited to, a parent of a minor between 16-18 years of age or by an attorney at law licensed to practice law in the State of New York.

1.8 Public Information

(a) The Executive Director shall provide for the maintenance of files containing all information, documents, evidence, transcripts, and other items submitted to or produced during the course of a hearing, appeal, or review of a request to stay entry of/vacate default judgment. All such files shall be maintained for a period of not less than four months from the date that all administrative remedies have been exhausted, and in accordance with TAB's established file retention program.

(b) Section 1209-a (4)(f) deems TAB records as exempt from disclosure under the Freedom of Information Law as records compiled for law enforcement purposes. Any request for disclosure of non-exempt information from files maintained by TAB must be made in accordance with Part 1001.3 of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

PART II - PRE-HEARING PROCEDURES

2.1 Notice of Violation and Hearing - All administrative proceedings shall be commenced by the issuance of a Notice of Violation and Hearing (hereinafter NOV). The NOV shall contain a reference to the statute, the particular section of the statute if possible, a general statement of the violation alleged, the date, time and place of occurrence, a statement that interpreter services shall be made available, including but not limited to deaf persons, at no charge, and shall be served by personal service made within the state upon the respondent. The NOV may record information which will facilitate the identification and location of respondents, including but not limited to name, address, telephone number, date of birth, place of employment or school, name of parent or guardian if the respondent is under the age of 18, and social security number, if otherwise permitted by law. A copy of each NOV served hereunder shall be filed with and retained by TAB and shall be deemed a record kept by TAB in the ordinary course of its business. A reproduction of the original NOV filed with TAB may be used at the hearing in lieu of the copy from which it was made. If the NOV is sworn to or affirmed, such record shall be prima facie evidence of the facts contained therein. The NOV, or such other form for giving notice as adopted by TAB's Executive Director, shall advise the respondent of the manner and the time within which s/he may either admit or deny the violation charged. Further, such notification shall also advise the respondent that failure to plead in the prescribed manner and by the time stated on the notice, or on any subsequent rescheduled or adjourned date, will be deemed an admission of the violation charged and may lead to a default judgment and subject the respondent to the maximum penalties provided by law. Each NOV filed with TAB shall contain proof of service upon

the respondent together with the manner and date upon which service was made.

2.2 Response to Notice of Violation - A respondent who is served with a NOV may either pay the fine stated or deny the violation charged and request a hearing.

(a) Payment of the Fine Prior to the Hearing - A respondent may pay the fine specified on the NOV either in person or by mail on or before the scheduled hearing date.

(i) In Person - Respondent may pay the fine in person at TAB, on any business day, during TAB's normal business hours, on or before the hearing date. If payment is made in person, it must be by check, money order, or cash. If the respondent is late in making payment, s/he may still pay the fine in person together with the applicable default penalties.

(ii) By Mail - Respondent may pay the fine prior to or on the designated hearing date, as shown on the front of the NOV, by sending a check or money order payable to the "Transit Adjudication Bureau" in the amount of the fine specified on the face of the NOV. The respondent must write the nine digit NOV number on the check or money order. (TAB will not accept responsibility for cash.) Payment by mail must be sent to the address specified on the back of the NOV. Payment of the fine in this manner must be received by TAB prior to or on the designated hearing date. If the payment is made after the designated hearing date, as shown on the front of the NOV, default penalties will be imposed in accordance with Part 4.2 below. If the respondent is late in making

payment, s/he may still mail in the fine together with the applicable default penalties.

(iii) If the respondent fails to designate which NOV the payment should be applied to, TAB will apply the payment to any NOV that may be outstanding in its discretion.

(iv) If the respondent pays the fine by check, and payment is denied due to insufficient funds, it will be deemed a failure to pay in a timely manner and penalties may be incurred.

(b) Denying the Violation - A respondent who wishes to deny the violation charged in the NOV may do so in any of three ways: (i) appearing in person at TAB on or before the hearing date specified in the NOV; (ii) denying the violation charged and requesting an alternate hearing date in person, by mail, or by telephone; (iii) denying the violation and requesting to adjudicate by mail.

(i) Denying the Violation By Personal Appearance At TAB - A respondent may deny the violation by appearing in person at TAB's office on any business day on or before the designated hearing date, as shown on the front of the NOV, between 8:30 A.M. and 2:30 P.M., in order to request a hearing. A respondent who elects this option should, at that time, be ready to proceed with the hearing. However, even if the respondent does appear at TAB during the designated hours, it is not a guarantee that TAB will be able to accommodate the respondent and hear the case.

(ii) Denying the Violation and Requesting Alternate Hearing Date in Person, By Mail, or By Telephone - A respondent may request an alternate hearing date in person, by mail, or by calling the telephone number indicated on the NOV. Such request must be received by TAB prior to the designated hearing date as shown

on the front of the NOV. The respondent will receive notification by certified mail of the date by which s/he must appear on or before for the hearing.

(iii) Denying the Violation and Requesting To Adjudicate By Mail - A respondent may deny the violation by checking the appropriate box on the back of the NOV, completing the plea form at the bottom of the back of the NOV, and mailing the NOV to the address indicated on it. Such request must be received by TAB no later than the designated hearing date as shown on the front of the NOV. The respondent must also forward with the NOV a written statement of facts, sworn to before a Notary Public, together with all evidence which s/he wishes to have considered in his/her defense. By adjudicating an NOV by mail, respondent waives his/her right to an in-person hearing. However, if the hearing officer finds that good cause exists to require that the respondent appear for an in-person hearing, the hearing officer may adjourn the matter and order the respondent to personally appear at TAB.

2.3 Motions - All motions shall be made at the hearing.

2.4 Consolidation and Severance of NOVs - In the interest of the convenient, expeditious, and complete determination of the violation charged in the NOV, the Executive or the Legal Director, or his/ her designee, or the hearing officer, may consolidate or sever hearings or reviews of requests to stay entry of/vacate default judgments involving the same or different respondents, provided that no party is thereby unduly prejudiced.

2.5 Applications to Adjourn Hearings - An application for an adjournment made subsequent to the commencement of the hearing may be granted by the hearing officer upon a finding of good cause.

2.6 Failure to plead to or appear in response to a NOV - Failure of respondent to plead to or appear on or by the designated hearing date, or any subsequent adjourned date, shall be deemed for all purposes an admission of liability. In such cases a default judgment may be rendered and a fine and additional default penalties, as provided by Part 4.2 below, may be imposed.

2.7 Application for Issuance of Subpoena

(a) General - An application for a subpoena shall be made at the time a respondent appears before a hearing officer.

(b) Determination of Application - In determining an application for a subpoena, the hearing officer shall consider the good cause and need therefore balanced against the burden and inconvenience to the person(s) to whom the subpoena is directed.

2.8 Discovery - There shall be no discovery proceedings. If a respondent seeks to obtain documentary records from the Authority, s/he may request the hearing officer to order the Authority to produce the records.

2.9 Amendment of the NOV and Respondent's Answer - Whenever the determination of a controversy on the merits will thereby be facilitated, the hearing officer may, upon such terms as are necessary to avoid injustice or unfair surprise to a party, allow appropriate amendments to the NOV and/or respondent's answer (if written). Notwithstanding the foregoing, no amendment

shall be permitted which would increase the amount of the fine which respondent may have to pay, as compared with the amount of the fine originally written on the NOV.

PART III - HEARINGS

3.1 General Guidelines

(a) **Expediency** - Consistent with TAB policy, all hearings shall continue without suspension until concluded. However, upon a finding of good cause, brief adjournments will be permitted.

(b) **Notice of Hearing or Rescheduled Hearing Date** - Notice of the hearing date, or rescheduled hearing date, and location shall be given to all parties in a timely fashion prior to the hearing or rescheduled hearing date. It shall be given either in the NOV or in a notice which the bureau shall deliver either personally or by certified mail. Such notice shall contain a warning regarding the consequences of failing to appear on or by the designated date or on any subsequent rescheduled or adjourn date. If the Notice of Hearing or subsequent notices are sent by certified mail, they will be sent to the last known address provided by the respondent, and it is the responsibility of the respondent to respond to delivery notices from the United States Postal Service to pick up the certified mail. Any failure to do so by the respondent will not be considered good cause for the failure to respond to the Notice of Hearing or subsequent notices in a timely manner.

(c) **Rights of Parties** - Both parties shall have the right of due notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing and consistent with the requisites of due

process. However, the hearing officer shall have the authority to limit the introduction of irrelevant evidence.

(d) Order of Hearing - The following shall be the order of all hearings:

(i) Identification by hearing officer, for the record, of his/her name, date, and NOV number.

(ii) The hearing officer will read into the record the essential details contained on the NOV which describe the alleged transit infraction including:

(1) The name and address of the respondent as stated on the NOV;

(2) The date and time of the alleged transit infraction;

(3) The location where the alleged transit infraction occurred;

(4) The specific statute and section which respondent is alleged to have violated;

(5) The written description of the alleged transit infraction;

(6) Name and I.D. number of the issuing officer.

(7) A determination as to whether the NOV is legally sufficient to establish a prima facie case.

(iii) Identification for the record of parties and representatives in the hearing room and swearing in of respondent.

(iv) Recitation by hearing officer of fundamental rights essential to a fair hearing which shall include:

(1) Right of the respondent to have a hearing.

(2) Right of respondent to be represented by an attorney or a representative at the hearing. (Where respondent appears by an attorney this need not be stated.) The hearing officer should obtain

any unrepresented respondent's oral waiver of this right before proceeding with the hearing.

(3) Right of respondent to cross-examine the issuing officer. If respondent elects to exercise this right, assuming a valid offer of proof has been made, the hearing will be adjourned to a date when the issuing officer can be present. If respondent waives such right of cross-examination, the hearing may proceed immediately. However, if the hearing officer determines that the issuing officer's testimony is necessary for a determination to be made on the merits, the matter may be adjourned for TAB to produce the issuing officer over the respondent's objection. In the event that a hearing is adjourned for TAB to produce the issuing officer, the respondent will be provided with a notice of his/her responsibilities and the consequences of failing to appear in a timely manner for the issuing officer to testify.

(4) Right to produce documents and witnesses in support of the defense.

(5) Right of both parties to appeal the decision.

(v) Presentation and argument of pre-hearing motions.

(vi) Petitioner's case in chief.

(1) If the issuing officer is not present, the hearing officer need not make an additional statement as the NOV has been included in the record.

(2) Where the issuing officer is present at the hearing, the hearing officer will ask the issuing officer to provide testimony concerning the issuance of the NOV, which will be followed by

cross-examination by the respondent, or the respondent's attorney or representative.

(3) Where the issuing officer is present and expresses no independent recollection of the incident:

(a) The issuing officer will be shown the NOV and given an opportunity to refresh his/her recollection.

(b) The issuing officer will be examined by the hearing officer, which will be followed by cross-examination by the respondent or the respondent's representative.

(c) If the issuing officer's recollection is not refreshed after being shown the NOV, the hearing officer will elicit information to establish whether the NOV was a business record, and if so, will deem it into evidence as a business record of the Authority.

(vii) Presentation of any additional witnesses or documents in support of petitioner's case.

(viii) Respondent's case in chief.

(ix) Presentation of any witnesses in support of respondent's defense.

(x) Petitioner's case in rebuttal.

(xi) Reservation of decision by hearing officer.

(g) All Testimony to be Sworn or Affirmed - All persons giving testimony as witnesses at a hearing must be placed under oath or affirmation.

(h) Rules of Evidence - The Hearing Officer shall not be bound by the rules of evidence in the conduct of the hearing, except to those rules relating to privileged communications.

3.2. Hearing Officers

(a) Who Presides - A hearing officer, appointed by the President of the Authority, shall preside over all TAB hearings. Every hearing officer is admitted to the practice of law in the courts of the State of New York for a minimum of three years, is in good standing, and is compensated on a per diem basis.

(b) Powers and Duties - Hearing officers shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. They shall have all powers necessary to these ends including, without limitation, the following:

- (1) To issue subpoenas and to rule upon objections to subpoenas;
- (2) To rule upon offers of proof and to receive evidence;
- (3) To regulate the course of the hearing and the conduct of the parties and their counsel therein;
- (4) To consider and rule upon, as justice may require, all motions;
- (5) To examine witnesses;
- (6) To make a full record of the proceedings;
- (7) To issue written decisions and orders.

(c) Suspension of Attorneys - The hearing officer shall have the authority, for good cause shown and stated on the record, to suspend or bar from participation in a particular proceeding any attorney, or other person authorized to appear under Part 1.8 above, who shall refuse to comply with the hearing officer's directives or who shall engage in disorderly, dilatory, obstructive or contumacious conduct, or who uses contemptuous language in the course of such proceeding.

(d) Independence of Hearing Officers - In the performance of their adjudicative functions, hearing officers shall not be subject to the directives of the

Authority, except as is consistent with the Authority's power to make rules and interpret them and to establish guidelines governing proceedings before TAB.

(e) Disqualification of Hearing Officer - When a hearing officer deems him/her/herself disqualified to preside in a particular proceeding, whether upon his/her own motion or that of a party, s/he shall withdraw from the proceeding by notice on the record and notification of such withdrawal to TAB's Executive or Legal Director or his/her designee. Grounds for disqualification of a hearing officer includes, but is not limited to, a personal or fiduciary relationship with a party, any other conflict of interest, or any circumstance which renders the hearing officer unable to make an impartial determination. Upon the Executive or Legal Director's acceptance of that withdrawal, the case shall then be assigned to a different hearing officer.

3.3 Evidence

(a) Burden of Proof - The petitioner shall have the burden of proof of establishing, by clear and convincing evidence, that the respondent has committed or caused the commission of the transit infraction charged in the NOV. The respondent, however, shall have the burden of establishing, by a fair preponderance of the credible evidence, any affirmative defenses which s/he raises.

(b) Admissibility - As stated above, the hearing officer shall not be bound by the rules of evidence. Relevant, material, and reliable evidence shall be admitted without regard to the technical or formal rules of evidence controlling in the courts of the State of New York (except those pertaining to privileged communications).

(c) Official Notice - Official notice may be taken of all Transit Authority rules, TAB procedures, and all facts of which judicial notice may be taken. The

opportunity to disprove such noticed fact shall be granted to any party who makes such a motion in a timely fashion.

(d) Objections - Objections to evidence must be timely stated. Rulings on all objections shall appear on the record.

(e) Exhibits - All exhibits entered into evidence shall be identified at the time the exhibit is first offered. The hearing officer shall mark his/her initials, the hearing date, the NOV number, and the exhibit number on the original or copy of each exhibit. Petitioner's exhibits shall be marked numerically, beginning with the number "1" and continuing in sequence thereafter. Respondent's exhibits shall be marked with letters, beginning with "A" and continuing in sequence thereafter. Any exhibit introduced as a hearing officer exhibit shall be marked "HO (number)" and continuing numerically in sequence thereafter. TAB will accept relevant documents, photographs, and video evidence. All photographs must be printed and all video evidence must be downloaded onto a DVD and formatted to be viewable on a DVD player prior to submission.

3.4 Record

(a) General - The record shall include: (i) the NOV and respondent's answer; (ii) all other notices, correspondence, Orders of Adjournment, and the Notice of Decision and Order; (iii) all exhibits marked in evidence; and (iv) the transcript of the hearing defined in subpart (b) below.

(b) Transcript of Hearing - TAB shall make a complete record of each hearing. Such record shall be made by electronically. The audio recording shall constitute the official record of the hearing.

(c) Right to Obtain The Record - Upon request by a respondent, and payment in advance of the fees as set by the Executive Director, TAB shall furnish to such party a copy of the record.

(d) Retention - All exhibits received in a TAB proceeding, together with the case folder and record of such proceeding, shall be retained by TAB, in accordance with the procedures established by TAB's Executive Director or his/her designee, for a period not less than four (4) months from the date of a final determination, in accordance with TAB's established record retention program. The hearing officer shall mark and retain in the record the original documents submitted into evidence, or copies thereof.

3.5 Decisions

(a) General - After due consideration of the evidence and arguments, the hearing officer shall determine whether the alleged transit infraction has been established. No charge may be established except upon proof by clear and convincing evidence. Where the charge has not been established, an order dismissing the charge shall be entered. Where a determination is made that a charge has been established, the hearing officer shall set the fine in accordance with the schedule of fines established by the Authority and an appropriate order thereto shall be entered in TAB's records. The respondent shall be given notice of entry of such order personally or by certified mail. The order shall constitute the final determination of the hearing officer and, for purposes of review, it shall be deemed to incorporate any intermediate determinations made by said hearing officer in the course of the proceeding. This order shall be the final order of TAB unless an appeal is filed in a timely manner.

(b) Modification and Vacating of Decision and Order by the Hearing Officer - At any time prior to personal service or mailing of the Notice of Decision and Order on the respondent, or his/her representative, the hearing officer shall have the authority to modify or vacate in whole or in part said decision and order. Such hearing officer shall have no authority to modify or vacate the decision and

order subsequent to personal service or mailing of a copy of such order to the respondent or his/her representative. In the event that is necessary for the hearing officer to correct an error in a decision that has previously been served, the hearing officer may issue a Superseding Decision and Order, which, in no case, will be to the respondent's detriment.

3.6 Administrative and Judicial Review

(a) There shall be an appeals board within TAB, each of which shall consist of three or more hearing officers, as the Executive Director, or such person as s/he may designate, shall determine. The Executive Director or his/her designee shall determine which hearing officers shall serve on a TAB appeals board, and shall select a chairperson of each appeals board from the members so designated. No hearing officer may sit on an appeals board considering an appeal from a determination made by such hearing officer.

(b) A party aggrieved by a final determination contained in a hearing officer's Notice of Decision and Order may obtain a review thereof by serving upon TAB a written notice of appeal within (30) days of the date of such order. The party filing the notice of appeal must set forth in the written notice of appeal the factual and legal reasons why the determination should be reversed or modified. A notice of appeal will not be accepted for filing unless any and all fines that have been imposed have been paid. (An application may be made to the Executive Director, or his/her designee, to waive the payment of the fine in order to file a Notice of Appeal upon a showing of undue financial hardship.) There shall be no interlocutory appeals.

(c) An appeal from a final determination contained in a hearing officer's notice of decision and order shall be submitted to an appeals board as designated by the Executive Director or his/her designee. The appeals board shall have the power to review the facts and the law, but shall not consider any

evidence which was not presented at the original hearing. The appeals board shall have the power to affirm, reverse, remand, dismiss, or modify any decision and order appealed from for errors of law or fact.

(d) All notices of appeal shall be submitted on a TAB Notice of Appeal form.

(e) Appeals shall be made without the appearance of the appellant and appellant's attorney or representative unless otherwise requested by the appellant, appellant's attorney, appellant's parent or guardian if appellant is between 16-18 years of age, or the appeals board. Requests for appearances shall be made on the Notice of Appeal form filed by or on behalf of the appellant. Within twenty (20) days of receiving a request to appear made either by the appellant, appellant's attorney or parent or guardian or the appeals board, TAB shall advise the appellant, by certified mail, of the date on which s/he shall appear before the appeals board.

(f) The service of a notice of appeal upon TAB shall not stay the enforcement of an order appealed from. The respondent must pay the fine and/or penalties assessed, subject to reimbursement, should the respondent prevail on his/her appeal.

(g) Where an appeal has been filed, the decision of the appeals board shall be the final order of TAB. There shall be no further review within TAB. The decision of the appeals board shall be communicated in writing by either personal service on the appellant or by certified mail.

(h) Where respondent has requested to appear at his appeal but fails to do so, the appeals board will nevertheless go forward and determine the merits of his/her appeal.

(i) Judicial review of the final determination of the appeals board may be sought in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

3.7 Default

(a) Failure of a party to make a timely response to the NOV, or to appear or proceed as required by the hearing officer, shall constitute a default. A default in these circumstances shall be deemed, for all purposes, to be an admission of liability to the transit infraction alleged on the NOV. Such default shall be grounds for rendering a default decision and order imposing a penalty in such amount as may be designated by the Authority, but not in excess of a total of \$50.00 (See section 4.2).

(b) Orders rendered by TAB in consequence of a default shall take effect immediately. Notice of Entry of a Default Decision and Order shall be promptly sent by first class mail to the party in default.

(c) A default penalty may be avoided by a respondent by requesting to stay entry of/vacate a default judgment. Upon such application, a hearing officer shall hold a review of the request. Such review is on the record but it is not a formal hearing, and as such, is not reviewable by an appeal to TAB. If the hearing officer determines that good cause exists to excuse the default, a hearing shall be held on the merits of the original claim. If the hearing officer refuses to set aside the default, for failure to show good cause, the original default order shall remain in force as the bureau's final order, and judicial review may be sought in accordance with the provisions of Article 78 of the Civil Practice Law and Rules up until four months from the date of the denial of the request to stay entry of/ vacate default judgment.

(d) A request to stay a default judgment made within 30 days of the first default date can be weighed favorably in determining whether there is good cause to stay the default judgment. The following list includes, but is not limited to, excuses that may be interpreted as “good cause” for vacating a default judgment:

- i. false identification
- ii. wrong respondent
- iii. lack of service
- iv. lack of TAB jurisdiction
- v. no prima facie case
- vi. lack of mental/physical capacity

(e) The filing of a request to stay entry of/vacate a default judgment shall in no way operate to stay any proceedings entered as a consequence of the default.

3.8 Enforcement of Judgments - TAB shall have the power to enforce its final decisions and orders imposing civil fines and default and late penalties for violations of laws, rules, and regulations enforced by it as if they were money judgments, without court proceedings, and in the manner described below.

(a) Any final order of TAB imposing a civil fine and/or penalty, whether the adjudication was had by hearing or upon default or otherwise, shall constitute a judgment rendered by TAB which may be entered in the Civil Court of the City of New York or any other place provided for the entry of civil judgments within the state provided that no proceeding for judicial review shall then be pending.

(b) Notwithstanding the foregoing provisions, before a judgment based upon a default may be so entered, TAB must have attempted to notify the respondent by first class mail of the following:

- (i) the default decision and order and the penalty imposed;
- (ii) that a judgment will be entered in the Civil Court of the City of New York, or any other place provided for the entry of civil judgments within the state;
- (iii) that the entry of such judgments may be avoided by the application for and granting of a request to stay entry of default judgment for good cause shown, and requesting a hearing pursuant to TAB procedures within thirty (30) days of the mailing of such notice.

3.10 Funds - All penalties collected pursuant to the provisions of Public Authorities Law Section 1209-a and these Rules shall be paid to the Authority to the credit of the Transit Crime Fund established and maintained by the Authority. Any sums in this fund shall be used to pay for programs selected by the board of the Authority, in its discretion, to reduce the incidence of crimes and infractions on transit facilities or to improve the enforcement of laws against such crimes and infractions.

PART IV - FINES AND PENALTIES

4.1 Fines - Fines for transit infractions shall be in accordance with the schedule of fines set by the Authority and in effect on the date of issuance of the NOV.

4.2 Default Penalties

(a) Where a respondent fails to respond to the NOV, either in person or by mail, within the time allowed by these guidelines, or fails to appear on any

subsequent rescheduled or adjourned date, and remains in default for more than one (1) day but less than thirty (30) days from the date of the designated hearing date or subsequent hearing date, a default penalty of \$25 will be imposed in addition to the fine scheduled for the transit infraction charged on the NOV.

(b) Where a respondent fails to appear or plead to the NOV for more than thirty (30) days from the designated hearing date, as shown on the front of the NOV, or a subsequent hearing date an additional default penalty of \$25 will be imposed.

(c) If a respondent has been found in violation of a transit rule and has failed to pay the scheduled fine or submits only a partial payment within (30) days of the date of the Notice of Decision and Order, a late penalty of \$25 will be imposed. If respondent's failure to remit the total amount due extends for more than sixty (60) days from the date the Notice of Decision and Order was served upon him/her, an additional late penalty of \$25 will be imposed.

(d) In no event shall the total amount of default penalties exceed \$50.

(Effective 01-10-89)
(Revised 09-10-93)
(Revised 03-12-99)
(Revised 12-18-09)
(Revised 02-22-13)
(Revised 02-10-16)
(Revised 04-07-16)
(Revised 12-31-23)