

DEPARTMENT OF FOR-HIRE VEHICLES

NOTICE OF SECOND EMERGENCY RULEMAKING

The Acting Director, Department of For-Hire Vehicles, pursuant to the authority set forth in Sections 8 (c) (2), (3), (7), (12), (13), and (19); 14; and 20 of the District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), effective March 25, 1986 (D.C. Law 6-97, as amended by the Transportation Reorganization Act of 2016, effective June 22, 2016 (D.C. Law 21-0124); D.C. Official Code §§ 50-301.07(c) (2), (3), (7), (12), (13), and (19); 50-301.13; and 50-301.19 (2014 Repl. & 2015 Supp.)), hereby gives notice of adoption, on an emergency basis, of amendments to Chapter 5 (Taxicab Companies, Associations, Fleets and Independent Owners), Chapter 12 (Luxury Class Services – Owners, Operators, and Vehicles), and Chapter 99 (Definitions) of Title 31 (Taxicabs and Public Vehicles For Hire) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking implements on an emergency basis proposed rulemaking adopted by the Commission on November 18, 2015, published in the *D.C. Register* on May 20, 2016 at 63 DCR 007693, and adopted by the Department as final rulemaking on June 29, 2016. This second emergency rulemaking amends Chapters 5 and 12 to create a pathway for non-District residents to own and operate DFHV-licensed taxicabs and black cars (and other luxury class vehicles), allowing them to legally provide point-to-point service in the District, rather than limiting them to the safe-haven of the reciprocity rules in § 828. Without this rulemaking, non-District residents are legally barred from registering vehicles in the District due to Department of Motor Vehicles (“DMV”) laws and regulations, and, as a result, the Department is precluded from issuing DFHV vehicle licenses to them; the Department hereby find that recent decisions of the Office of Adjudications and Hearings to the contrary are wrong as a matter of law on this point.

This rulemaking does not affect other DFHV vehicle license eligibility requirements in Title 31, which must be met in order for any applicant to be issued a DFHV vehicle license and corresponding “H” or “L” tags from DMV. The Washington Metropolitan Area Transit Authority (“WMATA”) has begun its SafeTrack safety program which accelerates major repairs to the Metrorail system. SafeTrack’s safety surge projects are expected to cause major delays in Metrorail service and attendant transportation disruptions throughout the District and surrounding areas. The Department finds there is an immediate need to preserve and promote the safety and welfare of District residents to ensure a supply of for-hire service adequate to meet the expected sharp increase in customer demand during SafeTrack, by adopting on an emergency basis a regulatory framework that will allow non-District residents to promptly form ITVBs and ILVBs as part of the process of applying for DFHV vehicle licenses, thereby providing a new source of public vehicles-for-hire to meet the increased demand.

The second emergency rules would authorize the licensing of independent taxicab vehicle businesses (“ITVBs”) and independent luxury vehicle businesses (“ILVBs”), which would co-own vehicles with these non-District owner-operators, who would then be eligible to title and register their vehicles with DMV in order to receive “H” or “L” tags”, as appropriate. Each ITVB and ILVB would be a District-based company, licensed and regulated by the D.C. Department of Consumer and Regulatory Affairs, and responsible for paying all applicable fees

and taxes to the District. Applicants seeking new DFHV vehicle licenses must also comply with all applicable DFHV rules and regulations, including all conditions imposed by the Department through an administrative issuance. This rulemaking also adds necessary definitions to Chapter 99.

An emergency rulemaking was adopted by the Department on June 29, 2016, which took effect immediately, expires on October 27, 2016. This second emergency rulemaking, which supersedes the emergency rulemaking adopted by Department on June 29, 2016, was adopted by the Department on October 6, 2016 and will remain in effect for one hundred and twenty (120) days after the date of adoption (expiring on February 3, 2017) unless earlier superseded by an amendment or repeal by the Department or the publication of final rulemaking, whichever occurs first. Final rulemaking adopted by the Department on June 29, 2016 has not yet been published in the *D.C. Register*.

Chapter 5, TAXICAB COMPANIES, ASSOCIATIONS, FLEETS AND INDEPENDENT OWNERS of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows.

The title of Chapter 5 is amended to read as follows:

Chapter 5 TAXICAB OWNERS

A new Section 504 is added to read as follows:

504 INDEPENDENT TAXICAB VEHICLE BUSINESSES

504.1 An individual not domiciled in the District (“applicant”) may apply pursuant to this section for an initial certificate of operating authority to operate an independent taxicab vehicle business (“ITVB”), during such times when the Department makes new DFHV vehicle licenses available. This section does not authorize the issuance of new DFHV vehicle licenses or DMV “H tags”. Existing ITVBs may apply pursuant to this section to renew their ITVB operating authority provided they meet all requirements for ITVBs in effect at that time. An applicant may register a taxicab vehicle in the District, with the ITVB as co-owner and co-registrant, as required by the rules and regulations of DMV and other applicable laws. The operating authority required by this section shall be in addition to any other operating required by this chapter for independent owners.

504.2 Applicants may be required by the Department as a condition for the issuance of operating authority to:

- (a) Purchase or lease a vehicle which has electric propulsion;
- (b) Purchase or lease a vehicle which is wheelchair accessible;
- (c) Provide service in underserved areas of the District, as identified by the

Department;

- (d) Obtain additional training to improve customer service levels, including training for wheelchair service and disability sensitivity; and
- (e) Meet other reasonable requirements to enhance safety and consumer protection, to improve customer service, and to achieve other lawful purposes within the jurisdiction of the Department, as determined by the Department in an administrative issuance.

504.3 For all purposes of this title, the Establishment Act, the Impoundment Act, and other applicable laws (excluding the regulations and laws applicable to DMV):

- (a) The ITVB shall be considered and treated by the Department as the legal *alter ego* of the individual for all purposes of this title, with the effect of imposing upon the individual all obligations applicable to the ITVB under this title, provided however that where a provision of this title authorizes the imposition of a civil penalty upon either the ITVB or the individual, either penalty may be applied upon the individual; and
- (b) Notwithstanding any contrary provision of Chapter 7, notice of any action including without limitation any enforcement action or legal proceeding by the Department, the Office of Administrative Hearings, or the District, shall be valid, binding, and fully enforceable against either or both the individual and the ITVB, provided it is otherwise properly served upon either the individual or the ITVB pursuant to Chapter 7.

504.4 Nothing in this chapter shall be construed to alter the legal rights or obligations of any person under any provision of the D.C. Municipal Regulations or District law other than the rules and regulations of this title.

504.5 An individual (“applicant”) shall be eligible to apply for an initial or renewed certificate of operating authority under this section where:

- (a) The individual is not domiciled in the District;
- (b) The individual holds a DFHV vehicle operator’s license (Face card) to operate a taxicab;
- (c) The individual:
 - (1) Holds a current DFHV vehicle license as an independent owner-operator, for a vehicle titled and registered with DMV;
 - (2) Is a co-owner of a vehicle with a taxicab company or association and has obtained a release of the company’s or association’s

interests in the vehicle; or

- (3) Owns or agrees in writing to purchase a new vehicle or a vehicle which is not required to be replaced within two (2) years from the date of the application;
- (d) Consistent with the prohibition in § 504.12, no person other than the applicant has acquired, or is designated to receive, a legal or beneficial interest in the ITVB, in any contract, will, or other legal document, and the applicant has not become domiciled in the District, requirements which shall appear in the charter documents filed with DCRA;
- (e) The ITVB is a District-based business with a bona fide place of business in the District, registered with DCRA and subject to all other requirements for a District-based business, and eligible under all applicable District regulations and laws (other than those in this title) to appear on the title as co-owner of the vehicle for which the application is filed;
- (f) The individual and the vehicle are in full compliance with all other requirements of this title, including all applicable licensing and operating requirements;
- (g) The individual is in good standing with the Department, including having no pending enforcement actions;
- (h) The individual is in compliance with the Clean Hands Act; and
- (i) For renewal applications: such additional information and documentation as may be required by the Department, including information and documentation showing the ITVB is in compliance with all operating requirements.

504.6

Each application for operating authority shall:

- (a) Contain such supporting information and documentation as may be required by the Department, including information and documentation about the applicant, the vehicle, and the business;
- (b) Be accompanied by the original charter documents for the ITVB which demonstrate compliance with this section;
- (c) Be provided under penalty of perjury and notarized before a notary public;
- (d) Be filed not later than any deadline stated in an applicable administrative issuance; and

- (e) Be accompanied by an application fee of one hundred fifty dollars (\$150) for an initial application.

504.7 The Department shall issue a decision to grant or deny an application for an initial or renewed certificate of operating authority within thirty (30) days.

504.8 Operating authority for the ITVB shall be effective for twelve (12) months. The Department may establish a uniform renewal date through an administrative issuance.

504.9 At the time an applicant is issued a certificate of operating authority, the applicant shall also be issued a DFHV vehicle license in the name of the applicant and the ITVB under § 1010, which shall be automatically suspended or revoked if the ITVB's operating authority or the applicant's DFHV operator's license (face card) is suspended or revoked.

504.10 Failure to file an application to renew ITVB operating authority within the time established by the Department shall result in the loss of the operating authority. The application deadline shall not be extended.

504.11 Each ITVB shall comply with § 812 for leasing the vehicle co-titled in its name. A lease executed in violation of this requirement shall be null and void.

504.12 An ITVB operating authority shall be null and void, and thereby subject to immediate suspension, proposed suspension, and proposed revocation, if any time:

- (a) A person other than the applicant acquires, or is designated to receive, a legal or beneficial interest in the ITVB, in any contract, will, or other legal document; or
- (b) The applicant becomes domiciled in the District, provided however that in the event ITVB operating authority becomes null and void for this reason, the applicant shall be entitled to be issued a DFHV vehicle license as the exclusive owner of the vehicle where the applicant notifies the Department of the change in domicile within thirty (30) days of the change.

504.13 Tags issued by DMV based on a DFHV vehicle license issued pursuant to this section shall be immediately surrendered to DMV if any of the following licenses are suspended (other than an immediate suspension), revoked, or not renewed:

- (a) The applicant's DFHV operator's license;
- (b) The vehicle's DFHV vehicle license; or
- (c) The ITVB operating authority

- 504.14 Tags required to be surrendered pursuant to § 504.13 shall not be reissued, reclaimed, restored, or returned.
- 504.15 The Department may deny any license issued under this title to any person the issuance of which would perpetuate a violation of this section.

Chapter 12, LUXURY CLASS SERVICES – OWNERS, OPERATORS, AND VEHICLES, is amended as follows:

A new Section 1221 is added to read as follows:

1221 INDEPENDENT LUXURY VEHICLE BUSINESSES

- 1221.1 An individual not domiciled in the District (“applicant”) may apply for a certificate of operating authority to operate an independent luxury vehicle business (“ILVB”). An ILVB shall allow the applicant to register a luxury class vehicle (limousine or black car) in the District, with the ILVB as co-owner and co-registrant of the vehicle, as required by the rules and regulations of DMV, and other applicable laws.
- 1221.2 Applicants who apply for certificates of operating authority under this section may be required to:
- (a) Purchase or lease a vehicle which has electric propulsion;
 - (b) Purchase or lease a vehicle which is wheelchair accessible;
 - (c) Provide service in underserved areas of the District, as identified by the Department;
 - (d) Obtain additional training to improve customer service levels, including training for wheelchair service and disability sensitivity; and
 - (e) Meet other reasonable requirements to enhance safety and consumer protection, to improve customer service, and to achieve other lawful purposes within the jurisdiction of the Department, as determined by the Department in an administrative issuance.
- 1221.3 For all purposes of this title, the Establishment Act, the Impoundment Act, and other applicable laws (excluding the regulations and laws applicable to DMV):
- (a) The ILVB shall be considered and treated by the Department as the legal *alter ego* of the individual for all purposes of this title, with the effect of imposing upon the individual all obligations applicable to the ILVB under this title, provided however that where a provision of this title authorizes

the imposition of a civil penalty upon either the ILVB or the individual, either penalty may be applied upon the individual; and

- (b) Notwithstanding any contrary provision of Chapter 7, notice of any action, including without limitation any enforcement action or legal proceeding by the Department, the Office of Administrative Hearings, or the District, shall be valid, binding, and fully enforceable against either or both the individual and the ILVB, provided it is otherwise properly served upon either the individual or the ILVB pursuant to Chapter 7.

1221.4 Nothing in this chapter shall be construed to alter the legal rights or obligations of any person under any provision of the D.C. Municipal Regulations or District law other than the rules and regulations of this title.

1221.5 An individual (“applicant”) shall be eligible to apply for an initial or renewed certificate of operating authority under this section where:

- (a) The individual is not domiciled in the District;
- (b) The individual holds a DFHV vehicle operator’s license (Face card) to operate a luxury class vehicle;
- (c) The individual owns or agrees in writing to purchase a new vehicle or a vehicle which is not required to be replaced within two (2) years from the date of application under this title or other applicable law;
- (d) Consistent with the prohibition in § 1221.12, no person other than the applicant has acquired, or is designated to receive, a legal or beneficial interest in the ILVB, in any contract, will, or other legal document, and the applicant has not become domiciled in the District, requirements which shall appear in the charter documents from DCRA;
- (e) The ILVB is a District-based business with a bona fide place of business in the District, registered with DCRA and subject to all other requirements for a District-based business, and eligible under all applicable District regulations and laws (other than those in this title) to appear on the title as co-owner of the vehicle for which the application is filed;
- (f) The individual and the vehicle are in full compliance with all other requirements of this title, including all applicable licensing and operating requirements, as may be amended from time-to-time;
- (g) The individual is in good standing with the Department, including having no pending enforcement actions;
- (h) The individual is in compliance with the Clean Hands Act; and

- (i) For renewal applications: such additional supporting information and documentation as may be required by the Department, including information and documentation showing the ILVB is in compliance with all operating requirements.

1221.6 Each application for operating authority shall:

- (a) Contain such information and documentation as may be required by the Department, including information and documentation about the applicant, the vehicle, and the business;
- (b) Be accompanied by the original charter documents for the ILVB demonstrating compliance with this section;
- (c) Be provided under penalty of perjury and notarized before a notary public;
- (d) Be filed not later than any deadline stated in an applicable administrative issuance; and
- (e) Be accompanied by an application fee of two hundred fifty dollars (\$250)

1221.7 The Department shall issue a decision to grant or deny an application for an initial or renewed certificate of operating authority within thirty (30) days.

1221.8 Operating authority for the ILVB shall be effective for twelve (12) months. The Department may establish a uniform renewal date through an administrative issuance.

1221.9 At the time an applicant is issued a certificate of operating authority, the applicant shall also be issued a DFHV vehicle license in the name of the applicant and the ILVB under §§ 1010 and 1204, which shall be automatically suspended or revoked if the ILVB's operating authority or the applicant's DFHV operator's license (face card) is suspended or revoked.

1221.10 Failure to file an application to renew ILVB operating authority within the time established by the Department shall result in the loss of the operating authority. The application deadline shall not be extended.

1221.11 Each ILVB shall comply with § 812 for leasing the vehicle co-titled in its name. A lease executed in violation of this requirement shall be null and void.

1221.12 An ILVB operating authority shall be null and void, and thereby subject to immediate suspension, proposed suspension, and proposed revocation, if any time:

- (a) A person other than the applicant acquires, or is designated to receive, a legal or beneficial interest in the ILVB, in any contract, will, or other legal document; or
- (b) The applicant becomes domiciled in the District, provided however that in the event ILVB operating authority becomes null and void for this reason, the applicant shall be entitled to be issued a DFHV vehicle license as the exclusive owner of the vehicle where the applicant notifies the Department of the change in domicile within thirty (30) days of the change.

1221.13 Tags issued by DMV based on a DFHV vehicle license issued pursuant to this section shall be immediately surrendered to DMV if any of the following licenses are suspended (other than an immediate suspension), revoked, or not renewed:

- (a) The applicant's DFHV operator's license;
- (b) The vehicle's DFHV vehicle license; or
- (c) The ILVB operating authority

1221.14 Tags required to be surrendered pursuant to § 1221.13 shall not be reissued, reclaimed, restored, or returned.

1221.15 The Department may deny any license issued under this title to any person the issuance of which would perpetuate a violation of this section.

Chapter 99, DEFINITIONS, is amended as follows:

Subsection 9901.1, of Section 9901, DEFINITIONS, is amended to add definitions as follows:

“ILVB” – An independent taxicab business, as defined in this chapter.

“Independent luxury vehicle business” – A District-based business which appears as co-owner and co-registrant of a vehicle owned by an individual who is not domiciled in the District, for the purpose of allowing the individual to register a public vehicle-for-hire in the District pursuant to all applicable District laws and regulations.

“Independent taxicab business” – A District-based business which appears as co-owner and co-registrant of a taxicab vehicle owned by an individual who is not domiciled in the District, for the purpose of allowing the individual to register a public vehicle-for-hire in the District pursuant to all applicable District laws and regulations.

“TTVB” – An independent taxicab business, as defined in this chapter.