

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Consumer and Regulatory Affairs (Director), pursuant to the authority set forth in D.C. Official Code § 47-2853.10(a)(12), Mayor's Order 2000-70, dated May 2, 2000, § 7 of the Residential Real Property Seller Disclosure, Funeral Services Date Change and Public Service Commission Independent Procurement Authority Act of 1998 ("Residential Real Property Seller Disclosure Act"), effective April 20, 1999 (D.C. Law 12-263; D.C. Official Code § 42-1305(2)), and Mayor's Order 99-82, dated May 21, 1999, hereby gives notice of the intent to adopt, in not less than thirty (30) calendar days from the date of publication of this notice in the D.C. Register, an amendment to 17 DCMR Chapter 27, §§ 2701.1 and 2708.13. This rulemaking reinstates a detailed signage requirement and amends the seller's disclosure statement by adding an instruction section and expanding upon specific subject areas.

17 DCMR Chapter 27, Section 2701.1 is amended to read as follows:

2701.1 Each place of business shall have a phone, desk, and pertinent files and shall conspicuously display therein the license of all persons licensed to act as a broker or salesperson and shall likewise conspicuously display on the door or outside of the premises named in the license a sign bearing the word "Real Estate" or where authorized, "Realtor" or "Realtist." The sign shall be visible from a public highway or public hallway, and shall include the licensee's name. Neither a post office box nor an answering service shall satisfy the requirements of D.C. Official Code § 47-2853.184.

17 DCMR Chapter 27, Section 2708.13 is amended to read as follows:

2708.13

SELLER'S DISCLOSURE STATEMENT

Instructions to the Seller for Seller's Disclosure Statement:

These Instructions are to assist the Seller in completing the required Seller's Disclosure Statement in order to comply with the District of Columbia Residential Real Property Seller Disclosure Act.

1. Who must complete the Seller's Disclosure Statement? The Seller, not the broker and not the management company, condominium association, cooperative association or homeowners association.

2. In what types of transactions must the Seller provide the Seller's Disclosure Statement to the Purchaser? The Act applies to the following types of transfers or sales of District of Columbia real estate:

(a) where the property consists of one to four residential dwelling units, and,

- (b) the transactions a sale, exchange, installment land contract, lease with an option to purchase, or any other option to purchase, and,
- (c) the purchaser expresses, in writing, an interest to reside in the property to be transferred.

However, the Act does not apply to:

- (a) court ordered transfers;
- (b) transfers to a mortgagee by a mortgagor in default;
- (c) transfers by sale under a power of sale in a deed of trust or mortgage or any foreclosure sale under a decree of foreclosure or deed in lieu of foreclosures;
- (d) transfers by a non-occupant fiduciary administering a decedent's estate, guardianship, conservatorship or trust;
- (e) transfers between co-tenants;
- (f) transfers made to the transferor's spouse, parent, grandparent, child, grandchild or sibling (or any combination of the foregoing);
- (g) transfer between spouses under a divorce judgment incidental to such a judgment;
- (h) transfers or exchanges to or from any governmental entity; and
- (i) transfers made by a person of newly constructed residential property that has not been inhabited.

3. When does the Seller's Disclosure Statement have to be provided to the Purchaser?

In a sale, before or at the time the prospective transferee executes a purchase agreement with the transferor. In an installment sales contract (where a binding purchase contract has not been executed), or in the case of a lease with no option to purchase, before or at the time the prospective transferee executes the installment sales contract or lease with the transferor.

4. What information must the Seller disclose? Answer ALL questions on the Seller's Disclosure Statement. If some items do not apply to your property, check "N/A" (not applicable). If you do not know the facts, check "UNKNOWN". Report actually known conditions referred to in the questions. Each disclosure must be made in "good faith" (honesty in fact in the making of the disclosure). Attach additional pages with your signature if additional space is required.

The Seller of a condominium unit, cooperative unit, or a lot in a homeowners association, is to provide information only as to the Seller's unit or lot, and not as to any common elements, common areas or other areas outside of the unit or lot.

5. What is the remedy if the Seller does not provide the Seller's Disclosure Statement to the Transferee? If the Seller's Disclosure Statement is delivered after the purchaser executes the purchase agreement, installment sales contract or lease with an option to purchase, the purchaser may terminate the transaction by written notice to the seller not more than five (5) calendar days after receipt of the Seller's Disclosure Statement by the purchaser, and the deposit must be returned to the purchaser. The right to terminate is waived if not exercised before the earliest of:

- (a) the making of an application for a mortgage loan (if the lender discloses in writing that the right to rescind terminates on submission of the application);
- (b) settlement or date of occupancy in the case of a sale; or
- (c) occupancy in the case of a lease with an option to purchase.

6. If the Seller finds out different information after providing the Seller's Disclosure Statement to the Purchaser, how does this impact a ratified contract? If information

becomes inaccurate after delivery of the disclosure form, the inaccuracy shall not be grounds for terminating the transaction.

7. **How must a Seller deliver the Seller's Disclosure Statement to the Transferee?** The Seller's Disclosure Statement must be delivered by personal delivery, facsimile delivery, or by registered mail to the transferee. Execution by the transferor of a facsimile is considered execution of the original.

SELLER'S PROPERTY CONDITION STATEMENT

For Washington, DC

Property Address: _____

Is the property included in a:

- | | | |
|--|------------------------------|-----------------------------|
| condominium association? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| cooperative? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| homeowners association with mandatory participation and fee? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If this is a sale of a condominium unit or cooperative unit, or in a homeowners association, this disclosure form provides information only as to the unit (as defined in the governing documents of the association) or lot (as defined in the covenants applicable to the lot), and not as to any common elements, common areas or other areas outside of the unit or lot.

Purpose of Statement: This Statement is a disclosure by the Seller of the defects or information actually known by the Seller concerning the property, in compliance with the District of Columbia Residential Real Property Seller Disclosure Act. Unless otherwise advised, the Seller does not possess an expertise in construction, architecture, engineering, or any other specific area related to the construction of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. **THIS STATEMENT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR BY ANY AGENT REPRESENTING THE SELLER IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE BUYER MAY WISH TO OBTAIN.**

Seller Disclosure: The Seller discloses the following information with the knowledge that, even though this is not a warranty, the Seller specifically makes the following statements based on the seller's actual knowledge at the signing of this document. Upon receiving this statement from the Seller, the Seller's agent is required to provide a copy to the Buyer or the agent of the Buyer. The Seller authorizes its agent (s) to provide a copy of this statement to any prospective buyer or agent of such prospective buyer in connection with any actual or anticipated sale of property. The following are statements made solely by the Seller and are not the statements of the Seller's agent (s), if any. This information is a disclosure only and is not intended to be a part of any contract between Buyer and Seller.

The seller(s) completing this disclosure have owned the property from _____ to _____.
The seller(s) completing this disclosure have occupied the residence from _____ to _____.

A. Structural Conditions

1. **Roof** roof is a common element maintained by condominium or cooperative (no further roof disclosure required).

Age of Roof 0-5 years 5-10 years 10-15 years 15+ years Unknown

Does the seller have actual knowledge of any current leaks or evidence of moisture from roof?

Yes No If yes,

comments: _____

Does the seller have actual knowledge of any existing fire retardant treated plywood?

Yes No If yes,

comments: _____

2. **Fireplace/Chimney(s)**

Does the seller have actual knowledge of any defects in the working order of the fireplaces?

Yes No No fireplace(s)

If yes,

comments: _____

Does the seller know when the chimney(s) and/or flue were last inspected and/or serviced?

Yes No No chimneys or flues

If yes, when were they last serviced or inspected?

3. **Basement**

Does the seller have actual knowledge of any current leaks or evidence of moisture in the basement?

Yes No Not Applicable

If yes,

comments: _____

Does the seller have actual knowledge of any structural defects in the foundation?

Yes No

If yes,

comments: _____

4. **Walls and floors**

Does the seller have actual knowledge of any structural defects in walls or floors?

Yes No

If yes,

comments: _____

5. Insulation

Does the seller have actual knowledge of presence of urea formaldehyde foam insulation?

Yes No

If yes, comments: _____

6. Windows

Does the seller have actual knowledge of any windows not in normal working order?

Yes No

If yes, comments: _____

B. Operating Condition of Property Systems

1. Heating System heating system is a common element maintained by condominium or cooperative (no further disclosure on heating system required).

Type of system Forced Air Radiator Heat Pump
 Electric baseboard Other

Heating Fuel Natural Gas Electric Oil Other

Age of system 0-5 years 5-10 years 10-15 years Unknown

Does the seller have actual knowledge that heat is not supplied to any finished rooms?

Yes No

If yes, comments: _____

Does the seller have actual knowledge of any defects in the heating system?

Yes No

If yes, comments: _____

Does the heating system include:

Humidifier Yes No Unknown

Electronic air filter Yes No Unknown

If installed, does the seller have actual knowledge of any defects with the humidifier and electronic filter?

Yes No Not Applicable

If no, comments: _____

2. Air Conditioning System air conditioning is a common element maintained by condominium or cooperative (no further disclosure on air conditioning system required).

Type of system: Central AC Heat Pump Window/wall units
 Other Not Applicable

Air Conditioning Fuel Natural Gas Electric Oil Other

Age of system 0-5 years 5-10 years 10-15 years Unknown

If central AC, does the seller have actual knowledge that cooling is not supplied to any finished rooms? Yes No Not Applicable

If yes,

comments: _____

Does the seller have actual knowledge of any problems or defects in the cooling system? Yes No Not Applicable

If yes,

comments: _____

3. Plumbing System

Type of system: Copper Galvanized Plastic Polybutelene Unknown

Water Supply: Public Well

Sewage Disposal Public Well

Water Heater Fuel Natural Gas Electric Oil Other

Does the seller have actual knowledge of any defects with the plumbing system?

Yes No

If yes,

comments: _____

4. Electrical System

Does the seller have actual knowledge of any defects in the electrical system, including the electrical fuses, circuit breakers, outlets, or wiring?

Yes No

If yes,

comments: _____

C. Appliances and Fixtures

Does the seller have actual knowledge of any defects with the following appliances?

- Range/Oven Yes No Not Applicable
- Dishwasher Yes No Not Applicable
- Refrigerator Yes No Not Applicable
- Range hood/fan Yes No Not Applicable
- Microwave oven Yes No Not Applicable
- Garbage Disposal Yes No Not Applicable
- Sump Pump Yes No Not Applicable
- Trash compactor Yes No Not Applicable
- TV antenna/controls Yes No Not Applicable
- Central vacuum Yes No Not Applicable
- Ceiling fan Yes No Not Applicable
- Attic fan Yes No Not Applicable
- Sauna/Hot tub Yes No Not Applicable
- Pool heater & equip. Yes No Not Applicable
- Security System Yes No Not Applicable
- Intercom System Yes No Not Applicable
- Garage door opener Yes No Not Applicable
- & remote controls Yes No Not Applicable

- Lawn sprinkler system Yes No Not Applicable
- Water treatment system Yes No Not Applicable
- Smoke Detectors Yes No Not Applicable
- Carbon Monoxide detectors Yes No Not Applicable
- Other Fixtures or Appliances Yes No Not Applicable

If yes to any of the above, describe defects: _____

D. Exterior/Environmental Issues

1. Exterior Drainage

Does the seller have actual knowledge of any problem with drainage on the property?
 Yes No

If yes, comments: _____

2. Damage to property

Does the seller have actual knowledge whether the property has previously been damaged by:

- Fire Yes No
- Wind Yes No
- Flooding Yes No

If yes, comments: _____

3. Wood destroying insects or rodents:

Does the seller have actual knowledge of any infestation or treatment for infestations?
 Yes No

If yes, comments: _____
 Does the seller have actual knowledge of any prior damage or repairs due to a previous infestation?
 Yes No

If yes, comments: _____

4. Does the seller have actual knowledge of any substances, materials or environmental hazards (including but not limited to asbestos, radon gas, lead based paint, underground storage tanks, formaldehyde, contaminated soil, or other contamination) on or affecting the property?

Yes No
 If yes, comments: _____

5. Does the seller have actual knowledge of any zoning violations, nonconforming uses, violation of building restrictions or setback requirements, or any recorded or unrecorded easement, except for utilities, on or affecting the property?

Yes No

If yes, comments: _____

6. Does the seller have actual knowledge that this property is a D.C. Landmark, included in a designated historic district or is designated a historic property?

Yes No

If yes, comments: _____

7. Has the property been cited for a violation of any historic preservation law or regulation during your ownership?

Yes No

If yes, comments: _____

8. Does the seller have actual knowledge if a façade easement or a conservation easement has been placed on the property?

Yes No

If yes, comments: _____

The seller(s) certifies that the information in this statement is true and correct to the best of their knowledge as known on the date of signature.

Seller

Date

Seller

Date

Buyer(s) have read and acknowledge receipt of this statement and acknowledge that this statement is made based upon the seller's actual knowledge as of the above date. This disclosure is not a substitute for any inspections or warranties which the buyer(s) may wish to obtain. This disclosure is NOT a statement, representation, or warranty by any of the seller's agents or any sub-agents as to the presence or absence of any condition, defect or malfunction or as to the nature of any condition, defect or malfunction.

Buyer

Date

Buyer

Date

All persons desiring to comment on these proposed regulations should submit comments in writing to Paul Waters, Legislative Liaison, Department of Consumer and Regulatory Affairs, Suite 9400, 941 North Capitol Street, NE, Washington, D.C. 20002, not later than thirty (30) days after publication of this notice in the D.C. Register. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Registrar and the Director of the Department of Health, pursuant to the authority set forth in §§ 22 and 27 of the Vital Records Act of 1981, effective October 8, 1981 (D.C. Law 4-34; D.C. Official Code §§ 7-221 and 7-226), and Mayor's Order 2002-13, dated January 25, 2002, hereby give notice of their intent to adopt the following amendments to Chapter 28 of Title 29 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty days from the date of publication of this notice in the *D.C. Register*. The purpose of the proposed rule is to make technical amendments and change fees for issuing and amending vital records in the Department of Health.

Chapter 28 of Title 29 (Public Welfare) (May 1987) of the DCMR is amended as follows:**Section 2801.2 is amended to read as follows:**

2801.2 Each form, certificate, and report used in the system of vital records is the property of the Department of Health and shall be surrendered to the Registrar upon demand.

Section 2801.7(d) is amended to read as follows:

- (d) Has original handwritten signatures, unless the document is submitted by electronic means pursuant to § 2801.8;

Section 2809.1 is amended to read as follows:

2809.1 A new certificate of birth for a person who is adopted shall be prepared and registered in accordance with D.C. Official Code § 16-314.

Section 2810.14 is amended to read as follows:

2810.14 When a death is presumed to have occurred within the District as a result of physical absence for a period of seven (7) years without having been heard from, the Registrar shall prepare a death certificate upon receipt of an order of the Court pursuant to D.C. Official Code § 14-701.

Section 2811.1 is amended to read as follows:

2811.1 A certificate of death filed after the time prescribed in D.C. Official Code § 7-211 shall be on the certificate of death form, marked "delayed" and completed in the following manner:

- (a) If the attending physician or other person authorized pursuant to D.C. Official Code § 7-211(e) or medical examiner at the time of death and the

funeral director or person who acted as such are available to complete and sign the certificate of death, it may be filed without additional evidence;

- (b) For a certificate of death filed one (1) year or more after the date of death, the physician or medical examiner and the funeral director or person who acted as such shall state in accompanying affidavits that the information on the certificate of death is based on records maintained in their files; and
- (c) In the absence of the attending physician or medical examiner and the funeral director or the person who acted as such, the certificate of death may be filed by the next of kin of the decedent and shall be accompanied by the following:
 - (1) An affidavit of the person filing the certificate of death swearing to the accuracy of the information on the certificate; and
 - (2) Two (2) documents that identify the decedent and the date and place of death.

Section 2812.1 is amended to read as follows:

2812.1 Reports of fetal death, required to be filed pursuant to D.C. Official Code § 7-213(a), are statistical reports that shall only be used for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital records.

Section 2813.2(b) is amended to read as follows:

- (b) Approved by the Director of the Department of Health.

Section 2814.3 is amended to read as follows:

2814.3 The Attorney General and the Director of the Department of Consumer and Regulatory Affairs shall review and approve each request for mass disinterment before the Registrar may authorize the disinterment.

Section 2816.1 is amended to read as follows:

2816.1 A marriage record may be filed after the time prescribed in D.C. Official Code § 7-215 on the regular marriage record form in the manner stated in this section.

Section 2822.2 is amended to read as follows:

2822.2 The Registrar may provide copies or data from the system of vital records to any federal, state, District, or other public or private agency for research, statistical, or administrative purposes upon request, provided that the applicant submits to the

Registrar a completed application that is on a prescribed form and meets the following conditions:

- (a) Has the signed approval of an Institutional Review Board constituted according to federal guidelines for the protection of human subjects, as set forth in 42 U.S.C. § 289 (Health Research Extension Act of 1985 § 2); and
- (b) Has a signed statement of assurances in which the applicant agrees to the terms and conditions of the application, which shall include the following statements:
 - (1) That the information will be used solely for research or administrative purposes;
 - (2) That the information will be used only for the project described in the application;
 - (3) That the information will not be used as a basis for legal, administrative, or other actions that directly affect any person or institution identifiable from the data; and
 - (4) That the statements made in the application form are correct to the applicant's best knowledge and belief.

Section 2880.1 is amended to read as follows:

2880.1 The following fees shall be for the services provided by the Department of Health Vital Records Division:

<u>Description of Record</u>	<u>Fee</u>
Archival Birth Certificate	\$23.00
Commemorative Birth Certificate	\$30.00
Correction to a Birth Certificate	\$23.00
Delayed Birth Record	\$23.00
Death Certificate	\$18.00
Marriage Record	\$18.00
Divorce Record	\$18.00

Correction to a Death Record	\$23.00
Recording of Legal Change of Name	\$23.00
Recording of Marital Acknowledgment	\$23.00
Adoption	\$28.00
Certificate of Search (for each 3 years searched)	\$18.00
Adjudgment of Parentage	\$23.00
Legal Change Without Certificate	\$15.00
Verification of a Vital Record	\$5.00
Administrative Copy of a Vital Record	\$10.00

Section 2899.1 is amended to read as follows:

2899.1 For purposes of this chapter, the following definitions shall apply unless otherwise provided:

Act—the District of Columbia Vital Records Act of 1981, D.C. Law 4-34, D.C. Official Code § 7-201 *et seq.*

Amendment—a document that is attached to an original record or an annotation placed on the margin or bottom of a certificate that is used to correct or complete an item on the original record.

Court—the Superior Court of the District of Columbia.

Department—the Department of Health of the District of Columbia.

Registrar—the Registrar of Vital Records in the Vital Records Division of the Department of Health.

All persons wishing to comment on the proposed rulemaking shall submit written comments no later than thirty (30) days after the date of publication of this notice in the D.C. Register, to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 A.M. and 5:00 P.M. Monday through Friday, excluding holidays, at the address listed above.

DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING

NOTICE OF PROPOSED RULEMAKING

The Commissioner of the Department of Insurance, Securities, and Banking ("Commissioner"), pursuant to the authority set forth in sections 12 and 23 of the Health Maintenance Organization Act of 1996 ("Act"), effective April 9, 1997 (D.C. Law 11-235, D.C. Official Code §§ 31-3411 and 31-3422 (2001)), hereby gives notice of his intent to adopt the following amendments to Chapter 31 (Investment Guidelines for Health Maintenance Organizations) of Title 26 (Insurance) of the District of Columbia Municipal Regulations in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

The proposed amendments will authorize health maintenance organizations to deposit invested securities in clearing corporations.

Chapter 31 (Investment Guidelines for Health Maintenance Organizations) of Title 26 (Insurance) of the District of Columbia Municipal Regulations is amended as follows:

1. A new section 26-3104 is added to read as follows:

3104 DEPOSIT OF SECURITIES IN CLEARING CORPORATIONS

- 3104.1 An HMO may deposit or arrange for the deposit of securities held in or purchased for its general account in a clearing corporation.
- 3104.2 When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited with the clearing corporation by any person, regardless of the ownership of the securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations.
- 3104.3 The records of a custodian through which an HMO holds securities in a clearing corporation shall at all times show that the securities are held for the HMO and shall show the accounts for or in which the securities are held.
- 3104.4 Ownership of, and other interests in, the securities in a clearing corporation may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities.

DISTRICT OF COLUMBIA REGISTER

2. Section 26-3199 is amended to read as follows:

3199 DEFINITIONS

- 3199.1 Admitted asset - the investments authorized or permitted under this chapter, and in addition, includes only the following:
- (a) Petty cash and other cash funds in the HMO's principal or official branch office(s) and under the control of the HMO;
 - (b) Immediately withdrawable funds on deposit in demand accounts, in a bank, savings bank, or trust company as defined in subsection 3199.4, or like funds actually in the principal or any official branch office at statement date, and in transit to such bank, savings bank or trust company with authentic deposit credit given prior to the close of business on the fifth (5th) bank working day following the statement date;
 - (c) The amount fairly estimated as recoverable on cash deposited in a closed bank, savings bank, or trust company, if qualifying under subsection 3199.4 prior to the suspension of such bank, savings bank or trust company;
 - (d) Bills and accounts receivable collateralized by securities of the kind in which the HMO is authorized to invest;
 - (e) Premiums receivable from: (1) groups or individuals which are not more than sixty (60) days past due; and (2) the District, the United States, any state of the United States or any political subdivision thereof which is not more than ninety (90) days past due;
 - (f) Amounts due under insurance policies or reinsurance arrangements from insurance companies authorized to do business in the District;
 - (g) Tax refunds due from the District, the United States, any state of the United States or any political subdivision thereof;
 - (h) The interest accrued on mortgage loans conforming to the requirements of this chapter, not exceeding in aggregate amount on an individual loan of one year's total due and accrued interest;
 - (i) The rents accrued and owing to the HMO on real and personal property, directly or beneficially owned, not exceeding on each individual property the amount of one year's total due and accrued rent;

- (j) Interest or rents accrued on conditional sales agreements, security interests, chattel mortgages, and real or personal property under lease to other corporations, all conforming to the provisions of this chapter, and not exceeding on any individual investment, the amount of one year's total due and accrued rent;
- (k) The fixed and required interest due and accrued on bonds and other like evidences of indebtedness, conforming to the provisions of this chapter, and not in default;
- (l) Dividends receivable on shares of stock conforming to the provisions of this chapter, provided that the market price taken for valuation purposes does not include the value of the dividend;
- (m) The interest or dividends due and payable, but not credited, on deposits in banks, savings banks and trust companies, or on accounts with savings and loan associations;
- (n) Interest accrued on secured loans conforming to the provisions of this chapter, not exceeding the amount of one year's interest on any loan;
- (o) Interest accrued on tax anticipation warrants;
- (p) The amortized value of electronic computer or data processing machines or systems purchased for use in connection with the business of the HMO, including software purchased and developed specifically for the HMO's use and purposes;
- (q) Amounts due from affiliates pursuant to management contracts or service agreements which meet the requirements of D.C. Code § 35-3003 to the extent that the affiliate has liquid assets with which to pay the balance and maintain its accounts on a current basis; provided that the aggregate amount due from affiliates may not exceed the lesser of ten percent (10%) of the organization's admitted assets or twenty-five percent (25%) of the HMO's net worth as defined in this chapter. Any amount outstanding more than three (3) months shall be deemed not current. For purpose of this paragraph "affiliates" shall have the same meaning as that term is defined in D.C. Code § 35-3701;
- (r) Intangible assets, including, but not limited to, organization good will and purchased good will, to the extent reported in the most recent annual or quarterly financial statement filed with the Commissioner after April 9, 1997. However, such assets shall be amortized, by the straight-line method, to a

value of zero no later than December 31, 1999; provided, however, that no HMO shall be required pursuant to the foregoing provision to amortize such assets in an amount greater than \$ 300,000 in any one year, and in cases where amortization of such assets by December 31, 1999 would otherwise require amortization of an annual amount in excess of \$ 300,000, the HMO shall be required only to amortize such assets at a rate of \$ 300,000 per year until all such assets have been amortized to a value of zero, unless the continuation of the current amortization schedule would result in an earlier zero value, in which case the current amortization schedule shall be applied;

- (s) Amounts due from patients or enrollees for health care services rendered which are not more than sixty (60) days past due;
 - (t) Amounts advanced to providers under contract to the organization for services to be rendered to enrollees pursuant to the contract. Amounts advanced must be for a period of not more than three (3) months and must be based on historical or estimated utilization patterns with the provider and must be reconciled against actual incurred claims at least semi-annually. Amounts due in the aggregate may not exceed fifty percent (50%) of the organization's net worth as defined in subsection 3199.13. Amounts due from a single provider may not exceed the lesser of five percent (5%) of the HMO's admitted assets or ten percent (10%) of the HMO's net worth;
 - (u) Cost reimbursement due from the Health Care Financing Administration of the U.S. Department of Health and Human Services, for furnishing covered medicare services to medicare enrollees which are not more than twelve (12) months past due; and
 - (v) Prepaid rent or lease payments no greater than three (3) months in advance, on real property used for the administration of the HMO's business or for the delivery of medical care.
- 3199.2 Bank, savings bank or trust company - any bank, savings bank or trust company organized and supervised under the laws of the District, the United States or any state thereof, if the bank, savings bank or trust company has the insurance protection afforded by an agency of the United States.
- 3199.3 Business corporation - a corporation organized for other than not-for-profit purposes.
- 3199.4 Business entity - a sole proprietorship, a corporation, an association, a partnership, a limited partnership, a business trust, or a limited liability company.

- 3199.5 Capital - capital stock paid up, if any, and its use in a provision does not imply that a not for profit HMO without stated capital stock is excluded from the provision. The capital of such an HMO will be zero.
- 3199.6 Clearing corporation -
- (a) A clearing corporation as defined in section 28:8-102(a)(5) of the District of Columbia Official Code;
 - (b) With respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business in the foreign country, a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to effect transactions in securities by computerized book-entry; and
 - (c) The Treasury/Reserve Automated Debt Entry System and the Treasury Direct book-entry securities system described in part 357 of title 31 of the U.S. Code of Federal Regulations.
- 3199.7 Custodian - a national bank, state bank, trust company, or broker/dealer that participates in a clearing corporation.”.
- 3199.8 Direct - when used in connection with “obligation” means that the designated obligor shall be primarily liable on the instrument representing the obligation.
- 3199.9 District - the District of Columbia.
- 3199.10 Facility - real estate and any and all forms of tangible personal property and services used constituting an operating unit.
- 3199.11 Guaranteed or insured - that the guarantor or insurer will perform or insure the obligation of the obligator or will purchase the obligation to the extent of the guaranty or insurance.
- 3199.12 Mortgage - includes a trust deed or other lien on real property securing an obligation for the payment of money.
- 3199.13 Security - has the same meaning as in section 28:8-102(a)(15) of the District of Columbia Official Code.
- 3199.14 Servicer - a business entity that has a contractual obligation to service a pool of mortgage loans. The service provided shall include, but is not limited to, collection of

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- principal and interest, keeping the accounts current, maintaining or confirming in force hazard insurance and tax status and providing supportive accounting services.
- 3199.15 Single credit risk - the direct, guaranteed or insured obligations of any one business entity including affiliates thereof.
- 3199.16 Surplus - the amount properly shown as total net worth on a company's balance sheet, plus all voluntary reserves, but not including capital paid-up.
- 3199.17 Tangible net worth - the par value of all issued and outstanding capital stock of a corporation (or in the case of shares having no par value, the stated value) and the amounts of all surplus accounts less the sum of:
- (a) Such intangible assets as deferred charges, organization and development expense, discount and expense incurred in securing capital, good will, trademarks, trade names and patents;
 - (b) Leasehold improvements; and
 - (c) Any reserves carried by the corporation and not otherwise deducted from assets.
- 3199.18 Unconditional - when used in connection with the term "obligation" means that nothing remains to be done or to occur to make the designated obligor liable on the instrument, and that the legal holder shall have the status at least equal to that of general creditor of the obligor."

Persons desiring to comment on these proposed rules should submit comments in writing to Mrs. Leslie E. Johnson, Hearing Officer, Department of Insurance, Securities and Banking, 810 First Street, N.E., Suite 701, Washington, D.C. 20002. Comments must be received not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Copies of the proposed rules may be obtained from the Department at the address stated above.

OFFICE OF THE MAYOR**NOTICE OF PROPOSED RULEMAKING**

The Mayor pursuant to the authority set forth in section 6(c) of the District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979 (D.C. Law 3-22; D.C. Official Code, § 7-1705(c) (2001)), section 4921 of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-747), hereby gives notice of his intent to adopt the following amendments to Title 20, Chapter 21 of the District of Columbia Municipal Regulations, (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The proposed amendments would regulate smoking in places of employment and public places, specify the requirements for eligibility for exemptions or waivers from the prohibition of smoking in public places and places of employment, and harmonize existing smoking rules with the requirements for signage under the Department of Health Functions Clarification Amendment Act of 2006, effective April 4, 2006 (D.C. Law 16-90; D.C. Official Code § 7-741 *et seq.*) (2006 Supp.).

Pursuant to § 4921 of the Department of Health Functions Clarification Act of 2001, the proposed rules are being transmitted to the Council of the District of Columbia, and the proposed rules will not become effective until the expiration of the sixty (60) day period of Council review or upon approval by Council resolution, whichever occurs first, and publication of a notice of final rulemaking in the *D.C. Register*.

Title 20 DCMR (Environment) (February 1997) is amended to read as follows:

2100 PURPOSE AND GENERAL PROVISIONS

- 2100.1 The purpose of this chapter is to regulate smoking in public places and places of employment, as required by the District of Columbia Smoking Restriction Act of 1979, as amended, and the Department of Health Functions Clarification Act of 2001, as amended, (the "Acts").
- 2100.2 This chapter shall apply to the following places and entities as of 12:01 A.M. on January 2, 2007:
- (a) A brew pub;
 - (b) A club;
 - (c) A nightclub;
 - (d) A tavern; and
 - (e) The bar and bar area of a restaurant.

2101 PLACE OF EMPLOYMENT AND PUBLIC PLACE SMOKING POLICY

- 2101.1 Each place of employment and public place shall adopt a smoking policy that is consistent with the Acts and this chapter.
- 2101.2 An employer shall notify each employee, both orally and in writing, of the smoking policy for the place of employment.
- 2101.3 The employer's smoking policy shall apply to each person in the workplace, including a visitor.
- 2101.4 An employer shall post the written smoking policy in the place of employment in the same place as the Worker's Compensation notice or any similar employee notice.
- 2101.5 An employer shall prohibit smoking in the enclosed area of a place of employment, except as provided in § 2105.
- 2101.6 An employer may permit smoking in an outdoor area under his or her control, subject to the terms and conditions of any lease contract between the owner and the tenant.
- 2101.7 When an employer of an establishment that is a restaurant, tavern, club, brew pub, or nightclub permits smoking in an outdoor area, the employer shall ensure that no area designated for smoking encompasses an area where smoking is prohibited.
- 2101.8 **Repealed.**

2102 VENTILATION OF SMOKING AREA IN THE WORKPLACE

- 2102.1 For the purpose of applying the Acts to designated smoking areas permitted because the employer is exempt under D.C. Official Code § 7-743 or has obtained an economic hardship waiver under D.C. Official Code § 7-745, all buildings constructed before August 3, 1991, shall be deemed to be in compliance with the ventilation requirements of the District of Columbia Construction Codes, unless the building has undergone a renovation since August 3, 1991, that required a building permit.

2103 POSTING OF SIGNS IN PLACES OF EMPLOYMENT AND PUBLIC PLACES

- 2103.1 The requirements of this section shall supplement the requirements for the posting of warning signs pursuant to DCMR Title 12D, Fire Prevention Code Supplement, and the BOCA National Fire Prevention Code.

2103.2 When smoking is prohibited in a building by the building owner, the owner or the owner's agent shall conspicuously post signs that include the internationally recognized symbol for no smoking and read as follows:

"NO SMOKING UNDER PENALTY OF LAW. MAXIMUM FINE ONE THOUSAND DOLLARS (\$1,000)."

2103.3 When posting signs pursuant to §2103.2, the building owner, or the owner's agent, shall conspicuously post signs at the entrance of the building, inside each elevator, and inside the building in sufficient number to give notice to the public of the law.

2103.4 If a building owner does not prohibit smoking and a tenant of the building owner permits smoking because it is exempt under D.C. Official Code § 7-743 or has obtained an economic hardship waiver under D.C. Official Code § 7-745, the owner or the owner's agent shall conspicuously post signs that include the internationally recognized smoking symbol and read as follows:

"NO SMOKING EXCEPT IN SMOKING AREAS. MAXIMUM FINE ONE THOUSAND DOLLARS (\$1,000)."

2103.5 When posting a sign pursuant to §2103.4 the building owner, or the owner's agent, shall conspicuously post signs at the entrance to the building, inside each elevator, and inside the building in sufficient number to give notice to the public of the law.

2103.6 An employer shall conspicuously post one of the following signs in a place of employment:

- (a) If the employer is not exempt under D.C. Official Code § 7-743 or has not obtained an economic hardship waiver under D.C. Official Code § 7-745, the employer shall conspicuously post signs that include the internationally recognized no-smoking symbol and read as follows:

"NO SMOKING UNDER PENALTY OF LAW. MAXIMUM FINE ONE THOUSAND DOLLARS (\$1,000)."; or

- (b) If the employer is exempt under D.C. Official Code § 7-743 or has obtained an economic hardship waiver under D.C. Official Code § 7-745, the employer shall conspicuously post signs that include the internationally recognized smoking symbol and read as follows:

"NO SMOKING EXCEPT IN SMOKING AREAS. MAXIMUM FINE ONE THOUSAND DOLLARS (\$1,000)."

- 2103.7 The internationally recognized smoking and no-smoking symbols required for each of the signs described in this section shall be in a typeface that is at least as large as the largest lettering on the sign.
- 2103.8 The employer shall post the signs required by §2103.6 in the following places that are open to or used by employees or the public:
- (a) At an entrance to the place of employment; and
 - (b) On the interior of any non-smoking area so that they are visible to employees and the public.
- 2103.9 If the employer is exempt under D.C. Official Code § 7-743 or has obtained an economic hardship waiver under D.C. Official Code § 7-745, the employer shall conspicuously post in a designated smoking area a sign that states the following:

“SMOKING IN ACCORDANCE WITH EMPLOYER’S SMOKING POLICY ONLY, SMOKING CAUSES LUNG CANCER, HEART DISEASE, EMPHYSEMA, AND MAY CAUSE FETAL INJURY, PREMATURE BIRTH, AND LOW BIRTH WEIGHT IN PREGNANT WOMEN. MAXIMUM FINE ONE THOUSAND DOLLARS (\$1,000).”

2104 PLACES LICENSED TO SELL TOBACCO PRODUCTS

- 2104.1 It shall be unlawful for any person to sell, give, or furnish any tobacco products to any person younger than eighteen (18) years of age.
- 2104.2 Any person who sells any cigarette or other tobacco product who has reasonable cause to believe that a person who attempts to purchase the product is under twenty-five (25) years of age shall require that the purchaser present identification that indicates his or her age.
- 2104.3 The owner, manager, or other person in charge of any business licensed to sell cigarettes or any tobacco product under D.C. Official Code §47-2404 (2001), shall conspicuously post signs that state in letters not less than three-quarters of an inch (3/4 in.) in height as follows:

“NO PERSONS UNDER EIGHTEEN (18) YEARS OF AGE SHALL PURCHASE ANY CIGARETTE OR OTHER TOBACCO PRODUCT. THE UNITED STATES SURGEON GENERAL HAS ISSUED A WARNING THAT SMOKING CAUSES LUNG CANCER, HEART DISEASE, EMPHYSEMA, AND MAY COMPLICATE PREGNANCY. MAXIMUM CRIMINAL FINE ONE THOUSAND DOLLARS (\$1,000) AND NINETY (90) DAYS IN JAIL.”

2104.4 The owner, manager, or person in charge shall post the sign required by §2104.3 at the entrance to the business and on the interior of the business near all points of purchase.

2105 EXEMPTIONS

2105.1 The following places shall be exempt from the provisions of this chapter:

- (a) A retail store that has as its primary source of revenue the sale of tobacco products and smoking accessories, provided that:
 - (1) No more than twenty-five percent (25%) of the revenue the store generates is from non-tobacco products; and
 - (2) The store does not share space with any other establishment;
- (b) A tobacco bar;
- (c) An outdoor area of the following:
 - (1) A restaurant;
 - (2) A tavern;
 - (3) A club;
 - (4) A brew pub; or
 - (5) A nightclub;
- (d) A hotel room or motel room rented to one or more guests;
- (e) A medical treatment, research, or nonprofit institution where the activity of smoking is conducted for the purpose of medical research or is an integral part of a smoking cessation program; and
- (f) Upon the stage of a theatrical performance, provided that smoking is part of the theatrical production.

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2105.2 A place shall not be exempt under § 2505.1(a), (b), or (e) until it establishes, to the satisfaction of the Director, Department of Health (hereinafter, Director) that it satisfies the revenue requirements to qualify for the exemption or is engaged in an activity that qualifies the place for an exemption. After the Director determines that a place qualifies for an exemption via an audit of the place's financial records, the Director may issue a certificate of exemption to that place. The certificate issued under this subsection shall be valid for not longer than three (3) years and shall not be transferable to another location or another owner. The Director shall have the right to perform annual audits of an exempted business's financial records. If a business fails to qualify for the exemption during any calendar year while the exemption is valid, the exemption certificate of that business shall expire immediately.

2105.3 A conditional certificate of exemption, valid for not longer than ninety (90) days may be made available to a place of employment or public place prior to an audit by the Director if that place asserts, under penalty of perjury, that it meets the revenue requirements or is engaged in an activity that qualifies it for an exemption. During the term of the conditional certificate of exemption, the Director shall audit the place's records and deliver a written decision on the status of the exemption. If an audit validates a place's exemption, that place shall be subject to the requirements of exemptions under § 2105.2. If an audit fails to validate a conditional certificate of exemption, the Director may revoke the conditional certificate of exemption, and the place shall be subject to the requirements of § 2100. If the Director fails to deliver a decision about a conditional certificate of exemption within ninety (90) days, the conditional certificate of exemption shall be extended for thirty (30) day increments until the Director makes that determination.

2106 SMOKING BAN REVIEW BOARD

2106.1 The Smoking Ban Review Board (hereinafter the "Board") is hereby established.

2106.2 The Board is delegated the Mayor's authority to review the applications of places of employment and public places that seek economic hardship waivers under § 2107 of this Title, and grant economic hardship waivers consistent with the requirements § 2107.

2106.3 The Mayor shall appoint no fewer than five (5) representatives to the Board. The Board shall include:

- (a) The Director of the Department of Health or the Director's designee;
- (b) The Deputy Mayor for Planning and Economic Development or the Deputy Mayor's designee;
- (c) A representative for the hospitality industry;

- (d) A representative for the public health or medical community; and
 - (e) A member of the public.
- 2106.4 The Mayor may alter the composition of the Board by rules.
- 2106.5 All Board Members shall be residents of the District of Columbia. After notice, the Mayor shall remove any Member for failure to establish or maintain residency in the District of Columbia.
- 2106.6 The Mayor shall appoint the Chairperson of the Board (hereinafter "Chairperson"). The Chairperson shall preside at all meetings of the Board at which he or she is present, and shall perform such other duties as may be required of him or her by the Board.
- 2106.7 The Board shall receive administrative assistance from the staff of DOH's Tobacco Control Program.
- 2106.8 Regular meetings of the Board shall be held not less than once every thirty (30) days at such time and place as the Chairperson shall determine. If there are no agenda items for a meeting, the Chairperson may cancel a regular meeting until such time as he or she deems appropriate.
- 2106.9 At least ten (10) days in advance of each regular meeting of the Board, notice shall be given to each Member and to the public. Notice of a meeting of the Board shall specify the date, time, and place of a meeting.
- 2106.10 Special meetings of the Board may be called at the discretion of the Chairperson or at the request of the Mayor. At least forty-eight (48) hours in advance of each special meeting of the Board, notice shall be given to each Member and to the public.
- 2106.11 A majority of Members shall constitute a quorum for the transaction of business at any meeting of the Board.
- 2106.12 At the discretion of the Chairperson, any or all Members may participate in a meeting of the Board by means of telephone conference or by any means of communication by which all persons participating in the meeting are able to hear one another, and such participation shall constitute presence in person at the meeting.
- 2106.13 A vacancy in membership shall be filled as quickly as possible. A proxy representative may serve on the Board until such time as the Mayor appoints a permanent Member to the Board.

- 2106.14 An affirmative vote of a majority of the Members present at a meeting at which a quorum exists shall be required for any valid Board action.
- 2106.15 By the following January 31 of each year that the Board has at least one regular or special meeting, the Board Members and staff shall produce a report detailing the following:
- (a) The number of applications received under the requirements of § 2107 of this Title;
 - (b) The types of public places or places of employment seeking a waiver under § 2107 of this Title;
 - (c) The specific provision of D.C. Law 16-90; D.C. Official Code § 7-741 *et seq.* from which applicants sought waivers; and
 - (d) A summary of the Board's decisions on all applications received under § 2107 of this Title including information about:
 - (1) The number of applications that resulted in approval of a waiver;
 - (2) The number of applications that resulted in the denial of a waiver; and
 - (3) The nature of the Board's decisions to deny waiver applications.
- 2106.16 The Mayor may dissolve the Board at a date that he or she deems appropriate.

2107 ECONOMIC HARDSHIP WAIVER

- 2107.1 The Board may, after April 1, 2007, grant a place of employment or a public place an economic hardship waiver from the requirements of this chapter provided that:
- (a) The place of employment or public place was in existence on or before January 1, 2007;
 - (b) The place of employment or public place has not admitted to or been found liable for two (2) or more notices of violation for violations of the Acts or this chapter during the previous one (1) year;
 - (c) The place of employment or public place demonstrates undue financial hardship by a reduction in sales tax receipts for food and beverages of five percent (5%) or more for three (3) consecutive months after January 1, 2007, as compared to the same three (3) month period during the previous two (2) years before January 1, 2007; and

- (d) The place of employment or public place demonstrates one or more of the following:
- (1) Sales revenues that fail to reach reasonably expected or anticipated levels for three (3) consecutive months after January 1, 2007 as compared to the same three (3) month period during the previous two (2) years before January 1, 2007;
 - (2) Significantly reduced staffing levels for three (3) consecutive months after January 1, 2007, as compared to the same three (3) month period during the previous two (2) years before January 1, 2007;
 - (3) Significantly reduced food and materials purchases for three (3) consecutive months after January 1, 2007, as compared to the same three (3) month period during the previous two (2) years before January 1, 2007; or
 - (4) Significantly reduced alcohol sales for three (3) consecutive months after January 1, 2007, as compared to the same three (3) month period during the previous two (2) years before January 1, 2007;

2107.2 If the place of employment or public place has not operated for a period of two (2) years before January 1, 2007, it shall demonstrate the requirements of § 2106.1 by comparing a period of three (3) consecutive months during which the place of employment or public place has operated smoke-free to the three (3) month period immediately preceding January 1, 2007.

2107.3 To receive an economic hardship waiver a place of employment or a public place shall submit an economic hardship waiver application to the Board. In not more than ten (10) business days, the Board shall return an incomplete application and inform the applicant of the information necessary to complete the application. The Board shall issue a final decision regarding an application, in writing, not later than sixty (60) days after receipt of a complete application. The written decision shall state the reasons for granting or denying the application.

2107.4 An application for an economic hardship waiver shall include the following information:

- (a) The specific provision(s) from which a place of employment or public place is seeking a waiver;
- (b) A description of the efforts the place of employment or public place has made to operate profitably while smoke-free;
- (c) Exact copies of proprietary sales information, District sales tax statements, and operational data for each three (3) month period described in § 2106.1 used to demonstrate an economic hardship;

- (d) Evidence that demonstrates that the place of employment or public place incurred an economic hardship because of eliminating smoking instead of other factors including evidence that the place of employment or public place:
 - (1) Operated during the same number of hours;
 - (2) Was open the same number of days;
 - (3) Was open on the same high business days;
 - (4) Sold food and beverages from a menu similar in selection and cost;
 - (5) Maintained the same management and staffing strategy;
 - (6) Did not fail to respond to new competitors who entered the market;
 - (7) Maintained a similar or enhanced marketing strategy; and
- (e) A description of the actions the place of employment or public place plans to take to minimize the effects of smoking on non-smoking patrons or visitors as a result of a waiver.

2107.5

If the Board grants a waiver under this section for a restaurant, the Board shall require that the area where smoking is permitted shall not exceed twenty-five percent (25%) of the total indoor area. The Board may require additional conditions or restrictions that may be necessary to minimize the adverse effects of smoking consistent with the general purpose of D.C. Official Code § 7-741 *et seq.* including the following:

- (a) Prohibiting smoking near restrooms or commonly used pathways and entrances;
- (b) Requiring physical barriers or ventilation systems, or both, between smoking and non-smoking areas;
- (c) Requiring additional or differently sized signs to designate smoking and non-smoking areas; and
- (d) Taking additional measures to minimize employee exposure to secondhand smoke.

2107.6

The Board may grant a waiver for a period not to exceed three (3) years. The waiver shall be:

- (a) For a specific location and not transferable; and

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(b) For a specific applicant and not transferable to a new owner.

2107.7 An applicant aggrieved by a ruling of the Board may seek review before the Office of Administrative Hearings.

2107.8 The Director shall conduct periodic inspections to ensure that the holder of a waiver complies with the requirements of this section or any conditions or restrictions contained in the waiver.

2107.9 A public place or place of employment may be eligible to renew a waiver after the expiration of an existing waiver so long as an applicant for a renewal waiver can demonstrate to the Board by a preponderance of evidence that:

(a) The place of employment or public place to which the Board has already granted a waiver has remained in compliance with the requirements of the waiver and has not admitted to or been found liable for two (2) or more notices of violation for violations of the waiver stipulations, the Acts, or this chapter during the duration of the waiver; and

(b) The lapse of an economic hardship waiver would unfairly and unequivocally subject the public place or place of employment to substantial economic hardship that would be directly attributable to the requirements of this chapter and of this Act rather than extraneous factors as may be deemed by the Board.

2107.10 The Board may suspend or revoke a waiver upon finding that the holder of a waiver has violated a condition or restriction or has failed to comply with the requirements of this chapter or the Acts that have not been waived.

2107.11 The Board may make available, until July 1, 2007, a temporary economic hardship waiver for hotels, motels, and convention halls that scheduled events prior to April 4, 2006. To qualify for a temporary economic hardship waiver, a hotel, motel, or convention hall must present documentation to the Board that a contract or other agreement was entered into on or before April 4, 2006 for an event scheduled to take place after January 1, 2007. Eligible events must take place in enclosed areas that are separate from other areas accessible to the general public.

2108 DISTRIBUTION OF FREE CIGARETTES

2108.1 No person, agent, or employee of any person shall, in the course of doing business, distribute any free cigarettes or other tobacco products to any person on any public street, public sidewalk, public park, playground, in a public building, other public property, or private property open to the public.

2108.2 A person may distribute free cigarettes or other tobacco products only under the following circumstances:

- (a) At a tobacco store to persons eighteen (18) years of age or older,
- (b) At a convention to persons eighteen (18) years of age or older, or
- (c) At a conference catering to persons eighteen (18) years of age or older.

2109 PENALTIES AND FINES

2109.1 Any person who fails to comply with any of the applicable provisions of this chapter shall, upon conviction, be punished as follows:

- (a) Any person smoking in a posted "NO SMOKING" area, disfiguring or removing a "NO SMOKING" sign, or failing to post warning signs as set forth in this Chapter shall, upon conviction, be punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand (\$1,000) for a first offense; and not less than two hundred dollars (\$200) nor a more than one thousand dollars (\$1,000) for each subsequent offense;
- (b) Each person found covering, removing, disfiguring, or otherwise destroying any sign posted under the provisions of this Chapter shall, upon conviction, be fined five hundred dollars (\$500).
- (c) Each person who fails to post or maintain "No Smoking" signs as required by this chapter shall be punished by a fine not to exceed five hundred dollars (\$500). Each day that the violation continues shall constitute a separate offense and the penalties provided in this paragraph shall be applicable to each offense.
- (d) Each employer or person who manages a public place who fails to warn a smoker observed to be smoking in violation of the Acts and as required by this chapter, shall be punished by a fine not to exceed five hundred dollars (\$500). Each day that the violation continues shall constitute a separate offense and the penalties provided in this paragraph shall be applicable to each offense.

2109.2 Hearings or adjudication of violations under this chapter shall be conducted pursuant to D.C. Official Code § 2-1801.01 *et seq.*, (2001).

2109.3 Pursuant to D.C. Official Code § 22-1320(c), any person licensed to sell tobacco products who violates § 2104.1 or 2104.2 of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred

dollars (\$500) or less than one hundred dollars (\$100), or imprisoned not more than thirty (30) days, or both, for the first offense.

- 2109.4 Pursuant to D.C. Official Code § 22-1320(c), any person who commits a subsequent violation of §2104.1 or 2104.2 shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars (\$1,000) or less than five hundred dollars (\$500), or imprisoned not more than ninety (90) days, or both.
- 2109.5 Pursuant to D.C. Official Code § 7-1731(b), any person who violates §2107.1 of this chapter shall, upon conviction, be fined not less than two hundred fifty dollars (\$250) for each violation.

2299**DEFINITIONS**

Acts – D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979 (D.C. Official Code § 7-1701 *et seq.*) and D.C. Law 16-90, the Department of Health Functions Clarification Amendment Act of 2001, as amended (D.C. Official Code § 7-741 *et seq.*).

Bar area of a restaurant – the area immediately adjacent to the bar in a restaurant where there are no dining tables or that is primarily the area where persons of legal drinking age consume alcoholic beverages purchased at the bar.

Employee - the license holder, person in charge, person having supervisory or management duties, person on the payroll, volunteer, or person performing work under contractual agreement at a place of employment.

Enclosed area – the space between a floor and ceiling that is enclosed on all sides by solid walls, windows, or doors, exclusive of doorways, that extend from the floor to the ceiling, regardless of whether windows or doors are open.

Existing building – a building that was built, under construction, or had a building permit issued on or before August 3, 1991.

Place of employment – an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, and vehicles owned by a private employer, if the vehicle is used by more than one person. This term does not apply to a private residence unless it is used as a child development center, adult day care facility, or health care facility.

Public place – an enclosed area to which the public is invited or in which the public is permitted, including banks, educational facilities, health care facilities, Laundromats, public transportation facilities, reception areas, restaurants, retail

food production and marketing establishments, nightclubs, retail service establishments, retail stores, shopping malls, sports arenas, taverns, theaters, and waiting rooms. This term does not apply to a private residence unless it is used as a child development center, adult day care facility, or health care facility.

Smoking – the act of burning a cigar, cigarette, pipe, or any other matter or substance that contains tobacco.

Tobacco bar – a restaurant, tavern, brew pub, club, or nightclub that generates ten percent (10%) or more of its total annual revenue from the on-site sale of tobacco products, excluding sales from vending machines, or the rental of on-site humidors.

Tobacco product(s) – any product made from or containing any percentage of the dried processed leaves of the plant genus *nicotiana* or any byproduct thereof used primarily for the purpose of smoking.

Persons desiring to comment on these proposed rules should submit comments in writing to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002, no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Copies of these proposed rules and related information may be obtained between 9:00 A.M. and 5:30 P.M. at the address stated above.

DISTRICT OF COLUMBIA
DEPARTMENT OF MOTOR VEHICLESNOTICE OF PROPOSED RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in Section 1825 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 50-904); §§ 6, 7, and 10a of the District of Columbia Traffic Act of 1925 ("Act"), effective March 3, 1925 (43 Stat. 1121; D.C. Official Code §§ 50-2201.03, 1401.01, and 2201.05a); § 2 of Title IV of the District of Columbia Revenue Act of 1937, approved September 8, 1950 (64 Stat. 792; D.C. Official Code § 50-1501.02); § 107 of the Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.07); and Mayor's Order 03-58, effective April 21, 2003, hereby gives notice of the intent to adopt the following rulemaking that will amend Chapters 1, 3, 4, 5, 30 and 99 of Title 18 of the District of Columbia Municipal Regulations (DCMR) (Vehicles and Traffic). The proposed rules would allow the Director discretion to extend the validity of any special identification card, renumber the section addressing the periods of suspension and revocation to correct a codification error, clarify the benefit of participating in the ignition interlock program, eliminate outdated conditions for reinstatement of a revoked license or driving privileges, accept a waiver from a state certified drug and/or alcohol counseling program exempting an individual that does not need to complete a state-certified program, authorize the rescission of a suspension or revocation proceeding commenced under the Director's discretionary authority if a respondent has been approved to participate in a court-approved deferral program, extend the reinstatement of driving privileges to an out-of-state driver who successfully completes a court approved diversion program, allow a trustee in bankruptcy to obtain a duplicate certificate of title, codify an existing law allowing certain out-of-state, company-owned motor vehicles to be registered by DC residents, create a new procedure for dealers to use title reassignment forms, and change the maximum amount of time a violation detected by an automated traffic enforcement device may be mailed to the vehicle owner and the relevant information transmitted to the Director. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 18, DCMR, is amended as follows:

- A. Chapter 1, ISSUANCE OF DRIVER'S LICENSE, Section 112, SPECIAL IDENTIFICATION CARDS, is amended as follows:
- 1) Subsection 112.7 is amended by striking the phrase "expire every" and inserting the phrase "be valid for" in its place.
 - 2) A new subsection 112.14 is added to read as follows:

112.14 The Director is further authorized to extend the validity of any special identification card without additional fee for such additional period or periods as the Director, in his or her discretion, may determine; Provided, that such additional period(s) shall not exceed five (5) years in the aggregate.

B. Chapter 3, CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES, Section 306, PERIOD OF SUSPENSION OR REVOCATION, is amended to read as follows:

- 306.1 The suspension period of any resident's or non-resident's driver's license or privilege to operate a motor vehicle in the District shall be from two (2) to ninety (90) days, at the discretion of the Director, based upon the seriousness of the case; except that the period of a license suspension due to point accumulation pursuant to § 303.3 shall be ninety (90) days.
- 306.2 The period of suspension for a person whose license or privilege has been suspended and fines and penalties imposed for failure to appear at a hearing for the administrative adjudication of a traffic infraction or for failure to pay a civil fine and any penalties or attend traffic school pursuant to the District of Columbia Traffic Adjudication Act of 1978, DC Official Code § 50-2301.01 et seq.), (the "Act") shall terminate only upon the payment of such fines and penalties, or the successful completion of traffic school, or both.
- 306.3 At the end of a period of suspension a license surrendered to the Director shall be returned to the licensee, subject to the payment of a reinstatement fee of ninety-eight dollars (\$98).
- 306.4 The minimum revocation period following a first offense of any resident's or non-resident's driver's license or privilege to operate a motor vehicle in the District for which revocation is made mandatory by law or under the discretionary authority of the Department shall be for six (6) months.
- 306.5 The period of revocation shall be one (1) year following a second offense, and two (2) years following a third or subsequent offense(s), except as provided in §§ 306.6 & 306.7.
- 306.6 A person convicted of a second offense pursuant to sections 10(b)(1) and (b)(2) of the Act (D.C. Official Code §§ 50-2201.05(b)(1) and (b)(2)) within a 15-year period shall have their license revoked for two (2) years, unless the person is enrolled in the ignition interlock program established in § 311 of this Title.
- 306.7 A person convicted of a third or subsequent offense pursuant to sections 10(b)(1) and (b)(2) of the Act (D.C. Official Code §§ 50-2201.05(b)(1) and (b)(2)) within a 15-year period shall have their license revoked for three (3)

years, unless the person is enrolled in the ignition interlock program established in § 311 of this Title.

- 306.8 Each person whose license has been revoked shall be eligible to apply for restoration of privileges at the expiration of the period for which the privileges have been revoked.
- 306.9 The Director shall not issue a new license to a resident or restore the operating privilege of any nonresident whose license has been revoked unless and until he or she is satisfied, after investigation of the driving ability of that person, that it will be safe to grant the privilege of driving a motor vehicle.
- 306.10 An applicant for reinstatement or a new driver's license after a suspension or revocation pursuant to §§ 301 or 302 for an alcohol-related offense may be required to pass a breathalyzer test, at the discretion of the Director.
- 306.11 An applicant for a new driver's license after a revocation pursuant to §§ 301 or 302 for an alcohol or drug related violation must present written proof from a state certified drug and/or alcohol counseling program certifying:
- (a) The applicant has successfully completed a state-certified drug and/or alcohol-counseling program after the date of revocation; or
 - (b) The applicant applied to participate in a state certified drug and/or alcohol-counseling program after the date of revocation, but that the application was denied because the program determined that such counseling was unnecessary.
- 306.12 Any person whose driving privileges were revoked or suspended pursuant to § 13 of the District of Columbia Traffic Act of 1925, effective March 3, 1925 (43 Stat. 1125; D.C. Official Code § 50-1403.01), and who was approved for a diversion program by the Superior Court of the District of Columbia, may apply to the Director for rescission of the revocation or suspension action.
- 306.13 If a revocation or suspension was rescinded pursuant to § 306.12, and the driver does not successfully complete the diversion program, he or she will be subject to a mandatory revocation upon a court conviction for the same underlying offense, pursuant to § 301 of this title.
- 306.14 If a driver's license is suspended or revoked pursuant to § 302 of this title and is subsequently revoked again based upon a court conviction for the same underlying offense, the Director may allow the suspension and revocation periods to run concurrently or may credit time already spent in suspension or revocation status towards the duration of the revocation based on a court conviction.

C. Chapter 4, MOTOR VEHICLE TITLE AND REGISTRATION, is amended as follows:

- 1) Section 401, APPLICATION FOR A CERTIFICATE OF TITLE, is amended by adding a new subsection 401.18 to read as follows:

401.18 If the application is submitted by a purchaser of a vehicle sold by a trustee in bankruptcy, the application shall be accompanied by a duly authenticated bill of sale from the trustee in bankruptcy and a certificate of title signed by the current owner or assigned by the trustee in bankruptcy in accordance with § 406.11.

- 2) Section 406, DUPLICATE CERTIFICATES OF TITLES, is amended as follows:

- a) Subsection 406.1 is amended to read as follows:

406.1 The Director is authorized to issue a duplicate certificate of title if:

- (a) A certificate is lost, stolen, destroyed, or illegally detained from the owner;
- (b) The face or back of a certificate has been altered, erased, or mutilated by a person other than the Director;
- (c) A certificate cannot be officially executed; or
- (d) A vehicle is subject to a bankruptcy proceeding and the trustee in bankruptcy requires a duplicate certificate to sell the asset; provided the prerequisites of §§ 406.9 through 406.11 are met.

- b) Three new subsections 406.9 through 406.11 are added to read as follows:

406.9 In order to apply for a duplicate certificate of title, a trustee in bankruptcy must provide a court order identifying the owner of the vehicle as the subject of a bankruptcy proceeding and naming the trustee in bankruptcy.

406.10 The Director shall not issue a duplicate certificate of title to a trustee in bankruptcy if there are any recorded liens on the vehicle.

406.11 In order to assign a duplicate certificate of title, the trustee in bankruptcy shall sign the back of the certificate adding the word "Trustee" after the signature, and provide the purchaser with a copy of the court order described in § 406.9.

- 3) Section 412, REFUSAL OF REGISTRATION, subsection 412.1, paragraph (m) is amended by adding after the phrase "District of Columbia", the phrase ", unless

DISTRICT OF COLUMBIA REGISTER

the owner is an out-of-state company and the vehicle to be used by a District resident”.

- D Chapter 5, MOTOR VEHICLE DEALERS, is amended by adding a new section 509 to read as follows:

509 TITLE REASSIGNMENT FORMS

- 509.1 A new or used car dealer, which is registered under this chapter and in good standing, may request the Director to provide it with title reassignment forms.
- 509.2 Any title reassignment forms issued shall be serially numbered and of a quantity to be determined by the Director. The Director may provide a dealer with additional reassignment sheets at the Director's discretion.
- 509.3 A dealer may not use title reassignment forms issued to another dealer.
- 509.4 The dealer shall complete the first reassignment space of each title reassignment form.
- 509.5 Except as provided in § 509.5, a dealer may not issue a title reassignment form unless all the reassignment spaces on the back of the certificate of title or certificate of origin and any accompanying reassignment sheets are filled in.
- 509.6 A dealer shall use a title reassignment form if the certificate of title or certificate of origin were issued in another jurisdiction that does not permit an out-of-state dealer to reassign the title.
- 509.7 A dealer may not complete a reassignment space on the back of the certificate of title or certificate of origin when a title reassignment form is attached.
- 509.8 The dealer shall verify the vehicle's identification number, year, make, model, the state in which the vehicle was last titled, and the title number and record that information on the title reassignment form.
- 509.9 The dealer shall verify and completely fill the reassignment block with the buyer's name and address, the seller's name, the date of reassignment, the selling price, the odometer reading, and any applicable lien information.
- 509.10 The dealer shall provide the buyer with the original title reassignment form.
- 509.11 The dealer shall retain a copy of the title reassignment form for no less than two (2) years at the dealer's principal place of business.

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- 509.12 Within twenty-four (24) hours after the reassignment of ownership, the dealer shall transmit electronically a digital certificate of ownership, including the following information:
- (a) The buyer's name, address, and driver's license, learner's permit, or identification card number;
 - (b) The state where the buyer's license, permit or identification card was issued;
 - (c) The vehicle's identification number; odometer reading; and purchase price; and
 - (d) The date of sale or reassignment.
- 509.13 If a buyer fails to take possession of the vehicle or if an error is made during the reassignment process, the dealer shall write VOID across the applicable reassignment space, include a notarized letter stating the correction, and use the next available reassignment space. The notarized letter shall be part of the original reassignment form.
- 509.14 If a title reassignment form is either lost or stolen, the dealer must provide a copy of the full police report or six-digit report number to the Director within 5 business days of the theft or loss.
- 509.15 The Director may issue no more than two replacement title reassignment forms to the same dealer within a six-month period.
- 509.16 If a title reassignment form is damaged, the dealer shall return all parts of the reassignment form to the Director within 5 business days.
- 509.17 The dealer shall provide to the Director the dealer copy of the reassignment form upon the verbal or written request by the Director.
- E) Chapter 30, ADJUDICATION AND ENFORCEMENT, section 3003, ISSUANCE OF MOVING AND NON-MOVING VIOLATIONS, subsection 3003.5 is amended by striking the phrase "fifteen (15)" and inserting the phrase "twenty-five (25)" in its place.
- F) Chapter 99, DEFINITIONS, Section 9901, DEFINITIONS, is amended by inserting the following new definition in alphabetical order:
- Trustee in Bankruptcy or Bankruptcy Trustee – a person authorized by a federal bankruptcy court under An Act to Establish a Uniform Law on the Subject of Bankruptcies, approved November 6, 1978 (Pub. L. 95-598, 11 USC 704) to take legal title to the property of the debtor and reduce the property to money for equitable distribution among the creditors.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Glenn Dubin, Assistant Attorney General, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Copies of this proposal may be obtained, at cost, by writing to the above address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 1005, IN THE MATTER OF THE APPLICATION OF
VERIZON WASHINGTON, DC INC.'S APPLICATION TO CLASSIFY
BUNDLED SERVICES AS COMPETITIVE UNDER PRICE CAP PLAN 2004

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to District of Columbia Official Code Section 2-505,¹ of its intent to act upon the Application of Verizon Washington, DC Inc. ("Verizon") to Classify Bundled Services as Competitive Services Under Price Cap Plan 2004 ("Application") in not less than 60 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.²

2. In its Application, Verizon seeks the reclassification of a list of bundled services as competitive services pursuant to Price Cap Plan 2004.³ Verizon states that its bundled services are combinations of individual services that Verizon provides to residential consumers and small business customers for one flat monthly rate.⁴ Under Price Cap Plan 2004, the individual services are classified into four service baskets while Verizon's bundled services are not. Verizon states that because its bundled services typically include at least one basic service any tariff modification of a bundled service requires Commission approval which places Verizon at a competitive disadvantage in the highly competitive market for service bundles.

3. The Commission notes that prices for individual basic and discretionary services are regulated by the Commission pursuant to Price Cap Plan 2004. Prices for competitive services, however, are not regulated by the Commission.⁵ Accordingly, Verizon's request would remove existing price restrictions on these bundled services. Section 5(a) of Price Cap Plan 2004 requires the Commission to determine, no later than

¹ D. C. Code, 2001 Ed. § 2-505.

² *Formal Case No. 1005, In the Matter of Verizon Washington, D.C. Inc.'s Application to Classify Bundled Services as Competitive Under Price Cap Plan 2004*, filed December 4, 2006 (Verizon's Application).

³ *Formal Case No. 1005, In the Matter of Verizon Washington, D.C. Inc.'s Price Cap Plan 2004 for the Provision of Local Telecommunications Services in the District of Columbia*, Order No. 13370, rel. September 9, 2004.

⁴ Some of Verizon's bundled services include "Verizon Freedom Value, Verizon Freedom Essentials, Verizon Freedom, and Verizon Freedom Extra." See Verizon's Application, Exhibit A-1, A-2.

⁵ See Order No. 13370, ¶ 15.

60 days after the date of publication of the NOPR, that either the reclassification is approved, the reclassification is approved on an interim basis subject to the Commission completing its review, the reclassification is denied, or the reclassification request is held in abeyance because additional time is needed for the Commission to complete its review due to the complexity of the application.⁶

4. Verizon's Application is on file with the Commission and can be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Seventh Floor, East Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the Application are available upon request, at a per-page reproduction cost.

5. Comments on Verizon's Application must be made in writing to Dorothy Wideman, Commission Secretary, at the above address. All initial comments must be received within 30 days of the date of publication of this NOPR in the *D.C. Register*. Persons wishing to file reply comments may do so no later than 40 days of the date of publication of this NOPR. After the comments have been received, the Commission will take final action on Verizon's Application as prescribed by Section 5(a) of Price Cap Plan 2004.

⁶ See Price Cap Plan 2004 § 5(a).

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., 2nd FLOOR, WEST TOWER
WASHINGTON, D.C. 20005

NOTICE OF FINAL RULEMAKING

TELEPHONE TARIFF 06-5, IN THE MATTER OF THE APPLICATION OF VERIZON
WASHINGTON, D.C., INC., FOR AUTHORITY TO AMEND THE GENERAL SERVICES
TARIFF P.S.C. - D.C. -NO. 203

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice of its final rulemaking action, taken in Order No. 14144 (December 12, 2006), to approve the tariff application of Verizon Washington, D.C. Inc. ("Verizon DC")¹ to amend the following tariff pages:

GENERAL SERVICES TARIFF P.S.C.-D.C.-NO. 203

Section 31, 1st Revised Page 6

1st Revised Page 8

2. Through this tariff filing, Verizon DC proposes to increase rates for Regional Essentials and Regional Value bundled services.² Verizon DC proposes a \$30.04 monthly rate for its Regional Essentials services and \$25.04 monthly rate for its Regional Value services.³ Verizon DC asserts that the proposed revisions are filed pursuant to Price Cap Plan 2004, although they are not classified under the Plan.⁴

3. The Commission issued a Notice of Proposed Rulemaking, published in the *D.C. Register* on October 20, 2006, inviting the public to submit comments on the proposed tariff amendment.⁵ No comments were filed. The Commission subsequently approved Verizon DC's Application in Order No. 14144, finding that the proposed tariff revision was consistent with the requirements of Section 3(a) of Price Cap Plan 2004. This tariff revision becomes effective upon the publication date of this Notice of Final Rulemaking in the *D.C. Register*.

¹ *Telephone Tariff 06-5, In the Matter of the Application of Verizon Washington, DC, Inc. for Authority to Amend the General Services Tariff, P.S.C.-D.C.-No. 203*, Letter from J. Henry Ambrose, Verizon DC Vice President for State Public Policy to Dorothy Wideman, Commission Secretary (September 29, 2006) ("Application").

² See Application at 1.

³ *Id.* at 2-3.

⁴ See *id.* See also *Formal Case No. 1005, In the Matter of Verizon Washington, D.C. Inc.'s Price Cap Plan 2004 for the Provision of Local Telecommunications Services in the District of Columbia*, Order No. 13370, rel. September 9, 2004. ("Price Cap Plan 2004").

⁵ 53 *D.C. Reg.* 8518 (2006).