OFFICE OF RISK MANAGEMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Office or Risk Management (ORM), Executive Office of the Mayor, pursuant to the authority set forth in section 7 of Reorganization Plan No.1 of 2003 for the Office of Risk Management, effective December 15, 2003, and Mayor's Order 2004-198 (December 14, 2004), hereby gives notice of the adoption, on an emergency basis, of the following new Chapter 31 to Title 7 of the *D.C. Municipal Regulations*. The new Chapter 31, entitled Termination, Suspension or Reduction of Disability Compensation Benefits for District Employees, sets forth the rules regarding notice requirements and other processes attendant to the termination, suspension, or reduction of disability compensation benefits being paid, by ORM or its designee, to District employees (including employees of instrumentalities of the District government and District government employees serving on petit or grand juries) from the District's Disability Compensation Program (Program).

The emergency rulemaking is necessary for the immediate preservation of the public peace, health and welfare in order to comply with the court's order in *Lightfoot, et al. v. District of Columbia, et al.* (No. 01-1484 (CKK)) (September 24, 2004) (*Lightfoot*) under which the District has been directed to publish rules concerning the termination, suspension or reduction of disability compensation benefits for District employees. The current rulemaking in 7 DCMR Chapter 1 was promulgated by the Department of Employment Services (DOES) when the disability compensation program was entirely under DOES's jurisdiction. While the DOES still has jurisdiction with respect to the adjudication of disability compensation appeals, the Program itself is under the jurisdiction of the ORM. The District government is appealing the court's order in *Lightfoot*. Therefore, while some of the current rules may be applicable to matters now within the jurisdiction of ORM, it was determined that, for purposes of this mandated rulemaking, a new Chapter 31 would be created to distinguish the subject rules from the rules currently published in 7 DCMR Chapter 1. At a future time, the DOES and the ORM may consider revising 7 DCMR Chapter 1 in its entirety by promulgating joint rulemaking pursuant to their respective jurisdictions, or, the ORM may publish more comprehensive rulemaking concerning the Program. However, the subject rulemaking is limited to addressing only those aspects of the Program as are required by the *Lightfoot* decision and other matters that must be addressed as a result of the promulgation of these rules. This rulemaking incorporates certain concepts embodied in the Disability Compensation Effective Administration Amendment Act of 2004, effective April 5, 2005 (D.C. Law 15-290). However, this rulemaking is not the rulemaking required by that act.

The emergency rules published in 52 DCR 5481, June 10, 2005 and 52 DCR 5771, June 17, 2005, are being republished as emergency rules to consider comments received during the comment period and to address the rules mandated by the Disability Compensation Effective Administration Amendment Act of 2004, effective April 5, 2005

(D.C. Law 15-290). These rules are adopted as of October 3, 2005 and will be effective October 7, 2005. The emergency rules will be in effect for 120 days (or until February 4, 2006) unless superseded by a notice of final rulemaking.

The Director also hereby gives notice of her intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

A new Chapter 31 is added to 7 DCMR, as follows:

Chapter 31

Office of Risk Management

Termination, Suspension or Reduction of Disability Compensation Benefits for District Employees

3100 Applicability

3100.1 The provisions of this subchapter are applicable to the District's Disability Compensation Program (Program), administered by the Office of Risk Management (ORM). To the extent that there is a conflict between the rules set forth in this subchapter and other rules in Chapter 1 of this title that are not part of this subchapter, the rules in this subchapter shall control with respect to any matter that is within the jurisdiction of the ORM.

3100.2 ORM has oversight and administrative responsibility for the Program, including decisions on requests for reconsideration of Initial Determinations (IDs) and Eligibility Determinations (EDs) rendered by the ORM or its designee. (When the term ORM is used in this subchapter, it is understood that the activity referenced may in fact be performed by the ORM's designee. A responsibility of the Program described in this subchapter may be carried out by the ORM or its designee, as the ORM may determine from time-to-time).

3100.3 All employees, contractors, sub-contractors, and agents, acting for or on behalf of the District of Columbia, to implement the Program pursuant to the Act, including third party administrators, shall comply with these rules.

3100.4 Nothing in these rules, or any instructions or attachments related thereto, shall be interpreted as:

(a) Creating an entitlement or property interest in any employee, contractor, sub-contractor, or agent to whom these rules are applicable;

(b) Making any person or entity a third-party beneficiary to any contract with the District or with any of its contractors or sub-contractors;

(c) Establishing a standard of care; or

(d) Limiting the District's ability to amend, modify, or rescind these rules, consistent with any applicable law, including the Act and the District of Columbia Administrative Procedure Act, approved October 21, 1968, 82 Stat. 1203, D.C. Official Code § 2-551 *et seq.* (2001), binding case law, government contract provisions and modifications, and applicable judgments or settlements.

3101 through 3130 Reserved

3131 Procedures for New Claims

3131.1 The Program shall render IDs concerning new claims for compensation benefits, including decisions to accept or deny new claims, pursuant to this subchapter.

3131.2 The District government is responsible for receiving first reports of injuries, administering claims and making compensability and continued eligibility determinations. The ORM may delegate some or all of these responsibilities to a third party administrator.

3131.3 Claims properly and timely reported by employees that meet the requirements of the Act shall be covered by the Program.

3131.4 The employer shall report the claim to ORM, or its designee, by telephone and in writing, using Form 1, the Employer and Employee First Report of Injury or Occupational Disease, and Form 2, Supervisor's Report.

3131.5 Form 1 shall contain the following information:

(a) The name and address of the employer;

(b) The name and address of the employee;

(c) The year, month, day and hour when the injury or death occurred;

(d) The name and telephone number of the employee's supervisor;

(e) The employee's occupation at the time of the injury or death;

(f) The employee's wage/base salary information;

(g) The length of employee's employment;

(h) The location of the accident; and

(i) A description of the events which resulted in the injury or disease, type of injury, and the body parts affected.

3131.6 Form 2 shall contain the following information:

(a) Whether the supervisor witnessed the accident;

(b) Whether the employee reported the accident or injury, and to whom;

(c) Whether an incident report was prepared in connection with the injury;

(d) The nature of the injuries the employee complained of;

(e) Whether the employee has been placed on Continuation of Pay (COP);

(f) Whether the employee was in the performance of duty at the time of injury;

(g) A description of the events which resulted in the injury or disease; and

(h) An attached copy of the employee's position description and all incident reports.

3131.7 The Employer shall complete and submit supplemental reports to the ORM as requested. Said reports shall contain:

(a) Statements from witnesses confirming or refuting the employee's allegations concerning the accident or injury;

(b) Statements, where requested, to give additional details of the accident or incident;

(c) Statements regarding whether the employee had a similar disability prior to the alleged injury, and, if so, full details of the prior disability or incident and associated medical reports; and

(d) Statements of other injuries or accidents of a similar character and the full details.

3131.8 The Employer shall complete Form CA-3, Report of Return to Duty.

3131.9 The Employee shall complete Form CA-7, Claim for Compensation, Part A, Employee Statement or another notice which shall:

(a) Be in writing;

(b) State the name and address of the employee;

(c) State the year, month, day, and hour when and the particular locality where the injury or death occurred;

(d) State the cause and nature of the injury, or in the case of death, the employment factors believed to be the cause;

(e) State the employee's official job title, grade/step, and number of hours scheduled to work per day;

(f) State the employee's health benefit plan and code;

(g) State whether the employee has optional life insurance;

(h) State whether a claim has been made against a third party as a result of the injury or illness;

(i) State the names, relationship, and birth dates of employee's dependents, and/or the amount of support paid for dependents not living with the employee;

(j) Be signed by, and contain the address of, the individual giving the notice;

(k) Attach proof of dependency, for example, birth certificates and court orders; and

(l) Attach a copy of the employee's last pay stub.

3131.10 The employee shall complete a Medical Authorization and Release of Confidential Information Form as provided by ORM.

3131.11 The employee shall have his physician complete and return to the ORM, a Form 3, Physician's Report of Employee's Injury and Disability.

3131.12 The employee shall submit proper medical documentation as requested by the ORM to support the employee's ongoing disability and absence from work. These documents shall include, but not be limited to the following:

(a) Statements and medical documentation regarding any similar disability

which occurred prior to the alleged injury;

(b) Statements and medical documentation regarding any other injury or accident of a similar character;

(c) A written statement showing why there was a delay in seeking medical care.

3131.13 ID benefits may be based, in whole or in part, upon the following factors:

(a) The claimant's lack of a compensable injury;

(b) The claimant's abandonment of the claim;

(c) The claimant's failure to cooperate with treatment or rehabilitation recommendations, or with Program requirements for providing information;

(d) Any other grounds, such as fraud, that reasonably demonstrate that the claimant is not entitled to benefits under the Act.

3131.14 A new claim shall be denied as controverted when a claimant fails to cooperate, by following the procedures set forth in this subchapter.

3131.15 Within 30 days after the Program receives a new claim for compensation benefits compensable under the Act, the Program shall issue an ID providing notice to the claimant furnishing or authorizing payment for services, appliances, supplies, reasonable transportation, and expenses incidental thereto. Within 30 days after the Program receives a new claim for compensation benefits that is not compensable under the Act, the Program shall issue an ID providing notice to the claimant denying such claim.

3131.16 The ID is effective unless the claimant succeeds on a request for reconsideration as provided in section 134 of this subchapter, or the Program revises the ID.

3131.17 Medical reports used in connection with an ID shall meet the requirements of section 160 of this subchapter.

3132 Procedures for Existing Claims

3132.1 The Program shall render EDs, concerning existing claims for compensation benefits, including decisions to terminate, suspend, or modify benefits, pursuant to this subchapter.

3132.2 The Program shall adjust a claim using information from the treating physician who provides medical treatment to the claimant for an injury or disability and from any Additional Medical Examination (AME) report. An AME shall consist of a case file review, and/or an in-person assessment or examination, by a qualified health professional other than the treating physician.

3132.3 An AME report shall be conclusive and responsive to the requests from the Program as part of a complete professional evaluation.

3132.4 Upon a request from the Program, the claimant and the treating physician shall provide copies of all the claimant's medical records regardless of the source of the record(s) or the medical condition(s) addressed in the records. The Program shall take appropriate steps to ensure that the medical records provided to it are maintained in a confidential manner.

3132.5 A claimant who is receiving benefits under the Program shall not be the subject of an ED unless and until there is sufficient evidence to support the issuance of an ED pursuant to the Act and this subchapter.

3132.6 An ED may be based, in whole or in part, upon the following factors:

(a) The death of the claimant;

(b) The clear evidence that claimant has returned to work;

(c) The claimant's conviction of fraud in connection with the claim;

(d) Suspension of the payment of compensation due to the claimant's failure to participate in vocational rehabilitation or cooperation with the Program's request for a physical examination;

(e) The cessation or lessening of a compensable injury;

(f) The condition is no longer causally related to the employment;

(g) The condition has changed from a total disability to a partial disability;

(h) The employee has returned to work on a full-time or part-time basis notwithstanding individuals directed to undergo vocational rehabilitation under section 2304 of the Act;

(i) The Program determines based upon strong compelling evidence that the ID was in error; and

(j) Any other ground demonstrating that the Act requires the claimant's benefits to be modified, such as abandonment of the claim, retirement of the claimant, or clear evidence that the claimant has knowingly and willfully received benefits to which he or she was not entitled under the Act.

3132.7 With the exception of the factors set forth in section 132.6 (a)-(d) of this subchapter, compensation benefits subject to an ED shall not be modified until the period for requesting reconsideration set forth in section 134 of this subchapter has elapsed with no Request for Reconsideration being received by the ORM, or until a timely Request for Reconsideration has been decided by the ORM, whichever is earlier.

3132.8 A claim shall be deemed abandoned or subject to modification for non-cooperation when the claimant fails to return required forms for an existing claim, the Program has made at least two (2) attempts to contact the claimant and request such forms, and at least fourteen (14) calendar days prior to the issuance of the notice, the Program sends the claimant a warning letter explaining why the Program believes the claimant is not cooperating or has abandoned the claim, what the claimant must do in order to comply, and describing the consequences of failing to cooperate or abandonment.

3132.9 In making its determinations regarding whether a claim should be the subject of an ED, the Program shall consider all relevant evidence in the claim file, including all relevant medical evidence. In weighing medical evidence, the Program shall give great weight to the opinion(s) of the treating physician, unless there are compelling reasons for rejecting such opinions, in which case, the opinion(s) of another physician may be given greater weight. Such reasons may include:

(a) Sketchiness, vagueness, and imprecision in the reports of the treating physician;

(b) The fact that the opinion of the treating physician is not supported by medically acceptable clinical and laboratory diagnostic techniques;

(c) The fact that the opinion of the treating physician is inconsistent with the other substantial evidence of record; or

(d) The existence of an AME report from a physician with superior, relevant, professional knowledge, who examined the claimant personally and reviewed all relevant, available medical records, and diagnostic studies.

3132.10 An AME report shall be considered to the extent permitted by section 132.9 of this subchapter, where the report was provided by a physician with superior, relevant, professional knowledge, who examined the claimant

personally and reviewed all relevant, available medical records, and diagnostic studies.

3132.11 If, pursuant to section 132.9, the Program does not give great weight to the opinions of a treating physician, the notice required by section 133 of this subchapter, informing the claimant of the ED, shall explain why the Program took such action in connection with its decision.

3132.12 The ED is effective unless the claimant succeeds on a request for reconsideration under section 134 of this subchapter or the Program revises the ED.

3132.13 Medical reports used in connection with an ED shall meet the requirements of section 160 of this subchapter.

3133 Program Notices of Initial Determinations and Eligibility Determinations

3133.1 The Program shall issue a notice regarding each ID and ED pursuant to this subchapter. A notice of an ID or ED shall be issued using a standard form developed by the Program that informs the claimant of the right to request reconsideration. Sample notices shall be published in the *District's Personnel Manual.*

3133.2 A notice shall contain a narrative description of the rationale for the decision, shall cite relevant portions of the supporting documentation or claim file, and shall be accompanied by supportive documentation.

3133.3 A notice shall be sent to the claimant's last known address by first class U.S. mail. A certificate of service shall be executed by the Program at the time of mailing.

3134 Reconsiderations of Initial Determinations and Eligibility Determinations

3134.1 A claimant who is dissatisfied with an ID or ED may either submit a request for reconsideration to the ORM, or, appeal the ID or ED as provided in the Act, but not both. Reconsideration shall be optional and in addition to an appeal under the Act.

3134.2 A claimant shall be entitled to receive continued benefits pending a decision on a request for reconsideration unless:

(a) The claimant has died;

(b) The claimant has returned to work;

(c) The claim has been controverted;

(d) The claimant's compensation benefits have been suspended for non-cooperation;

(e) The claimant is no longer entitled to augmented compensation pursuant to the Act;

(f) The claimant has voluntarily retired and been awarded retirement benefits in lieu of disability compensation benefits;

(g) The claimant knowingly and willfully received benefits to which he or she was not entitled under the Act; and

(h) The claim has been abandoned, as defined in section 132.8 of this subchapter.

3134.3 If a request for reconsideration is properly and timely submitted pursuant to this section, the ORM may affirm, modify, vacate, or remand the ID or ED for further examination by claims examiners within the Program, in full, or in part.

3134.4 A request for reconsideration shall be written and shall contain medical, vocational, or factual justification.

3134.5 A Request for Reconsideration shall be delivered to the ORM by hand, or by United States Mail, within 30 days of the date of issuance of the ID or ED that is the subject of the Request for Reconsideration. If a Request for Reconsideration is hand-delivered, the ORM shall provide the claimant with a dated receipt. Requests for Reconsideration shall not be accepted by facsimile or email.

3134.6 The deadline for filing a Request for Reconsideration shall be strictly enforced. If, by the 31st day following the date of issuance of the ID or ED, the ORM has not received a Request for Reconsideration, it shall implement the decision if it has not already done so consistent with sections 132.6 and 132.7 of this subchapter. If the ORM receives a Request for Reconsideration after the 30th day following the issuance of the ID or ED, then it shall deny the Request for Reconsideration as untimely without ruling on the merits.

3134.7 If the deadline for a Request for Reconsideration falls on a Sunday, a holiday, or a day that is normally a business day but on which the District government is otherwise closed, such as for snow or other emergency, then

the request for reconsideration shall be timely if it is received by ORM on the next business day.

3134.8 The ORM shall permit a claimant to request a waiver of the filing deadline in section 134.6 of this subchapter on the grounds that good cause existed during the 30 days following the ID or ED decision sufficient to justify the ORM's late receipt of the Request for Reconsideration. The claimant shall provide factual justification and any documentation required by ORM to support the request for the waiver. In no event shall a request for a waiver of the deadline be considered after 180 days from the date of issuance of an ID or ED.

3134.9 The ORM shall make its ruling on the merits of a Request for Reconsideration upon a preponderance of the evidence, based on the Act, best practices, and applicable case law. If the ORM's decision on the Request for Reconsideration is based in whole or in part on medical information, the ORM shall, in making its ruling, adhere to the requirements of section 132.9 of this subchapter.

3134.10 If the ORM rules favorably upon a Request for Reconsideration and the claimant has been receiving continued benefits during the pendency of the ORM's decision, such benefits shall continue without interruption. If the ORM rules favorably upon a Request for Reconsideration and the claimant has not been receiving benefits during the pendency of the ORM's decision, all current and any retroactive benefits due to the claimant shall be paid.

3134.11 If the ORM does not rule favorably upon a Request for Reconsideration, the ORM shall, using a standard form developed by the ORM, provide a brief explanation of its decision. On such form, the ORM shall either direct the Program to issue a new ID or ED from which the claimant shall have thirty (30) calendar days from the date of the ORM's reconsideration decision to appeal to the Department of Employment Services (DOES), or shall adjust the date of the existing ID or ED so the claimant has thirty (30) calendar days from the date of the ORM's reconsideration decision to appeal to the DOES.

3134.12 The decision rendered by the ORM upon a Request for Reconsideration shall not be binding upon an Administrative Law Judge. If a claimant files a Request for Reconsideration of an ID or ED with the ORM, any subsequent appeal following the ORM's decision on the Request for Reconsideration to the DOES shall be from the existing or new ID or ED that is in effect following the ORM's decision on the Request for Reconsideration, and not from the ID itself.

3135 through 3159 Reserved

3160 Required Contents of Medical Reports from Physicians

3160.1 The following information shall be included in a medical report from a physician that is used by the Program in connection with an ID, ED, or other Program decision affecting claimant benefits:

(a) Date(s) of examination and treatment;

(b) History given by the employee;

(c) Physical findings;

(d) Results of diagnostic tests;

(e) Diagnosis;

(f) Course of treatment

(g) Description of any other conditions found but not due to the claimed injury;

(h) Treatment given or recommended for the claimed injury;

(i) Physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment;

(j) Extent of disability affecting the employee's ability to work due to the injury;

(k) Prognosis for recovery; and

(l) All other material findings.

3160.2 Medical reports that fail to meet the requirements of this section may be deemed to be invalid and compensation claims based thereon may be denied.

3161 Claimant and Attorney Access to Program Claims Files

3161.1 A claimant and his or her attorney shall have access to the Program's file pertaining to his or her claim. The Program's files pertaining to disability compensation claims are District of Columbia property.

3161.2 A claimant and his or her attorney may contact the Program to request an appointment to review the Program's file and make one copy of the

documents at the claimant's expense at reasonable rates set by the Program. The Program shall schedule an appointment to be held at a mutually convenient time within five (5) business days of receiving the claimant's request.

3162 Payment of Compensation Benefits on Remand from Appeal

3162.1 The Program shall pay compensation to the claimant pursuant to an Order of an Administrative Law Judge (ALJ), and provided the claimant, within fifteen (15) days of the Order, has submitted:

(a) Verification of the disability for the period specified in the Order; and

(b) Verification of lost wages for the period specified in the order, including but not limited to, all wage documentation for the period (i.e., pay stubs, W-2 or 1099 income tax forms, and/or other related income earnings statements).

3163 through 3197 Reserved

3198 Computation of Time

3198.1 Any days required to be counted pursuant to this subchapter shall be counted commencing with the day after the date referenced in the rule.

3199 Definitions

3199.1 When used in this chapter, the following terms shall have the following meanings:

Act – Title XXIII of the District of Columbia Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, D.C. Law 2-139, D.C. Official Code § 1-623.01 *et seq.* (2001).

Best practices – practices that reflect well-established methods of adjustment for weighing evidence, consulting industry reference materials, seeking advice from medical consultants, and engaging in the other steps of adjustment commonly known in the disability compensation field.

Claim File - all program documents, materials, and information, written and electronic, pertaining to a claim, excluding that which is privileged or confidential by law or custom within the workers' compensation industry.

Eligibility Determination (ED) – a decision concerning, or that results in, the termination, suspension or reduction of a claimant's existing disability

compensation benefits, excluding *de minimus* modifications and corrections of technical errors that affect five percent (5%) or less of the claimant's monetary benefits.

Good Cause – "excusable neglect," as defined in the Federal Rules of Civil Procedure, Rule 6(b)(2) and interpretive case law.

Initial Determination (ID) – a decision regarding initial eligibility for benefits under the Act, including decisions to accept, deny, or controvert new claims, pursuant to this subchapter.

Medical opinion – a statement from a physician, psychiatrist, psychologist or other acceptable medical source that reflects judgments about the nature and severity of an impairment, including: symptoms, diagnosis and prognosis, physical or mental restrictions, and what the employee is capable of doing despite his or her impairments.

Treating physician – the physician, psychiatrist, psychologist, or other medical source who provided the greatest amount of treatment and who had the most quantitative and qualitative interaction with the employee.

Comments on the proposed rulemaking should be submitted, in writing, to Kelly L. Valentine, Interim Chief Risk Officer, 441 Fourth Street, N.W., Suite 800S, Washington, DC 20001, within thirty (30) days of the date of publication in the *D.C. Register*. Additional copies of the proposed rules are also available from this same address.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), pursuant to the authority set forth under §8(b)(1)(A) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §50-307(b)(1)(A)), hereby gives notice of its emergency rulemaking action on Friday, September 9, 2005, at its Special meeting, to add a fuel surcharge to the current rates for taxicab service in the District of Columbia. Through its emergency rulemaking action, the Commission voted to amend Appendix 8-2 in Chapter 8 of Title 31 of the District of Columbia Municipal Regulations by adding a fuel surcharge of one dollar and fifty cents ($1.50) per taxicab trip. The fuel surcharge will only affect current zone fares. It does not apply to interstate fares. The effective date of this emergency rule is 12:01 am Saturday, September 10, 2005 and the emergency rule will expire midnight Sunday, January 8, 2006, one hundred and twenty (120) days after its adoption, or upon publication of a notice of final rulemaking in the *D.C. Register* whichever occurs first, unless terminated by the Commission. The Commission also gives notice of intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register.*

The Commission previously took emergency rulemaking action adding a surcharge to taxicab fares that expired on August 31, 2005. Due to the continuing escalation of fuel costs, the Commission determined that it was necessary to issue additional emergency rules to add a surcharge to assist taxicab operators in paying the high fuel costs necessary to operate their taxicabs.

This emergency rulemaking action is an attempt by the Commission to offset the rising fuel costs. Taxicab operators may not be able to continue to meet their public service obligations to provide vital transportation service to the public and preserve the status quo. The increased costs of fuel may cause many taxicab operators to leave the industry or discontinue taxicab service because they may not earn a fair return on their investment. Also, taxicab operators may not be able to meet basic health and welfare needs for themselves or their families. The potential termination of taxicab service may affect senior citizens and persons with disabilities who rely on taxicab service for medical care, extended health services, physical therapy, social, and other supportive services.

The emergency fuel surcharge in effect during this period adds one dollar and fifty cents ($1.50) to the current zone rates listed below:

Number of Zones	Current Fares	Fares Plus Surcharge
1	$5.50	$7.00
2	$7.60	$9.10
3	$9.50	$11.00
4	$11.40	$12.90
5	$12.80	$14.30
6	$14.10	$15.60
7	$16.20	$17.70
8	$17.20	$18.70

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days from the date of publication of this notice in the D.C. Register. Comments should be filed with Kimberly A. Lewis, Attorney Advisor, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. Copies of the proposed rulemaking may be obtained by writing to the above address.

OCT 7 - 2005

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY RULEMAKING
Case No. 05-29
(Text Amendment –Flexibility for Private Schools to Enroll Students Displaced by Hurricane Katrina)
September 15, 2005

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code § 6-641-01) and the authority set forth in D.C. Official Code § 2-505(c) hereby gives notice of the adoption, on an emergency basis, of an amendment to Title 11 of the District of Columbia Municipal Regulations ("DCMR") to permit private schools in the District of Columbia to enroll students displaced by the affects of Hurricane Katrina without having such students count against enrollment caps imposed by orders of the Board of Zoning Adjustment ("BZA"). The rule limits the number of students who could be enrolled without counting towards such caps at ten percent of the maximum number permitted or twenty students, whichever is less.

Hurricane Katrina displaced thousands of persons, including countless numbers of children. Private schools in the District of Columbia have expressed an interest in opening their doors to these students, at no cost, but many cannot do so without running afoul of enrollment caps imposed by BZA orders. In order to avoid even further disruption in the lives of these young persons and alleviate, to some extent, the impact on area public school systems, it is necessary to make this limited and temporary relief effective immediately.

The emergency rulemaking took effect immediately upon its adoption on September 15, 2005 and will expire 120 days thereafter, i.e. January 13, 2006, or upon the publication of a notice of the final adoption of this rule in the D.C. Register, whichever is the first to occur.

Title 11 (DCMR) is amended as follows:

Chapter 2, R-1 RESIDENCE DISTRICT USE REGULATIONS, is amended by adding a new § 206.4 to read as follows:

206.4 Students who were displaced due to the effects of Hurricane Katrina may attend a private school existing as of September 15, 2005, without being counted against the limit on the number of students that may be a condition of an order of the Board of Zoning Adjustment; Provided, that the number of students to be accommodated at a school shall not exceed ten percent (10%) of the maximum number permitted or twenty (20) students, whichever is less.