

## DEPARTMENT OF FOR-HIRE VEHICLES

### NOTICE OF FINAL RULEMAKING

The Director of the Department of For-Hire Vehicles (“Department” or “DFHV”) pursuant to the authority set forth in Sections 8(c) (2), (3), (7), (10), (14), (16), (17), (19) and (20), 10b, 14, 20, and 20j of the District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-301.07(c) (2) (3), (7), (10), (19), and (20), 50-309.02, 50-301.13, 50-301.19, and 50-301.29 (2014 Repl. & 2016 Supp.)), and D.C. Official Code § 47-2829 (b), (d), (e), (e-1), and (i) (2015 Repl.), hereby gives notice of its intent to adopt amendments to Chapter 5 (Taxicab Companies, Associations, Fleets, and Independent Taxicabs), Chapter 7 (Enforcement), Chapter 8 (Operating Rules for Public Vehicles-For-Hire), Chapter 10 (Public Vehicles for Hire), Chapter 12 (Luxury Class Services – Owners, Operators, and Vehicles), Chapter 16 (Dispatch Services and District of Columbia Taxicab Industry Co-Op), Chapter 99 (Definitions) of Title 31 (Taxicabs and Public Vehicles For Hire) of the District of Columbia Municipal Regulations (DCMR). This Rulemaking also adds a new Chapter 21 (Office of Hearing Examiners) to Title 31 of the DCMR. This rulemaking consolidates seven (7) previously adopted final rulemakings none of which had been published in the *D.C. Register*.

This final rulemaking amends Chapter 7 to authorize the in-person service of a notice of infraction (NOI) anywhere within the District of Columbia. The current regulations only provide for personal service of an NOI upon the respondent or respondent’s agent at the respondent’s or respondent’s agent’s last known home or business address; by posting the NOI in a conspicuous place in or about the location of the respondent’s place of business; or by sending the NOI by first-class U.S. Mail to the last known home or business address of the respondent, or respondent’s agent. The amendment increases efficiencies and lowers costs to the Department by also allowing service of an NOI at any location where the respondent may be found within the District. Proposed rulemaking was adopted by the D.C. Taxicab Commission<sup>1</sup> on February 10, 2016 and was published in the *D.C. Register* on May 20, 2016 at 63 DCR 007703. The Commission did not receive any comments during the comment period which expired on June 20, 2016. Any changes made in this final rulemaking from the proposed rulemaking were solely: to correct grammar and typographic errors, to clarify the Department’s intent, and to lessen the burdens on affected stakeholders. No substantial changes have been made from the proposed rules.

This final rulemaking amends Chapter 12 to establish data reporting requirements for luxury class vehicles when used as limousines. The data collected will allow the Department to: determine the availability wheelchair accessible vehicles in this class of service; measure vehicle response time; ensure the reasonableness of rates and charges; and develop policy based on data which includes a broader spectrum of public vehicles-for-hire. The rules also establish greater parity in operating rules among existing public vehicle-for-hire services. Proposed rulemaking

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<sup>1</sup> The District of Columbia Taxicab Commission was renamed and re-structured as the Department of For-Hire Vehicles by the Transportation Reorganization Act of 2016 (D.C. Law 21-0124) effective June 22, 2016.

was adopted by the Commission on December 9, 2015 and published in the *D.C. Register* on February 26, 2016, at 63 DCR 002257. The Commission received one comment during the comment period, which expired March 27, 2016, stating that the rulemaking should be withdrawn because it would impose unnecessary burdens on business owners and present privacy concerns. The Department did not make changes in response to this comment because the reporting requirements are reasonable, and are consistent with the existing rules for taxicabs to report trip data to the Department through payment service providers, and the operation of black cars occurs entirely through apps provided by digital dispatch services, which requires a real-time data flow. Further, the rulemaking would limit data reporting to once per day and would not require the collection of private information. Changes have been made to update the implementation date, clarify intent, correct grammar, and limit the collection of real time information to periods when the operator is on duty. No substantial changes have been made.

This final rulemaking amends Chapters 7 and Chapter 16 to establish a new requirement in § 1605 that all digital dispatch services (DDSs) provide the Department with one or more bonds to secure the payments to the District of taxicab surcharges and one percent of gross receipts required by § 1604.7 and the Establishment Act, which are vital to support the operations of the Department. The Department finds that bonds must be provided to the Department by all DDSs to secure the payments of taxicab surcharges and one percent of gross receipts, as required by § 1604.7 and the Establishment Act, to reduce the possibility that the District will fail to receive a required payment. The Department finds it necessary to impose this requirement after two incidents in which businesses obligated to make payments of surcharges or one percent of gross receipts failed to do so. In one incident, a payment service provider (PSP) ceased operations in the District without paying all owed taxicab surcharges, but, because it had provided the Department with a bond pursuant to Chapter 4 of Title 31, the Department was able to recover a substantial portion of the unpaid surcharges. In a more recent incident, a DDS for private sedans ceased operations while still owing a payment for one percent of gross profits. Because DDSs are not required under the current, permanent (non-emergency) rules in Chapter 16 to provide a bond, when the DDS ceased operations, there was no bond available cover its outstanding payment. To prevent a recurrence, the new bond requirement applies to all DDSs, including all those which are currently registered with the Department. This rulemaking also amends Chapter 7 to add an enforcement provision allowing the Department to suspend the registration of a registered digital dispatch service which fails to provide a bond within the time required under the new rules in § 1605. A notice of emergency and proposed rulemaking was adopted by the D.C. Taxicab Commission on February 10, 2016, and was published in the *D.C. Register* on May 20, 2016 at 63 DCR 007704. The Commission received two comments during the comment period, which expired on June 20, 2016. Changes made in this final rulemaking from the proposed rulemaking were to correct grammatical and typographic errors, and clarify the Department's intent. In addition, the following changes were made in § 1605.5 in part due to the comments, which lessen the burdens on affected stakeholders: (1) a digital dispatch service may, for each public or private vehicle-for-hire service other than taxicabs, provide bond(s) of either two hundred fifty thousand dollars (\$250,000), or, pursuant to an administrative issuance, one hundred thousand dollars (\$100,000) to two hundred fifty thousand dollars (\$250,000), inclusive, if the digital dispatch service voluntarily maintains with the Department current information relevant to establishing a risk profile for the non-payment of amount(s) owed to the District pursuant to the § 1604.7, such as the number of the digital dispatch service's associated vehicles;

and (2) a bond shall not be required during the first six months that any business digitally dispatches rides pursuant to a donation agreement or through a live field testing program approved by the Department pursuant to § 1612.6 *et seq.* No substantial changes have been made from the proposed rules.

This final rulemaking amends Chapters 5, 12 and 99 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 DCHV vehicle licenses to them; the Department hereby finds that recent decisions of the Office Administrative Hearings to the contrary are incorrect as a matter of law. 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 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. Proposed rulemaking was adopted by the District of Columbia Taxicab Commission on November 18, 2015 and was published in the *D.C. Register* on May 20, 2016 at 63 DCR 007693. The Commission received one comment during the comment period, which expired on June 20, 2016. The commenter opposed the rulemaking believing it to be unnecessary, unreasonable and burdensome. The Department believes that this rulemaking is necessary, for the reasons including those stated above, and that it is not unreasonable or burdensome. Accordingly, changes were not made in response to the comment. Any changes made in this final rulemaking from the proposed rulemaking were solely: to correct grammar and typographic errors, to clarify the Department’s intent, and to lessen the burdens on affected stakeholders. No substantial changes have been made from the proposed rules.

This final rulemaking amends Chapters 10, 12, and 99 to: (1) authorize the Department to issue provisional licenses to applicants seeking new DFHV operator’s licenses for luxury class service (LCS), in order to expedite the licensing process for this public vehicle-for-hire service, which includes black cars and limousines, and (2) require that all applicants seeking new DFHV operator’s licenses successfully complete disability sensitivity training prior to being licensed. This rulemaking also adds new necessary definitions to Chapter 99. Proposed rulemaking was adopted by the D.C. Taxicab Commission on January 20, 2016 and was published in the *D.C. Register* on May 20, 2016 at 63 DCR 004888. The Commission received no comments during the comment period expiring June 19, 2016. Any changes made in this final rulemaking from the proposed rulemaking were to correct grammar and typographic errors, clarify the

Department's intent, and lessen the burdens on affected stakeholders. No substantial changes have been made from the proposed rules.

This final rulemaking amends Chapters 8 and 16 to: (1) encourage the use of shared riding through a clarified structure for calculating shared ride fares which incentivizes the adoption of digital meters, an innovative technology that would apportion shared ride fares in a manner that maximizes consumer choice and operator income; and (2) broadens the ban on electronic refusal to haul, to protect consumers and support the agency's efforts to eliminate discrimination in for-hire transportation. The rulemaking also amends Chapter 16 by clarifying the implementation date by which all taxicab operators must be logged in to the DC TaxiApp while providing service. Proposed rulemaking was adopted by the D.C. Taxicab Commission on January 20, 2016 and published in the *D.C. Register* on May 20, 2016 at 63 DCR 007704. The Commission received no comments during the comment period expiring June 20, 2016. Changes made from the proposed rulemaking were to correct grammar and typographic errors, clarify the Department's intent, and lessen the burdens on affected stakeholders. No substantial changes were made from the proposed rules.

This final rulemaking adds a new Chapter 21 that creates an independent Office of Hearing Examiners ("OHE") within the Department of For-Hire Vehicles ("Department"), with jurisdiction to hear and adjudicate the following types of enforcement actions (contested cases) of the Department: (1) decisions to deny new licenses; (2) decisions to deny renewed licenses; (3) notices of proposed suspensions of licenses; and (4) notices of proposed revocations of licenses. The rulemaking also establishes the rules and procedures applicable to these cases. This rulemaking also amends Chapter 99 to add necessary definitions. Proposed rulemaking was adopted by the Commission on October 14, 2015 and published in the *D.C. Register* on February 12, 2016 at 63 DCR 001687. The Commission did not receive any comments during the comment period, which expired on March 13, 2016. Changes were made to correct grammar, clarify initial intent, clarify proposed procedures, or lessen the burdens established by the proposed rules. No substantial changes were made.

This rulemaking was adopted as final on February 1, 2017; it will become effective upon publication 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 7, ENFORCEMENT, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:**

**Section 714, SERVICE AND FILING, is amended as follows:**

**A new Subsection 714.6 is added to read as follows:**

714.6 In addition to the methods of service available under § 714.1, a notice of infraction may be served by in-person service upon the respondent at any location where the respondent may be found within the District of Columbia.

**Chapter 8, OPERATING RULES FOR PUBLIC VEHICLES FOR HIRE, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:**

**Section 801, PASSENGER RATES AND CHARGES, is amended as follows:**

**Subsection 801.8 is amended to read as follows:**

801.8 Charges for group and shared rides shall be assessed as follows, and in the manner set forth in an applicable administrative issuance:

- (a) For shared rides:
  - (1) In vehicles with digital meters: only one flag drop rate shall be charged, without regard to the number of destinations. Shared rides may be arranged through digital meters approved by the Department pursuant to § 602, which shall allow passengers to apportion the total fare in a manner that maximizes consumer choice and operator income pursuant to an administrative issuance; and
  - (2) In vehicles with legacy (non-digital) meters: as each passenger reaches his or her destination, the metered fare shall be paid by the passenger(s) leaving the taxicab, at which time there shall be a new flag drop and the passenger(s) remaining in the group shall pay in the same manner until the last passenger(s) arrives at his or her destination and the final metered taxicab fare is then paid. There shall be a new flag drop for each leg of the trip.
- (b) For group rides booked by street hail, telephone dispatch, or digital dispatch, and paid through in-vehicle payment, the metered fare, including the additional passenger fee under § 801.7(c)(2)(E), shall be paid by the last passenger(s) leaving the taxicab.
- (c) For group rides booked by digital dispatch and paid through digital payment, the fare shall be charged and paid consistent with all applicable requirements of this title applicable to a trip which is not a group ride.

**Section 819, CONSUMER SERVICE AND PASSENGER RELATIONS, is amended as follows:**

**A new Subsection 819.12 is added to read as follows:**

819.12 Proof that an operator has failed to accept two (2) or more requests for service transmitted to the operator through the app of any DDS registered with the Department under Chapter 16, including but not limited to the DC TaxiApp, during the same two (2) hour period of any tour of duty, shall be treated as a refusal to haul under § 818.2 or § 819.5, unless the operator's actions do not violate either: the District of Columbia Human Rights Act, D.C. Official Code § 2-1401.01, *et seq.*, Title 4 of the D.C. Municipal Regulations, or any other applicable anti-discrimination law or regulation; or any policy maintained by the DDS.

**A new Section 1008 is added to read as follows:**

**1008 PROVISIONAL LUXURY CLASS SERVICE OPERATOR'S LICENSE**

1008.1 The Department may issue a provisional DFHV operator's luxury class service license (provisional LCS operator's license) consistent with the requirements of § 1209 and pursuant to an administrative issuance.

**Chapter 12, LUXURY CLASS SERVICES – OWNERS, OPERATORS, AND VEHICLES, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended to read as follows:**

**Section 1201, GENERAL REQUIREMENTS, is amended as follows:**

**A new Subsection 1201.9 is added to read as follows:**

1201.9 Beginning May 1, 2016, or at such later date as set by the Department in an administrative issuance ("implementation date"), each owner of a luxury class vehicle, when used to provide limousine service, shall provide the Department with the following trip data for all limousine trips:

- (1) The operator's DCTC operator's license (face card) number;
- (2) The vehicle's tag (license plate) number;
- (3) The vehicle's vehicle identification number (VIN);
- (4) The name of the vehicle owner;
- (5) The date and time of the beginning of the operator's tour of duty;
- (6) The duration and mileage of each trip;
- (7) The date and time of the pickup and drop-off of each trip;
- (8) The address and/or geospatially-recorded place of pickup and drop-off of each trip;
- (9) The number of passengers;
- (10) The unique trip identification number assigned by the owner or operator, if any;
- (11) The total fare, with an itemization of all rates and charges;
- (12) The form of payment;
- (13) The date and time of the end of the operator's tour of duty;
- (14) The date and time that the data was transmitted to the Department;

- (15) The date on which the vehicle's insurance policy expires;
- (16) The vehicle's odometer reading;
- (17) The vehicle's type of propulsion;
- (18) An indication of whether the vehicle is wheelchair accessible; and
- (17) Such other reasonable information within the jurisdiction of the Department as it may require through an administrative issuance.

1201.10 The trip data required by § 1201.9 shall be reported no more than once per day or such lower frequency as set in an administrative issuance, and real time information may be required only when the operator is on duty.

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

**Section 1209, LICENSING OF LCS VEHICLE OPERATORS – ISSUANCE OF LICENSES, is amended as follows:**

**New Subsections 1209.5 and 1209.6 are added to read as follows:**

1209.5 The Department may issue a provisional DFHV operator's luxury class service license (provisional LCS operator's license) pursuant to an administrative issuance provided that each applicant:

- (a) Meets the requirements of §§ 1205 and 1207;
- (b) Submits an application pursuant to § 1206;
- (c) Completes the training and education requirements of § 1208; and
- (d) Complies with such additional terms and conditions for provisional licensing as may be set forth in the administrative issuance, including requirements related to:
  - (1) Passenger, operator, and public safety;
  - (2) Consumer protection; and
  - (3) Any other purpose within the jurisdiction of the Department.

1209.6 The total application fees for a provisional LCS operator's license, including fees for fingerprinting and testing, shall not exceed the total fees for a full (non-

provisional) DFHV operator's license.

**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 and 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 16, DISPATCH SERVICES AND DISTRICT OF COLUMBIA TAXICAB INDUSTRY CO-OP, is amended as follows:**

**Section 1612, DISTRICT OF COLUMBIA UNIVERSAL TAXICAB APP, is amended as follows:**

**Subsection 1612.1 is amended to read as follows:**

- 1612.1 Not later than one hundred eighty (180) days after the effective date of this section ("implementation date"), each DCTC taxicab operator shall at all times throughout each tour of duty:
- (a) Be logged into the District of Columbia Universal Taxicab App ("DC TaxiApp"); and
  - (b) Be able to timely receive and accept all requests for service.

**A new Chapter 21, OFFICE OF HEARING EXAMINERS, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is added as follows:**

**2100 APPLICATION AND SCOPE**

- 2100.1 This chapter is intended to create the Office of Hearing Examiners ("OHE") as an independent unit within the Department of For-Hire Vehicles, and to establish fair and consistent procedural rules for the hearing and adjudication of matters by OHE.

- 2100.2 The provisions of this chapter shall apply to all matters heard or adjudicated by OHE.
- 2100.3 The provisions of this chapter shall be interpreted to comply with the language and intent of the Establishment Act and the Impoundment Act.
- 2100.4 OHE shall have jurisdiction to adjudicate and conduct a hearing in a matter involving one or more of the following actions by the Department:
- (a) A decision to deny a new license;
  - (b) A decision to deny a renewed license;
  - (c) A notice of proposed suspension of a license; or
  - (d) A notice of proposed revocation of a license.
- 2100.5 Hearings shall be conducted at the administrative offices of the Department, or elsewhere in the District as designated in an administrative issuance.
- 2100.6 All adjudications and hearings before OHE shall comply with this chapter, other applicable provisions of this title, the Administrative Procedure Act (“APA”), and other applicable laws.
- 2100.7 In the event of a conflict between a provision of this chapter and a provision of another chapter of this title other than Chapter 7, the provision of this chapter shall control.

## **2101 EFFECT OF FAILURE TO APPEAL**

- 2101.1 If an appellant or respondent fails to timely appeal an action taken by the Department enumerated in § 2100.4, the action shall become final and not subject to appeal.

## **2102 INDEPENDENCE AND IMPARTIALITY OF HEARING EXAMINERS**

- 2102.1 Hearing examiners shall be employees of the Department, but no hearing examiner shall be subject to the supervision, direction, control, or influence of an official, employee, agent, or counsel of the Department, except for purposes of time and attendance.
- 2102.2 No official, employee, agent, or counsel of the Department shall engage in *ex parte* communications with an employee of OHE, or attempt to supervise, direct, control, or influence a hearing examiner in connection with the merits or facts of any matter.

2102.3 No official, employee, agent, or counsel of the Department shall assign to a hearing examiner any task or duty which is unrelated to adjudications or hearings, or which limits a hearing examiner's availability to adjudicate matters, except for time and attendance and other administrative matters applicable to all District employees.

2102.4 Hearing examiners shall be required at all times to act in a manner that promotes public confidence in the integrity and impartiality of OHE.

### **2103 POWERS AND DUTIES OF HEARING EXAMINERS**

2103.1 All hearings shall be conducted by a hearing examiner. No other official, employee, agent, or counsel of the Department shall have authority to adjudicate contested cases before the Department.

2103.2 Hearing examiners shall conduct fair and impartial hearings, in a manner which ensures that facts are fully and accurately elicited and that all issues are adjudicated expeditiously so as to not create undue delay.

2103.3 Hearing examiners shall ensure that each hearing is conducted in an orderly manner, and shall have the authority to physically exclude from a hearing an appellant, respondent, or other individual who substantially interferes with or obstructs the orderly conduct of a hearing.

2103.4 Within thirty (30) days following the receipt of a request for a hearing pursuant to § 2106, OHE shall schedule a hearing and serve notice thereof upon the parties.

2103.5 Each hearing examiner shall have authority to:

- (a) Administer oaths and affirmations;
- (b) Examine witnesses and receive testimony;
- (c) Rule upon offers of proof and receive evidence;
- (d) Regulate the course and conduct of hearings;
- (e) Rule upon motions and dispose of procedural requests and similar matters;
- (f) Hear and decide questions of law and fact;
- (g) Exclude information which is scandalous, impertinent, or not relevant to the adjudication of the matter;
- (h) Issue a subpoena to compel a witness to testify; and

- (i) Limit the evidence and number of witnesses to be heard, and the nature of testimony, to avoid cumulative evidence and to expedite the proceedings.

## **2104 RECUSAL**

2104.1 A hearing examiner shall recuse himself or herself from a matter where he or she is unable to act in a fair and impartial manner. Notice of a recusal shall be provided to the senior hearing examiner.

2104.2 Grounds for recusal shall include:

- (a) A conflict of interest or the appearance thereof;
- (b) Bias toward a party or the appearance thereof;
- (c) An *ex parte* communication or pre-judgment of the matter by the hearing examiner of any fact or issue; and
- (d) Any other reason for recusal supported by District law.

2104.3 A party shall file a motion to recuse a hearing examiner from participating in the adjudication not later than five (5) days after receipt of the notice of hearing.

2104.4 Each motion for recusal shall be supported by an affidavit setting forth the reasons for recusal. Failure to timely file a motion for recusal by the time required by § 2104.3 may be construed as a waiver of all grounds for recusal.

2104.5 The senior hearing examiner shall rule upon each motion for recusal.

## **2105 EX PARTE COMMUNICATIONS**

2105.1 Hearing examiners shall not engage in *ex parte* communications with any individual, including any official, employee, agent, or counsel of the Department.

2105.2 Where a hearing examiner has engaged in *ex parte* communications, the hearing examiner shall disclose such communications on the record, and shall consider whether recusal is required by § 2104.1.

## **2106 REQUEST FOR HEARING**

2106.1 An appeal shall be filed with OHE within the time prescribed by §§ 708 and 709.

2106.2 Each request for a hearing shall include:

- (a) The full name of the respondent or appellant, and the full name of the appellant's or respondent's representative, if any, appearing on the

appellant's or respondent's behalf pursuant to § 2108;

- (b) The mailing address, email address, and telephone number of the appellant or respondent, or of the appellant's representative, if any;
- (c) A brief statement of the reasons for the appeal;
- (d) A brief statement of the relief sought from OHE; and
- (e) A copy of the document reflecting the Department's decision to deny a new or renewed license, the notice of proposed suspension, or the notice of proposed revocation.

## **2107 SUMMARY ADJUDICATION**

- 2107.1 An appellant may request that an appeal of a decision to deny a new or renewed license be decided summarily, without a hearing.
- 2107.2 Each motion for summary adjudication shall be supported by evidence that identifies the facts not in dispute, with appropriate affidavits, and citations to relevant legal authority.

## **2108 REPRESENTATIVES**

- 2108.1 An appellant or respondent, at its own expense, may appear through an attorney or non-attorney representative.
- 2108.2 Each representative shall file a notice of appearance at least two (2) days prior to the first scheduled hearing at which the representative expects to appear. The notice shall include the representative's full name, contact information, and, if applicable, the bar number and jurisdiction(s) of admission.
- 2108.3 A representative shall not be heard and shall not file or serve documents, other than a request for a hearing, until a notice of appearance has been filed.
- 2108.4 A representative may withdraw by serving and filing a notice of withdrawal upon all parties, provided that no motions are pending and no hearing has been scheduled. If a motion is pending or a hearing date has been scheduled, withdrawal shall be granted only by leave of the hearing examiner.
- 2108.5 An attorney acting as a representative shall be in good standing in all jurisdictions where the attorney is admitted, and shall comply with the D.C. Rules of Professional Responsibility throughout the course of the representation.
- 2108.6 Each representative shall exhibit professionalism and courtesy, and shall not mislead or make false statements to OHE.

## **2109 FAILURE TO APPEAR**

- 2109.1 Where a respondent or appellant fails to appear for a scheduled hearing, the hearing examiner may enter a default, provided however, that the Department shall be required to proffer sufficient evidence to meet its burden of proof.
- 2109.2 Where, following default, the Department proffers sufficient evidence to meet its burden of proof, the hearing examiner shall issue a default judgment, which shall constitute the hearing examiner's final decision in the matter.
- 2109.3 A respondent or appellant may file a motion to set aside a default judgment within ten (10) days following the default judgment. If a respondent fails to file a motion to set aside a default judgment, the default judgment will become final. The hearing examiner may grant the motion for good cause shown.

## **2110 MOTIONS**

- 2110.1 Motions shall be filed no later than ten (10) days prior to the hearing, shall state the nature of the motion and the relief sought, and shall be supported by appropriate documentation.
- 2110.2 A response or opposition to a motion shall be filed not later than five (5) days prior to the hearing, and shall be supported by appropriate documentation. Replies and sur-replies shall not be filed without leave.
- 2110.3 Where leave is required to file a document, a motion for leave shall be filed within ten (10) days following service of the motion or order to which the document is addressed.
- 2110.4 Each motion other than a motion made at a hearing shall be in writing and shall be served upon all parties to the matter. The filing or pendency of a motion shall not extend any deadline.
- 2110.5 Motions made during a hearing may be made orally at the discretion of the hearing examiner.

## **2111 COMPUTATION OF TIME**

- 2111.1 An applicable time period measured in days under this chapter shall be calculated using the computation of time rules prescribed by Chapter 7, if any, and, if none, then in calculating such period:
- (a) The day of the act, event, or default from which the period begins to run shall not be included;

- (b) The last day of the period shall be included;
- (c) Unless otherwise specified, any reference to “days” means calendar days including holidays and weekends; and
- (d) When the last day is a Saturday or a Sunday, or a national or District holiday, the period shall run until the close of business of the following business day.

## **2112 ENLARGEMENTS OF TIME**

- 2112.1 When an act is required or allowed to be done within a specified time, a hearing examiner, upon motion demonstrating good cause, or *sua sponte*, may enlarge the time period.
- 2112.2 If a motion is made to enlarge before the expiration of the period originally prescribed, the hearing examiner may grant enlargement of time for good cause shown.
- 2112.3 If a motion for enlargement of time is filed after the expiration of the time period, the hearing examiner may grant the enlargement for good cause shown, provided that the failure to file the motion prior to the expiration of the time period was the result of excusable neglect.
- 2112.4 A motion for enlargement of time shall not apply to the time prescribed for filing an appeal.

## **2113 CONTINUANCES OF HEARINGS**

- 2113.1 A hearing examiner may continue a hearing for good cause shown, including at a hearing, upon motion or *sua sponte*, provided the continuance does not unduly delay or disrupt the adjudication of a matter, and does not cause undue prejudice to the opposing party.
- 2113.2 Each motion for continuance shall comply with § 2110.

## **2114 DISMISSALS OF MATTERS**

- 2114.1 A respondent or appellant may file a motion to dismiss at any time.
- 2114.2 Parties may file a joint motion to dismiss, with or without prejudice, at any time.
- 2114.3 If a respondent or appellant fails to comply with a hearing examiner’s order or with the requirements of this chapter, or fails to prosecute, the hearing examiner may dismiss the matter *sua sponte* or upon motion.

- 2114.4 A dismissal shall be without prejudice, unless the hearing examiner orders otherwise.
- 2114.5 Each motion to dismiss shall be in writing unless made orally at a hearing.
- 2114.6 Each motion to dismiss shall state the reasons for dismissal and include supporting documentation.

## **2115 SUBPOENAS**

- 2115.1 A hearing examiner shall have authority to issue a subpoena for the appearance of witnesses or the production of documents, *sua sponte* or upon the filing of a motion.
- 2115.2 Each motion for a subpoena shall identify the relevance of the documents sought or witnesses requested, and shall be filed not later than ten (10) days prior to the hearing.
- 2115.3 If a motion for subpoena is granted, the moving party shall serve the subpoena in the manner required by § 714.1 (a) and (c), and shall serve a copy of the subpoena and proof of service upon the opposing party within one (1) day.
- 2115.4 Proof of service of a subpoena shall be filed with OHE within three (3) days following service of the subpoena, or one (1) day prior to the hearing, whichever is earlier.

## **2116 BURDEN OF PROOF**

- 2116.1 In all matters adjudicated by OHE, the Department shall bear the burden of proof to establish by a preponderance of the evidence an evidentiary basis for the Department's denial or nonrenewal of a license, or for the Department's proposed suspension or revocation of a license.
- 2116.2 If the Department has presented all of its evidence and the hearing examiner determines that the Department has not met its burden of proof, the hearing examiner may enter judgment against the Department without the presentation of additional evidence.

## **2117 EVIDENCE**

- 2117.1 Formal rules of evidence shall not apply to adjudications or hearings before OHE.
- 2117.2 Hearsay may be considered during a hearing, provided however, that hearsay shall not serve as the sole evidentiary basis for a suspension or revocation of a license.

- 2117.3 Irrelevant, immaterial, scandalous, cumulative, or unduly lengthy evidence may be excluded at the discretion of the hearing examiner.
- 2117.4 Each party shall have the right to present witnesses, to conduct direct examination and cross examination, and to introduce documentary evidence.
- 2117.5 Each party shall serve upon the opposing party and file with OHE, exhibit and witness lists, not later than five (5) business days prior to the hearing.
- 2117.6 A hearing examiner may require the production of evidence by either party.
- 2117.7 A hearing examiner may take judicial notice of generally accepted facts, but shall not take judicial notice of any facts in dispute.

## **2118 DECISIONS**

- 2118.1 A hearing examiner shall issue a written decision within thirty (30) days following the hearing.
- 2118.2 Each decision shall include:
- (a) A list of the exhibits accepted in evidence and the witnesses who testified;
  - (b) Findings of fact based on the evidence adduced at the hearing; and
  - (c) Conclusions of law referencing the applicable law and identifying the findings of fact upon which the conclusions rest.
- 2118.3 If the Establishment Act does not require that a hearing examiner's decision be approved by the Director, the decision shall be a final agency decision.
- 2118.4 If the Establishment Act requires that a hearing examiner's decision be approved by the Director, the hearing examiner shall promptly refer the matter to the Director or his or her designee.

## **2119 RECONSIDERATION**

- 2119.1 A motion for reconsideration of a hearing examiner's decision shall be filed within ten (10) days following the issuance of the decision.
- 2119.2 Each motion for reconsideration shall state the grounds for reconsideration and shall be limited to:
- (a) Errors of law; findings of facts not supported by the evidence, or

- (b) Newly discovered evidence which was not reasonably available to the party at the time of the hearing.

2119.3 The filing of a motion for reconsideration shall not stay a decision by the Department to deny a new license, but it shall stay a decision by the Department to deny a renewed license, a notice of proposed suspension, or a notice of proposed revocation.

## **2120 APPEALS**

2120.1 This section shall apply to a decision of a hearing examiner which does not require the Director's approval under the Establishment Act.

2120.2 In accordance with Chapter 7, either party may appeal a hearing examiner's decision to the Director or his or her designee within thirty (30) days of the issuance of the decision.

2120.3 Upon receipt of an appeal from a hearing examiner's decision, the Director or his or her designee shall render a final decision to affirm, reverse, or modify the decision, or to remand for further proceedings.

2120.4 The filing of an appeal shall not stay a decision by the Department to deny a new license.

2120.5 The filing of an appeal shall stay a decision by the Department to deny a renewed license, a notice of proposed suspension, or a notice of proposed revocation.

## **2121 RECORDS OF HEARINGS**

2121.1 All hearings shall be recorded, and shall be available to the parties and to the public by transcript.

2121.2 The administrative record shall consist of the OHE file, exhibits, transcripts, and all other documents filed with or issued by OHE.

2121.3 A party appealing a decision of OHE shall bear the expense of producing the transcript where not already produced.

## **2122 FINAL AGENCY DECISION**

2122.1 A decision of the Director or his or her designee on a matter referred under § 2118.4 or appealed to the Director or his or her designee under § 2120 shall constitute a final agency decision.

2122.2 A decision of a hearing examiner which is not timely appealed in accordance with § 2120.2 shall constitute a final agency decision.

**Chapter 99, DEFINITIONS, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:**

**Section 9901, DEFINITIONS, is amended as follows:**

**Subsection 9901.1 is amended to add definitions as follows:**

**“Administrative Procedure Act” (“APA”)**-- The District of Columbia Administrative Procedure Act, effective October 8, 1975, (D.C. Law 1-19; [D.C. Official Code §§ 2-502 et seq.](#) (2014 Repl. & 2015 Supp.)).

**“Evidence”** - papers, notarized statements, photographs, and other things a party believes are helpful to a case.

**“Ex parte communications”** – direct or indirect communications about the merits or facts of a matter or impending matter which do not occur in the presence of all parties, and which do not include scheduling or other procedural matters unrelated to the merits or facts of a matter.

**“Hearing examiner”** – an attorney who hears and adjudicates cases at OHE.

**“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.

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

**“Matter”** - a contested case, as defined in the Administrative Procedures Act.

**“Preponderance of the evidence”** - evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, sufficient evidence to convince the hearing examiner that something is more likely to have occurred than to not have occurred.

**“Proceeding”** - the entire adjudication process, from the issuance of a notice of hearing through the issuance of a decision, including the disposition of any motion for reconsideration.

**“Provisional DCTC luxury class service operator’s license”** – a DFHV operator’s license issued to an operator of a luxury class service vehicle which, following its issuance, may be subject to additional requirements or conditions, including the completion of a background check

by the Federal Bureau of Investigation, prior to full licensing consistent with the requirements of this title and other applicable laws.

**“Provisional LCS operator’s license”** – a provisional DFHV luxury class service operator’s license as defined in this section.

**“Senior hearing examiner”** – a hearing examiner, as defined in this Chapter, who also performs administrative duties for OHE as allowed or required by OHE rules and by other applicable laws and regulations.