

1604.8 The issuance of an advisory opinion by the Board pursuant to § 1902 of this title may also result in the issuance of a show cause notice under this section.

1605. FILING A PROTEST

1605.1 Only those individuals or entities listed in D.C. Official Code § 25-601 may file a protest against:

- (a) The issuance of a new license;
- (b) The renewal of an existing license;
- (c) The transfer of a license to a new location;
- (d) Substantial changes to the nature of the operations of a licensed establishment;
and
- (e) Changes in license classes.

1605.2 All protests shall be in writing, shall be received by the Board prior to the end of the protest period, and shall state, as grounds for the protest, why the matter being objected to is inappropriate under one (1) or more of the appropriateness standards set out in D.C. Official Code §§ 25-313 and 25-314 and § 400 of this title.

1605.3 All protests shall be signed by the protestant and contain the protestant's full name and mailing address.

1605.4 The Board may require protestants to appear before the Board for the purpose of determining that a sufficient number of individuals exist to have standing pursuant to D.C. Official Code § 25-601.

1605.5 In addition to, or instead of, filing a protest, any person may circulate or sign Protest Petitions in opposition to any of the licensing actions listed in § 1605.1.

1606. PROTEST HEARINGS

1606.1 Whenever any objection is filed to any of the licensing actions set out in § 1605.1, whether by protest or by submission of Protest Petitions, the Board shall hold an adjudicatory proceeding, known as a "protest hearing," for the purpose of receiving evidence and testimony regarding the appropriateness of the licensing action.

1606.2 The parties to a protest hearing shall be the applicant or licensee and the protestants. For the purpose of this section, "protestant" shall mean any eligible person, group, ANC, government agency or organization with standing under D.C. Official Code § 25-601 that has submitted a

written protest or who has circulated a Protest Petition.

1606.3 At the protest hearing, an applicant or licensee may give a brief opening statement summarizing the evidence and testimony he or she intends to produce regarding the appropriateness of the application or license at issue. Thereafter, the protestant may give a brief opening statement summarizing the evidence he or she intends to present to rebut or overcome the evidence and argument presented by the applicant or licensee.

1606.4 At the conclusion of the opening statements, the Board shall call its own witnesses, if any, who shall testify to the results of their investigation into the appropriateness of the establishment.

1606.5 At the conclusion of testimony by the Board's witnesses, if any, the applicant shall call its witnesses to give testimony and present evidence regarding the appropriateness of the establishment, as set forth in § 400 of this title.

1606.6 At the conclusion of testimony by the applicant's witnesses, the protestant shall call witnesses to give testimony and present evidence.

1606.7 All witnesses shall testify under oath and shall be subject to questioning by the Board and to cross-examination by the opposing party.

1606.8 In any case where there is more than one (1) protestant, the Board, in its discretion, may require the protestants to confer among themselves and designate one (1) person to conduct the protestants' case, to give the opening and closing statements, and to cross-examine the applicant's witnesses.

1607. ESTABLISHMENT OF GEOGRAPHIC BOUNDARIES

1607.1 Upon recognition by the Board of a properly filed protest at a roll call hearing, the applicant shall be required to select one of the geographic areas listed below that the applicant proposes be considered in determining the appropriateness of the establishment. The applicant shall submit the proposed boundaries to the Board and the protestants no later than ten (10) calendar days after the roll call hearing.

1607.2 Any protestant may object to the area and boundaries proposed by an applicant by filing a written objection with the Board after receipt of the applicant's proposed boundaries. The objection shall also be served on the applicant by any of the means set out in § 1703 of this title. The objection shall state in detail the following:

- (a) The reasons for objecting to the boundaries proposed by the applicant;
- (b) The boundaries proposed by the Objector; and

(c) The reasons why the Objector's boundaries should be adopted by the Board.

1607.3 If the applicant wishes to contest the boundaries proposed by the objector, he or she shall submit to the Board in writing the reasons why the boundaries originally proposed should be adopted by the Board.

1607.4 The applicant's submission shall be served on the objector by any of the means set out in § 1703 and received by the Board no later than eight (8) calendar days after receipt of the applicant's submission.

1607.5 Any objector or applicant who makes a submission to the Board pursuant to §§ 1607.1, 1607.2, 1607.3, or 1607.4, may forward written argument or documentary evidence to the Board in support of the boundaries he or she proposes.

1607.6 The Board, pursuant to D.C. Official Code § 25-312(b), shall determine, on a case-by-case basis, the size of the area relevant for the appropriateness review. In making this determination, the Board shall consider the overall characteristics of the area, including population, density, and general commercial and residential activities.

1607.7 For the purpose of determining the appropriateness of a license, the geographic areas to be considered by the Board shall be measured pursuant to § 101.1 and shall be as follows:

- (a) A "locality," which shall be the immediate neighborhood of the establishment and whose boundary shall be at a distance of six hundred feet (600 ft.) from the establishment;
- (b) A "section," whose boundary shall be at an area larger than the immediate neighborhood and whose boundary shall be at a distance of twelve hundred feet (1,200 ft.) from the establishment; and
- (c) A "portion," whose boundary shall be at an area larger than a "section" and whose boundary shall be at a distance of eighteen hundred feet (1,800 ft.) from the establishment.

1607.8 In determining the area to be considered, the Board shall consider the report of the Board's investigators concerning the overall characteristics of the alternative areas, including the following:

- (a) The population and density of the areas surrounding the establishment;
- (b) The general commercial and residential activities in the areas surrounding the establishment; and
- (c) Geographical factors, such as parks, rail lines, major thoroughfares, bodies of

water, cemeteries, and unimproved or unused property, which may tend to define physically an area to be considered.

1607.9 In determining the area to be considered, the Board shall also consider the evidence and testimony of a party proposing a particular area of consideration, when the proposal is based on an assertion of:

- (a) Historical patterns of commercial or residential activity leading to an identification of a given area as a distinct, generally-recognized neighborhood, or larger area; or
- (b) Any other reason not included in § 1607.2.

1607.10 The Board shall make a final decision on the boundaries without a hearing and based on the submissions received from the applicant and the objector.

1607.11 The Board's final decision shall be made and announced at the first status hearing for the application at issue.

1608. SETTLEMENT CONFERENCES

1608.1 Whenever a protest is filed, all parties shall attend a settlement conference among themselves on any mutually convenient date prior to the scheduled status or protest hearing. The date of the settlement conference may be arranged at the roll call hearing or may be arranged at any other time.

1608.2 The parties at a settlement conference may enter into a cooperative/voluntary agreement, as provided for in § 1609, and shall submit, on or before the date of the scheduled status or protest hearing, the agreement to the Board for approval.

1608.3 If the parties fail to reach a cooperative/voluntary agreement on one or more of the protest issues, they shall so state at the scheduled status or protest hearing and the Board shall thereupon proceed with a protest hearing as to all unresolved issues of fact.

1609. COOPERATIVE OR VOLUNTARY AGREEMENTS

1609.1 Cooperative/voluntary agreements reached between an entity with standing under D.C. Official Code § 25-601 and an applicant for a Caterer's license may address activities of the caterer generally within the boundaries of an ANC or activities at a specific event site.

1609.2 The Board may initiate a "Notice to Show Cause Hearing" upon evidence that the holder of a license has violated the material terms of the agreement. Upon a determination that the licensee has materially violated the agreement, the Board may suspend or revoke the license or impose any other penalty authorized by the Act or this title.

1609.3 A request to amend a cooperative/voluntary agreement shall be considered by the Board pursuant to the substantial change and notice procedures set forth in D.C. Official Code §§ 25-404 and 25-762.

1609.4 A request by a party to amend a cooperative/voluntary agreement may be filed with the Board at any time. However, a request to amend a cooperative/voluntary agreement that is denied by the Board or withdrawn by a party shall not be reconsidered by the Board for a period of two years.

1609.5 The phrase "cooperative agreement" often used in agreements reached between applicants and protestants that are submitted to the Board for approval shall be considered synonymous with the phrase "voluntary agreement" and shall have the same meaning in these regulations.

1610. SUMMARY SUSPENSION AND SUMMARY REVOCATION HEARINGS

1610.1 In rendering a decision on a summary suspension hearing, the Board may suspend or restrict the license of the licensee. Additionally, the Board may keep the licensee in the summary suspension proceeding to monitor the licensee to make a determination if the conditions placed by the Board on the licensee are effective. The Board shall schedule a show cause hearing to revoke the license if it determines that the operations of the licensee present an imminent danger to the health and safety of the public pursuant to D.C. Official Code §§ 25-826 and 25-827.

1610.2 In rendering a decision on a summary revocation hearing, the Board may revoke, suspend, or restrict an applicant's license.

SUBCHAPTER III. NON-CONTESTED CASES

1611. FACT-FINDING HEARINGS

1611.1 Prior to rendering a final decision on a licensing request or an ABRA Investigative Report, the Board may hold a fact-finding hearing to obtain further information from an applicant or licensee.

1611.2 A licensee shall not be fined, suspended, or revoked at a fact-finding hearing. However, information provided at a fact-finding hearing may result in the issuance of a show cause notice pursuant to § 1604 or other enforcement action permitted under the Act or this title.

1612. MORATORIUM HEARINGS

1612.1 The Board shall hold moratorium hearings pursuant to the requirements set forth in D.C. Official Code §§ 25-353 and 25-354.

CHAPTER 17. PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS**1700. APPLICABILITY**

1700.1 This chapter shall apply to all hearings held before the Board.

1700.2 The Board may, for good cause shown and in the interests of justice or to prevent hardship, waive any of the provisions of this chapter in any proceeding after duly advising the parties of its intention to do so.

1701. PARTIES, INTERVENTION, AND RIGHT TO BE HEARD

1701.1 The parties to a show cause hearing shall be the following:

- (a) The respondent, licensee, permittee, or applicant, and
- (b) The District of Columbia.

1701.2 The parties to a protest hearing shall be the applicant and the protestants and their designated representatives, if any.

1701.3 The parties to a fact-finding hearing shall be the licensee, permittee, or applicant for a license, and such other persons whose appearance the Board deems necessary and who are designated by the Board as parties.

1701.4 The Board may, in its discretion, permit interested persons other than parties, as defined in this chapter, to intervene in a proceeding for such general or limited purpose as the Board may specify.

1701.5 A person permitted to intervene under this section shall comply with all conditions fixed by the Board and shall not be considered a party to the proceedings.

1701.6 At any proceeding before the Board on an application for issuance or renewal of a license, or transfer of a license to a new person or location, the Board shall hear as witnesses all persons residing within and without the neighborhood who desire to be heard; provided that such testimony is not irrelevant or duly repetitious.

1702. COMPUTATION OF TIME

1702.1 Whenever a party to a proceeding under this chapter has the right or is required to perform some act within a specified time period after the service of notice upon the party, and the notice is served upon that party by mail, three (3) days shall be added to the prescribed period.

1702.2 Except as otherwise provided by law, any time period prescribed by this chapter may, for

good cause shown, be extended or shortened by the Board with notice to all parties.

1703. SERVICE OF PAPERS

1703.1 Any papers filed with the Board in a contested case shall be served by personal delivery, first class U.S. mail, registered or certified mail, or facsimile. An original and six (6) copies of all papers filed with the Board are required, and proof of service shall be shown as required in § 1703.7.

1703.2 Any papers required to be served upon a party may be served upon the party or the party's designated representative.

1703.3 When a party has appeared through a representative, service shall be made upon the representative of record.

1703.4 Service upon a party may be made in the following manner:

- (a) By personal delivery;
- (b) By use of a process server;
- (c) By registered or certified mail;
- (d) By telegram; or
- (e) As otherwise authorized by law.

1703.5 Service upon a party shall be completed upon any of the following acts:

- (a) Handing the paper to the person to be served;
- (b) Leaving the paper at the licensed premises with a Board-approved manager;
- (c) Leaving the paper at the party's usual place of residence with some individual of suitable age and discretion residing therein;
- (d) Deposit of the paper in the U.S. Mail, by registered or certified mail, properly stamped and addressed;
- (e) Deposit of the paper with a telegraph company, properly addressed and with charges prepaid;
- (f) Deposit of the paper in the U.S. Mail, by first class mail, properly stamped and addressed, by an attorney of record; or

(g) By an action in conformity with an Order of the Board in any proceeding.

1703.6 Proof of service shall state the name and address of the person served, the manner of service, and the date of service.

1703.7 Proof of service shall be shown by one of the following:

- (a) Written acknowledgement of the person served or that person's representative;
- (b) The certificate of the person making the service;
- (c) A return receipt, if served by registered or certified mail; or
- (d) A receipt, if served by telegram.

1703.8 Failure to serve all parties of record, or their designated representatives, may result in the Board delaying action on the matter at issue until such time as service is properly accomplished.

1704. SUBPOENAS

1704.1 The Board may upon its own motion, or upon the request of a party, compel witnesses to appear and testify or to produce books, records, papers, or other documents.

1704.2 Subpoenas shall be served by one of the methods set forth in D.C. Official Code § 25-443(a).

1704.3 Subpoenas issued by the Board shall be enforceable in the manner prescribed in D.C. Official Code § 25-443(c).

1705. CONTINUANCES

1705.1 A hearing scheduled before the Board shall not be delayed by motion for a continuance unless the motion is received in writing by the Board and the other parties six (6) calendar days before the scheduled hearing date and is served upon all parties on or before the sixth (6th) calendar day before the hearing. To be granted, the motion shall, in the opinion of the Board, set forth good and sufficient cause for the continuance.

1705.2 Conflicting engagements of counsel shall not be considered good and sufficient cause for continuance unless set forth in a motion filed promptly after notice of the hearing has been given.

1705.3 The granting of a continuance by the Board shall not be considered a waiver of requirements of this chapter, governing the time in which to file objections, petitions, or other pleadings.

1705.4 The Board may, on motion of any party or on its own motion, continue a hearing in order to permit an ANC to vote on a material issue in the hearing or upon a determination that the interests of justice will be served by the granting of the continuance to any party.

1705.5 The Board may, on the request of both the ANC and the applicant, extend the ANC's protest petition deadline for the sole purpose of allowing the ANC to vote on whether to support or protest the license application.

1706. APPEARANCE AND REPRESENTATION

1706.1 In any proceeding before the Board, an individual may appear on his or her own behalf.

1706.2 In any proceeding before the Board, a general partner of a partnership may represent the partnership, if properly authorized.

1706.3 In any proceeding before the Board, an officer of a corporation or association may represent the corporation or association, if authorized to do so by the Board of Directors of the corporation or association.

1706.4 A partner or officer appearing pursuant to § 1706.2 or 1706.3 may be required to establish his or her authority to act in that capacity;

1706.5 Any party appearing or having the right to appear before the Board in any proceeding shall have the right to representation by an attorney or designated representative of his or her choice. Any party appearing before the Board in any proceeding may also bring an interpreter of his or her choice.

1706.6 The provisions of § 1706.5 shall not infringe upon the authority of the Board under § 1706.7 to require representation of a party.

1706.7 If it appears to the Board that the facts or issues in a matter before it are so intricate or involved that, in the interests of justice, of conserving time, or of facilitating preparation of an adequate record, a party ought to be represented by an attorney, the Board may urge the party to obtain counsel and shall allow the party a reasonable time in which to do so, as long as the rights of other parties to the hearing are not substantially and adversely affected.

1706.8 Any person authorized to appear pursuant to this section may sign any paper required or permitted by statute, regulation, or this chapter to be filed with the Board.

1707. NOTICE OF APPEARANCE

1707.1 No person may appear before the Board in a representative capacity prior to submission of a signed statement containing that person's name, address, occupation, telephone number, and

the nature of representation.

1707.2 The written statement required under § 1707.1 shall be made a part of the record of the proceeding.

1707.3 Any attorney appearing as counsel in any proceeding shall execute a notice of appearance containing his or her name, office address, office telephone number, D.C. Bar number, and the nature of representation.

1707.4 In the case of law students who appear before the Board under the direction of an accredited law school clinical program, the supervising attorney shall register with the Board.

1708. INSPECTION OF BOARD FILES

1708.1 The records of the Board shall be available for inspection and copying during normal business hours without appointment at the request of any interested party or member of the public, except as otherwise provided in this section.

1708.2 The records of the Board that shall be available for inspection and copying include the following:

- (a) Written decisions and orders of the Board;
- (b) Regulatory inspection reports;
- (c) License applications and related documentation; and
- (d) Any other records not specifically excepted from disclosure by the Freedom of Information Act of 1976 (D.C. Official Code §§ 2-531 *et seq.*).

1708.3 The Board shall withhold from its files those documents and other information which are exempted from public disclosure under the Freedom of Information Act of 1976. However, all documents and other information which is relied upon by the Board in reaching a decision on a contested case shall be made available to all parties and shall be entered into the record of the proceedings.

1708.4 Except as provided in § 1708.3, all petitions filed under this chapter shall be considered part of the record and shall be available for public inspection.

1709. INVESTIGATOR REPORTS

1709.1 The Board shall make investigator reports available to the parties of a contested case at least two days prior to the date of the protest hearing or catered site protest hearing.

1710. SCHEDULING AND CONDUCT OF HEARINGS: GENERAL PROVISIONS

1710.1 The Board shall not schedule any hearing until the applicant has submitted, in writing to the Board, all information and documents required by the Act and this title.

1710.2 Before a person may be heard to object to approval of an application, the person shall have notified the Board and the applicant or licensee, by any of the means listed in § 1703.4, of his or her intent to object, and of the grounds for the objection, prior to the end of the protest period.

1710.3 Decorum and good order shall be maintained at all times during hearings, and the Board may exclude or order the removal from the hearing room of any person who refuses to comply with a reasonable order of the Board.

1710.4 In all protest hearings before the Board, the applicant shall open and close the case insofar as presentation of evidence and argument are concerned. In all show cause proceedings, the District of Columbia shall open and close the case.

1711. EVIDENCE: GENERAL RULES

1711.1 Any party objecting to the admission of evidence shall state the grounds relied upon for the objection.

1711.2 Formal exceptions to the rulings of the Board made during the course of a hearing shall not be required.

1711.3 The parties may, by stipulation in writing filed with the Board, or in the record at a hearing, agree upon any facts relevant to a proceeding, or upon the substance of the testimony which would be given by a witness.

1711.4 The Board, in its discretion, may require additional evidence on any matter covered by stipulation.

1712. OFFERS OF PROOF

1712.1 Any offer of proof made in connection with an objection to any ruling of the Board which rejects or excludes proffered oral testimony shall consist of a statement for the record of the substance of the evidence which the party contends would be established by the testimony.

1712.2 If the excluded evidence is documentary, a copy of the written evidence shall be marked for identification and shall constitute the offer of proof.

1712.3 The document shall be retained by the Board as part of the record for purposes of an appeal.

1713. DOCUMENTARY EVIDENCE

1713.1 Documentary evidence offered at any hearing before the Board shall, if received by the Board, be retained by the Board, and may be examined by interested persons pursuant to § 1708.

1713.2 Any party who offers documentary evidence shall, at the hearing, provide copies to each opposing party.

1713.3 The Board may, in its discretion, permit the withdrawal of original documents received into evidence and the substitution of certified copies in lieu of the originals.

1713.4 When relevant and material matters offered into evidence are contained in a book or other document which also contains other matters not material or relevant, the person offering the evidence shall plainly designate the matters offered, and the immaterial and irrelevant parts shall be excluded and segregated insofar as practicable.

1714. EXAMINATION OF WITNESSES

1714.1 In any proceeding before the Board, each party shall have the right to present in person, by counsel or by designated representative, the party's case or defense, including oral and documentary evidence, to submit rebuttal evidence, and to cross-examine opposing witnesses, unless the matter at issue has been dismissed by the Board.

1714.2 Any member of the Board may question any witness at any time during or after examination or cross-examination, subject to objection by a party.

1714.3 Any oral or documentary evidence may be received, but the Board shall exclude irrelevant, immaterial, or unduly repetitious evidence.

1714.4 The Board may impose a time limitation on oral arguments and witness testimony as it deems appropriate.

1714.5 The Board shall afford all parties the opportunity to present oral argument.

1715. RECORDS IN PROCEEDINGS

1715.1 When any part of the record in any other proceeding before the Board, a criminal or civil action, or a proceeding before any administrative agency is offered in evidence, a certified true copy of that part of that record shall be presented to the Board as an exhibit, except in the following instances:

- (a) It is described in a manner which makes it readily identifiable and the offeror agrees to supply copies at a later time as required by the Board;

(b) There is a stipulation on the record that it may be incorporated by reference and the Board directs the incorporation; or

(c) It is described in a manner which makes it readily identifiable in the files of the Board.

1716. MOTIONS

1716.1 Unless otherwise specified, motions shall conform to the following requirements:

(a) Motions shall be typewritten on letter-sized (8.5" x 11") paper and double-spaced;

(b) An original and six (6) legible copies shall be filed with the Board; and

(c) A copy shall be served on all other parties and shall include a certificate of service.

1716.2 Any party may file a response in opposition to a motion within seven (7) calendar days after service of the motion. In the case of motions for continuances which have been filed by a party on the sixth (6th) calendar day before a scheduled hearing, pursuant to § 1705.1, responses thereto shall either be made in writing and served by personal delivery on all parties prior to the hearing or shall be made orally on the date of the hearing.

1716.3 A response to a motion shall not include a motion for other affirmative relief against the moving party.

1716.4 If a party filing an opposition desires to submit a motion for other affirmative relief, it shall be done by separate pleading.

1716.5 Any motion seeking relief from the Board shall be accompanied by a proposed Order of the Board.

1716.6 A reply may be filed within three (3) calendar days after service of a response in opposition to a motion, but the reply shall not re-argue propositions presented in the motion, nor present matters which are not strictly in reply to the opposition.

1716.7 No further pleading shall be filed except by leave of the Board.

1717. POST-HEARING SUBMISSIONS

1717.1 No document or other information shall be accepted for the record after the close of a hearing, except as follows:

(a) Until all parties are afforded due notice and an opportunity to rebut the information; or

(b) Upon official notice of a material fact not appearing in the evidence in the record, in accordance with D.C. Official Code § 2-509(b).

1717.2 The Board shall afford parties an opportunity to file Proposed Findings of Fact and Conclusions of Law within thirty (30) calendar days after the conclusion of the hearing. The parties may seek an extension to file Proposed Findings of Fact and Conclusions of Law if the transcript has not become available within twenty (20) calendar days. An extension granted by the Board shall not exceed twenty (20) calendar days after the transcript in the proceeding becomes available, by oral or written notice of the Board to each party.

1717.3 Proposed Findings of Fact and Conclusions of Law shall be typewritten on letter-sized (8.5" x 11") paper and double-spaced.

1717.4 An original and six (6) legible copies of Proposed Findings of Fact and Conclusions of Law shall be filed with the Board.

1717.5 A copy of the Proposed Findings of Fact and Conclusions of Law shall be served on each party.

1718. DECISIONS OF THE BOARD

1718.1 Within ninety (90) calendar days after the close of the record, the Board shall render its written decision accompanied by Findings of Fact and Conclusions of Law.

1718.2 Findings of Fact and Conclusions of Law shall consist of a concise statement of the Board's conclusions on each contested issue of fact, and shall be based solely upon evidence contained in the record and facts of which the Board properly took judicial notice.

1718.3 Findings of Fact and Conclusions of Law shall be supported by and in accordance with reliable, probative, and substantial evidence.

1718.4 In cases where a hearing for an original application or the transfer of an existing license to a new location is sought, the Findings of Fact and Conclusions of Law shall include, but not be limited, to the following:

- (a) The boundaries of the neighborhood;
- (b) The appropriateness of the location for which the license is sought, in accordance with D.C. Official Code §§ 25-313 and 25-314, and § 400 of this title; and
- (c) A finding as to the wishes of the persons voting, owning property or residing in the vicinity.

1718.5 All written decisions of the Board shall be available for public inspection and copying at a reasonable cost.

1719. RECONSIDERATION, REHEARING, AND REARGUMENT

1719.1 Petitions for reconsideration, rehearing, reargument, or stay of a decision or order of the Board filed pursuant to D.C. Official Code § 25-433(d) shall be typewritten on letter-sized (8.5" x 11") paper and double-spaced.

1719.2 An original and six (6) legible copies of the Petition shall be filed with the Board, and a copy shall be served on each party and intervenor.

1719.3 A petition for reconsideration shall state briefly the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought.

1719.4 If a petition is based in whole or in part on a new matter, that matter shall be set forth in an affidavit and be accompanied by a statement that the petitioner could not by due diligence have known or discovered the new matter prior to the date the case was presented to the Board for decision.

1719.5 The Board may, in its discretion, permit or require oral argument upon a petition filed under this section.

1720. EX PARTE COMMUNICATIONS

1720.1 If a proceeding is a contested case within the meaning of the D.C. Administrative Procedure Act (D.C. Official Code § 2-502(8)), the following restrictions shall apply:

(a) A person shall not make or knowingly cause to be made to a member of the Board an ex parte communication relevant to the merits of the proceeding; and

(b) No member of the Board shall make or cause to be made to any interested persons outside the Board an ex parte communication relevant to the merits of the proceeding.

1720.2 The prohibitions set forth in § 1720.1 shall apply upon the issuance of notice of an application for an original, transfer, or renewal license or a notice to show cause hearing.

1720.3 "Ex parte communication" does not include a request for a status report on a matter, proceeding, or notice of a meeting or hearing.

1721. TRANSCRIPTS OF HEARINGS

1721.1 Hearings shall be recorded and transcribed under the direction of the Board.

1721.2 Whenever a proceeding is transcribed, the Board shall notify all parties (or their representatives) by telephone that the transcript is available for purchase directly from the transcription company.

1721.3 Changes in the official transcript may be made only in cases of material error.

1721.4 A motion to correct the transcript shall be filed with the Board within ten (10) calendar days of the date the transcript is available to the movant. Copies of the motion shall be served on all parties.

1721.5 If no objections to the motion are filed within five (5) days after service of the motion, the Board may correct the transcript.

1721.6 The Board shall have final authority to dispose of all motions for correction of the record.

CHAPTER 18. PETITION PROCEDURES

1800. TYPES OF PETITIONS

1800.1 Protest Petitions filed pursuant to D.C. Official Code § 25-601 may be received by the Board regarding objections to licenses.

1800.2(a) For purposes of this section, "Protest Petitions" are those which may be signed by any person in support of, or in opposition to a license application for the following:

- (1) The issuance of a new license;
- (2) The renewal of an existing license;
- (3) The transfer of a license to a new location;
- (4) Substantial changes to the nature of the operations of a licensed establishment; or
- (5) A change in license class.

1800.2(b) Protest Petitions may be filed to indicate whether the signatories believe, or do not believe, that the establishment is appropriate under the provisions of D.C. Official Code §§ 25-313 and 25-314, and § 400 of this title.

1801. PROTEST PETITIONS

1801.1 Petitions in support of or in opposition to a license application for the issuance of a new

license, the renewal of an existing license, the transfer of a license to a new location, substantial changes to the nature of the operations of a licensed establishment, or a change in license class shall be filed with the Board by the final day of the protest period for the license application.

1801.2 Petitions filed under § 1801.1 shall set forth the following information:

- (a) The name of the applicant or licensee;
- (b) The address for which the license is sought;
- (c) The class of license requested;
- (d) The application number or license number, as appropriate;
- (e) A brief summary of the reasons for support of or opposition to the granting of the license; provided, that participation in Board proceedings shall not be limited by this summary; and
- (f) The printed name and address of each petitioner, accompanied by his or her handwritten signature.

1801.3 Forms for the filing of Protest Petitions shall be available from ABRA.

1801.4 Petitions filed pursuant to this section shall not be withdrawn after the date of the protest hearing.

1801.5 Protest Petitions which are received by the Board after the fifteen (15) calendar day period specified in § 1801.1 shall not be considered by the Board in reaching a decision on any matter and shall be promptly returned to the party or individual submitting the petitions.

1801.6 The Board shall permit any party to a protested case to challenge the validity of signatures on Protest Petitions submitted by the opposing party.

CHAPTER 19. COMPLAINTS: INQUIRIES TO THE BOARD

1900. COMPLAINTS

1900.1 The Board shall receive, at any time during the license period, complaints from any person alleging a violation by a licensee of the Act or this title. Complaints shall be in writing and set forth enough information to allow the Board or its staff to investigate the matter.

1900.2 Any written complaint shall be kept confidential by the Board to the extent permitted by law, unless the writer specifically states that it may be made public.

1900.3 All written complaints which identify the complainant by name and address shall be responded to in writing by the Board or its staff within ninety (90) days of receipt of the complaint, and shall advise the complainant of what action the Board or its staff has taken on the matter.

1900.4 If the complainant has not provided the Board with a telephone number where he or she may be reached for additional information, and the written complaint has set forth insufficient information for the Board to take action, the Board or staff response shall so state.

1900.5 In addition to written complaints identifying the complainant, any person may make an anonymous complaint in writing to the Board, or orally to any Investigator at ABRA. Anonymous complaints shall be investigated to the best of the Board's ability, but may result in no action being taken if the anonymous complainant fails to provide the Board or the Investigator with adequate information.

1901. LETTERS OF INFORMATION

1901.1 Any person, group, licensee, or business organization may make a written request to the Board for general information concerning staff procedures, Board procedures, the Act, this title, or any other matter of a general nature affecting the licensing of alcoholic beverages in the District of Columbia.

1901.2 The Board shall respond to all such letters in writing, and may refer the writer directly to a member of the ABRA Staff, to a specific section of the Act or this title, or to other District of Columbia government officials. The response may also suggest that the writer retain the services of an attorney to properly advise him or her as to how to proceed in a particular matter. If the writer's inquiry is so broad, inexact, or vague that the Board is unable to respond, the Board shall so advise the writer and may request that the writer provide additional information.

1901.3 Any statement contained in the Board's letters of information provides only general guidance to the writer and shall not be binding on the writer or binding on the Board if the Board is later presented with a more particularized factual situation. Further, the Board's responses shall not provide any basis for appeal to any court in the District of Columbia.

1902. ADVISORY OPINIONS

1902.1 Any person, group, licensee or business organization may make a written request to the Board for an advisory opinion when:

(a) The requestor is confronted with a situation involving the Act or this title which requires, or may require, him or her to take action; and

(b) The legality or propriety of the action to be taken is not clear from the plain text of the Act or this title.

1902.2 Any request for an advisory opinion shall set forth sufficient information to allow the Board to understand the issues involved and to frame a response. The requestor shall also state which section of the Act or section of this title the requestor wishes the Board to interpret or clarify, with respect to the stated set of facts.

1902.3 If the writer presents insufficient facts in any request for an advisory opinion, the Board may, in its discretion, issue a letter of information; engage in fact-finding through investigation or in a noncontested case hearing; request the writer to provide by letter more facts or details in support of his or her request; or decline to issue an advisory opinion.

1902.4 The decision to issue an advisory opinion shall be solely in the discretion of the Board, and any decision by the Board not to issue such an opinion, shall not be subject to review by the Mayor or any court in the District of Columbia.

1902.5 If issued, an advisory opinion is not binding upon the requestor but shall constitute guidance to the requestor as to how the Board may interpret the Act or this title on a particular matter, the facts of which are consistent with those raised by the requestor. Where the requestor is also a licensee, the Board may issue a show cause notice pursuant to § 1604 of this title in the instance where the facts raised by the requestor provide the Board with reasonable cause to believe that the requestor's license should be fined, suspended, or revoked.

1902.6 If the requestor disagrees with the Board's advisory opinion in any respect, he or she may, within twenty (20) calendar days after issuance of the opinion, petition the Board in writing to reconsider its opinion, setting forth in detail the reasons and legal argument which support the requestor's points of disagreement, or may request the Board to issue a declaratory order, pursuant to § 1903. Advisory opinions of the Board may not form the basis of an appeal to any court in the District of Columbia.

1902.7 All advisory opinions of the Board determined to be in the public interest in accordance with D.C. Official Code § 2-508, shall be published in the D.C. Register and shall be available for public inspection and copying at a reasonable charge at the offices of the Board.

1903. DECLARATORY ORDERS

1903.1 The decision to issue a declaratory order shall be solely in the discretion of the Board, and any decision by the Board not to issue such an order shall not be subject to review by the Mayor or any court in the District of Columbia.

1903.2 Any request for a declaratory order shall:

- (a) Set forth a particular and specific set of facts; and
- (b) State in detail the reasons for uncertainty as to the applicability of the Act, this

title or other statutes enforceable by the Board or state in detail why a controversy exists.

1903.3 Any declaratory order issued by the Board shall state the Board's Findings of Fact and Conclusions of Law. If the circumstances so warrant, the declaratory order may include an order by the Board to the requestor to cease and desist any practice or activity which is violative of applicable statutes or this title.

1903.4 Any declaratory order issued by the Board shall be binding on the requestor as regards to the state of facts established. If the requestor is a licensee, failure to adhere to the decision of the Board, as set out in the declaratory order, shall subject the requestor to the issuance of a notice to show cause why his or her license should not be fined, suspended, or revoked, pursuant to D.C. Official Code § 25-821. If the requestor is an applicant for a license and fails to adhere to the decision of the Board, the Board shall take such steps as are necessary and authorized by law to enforce the provisions of its declaratory order.

1903.5 Any requestor who is aggrieved by a declaratory order or who disagrees with the declaratory order in any respect may appeal the order by:

(a) Petitioning the Board, in writing, within twenty (20) calendar days after issuance of the declaratory order, to reconsider its order, and by setting forth in detail newly discovered facts or by setting forth legal argument which shows one (1) or more errors of law in the Board's order; or

(b) Seeking judicial review of the Board's order as permitted under D.C. Official Code § 2-510.

1903.6 All declaratory orders of the Board determined to be in the public interest in accordance with D.C. Official Code § 2-508, shall be published in the D.C. Register and shall be available for public inspection and copying at a reasonable charge at the offices of the Board.

Copies of the proposed rulemaking can be obtained by contacting Fred Moosally, General Counsel, Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., 7th Floor, Washington, D.C. 20002. All persons desiring to comment on the proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to the above address.

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 §§ 47-2853.08, 47-2853.10 (a) (12) (2001), and Mayor's Order 2000-70, dated May 2, 2000, gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the D.C. Register, a new 17 DCMR Chapter 25 (Accountants). The new 17 DCMR Chapter 25 will update the regulations governing the practice of certified public accounting within the District of Columbia. These regulations will repeal and replace the current 17 DCMR Chapter 25 (Accountants).

This rulemaking is necessary to implement the Non-Health Related Occupations and Professions Licensure Act of 1998, effective April 20, 1999 (D.C. Law 12-261; D. C. Official Code § 47-2853.01 *et seq.* (2001)), which repealed the Public Accounting Act of 1977 and transferred all authority under that Act to the Board of Accountancy created by D.C. Official Code § 47-2853.06(b) (2001). It also serves as the Board's vehicle to implement the substantive elements of the Uniform Accountancy Act (UAA) within the District of Columbia.

Title 17 DCMR Chapter 25 is amended as follows:

CHAPTER 25 ACCOUNTANTS**Secs.**

- 2500 Board Of Accountancy
- 2501 Application For Licensure And Examination
- 2502 Board Action On Applications
- 2503 Educational Requirements
- 2504 Experience Requirements
- 2505 Examinations
- 2506 Conditional Credit For Examination
- 2507 Examination Security And Irregularities
- 2508 Licensure Of CPAs By Reciprocity Or Endorsement
- 2509 Reciprocity For Accountants Licensed In Foreign Countries
- 2510 Code Of Professional Conduct: Independence, Integrity, And Objectivity Standards
- 2511 Code Of Professional Conduct: Competence And Technical Standards
- 2512 Code Of Professional Conduct: Responsibilities To Clients
- 2513 Code Of Professional Conduct: Other Responsibilities And Practices
- 2514 Exceptions and Safe Harbor Language
- 2515-2519 [Reserved]
- 2520 Denial, Suspension, And Revocation Of Licenses
- 2521 Failure To Request A Hearing
- 2522 Service Of Notices
- 2523 Failure To Appear
- 2524 Hearing Procedures

- 2525 Hearings: Powers Of The Board
- 2526 Record Of Hearing
- 2527 Evidence And Burden Of Proof
- 2528 Findings And Decisions
- 2529 Reopening Of Hearing Proceedings
- 2530 Continuing Education: Requirements For Certified Public Accountants Holding Permits To Practice
- 2531 Continuing Education: Acceptable Continuing Professional Programs
- 2532 Continuing Education: Reporting
- 2533 Continuing Education: Advisory Committee
- 2534-2539 [Reserved]
- 2540 Partnership And Corporate Practice: Professional Relationship Responsibilities And Conduct
- 2541 Partnership And Corporate Practice: Application For Permit
- 2542 Partnership And Corporate Practice: Requirements To Practice In The District
- 2543 Partnership And Corporate Practice: Ownership And Transfer Of Shares In A Professional Corporation
- 2544 Partnership And Corporate Practice: Name Usage
- 2545 Partnership And Corporate Practice: Claims Against Accountancy Partnerships Or Corporations
- 2546 Partnership And Corporate Practice: Nonresident (Foreign) Practitioner
- 2547 Partnership And Corporate Practice: Term And Renewal Of Permit
- 2599 Definitions

2500 BOARD OF ACCOUNTANCY

- 2500.1 The provisions of this chapter are adopted by the District of Columbia Board of Accountancy (the Board) pursuant to its authority under Non-Health Related Occupations and Professions Licensure Act of 1998, effective April 20, 1999 (D.C. Law 12-261; D. C. Official Code § 47-2853.01 *et seq.* (2001)).
- 2500.2 The purpose of this chapter is to promote and protect the public interest by implementing the provisions of the Act, which provides for the licensing of certain practitioners of public accountancy and seeks to enhance the reliability of information which is used in financial transactions or for accounting for or assessing the financial status or performance of commercial, non-commercial, and governmental enterprises.
- 2500.3 The chairperson is authorized to sign all orders issued on behalf of the Board.
- 2500.4 A majority of the Board shall be in attendance at a meeting to constitute a quorum.
- 2500.5 A majority vote of those Board members present and voting is necessary for the Board to take any action.
- 2500.6 The Board shall meet no less than four times per year.

2500.7 The Board may meet in committees smaller than the full Board, but of not less than three members, for carrying out specific functions of the Board, provided that any actions of such smaller committees are ratified by the full Board.

2501 APPLICATION FOR LICENSURE AND EXAMINATION

2501.1 Each applicant for a Certified Public Accountant's license in the District of Columbia by examination, reciprocity, or for an endorsement of a Certified Public Accountant license, shall duly file with the Board an application on a form prescribed and provided by the Board.

2501.2 An application for licensure is not considered filed until the Board receives all supporting documents, the application fee, and, if applicable, the examination fee. Supporting documents may include proof of identity as specified on the application form, certification of experience, official transcripts, and proof that the applicant has completed the education requirement.

2501.3 Each applicant shall attest to the truthfulness of the application before a notary public, who shall affix his or her seal to the application.

2501.4 Applications to take the Certified Public Accountant Examination shall be made on a form provided by the Board and filed with the Board by the due date specified by the Board in the application form. Applicants filing after the due date may be directed by the Board to take the computer-based Uniform CPA Examination during the next available examination window.

2501.5 If applicable, the Board or its designee will forward notification of the applicant's eligibility for the computer-based examination to the National Association of State Boards of Accountancy (NASBA) for inclusion in the National Candidate Database.

2501.6 Eligible candidates shall be notified of the time and place of a computer-based examination or shall independently contact the Board or a test center operator identified by the Board to schedule the time and place for the computer-based examination at an approved test site. Scheduling reexaminations shall be made in accordance with the rules established by NASBA.

2501.7 An applicant, upon receiving notification that he or she is eligible to take the CPA examination, shall be classified as a candidate for the purposes of these regulations.

2501.8 A candidate who fails to appear for a scheduled Testing Event of the computer-based examination shall forfeit all fees charged for both the application and the examination.

2502 BOARD ACTION ON APPLICATIONS

2502.1 The Board may review and take action on all applications.

- 2502.2 The applicant shall have the burden of proving that he or she meets the required qualifications.
- 2502.3 The Board may not presume qualifications not shown on the application.
- 2502.4 The Board may disapprove an application that fails to provide the required information.
- 2502.5 After giving notice and opportunity for a hearing, the Board may disqualify an applicant for either of the following reasons:
- (a) If the applicant has knowingly made or allowed to be made, directly or indirectly, any false or misleading statements in connection with his or her application; or
 - (b) If the applicant has attempted to influence, directly or indirectly, any member of the Board in the discharge of the member's duties relating to an application.
- 2502.6 At the discretion of the Board, any applicant whose application has been disqualified may not reapply for a minimum of one (1) year from the date of disqualification.
- 2502.7 Any licensee who has been requested by an applicant to submit to the Board evidence of the applicant's experience and has refused to do so shall, upon request by the Board, explain in writing or in person the basis for the refusal.
- 2502.8 The Board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information provided in the following manner:
- (a) Any applicant may be required to appear before the Board or its representative to supplement or verify evidence of experience; and
 - (b) The Board may inspect documentation relating to an applicant's claimed experience.
- 2502.9 The Director shall not issue a license or permit unless the applicant has been approved by the Board.

2503 EDUCATIONAL REQUIREMENTS

- 2503.1 An applicant for licensure as a certified public accountant shall establish to the satisfaction of the Board that he or she:
- (a) Holds a baccalaureate degree with a concentration in accounting conferred by a college or university recognized by the Board or holds that which the Board determines to be substantially the equivalent thereof; or

- (b) Holds a baccalaureate degree acceptable to the Board supplemented with the equivalent of an accounting concentration including related courses in other areas of business administration; and
 - (c) For applicants receiving their baccalaureate degree after January 1, 2000, in addition to meeting the requirements of either subparagraphs (a) or (b) of this section, possesses one hundred fifty (150) semester hours of college education.
- 2503.2 The college or university that conferred the degree relied upon by the applicant shall either have been accredited or licensed by the D.C. Education Licensure Commission or have been a member of a regional accrediting agency recognized by the Board when the applicant's degree was awarded.
- 2503.3 The following regional accrediting agencies shall be recognized by the Board:
- (a) Middle States Association of Colleges and Secondary Schools;
 - (b) New England Association of Schools and Colleges;
 - (c) North Central Association of Colleges and Secondary Schools;
 - (d) Northwest Association of Schools and Colleges;
 - (e) Southern Association of Colleges and Schools; and
 - (f) Western Association of Schools and Colleges.
- 2503.4 The educational institution shall have been accredited in accordance with this section when the applicant's degree was awarded.
- 2503.5 A listing of the colleges and universities accredited by the regional accrediting agencies recognized by the Board is contained in the most recent edition of "Accredited Institutions of Postsecondary Education," published by the American Council on Education.
- 2503.6 If the educational institution that conferred the degree relied upon by the applicant in his or her application was not accredited when an applicant received the degree, but the institution was accredited when the applicant filed his or her application with the Board, the Board shall deem the institution to have been accredited for the purposes of this section if the educational institution does the following:
- (a) Certifies that the applicant's total educational program would qualify the applicant for graduation with a baccalaureate degree during the time the institution has been accredited; and

- (b) Furnishes the Board satisfactory proof, including college catalogue course numbers and descriptions, that the pre-accrediting courses used to qualify the applicant as an accounting major can be matched with substantially equivalent post accrediting courses.

2503.7 If an applicant's degree was received from an accredited college or university as defined in this section, but the educational program used to qualify the applicant as an accounting major included courses taken either before or after graduation at a non-accredited institution(s), the courses shall be deemed to have been taken at the institution from which the applicant's degree was received if either of the following requirements are met:

- (a) The courses from the non-accredited institution have been included in the applicant's official transcript; or
- (b) The accredited degree-granting institution certifies to the Board that it accepted the courses from the non-accredited institution for credit toward graduation.

2503.8 For the purposes of this chapter, a concentration in accounting, or the equivalent, shall consist of a minimum of three (3) semester hours in commercial law and a minimum of twenty-four (24) semester hours in accounting subjects. The accounting subjects shall include courses in financial accounting, auditing, cost accounting, and federal income taxes.

2504 EXPERIENCE REQUIREMENTS

2504.1 An applicant for initial issuance of a license shall show that he or she has had at least one year of experience. One year of experience shall consist of full or part-time employment that extends over a period of no less than a year and no more than three years and includes no fewer than 2,000 hours performing the services described in § 2504.3.

2504.2 Experience gained through employment in government, industry, academia or public practice shall qualify.

2504.3 Acceptable experience may consist of providing any type of business services or advice using accounting, attest services, compilation, management advisory, financial advisory, tax, or consulting skills. The Board shall consider such factors as the complexity and diversity of the work.

2504.4 The applicant shall have his or her experience verified to the Board by a CPA licensed in the District of Columbia or another State.

2505 EXAMINATIONS

- 2505.1 The examination approved by the Board shall test the knowledge and skills required for performance as an entry-level certified public accountant. The Board may vote to utilize an examination developed and administered by a third party, but any examination approved by the Board shall include the subject areas of accounting, auditing, and related knowledge and skills.
- 2505.2 The Director may charge, or provide for a third party administering the Board's examination to charge, each applicant an examination fee.
- 2505.3 Cheating by a candidate in applying for, taking, or after the examination will invalidate any grade otherwise earned by a candidate on any Test Section of the examination, and may warrant summary expulsion from the test site and disqualification from taking the examination for a specified period of time.
- 2505.4 For purposes of this chapter, the following actions or attempted activities, among others, may be considered cheating:
- (a) Falsifying or misrepresenting educational credentials or other information required for admission to the examination;
 - (b) Communication between candidates inside or outside the test site or copying another candidate's answers while the examination is in progress;
 - (c) Communication with others inside or outside the test site while the examination is in progress;
 - (d) Substitution of another person to sit in the test site in the stead of a candidate;
 - (e) Reference to crib sheets, textbooks or other material or electronic media (other than that provided to the candidate as part of the examination) inside or outside the test site while the examination is in progress;
 - (f) Violating the nondisclosure prohibitions of the examination or aiding or abetting another in doing so; and
 - (g) Retaking or attempting to retake a Test Section by an individual holding a valid license or by a candidate who has unexpired credit for having already passed the same Test Section, unless authorized by the Board.
- 2505.5 In any case where it appears that cheating has occurred or is occurring, the Board or its representatives may either summarily expel the candidate involved from the examination or move the candidate to a position in the test center away from other examinees where the candidate can be watched more closely.

- 2505.6 In any case where the Board believes that it has evidence that a candidate has cheated on the examination, including those cases where the candidate has been expelled from the examination, the Board shall conduct an investigation and, following the examination session, may conduct a hearing consistent with the requirements of D.C. Official Code § 2-501 *et seq.* (2001), to determine whether there was cheating and, if so, what remedy should be applied. In proceedings held pursuant to this subparagraph, the Board shall decide:
- (a) Whether the candidate shall be given credit for any portion of the examination completed in that session; and
 - (b) Whether the candidate shall be barred from taking the examination and if so, for a period of time not to exceed five (5) years.
- 2505.7 In any case where the Board or its representative permits a candidate to continue taking the examination, it may:
- (a) Admonish the candidate;
 - (b) Seat the candidate in a segregated location for the rest of the examination;
 - (c) Keep a record of the candidate's seat location and identifying information;
 - (d) Keep the names and identifying information of the candidates in close proximity of the candidate; and
 - (e) Before the introduction of a computer-based examination, notify the appropriate authority of the circumstances, furnishing the candidate's identification number, so that after the initial grading is completed, the candidate's papers can be compared for unusual similarities with the papers of others who may have been involved. Upon introduction of a computer-based examination, notify NASBA and the AICPA and/or the test center of the circumstances, so that the candidate's actions may be noted in the National Candidate Database and the candidate may be more closely monitored in future examination sessions.
- 2505.8 In any case in which a candidate is refused credit for any Test Section of an examination taken, disqualified from taking any Test Section, or barred from taking the examination in the future, the Board will provide to NASBA and the Accountancy Board of any other state to which the candidate may apply for the examination information as to the Board's findings and actions taken.

2506 CONDITIONAL CREDIT FOR EXAMINATION

- 2506.1 The candidate is required to pass all Test Sections of the Uniform CPA Examination in order to qualify for a license.

- 2506.2 Upon receipt of advisory grades from the examination provider, the Board will review and may adopt the examination grades and will report the official results to the candidate.
- 2506.3 Before the implementation of a computer-based examination, a passing grade for each paper-and-pencil Test Section shall be 75. Upon implementation of the computer-based examination, the passing grade for each test section shall be the uniform passing grade established through the standard-setting procedure used by The American Institute of Certified Public Accountants (AICPA) Board of Examiners (BOE) and reported to the Board by NASBA. The Board shall report the candidate's score to the candidate using a numeric scale of 0-99 that is calculated by AICPA. A score of 75 or greater shall represent a passing score.
- 2506.4 Pending implementation of a computer-based examination, a candidate who passes two or more, but not all, sections of an examination at a given sitting shall be given credit for those sections that the candidate has passed and need not sit for reexamination in those sections, provided that:
- (a) At the sitting, the candidate attempted to answer questions in all sections of the examination for which the candidate does not have credit;
 - (b) The candidate attained a minimum grade of 50 on each section taken at the sitting;
 - (c) The candidate passes the remaining sections of the examination within six consecutive examinations administered after the one at which the first sections were passed;
 - (d) At each subsequent sitting at which the candidate seeks to pass any additional sections, the candidate sits for all sections for which the candidate does not have credit; and
 - (e) In order to receive credit for passing additional sections in any subsequent sitting, the candidate attains a minimum grade of 50 on sections taken at that sitting.
- 2506.5 Upon the Board's implementation of a computer-based examination, a candidate may take the required Test Sections individually and in any order.
- 2506.6 Any candidate taking the computer-based Uniform CPA Examination will be exempted from the provisions of § 2506.4.
- 2506.7 Candidates shall pass all four Test Sections of the Uniform CPA Examination within any continuous eighteen-month period, which shall begin on the date that the first Test Section(s) passed is taken.
- 2506.8 Candidates cannot retake a failed Test Section within the same three-month examination window during which the candidate failed that Test Section.

2506.9 In the event all four Test Sections of the Uniform CPA Examination are not passed within any continuous eighteen-month period, credit for any Test Section(s) passed prior to the eighteen-month period will expire and that Test Section(s) shall be retaken.

2506.10 Candidates having earned conditional credits on the paper-and-pencil examination, as of the launch date of the computer-based Uniform CPA Examination, will retain conditional credits for the corresponding Test Sections of the computer-based CPA examination as follows:

Paper-and-Pencil Examination	Computer-Based Examination
Auditing	Auditing and Attestation
Business Law and Professional Responsibilities (LPR)	Business Environment and Concepts
Financial Accounting and Reporting (FARE)	Financial Accounting and Reporting
Accounting and Reporting (ARE)	Regulation

2506.11 Candidates who possess conditional credits earned under the paper-and-pencil examination as of the launch date of the computer-based Uniform CPA Examination will be allowed a transition period to complete any remaining Test Sections of the Uniform CPA Examination.

2506.12 The transition period shall be calculated as follows:

- (a) Conditional credit earned November 2001 expires after one attempt to pass the remaining sections or May 31, 2004, whichever occurs first;
- (b) Conditional credit earned May 2002 expires after two attempts to pass the remaining sections or November 30, 2004, whichever occurs first;
- (c) Conditional credit earned November 2002 expires after three attempts to pass the remaining sections or May 31, 2005, whichever occurs first;
- (d) Conditional credit earned May 2003 expires after four attempts to pass the remaining sections or November 30, 2005, whichever occurs first; or
- (e) Conditional credit earned November 2003 expires after five attempts to pass the remaining sections or May 31, 2006, whichever occurs first.

2506.13 If a candidate who possesses conditional credit earned under the paper-and-pencil examination does not pass all remaining Test Sections during the applicable transition period, the conditional credits earned under the paper-and-pencil examination will

expire and the candidate will lose credit for the Test Sections passed under the computer-based examination.

- 2506.14 Any computer-based Test Section passed during the transition period is subject to the conditional credit provisions of the computer-based examination as shown in § 2506.4, except that a candidate that had earned conditional credit under the paper-and-pencil examination will not lose conditional credit for a Test Section of the computer-based examination that is passed during the transition period, even though more than eighteen months may have elapsed from the date the Test Section is passed, until the end of the transition period.
- 2506.15 A candidate retains credit for each Test Section of an examination passed in another state if the candidate would have earned credit under the then applicable requirements if the candidate had taken the examination in the District of Columbia.
- 2506.16 The Board may extend the term of an applicant's conditional credit validity upon a showing by the applicant that the credit was lost due to circumstances beyond the candidate's control.
- 2506.17 A candidate is deemed to have passed the Uniform CPA Examination when the candidate holds, at the same time, valid credit for passing each of the four Test Sections of the examination. For purposes of this section, credit for passing a Test Section of the computer-based examination is valid from the actual date of the Testing Event for that Test Section, regardless of the date the candidate actually receives notice of the passing grade.
- 2506.18 The candidate shall, for each Test Section scheduled by the candidate, pay to the Board or its designee, a Candidate Testing Fee. The Candidate Testing Fee is the total amount of the actual fees charged by the testing services or agencies, including rescheduling fees, plus the reasonable application fees established by the Director.

2507 EXAMINATION SECURITY AND IRREGULARITIES

- 2507.1 Notwithstanding any other provision of this chapter, the Board may postpone scheduled examinations, the release of grades, or the issuance of licenses and certificates due to a breach of examination security; unauthorized acquisition or disclosure of the contents of an examination; suspected or actual negligence, errors, omissions, or irregularities in conducting an examination; or for any other reasonable cause or unforeseen circumstance.
- 2507.2 If the Board postpones a scheduled examination, the Board shall grant the candidates affected by the postponement additional time to pass the four sections of the Uniform CPA Examination. The additional time granted by the Board to the affected candidates shall be added to the eighteen (18) month testing period described in § 2506.7.
- 2507.3 The additional time granted by the Board shall be the longer of the number of days

between the date of the postponed examination and the next date that the Board allows the affected candidates to retake the Uniform CPA Examination or three months.

2508 LICENSURE OF CPAs BY RECIPROCITY OR ENDORSEMENT

2508.1 The Board may issue a license to practice as a CPA in the District of Columbia to an individual applying for licensure by reciprocity or endorsement only after the Board or its designee has:

- (a) Verified that the qualifications relied upon by the applicant, as set forth in §§ 2508.2 and 2508.3, meet or exceed the standards for licensure by examination in the District of Columbia;
- (b) Verified that the applicant's license is in good standing in the applicant's current jurisdiction; and
- (c) Verified that the applicant has paid the application fee.

2508.2 The Board may issue a CPA license to an individual by reciprocity and may presume that the individual meets the licensure requirements of the District of Columbia if the applicant meets the following conditions:

- (a) The applicant possesses a valid license as a Certified Public Accountant from any State of the United States whose licensing standards are verified by the National Association of State Boards of Accountancy (NASBA) National Qualification Appraisal Service or successor organization to be in substantial equivalence with the UAA; and
- (b) The Board considers the State's licensing standards to be in substantial equivalence with the licensing standards of the District of Columbia.

2508.3 The Board may issue a CPA license by Endorsement to an individual if the individual holding a valid CPA license from any jurisdiction in the United States that is not in substantial equivalence with the UAA presents evidence to the Board of his or her own education and experience qualification and the Board approves the applicant for licensure.

2509 RECIPROCITY FOR ACCOUNTANTS LICENSED IN FOREIGN COUNTRIES

2509.1 The Board may issue a license to practice as a CPA in the District of Columbia to applicants licensed in foreign countries who meet the following criteria:

- (a) The applicant is a member in good standing of any professional accounting organization which has a current Mutual Recognition Agreement with NASBA and the AICPA or any successors or assignee as selected by the Board;

- (b) The applicant has passed the International Uniform CPA Qualification Examination (IQEX); and
- (c) The applicant has paid the applicable fees.

2510 CODE OF PROFESSIONAL CONDUCT: INDEPENDENCE, INTEGRITY, AND OBJECTIVITY STANDARDS

2510.1 A licensee shall not permit his or her name to be associated with financial statements of an enterprise when the association would imply that the licensee is acting as an independent certified public accountant to the enterprise unless he or she is independent.

2510.2 A licensee shall not claim independence if, during the period of a professional engagement or when expressing an opinion, the licensee did any of the following:

- (a) Had or was committed to acquire any direct or material indirect financial interest in the enterprises;
- (b) Was a trustee of any trust, or executor or administrator of any estate, if the trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise;
- (c) Had any joint, closely held business investment with the enterprise or with any officer, director, or principal stockholder of the enterprise which was material in relation to the net worth of either the licensee or the enterprise; or
- (d) Had any loan to or from the enterprise or any officer, director, or principal stockholder of the enterprise other than loans of the following kinds made by a financial institution under normal lending procedures, terms, and requirements:
 - (1) Loans obtained by the licensee that are not material in relation to the net worth of the borrower;
 - (2) Home mortgage; and
 - (3) Other secured loans, except those secured solely by guarantee of the licensee.

2510.3 A licensee shall not claim independence if, during the period covered by the financial statements or the professional engagement, or when expressing an opinion, the licensee was as follows:

- (a) Connected with the enterprise as a promoter, underwriter, voting trustee, director or officer, or in any capacity equivalent to that of a member of management or of an employee; or
 - (b) A trustee for any pension or profit-sharing trust of the enterprise.
- 2510.4 A licensee shall not, in the performance of professional services, knowingly misrepresent facts or subordinate his or her judgment to others.
- 2510.5 In tax practice, a licensee may resolve doubt in favor of his or her client as long as there is reasonable support for the position.
- 2510.6 A licensee shall not receive a commission from any party for recommending to a client any product or service when the licensee also performs for that client:
- (a) An audit or review of a financial statement;
 - (b) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or
 - (c) An examination of prospective financial information.
- 2510.7 The provisions of § 2510.6 shall not prohibit the following payments:
- (a) Payments for the purchase of all, or a material part, of an accounting practice;
 - (b) Retirement payments to persons formerly engaged in the practice of public accountancy; or
 - (c) Payments to the heirs or estate of persons formerly engaged in the practice of public accountancy.
- 2510.8 Any licensee who is paid or expects to be paid a non-prohibited commission for referring products or services to a client shall disclose such commission to a client.
- 2510.9 Any licensee who accepts a referral fee from another licensee for recommending or referring any service of a licensee to any person or entity, or who pays a referral fee to another licensee to obtain a client, shall disclose such acceptance of or payment of a referral fee to the client.
- 2510.10 A licensee shall not:
- (a) Perform any professional services for a contingent fee or receive a contingent fee from a client for whom the licensee or the licensee's firm performs;

- (1) An audit or review of a financial statement;
 - (2) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or
 - (3) An examination of prospective financial information.
- (b) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.
- 2510.11 The prohibition in § 2510.6 applies during the period in which the licensee is engaged to perform any of the services listed in § 2510.10 and the period covered by any financial statements involved in any such listed services.
- 2510.12 Unless otherwise allowed by this chapter or the Act, a licensee may not enter into a contingent fee agreement.
- 2510.13 A contingent fee agreement exists when the licensee's fee for services depends upon the findings or results of the licensee's services.
- 2510.14 A fee is not a contingent fee if a court or other public authority fixes the fee, or, in tax matters, if the fee is based upon the results of judicial proceedings or the findings of governmental agencies.
- 2510.15 A licensee may vary fees, for reasons such as the complexity of services rendered, and such variation is not considered a contingent fee.
- 2511 CODE OF PROFESSIONAL CONDUCT: COMPETENCE AND TECHNICAL STANDARDS**
- 2511.1 A licensee shall not undertake any engagement for the performance of professional services that he or she cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with the requirements of this section.
- 2511.2 A licensee shall not permit his or her name to be associated with financial statements in a manner that implies that the licensee is acting as an independent public accountant with respect to those financial statements unless the licensee has complied with applicable generally accepted auditing standards.
- 2511.3 The Board considers statements on auditing standards issued by the American Institute of Certified Public Accountants and other pronouncements having similar generally recognized authority to be interpretations of generally accepted auditing standards.

Departures from these statements shall be justified by anyone who does not follow them.

- 2511.4 A licensee shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if the financial statements contain any departure from generally accepted accounting principles that has a material effect on the financial statements taken as a whole, except as provided in § 2511.5.
- 2511.5 A licensee may express an opinion that financial statements are presented in conformity with generally accepted accounting principles when the financial statements contain a departure from generally accepted accounting principles that has a material effect on the financial statements taken as a whole if the licensee can demonstrate that, by reason of unusual circumstances, the financial statements would otherwise have been misleading.
- 2511.6 When there is a departure from generally accepted accounting principles, the licensee's report shall describe the departure, the approximate effects thereof, if possible, and the reasons why compliance with generally accepted accounting principles would result in a misleading statement.
- 2511.7 For purposes of this chapter, generally accepted accounting principles are those principles defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor and similar pronouncements issued by other Board approved entities having similar, generally recognized authority.
- 2511.8 In the performance of other accounting services, a licensee shall comply with all professional and technical standards generally recognized by the profession for the particular service.
- 2511.9 A licensee, in the performance of professional services, shall not permit the use of his or her name in conjunction with any forecast of future transactions in a manner that may reasonably lead to the belief that the licensee vouches for the achievability of the forecast.

2512 CODE OF PROFESSIONAL CONDUCT: RESPONSIBILITIES TO CLIENTS

- 2512.1 A licensee shall not disclose, without the consent of his or her client, any confidential information pertaining to the client that the licensee obtained in the course of performing professional services.
- 2512.2 The provisions of this section do not do the following:
- (a) Relieve a licensee of any obligations under § 2511;
 - (b) Affect in any way a licensee's obligation to comply with a validly issued subpoena or summons enforceable by order of a court of competent jurisdiction;

- (c) Prohibit disclosures during a quality review of a licensee's professional services;
 - (d) Preclude a licensee from responding to any inquiry made by the Board or any investigative or disciplinary body established by law or formally recognized by the Board; or
 - (e) Relieve a licensee from any obligations incurred under the Sarbanes-Oxley Act of 2002, approved July 30, 2002 (Pub. L. 107-204, 116 Stat. 745 (2002)), and any rules or regulations promulgated pursuant thereto not already reflected within this chapter.
- 2512.3 Members of the Board and professional practice reviewers shall not disclose any confidential client information that comes to their attention from licensees in disciplinary proceedings or otherwise in carrying out their responsibilities, except that they may furnish this information to an investigative or disciplinary body of the kind referred to in this section.
- 2512.4 A licensee shall furnish to a client or former client, upon request made within a reasonable time after original issuance of the document in question, the following items:
- (a) A copy of a tax return of the client;
 - (b) A copy of any report, or other document, issued by the licensee to or for the client;
 - (c) Any accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received from the client's account; and
 - (d) A copy of the licensee's working papers, to the extent that these working papers include records that would ordinarily constitute part of the client's books and records and are not otherwise available to the client.
- 2512.5 A licensee may take and retain copies of accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received from the client's account, when these records form the basis for work done.

2513 CODE OF PROFESSIONAL CONDUCT: OTHER RESPONSIBILITIES AND PRACTICES

- 2513.1 A licensee shall not commit any acts of dishonesty, fraud, or falsification of records that reflect adversely on his or her moral fitness to engage in the practice of certified public accounting.
- 2513.2 A licensee shall not permit others to carry out on his or her behalf, either with or without compensation, acts that, if carried out by the licensee, would place the licensee in violation of the Code of Professional Conduct.
- 2513.3 A licensee shall not use or participate in the use of any form of public communication which refers to the licensee's professional services that contains a false, fraudulent, misleading, deceptive, or unfair statement or claim including, but not limited to, a statement or claim that does the following:
- (a) Contains a misrepresentation of fact;
 - (b) Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;
 - (c) Contains any testimonial, laudatory statement, or other statement or implication that the licensee's professional services are of exceptional quality;
 - (d) Is intended or likely to create false or unjustified expectations of favorable results;
 - (e) Implies educational or professional attainments or licensing recognition not supported in fact;
 - (f) States or implies that the licensee has received formal recognition as specialist in any aspect of the practice of public accountancy, if this is not the case;
 - (g) Represents that professional services can or will be competently performed for a stated fee when this is not the case;
 - (h) Makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or
 - (i) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.
- 2513.4 A licensee shall not solicit, by any direct personal communication, an engagement to perform professional services in the following circumstances:
- (a) If the communication would violate § 2513.3, if it were a public communication; or

- (b) The communication uses coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct.

2513.5 A licensee shall practice public accountancy only in a sole proprietorship, partnership, or professional corporation organized in accordance with the D.C. Professional Corporation Act, approved December 10, 1971 (85 Stat. 576; D.C. Official Code § 29-401 *et seq.* (2001)) and D.C. Official Code § 47-2853.44 (2001).

2513.6 A licensee shall not practice public accountancy under a firm name which is misleading in any way as to the legal form of the firm, or as to the persons who are partners, officers, or shareholders of the firm, or as to any matter with respect to which public communications are restricted by § 2513.3. However, names of one or more past partners or shareholders may be included in the firm name of a partnership, corporation, or successor, and a partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two (2) years after becoming a sole practitioner.

2513.7 When requested, a licensee shall respond to communications from the Board within thirty (30) days of receipt by registered or certified mail unless otherwise specified.

2514 EXCEPTIONS AND SAFE HARBOR LANGUAGE

2514.1 Non-licensees may use the following safe harbor language as a disclaimer in connection with financial statements to avoid violating these regulations and the Act:

- (a) "I (We) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners)."; or
- (b) "I (We) have not audited or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them."

2515-2519 [RESERVED]

2520 DENIAL, SUSPENSION, AND REVOCATION OF LICENSES

2520.1 Each applicant for examination, and each applicant for or holder of a license, shall be given notice and an opportunity for a hearing by the Board before the Board takes any action that would have one (1) or more of the following effects:

- (a) Denial of permission to take an examination for a license for which an applicant has correctly filed and whose application has been accepted as meeting the qualifications for examination;

- (b) Denial of a license after an examination for any cause other than failure to pass the examination;
- (c) Denial of a license by endorsement to an applicant who meets the qualifications set forth in the Acts;
- (d) Denial of a license to an applicant who meets the qualifications set forth in these regulations and the Acts;
- (e) Suspension of a license;
- (f) Revocation of a license;
- (g) Reprimand of a licensee; or
- (h) Refusal to issue a renewal by annual registration for any cause other than failure to pay the prescribed renewal fee or the operation of any other District law that prohibits the Department from issuing a renewal license for reasons unrelated to a deficiency in the application or the applicant's professional conduct.

2520.2 When the Board contemplates taking any action of the type specified in § 2520.1(a), (b), or (c), it shall give the applicant a written notice at least fifteen (15) days before the hearing. The notice shall contain the following information:

- (a) That the applicant has failed to satisfy the Board as to his or her qualification to sit for examination or to be approved for licensure, as the case may be;
- (b) The reasons that the applicant has failed to satisfy the Board;
- (c) That the applicant may obtain a hearing before the Board by making a request for a hearing in the following manner:
 - (1) Write a letter to the Board that contains a request for a hearing; and
 - (2) Mail the letter by certified mail or deliver the letter in person within twenty (20) days after service of the notice.
- (d) That the applicant may be represented at the hearing by counsel.

2520.3 When the Board contemplates taking any action of the type specified in §§ 2520.1(d), (e), (f), (g), or (h), it shall give the person concerned a written notice at least fifteen (15) days before the hearing. The notice shall contain the following:

- (a) That the Board has sufficient evidence which, if not rebutted or explained, justifies the Board in taking the proposed action; and

- (b) That the Board will take the proposed action unless the person concerned requests a hearing before the Board by making a request for a hearing in the following manner:
 - (1) Write a letter to the Board that contains a request for a hearing; and
 - (2) Mail the letter by certified mail or deliver the letter in person within twenty (20) days after service of the notice.
- (c) That the applicant may be represented at the hearing by counsel.

2521 FAILURE TO REQUEST A HEARING

- 2521.1 If the person concerned does not mail a request for a hearing within twenty (20) days after the Board served the notice of hearing, the Board may take the action proposed in the notice, without a hearing.
- 2521.2 Within ninety (90) days of any Board action taken pursuant to § 2521.1, the Board shall give, by certified mail, written notice of the Board's action to the person concerned, and shall file copies of the notice with the Corporation Counsel and the Director.

2522 SERVICE OF NOTICES

- 2522.1 Any notice required by § 2520 or § 2524.1 may be served either personally by the Director or by certified mail, return receipt requested, directed to the person concerned at his or her last known residence or business address as shown by the records of the Department.
- 2522.2 If notice is served personally, it shall be deemed to have been served when delivery is made to the person concerned.
- 2522.3 If notice is served by certified mail, it shall be deemed to have been served on the date borne upon the return receipt showing delivery of the notice to the person concerned or refusal of the person concerned to receive notice.
- 2522.4 If the person concerned is no longer at the last known address as shown by the records of the Department, and no forwarding address is available, the notice shall be deemed to have been served on the date the Department received the return receipt bearing that notification.

2523 FAILURE TO APPEAR

- 2523.1 If a person who requested a hearing does not appear and no continuance has been requested or is granted, the Board may hear the evidence of the witnesses who appear.

2523.2 The Board also may proceed to consider the matter and render a decision based on evidence before it, in the manner required by this chapter.

2524 HEARING PROCEDURES

2524.1 If the person concerned mails a request for a hearing as required in § 2520, the Board shall, within twenty (20) days following receipt of a request, notify the person concerned of the time and place of the hearing.

2524.2 The Board shall hold the hearing not more than ninety (90) days nor less than thirty (30) days following the date of service of the notice.

2524.3 Each hearing before the Board shall be open to the public and all transcripts, filings, and other records associated with the hearing shall be available for public inspection unless sealed by operation of law or by an order issued by the hearing examiner or a court of competent jurisdiction.

2524.4 At each hearing, at least a majority of the members of the Board shall be present to hear the evidence and render a decision.

2524.5 A person entitled to a hearing shall have the following rights:

- (a) To be represented by counsel;
- (b) To present all relevant evidence by witnesses and books, papers, and other documents;
- (c) To examine all opposing witnesses on any matter relevant to the issues; and
- (d) To have subpoenas issued to compel the attendance of witnesses and the production of relevant books, papers, and documents upon making written request to the Board.

2525 HEARINGS: POWERS OF THE BOARD

2525.1 In connection with any hearing held pursuant to this chapter, the Board shall have the following powers:

- (a) To request that counsel from the Office of the Corporation Counsel represent the District in any case before the Board;
- (b) To administer oaths or affirmations, either personally or through a designated agent, to witnesses called to testify;
- (c) To subpoena respondents and other witnesses and relevant books, papers, and documents;

- (d) To take testimony and to examine witnesses; and
- (e) To direct continuance of any case without regard to the limitation in §2521.1.

2525.2 In proceedings before the Board, if any person refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness, refuses to be examined, or refuses to obey any lawful order of the Board contained in a decision rendered after a hearing, the Board may make application to the Superior Court of the District of Columbia for an order requiring obedience.

2526 RECORD OF HEARING

2526.1 In all hearings conducted under this chapter, a complete record shall be made of all evidence presented during the course of the hearing.

2526.2 Parties to the proceedings and the public may obtain a copy of the record after paying the fee established by the Mayor.

2527 EVIDENCE AND BURDEN OF PROOF

2527.1 In all proceedings held by the Board, the Board shall receive and consider any evidence or testimony. However, the Board may exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence or testimony.

2527.2 In any Board proceeding resulting from the Board's proposed action to deny licensure, the applicant shall have the burden of satisfying the Board of his or her qualifications.

2527.3 In any Board proceeding resulting from the Board's proposed action to refuse to renew, to cancel, to suspend, to revoke, or to censure a licensee, the Board shall have the burden of proving that such action should be taken.

2528 FINDINGS AND DECISIONS

2528.1 The members of the Board who conduct the hearing shall render their decision, in writing, as soon as practicable, but no later than ninety (90) days after the date that the hearing is completed.

2528.2 The decision of the Board shall contain the following:

- (a) Findings of fact made by the Board;
- (b) Application by the Board of the provisions of the statutes and this chapter to the facts as found by the Board;

- (c) The decision of the Board based upon findings of fact and the application of the law;
 - (d) A statement informing the person concerned of his or her right to have the Board's decision reviewed by the District of Columbia Court of Appeals; and
 - (e) A statement regarding the time within which a judicial review of the Board's decision by the District of Columbia Court of Appeals shall be sought.
- 2528.3 Within ten (10) days after the Board renders its written decision, the Board shall serve a copy of the written decision upon the person concerned, or his or her attorney of record.

2529 REOPENING OF HEARING PROCEEDINGS

- 2529.1 If, because of accident, sickness, or other good cause, a person fails to receive a hearing or fails to appear for a hearing that he or she requested, the person may, within thirty (30) days from the date of the decision of the Board, apply to the Board to reopen the proceedings.
- 2529.2 If the Board finds sufficient cause to reopen a hearing, it shall immediately fix a time and place for a hearing and serve upon the person, the Corporation Counsel, and the Director notice as required by this chapter.
- 2529.3 The Board may reopen a proceeding if no appeal is pending before the D.C. Court of Appeals or the D.C. Court of Appeals has not decided the matter.

2530 CONTINUING EDUCATION: REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANTS HOLDING PERMITS TO PRACTICE

- 2530.1 A licensee seeking biennial renewal of a license shall provide proof of having completed no less than eighty (80) hours of acceptable continuing professional education during the two-year (2) period preceding the date the license expires.
- 2530.2 A licensee seeking to renew an initial license issued for less than two (2) years is not required to submit proof of continuing professional education for the first renewal.
- 2530.3 An applicant for reinstatement of a license, who has failed to renew the license for a period of less than five (5) years, shall provide proof of having completed since the previous issuance of the license, forty (40) hours of approved continuing education for each year of non-renewal, up to a maximum of one hundred twenty (120) hours.
- 2530.4 The Board may exempt a licensee from continuing education requirements for reason of individual hardship including health, military service, foreign residence, retirement, or other good cause if the licensee does not hold oneself out to the public as a CPA and does not issue audit reports or certify other reports and statements.

- 2530.5 Licensees requesting an exemption from the Board shall file the request in writing no less than sixty (60) days before the expiration of the current license.
- 2530.6 Licensees granted such an exemption by the Board shall place their license on inactive status.
- 2530.7 Licensees granted an exemption by the Board shall comply with a re-entry competency requirement defined by the Board.
- 2530.8 Effective January 1, 2005, licensees shall be required to complete four (4) hours of Professional Ethics instruction per licensing cycle as part of the continuing professional education requirement.

2531 CONTINUING EDUCATION: ACCEPTABLE CONTINUING PROFESSIONAL PROGRAMS

- 2531.1 Unless a program qualifies for an exemption from the requirements of this subsection, the Board shall only approve a program as acceptable for continuing professional education (CPE) credit if NASBA lists the program in NASBA's National Registry of CPE Sponsors (Registry) or The Quality Assurance Service (QAS). If NASBA removes a CPE program from the Registry or the QAS for any reason, the program shall no longer qualify as acceptable to offer CPE courses or credit to licensees. Program sponsors removed from the Registry or the QAS by NASBA must inform the Board of the removal in writing and within fifteen (15) calendar days of the action.
- 2531.2 Acceptable continuing education programs exempt from the requirements of 2531.1, but not exempt from the standards established in the *Statement on Standards of Continuing Professional Education (CPE) Programs* developed jointly by NASBA and the AICPA, and subject to audit by the Board, may include classes, correspondence courses, institutes, conferences, lectures, professional meetings, seminars, or other comparable educational activities offered by the following organizations:
- (a) AICPA;
 - (b) NASBA;
 - (c) State Accounting Boards;
 - (d) Firms such as Accounting Firms, Law Firms, Brokerage Firms, Insurance Firms, and others offering professional programs to CPAs;
 - (e) Colleges; and
 - (f) Universities

- (g) Greater Washington Society of Certified Public Accountants and any other State Society of CPA's.

2531.3 Continuing education credits received from an acceptable program shall be granted for programs taken in the following subject areas:

- (a) Accounting and auditing;
- (b) Taxation;
- (c) Management;
- (d) Computer Science;
- (e) Communication Arts (accounting oriented);
- (f) Mathematics, Statistics, Probability and Quantitative Applications in Business;
- (g) Economics;
- (h) Business Law;
- (i) Functional fields of business including; finance, production, marketing, personnel relations, and business management and organization;
- (j) Specialized areas of industry, such as oil and gas, real estate, farming, or any other specialized industry;
- (k) Administrative Practice (accountant's legal liability, engagement letters, and personnel); and
- (l) Professional Ethics (beginning January 1, 2005).

2531.4 Credit may be granted by the Board for subjects other than those specified in § 2531.3 upon a showing by the applicant that the subjects contribute to professional competence. The responsibility for demonstrating the contribution of a particular program shall rest solely upon the applicant.

2531.5 The Board may grant credit for the following group programs:

- (a) Professional education and development programs of national, state, and local accounting organizations;
- (b) Technical sessions of meetings of national, state, and local accounting organizations and their chapters;

- (c) University or college courses, both credit and non-credit;
 - (d) Formal in-firm education programs;
 - (e) Programs of other organizations (accounting, industrial, professional, etc.);
 - (f) Committee meetings of professional societies which are structured as formal education programs; and
 - (g) Other structured formal educational programs.
- 2531.6 Licensees requesting credit for continuing education courses taken to satisfy the requirements set forth in § 2530 shall submit a written application to the Board on the form approved by the Board.
- 2531.7 The proper fees and all required documents shall accompany the application when filing.
- 2531.8 Every licensee applying for license renewal who is denied accreditation or certification of their continuing education credit, for reasons other than the program's failure to meet the requirements of § 2531.1, shall be given an opportunity for a hearing pursuant to § 2524.
- 2531.9 Continuing professional education credit shall be given for whole hours or half hours, with a minimum of fifty (50) minutes constituting one (1) hour and a minimum of twenty-five (25) minutes constituting one-half hour. As an example, one hundred (100) minutes of continuous instructions would count as two (2) hours. Only time spent in instruction, and not preparation time, shall be credited.
- 2531.10 Each semester hour of credit shall equal fifteen (15) hours toward the requirement, and a quarter hour of credit shall equal ten (10) hours for university or college courses.
- 2531.11 Credit for correspondence and formal individual study programs, including taped study programs, shall be as recommended by the program sponsor on the basis of one-half the average completion time under appropriate "field tests." Licensees claiming credit for such correspondence or formal individual study courses shall be required to obtain evidence of satisfactory completion of the course from the program sponsor. Credit shall be allowed in the renewal period in which course is completed.
- 2531.12 Credit for committee and firm meetings is limited to twenty-five percent (25%) of the hours reported.
- 2531.13 Credit for courses covered under Sec. 2531.4 is limited to 25% of the hours reported.
- 2531.14 An instructor, discussion leader or speaker at approved programs may claim continuing professional education credit for both preparation and presentation time. Credit may be

claimed for actual preparation time up to two (2) times the class contact hours. The maximum credit for preparation and teaching time shall be fifty percent (50%) of the applicable renewal period requirement. For repetitive presentations, the instructor shall receive no credit unless he or she can demonstrate that the subject matter involved was changed sufficiently to require significant additional study or research.

- 2531.15 Credit may be granted for published articles and books, provided they contribute to the professional competence of the applicant. Credit for preparation of publications may be claimed on a self-requirement basis for up to twenty-five percent (25%) of the renewal period requirement. In exceptional circumstances an applicant may request additional credit by submitting the article(s) or book(s) to the Board with an explanation of the circumstances which justify a greater credit. The amount of credit awarded for a given publication shall be determined by the Board.

2532 CONTINUING EDUCATION: REPORTING

- 2532.1 The renewal application for a license shall include a signed statement indicating the continuing professional education programs for which credit is requested and which shall include the following information:

- (a) The name of the sponsoring organization;
- (b) The location of program;
- (c) The title of program or description of content;
- (d) The dates attended; and
- (e) The hours claimed.

- 2532.2 The licensee is responsible for documenting the acceptability of the program and validity of the credits.

- 2532.3 The licensee shall retain course documentation for five (5) years after completing the program, which shall consist of the following:

- (a) A copy of the course outline prepared by the course sponsor;
- (b) In the case of courses taken at accredited universities and colleges, proof of satisfactory completion of the course; and
- (c) In the case of individual study programs, proof of written completion.

- 2532.4 The Board may verify information submitted by licensees for permits.

2532.5 If the Board determines that the licensee has not met the continuing education requirement, the Board may grant an additional period of time in which the deficiencies can be cured.

2533 CONTINUING EDUCATION: ADVISORY COMMITTEE

2533.1 The Board may appoint an Advisory Committee on continuing education.

2533.2 Members of the Advisory Committee may be certified public accountants licensed under the Acts or may be educators or users of financial statements.

2534-2539 [RESERVED]

2540 PARTNERSHIP AND CORPORATE PRACTICE: PROFESSIONAL RELATIONSHIP RESPONSIBILITIES AND CONDUCT

2540.1 Nothing in §§ 2540 to 2547 relating to accountancy partnerships and corporations shall alter the duties and responsibilities of a licensed person or the person's professional relationships with clients and others.

2540.2 Partnerships and corporations licensed under this chapter and the Act shall follow the same code of professional conduct as individual licensees and may not do any act in which individual licensees cannot engage.

2541 PARTNERSHIP AND CORPORATE PRACTICE: APPLICATION FOR PERMIT

2541.1 Within thirty (30) days of the effective date of §§ 2540 to 2547, every sole proprietor, partnership, or corporation practicing public accountancy in the District of Columbia not holding a permit shall file an application with the Board.

2541.2 Applicants shall submit an application for a permit to the Board on a form provided by the Board. A partner of the partnership or shareholder of the corporation who is a licensee under the Act shall sign the application and swear or affirm to the contents of the application before a notary public.

2541.3 The Board shall, within a reasonable time after an application for a permit is submitted, either approve the application and issue a license or deny the application and notify the applicant.

2541.4 If the Board denies an application, the applicant may request a hearing pursuant to § 2520.

2541.5 No applicant shall hold itself out or advertise itself as engaged in public accounting, nor shall it render any professional services unless and until a permit has been issued.

2542 PARTNERSHIP AND CORPORATE PRACTICE: REQUIREMENTS TO PRACTICE IN THE DISTRICT

- 2542.1 No sole proprietorship, partnership, limited partnership, limited liability partnership, or professional corporation shall hold itself out as engaged in certified public accounting, nor shall it render any professional services requiring licensure under this chapter and the Act, unless it is registered and holds a permit issued under this section.
- 2542.2 The Board shall register a sole proprietorship, partnership, limited partnership, limited liability partnership, or professional corporation if it finds the following:
- (a) That applicant has organized and exists as:
 - (1) A professional corporation pursuant to D.C. Official Code § 29-401 *et seq.* (2001);
 - (2) A foreign professional corporation possessing a valid certificate of authority to render professional services in the District of Columbia pursuant to D.C. Official Code § 29-414 (2001);
 - (3) A partnership or limited liability partnership organized under D.C. Official Code § 33-101.01 *et seq.* (2001), or under the laws of a jurisdiction other than the District of Columbia;
 - (4) A limited partnership organized under D.C. Official Code § 33-201.01 *et seq.* (2001), or under the laws of a jurisdiction other than the District of Columbia; or
 - (5) A sole proprietorship with a current trade-name registration.
 - (b) That each of the applicant's offices in the District are under the direct supervision of at least one partner or resident manager who is either a principal, shareholder, or staff employee licensed under the Act. The partner or resident manager may serve in such capacity at one (1) office only;
 - (c) That the applicant is in compliance with all applicable requirements of the Act, this chapter, and all other applicable D.C. laws, rules and regulations with respect to sole proprietorships, partnerships, limited partnerships, limited liability partnerships, or professional corporations;
 - (d) That the partners of an applicant organized as a partnership, limited partnership, or limited liability partnership are licensed certified public accountants and in compliance with D.C. Official Code § 47-2853.44 (2001); and

- (e) That the shareholders of an applicant organized as a limited liability corporation or professional corporation are licensed certified public accountants and in compliance with D.C. Official Code §47-2853.44 (2001).

2543 PARTNERSHIP AND CORPORATE PRACTICE: OWNERSHIP AND TRANSFER OF SHARES IN A PROFESSIONAL CORPORATION

2543.1 The shares of an accountancy corporation shall only be held by the following:

- (a) The Corporation;
- (b) An individual who either:
 - (1) Holds a certified public accountant's license pursuant to this chapter and D.C. Official Code § 47-2853.01 *et seq.* (2001);
 - (2) Qualifies to hold shares in the corporation pursuant to D.C. Official Code §§ 29-408 (2001) and 47-2853.44 (2001); or
- (c) An individual who is the personal representative or the estate of a deceased or legally incompetent shareholder.

2543.2 If there are two (2) or more shareholders in an accountancy corporation and one (1) of the shareholders dies or becomes a disqualified person as defined in D.C. Official Code § 29-415 (2001), that person's shares shall be sold and surrendered in accordance with D.C. Official Code § 29-416 (2001).

2543.3 The restrictions listed in §§ 2543.1 and 2543.2 shall be set forth in the corporation's by-laws or articles of incorporation.

2543.4 The share certificates of an accountancy corporation shall contain the following legend: "The ownership and transfer of these shares and the rights and obligations of shareholders are subject to the limitations of the District of Columbia Professional Corporation Act."

2543.5 Each license holder shall notify the Board of Accountancy within thirty (30) days of the occurrence of any change relating to the requirements of §§ 2542 or 2543; including any changes in officers, shareholders, partners, and resident managers.

2544 PARTNERSHIP AND CORPORATE PRACTICE: NAME USAGE

2544.1 A permit holder shall not render professional services using a name other than that which is stated in its license or in its partnership or corporation registration.

2545 PARTNERSHIP AND CORPORATE PRACTICE: CLAIMS AGAINST ACCOUNTANCY PARTNERSHIPS OR CORPORATIONS

- 2545.1 Liability for claims against an accountancy corporation, or against any individual rendering professional service on behalf of such corporation, shall be determined in accordance with D.C. Official Code § 29-411 (2001).
- 2545.2 Liability for claims against an accountancy partnership, or against any individual rendering professional service on behalf of such partnership, shall be determined in accordance with D.C. Official Code § 33-101.01 *et seq.* (2001).

2546 PARTNERSHIP AND CORPORATE PRACTICE: NONRESIDENT (FOREIGN) PRACTITIONER

- 2546.1 Except as provided in § 2546.2, every nonresident partnership or corporation that engages in the practice of public accountancy in the District of Columbia, shall comply with the requirements of this chapter and the applicable Acts.
- 2546.2 A nonresident person, partnership or corporation which provides only temporary or periodic accounting work incidental to a regular practice in another jurisdiction, pursuant to D.C. Official Code § 47-2853.03(f) (2) (2001), shall not be required to hold a permit issued pursuant to § 2542 if the work is performed in affiliation with a comparably licensed D.C. licensee and the work is conducted in conformity with the rules of professional conduct promulgated by the Board.
- 2546.3 A nonresident partnership or corporation seeking to engage in any activity licensed by this chapter and the Act on an incidental or temporary basis shall apply for and obtain a permit from the Board before engaging in the activity. The permit application shall be made on the form provided by the Board and shall contain all of the information requested by the Board.
- 2546.4 The Board may deny an application submitted pursuant to § 2546.3 if the applicant has previously engaged in any incidental or temporary accounting work within the District of Columbia.

2547 PARTNERSHIP AND CORPORATE PRACTICE: TERM AND RENEWAL OF PERMIT

- 2547.1 A permit issued under § 2542 shall expire on December 31 of each even-numbered year.
- 2547.2 Every permit holder shall be required to file a renewal application on or before the expiration of the current permit.

2547.3 Each permit holder shall be required to report immediately to the Board any change of address, giving both its old and its new address. No fee shall be charged for filing such notification.

2599 DEFINITIONS

2599.1 As used in this chapter, the following terms and phrases shall have the meanings ascribed:

Act – Non-Health Related Occupations and Professions Licensure Act of 1998 (D.C. Law 12-261; Official Code § 47-2853.01 *et seq.* (2001))

AICPA - the American Institute of Certified Public Accountants

Applicant – an individual who applies to the Board for licensure by examination, reciprocity, or by endorsement

Attest - providing the following financial statement services:

- (1) Any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS) or its successor or assignee;
- (2) Any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS) or its successor or assignee; and
- (3) Any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE) or its successor or assignee

Board - the District of Columbia Board of Accountancy

Candidate – an individual who is approved by the Board to take the Uniform CPA Examination

Certificate - a certificate as “certified public accountant” issued as part of licensure under corresponding provisions of District of Columbia law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state

Certified Public Accountant (CPA) – a person licensed under this chapter and the Act to provide accounting or consulting services under circumstances where there is an expectation of public confidence in such services, and attesting to the results, including (1) expressing opinions on financial statements (audits); (2) reviewing financial statements and issuing reports in standard form on such statements; (3) compiling financial statements and issuing reports in standard form on such compilations; (4) examining prospective financial information

Client - the person or entity retaining a licensee for the performance of public accounting services

Compilation - providing a service to be performed in accordance with Statements on Standards for Accounting and Review Services (SSARS) that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements

Computer-Based Examination – the Uniform CPA Examination administered by NASBA on a computer-based medium

Conditional Credits – credits earned by a candidate for achieving a passing score on either the paper-and-pencil or computer-based Uniform CPA Examination.

CPA – see certified public accountant

CPA Firm - a sole proprietorship, a corporation, a partnership or any other form of organization issued a permit by the District of Columbia or other recognized granting state

Department - the D.C. Department of Consumer and Regulatory Affairs

Director - the Director of the D.C. Department of Consumer and Regulatory Affairs, or his or her agent or designee

Enterprise - a person or entity, whether organized for profit or not, for which a licensee performs public accounting services

Examination window – defined by NASBA in the Uniform CPA Examination Candidate Bulletin as a three-month period in which candidates have an opportunity to take the CPA examination, comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered

Financial statements - statements and related footnotes that purport to show financial position at a point in time or changes in financial position which relate to a period of time, on the basis of generally accepted accounting principles or another comprehensive basis of accounting. The term does not include incidental financial data included in management advisory services reports to support recommendations to a client, nor does it include tax returns and supporting schedules

Foreign (nonresident) – unless otherwise indicated, refers to jurisdictions outside of the District of Columbia but within the states and territories of the United States of America.

Generally accepted accounting principles - the pronouncements issued by the Financial Accounting Standards Board and the predecessor entities, and similar pronouncements issued by other entities having similar, generally recognized authority

Generally accepted auditing standards - the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, together with interpretations thereof, published by the American Institute of Certified Public Accountants

Incidental practice - the practice of public accountancy for a client the headquarters or home office of which is located outside the District but which has a branch or subsidiary located in the District, for which the practice of public accountancy is being performed

International Qualifications Appraisal Board (IQAB) – a joint body of the National Association of State Boards of Accountancy and the American Institute of CPAs that negotiates Mutual Recognition Agreements with the accountancy licensing authorities of foreign countries

International Uniform Certified Public Accountant Qualification Examination (IQEX) – the CPA examination used to assess the professional competence of accountants licensed in foreign countries that have entered into a Mutual Recognition Agreement with the IQAB.

Licensee - an individual or firm holding license issued under D.C. Official Code § 47-2853.01 *et seq.* (2001)

License - a valid license as defined in the Acts and issued in accordance with D.C. Official Code § 47-2853.01 *et seq.* (2001)

License Cycle – the two-year cycle in which licenses or permits issued under this chapter are valid.

Manager - a manager of a limited liability company

Member - a member of a limited liability company

Mutual Recognition Agreement – an agreement entered into between NASBA and the AICPA through the International Qualifications Appraisal Board (IQAB) with a foreign country's licensing authority after a determination has been made that the education, experience, and examination requirements of the foreign jurisdiction are substantially equivalent to the requirements set forth in the Uniform Accounting Act

National Candidate Database – the database maintained by NASBA identifying the individuals that have applied to take the computer-based Uniform CPA Examination administered by NASBA

NASBA - the National Association of State Boards of Accountancy

National Registry of CPE Sponsors (Registry) – a service offered by NASBA that lists organizations that provide high quality CPE in accordance with nationally recognized standards

Nonresident – see foreign

Paper-and-pencil examination – the Uniform CPA Examination in which candidates for licensure as a Certified Public Accountant answered questions by using paper-and-pencil and utilized by NASBA up until November 2003

Permit - a permit to practice as a CPA firm issued by the District of Columbia or corresponding provisions of prior law or under corresponding provisions of the laws of other states

Person - includes partnerships, corporations, and associations, as well as natural persons

Periodic accounting work - accounting work recurring from time to time

Practice of certified public accountancy - offering to perform or performing for a client or potential client one or more types of services involving the use of accounting or auditing skills, or one or more types of management advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters, while holding oneself out in a manner that would state or imply that one is a licensee

Professional - arising out of or related to the specialized knowledge or skills associated with CPAs

Professional Ethics – any continuing education course approved by the Board in which the content of the course includes instruction on the code of ethics developed by AICPA and NASBA

Professional Practice Reviewer – a person retained by the Board to assist in an investigation or disciplinary proceeding conducted by the Board or other disciplinary body referred to in this chapter or the Act

Professional services - any service performed or offered to be performed by a licensee for a client during the practice of public accountancy as defined in this section

Quality Assurance Service (QAS) – a service offered by NASBA that recognizes organizations that provide self-study CPE courses of the highest caliber

Report - when used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. The term “report” includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to and/or special competence by the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence

Resident Manager – an individual licensed under this chapter and the Act that manages a single office or branch of a partnership or corporation licensee

Rule - any rule, regulation, or other written directive of general application duly adopted by the Board

State - any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam; except that “this State” means the District of Columbia

Substantial Equivalency - a determination by the board of accountancy or its designee that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed the education, examination and experience requirements contained in the Uniform Accountancy Act or that an individual CPA’s education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements contained in the Uniform Accountancy Act

Temporary accounting work - accounting work to be performed only once for a particular client

Testing Event – the actual date that a candidate sits for one or more sections of the computer-based Uniform CPA Examination administered by NASBA

Test Section – one of the four parts of the Uniform CPA Examination

Uniform CPA Examination – the examination created and graded by AICPA and administered by NASBA (directly or through a third-party) in paper-and-pencil format through November 2003 and computer-based format beginning in 2004

All persons desiring to comment on these proposed regulations should submit comments in writing to Julie Lee, Acting General Counsel, 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 CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in D.C. Official Code § 47-2853.10(a) (12) and Mayor's Order 2000-70, dated May 2, 2000, hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the D.C. Register, the following amendments to 17 DCMR Chapter 35. The purpose of the proposed rule is to increase the non-health related occupations and professions license fees.

Section 3500.1 of Title 17 (Business, Occupations & Professions) of the DCMR is amended by striking the fees associated with the non-health related occupations and professions listed below and inserting in their place the following fees:

DESCRIPTION OF SERVICE	FEE	
ARCHITECTS:		
Application	\$65.00	
License	\$120.00	(up to 2 yrs.)
Renewal	\$155.00	(up to 2 yrs.)
Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.2	
Reinstated License	\$155.00	(up to 2 yrs.)
Inactive Status	\$155.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	
ASBESTOS:		
Application	\$65.00	
License (Asbestos Worker & Supervisor)	\$110.00	
Renewal	\$110.00	
Late Renewal Fee	\$50.00	
Examination/Re-Examination	See § 3500.2	
Reinstated License	\$110.00	
Inactive Status	\$110.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	
BARBERS (All categories):		
Application	\$65.00	
License	(Barber, Manager, Instructor & Owner)	\$110.00 (up to 2 yrs.)
Renewal	(Barber & Owner)	\$110.00 (up to 2 yrs.)
Renewal	(Barber Manager & Instructor)	\$155.00

Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.2	
Reinstated License	\$155.00	(up to 2 yrs.)
Inactive Status	\$155.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	

BOXERS & WRESTLERS

Application & License Fees

-Amateur	\$7.00	
-Amateur Show	\$25.00	
-Manager	\$110.00	
-Permit	\$50.00	
-Professional Contestant	\$25.00	
-Professional Show	\$50.00	
-Promoter	\$130.00	
-Referee	\$50.00	
Matchmaker	\$110.00	
Timekeeper	\$110.00	
Inspector	\$110.00	
Judges	\$110.00	
Announcer	\$110.00	
Physician	\$110.00	
Seconds	\$25.00	
Verification of Records	\$30.00	

CERTIFIED PUBLIC ACCOUNTANTS:

Application	\$65.00	
License	\$110.00	(up to 2 yrs.)
Renewal	\$110.00	(up to 2 yrs.)
Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.2	
Reinstated License	\$110.00	(up to 2 yrs.)
Inactive Status	\$110.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	
Permit to Practice	\$110.00	(up to 2 yrs.)

COSMETOLOGISTS (All categories and levels, including cosmetologists, braiders, manicurists, estheticians, electrologists, owners, and demonstrators):

Applications (All categories)	\$65.00	
License	\$110.00	(up to 2 yrs.)
Renewal	\$110.00	(up to 2 yrs.)
Renewal (Managers & Instructors)	\$155.00	
Renewal (Specialty Managers &		

Instructors)	\$155.00	
Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.2	
Reinstated License	\$110.00	(up to 2 yrs.)
Reinstated License (Managers & Instructors)	\$155.00	
Reinstated License (Specialty Managers & Instructor)	\$155.00	
Inactive Status(All categories)	\$110.00	
Inactive StatusManagers, Instructor & Specialty)	\$155.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	
Temporary License (All operators except electrologists)	\$110.00	
ELECTRICIANS:		
Application (All categories)	\$65.00	
Temporary License (Journeyman) License	\$110.00	(up to 60 days)
-Apprentice	\$110.00	(up to 2 yrs.)
-Journeyman Electrician (all types)	\$110.00	(up to 2 yrs.)
-Master (all types)	\$120.00	(up to 2 yrs.)
-Contractor (all types)	\$120.00	(up to 2 yrs.)
Examination/Re-examination	See § 3500.2	
Renewal		
-Apprentice	\$110.00	(up to 2 yrs.)
-Journeyman Electrician (all types)	\$110.00	(up to 2 yrs.)
-Master (all types)	\$155.00	(up to 2 yrs.)
-Contractor (all types)	\$180.00	(up to 2 yrs.)
Late renewal fee	\$50.00	
Inactive Status		
-Journeyman Electrician (all types)	\$110.00	
-Master (all types)	\$155.00	
Reinstated License		
-Apprentice	\$110.00	(up to 2 yrs.)
-Electrician (all types)	\$110.00	(up to 2 yrs.)
-Master (all types)	\$155.00	(up to 2 yrs.)
Contractor (all types (all types)	\$180.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	
FUNERAL DIRECTORS AND APPRENTICES:		
Application (All categories)	\$65.00	
License Fee		
-Apprentice	\$110.00	(4 yrs.)
-Funeral Directors	\$120.00	(up to 2 yrs.)
Courtesy Card (Funeral Directors)	\$100.00	

Renewal (Funeral Directors)	\$130.00	(up to 2 yrs.)
Late Renewal Fee	\$50.00	
Reinstated License (Funeral Directors)	\$120.00	(up to 2 yrs.)
Courtesy Card (Funeral Directors)	\$100.00	(up to 2 yrs.)
Inactive Status (Funeral Directors)	\$120.00	
Examination/Re-examination	See § 3500.2	
Duplicate License	\$30.00	
Verification of Records	\$30.00	

INTERIOR DESIGNERS:

Application	\$65.00	
License	\$110.00	(up to 2 yrs.)
Renewal	\$120.00	(up to 2 yrs.)
Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.2	
Reinstated License	\$120.00	(up to 2 yrs.)
Inactive Status	\$120.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	

PLUMBERS/GASFITTERS

Application	\$65.00	
License		
-Apprentice	\$110.00	(up to 2 yrs.)
-Journeyman (All types)	\$110.00	(up to 2 yrs.)
-Master (All types)	\$120.00	(up to 2 yrs.)
-Contractor	\$120.00	(up to 2 yrs.)
Renewal		
-Apprentice	\$110.00	(up to 2 yrs.)
-Journeyman (All types)	\$110.00	(up to 2 yrs.)
-Master (All types)	\$155.00	(up to 2 yrs.)
-Contractor	\$180.00	(up to 2 yrs.)
Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.2	
Reinstated License (Apprentice & Journeyman)	\$110.00	(up to 2 yrs.)
Inactive Status	\$110.00	
Reinstated License (Master)	\$155.00	
Inactive Status	\$155.00	
Reinstated License (Contractor)	\$180.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	

PROFESSIONAL ENGINEERS (P.E.'s)/ENGINEERS IN TRAINING (EIT's)

Application (All categories)	\$65.00
FE (EIT-Certificate)	\$120.00
LSI - Land Surveyor Intern	\$120.00

License

PE - Professional Engineer	\$120.00	(up to 2 yrs.)
LS - Land Surveyor	\$120.00	(up to 2 yrs.)
Renewal (Professional Engineer & Land Surveyor)	\$155.00	(up to 2 yrs.)
Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.2	
Reinstated License	\$155.00	(up to 2 yrs.)
Inactive Status	\$155.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	

PUBLIC ACCOUNTANTS:

Renewal	\$110.00
Late Renewal Fee	\$50.00
Inactive Status	\$110.00
Duplicate License	\$30.00
Verification of Records	\$30.00

REAL ESTATE:

Application

(Assoc. Broker, Prop. Mgr., Broker, Salesperson)	\$65.00	
License	\$170.00	(up to 2 yrs.)**
Renewal		
-Assoc. Broker, Broker and Property Mgr.	\$170.00	(up to 2 yrs.)**
-Salesperson	\$130.00	(up to 2 yrs.)**
Inactive Status		
-Assoc. Broker, Broker and Property Mgr.	\$210.00	
-Salesperson	\$130.00	
Late Renewal Fee (All)	\$50.00	
Reinstated License		
-Assoc. Broker, Broker and Property Mgr.	\$210.00	(up to 2 yrs.)**
-Salesperson	\$130.00	(up to 2 yrs.)**
Transfer, Exchange of License or Status Change	\$30.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	

** In addition, a fee of sixty dollars (\$60.00) for two years and thirty dollars (\$30.00) for one year (Cashier's check, certified check or money order) shall be submitted for the Real Estate Guaranty and Education Fund, unless such payments are suspended in accordance with the rules.

REAL ESTATE APPRAISERS:

Application	\$65.00	
License (Residential & Certified General Appraiser)	\$170.00	(up to 2 yrs.)**
Renewal		
-Licensed Residential Appraiser	\$195.00	(up to 2 yrs.)**

-Certified General Appraiser	\$195.00	(up to 2 yrs.)**
Late Renewal Fee (all)	\$50.00	
Inactive Status		
-Licensed Residential Appraiser	\$195.00	(up to 2 yrs.)**
-Certified General Appraiser	\$195.00	(up to 2 yrs.)**
Temporary License for Practice in D.C.	\$150.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	
Real Estate Appraiser-Federal Registration	\$50.00	(up to 2yrs.)***

** In addition a fee of one hundred thirty dollars (\$130.00) (cashier's check, certified check or money order) shall be submitted for the Appraisal Education Fund, unless such payments are suspended in accordance with the rules.

*** Federal regulations require that local regulatory agencies collect a fee for federal registration. This fee is in addition to all other fees and the current federal fee is shown here for information purposes.

REFRIGERATION AND AIR CONDITIONING MECHANICS

Application		
-Mechanic (all)	\$65.00	
-Contractor (all)	\$65.00	
Examination	See § 3500.2	
License (new or reinstated)		
-Mechanic (all)	\$110.00	(up to 2 yrs.)
-Contractor (all)	\$120.00	(up to 2 yrs.)
Renewal		
-Mechanic (all)	\$155.00	(up to 2 yrs.)
-Contractor (all)	\$180.00	(up to 2 yrs.)
Reinstated License		
Mechanic (all)	\$155.00	
Contractor (all)	\$180.00	
Inactive Status		
-Mechanic (all)	\$155.00	
-Contractor (all)	\$180.00	
Late Renewal Fee (all)	\$50.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	

STEAM AND OTHER OPERATING ENGINEERS (ALL):

Application	\$65.00	
Examination	See § 3500.2	
License (new or reinstated)	\$110.00	(up to 2 yrs.)
Renewal	\$110.00	(up to 2 yrs.)
Late Renewal Fee	\$50.00	
Inactive Status	\$110.00	(up to 2 yrs.)

Duplicate License	\$30.00	
Verification of Records	\$30.00	
VETERINARIANS:		
Application	\$65.00	
Examination	See § 3500.2	
License (new or reinstated)	\$130.00	(up to 2 yrs.)
Renewal	\$130.00	(up to 2 yrs.)
Inactive Status	\$130.00	
Late Renewal Fee	\$50.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	
ALL OCCUPATIONS/PROFESSIONS (DCRA) D		
List of licensees	\$0.05/name	

3500.2 The types of examinations utilized for professional licensing are as follows; national examinations, standard examinations, and local examinations. National examinations are examinations that are developed and administered by third parties. Standard examinations are examinations developed by third parties and administered by DCRA. Local examinations are examinations developed and administered by DCRA or the board or commission regulating the individual occupation. The examination fees for both national examinations and standard examinations change frequently and, to avoid incurring a deficit while the Department advertises these fee changes, the Director establishes the examination fees as follows:

- (a) National examinations: Actual cost
- (b) Standard examinations: Actual cost + \$25.00 DCRA administrative fee
- (c) Local examinations: \$25.00 DCRA administrative fee

3500.3 If a Board does not require applicants to take an examination after submitting an application for licensure, or the applicable rules require applicants to pass a national examination before submitting an application for licensure, an applicant does not need to include an examination fee with his or her license application.

3500.4 Unless otherwise specified, fees apply to all license types within a category.

Persons desiring to comment on these proposed regulations should submit comments in writing to Julie Lee, Acting General Counsel, Department of Consumer and Regulatory Affairs, Suite 9400, 941 North Capitol Street, N.E., 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 copying fee of one dollar (\$1) will be charged for each copy of the proposed rulemaking requested.

DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH ADMINISTRATIONNOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in the District of Columbia Air Pollution Control Act of 1984 ("the Act"), as amended, effective March 15, 1985 (D.C. Law 5-165, D.C. Official Code § 8-101.06(b)), and Mayor's Order 98-44 (dated April 10, 1998) hereby gives notice of his intent to adopt the following amendments to Chapter 3, of Subtitle A: Air Quality, of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR) in not less than fifteen (15) days from the date of publication of this notice in the D.C. Register.

The proposed rules would amend 20 DCMR Chapter 3 (Operating Permits) by adding a new section 307 to require that increased emission fees be paid by each major stationary source of VOCs and NO_x if the District of Columbia fails to meet the national ambient air quality standards ("NAAQS") for ozone by November 2005. In January 2003 the Environmental Protection Agency ("EPA") classified the District of Columbia as a "severe non-attainment area" for ozone. Sections 182 and 185 of the federal Clean Air Act, 42 U.S.C. 7511a and 7511d, require that severe non-attainment areas that fail to attain NAAQS for ozone by the applicable attainment date shall impose a fee on each major stationary source located in the non-attainment area. The fee is to be paid to the District as computed in accordance with Section 185(b) of the federal Clean Air Act, for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for the NAAQS ozone.

There is good cause for a shortened notice of publication in the D.C. Register because the federal Clean Air Act requires implementation of the proposed rules by March 2004 due to the District's redesignation of severe non-attainment for ozone. There is also good cause for a shortened notice of publication in the D.C. Register because the public has already had an opportunity to review the proposed rulemaking, submit written comments, and testify at a public hearing on this matter. The proposed rules have been available for public review since December 19, 2003 at the offices of the Environmental Health Administration ("EHA"), 51 N Street, NE, Room 6051, Washington, D.C. 20002, and at the following D.C. Public Library branches: 901 G Street, NW; Connecticut Avenue & McKinley Street, NW; 37th Street & Alabama Avenue, SE; Wisconsin Avenue & R Street, NW; and 18th Street & Rhode Island Avenue, NE. In addition, a public hearing was held on January 20, 2004, in the Old City Council Chambers in One Judiciary Square, 441 4th Street, NW, Washington, D.C., and the proposed rules were previously published in the D.C. Register on February 6, 2004. The rules are being re-proposed to reflect comments received from EPA.

As the proposed rules are necessary to comply with federal requirements needed to implement the District's comprehensive air pollution control program, pursuant to the Act (D.C. Official Code § 8-101.06(b)), they are being transmitted to the Council of the District of Columbia, and will not become effective until the end of the fifteen day (15) comment period, the expiration of the forty-five (45) 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), SUBTITLE A: AIR QUALITY, CHAPTER 3 (OPERATING PERMITS) is amended by adding a new section as follows:

307 ENFORCEMENT FOR SEVERE OZONE NONATTAINMENT AREAS

307.1 Pursuant to Section 182 (d) of the federal Clean Air Act, 42 U.S.C. 7511a, if the United States Environmental Protection Agency ("EPA") determines that the District of Columbia has failed to attain the national primary ambient air quality standard for ozone (O₃) by the applicable attainment date for severe ozone nonattainment areas, the owners or operators of each major stationary source of oxides of nitrogen (NO_x) or volatile organic compounds (VOCs) located in the District of Columbia shall, except as otherwise provided under subsection 307.2, pay a fee to the District of Columbia, for NO_x emissions if the stationary source qualifies as major with respect to NO_x emissions, or for VOC emissions if the stationary source qualifies as major with respect to VOC emissions, computed in accordance with paragraphs (a), (b), and (c) of this subsection, for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone;

- (a) The fee shall equal five thousand dollars (\$5,000), adjusted in accordance with paragraph (c), per ton of NO_x or VOC emitted by the source during the calendar year in excess of eighty percent (80%) of the baseline amount, computed under paragraph (b);
- (b) For purposes of this section, the baseline amount shall be computed as the lower of the amount of actual NO_x or VOC emissions or NO_x or VOC emissions allowed under the permit applicable to the source (or, if no such permit has been issued for the attainment year, the amount of NO_x or VOC emissions allowed under the State Implementation Plan) during the attainment year. Notwithstanding the preceding sentence, the baseline amount may be determined over a period of more than one calendar year in accordance with guidance issued by the EPA; and
- (c) The fee amount under paragraph (a) shall be adjusted annually, beginning in calendar year 1991, in accordance with the federal Clean Air Act section 502(b)(3)(B)(v), 42 U.S.C. 7661a(b)(3)(B)(v), relating to inflation adjustment.

307.2 Notwithstanding any provision of this section, no source shall be required to pay any fee under subsection 307.1 with respect to emissions during any year that is treated as an extension year under the federal Clean Air Act section 181(a)(5), 42 U.S.C. 7511(a)(5).

307.3 Any fees, penalties, and interest collected under this section shall be deposited in a special fund in the District of Columbia Treasury and shall be utilized solely to cover all reasonable direct and indirect costs required to support the air quality program as set forth in Chapter 3.

All persons desiring to comment on the proposed rulemaking shall submit written comments no later than fifteen (15) days after the date of publication of this notice in the D.C. Register, to Mr. Stanley Tracey, DC Department of Health, Air Quality Division, 51 N Street, N.E., 5th 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. at the address listed above.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the intent to adopt an amendment to section 901 of Chapter 9, Title 29 of the District of Columbia Municipal Regulations (DCMR) entitled "Medically Needy Income Levels". The proposed rules would clarify that the medically needy income levels for the District Medicaid Program shall be equal to 50% of the federal poverty level (FPL) set forth each year by the United States Department of Health and Human Services.

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

Amend section 901 (Medically Needy Income Levels) of Chapter 9, Title 29 DCMR by deleting subsection 901.1 in its entirety and replacing it with the following:

901.1 The medically needy income levels (MNIL) for each household size in the District of Columbia shall equal fifty percent (50%) of the poverty guideline for the same household size as set forth in the Poverty Guidelines for the 48 Contiguous States and the District of Columbia issued by the United States Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. The MNIL for a household of one shall equal ninety-five percent (95%) of the MNIL for a household of two.

Comments on the proposed rules should be sent in writing to Robert Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, not later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

**DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE AND SECURITIES REGULATION**

NOTICE OF PROPOSED RULEMAKING

The Commissioner of the Department of Insurance and Securities Regulation, pursuant to the authority set forth in Section 12 of the Long-Term Care Insurance Act of 2000, effective May 23, 2000, D.C. Law 13-121, D.C. Official Code § 31-3601 *et seq.* (2002), as amended by the Long-Term Care Conformity Amendment Act of 2002, effective October 10, 2002, D.C. Law 14-190 ("Act"), gives notice of his intent to add a new Chapter 26, entitled Long Term Care Insurance, to Title 26 of the D.C. Municipal Regulations (Insurance), in not less than thirty days from the date of publication of this notice in the *District of Columbia Register*. The purpose of this new chapter is to implement the Act to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverage, and to facilitate flexibility and innovation in the development of long-term care insurance. This Notice of Proposed Rulemaking supercedes the notice as published in the *D.C. Register* at 48 DCR 478 (January 19, 2001). Comments were received and revisions were made based upon those comments.

Title 26 DCMR (Insurance) is amended by adding a new Chapter 26, Long Term Care Insurance.

2600 Applicability and Scope

2600.1 Except as otherwise specifically provided, this regulation applies to all long-term care insurance policies and life insurance policies that accelerate benefits for long-term care delivered or issued for delivery in the District of Columbia on or after the effective date by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations.

2600.2 Additionally, this regulation is intended to apply to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance, under the following conditions:

- a. If the benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services;
- b. If the disability income policy is advertised, marketed or offered as insurance for long-term care services; or

- c. If benefits under the policy may commence after the policyholder has reached Social Security's normal retirement age unless benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

2601 Exceptional Increases

2601.1 "Exceptional increase" - only those increases filed by an insurer as exceptional for which the Commissioner determines the need for the premium rate increase is justified for the following reasons:

- (a) Due to changes in laws or regulations applicable to long-term care coverage in the District of Columbia; or
- (b) Due to increased and unexpected utilization that affects the majority of insurers of similar products.

2601.2 Except as provided in section 2617, exceptional increases are subject to the same requirements as other premium rate schedule increases.

2601.3 The Commissioner may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.

2601.4 The Commissioner, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

2602 Policy Practices and Provisions

2602.1 The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of section 2605 of this regulation.

2602.2 A policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable" provisions.

2602.3 The term "guaranteed renewable" shall be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.