

OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF FINAL RULEMAKING

The Acting Chief Administrative Law Judge of the Office of Administrative Hearings (OAH), pursuant to the authority set forth in Sections 8(a)(7) and 8(b)(7) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76, D.C. Official Code §§ 2-1831.05(a)(7) and (b)(7)), hereby gives notice of the intent to take final rulemaking action for adopting amendments to Chapter 28, entitled “Office of Administrative Hearings Rules of Practice and Procedure,” of Title 1 of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to promote the public peace, safety, and welfare by establishing procedures for adjudicating alleged violations by taxicab drivers, referred to OAH by the District of Columbia Taxicab Commission.

The proposed and emergency rulemaking was published in the *D.C. Register* on August 1, 2014, at 61 DCR 7896. OAH did not receive any comments from the public concerning the proposed rules during the thirty (30)-day comment period, which expired on September 2, 2014, and no substantive changes were made. These rules were adopted as final on October 14, 2014, and shall take effect upon publication in the *D.C. Register*.

Section 2803 (Beginning a Civil Fine Case) of Chapter 28 (Office of Administrative Hearings Rules of Practice and Procedure), of Title 1 (Mayor and Executive Agencies) of the DCMR is amended as follows:

2803 BEGINNING A CIVIL FINE CASE

2803.1 Sections 2803 through 2807 establish procedures for cases in which the Government seeks payment of a civil fine.

2803.2 When the Government is seeking a civil fine, it must file a Notice of Infraction or a Notice of Violation, as authorized by law, at the OAH. The Government may not file a Notice of Infraction, under the Civil Infractions Act, without complying with Subsection 2803.5, and may not file a Notice of Violation, under the Litter Control Administration Act, without complying with Subsection 2803.8.

2803.3 The Government must provide a copy of the Notice of Infraction or Notice of Violation to the Respondent (the person or entity that the Government wants to pay the fine) in the manner specified in the Civil Infractions Act, the Litter Control Administration Act, the District of Columbia Taxicab Commission Establishment Act of 1985 (DCTC Act), or other applicable law.

2803.4 If a Respondent files an answer before the Government files a Notice of Infraction or a Notice of Violation, OAH will open a case. The Administrative Law Judge

may require the Government to file the original Notice of Infraction or Notice of Violation.

- 2803.5 In a Civil Infractions Act case filed on or after October 1, 2010, if the Government sends a Notice of Infraction to the Respondent by first-class mail, the Government may not file the Notice of Infraction until at least fifteen (15) calendar days after the date that it mailed the Notice of Infraction. When it files the Notice of Infraction, the Government also must file an affidavit, on a form approved by the Chief Administrative Law Judge, verifying that the United States Postal Service (USPS) did not return the Notice of Infraction to the Government.
- 2803.6 If the USPS returns a Notice of Infraction to the Government after it has filed the affidavit required by Subsections 2803.5 or 2803.11(b), the Government must notify OAH by filing a new affidavit, on a form approved by the Chief Administrative Law Judge.
- 2803.7 If the USPS returns the Notice of Infraction to the Government, the Government may file proof of any alternative service of the Notice of Infraction.
- 2803.8 In a Litter Control Administration Act case, if the Government sends a Notice of Violation to a Respondent by certified mail, the Government must file a copy of a signed certified mail receipt or other proof that the USPS delivered the Notice of Violation to the Respondent's address. If the USPS returns the certified mail to the Government, the Government may file proof of any alternative service of the Notice of Violation.
- 2803.9 When it files a Notice of Infraction or a Notice of Violation, the Government must file a copy of all exhibits it expects to offer at any hearing in the case and must provide a copy of each exhibit to the Respondent. An Administrative Law Judge may allow the Government to use exhibits that it did not file or provide in accordance with this subsection if there is no prejudice to the Respondent.
- 2803.10 OAH may dismiss or may refuse to accept for filing any Notice of Infraction or Notice of Violation that does not comply with the applicable law or these Rules.
- 2803.11 When DCTC is seeking civil fines or sanctions under the "District of Columbia Taxicab Commission Establishment Act of 1985," effective March 25, 1986, as amended (D.C. Law 6-97; D.C. Official Code §§ 50-301 *et seq.*) ("DCTC Act"),
- (a) DCTC may file a Notice of Infraction by entering it in the automatic ticket database presently maintained by the Department of Motor Vehicles ("DMV"). The day the Notice of Infraction data is entered into the DMV database shall be deemed the date of filing of the Notice of Infraction with OAH;
 - (b) If DCTC serves a Notice of Infraction by first-class mail, DCTC may not file the Notice of Infraction with OAH until at least 15 calendar days after

the date it mailed the Notice of Infraction. When it files the Notice of Infraction with OAH, DCTC must also file an affidavit, on a form approved by the Chief Administrative Law Judge, verifying that the USPS did not return the Notice of Infraction to DCTC;

- (c) If DCTC issues a Notice of summary or proposed denial, revocation, suspension or modification of a license, a Notice to cease and desist, or a Notice to take action, DCTC shall file the Notice with OAH promptly and serve it in the manner provided under the DCTC Act and implementing regulations. OAH will schedule a hearing as required by law or on the request of the Respondent;
- (d) If DCTC takes other actions under the DCTC Act or implementing regulations appealable to OAH, DCTC shall file the relevant Notice, Order, or Action with OAH and serve it in the manner provided under the DCTC Act and implementing regulations. If the DCTC Act and implementing regulations do not specify a manner of service, DCTC shall follow Subsection (b) above.

2803.12 When a Notice of Infraction is issued from a hand-held electronic device, no signature of an issuing officer shall be required; provided, that the officer's printed name, department, and badge number appear legibly on the face of the Notice of Infraction.

Section 2804 (Answers in Civil Fine Cases) of Chapter 28 (Office of Administrative Hearings Rules of Practice and Procedure), of Title 1 (Mayor and Executive Agencies) is amended as follows:

2804 ANSWERS IN CIVIL FINE CASES

2804.1 To answer a Notice of Infraction or a Notice of Violation (both “Notice”), a Respondent should file the Respondent’s copy of the Notice at OAH, or in DCTC cases filed in the DMV automatic ticket database, the Respondent shall answer according to the instructions on the back of the Notice of Infraction. The Respondent shall indicate on the Notice whether the Respondent’s answer is Admit, Admit with Explanation, or Deny.

2804.2 If a Respondent does not file the Respondent’s copy of the Notice, a written answer will be sufficient if it contains both the number of the Notice and a statement whether the Respondent’s answer is Admit, Deny, or Admit with Explanation.

2804.3 A Respondent is not required to send a copy of the answer to the Government. OAH will send the Government a copy of every answer of Deny or Admit with Explanation. In DCTC cases filed in the DMV automatic ticket database, the

Government has access to answers of Deny or Admit with Explanation in that database.

- 2804.4 A Respondent whose answer is Admit shall pay the fine specified on the Notice when filing the answer.
- 2804.5 If a Respondent's answer is Deny, OAH ordinarily will schedule a hearing and will notify the Respondent and Government, in writing, of the hearing date and time. The hearing order will contain additional information about procedures for the hearing. In DCTC cases filed in the DMV automatic ticket database, OAH will notify DCTC in writing of the hearing date and time selected by Respondent or by calendaring the hearing in the DMV database. In DCTC cases filed in the DMV database, if Respondent did not select the date and time of the hearing, OAH shall notify the Respondent in writing of the date and time of the hearing.
- 2804.6 If a Respondent's answer is Deny, after notice and opportunity to respond, an Administrative Law Judge may decide a case based on the papers submitted, without an in-person hearing, if a hearing is unnecessary.
- 2804.7 At least five (5) calendar days before any hearing date, the Respondent shall file at OAH copies of all exhibits that the Respondent intends to ask the Administrative Law Judge to consider at the hearing. At the same time, the Respondent shall send copies of those exhibits to the Government. In DCTC cases filed in the DMV automatic ticket database, the Respondent may file copies of all such exhibits in the DMV database without sending copies to DCTC. An Administrative Law Judge may allow a Respondent to use exhibits at a hearing that the Respondent did not file or provide to the Government before the hearing if there is no prejudice to the Government.
- 2804.8 If a Respondent's answer is Admit with Explanation, a Respondent shall submit a written explanation stating why the Respondent believes the Administrative Law Judge should reduce or suspend the fine or any penalty. The Respondent also shall submit any papers, photographs, or other materials supporting the Respondent's explanation. In DCTC cases filed in the DMV automatic ticket database, Respondent may file any materials supporting the answer of Admit with Explanation through the DMV database.
- 2804.9 OAH will send a copy of an answer of Admit with Explanation and supporting materials to the Government, and will allow the Government twenty-one (21) calendar days to reply. The Government must send the Respondent a copy of everything the Government files in reply. In DCTC cases filed in the DMV automatic ticket database, the Government has access to the answer of Admit with Explanation and Respondent's supporting materials through the DMV database. Any reply by DCTC must be filed in the DMV database and also provided to the Respondent.

- 2804.10 The Administrative Law Judge shall decide Admit with Explanation cases by considering all the materials filed by the parties, including the exhibits filed with the Notice, Respondent's explanation and supporting materials, and the Government's reply and supporting materials. The Administrative Law Judge will not hold a hearing, unless the parties' materials are not sufficient to allow him or her to decide the case.
- 2804.11 In an Admit with Explanation case, the Administrative Law Judge shall dismiss the Notice if he or she determines that the Respondent did not commit or is not responsible for the violation charged.
- 2804.12 In all civil fine cases, an Administrative Law Judge shall not impose a fine that exceeds the fine amount the Government requests.
- 2804.13 In a case involving (a) a denial, revocation, suspension, or modification of a license issued under the DCTC statute or (b) any other order or action authorized under the DCTC Act, other than a Notice of Infraction, OAH will schedule a hearing as required by law or on the request of the Respondent. If the Respondent requests a hearing, OAH shall schedule the hearing as required by law or as soon as practicable. If the Respondent does not appear for a hearing, the Administrative Law Judge may suspend the hearing and close the case.

Section 2805 (Defaults in Civil Fine Cases) of Chapter 28 (Office of Administrative Hearings Rules of Practice and Procedure), of Title 1 (Mayor and Executive Agencies) is amended as follows:

2805 DEFAULTS IN CIVIL FINE CASES

- 2805.1 This section contains rules for deciding civil fine cases in which the Respondent does not file an answer. There are separate procedures for Civil Infractions Act cases, Litter Control Administration Act cases, and other cases, because the law establishes different requirements for each of those cases.
- 2805.2 In a Civil Infractions Act case filed on or before September 30, 2010, if a Respondent fails to answer a Notice of Infraction within the time allowed by law, the Government must issue a second Notice of Infraction, as required by the Civil Infractions Act. OAH also may issue a notice of default. The notice of default shall inform the Respondent of any penalty provided by law, and shall direct the Government to issue a second Notice of Infraction.
- 2805.3 In a Civil Infractions Act case filed on or before September 30, 2010, if the Government fails to file a second Notice of Infraction within thirty (30) calendar days after a notice of default is served, an Administrative Law Judge may dismiss the charge against the Respondent.

2805.4 In a Civil Infractions Act case filed on or before September 30, 2010, if a Respondent fails to answer a second Notice of Infraction within the time allowed by law, an Administrative Law Judge shall determine whether:

- (a) The Government has submitted evidence of proper service; and
- (b) Each Notice of Infraction meets all legal requirements on its face.

If so, the Administrative Law Judge shall find the Respondent in default and shall impose the legally authorized fine and penalty. If not, the Administrative Law Judge shall dismiss both Notices of Infraction without prejudice.

2805.5 In a Civil Infractions Act case filed on or after October 1, 2010, and in a Litter Control Administration Act case, if a Respondent fails to answer within the time allowed by law, an Administrative Law Judge shall determine whether:

- (a) The Government has submitted evidence of proper service; and
- (b) The Notice of Infraction or Notice of Violation meets all legal requirements on its face.

If so, the Administrative Law Judge shall find the Respondent in default and shall impose the legally authorized fine and penalty. If not, the Administrative Law Judge shall dismiss the Notice of Infraction or Notice of Violation without prejudice.

2805.6 In a Civil Infractions Act case filed on or after October 1, 2010, or in DCTC cases filed under Subsection 2803.11(b), if the USPS returns an order finding the Respondent in default to the Clerk's Office, for reasons that call into question the accuracy of any affidavit filed under Subsection 2803.5 or Subsection 2803.11(b), (for example, "no such address," "addressee unknown"), an Administrative Law Judge shall issue an order requiring the Government to show why the default order should not be vacated. If the Government does not respond with sufficient evidence showing that it mailed the Notice of Infraction to a valid address for the Respondent, the default order shall be vacated and the Notice of Infraction shall be dismissed.

2805.7 In default cases brought under the DCTC Act or acts other than the Civil Infractions Act or the Litter Control Administration Act, the procedure shall be consistent with the applicable law and shall ensure that:

- (a) There is sufficient evidence of proper service on the Respondent; and
- (b) The charging document meets all legal requirements on its face.

A Respondent who fails to answer shall be held in default and must pay the legally authorized fine and penalty. If the Administrative Law Judge does not find the Respondent in default, the Administrative Law Judge shall dismiss the Notice without prejudice.