

## DISTRICT OF COLUMBIA TAXICAB COMMISSION

### NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission (“Commission”), pursuant to the authority set forth in Sections 8(c) (2), (3), (7), (14), (16), (17) and (19), 14, 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 §§ 50-307(c)(2), (3), (7), (14), (16), (17), and (19), 50-313 and 50-329 (2012 Repl. & 2015 Supp.)), hereby gives notice of its adoption of amendments to Chapter 7 (Enforcement). The rulemaking amends Chapter 7 to clarify: (1) that the Office of Taxicabs’ (“Office”) failure to comply with Title 31 deadlines which do not violate a Respondent’s substantial legal rights shall not result in the dismissal of an enforcement action; (2) the requirements for the issuance of notices of proposed suspensions and revocations; (3) that an action taken by the Office may be appealed to the Commission, a hearing examiner of the Office, or the Office of Administrative Hearings, at the discretion of the Office.

Proposed rulemaking was adopted by the Commission on August 12, 2015, and published in the *D.C. Register* on November 6, 2015 at 62 DCR 014359. The Commission received comments during the comment period, which ended on December 6, 2015. These comments included suggestions that DCTC clarified: (1) whether hearing examiners’ decisions under proposed § 703.9 are appealable to OAH; and (2) the standard of review for decisions by the Commission under § 703.11. In response to these comments, DCTC has clarified that hearing examiners’ decisions shall not be appealable to OAH, and that decisions by the Commission under § 703.11 shall not be reversed by OAH unless they are clearly erroneous and/or reflect an abuse of discretion. No substantial changes were made.

The Commission voted to adopt these rules as final on January 20, 2016, and they will become effective upon publication in the *D.C. Register*.

#### **Chapter 7, ENFORCEMENT, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR is amended as follows:**

##### **Section 700, APPLICATION AND SCOPE, is amended as follows:**

##### **Subsection 700.5 is amended to read as follows:**

700.5           The provisions of this chapter shall apply to all matters and contested cases pending on the date of publication of the final rulemaking in the *D.C. Register*, respectively, to the extent allowed by the District of Columbia Administrative Procedure Act (“DCAPA”) effective October 8, 1975 (D.C. Law 1-19; D.C. Official Code §§ 2-501 *et seq.*) and other applicable law.

##### **A new subsection 700.6 is added to read as follows:**

700.6           The Office’s failure to comply with a deadline established by a provision of this title shall not be a basis for the dismissal of an enforcement action except where the Respondent proves that the Respondent’s substantial legal rights would be violated in the absence of a dismissal, and that no reasonable

procedural remedy, such as a continuance or enlargement of time, can be fashioned to cure the violation.

**Section 703, ENFORCEMENT ACTIONS, is amended as follows:**

**Subsections 703.5 and 703.6 are amended to read as follows:**

703.5 The enumeration of enforcement actions in this section shall not limit or proscribe any legal remedy available to the Commission or the Office in a court proceeding at law or in equity, including, but not limited to, entering into consent decrees and settlements, and enforcing the terms thereof.

703.6 The Office may, through the Office of the Attorney General, petition the District of Columbia Superior Court for injunctive relief, or take any other action authorized by law to enforce compliance with a provision of this title or other applicable law including, but not limited to, consent decrees and settlements.

**New subsections 703.9-703.11 are added to read as follows:**

703.9 An appeal from any enforcement action under this chapter may be referred to the Commission, to a hearing examiner of the Office, or to OAH, as designated by the Office in its sole discretion. Decisions by DCTC hearing examiners shall be according to any rules which may be enacted by the Commission but shall in no instances be appealable to OAH.

703.10 In computing any applicable time period measured in days under this chapter:

- (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; and
- (c) Unless otherwise specified, any reference to “days” means calendar days including holidays and weekends.

703.11 An appeal to OAH from any of the following appellate decisions of the Commission shall be limited to the administrative record, and shall not be reversed unless they are clearly erroneous and/or constitute an abuse of discretion:

- (a) A decision on appeal from a cease and desist order pursuant to § 705.4; and
- (b) A decision on appeal from a denial of a license pursuant to § 709.3.

**Section 705, CEASE AND DESIST ORDERS, is amended as follows:**

**Subsection 705.2 (d) is amended to read as follows:**

- (d) A statement that the respondent has a right to request a hearing, in writing, within fifteen (15) calendar days of service of the order.

**Subsection 705.2 is amended to add a new subparagraph (g) to read as follows:**

- (g) A statement of the requirements, terms, and conditions of the cease and desist order, if any.

**Subsection 705.4 is amended to read as follows:**

705.4 Upon receipt of a timely request for a hearing, the Commission, hearing examiner of the Office, or OAH, as designated by the Office, shall conduct a hearing within fifteen (15) calendar days after the date of receipt of the request for a hearing and shall issue a decision within thirty (30) calendar days after the close of the record of the hearing.

**Subsection 705.5 is amended to read as follows:**

705.5 If the respondent does not request a hearing, in writing, within fifteen (15) calendar days after service of the cease and desist order, the Order shall become final and shall incorporate the requirements, terms, and conditions of the cease and desist order.

**Existing subsection 705.7 is renumbered as subsection 705.8.**

**A new subsection 705.7 is added to read as follows:**

705.7 The following civil fines for failure to comply with a cease and desist order shall apply where no other provision of this title or other applicable law establishes a civil fine for the same conduct, or where another provision of this title or other applicable law establishes a lower civil fine, in lieu of such lower civil fine:

- (a) Where an individual fails to timely and fully comply with a cease and desist order: a civil fine not to exceed one thousand dollars (\$1,000) per day based on the circumstances; and
- (b) Where an entity fails to timely and fully comply with a cease and desist order: a civil fine not to exceed five thousand dollars (\$5,000) per day based on the circumstances.

**Section 706, IMMEDIATE SUSPENSION OF A VEHICLE OPERATOR'S LICENSE, is amended as follows:**

**Subsections 706.8 through 706.9 are amended to read as follows:**

706.8 Any review by OAH of an order of immediate suspension, at a preliminary hearing held pursuant to § 706.7, or at any subsequent hearing, shall be limited to a determination of whether the Office has sufficient evidence to conclude that reasonable grounds exist to believe that the respondent poses an imminent danger to the health, safety, or welfare of an operator, a passenger, or the public, as provided in § 706.2.

706.9 If OAH determines, after a review pursuant to § 706.8, that the Office has sufficient evidence to conclude that reasonable grounds exist to believe that the respondent poses an imminent danger to the health, safety, or welfare of an operator, a passenger, or the public, as provided in § 706.2, the order of immediate suspension shall remain in effect without modification by OAH through the end of the immediate suspension as stated in the order, or until a final ruling on the merits of any related notice of proposed suspension or revocation issued by the Office pursuant to § 708, whichever is later.

**A new subsection 706.10 is added to read as follows:**

706.10 Each order of immediate suspension issued pursuant to this section shall be issued concurrently with a notice of proposed suspension or revocation issued pursuant to § 708.

**Section 707, IMMEDIATE SUSPENSION OF A LICENSE OTHER THAN A VEHICLE OPERATOR'S LICENSE, is amended as follows:**

**Subsection 707.2 is amended to read as follows:**

707.2 A determination under § 707.1 shall be based on evidence that the respondent:

- (a) Has committed a willful or repeated violation of any provision of this title or other applicable law which carries a civil penalty of at least five hundred dollars (\$500) for the current or most recent violation or for which license suspension is stated as an available civil penalty;
- (b) Has allowed or suborned activity by another person which would provide a ground for such person's suspension or revocation under this chapter;
- (c) Poses an imminent or significant threat to the health or safety of passengers, operators, or the public, consumer protection, or passenger privacy; or
- (d) Is using the license to engage in an activity prohibited by a provision of this title or other applicable law.

**Section 708, NOTICE OF PROPOSED SUSPENSION OR REVOCATION OF A LICENSE, is amended as follows:**

**Subsection 708.1 is amended to read as follows:**

708.1 Proposed suspension. The Office may issue a notice of proposed suspension of a license issued under this title based on any of the following grounds:

- (a) A material misrepresentation, fraud, or concealment of material information in a communication with the Commission or the Office in a document provided to the Commission or the Office, or in connection with an activity for which the respondent is licensed;

- (b) A determination that the respondent no longer meets the requirements for the license it was issued by the Office;
- (c) A determination that a basis for suspension exists pursuant to a provision of another chapter of this title;
- (d) The existence of one or more grounds for suspension of a license pursuant to § 706.2 or § 707.2, without regard to whether the Office has issued an order of immediate suspension;
- (e) A criminal conviction involving fraudulent conduct, or in the case of an entity, a determination that an employee, agent, or independent contractor associated with the entity has been convicted of such conduct in connection with any activity regulated by this title;
- (f) The use or subornation of a fraudulent or misleading device, method, or practice relating to any activity regulated by this title;
- (g) A willful or repeated failure to obey one or more compliance orders issued by the Office;
- (h) A willful or repeated failure to comply with one or more orders issued by OAH;
- (i) A willful or repeated failure to pay one or more civil fines imposed by the Office;
- (j) A willful or repeated failure to comply with one or more provisions of this title or applicable law; or
- (k) Where identified as a civil penalty in a provision of this title.

**Subsections 708.3 and 708.5 are amended to read as follows:**

708.3 A notice of proposed suspension or proposed revocation may be issued concurrently with an order of immediate suspension or at any time at least fourteen (14) days prior to a hearing on the merits, provided however, that such notice shall not be issued fewer than fourteen (14) days prior to a hearing on the merits without good cause shown by the Office, including access to new evidence, and a change in the law or regulations applicable to the action.

708.5 A proposed suspension shall not exceed the current licensing period.

**Subsection 708.6 is amended to read as follows:**

708.6 A proposed revocation shall exceed the current licensing period and shall contain a requirement that the respondent is not permitted to re-apply for a new license until after a specific date following the date on which the revocation becomes final.

**New subsections 708.7 and 708.8 are added to read as follows:**

- 708.7           The revocation of a license and the circumstances giving rise thereto may be considered by the Office at the time of a renewal of a license issued under this title.
- 708.8           Each notice of proposed suspension or proposed revocation shall be served and filed in the manner prescribed by § 712.

**Section 713, MEDIATION, is amended as follows:**

**Subsection 713.4 is amended to read as follows:**

- 713.4           Mediation shall be scheduled by the Office to occur within a reasonable period, provided, however, that where the Office is considering an immediate suspension, the mediation shall be scheduled for not later than three (3) business days following service of the invitation.