Emergency Rulemaking

17 NYCRR § 720.32 (2011)

§ 720.32 Suspension and revocation of operating authority.

(a) Notwithstanding any regulation of the department to the contrary, pursuant to section 156, subdivision 2 of the Transportation Law, the Commissioner may immediately suspend or revoke the authority for operation authorized by certificate or permit for any of the following safety violations:

(1) Out of service violations which are determined by the Commissioner to be conditions or activities which constitute a danger to the safety of the people and which are found to have occurred for such carrier in the preceding six-month period. The incidence of out of service violations triggering a suspension or revocation of authority shall be as follows:
   (i) For a carrier with at least one, but no more than five buses at any time in the preceding six month period: three violations.
   (ii) For a carrier with at least six, but no more than twenty buses at any time in the preceding six month period: four violations.
   (iii) For a carrier with more than twenty-one buses at any time in the preceding six month period: five violations;
   (iv) For a carrier with at least ten department semi-annual inspections performed between April 1, 2010 and March 31, 2011 that resulted in an out-of-service rate greater than 25%.

(2) Driving a bus while intoxicated in violation of the vehicle and traffic law;
(3) Driving a bus while using or in possession of drugs in violation of the vehicle and traffic law;
(4) Driving a bus after such driver has been placed out of service in violation of the transportation law, vehicle and traffic law or regulations adopted thereunder;
(5) Driving a bus that has been placed out of service in violation of the transportation law, vehicle and traffic law or regulations adopted thereunder; or
(6) Driving a bus without a required license in violation of the vehicle and traffic law.

(b) Notwithstanding any regulation of the department to the contrary, the Commissioner may immediately suspend or revoke the authority of any carrier operating pursuant to a certificate or permit issued by the Commissioner pursuant to Article 6 or Article 7 of the Transportation Law if such carrier operates concurrently under any authority issued by the United States Department of Transportation, Federal Motor Carrier Safety Administration, and such federal operating authority has been suspended or revoked.

(c) The suspension of operating authority as provided in sub-sections (a) or (b) shall be effective five business days after the date of issuance. Pending the effective date of such suspension, any carrier subject to this section may be heard to present proof as to why such suspension should not occur or should not have occurred. The Commissioner shall make a determination based upon a
hearing of the proof whether such suspension shall become effective or continue and a hearing regarding permanent revocation shall be scheduled. In addition to or in lieu of any suspension or revocation, the Commissioner may, after a hearing, impose a civil penalty upon such carrier in accordance with the provisions of Article 6 of the Transportation Law.

(d) Whenever because of danger to public safety or the welfare of the people it appears prejudicial to the interests of the people of the state, the commissioner may serve the respondent with a notice or order requiring certain action or the cessation of certain activities immediately or within a specified period, and the commissioner shall provide an opportunity to be heard within a period specified in such notice or order.

(e) Service may be made personally or by certified mail, return receipt requested, and a hearing shall be conducted pursuant to the provisions of section 503.2 of this title, except for the notice provisions, provided however, that notice may be made pursuant to sub-section (d) or this subsection.