

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF SECOND PROPOSED RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in sections 8(b)(1)(E), (I) and (J) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(b)(1)(E), (I) and (J) (2009 Repl.; 2012 Fall Supp.)); section 12 of the 1919 District of Columbia Taxicab Act, approved July 11, 1919 (41 Stat. 104; D.C. Official Code § 50-371 (2009 Repl.)); and by Section 6051 of the Fiscal Year 2013 Budget Support Act of 2012 (District of Columbia Commission Fund Amendment Act of 2012), effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 50-320(a))(2012 Supp.), hereby gives notice of its intent to adopt amendments to Chapters 4, 5, 6, 7, 8 and 10 of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

Proposed rules amending Chapters 4, 5, 6, 7, 8 and 10 of DCMR Title 31 were originally published in the *D.C. Register* on March 15, 2013, at 60 DCR 3783. The Commission held a public hearing on the proposed rules on April 12, 2013, to receive oral comments on the proposed rules. The Commission received valuable comments from the public at the hearing and throughout the comment period, which expired on April 13, 2013. The proposed amendments clarify jurisdiction, procedures, and penalties to assist the Office of Taxicabs in its enforcement of Title 31, and clarify that all enforcement actions shall be governed by this Chapter.

The Commission also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

Chapter 7, COMPLAINTS AGAINST TAXICAB OWNERS OR OPERATORS, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is deleted.

A new Chapter 7, ENFORCEMENT, is added as follows.

CHAPTER 7 ENFORCEMENT

700 APPLICATION AND SCOPE

- 700.1 The purpose of this Chapter is to create procedural rules for the enforcement of and compliance with the provisions of this Title.
- 700.2 The provisions of this Chapter shall be interpreted to comply with the language and intent of the “District of Columbia Taxicab Commission Establishment Act of 1985” (“Act”) as amended.
- 700.3 In the event of a conflict between a provision of this Chapter and a provision of another Chapter of this Title, the provision of this Chapter shall control.

701 ADMINISTRATIVE ACTIONS

- 701.1 The Office may, in its discretion, issue or take administrative actions, including Office orders and Office directives, as necessary to aid in administration, enforcement, and compliance under this Title.
- 701.2 Each Office order shall be posted on the Commission’s website, and shall become effective ten (10) days after it is posted, provided, however, that an Office order shall become effective upon posting where the Office finds that such action is required to protect passenger, operator, or public safety, or for consumer protection.
- 701.3 Each written Office directive shall be served in person upon the individual who must comply with it or upon the owner, agent, partner, employee, or other designated representative of the person that must comply with it, or by U.S. Mail to the address on file at the Office. Service of a written Office directive shall be complete at the time the Office directive is served in person or at the time it is deposited into the U.S. Mail.
- 701.4 Each oral Office directive shall be given to the individual who must comply with it, or to the owner, agent, partner, employee, or other designated representative of the person that must comply with it.
- 701.5 Each person shall timely and fully comply with each Office order that applies or relates to its obligations under any provision of this Title or other applicable law and with each Office directive.
- 701.6 Where a licensing document is issued by the Office—
- (a) The terms stated or incorporated by reference in such document shall constitute an Office directive; and
 - (b) If the document states that it is a temporary (such as in the case of a temporary DCTC identification card (Face Card)), it shall be valid and effective for all purposes under this Title for the period stated therein, to the same extent as if it did not contain such language.
- 701.7 No person, other than a District enforcement official or other person authorized by law, shall duplicate or cause to be duplicated any licensing except with written permission from the Office or for personal use pursuant to §§ 814.8 and 822.2.
- 701.8 Each person shall fully and timely cooperate with all officials, employees, agents, contractors, and general counsel for the Commission and the Office, and with all District enforcement personnel, including all public vehicle enforcement inspectors (hack inspectors).

702 PUBLIC COMPLAINTS

- 702.1 The Office shall receive complaints by members of the public, orally – through its telephone hotline or in person, or in writing – electronically, by email or through the Commission’s website, or by U.S. Mail or private delivery service. An oral complaint shall not be the basis of further action unless it has been reduced to a writing.
- 702.2 The Office shall provide written notice to each complainant that his or her complaint has been received, within seventy-two (72) hours of receiving a complaint submitted in writing or within seventy-two (72) hours after a complaint originally submitted orally is reduced to writing. The notice required by this Subsection may be served by email, if provided by the complainant.
- 702.3 If the Office determines that a complaint has merit, it shall provide written notice to the person who is the subject of the complaint, via U.S. Mail with delivery confirmation, tracking, or return receipt requested. The notice shall include a detailed description of the complaint, including the time, place, and location of any incident referenced in the complaint, and the potential penalties if a contested case is initiated based on the complaint.
- 702.4 The Office shall initiate any contested case based on a complaint not later than one-hundred twenty (120) days after it receives the complaint, provided, however, that such period shall be subject to tolling as provided by District case law applicable to limitations periods.

703 MEDIATION

- 703.1 The Office may offer to mediate prior to initiating a contested case pursuant to § 704.1(a) at its discretion, provided, however, that the Office shall mediate if its actions are based on a public complaint, unless the Office finds exigent circumstances exist that require dispensing with mediation.
- 703.2 Mediation shall proceed according to an Office order that relates to the conduct of mediation.
- 703.3 Mediation shall consist of one informal meeting at the Office at a time determined by the Office.
- 703.4 Mediation shall be rescheduled not more than once. A mediation session shall be rescheduled for good cause shown if it is received by the Office not later than three (3) business days before the mediation session is scheduled or if it is based on exigent circumstances (such as hospitalization) supported by appropriate documentation.

703.5 An Office directive may be issued requiring the respondent to submit documents or information in advance of or at the time of mediation.

703.6 At mediation, the parties may negotiate and agree concerning any penalty that would be available if a contested case were filed (including a full or partial payment of a civil fine), admission of liability, execution of a compliance agreement or consent decree, suspension or revocation of a license, or any other relief authorized by law.

703.7 No fact related to or concerning mediation, including whether a mediation session occurred or did not occur, whether a mediation session was rescheduled or not, and a party's offer to compromise made orally or in writing, shall be admissible in a contested case, provided, however, that a document created prior to mediation shall be admissible in a contested case regardless of whether it was obtained in connection with mediation.

704 CONTESTED CASES

704.1 The Office may initiate a contested case alleging the violation of one or more provisions of this Title or other applicable law by serving—

- (a) A notice of infraction (NOI) seeking a penalty authorized by law;
- (b) A notice of summary denial, revocation, suspension, or modification, of a license issued by the Office;
- (c) A notice of proposed denial, revocation, suspension, or modification, of a license issued by the Office; or
- (d) A notice requiring the respondent to cease and desist conduct that violates a provision of this Title or other applicable law, or to take action necessary to achieve compliance with a provision of this Title or other applicable law.

704.2 A contested case shall be adjudicated by OAH or by such other authorized official as designated in the notice.

704.3 In addition to any other penalty authorized by a provision of this Title, the Office may recommend to another government agency the denial, revocation, or suspension of any license that may be issued by such other agency.

704.4 Optional administrative reconsideration process for certain contested cases.

When a notice of proposed denial, revocation, suspension, or modification, of a license issued by the Office (“notice of proposed action”) is served pursuant to

§ 704.1(c), the respondent may, at its option, request reconsideration by the Chairman of the Commission under the following procedures:

- (a) The notice of proposed action shall state the availability of the process established by this Subsection;
- (b) The respondent shall notify the Office in writing of its intention to seek reconsideration within five (5) business days of service of the notice of proposed action (“service”);
- (c) If the Office receives the statement indicating the respondent intends to seek reconsideration within the time required by § 704.5(b), the Office shall notify the respondent of such receipt within two (2) business days, and otherwise the reconsideration process shall end;
- (d) Within ten (10) business days of service, the respondent shall file with the Office a detailed written statement in support of its request for reconsideration stating the grounds upon which reconsideration is sought, which shall include citation to any provision of this Title or other applicable law, or other point or authority, and which shall be executed under oath and attach all supporting documentation, including any witness statements, which shall also be executed under oath;
- (e) If the Office receives the written statement in support of reconsideration within the time required by § 704.5 (d), the Office shall notify the respondent of such receipt within two (2) business days, and otherwise the reconsideration process shall end;
- (f) The Chairman shall consider the written statement and all documentation provided by the respondent, and may also consider any relevant information or document from the Office, another District agency, or another person, or any point or authority, that appears reasonably reliable and bears on the issues presented, and shall issue a written decision to grant, grant in part, or deny reconsideration, together with a supporting narrative, within ten (10) business days of the receipt of the written statement, unless the Chairman extends this deadline at his or her sole discretion for no more than five (5) business days;
- (g) The Office shall serve the Chairman’s decision and supporting narrative on the day it is issued, and shall comply with such order by withdrawing, modifying, or letting stand the proposed order; and
- (h) The Chairman’s decision on optional administrative reconsideration shall not be subject to review, and no fact related to or concerning reconsideration, including, without limitation, any action or failure to take action by the Office or by the Chairman, and the Chairman’s decision and

supporting narrative, shall be admissible in an adjudication of the proposed action or in any other contested case, provided, however, that a document created prior to the reconsideration process or not in connection with the reconsideration process, or that would be admissible if the respondent had not requested reconsideration, shall be admissible.

704.5 Additional civil penalties for failure to comply with an Office order or Office directive.

- (a) Each individual that fails to comply with an Office order or Office directive:
 - (1) Shall pay any civil fine that may be imposed under a Chapter of this Title that provides authority for the Office order or Office directive, or, where no fine is established, three-hundred dollars (\$300), which shall be doubled for the second violation, and tripled for the third and subsequent violations occurring within any twelve (12) month period; and
 - (2) If the individual's failure to comply causes the Office to lose jurisdiction to initiate a contested case against any person, then, in addition to the civil fine imposed under Subparagraph (a)(1) of this Subsection, such individual shall pay a civil fine of one-thousand dollars (\$1,000).
- (b) Each person other than an individual that fails to comply with an Office order or Office directive shall be subject to:
 - (1) Shall pay any civil fine that may be imposed under a Chapter of this Title that provides authority for the Office order or Office directive, or, where no fine is established, six-hundred dollars (\$600), which shall be doubled for the second violation, and tripled for the third and subsequent violations occurring within any twelve (12) month period;
 - (2) If the person's failure to comply causes the Office to lose jurisdiction to initiate a contested case against any person, then, in addition to a civil fine that may be imposed under Subparagraph (b)(1) of this Subsection, such person shall pay a civil fine of five-thousand dollars (\$5,000).

704.6 Additional civil penalties for failure to answer or respond.

- (a) Each respondent that fails to timely answer or otherwise respond within thirty (30) days to a contested case notice issued under § 704.1 (a)—

- (1) Shall pay, as a civil penalty, a civil fine equal to twice the amount of the civil fine applicable to the violation pursuant to a penalty provision of any Chapter of this Title, in addition to the applicable civil fine itself; and
 - (2) Shall be subject to the entry of a default order without additional notice.
- (b) An additional civil fine imposed under § 704.6 (a) shall not relate to and shall not preclude or affect the multiplication of a civil fine under a penalty provision of any Chapter of this Title, as the result of a prior violation by the respondent.

705 DECLARATORY ORDERS

705.1 Upon the petition of any interested person, the Commission may issue a declaratory order concerning the applicability of any rule, regulation, Council act or resolution, or statute administered by the Commission, for the purpose of terminating a controversy (other than a contested case) or removing an uncertainty.

705.2 A petition for a declaratory order shall be filed in writing, clearly marked to indicate that it is being filed pursuant to this Section and shall:

- (a) Contain a detailed statement of the facts on which the petition is based;
- (b) Set forth fully the laws and decisions relevant to the issue;
- (c) Pose the question of whether, and in what manner, the law and decisions apply to the petitioner under the facts outlined in the petition;
- (d) Contain a statement describing the interest of the petitioner in making the request for the declaratory order; and
- (e) Provide a description and any supporting documentation of any action or inaction of the Commission that gives rise to the petition.

705.3 The Commission shall consider the petition and, at the Commission’s discretion, may issue or not issue the declaratory order requested. The determination to issue or not issue a declaratory order shall be promptly communicated to the petitioner. The Commission may require argument on the petition. A declaratory order issued by the Commission shall be in writing and plainly state that it is a declaratory order issued pursuant to this Section. A written answer from the Commission to an inquiry shall not be construed as a declaratory order unless it is made in compliance with the requirement of this Section.

705.4 The Office shall publish each declaratory order of general interest on the Commission’s website, subject to the redaction of any information that should be withheld under the Freedom of Information Act, D.C. Code §§ 531, *et seq.*, and its implementing regulations.

705.5 A declaratory order shall be binding between the Commission and the petitioner on the stated facts alleged, unless such order is altered or set aside by a court of competent jurisdiction. A declaratory order may be revoked, altered, or amended by the Commission at any time by written notice to the petitioner, which shall have prospective effect only, and if the revocation, alteration, or amendment concerns a declaratory order that has been published, such revocation, alteration, or amendment shall also be published promptly.

706 REPRESENTATION

706.1 Each person may designate a representative to act on its behalf before the Office or the Commission in connection with any matter arising under this Title.

706.2 No person other than a representative designated pursuant to § 706.1 shall act on behalf of another person before the Office or the Commission.

Subsection 799.1 is amended to read as follows:

799.1 The terms “adjudication,” “contested case,” “declaratory order”, “party,” and “license” shall have the meanings ascribed to them in the D.C. Administrative Procedure Act (“APA”), D.C. Official Code § 2-502, *et seq.*

A new subsection 799.2 is added to read as follows:

799.2 The following words and phrases shall have the meanings ascribed:

“Administration action” means an Office order, Office directive, or

“Complainant” means a member of the public who submits a complaint.

“District enforcement official” means a public vehicle enforcement inspector (hack inspector) or other authorized official, employee, or general counsel of the Office, or any law enforcement official authorized to enforce a provision of this Title.

“Licensing document” means a physical or electronic document issued to a person as evidence that such person has been issued a license under this Title (such as a DCTC identification card (Face card)).

“Office directive” means a written or oral administrative instruction by the Office, including a District enforcement official, to a person regulated by this Title or

other applicable law, requiring such person to: appear at the Office; produce a document, information, or thing for inspection or copying; submit a vehicle for testing or inspection; surrender a physical document evidencing that a person has been licensed by the Office (such as a DCTC identification card (Face Card)); comply with any provision of this Title or other applicable law, including an order pursuant to the Taxicab and Passenger Vehicle for Hire Impoundment Act of 1992, D.C. Official Code § 50-331; or take or refrain from any action as the Office or such District enforcement official may deem necessary for purposes of administration, enforcement, or compliance.

“Office order” means an administrative issuance by the Office to a class of persons or vehicles regulated by a provision of this Title or other applicable law that: adopts a form; sets a fee; issues a guideline or protocol applicable to persons other than employees of the Office; provides guidance concerning a provision of this Title; or takes any action that the Office deems necessary for purposes of administration, enforcement, or compliance.

“Notice of infraction” or “NOI” is a civil charging document in which the respondent is charged with violating one or more provisions of this Title or other applicable law.

“Person” has the meaning ascribed to it in the APA, and is further defined as including any individual or entity regulated by this Title or any individual or entity that engages in an activity regulated by this Title which requires DCTC licensure or authorization to operate but has not obtained such appropriate license or authorization or the license or authorization has lapsed, been suspended or been revoked.

“Representative” is an individual or a law firm designated and accepted by a person to advocate on its behalf or to provide advice and counsel to it, at its sole cost and expense, to the extent authorized by law.

“Respondent” is a person that participates in mediation, or against which a public complaint is filed or a contested case is initiated.

Chapter 4, HEARING PROCEDURES APPLICABLE TO NOTICES OF INFRACTIONS, is DELETED and RESERVED.

Chapter 5, TAXICABS COMPANIES, ASSOCIATIONS, AND FLEETS AND INDEPENDENT TAXICABS, is amended as follows:

Subsection 500, APPLICATION AND SCOPE, is amended to read:

500.3 The enforcement of this Chapter shall be governed by the procedures set forth in Chapter 7 of this Title.

Subsection 510.3 is DELETED.

Subsections 518.2 and 518.3 are DELETED.

Chapter 6, TAXICABS PARTS AND EQUIPMENT, is amended as follows:

Section 600, APPLICATION AND SCOPE, is amended to read:

600.5 The enforcement of this Chapter shall be governed by the procedures set forth in Chapter 7 of this Title.

Chapter 8, OPERATION OF TAXICABS, is amended as follows:

The title of Section 826 is amended to read:

ENFORCEMENT OF THIS CHAPTER

Section 826, ENFORCEMENT OF THIS CHAPTER, is amended as follows:

826.1 The enforcement of this Chapter shall be governed by the procedures set forth in Chapter 7 of this Title.

Chapter 10, PUBLIC VEHICLES FOR HIRE, is amended as follows:

Subsection 1002, APPLICATION FOR A HACKER'S LICENSE; FEES, is amended to read:

1002.10 The denial of a hacker's license for failure to successfully take and pass the written examination is not reviewable on appeal.

Section 1013 is DELETED.

A new Section 1013, ENFORCEMENT, is added.

1013.1 The enforcement of this Chapter shall be governed by the procedures set forth in Chapter 7 of this Title.

Copies of this proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Jacques P. Lerner, General Counsel and Secretary to the Commission, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to dctc@dc.gov or by mail to the DC Taxicab Commission, 2041 Martin Luther King, Jr., Ave., S.E., Suite 204, Washington, DC 20020, Attn: Jacques P. Lerner, General Counsel and Secretary to the Commission, no later than thirty (30) days after the publication of this notice in the *D.C Register*.