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 Section 2 of the Towing Vehicles Rulemaking Authority Continuation Temporary Act of 2002, effective April 2, 2003 (D.C. Law 14-277; D.C. Official Code §47-2850), and Mayor's Order 2003-78, dated June 26, 2003, hereby gives notice of the intent to adopt in not less than 15 calendar days the following amendments to Chapter 4 of Title 16 of the District of Columbia Municipal Regulations (DCMR), Towing Service for Motor Vehicles, which were published as final rules on May 23, 2003 (50 DCR 3935).

There is good cause for less than a 30-day public comment period because there is concern that consumers of towing services are being overcharged by some towing businesses for the services, and the Director has determined that it is in the public interest to take expeditious action to establish maximum rates for public towing services.

The proposed rules amend Chapter 4, Title 16 DCMR, Towing Service for Motor Vehicles, to provide: (1) the specific manner in which storage lot operators shall notify the Department of Public Works when releasing public tow vehicles; (2) the forms of payment for services that must be accepted by towing businesses and storage lot operators; (3) the minimum bond amount required of licensees; and (4) the maximum rates for public towing services in the District of Columbia.

Pursuant to Section 2 of the Towing Vehicles Rulemaking Authority Continuation Temporary Act of 2002, the proposed rulemaking is being transmitted to the Council of the District of Columbia for a 45-day period of review. The proposed rules will become effective in not less than 15 days from the publication of this notice in the *D.C. Register,* or upon approval by the Council by resolution, whichever occurs later, and publication of the final rules in the *D.C. Register*. If the Council does not approve or disapprove the proposed rules, in whole or in part, within the forty-five (45) day period, the proposed rules shall be deemed disapproved.

The following sections of Title 16 DCMR (Consumers, Commercial Practices & Civil Infractions) (July 1998), Chapter 4 are amended to read as follows:

402 LICENSES REQUIRED FOR TOWING BUSINESSES AND TOWING SERVICE STORAGE LOTS

402.3 Each person or entity making application for a Master Business License Endorsement for a Towing Business shall submit relevant information requested by the Director, in a form and manner specified by the Director, which information shall include the following:

* * *

(h) A bond in the minimum amount of $50,000.00; and

* * *

406 PUBLIC TOWS

406.9 Operators of storage lots shall notify the Department of Public Works ("DPW") prior to releasing a public tow vehicle by calling (202) 541-6075.

408 PAYMENT FOR SERVICES

408.1 The maximum rates that may be charged for all public tows initiated within the District of Columbia, and for all other services, including vehicle storage charges, related to public tows shall be as follows:

(a) $50 for providing Road Service for all vehicles, including all services provided to restore and or maintain operation of a vehicle, including services such as repairing tires, recharging batteries, and delivering gasoline;

(b) For Standard Towing Services for any passenger vehicle or any other vehicle with a Gross Vehicle Weight of 8,000 pounds, or less:

(1) $100.00 for Preparation, hoist and tow to location within the District (Roll-back or wheel lift-use of dollies included);

(2) $3.00 for Towing charge per mile outside of the District (at owner's request); and

(3) $20.00 for Storage, per 24-hour period, or part thereof.

(c) For Heavy-Duty Towing to any Location within the District of any vehicle with a Gross Vehicle Weight over 8,000 pounds:

(1) $275.00 for Preparation, hoist, and tow to a location within the District (Rollback or wheel lift - use of dollies included);

(2) $6.00 for Towing charge per mile outside of the District (at owner's request); and

(3) $20.00 for Storage per 24-hour period, or part thereof.

(d) $50.00 for Discontinuance Fee ("Drop Fee") that is charged when the Operator of a vehicle that is to be towed asks that the tow be discontinued and the police officer or other official who requested the tow agrees to discontinue the tow.

408.8 Towing businesses and towing services storage lots shall accept as payment for public towing and storage charges, cash, insurance draft, certified check, bank check, money order, and at least two (2) of the most widely-used, nationally-recognized credit cards.

Persons desiring to comment on these proposed regulations should submit comments in writing to Karen Edwards, General Counsel, Department of Consumer and Regulatory Affairs, Suite 9400, 941 North Capitol Street, N.E., Washington, D.C. 20002, not later than fifteen (15) calendar 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 ($1.00) will be charged for each requested copy of the proposed rulemaking.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

CIVIL INFRACTIONS: SCHEDULE OF FINES AMENDMENTS

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in Section 33 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990, effective March 8, 1991 (D.C. Law 8-237; 16 DCMR §§ 411.10 and 411.11); Section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04); Mayor's Order 99-68, dated April 28, 1999; and the Towing Vehicles Rulemaking Authority Continuation Temporary Act of 2002, effective April 2, 2003 (D.C. Law 14-277; D.C. Official Code § 47-2850), hereby gives notice of the intent to adopt the following amendments to Chapter 32 of Title 16 of the District of Columbia Municipal Regulations in not less than five (5) calendar days from the date of publication of this notice in the D.C. Register. These rules will become effective upon publication of the final rules in the D.C. Register, or upon approval of the proposed rules by the Council of the District of Columbia, whichever occurs later.

There is good cause for the five (5) calendar days comment period because the Towing Service for Motor Vehicles Regulations became effective on June 16, 2003 (50 DCR 2473). In order to enforce the towing rules that are already in effect, it is necessary to establish the civil fines for violations of the towing rules as soon as possible. In addition, the rules to establish the civil fines have already been published as a Notice of Proposed Rulemaking in the D.C. Register on May 23, 2003 (50 DCR 3995). The Director has made the following changes to the previous Notice of Proposed Rulemaking: Reserved section 3210.1; transferred Class 1 infractions into the Class 2 infractions section, until further notice; and reclassified the violation of 16 DCMR § 402.4(b)(2) from a Class 2 to a Class 3 violation.

This proposed rulemaking will add a new section of infractions to the Civil Infractions Schedule of Fines (16 DCMR 32) for violations of 16 DCMR, Chapter 4–Towing Service for Motor Vehicles.

Chapter 32 of Title 16 DCMR (Consumers, Commercial Practices & Civil Infractions) (July 1998), is amended as follows to add:

3210 DCRA OFFICE OF INVESTIGATION, WEIGHTS AND MEASURES – TOWING SERVICE FOR MOTOR VEHICLES INFRACTIONS

3210.1 [Reserved].

3210.2 Violation of any of the following provisions shall be a Class 2 infraction:

(a) 16 DCMR § 401.2 (failure to permit inspection by an authorized government official, including inspecting and photographing of towing

equipment, tow trucks, towing storage lots, logs and documents related to towing services initiated in the District);

(b) 16 DCMR § 401.3 (failure to permit inspection of a towing service storage lot by officials of DCRA and other authorized government agencies);

(c) 16 DCMR § 401.4 (interfering with an authorized inspection);

(d) 16 DCMR § 401.5 (failure to surrender records upon lawful demand by an authorized government official);

(e) 16 DCMR § 401.6 (submitting towing service records that were created after demand for inspection by an authorized government official; or, creating towing service records after an authorized government official demands an inspection);

(f) 16 DCMR § 402.1 (owning a towing business without proper licensure);

(g) 16 DCMR § 402.2 (owning a towing service storage lot without proper licensure);

(h) 16 DCMR § 402.4(a) (unauthorized location of a towing service storage lot);

(i) 16 DCMR § 402.4(b)(1) (assessing excess charges to vehicle owner or operator);

(j) 16 DCMR § 402.4(b)(3) (failure to grant access to authorized government agency or official for inspection or photographing of any vehicle(s) on a towing service storage lot);

(k) 16 DCMR § 402.7 (failure to provide updated information to DCRA within 14 (fourteen) days of change);

(l) 16 DCMR § 402.8 (failure to identify person with financial interest in towing business or storage lot);

(m) 16 DCMR § 402.9 (owning or operating a towing business or truck, or towing service storage lot within five (5) years of specified auto related misdemeanor or felony);

(n) 16 DCMR § 403.1 (operating or using a tow truck without an authorized unique identifier);

(o) 16 DCMR § 403.4 (failure to display license in manner specified by the Director);

(p) 16 DCMR § 404.1 (failure to maintain at least one fully equipped and licensed tow truck);

(q) 16 DCMR § 404.2 (failure to mark cab of tow truck with trade name, primary location and primary telephone number, as specified);

(r) 16 DCMR § 404.3 (failure to mark cab of tow truck with private towing and storage fees, as specified);

(s) 16 DCMR § 404.4 (failure to mark cab of tow truck with alphanumeric identifier, as specified);

(t) 16 DCMR § 404.5 (failure to equip tow truck with operable communication system, as specified; or, failure to produce a current permit and license, as required, to operate the communications system);

(u) 16 DCMR § 404.11 (improper use of equipment while towing; or, towing without manufacturer's minimally specified equipment for a particular vehicle);

(v) 16 DCMR § 405.1 (failure to secure storage lot; or, failure to provide descriptive signage on lot; or, failure to comply with other District laws, regulations and zoning rules);

(w) 16 DCMR § 405.5 (release of vehicle to unauthorized person);

(x) 16 DCMR § 406.3 (failure to obtain a towing control number);

(y) 16 DCMR § 406.4 (failure to provide information to DPW before initiating a tow from private real property);

(z) 16 DCMR § 406.7 (towing from private property without consent of the owner and without a citation for the vehicle issued by law enforcement personnel; or, towing from private property without being directed by a police officer in an emergency; or, failure to comply with provisions of D.C. Official Code §§ 50-2651 through 50-2654 (2001));

(aa) 16 DCMR § 408.2 (charging rates for private tows that exceed the rates specified in the application for the current Master Business License or Endorsement);

(bb) 16 DCMR § 408.4 (charging for storage service on day(s) facility was not open for business);

(cc) 16 DCMR § 408.5 (charging for towing service, in response to a dispatch, after authorized official determines that service is not required);

(dd) 16 DCMR § 408.6 (failure to discontinue tow and release vehicle after payment of lawful rate (and concurrence of requesting official, if present));

(ee) 16 DCMR § 408.8 (failure to accept lawful payment for towing services rendered);

(ff) 16 DCMR § 408.10 (performing repair work on a public tow vehicle without written consent of the owner or owner's agent);

(gg) 16 DCMR § 409.3 (charging for services not provided);

(hh) 16 DCMR § 409.6 (assessing charges for providing unnecessary services; or, assessing charges for the use of unnecessary equipment);

(ii) 16 DCMR § 409.7 (failure to release vehicle after tender of lawful payment by owner or owner's agent);

(jj) 16 DCMR § 410.1 (operating or offering to engage in the towing business without valid licensure; or, operating a towing storage lot without valid licensure);

(kk) 16 DCMR § 410.3 (unauthorized removal of vehicle involved in accident);

(ll) 16 DCMR § 410.9 (soliciting or providing unauthorized towing service at the scene of an accident);

(mm) 16 DCMR § 410.10 (depositing a vehicle that is inoperable or in disrepair upon public space, without direction from an authorized official; or, depositing a vehicle that is inoperable or in disrepair upon private property without permission of the owner of the property); and

(nn) 16 DCMR § 410.11 (failure to provide an itemized receipt for charges related to towing or storing of a vehicle);

(oo) 16 DCMR § 410.12 (charging rates in excess of those set by the Director for public tows);

(pp) 16 DCMR § 410.14 (failure to surrender suspended, revoked or canceled license or endorsement);

(qq) 16 DCMR § 410.15 (failure to obtain a towing control number before initiating a public tow);

(rr) 16 DCMR § 410.16 (permitting the unlawful use of a towing license or endorsement; or, the unlawful use of a towing license or endorsement);

(ss) 16 DCMR § 411.3 (failure to appear when summoned by the Director);

(tt) 16 DCMR § 411.8 (performing towing services, including operating a towing service storage lot, without a license or endorsement; or, performing towing services, including operating a towing service storage lot, with a license that has been revoked, cancelled or suspended); and

(uu) 16 DCMR § 411.9 (failure to remove accident debris from roadway before towing a vehicle involved in a collision).

3210.3 Violation of any of the following provisions shall be a Class 3 infraction:

(a) 16 DCMR § 400.8 (failure to provide insurance information, as requested);

(b) 16 DCMR § 402.4(b)(2) (assessing charges for return of towed vehicle to the District; or, failure to return towed vehicle within one hour);

(c) 16 DCMR § 402.4(c) (failure to report discontinuance of availability of towing storage lot to Director at least 10 (ten) days prior to discontinuance);

(d) 16 DCMR § 405.4 (failure to clearly identify business that towed vehicle);

(e) 16 DCMR § 405.6 (failure to provide "Owner's Bill of Rights" to vehicle owner or operator before tow; or, failure to post "Owner's Bill of Rights at towing service storage lot; or, failure to provide "Owner's Bill of Rights" to the person to whom vehicle is released);

(f) 16 DCMR § 406.3 (failure to display towing control number as prescribed by DPW; or, failure to use towing control number on documents related to the tow);

(g) 16 DCMR § 406.5 (failure to obtain towing control number after emergency; or, failure to provide information as required after an emergency);

(h) 16 DCMR § 406.8 (failure to take precautions to protect persons or property; or, failure to provide sufficiently trained personnel);

(i) 16 DCMR § 406.9 (storage lot owner: failure to notify DPW when releasing a public tow vehicle);

(j) 16 DCMR § 407.2 (initiating the private tow of a vehicle without written consent, as specified);

(k) 16 DCMR § 408.5 (failure to notify DPW when dispatched to a public tow that is discontinued; or, failure to notify DPW when a public tow is discontinued at the owner or operator's request (and concurrence of the requesting official, if present));

(l) 16 DCMR § 408.7 (failure to release vehicle to authorized person when presented with proof of personal identification and lawful payment);

(m) 16 DCMR § 408.9 (upon release of vehicle: failure to provide Owner Bill of Rights; or, failure to provide legal authority for towing of vehicle; or, failure to provide itemized charges; or, failure to provide a receipt);

(n) 16 DCMR § 408.11 (failure to provide separate form for written authorization of repair work);

(o) 16 DCMR § 409.1 (for private tow: failure to furnish an itemized estimate of charges; or, failure to furnish an itemized estimate of charges on approved form; or, failure to obtain signature of owner or operator before initiating tow);

(p) 16 DCMR § 409.3 (failure to document actual amount paid; or, failure to sign receipt);

(q) 16 DCMR § 410.4 (soliciting or requiring repair work as a condition for towing of vehicle);

(r) 16 DCMR § 410.5 (removing a vehicle from the scene of an accident or event and depositing it upon public space, without direction from a police officer);

(s) 16 DCMR § 410.6 (charging more than one towing fee for towing to a repair facility owned or operated by person or entity conducting tow);

(t) 16 DCMR § 410.7 (towing to a repair facility without prior written consent);

(u) 16 DCMR § 410.8 (installing or maintaining a receiver capable of tuning to MPD radio frequencies); and

(v) 16 DCMR § 410.17 (using unsafe tow truck or equipment; or, towing in an unsafe manner).

3210.4 Violation of any of the following provisions shall be a Class 4 infraction:

(a) 16 DCMR § 405.2(b), (c), (d) (failure to maintain a log; or, failure to properly record entries in log; or, failure to retain log for inspection three (3) years after last entry);

(b) 16 DCMR § 408.3 (failure to obtain Director's approval to assess extra charges resulting from extraordinary circumstances);

(c) 16 DCMR § 408.12 (using improper form to obtain consent for repair work on a public tow vehicle);

(d) 16 DCMR § 409.2 (failure to provide complete information in itemized estimate of charges);

(e) 16 DCMR § 409.4 (failure to exhibit statements or receipts upon request; or, failure to retain statements and receipts for 3 (three) years from date of issuance); and

(f) 16 DCMR § 410.2 (misrepresentation).

3210.5 Violation of any of the following provisions shall be a Class 5 infraction:

(a) 16 DCMR § 404.6 (failure to maintain tie-down devices, chains, or straps, as specified);

(b) 16 DCMR § 404.7 (engaging in recovery towing without proper equipment, as specified);

(c) 16 DCMR § 404.8 (operating a crane tow truck without proper equipment, as specified);

(d) 16 DCMR § 404.9 (operating wheel lift tow truck without proper equipment, as specified);

(e) 16 DCMR § 404.10(a-h) (failure to maintain equipment in good working order); and

(f) 16 DCMR § 410.13 (refusing to allow inspection of vehicle before payment of fees and release of vehicle).

Persons desiring to comment on these proposed regulations should submit comments in writing to Karen Edwards, General Counsel, Department of Consumer and Regulatory Affairs, Suite 9400, 941 North Capitol Street, N.E., Washington, D.C. 20002, not later than five (5) calendar 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 ($1.00) will be charged for each requested copy of the proposed rulemaking.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02 (14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take rulemaking action to adopt the following amendments for Chapter 66 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The purpose of this rulemaking is to clearly delineate the standards of ethical conduct for the practice of Professional Counseling.

Chapter 66 (Professional Counseling) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended to read as follows:

Section 6609 is amended to read as follows:

6609 Standards of Conduct

6609.1 Licensed professional counselors shall not discriminate against clients because of age, color, culture, disability, ethnic group, gender, race, religion, sexual orientation, marital status, or socioeconomic status.

6609.2 Licensed professional counselors shall inform clients, preferably in writing, regarding the counseling process and counseling relationship at or before the time it begins and throughout the relationship.

6609.3 Licensed professional counselors shall make every effort to avoid dual relationship with clients that could impair their professional judgment or increase the risk of harm to clients. When a dual relationship cannot be avoided, licensed professional counselors shall take appropriate steps to ensure that their judgment is not impaired and that no exploitation occurs.

6609.4 Licensed professional counselors shall not engage in any type of sexual intimacies with current clients and shall not engage in sexual intimacies with former clients within a minimum of two years after terminating the counseling relationship. Licensed professional counselors who engage in such relationship after two years following termination shall have the responsibility to thoroughly examine and document that such relations did not have an exploitative nature.

6609.5 Licensed professional counselors shall take steps to protect clients from physical or psychological trauma resulting from interactions during group work.

6609.6 Licensed professional counselors shall explain to clients, prior to their entering the counseling relationship, financial arrangements related to professional services.

6609.7 Licensed professional counselors shall assist in making appropriate arrangements for the continuation of treatment of clients, when necessary, following termination of counseling relationship.

6609.8 Licensed professional counselors shall avoid entering or immediately terminating a counseling relationship if it is determined that they are unable to be of professional assistance to a client. The counselors shall assist in making an appropriate referral to the client.

6609.9 Licensed professional counselors shall keep information related to counseling services confidential unless disclosure is in the best interest of clients, is required for the welfare of others, or is required by law.

6609.10 Licensed professional counselors shall take measures to ensure that subordinates maintain privacy and confidentiality.

6609.11 Licensed professional counselors shall clearly communicate to group members that confidentiality cannot be guaranteed in groupwork.

6609.12 Licensed professional counselors shall not disclose information about one family member in counseling to another family member without prior consent.

6609.13 Licensed professional counselors shall maintain appropriate confidentiality in creating, storing, accessing, transferring and disposing of counseling records.

6609.14 Licensed professional counselors shall obtain prior consent from clients in order to electronically record or observe sessions.

6609.15 Except as provided in § 6609.9, licensed professional counselors shall obtain client consent to disclose or transfer records to third parties.

6608.16 Licensed professional counselors shall disguise the identity of the client when using data for training, research or publication.

6608.17 Licensed professional counselors shall practice only within the boundaries of their competence.

6608.18 Licensed professional counselors shall in engage in continuing education to maintain their professional competence.

6609.19 Licensed professional counselors shall refrain from offering professional services when their personal problems or conflicts may cause harm to a client or others.

6609.20 Licensed professional counselors shall accurately represent their credentials and services when advertising.

6609.21 Licensed professional counselors shall not use their place of employment or institutional affiliation to recruit clients for their private practice.

6609.22 Licensed professional counselors shall claim or imply only professional credentials possessed and shall correct any known misrepresentation of their credentials by others.

6609.23 Licensed professional counselors shall not engage in sexual harassment.

6609.24 With the consent of the client, licensed professional counselors shall inform other mental health professionals serving the same client that a counseling relationship between the counselor and client exists.

6609.25 Licensed professional counselors shall alert their employers to institutional policy or conditions that may be potentially disruptive or damaging to the counselors' professional responsibilities or that may limit their effectiveness or deny clients' rights.

6609.26 Licensed professional counselors shall select competent staff and shall assign responsibilities compatible with staff skills and experiences.

6608.27 Licensed professional counselors shall not engage in exploitative relationships with individuals over whom they have supervisory, evaluative, or instructional control or authority.

6609.28 Licensed professional counselors shall not accept fees or other remuneration for consultation with persons entitled to such services through the counselors' employing agency or institution.

6609.29 Licensed professional counselors shall not accept referral fees.

6608.30 Licensed professional counselors shall perform only testing and assessment services for which they are competent.

6608.31 Licensed professional counselors shall not allow the use of psychological assessment techniques by unqualified persons under their supervision.

6609.32 Licensed professional counselors shall use assessment instruments in the manner for which they were intended.

6609.33 Licensed professional counselors shall provide explanations to clients prior to assessment about the nature and purposes of assessment and the specific uses of results.

6609.34 Licensed professional counselors shall ensure that accurate and appropriate interpretations accompany any release of testing and assessment information.

6609.35 Licensed professional counselors shall not base their assessment or intervention decisions or recommendations on data or test results that are obsolete or outdated for the current purpose.

6609.36 Licensed professional counselors shall not engage in sexual relationships with their students and supervisees.

6609.37 Licensed professional counselors shall give credit to students or supervisees for their contributions to research and scholarly projects.

6609.38 Licensed professional counselors who offer clinical supervision services shall be trained and prepared in supervision methods and techniques.

6609.39 Licensed professional counselors shall clearly state to students and supervisees in advance of training, the levels of competency expected, appraisal methods, and timing of evaluations. Counselors shall provide students and supervisees periodic performance appraisals and evaluation feedback throughout the training program.

6609.40 Licensed professional counselors shall make every effort to ensure that the rights of peers are not violated when students and supervisees are assigned to lead counseling groups or provide clinical supervision.

6609.41 Licensed professional counselors shall assist students and supervisees in securing remedial assistance, when needed, and shall dismiss from the training program students and supervisees who are unable to provide competent services due to academic or personal limitations.

6609.42 Licensed professional counselors who conduct experiences for students or supervisees that include self-growth or self-disclosure shall inform participants of counselors' ethical obligations to the profession and shall not grade participants based on their nonacademic performance.

6609.43 Students and supervisees preparing to become licensed professional counselors shall adhere to the Code of Ethics and the Standards of Practice of counselors.

6609.44 Licensed professional counselors shall avoid causing physical, social or psychological harm or injury to subjects of research.

6609.45 Licensed professional counselors shall keep confidential information obtained about research participants.

6609.46 Licensed professional counselors shall report all variables and conditions known to the investigators that may affect research data or outcomes.

6609.47 Licensed professional counselors shall not distort or misrepresent research data or fabricate or intentionally bias research results.

6609.48 Licensed professional counselors shall give appropriate credit to those who have contributed to research.

6609.49 Licensed professional counselors shall take appropriate action when they reasonably believe that a counselor or other mental health professionals are acting in an unethical manner.

6609.50 Licensed professional counselors shall not initiate, participate in, or encourage the filing of ethical complaints that are unwarranted, or intended to harm a mental health professional rather than to protect clients or the public.

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

DISTRICT OF COLUMBIA
DEPARTMENT OF MOTOR VEHICLES

NOTICE OF PROPOSED RULEMAKING

The Acting Director of the Department of Motor Vehicles, pursuant to the authority set forth in Section 1425 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999, 45 DCR 4794 (D.C. Law 12-175; D.C. Official Code § 50-901 et seq.) (2001 Ed.); Mayor's Order 94-176, effective August 19, 1994; and 18 DCMR § 411.13 hereby gives notice of the intent to adopt the following rulemaking that amends Chapter 4 of Title 18 of the District of Columbia Municipal Regulations (DCMR) (Vehicles and Traffic). The amendment will establish a reinstatement fee for persons who seek to reinstate their motor vehicle registration after it has been suspended or revoked. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Title 18, DCMR, is amended as follows:

Section 411, REGISTRATION OF MOTOR VEHICLES: GENERAL PROVISIONS, subsection 411.13, paragraph (c) is amended by inserting the figure "of ninety eight dollars ($98)" after the phrase "has paid the reinstatement fee".

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing to the Angell Jacobs, D.C. Department of Motor Vehicles, 301 C Street, N.W., Washington, D.C. 20001. Comments must be received not later than thirty (30) days after the publication of this notice in the D.C. Register. Copies of this proposal may be obtained, at cost, by writing to the above address.

D.C. OFFICE OF PERSONNEL

NOTICE OF PROPOSED RULEMAKING

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with §§ 906 and 1059 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-609.06 and 1-610.59 (2001)) (the "CMPA"), as amended by the Excepted and Executive Service Domicile Requirement Amendment Act of 2002, effective October 1, 2002 (D.C. Law 14-185; 49 DCR 6073) and § 43 of the Technical Amendments Act of 2002, effective October 19, 2002 (D.C. Law 14-213; 49 DCR 8140) (collectively, hereinafter referred to as the "Domicile Acts"), and approved by Council Resolution 15-142 (deemed approved on June 13, 2003, hereby gives notice of the intent to adopt the following rules in no less than thirty (30) days from the publication of this notice in the *D.C. Register*. These rules will amend Chapter 3 of the *D.C. Personnel Regulations*, Residency, to implement the provisions of the Domicile Acts, which establish a domicile requirement for persons appointed to the Excepted and Executive Services on or after October 1, 2002, define the term "domicile," provide that the personnel authority may grant waivers of the domicile requirement for appointees to positions in the Excepted and Executive Services presenting exceptional circumstances or for appointees to hard to fill positions, define the terms "hard to fill position" and "exceptional circumstances" for the granting of waivers of the domicile requirement, and provide a list of documents that appointees to the Excepted and Executive Services shall submit to the personnel authority as proof of domicile in addition to the requirements in renumbered § 306.3 of the *D.C. Personnel Regulations*. These rules also establish that a person serving in acting or interim capacity in an Executive Service position shall become subject to the domicile requirement upon confirmation by the Council and promulgation of a Mayor's Order or personnel action appointing him or her to the Executive Service position, and revise and update the chapter in general. Upon adoption, these rules will amend Chapter 3 of the *D.C. Personnel Regulations*, Residency, published at 37 DCR 851 (January 26, 1990) and amended at 37 DCR 4117 (June 22, 1990), 40 DCR 2485 (April 16, 1993), and 47 DCR 2416 (April 7, 2000).

CHAPTER 3

RESIDENCY

Chapter 3 of the D.C. Personnel Regulations is amended as follows:

300 APPLICABILITY

300.1 The requirements set forth in this chapter shall apply to any applicant for or any person occupying a position in the Career Service, Legal Service, including the Senior Executive Attorney Service, Excepted Service, Management Supervisory Service, or Executive Service as specifically provided herein.

301 RESIDENCY PREFERENCE

301.1 A person who applies for employment in the Career Service or the Management Supervisory Service and who is a bona fide resident of the District of Columbia may claim a residency preference at the time of application.

301.2 An employee who applies for a competitive promotion in the Career Service or the Management Supervisory Service and who is a bona fide resident of the District of Columbia may claim a residency preference at the time of application.

301.3 When residency preference is claimed pursuant to § 301.1 or 301.2, proof of bona fide residency shall be submitted upon selection for the position.

301.4 Except as provided in § 301.14, an applicant for a position in the Career Service or the Management Supervisory Service who claims a residency preference and is selected for the position shall agree in writing at the time of appointment to maintain bona fide District residency for a period of five (5) consecutive years from the effective date of appointment.

301.5 Except as provided in § 301.14, an employee who claims a residency preference in applying for a competitive promotion and is selected for the position shall agree in writing no later than the day before the effective date of appointment to maintain bona fide District residency for a period of five (5) consecutive years from the effective date of appointment.

301.6 The requirement to maintain bona fide District residency as provided in §§ 301.4 and 301.5 shall be applicable to any applicant or employee who claims a residency preference and is selected for the position on or after March 16, 1989.

301.7 Failure to maintain bona fide District residency as provided in § 301.4, 301.5, or 301.6 shall result in forfeiture of employment.

301.8 Except as provided in § 301.9, residency preference shall be given by adding five (5) points to the rating and ranking score of each qualified applicant claiming or entitled to residency preference.

301.9 When all applicants are employees of the District government or when there are no qualified outside candidates who claim preference, no points shall be afforded to any qualified applicant who claims or is entitled to preference.

301.10 To fill a position in the Career Service or the Management Supervisory Service where two (2) or more applicants are equally qualified, the applicant with residency preference shall be listed and selected ahead of the non-preference candidate, with the determination as to equal qualifications made as follows:

(a) For an unassembled examining procedure, all applicants with the same categorical ranking; and

(b) For an assembled examining procedure, all applicants with the same numerical rating.

301.11 Each applicant for a position in the Career Service or the Management Supervisory Service shall be informed in writing by the personnel authority of the provisions of §§ 301.1 through 301.10.

301.12 Each person who claims a residency preference and who is selected for a position in the Career Service or the Management Supervisory Service shall be informed, in writing, by the personnel authority, no later than the effective date of the appointment, of the requirement to maintain bona fide District residency for a period of five (5) consecutive years from the effective date of appointment and that failure to do so shall result in forfeiture of employment.

301.13 For the purpose of this section, in order to be a bona fide resident of the District of Columbia, a person must maintain a place of abode in the District of Columbia as his or her actual, regular, and principal place of residence and must have the intent to remain in the District for a minimum of five (5) consecutive years from the date of appointment.

301.14 Notwithstanding any other provision of this chapter, any person who meets either of the following criteria shall be granted a residency preference, as provided in § 301.15, upon application for a competitive promotion in the Career Service or the Management Supervisory Service:

(a) Any person who was employed by the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or

(b) Pursuant to the provisions of § 7 of the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (P.L. 98-621; 98 Stat. 3376; 24 U.S.C. § 225e(b)) (P.L. 98-621), any former employee of the U.S. Department of Health and Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.

301.15 The entitlement to a residency preference pursuant to § 301.14 shall be granted if at least one (1) of the qualified applicants for the position has claimed a residency preference.

301.16 Each applicant for appointment or promotion shall be required to indicate at the time of application his or her claim or entitlement to residency preference in a manner prescribed by the Mayor.

301.17 The provisions of this section shall apply to Legal Service attorneys who are appointed competitively and who claim a residency preference at the time of application for positions in the Legal Service other than the Senior Executive Attorney Service.

302 RESIDENCY PREFERENCE IN EMPLOYMENT FOR ATTORNEYS IN THE EXCEPTED SERVICE

302.1 A person who applies for employment as an attorney in the Excepted Service and who is a bona fide resident of the District of Columbia may claim a residency preference at the time of application.

302.2 Each applicant for appointment as an attorney in the Excepted Service shall be required to indicate at the time of application his or her claim to residency preference.

302.3 When residency preference is claimed pursuant to § 302.2, proof of bona fide residency shall be submitted upon selection for the position.

302.4 Except as provided in § 302.8, an applicant who claims a residency preference and is selected for the position shall agree in writing to maintain bona fide District residency for a period of five (5) consecutive years from the effective date of appointment.

302.5 Any person who is appointed as an attorney in the Excepted Service after claiming residency preference and who thereafter fails to maintain bona fide District residency shall forfeit his or her position.

302.6 When two (2) or more applicants for one (1) attorney position in the Excepted Service are equally qualified, the personnel authority shall offer the position to the applicant or applicants claiming a residency preference before offering the position to an applicant not claiming a residency preference.

302.7 Each applicant for an attorney position in the Excepted Service shall be informed of the residency preference system as described in this section.

302.8 Notwithstanding any other provision of this chapter, any person who was employed by the District of Columbia government on December 31, 1979 and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date shall be granted a residency preference upon application for an attorney position in the Excepted Service.

303 RESIDENCY PREFERENCE IN REDUCTION IN FORCE

303.1 Preference shall be given in a reduction in force conducted pursuant to Chapter 24 of these regulations by adding three (3) years of service credit to the service computation date of all of the following:

(a) Each competing employee who is a bona fide resident of the District of Columbia;

(b) Each competing employee who is not a resident of the District of Columbia, but who was hired prior to January 1, 1980 and has continued employment without a break in service of one (1) workday or more since that date; and

(c) Each competing employee who is not a resident of the District of Columbia, but who was a former employee of the U.S. Department of Health & Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has continued employment without a break in service of one (1) workday or more since that date.

303.2 When the provisions of this section conflict with the provisions of an effective collective bargaining agreement, the provisions of the collective bargaining agreement shall govern to the extent that there is a conflict.

304 SENIOR EXECUTIVE ATTORNEY SERVICE RESIDENCY REQUIREMENT

304.1 Any attorney appointed to the Senior Executive Attorney Service under the authority of D.C. Official Code § 1-608.51 *et seq.* (2001) shall:

(a) Be a bona fide resident of the District of Columbia at the time of appointment and remain a District resident for the duration of employment; or

(b) Become a bona fide resident of the District of Columbia within one hundred eighty (180) days of his or her appointment and remain a District resident for the duration of employment.

304.2 Each person appointed to the Senior Executive Attorney Service shall be informed in writing by the personnel authority of the residency provisions of §§ 304.1 and 304.4 before the effective date of appointment.

304.3 On the date of appointment, each person appointed to the Senior Executive Attorney Service shall be informed in writing by the personnel authority of the residency provisions of §§ 304.1 and 304.4.

304.4 Failure to meet the residency requirement set forth in § 304.1 shall result in forfeiture of employment.

304.5 The residency requirement set forth in this section shall not apply to any person appointed to the Senior Executive Attorney Service who meets either of the following criteria:

(a) Any person who was employed by the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or

(b) Pursuant to the provisions of § 7 of P.L. 98-621, any former employee of the U.S. Department of Health and Human services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.

304.6 Upon request, the Director of Personnel may waive the residency requirement set forth in this section for a new hire appointed to a hard to fill position in the Senior Executive Attorney Service, as follows:

(a) The Corporation Counsel, another subordinate agency head, and any independent personnel authority subject to D.C. Official Code §§ 1-608.51 *et seq.* (2001), may request a waiver of the residency requirement to the Director of Personnel for a new hire appointed to a hard to fill position in the Senior Executive Attorney Service.

(b) For the purposes of this section, the term "hard to fill position" shall have the meaning ascribed in § 399 of this chapter, except that a Senior Executive Attorney Service position shall be designated as hard to fill only by the Director of Personnel.

(c) Any request for a waiver shall be in writing, made and granted before the effective date of appointment of the candidate for the waiver.

(d) Any request for a waiver shall include appropriate documentation and information to demonstrate that the position is hard to fill and justify consideration of the request. Appropriate documentation and information demonstrating that the position is hard to fill shall include but not be limited to:

(1) A statement containing the qualification requirements for the position, and explaining the uniqueness of the duties and responsibilities of the position and the unusual combination of highly specialized qualification requirements which make it hard to fill;

(2) A copy of the position description or statement of duties for the position;

(3) A copy of the recruitment plan for the position or a statement explaining the recruitment plan;

(4) Copies of any vacancy announcements and/or other types of advertisement issued and published for the position;

(5) A statement detailing any special outreach and recruitment efforts undertaken in trying to fill the position and the date on which recruitment efforts to fill the position began;

(6) The employment application or résumé of the person for which the waiver is being requested; and

(7) A statement explaining the reasons why the waiver should be granted.

304.7 Upon receipt of a request for a waiver pursuant to this section, the Director of Personnel shall promptly determine whether to grant the waiver and notify the requestor of the decision, in writing.

304.8 Any employee occupying a position in the Senior Executive Attorney Service for which a waiver of the residency requirement has been granted pursuant to § 304.6 shall be exempt from the residency requirement set forth in this section for as long as he or she continues to occupy that position.

305 EXCEPTED SERVICE AND EXECUTIVE SERVICE DOMICILE REQUIREMENT

305.1 Except as provided in §§ 305.8 and 305.9, any person who is appointed to a position in the Excepted Service, excluding attorneys in that service, or the Executive Service on or after October 1, 2002 shall meet one (1) of the following criteria:

(a) Be a domiciliary of the District of Columbia at the time of appointment and maintain such domicile for the duration of his or her employment; or

(b) Become a domiciliary of the District of Columbia within one hundred eighty (180) days of the date of his or her appointment and maintain such domicile for the duration of his or her employment.

305.2 Failure to meet the domicile requirement set forth in § 305.1 shall result in forfeiture of employment.

305.3 Notwithstanding the provisions of §§ 305.1 and 305.2, a person nominated to serve in an acting or interim capacity in an Executive Service position or appointed to an Excepted Service position requiring confirmation by the Council shall not become subject to the domicile requirement until after confirmation by the Council and promulgation of a Mayor's Order or a personnel action appointing him or her to the position. Specifically, such person shall become a domiciliary of the District of Columbia within one hundred eighty (180) days from the date specified in the Mayor's Order as the date of appointment, or from the effective date of the personnel action processed after Council confirmation to appoint him or her to the position, whichever occurs first. The personnel authority shall inform each employee to whom this subsection applies, in writing, of the exact date by which he or she shall meet the domicile requirement.

305.4 Except as provided in §§ 305.8 and 305.9, any employee in the Excepted or Executive Service who was hired prior to October 1, 2002, and who was required to be or become a bona fide resident of the District of Columbia within one hundred eighty (180) days of appointment and maintain that residency or forfeit employment, shall continue to be bound by the residency requirement that was in effect before October 1, 2002.

305.5 Each appointee to a position in the Excepted or Executive Service shall be informed in writing by the personnel authority of the provisions of §§ 305.1 and 305.2 before the effective date of appointment.

305.6 On the date of appointment, each person appointed to the Excepted or Executive Service shall be informed in writing by the personnel authority of the provisions of §§ 305.1 and 305.2.

305.7 District of Columbia domicile shall be proven by affirmative acts by an Excepted and Executive Service employee who is not a District domiciliary at the time of appointment. Proof of District of Columbia domicile shall be established and certified by meeting the requirements in §§ 306.4 and 306.6.

305.8 The domicile requirement set forth in this section shall not apply to any person who meets either of the following criteria:

(a) Any person who was employed by the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or

(b) Pursuant to the provisions of § 7 of P.L. 98-621, any former employee of the U.S. Department of Health and Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.

305.9 The Director of Personnel or independent personnel authority may grant waivers of the domicile requirement for persons appointed on or after October 1, 2002 to positions in the Excepted or Executive Service pursuant to D.C. Official Code §§ 1-609.03(a)(1) or (2) (2002 Supp.) or 1-610.51 (2001) presenting exceptional circumstances or for positions that are hard to fill. The provisions for the granting of waivers are as follows:

(a) An agency head or the Mayor in the case of an Executive Service appointee, may request a waiver of the domicile requirement for a person as described in § 305.1 by submitting written justification to the Director of Personnel or independent personnel authority that the position is hard to fill. The request shall include appropriate documentation and information to demonstrate that the position is hard to fill and justify consideration of the request. Appropriate documentation and information shall include but not be limited to:

(1) A statement containing the qualification requirements for the position, and explaining the uniqueness of the duties and responsibilities of the position and the unusual combination of highly specialized qualification requirements which make it hard to fill;

(2) A copy of the position description or statement of duties for the position;

(3) A copy of the recruitment plan for the position or a statement explaining the recruitment plan;

(4) Copies of any vacancy announcements and/or other types of advertisement issued and published for the position;

(5) A statement detailing any special outreach and recruitment efforts undertaken in trying to fill the position and the date on which recruitment efforts to fill the position began;

(6) The employment application or résumé of the person for which the waiver is being requested; and

(7) A statement explaining the reasons why the waiver should be granted.

(b) The Director of Personnel or independent personnel authority may designate an Excepted Service position established pursuant to D.C. Official Code § 1-609.03(a)(1) or (2) (2002 Supp.) as a hard-to-fill position and, subsequent to that determination, may waive the domicile requirement for any individual appointed to such a position. Under no circumstance shall a position be designated as hard-to-fill pursuant to this subsection after the position has been filled and an individual encumbers it.

(c) Any employee occupying a position for which a waiver of the domicile requirement has been granted pursuant to § 305.9(b) shall be exempt from the domicile requirement for as long as he or she continues to occupy that position.

(d) An agency head hiring a non-District domiciliary presenting exceptional circumstances to a position in the Excepted Service pursuant to D.C. Official Code § 1-609.03(a)(1) or (2) (2002 Supp.), or the Mayor in the case of a similarly situated individual being

hired to a position in the Executive Service pursuant to D.C. Official Code § 1-610.51 (2001), may present such exceptional circumstances to the Director of Personnel or independent personnel authority in writing before the effective date of appointment. The request shall include appropriate documentation to substantiate the claim of exceptional circumstances.

(e) Any waiver granted pursuant to §§ 305.9(a) or (d) shall remain in effect only for as long as the employee occupies the position for which the waiver was granted.

305.10 Upon receipt of a request for a waiver of the domicile requirement pursuant to this section, the Director of Personnel or independent personnel authority shall promptly determine whether to grant the waiver and notify the agency head or the Mayor of the decision, in writing, prior to the effective date of the appointment. Under no circumstance shall a waiver of the domicile requirement be granted after the effective date of appointment.

305.11 A waiver of the residency requirement granted to an Excepted Service employee before October 1, 2002 shall remain in effect for as long as the employee occupies the position for which the waiver of the residency requirement was granted.

306 PROOFS, CERTIFICATION, AND DOCUMENTATION OF DISTRICT RESIDENCY

306.1 The provisions of this section apply to any person required to submit proof of bona fide District residency or, in the case of persons appointed to the Excepted and Executive Services on or after October 1, 2002, proof of District domicile.

306.2 Documentation, certification, and affidavits required by this section shall be in a form prescribed by the personnel authority.

306.3 No single document is conclusive in order to determine bona fide residency; however, the following may be considered:

(a) Voter registration, if any;

(b) Motor vehicle registration, if any;

(c) Motor vehicle driver permit, if any;

(d) Withholding and payment of individual income taxes including:

(1) Copies of District of Columbia tax returns certified by the D.C. Office of Tax and Revenue; and

(2) Copies of certified federal tax returns filed with the U.S. Internal Revenue Service;

(e) Certified deed or lease or rental agreement for real property;

(f) Cancelled checks or receipts for mortgage or rental payments; and

(g) Utility bills and payment receipts.

306.4 When a person is required to submit documents to support a claim of bona fide District residency, a minimum of four (4) of the documents set forth in § 306.3 shall be submitted to the personnel authority.

306.5 For each Excepted or Executive Service appointee subject to the domicile requirement pursuant to § 305, proof of District domicile or of the intent of the appointee to change his or her domicile to the District of Columbia and acquire a principal place of residence in the District of Columbia shall include the following documents in addition to a minimum of four (4) of the documents set forth in § 306.3:

(a) A copy of a change of address form filed with the United States Postal Service containing the address of the employee's principal place of residence in the District of Columbia;

(b) A copy of an executed contract of sale for the real property that was the employee's principal place of residence at the time of accepting the employment, if the employee owns a principal place of residence outside of the District of Columbia; or a copy of a change in the public records of the state where the employee was domiciled to show that the residence outside of the District of Columbia is no longer the employee's principal place of residence;

(c) Copies of utility bills, including electric, gas, telephone, cable, water or other residency bills associated with occupying real property in the District of Columbia, where the billing and mailing address are the same as the principal place of residence;

(d) A copy of a bank account statement in the District of Columbia in the name of the employee;

(e) A copy of District of Columbia and federal income tax returns that use the District of Columbia address which is the employee's principal place of residence;

(f) Copies of professional dues statements mailed to the employee's principal place of residence in the District of Columbia;

(g) A sworn affidavit from the employee that the administration of the employee's estate is subject to District of Columbia probate and estate taxes;

(h) Copies of credit card or brokerage account statements mailed to the employee's principal place of residence in the District of Columbia;

(i) Copies of automobile, health, and life insurance contracts for the employee based upon the employee's principal place of residence in the District of Columbia;

(j) Copies of mortgage statements for the employee's principal place of residence in the District of Columbia, or an executed lease for the employee's principal place of residence in the District of Columbia; and

(k) A sworn affidavit from the employee that the employee's income, from any source, is subject to District of Columbia withholding tax and taxation.

306.6 An Excepted or Executive Service employee subject to the domicile requirement shall fulfill the requirements of § 306.5 by filing a sworn affidavit with the Director of Personnel or independent personnel authority that affirms that the employee has undertaken affirmative acts to comply with each requirement, and when the requirement is not applicable, the reasons why the requirement does not apply.

306.7 A person who claims a residency preference as provided in § 301.1 or 301.2 and who is selected for the position shall, on or before the effective date of appointment or promotion, sign a statement that certifies the following:

(a) That the person has received written notification of the residency preference requirement;

(b) That the person has read the notice, has been given an opportunity to ask questions about the residency preference requirement, and understands the residency preference requirement;

(c) That the person understands that failure to maintain bona fide residency in the District of Columbia for a period of five (5) consecutive years from the effective date of appointment will result in forfeiture of the position; and

(d) That the place of residence stated in the certification is the person's actual, regular, and principal place of residence.

306.8 A person who is appointed to a position in the Excepted or Executive Services on or after October 1, 2002 and who claims that he or she is a District domiciliary shall sign a statement on or before the effective date of appointment to the position, whether it is an initial appointment or other appointment, which certifies the following:

(a) That the person has received written notification of the domicile requirement;

(b) That the person has read the notice, has been given an opportunity to ask questions about the domicile requirement, and understands the domicile requirement;

(c) That the person understands that failure to remain a District domiciliary for the duration of employment shall result in forfeiture of the position; and

(d) That the place of residence stated in the certification is the person's domicile.

306.9 Unless exempted pursuant to §§ 305.8 and 305.9, each Excepted or Executive Service appointee or employee who is not a domiciliary of the District of Columbia on the date of appointment to a position, whether it is an initial appointment or other appointment, shall sign a statement when appointed, which certifies the following:

(a) That the person has received written notification of the domicile requirement;

(b) That the person has read the notice, has been given an opportunity to ask questions about the domicile requirement, and understands the domicile requirement;

(c) That the person intends to become a domiciliary of the District of Columbia within one hundred eighty (180) days of the date of appointment;

(d) That the person understands that failure to become a domiciliary of the District of Columbia within one hundred eighty (180) days from the date of appointment shall result in forfeiture of the position; and

(e) That the person understands that failure to remain a District domiciliary for the duration of employment shall result in forfeiture of the position.

306.10 Each Excepted or Executive Service appointee subject to the requirements of § 305.1 who is not a domiciliary of the District of Columbia on the date of appointment shall provide to the personnel authority, within one hundred eighty (180) days of the date of appointment, sufficient documentation, as provided in §§ 306.3, 306.5 and 306.6, which demonstrates that he or she has become a domiciliary of the District of Columbia.

306.11 Each agency head or independent personnel authority shall designate an agency representative to fulfill the requirements specified in §§ 306.12, 306.13, 307, and 309 of this chapter.

306.12 Between November 1 and November 30 of each year after the first year of employment, up to the end of the required period of bona fide District residency or District domicile, each employee required to be a bona fide resident or District domiciliary shall submit to the agency representative an affidavit which certifies at least the following:

(a) That he or she is currently, and has been continuously for the preceding twelve-month (12-month) period, in compliance with the provisions of the residency or domicile requirements, as applicable;

(b) The home address(es) for the preceding twelve-month (12-month) period;

(c) The address used on the individual income tax return filed with the District of Columbia during the preceding twelve-month (12-month) period; and

(d) The address used on the individual income tax return filed with the United States Internal Revenue Service during the preceding twelve-month (12-month) period.

306.13 The agency representative, at a time he or she shall determine, but within one (1) year following the date on which the employee became subject to the residency or domicile requirements, shall request, and the employee shall provide, sufficient documentation to demonstrate that the employee is in compliance.

307 RESIDENCY DETERMINATION HEARINGS

307.1 Whenever the agency head has reasonable cause to believe that an employee of the agency is not in compliance with the residency or domicile requirements, the agency head shall issue to the employee a written notice to show cause why his or her employment should not be

forfeited. The agency head shall provide a copy of the written notice to the Director of Personnel or independent personnel authority.

307.2 Any written notice to show cause why employment should not be forfeited shall be issued only during the period of time that the employee is required to maintain bona fide District residency or be a District domiciliary.

307.3 If the employee intends to present documents, facts, and circumstances to demonstrate compliance with the residency or domicile requirements, a pre-hearing conference and an evidentiary hearing on the merits shall be conducted by the D.C. Office of Personnel or independent personnel authority.

307.4 The full evidentiary hearing shall follow the pre-hearing conference by a period of not less than ten (10) days.

307.5 The Director of Personnel or independent personnel authority shall designate a hearing officer, who shall conduct residency determination hearings.

307.6 The respondent employee may be represented at the pre-hearing conference and hearing by counsel if he or she so chooses.

307.7 The agency representative shall present the facts and circumstances which led to the issuance of the show-cause notice.

307.8 The respondent employee shall have an opportunity to rebut the facts and circumstances presented by the agency representative, to cross-examine any witnesses called by the agency, and to present evidence that demonstrates compliance with the residency or domicile requirements.

307.9 If the hearing officer determines that the agency representative has established reasonable cause to believe that the employee is not in compliance with the residency or domicile requirements, then the burden of persuasion shall shift to and be borne by the respondent employee.

307.10 The agency representative shall have an opportunity to cross-examine the respondent employee as well as any witnesses called by the respondent employee.

307.11 The standard of proof in a residency or domicile determination case shall be by a preponderance of the evidence.

307.12 After the hearing, the hearing officer shall prepare a proposed written determination within a reasonable period of time and shall serve a copy of the proposed determination on the Director of Personnel or independent personnel authority and on the respondent employee.

307.13 The proposed determination of the hearing officer shall be based solely on the record of the evidentiary hearing.

307.14 The employee shall have a period of ten (10) days from the receipt of the proposed determination to present written exceptions to the Director of Personnel or independent

personnel authority in response to a proposed determination of noncompliance with the residency or domicile requirements. Exceptions must be based solely on the record of the evidentiary hearing.

307.15 The Director of Personnel or independent personnel authority shall review the record and make the final decision on compliance with the residency or domicile requirements.

307.16 The final decision of the Director of Personnel or independent personnel authority shall be issued to the employee and the agency head in writing.

307.17 A final decision by the Director of Personnel or independent personnel authority of noncompliance with the residency domicile requirements shall result in forfeiture of employment by the employee.

308 METROPOLITAN POLICE AND FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENTS

308.1 Notwithstanding the provisions of § 301, any officer or member of the Metropolitan Police Department or of the Fire and Emergency Medical Services Department in the Career Service who was employed prior to January 1, 1980, and who has not had a break in service, shall continue to be subject to the provisions of D.C. Official Code § 5-105.08 (2001).

308.2 Notwithstanding the provisions of § 301, any officer or member of the Metropolitan Police Department or of the Fire and Emergency Medical Services Department in the Career Service employed on or after January 1, 1980, shall be subject to the requirements of D.C. Official Code § 5-105.08 (2001).

309 REPORTING REQUIREMENTS

309.1 By November 1 of each year, each personnel authority shall submit to the Office of Tax and Revenue a listing which shall include the name, social security number, and employing agency of each person subject to the residency or domicile requirements who was appointed prior to January 1 of the current year.

309.2 The Office of Tax and Revenue shall provide, on a date specified by the Mayor, each personnel authority with information on the filing status of individual income tax returns for persons identified under § 309.1 for the returns filed in that calendar year. The information provided by the Office of Tax and Revenue shall include the mailing address used in filing the tax return.

309.3 Each personnel authority shall distribute the information received under § 309.2 to the agencies subject to its personnel authority.

309.4 The information received by the agency under this section shall be used by the agency in conjunction with its overall monitoring responsibility pursuant to § 306.11.

309.5 Agencies of the District of Columbia government having regulatory or administrative authority relating to any factor that may be used in making a determination of bona fide residency or District of Columbia domicile shall provide the agency representative with

information that may be requested. Information requested and released under this section shall be in accord with applicable statutory privacy restrictions.

399 DEFINITIONS

399.1 For the purposes of this chapter, the following terms have the meaning ascribed:

Agency—the meaning set forth in D.C. Official Code § 1-603.01(1) (2002 Supp.), but including boards and commissions as described in D.C. Official Code § 1-603.01(2) (2002 Supp.), and excluding the courts.

Agency head—the highest ranking executive official of an agency.

Agency representative—any person(s) designated by the agency head to receive and review factors and documents, conduct investigations, and represent the agency at residency preference or District of Columbia domicile determination hearings.

Bona fide resident—any person who maintains a place of abode in the District of Columbia as his or her actual, regular, and principal place of residence.

Claim—completion of the Residency Preference for Employment form, DC-2000RP, by a bona fide District resident at the time of application for employment or a competitive promotion, who agrees in writing that, if selected, he or she will maintain District residency for five (5) consecutive years from the date of appointment or promotion.

Competitive promotion—the change of an employee to a position at a higher grade or class level within the same job classification system and pay schedule, or to a position with a higher representative rate in a different job classification system and pay schedule, as a result of open competitive procedures pursuant to Chapters 8 and 38 of these regulations.

Counsel—an attorney at law who may be chosen by an employee to represent the employee in a residency or District of Columbia domicile determination adjudication.

Days—calendar days, unless otherwise stated. In computing a period of time prescribed by these regulations, the day of the action or event triggering the count is not included in the computation. The last day of the period shall not be a Saturday, Sunday, or legal holiday, but shall be the end of the next day which is not a Saturday, Sunday, or legal holiday.

Director of Personnel—the Director of the D.C. Office of Personnel, or his or her designee.

District domicile – physical presence in the District of Columbia; and an intent to abandon any and all former domiciles and remain in the District of Columbia for the duration of an Excepted or Executive Services appointment.

Entitlement—when at least one of the qualified applicants for a position has claimed a residency preference, any qualified candidate who meets either of the following criteria is automatically granted a residency preference:

(a) Any person who was employed by the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or

(b) Pursuant to the provisions of § 7 of P.L. 98-621, any former employee of the U.S. Department of Health and Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.

Exceptional circumstances – conditions or facts that are uncommon, deviate from or do not conform to the norm, or are beyond willful control, which are presented to the personnel authority by an agency head or the Mayor, when hiring an individual to fill a position in the Excepted or Executive Services, and which shall be considered by the personnel authority in determining the reasonableness of granting a waiver of the domicile requirement to that individual.

Forfeiture—the loss of employment as a result of the failure of the employee to comply with the provisions of the residency preference or domicile requirements.

Hard to fill position – a position so designated by the personnel authority on the basis of demonstrated recruitment and retention problems inherent in the position due to the uniqueness of the duties and responsibilities and the unusual combination of highly specialized qualification requirements for the position.

Mayor—the Mayor of the District of Columbia or his or her designee.

Personnel authority—an individual or entity authorized by D.C. Official Code § 1-604.06 (2001) to implement personnel rules and regulations for employees of an agency or group of agencies of the District of Columbia; or persons delegated that authority by that individual or entity.

Preponderance of evidence—that which is more convincing to the mind—more likely than not. That amount (weight) of evidence which convinces as to its truthfulness.

Reasonable cause—that composite of facts from which a reasonably prudent person might determine that an employee is not in compliance with the residency preference or domicile requirements.

Residency preference—credit that is given as follows:

(a) Additional points and/or priority placement on a selection register afforded to a qualified applicant who claims or is entitled to preference; or

(b) Additional years of service given in the event of a reduction in force to each bona fide resident and each non-resident employee hired prior to January 1, 1980.

Comments on these proposed regulations should be submitted, in writing, to Ms. Judy D. Banks, Interim Director of Personnel, 441 4th Street, NW, Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed rules are available from the above address.

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

CORRECTED NOTICE OF PROPOSED RULEMAKING

TT03-1, In the Matter of the Application of Verizon Washington DC, Inc., for Authority to Amend the Local Exchange Services Tariff, P.S.C. – D.C. No. 203

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Code, 2001 Ed. § 2-505, of its intent to act upon the application of Verizon Washington DC, Inc. ("Verizon DC") in the above-captioned matter in not less than 60 days from the date of publication of this Notice of Proposed Rulemaking in the *D.C. Register*. This Notice of Proposed Rulemaking corrects the notice that was published at 50 D.C. Reg. 4987-4988 (June 20, 2003).

2. On June 2, 2003, Verizon DC filed an application with the Commission requesting authority to amend the following tariff pages:

GENERAL INDEX, INTRASTATE TARIFFS, P.S.C.-D.C.
Index, 3rd Revised Page 7
LOCAL EXCHANGE SERVICES TARIFF P.S.C. – D.C. NO. 203
Section 31, 3rd Revised Page 1
2nd Revised Page 2
Original Pages 3 and 4

3. If approved, this filing would introduce two new local package options, Local Package Basis and Local Package Plus. These packages are packages of bundled residential services that combine local service and various features. These two packages include unlimited local and intraLATA toll calling, Home Voice Mail, and other features.

4. The complete text of the proposed tariff pages is on file with the Commission. Copies of the proposed tariff pages can be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., 2nd Floor, West Tower, Washington DC, 20005, between the hours of 9:00 a.m. and 5:30 p.m. Monday through Friday. Copies of the tariff pages are available upon request, at a per-page reproduction fee. .Comments on the proposed tariff revisions, setting forth the specific grounds for each representation, should be made in writing to Sanford M. Speight, Acting Commission Secretary, at the above address. Comments must be received within 45 days of publication of this NOPR in the *D.C. Register*. Reply Comments may be filed within 60 days of the publication of the NOPR, after which time the Commission will take final action on Verizon DC's application.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

DOCKET NUMBER 03-36-TS

The Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the intent to amend the Vehicle and Traffic Regulations (18 DCMR). Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following rulemaking action is proposed:

Title 18 DCMR, Section 4004, ONE-WAY STREETS, Subsection 4004.1, (a) Northwest Section and (b) Northeast Section, is amended by adding the following to the list of locations where traffic is restricted to one direction of travel:

"On Sheridan Street, N.W., between North Capitol Street and Chillum Street, for westbound traffic only";

"On Sheridan Street, N.E, between North Capitol Street and Kansas Avenue, for eastbound traffic only".

Title 18 DCMR, Section 4008, STOP SIGNS, Subsection 4008.1, (a) Northwest Section and (b) Northeast Section, is amended by deleting the following from the list of locations where STOP signs are placed:

"On Sheridan Street, N.E. and N.W. and North Capitol Street, so as to stop at both streets";

and by substituting the following:

"On North Capitol Street, so as to stop at Sheridan Street".

All persons interested in commenting on the subject matter in this proposed rulemaking action may file comments in writing, not later than thirty days (30) days after the publication of this notice in the D.C. Register, with the Department of Transportation, Traffic Services Administration, 2000 14th Street, N.W., 7th Floor, Washington, D.C. 20009 (Attention: Docket No. 03-36-TS). Copies of this proposal are available, at cost, by writing to the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
NOTICE OF PROPOSED RULEMAKING
APPLICATION NO. 17051

On June 25, 2003, the Board of Zoning Adjustment received the above-numbered application from Cynthia A. Giordano, Esquire, on behalf of the Republic of Tajikistan to permit the location of a chancery in the R-5-E District at premises 1005 New Hampshire Avenue, N.W. (Square 53, Lot 11). The application will be considered by the Board in accordance with the requirements of the Foreign Missions Act, and any applicable provisions of the Zoning Regulations.

Written comments may be submitted to the Board of Zoning Adjustment through Jerrily R. Kress, FAIA, Director of the Office of Zoning, 441 4th Street, N.W., Suite 210, Washington, D.C. 20001. Copies of this notice are available from the Office of Zoning. For further information, call the Office of Zoning at (202) 727-6311.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Case No. 02-35
(Text Amendment –Definition of Building Height)

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in §1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code, 2001 Ed. §6-641.01), hereby gives notice of its intent to amend the Zoning Regulations of the District of Columbia. The proposed revision would revise the definition of building height in the Zoning Regulations (Title 11) to clarify the definition's use of the term "curb". The amendment would also add a definition for the term "natural grade". Final rulemaking action shall be taken in not less than thirty (30) days from the date this notice is published in the *D.C. Register*.

Title 11, Zoning Regulations, § 199, DEFINITIONS, § 199.1, is amended as follows:

1) The definition "Height of building" is amended by inserting the following text after the first sentence:

> The term curb shall refer to a curb at grade. In the case of a property fronting a bridge or a viaduct, the height of the building shall be measured from the lower of the natural grade or the finished grade at the middle of the front of the building to the highest point of the roof or parapet.

2) A new definition, "Natural grade", is added to read as follows:

> **Natural grade** – the undisturbed level formed without human intervention or, where the undisturbed ground level cannot be determined because of an existing building or structure, the undisturbed existing grade.

All persons wishing to comment on the subject matter of this proposed rulemaking should file comments in writing to Alberto Bastida, Secretary to the Zoning Commission for the District of Columbia, Office of Zoning, 441 Fourth Street, N.W., Suite 210S, Washington, D.C. 20001. Comments must be received no later than thirty (30) days after the date of publication on this notice in the *D.C. Register*. Copies of this proposal may be obtained at cost by writing to the above address.

BOARD OF EDUCATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Board of Education ("Board"), pursuant to the authority set forth in D.C. Code, 2001 Edition, Section 38-101 et seq., hereby gives notice of emergency and proposed rulemaking action taken by the Board at its meeting on June 18, 2003 to amend Chapter 38 of the Board Rules, Title 5 of the District of Columbia Municipal Regulations. The amendment enables the State Education Agency of the District of Columbia to comply with the Unsafe School Choice Option requirements of Public Law 107-110 (No Child Left Behind).

The provisions of this Rulemaking include the establishment of criteria, processes and timelines for the identification of persistently dangerous schools by the SEA, appeals of such designation by the LEAs, notification of parents, the transfer of students from persistently dangerous schools and the transfer of students who have been victims of violent crimes. Students who are determined to be the victim of a pattern of harassment or sexual harassment in or on the grounds of the schools they attend will also be eligible for transfer.

The emergency results from the SEA's need to implement the Rulemaking by July 1, consistent with the requirements of federal legislation. The effective date of the rulemaking is June 18, 2003. This Emergency Rulemaking shall expire within 120 days of June 18, 2003.

The Board also gives notice of its intent to adopt these emergency and proposed rules in not less than thirty (30) days following publication of this notice in the D.C. Register.

Chapter 38 is amended as follows:

3804 Identification of Persistently Dangerous Schools and Unsafe School Transfer Option

3804.1 Identification of Persistently Dangerous Schools

(a) Pursuant to the requirements of P.L.107-110, the District of Columbia Public Schools acting as the State Educational Agency (SEA) shall identify, by July 1 of each year, all public schools within District of Columbia LEAs that are "persistently dangerous" pursuant to criteria established by the SEA and set forth in subsection 3804.1 (c).

(b) By July 1, the SEA also shall send a letter of concern to each LEA and school administrator whose statistics for the previous year indicate that his or her schools are at risk of being identified as persistently dangerous the following year.

(c) A school is determined to be persistently dangerous if the annual number of officially reported violent crimes against students, on the school grounds, during school operating hours, over a period of two consecutive years is equal to or greater than:

1) 2.5% of the school's official membership, for schools with enrollments of 200 students or more, or
2) five, for schools with enrollments of 200 students or less.

(d) Juvenile detention facilities are exempt from the provisions of this section.

3804.2 Persistently Dangerous Schools Transfer Option

(a) A student who is enrolled at a school determined to be persistently dangerous shall have the right to transfer to a destination school within the District of Columbia's LEAs and remain there until the originating school is no longer identified as persistently dangerous, provided such transfer is consistent with all applicable laws, including IDEA.

(b) The destination school shall be a public school that

1) is not identified as persistently dangerous;
2) is not in school improvement, under corrective action, or restructuring;
3) is making adequate yearly progress (AYP), and
4) has space to accommodate the student.

(c) A student shall not be eligible to seek a transfer under §3804.2 (a) if he or she is

1) in a court-ordered educational placement; or
2) in an alternative setting into which he or she has been placed by the LEA pursuant to expulsion from his or her school.

(d) The eligible student's right to seek a transfer pursuant to this section must be exercised within 21 days following parental notification of his or her school's designation as "persistently dangerous."

(e) A transfer for reasons under this section shall be in effect until the persistently dangerous school is no longer designated as such, at which

point the LEA or the destination school administrator may return the student to his or her neighborhood school.

3804.3 Local Education Agency (LEA) Notification and Appeals Process

(a) No later than June 15, the SEA shall notify the LEAs about schools that are likely to be designated persistently dangerous and provide each school with the following data used by the SEA to base its designation:

1) The school's official membership for the two most recent, consecutive school years, and
2) The number of violent crimes against students on the school grounds, during school operating hours, for the two most recent, consecutive school years.

(b) The LEA shall have 10 days within which to review the data and submit to the SEA any evidence proving that a school is not persistently dangerous.

(c) If, after reviewing the evidence, the SEA determines that the designation is appropriate, it shall issue formal designation, pursuant to §3804.3, that a school is persistently dangerous.

(d) The LEA or the school administrator shall have the right to appeal a school's designation, in writing, to the State Education Officer within 7 days of notification by the SEA.

(e) Appeals shall be resolved as follows:

1) Upon receipt of a written appeal, the SEA shall convene representatives from its monitoring office and representatives of the LEA.
2) At the meeting, the LEA shall present evidence challenging either the official membership numbers or specific reports of violent crimes, which may include a revised official membership audit for the affected school years, copies of official incident reports from the Metropolitan Police which clarify that the alleged violent crime(s) do not meet criteria established in §3804.3, or official findings that show the reported crime could not be substantiated.
3) The monitoring officer will review the evidence and make a determination if the school's designation is still warranted.

(f) Appeals shall be resolved within 7 – 10 days by the Superintendent, acting in his or her capacity as State Education Officer, or his or her designee, and he or she shall issue his or her finding on the LEA's

status in writing to the LEA and the administrator of the school in question.

3804.4 Notification of Parents and Completion of Transfers

(a) The LEA shall notify parents of students at affected schools of their school's status and the option to transfer no later than one month following a school's designation as persistently dangerous.
(b) The LEA shall notify parents who intend voluntarily to transfer a student into a school that has been identified as persistently dangerous of that school's designation and provide them with a list of alternate schools, if available, to which the student can apply.
(c) Pursuant to § 3804.4 (a), the SEA will recommend that each LEA provide the parent of the student seeking admission to a school identified as persistently dangerous with a copy of the school's corrective action plan, pursuant to § 3804.5 (a).
(d) These notices shall be provided in language that is understandable to all parents or guardians of students enrolled in the school, including either written translation or oral interpretation into the native language of the parents and provided by competent interpreters, unless it is clearly not feasible to do so.
(e) The LEA, pursuant to a parent's written request, shall effect student transfers within twenty-one (21) calendar days following parental notification by the LEA.

3804.5 **Corrective Action for Persistently Dangerous Schools**

(a) Each LEA must develop and submit to the SEA a corrective action plan for all schools within the LEA that have been identified as persistently dangerous within twenty (20) days of a school's final designation as persistently dangerous by the SEA.
(b) A school shall remain in corrective action for a period of two years, during which time the SEA will provide technical assistance to the school, pursuant to the availability of funds.
(c) The LEA shall report to the SEA and to parents semi-annually on the progress the persistently dangerous school is making toward the goals of its corrective action plan.
(d) The SEA shall remove a school's designation as persistently dangerous if the annual number of documented reported violent crimes against students on the school grounds, during school operating hours, over a period of two, consecutive years following its designation is

1) less than 2.5% of the school's official membership for schools with enrollments of 200 students or more; or
2) Less than five, for schools with enrollments of 200 students or less.

(e) By August 1 of each year, the LEA shall notify parents of affected students when a school is no longer designated as persistently dangerous.

3804.6 **Individual Student Victim Transfer Option**

(a) A student shall also have the right to transfer to a destination school within the District of Columbia's LEAs if he or she has been the victim of

1) a violent crime committed on school grounds, during school operating hours, that has been substantiated by the LEA or

2) a pattern of harassment or sexual harassment pursuant to §2503.2 (g) and (h) of this title, that has been perpetrated on school grounds, during school operating hours, and that has been substantiated by the LEA, pursuant to a grievance filed under §2405.4 or §2405.5 of this title. For purposes of this subsection, a "pattern of harassment or sexual harassment" shall mean one substantiated incident of harassment that created an intimidating, threatening or abusive environment or two other substantiated harassment incidents.

(b) No later than 48 hours after an allegation pursuant to §3804.6 (a) (1), the LEA shall provide parents with notice of the right to transfer pursuant to this section, the limitations on the right to exercise this option set forth in §3804.6 (d).

(c) In the event of the alleged harassment or sexual harassment of a student enrolled in the District of Columbia Public Schools (DCPS), the notice required under §3804.6 (b) shall also include notice of the right to file a grievance under §2405.4 or §2405.5.

(d) If the student is alleged to have been the victim of a violent crime perpetrated on school grounds during school operating hours, the LEA shall substantiate the alleged incident, and report its findings to the parent in no more than three days.

(e) If a student alleges a pattern of harassment or sexual harassment, the timeline and procedures for resolution of such grievances by the LEA provides in §2405.4 and §2405.5, shall apply.

(f) In the event that the LEA finds that a violent crime alleged under §3804.6 (a)(1) is not substantiated, the LEA's notice to parents shall include notification of the student's right to file a grievance pursuant to §2405.4.

(g) The parent shall have three weeks from the date of the completion of the LEA's substantiation of allegations made under §3806.4 (a) (1) or (2) to request a transfer under the provisions of this subsection.

(h) The LEA shall file a cumulative report of incidents reported under this section annually with the SEA.

Definitions:

Adequate Yearly Progress (AYP)
Making acceptable progress toward the goals defined by the State's accountability and assessment plan.

Corrective Action
Action taken to eliminate the conditions that have led to a school's designation as persistently dangerous.

Corrective Action Plan
A plan submitted by the LEA to the SEA describing the corrective action to be taken by a persistently dangerous school, which shall include, at a minimum analysis of the conditions under which the violent crimes occurred and specific activities planned to mitigate those conditions.

Official Membership
A school's official enrollment on October 5 of each year, as certified by the State Education Office.

School Operating Hours
The regular operating hours established by a school, when classes are in session and/or a school-sponsored event takes place on school grounds.

School Year
For purposes of this Regulation, the school year is defined as beginning on the first official day of school and ending on June first of the following year.

Students
Pre-K – 12 students who are currently enrolled in a school.

Violent Crime
Any of the following offenses, documented by an official police report, that is designated a "crime of violence" under Section 22-4501(f) of the DC Code: murder; manslaughter; first degree sexual abuse; second degree sexual abuse; malicious disfigurement of another; abduction; kidnapping; any assault with intent to kill, commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse or robbery; assault with a dangerous weapon; assault with intent to commit any offense punishable by imprisonment; extortion or blackmail accompanied by threats of violence or aggravated assault.

School Grounds:
LEA-owned or leased building and land surrounding the school building.

Written comments on the emergency and proposed rulemaking are invited from interested citizens. Such comments should be addressed to Mr. Russell Smith, Executive Secretary, D.C. Board of Education, 825 North Capitol Street, N.E., Suite 9108, Washington, D.C. 20002. Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND 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 adoption, on an emergency basis, of an amendment to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR) entitled "Method Established for Determining Prescription Reimbursement". The effect of the amendment is to increase the pharmacy dispensing reimbursement from $3.75 to $4.50.

A notice of proposed rulemaking to increase the Medicaid reimbursement to pharmacy providers for dispensing medicine, effective April 1, 2003 was published on February 14, 2003 (50 DCR 1534). After publication, the Department of Health, Medical Assistance Administration determined that the District government was experiencing a shortfall in the local budget. Because of the shortfall the reimbursement increase was postponed until July 5, 2003 consistent with the District's FY 2003 budget and financial plan. To ensure compliance with the federal law, the Medicaid Program is also amending the District of Columbia State Plan for Medical Assistance (State Plan). The Medicaid Program projects an increase in local and federal expenditures of $187,500 attributable to the increased reimbursement. Emergency action is necessary for the immediate preservation of the health, safety and welfare of persons in need of pharmacy services.

The emergency rulemaking was adopted on June 6, 2003 and will become effective one day after publication of this notice in the *D.C. Register*. The emergency rulemaking will remain in effect for 120 days or until October 4, 2003 unless superceded by another emergency rulemaking or by publication of a notice of final rulemaking in the *D.C. Register*, whichever comes first.

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

Amend subsection 924.1 (Method Established For Determining Prescription Reimbursement) of Chapter 9 of Title 29 DCMR by deleting the existing paragraph (a) and inserting the following paragraph (a) in its place:

924 METHOD ESTABLISHED FOR DETERMINING PRESCRIPTION REIMBURSEMENT

924.1 Pharmacy claims for services rendered on or after July 5, 2003 shall be reimbursed at the lower of the following:

(a) The allowable cost, established pursuant to section 922 or 923, as appropriate, plus a dispensing fee of four dollars and fifty cents ($4.50) per prescription.

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

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND 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 adoption, on an emergency basis, of a new section 964 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR) entitled "Medicaid Reimbursement for Dental Services". These rules would authorize an increase in the amount of reimbursement by the District of Columbia Medicaid Program (Medicaid Program) for dental services.

These rules would increase the current reimbursement rates by 150% for services provided to persons under 21 years of age and by 175% for services provided to persons residing in an intermediate care facility for persons with mental retardation. Dental providers have indicated that current reimbursement rates are insufficient. Federal rules require that the state Medicaid rates are sufficient to enlist enough providers such that access to services is, at a minimum, comparable between program recipients and the general population. The Medicaid Program is currently experiencing a health care crisis due to the limited number of dental professionals. Emergency action is necessary for the immediate preservation of the health, safety and welfare of Medicaid recipients who are in need of dental services. The Medicaid Program projects an increase in total state and federal expenditures of approximately $75,000 for FY 2003 as a result of the increased reimbursement rates.

The emergency rulemaking was adopted on June 11, 2003 and will become effective one day after publication of this notice in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until October 9, 2003 unless earlier superceded by another emergency rulemaking or by publication of a notice of final rulemaking in the *D.C. Register*, whichever comes first.

Amend Chapter 9 (Medicaid Program) of Title 29 DCMR by adding the following new section 964, to read as follows:

SECTION 964 DENTAL SERVICES

964.1 The reimbursement rates for dental services provided on or after July 5, 2003 to eligible Medicaid recipients under the age of twenty-one (21) shall be as follows:

DESCRIPTION OF SERVICE	RATE
Periodic Dental Screening	$20.00
ER Treatment Control Blood	$27.50

DESCRIPTION OF SERVICE	RATE
Periconitis Palliative Therapy	$22.50
Limit Oral Eval Problm Focus	$27.50
Comprehensive Oral Evaluation	$77.50
Intraor Complete Film Series	$67.50
Full Mouth X Rays	$67.50
Periapical X Ray; First Film	$12.50
One Periapical Film	$12.50
Two Periapical X Rays	$22.50
Three Periapical X Rays	$25.00
Peripical X Ray-Each additional film	$20.00
Occlusal X Ray	$25.00
Dental Bitewings Two Films	$40.00
P.A. Film	$100.00
Panorex	$67.50
Cephalometric Film	$100.00
Pulp Test	$15.00
Study Models	$35.00
Prophylaxis, Mouth Exam	$77.50
Preventive Prohylaxis (Adult)	$32.50
Preventive Prohylaxis (Child)	$22.50
Topical Fluor w/o Prophy Child	$20.00
Sodium Floride Application	$20.00
Dental Sealants	$15.00
Fixed, Band Type	$187.50
Lingual Arch Wire	$225.00
Amalgam One Surface, Primary	$25.00
Amalgam Two Surfaces, Primary	$35.00
Amalgam, Three Surfaces, Primary	$52.50
Amalgam Four Surfaces, Primary	$67.50
Amalgam One Surface, Permanent	$30.00
Amalgam Two Surfaces, Permanent	$42.50
Amalgam Three Surfaces, Permanent	$65.00
Amalgam Four Surfaces, Permanent	$85.00
Acrylic or Plastic Restoration	$50.00
Esthetic Restoration Including Angle	$62.50
Acrylic or Plastic Restoration, III	$30.00
Esthetic Restoration Class IV	$62.50
Acrylic Jacket	$225.00
Gold (Full Cast)	$295.00
Dowel Crown	$375.00
Pulp Cap Direct Excluding Final Rest	$25.00
Pulpotomy	$50.00
One Canal: Excludes Final Restoration	$235.00

DESCRIPTION OF SERVICE	RATE
Three Canal; Excludes Final Restoration	$362.50
Gingivectomy or Gingivioplasty,5 Mor.t	$250.00
Subgigival Currettage Root PLN Peri	$125.00
Deep Scaling	$125.00
Complete Lower Denture	$437.50
Partial Upper Denture With Gold	$625.00
Single Tooth Extraction	$35.00
Multiple Extractions	$35.00
Extraction of Tooth, Erupted	$92.50
Extraction of Tooth, Soft Tiss Imp	$140.00
Extraction of Tooth, Partial Bony Imp	$185.00
Extraction of Tooth Complete Bony Impac	$202.50
Root Tips	$77.50
Replantation of Tooth with Splint	$265.00
Surgical Exposure of Bony Impaction	$140.00
Removal of Subcutaneous Tissue	$280.00
Incision Drainage Abscess, Intracol	$77.50
Bite Plane	$140.00
Habit Breaker	$235.00
Consultation	$75.00
Office Visit	$45.00

964.2 The reimbursement rates for dental services provided on or after July 1, 2003 to eligible Medicaid recipients residing in an intermediate care facility for persons with mental retardation shall be as follows:

DESCRIPTION OF SERVICE	RATE
Periodic Dental Screening	$22.00
ER Treatment Control Blood	$30.25
Periconitis Palliative Therapy	$24.75
Limit Oral Eval Problm Focus	$30.25
Comprehensive Oral Evaluation	$85.25
Intraor Complete Film Series	$74.25
Full Mouth X Rays	$74.25
Periapical X Ray; First Film	$13.75
One Periapical Film	$13.75
Two Periapical X Rays	$24.75
Three Periapical X Rays	$27.50
Peripical X Ray-Each additional film	$22.00
Occlusal X Ray	$27.50
Dental Bitewings Two Films	$44.00
P.A. Film	$110.00

DESCRIPTION OF SERVICE	RATE
Panorex	$74.25
Cephalometric Film	$110.00
Pulp Test	$16.50
Study Models	$38.50
Prophylaxis, Mouth Exam	$85.25
Preventive Prohylaxis (Adult)	$35.75
Preventive Prohylaxis (Child)	$24.75
Topical Fluor w/o Prophy Child	$22.00
Sodium Floride Application	$22.00
Dental Sealants	$16.50
Fixed, Band Type	$206.25
Lingual Arch Wire	$247.50
Amalgam One Surface, Primary	$27.50
Amalgam Two Surfaces, Primary	$38.50
Amalgam, Three Surfaces, Primary	$57.75
Amalgam Four Surfaces, Primary	$74.25
Amalgam One Surface, Permanent	$33.00
Amalgam Two Surfaces, Permanent	$46.75
Amalgam Three Surfaces, Permanent	$71.50
Amalgam Four Surfaces, Permanent	$93.50
Acrylic or Plastic Restoration	$55.00
Esthetic Restoration Including Angle	$68.75
Acrylic or Plastic Restoration, III	$33.00
Esthetic Restoration Class IV	$68.75
Acrylic Jacket	$247.50
Gold (Full Cast)	$324.50
Dowel Crown	$412.50
Pulp Cap Direct Excluding Final Rest	$27.50
Pulpotomy	$55.00
One Canal: Excludes Final Restoration	$258.50
Three Canal; Excludes Final Restoration	$398.75
Gingivectomy or Gingivioplasty,5 Mor.t	$275.00
Subgigival Currettage Root PLN Peri	$137.50
Deep Scaling	$137.50
Complete Lower Denture	$481.25
Partial Upper Denture With Gold	$687.50
Single Tooth Extraction	$38.50
Multiple Extractions	$38.50
Extraction of Tooth, Erupted	$101.75
Extraction of Tooth, Soft Tiss Imp	$154.00
Extraction of Tooth, Partial Bony Imp	$203.50
Extraction of Tooth Complete Bony Impac	$222.75
Root Tips	$85.25
Replantation of Tooth with Splint	$291.50

DESCRIPTION OF SERVICE	RATE
Surgical Exposure of Bony Impaction	$154.00
Removal of Subcutaneous Tissue	$308.00
Incision Drainage Abscess, Intracol	$85.25
Bite Plane	$154.00
Habit Breaker	$258.50
Consultation	$82.50
Office Visit	$49.50

964.99 DEFINITIONS

When used in this section, the following terms and phrases shall the meanings ascribed:

Intermediate care facility for persons with mental retardation- Shall have the same meaning as set forth in 42 CFR 483.400 *et seq.*

Comments of the proposed rules shall be sent in writing to Wanda R. Tucker, Interim Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 2003, 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.

DEPARTMENT OF HEATH

NOTICE OF EMERGENCY AND 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 adoption, on an emergency basis, of an amendment to section 995 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), governing reimbursement rates for transportation services.

These rules amend reimbursement rates for the District of Columbia Medicaid Program for transportation of ambulatory single individuals and groups, non-emergency stretcher shuttle services and van transportation of single individuals in wheelchairs. In 1997, the Medicaid Program reduced by ten percent (10%) the rates paid for transportation services. These rules will restore the rates to the levels paid prior to the 1997 rate reduction. The Medicaid Program projects an increase in local and federal expenditures of approximately $327,000 in fiscal year 2003 as a result of the rate increase. Emergency action is necessary for the immediate preservation of the health, safety and welfare of persons in need of transportation services.

The emergency rulemaking was adopted on June 4, 2003 and will become effective one day after publication of this notice in the *D.C. Register*. The emergency rulemaking will remain in effect for 120 days or until October 2, 2003 unless earlier superceded by another emergency rulemaking or by publication of a notice of final rulemaking in the *D.C. Register*.

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

Amend section 995 (Reimbursement Rates for Transportation Services) of Chapter 9, Title 29 DCMR to read as follows:

995 REIMBURSEMENT RATES FOR TRANSPORTATION SERVICES

995.1 The reimbursement rates for transportation services rendered for ambulatory single individuals on or after July 5, 2003 are as follows:

SERVICE DESCRIPTION	RATE
Van, one way inside the Capitol Beltway	$16.50

Van, round-trip inside the Capitol Beltway	$27.50
Van, one way inside Capitol Beltway with extra assistant	$22.00
Van, round-trip inside Capitol Beltway with extra assistant	$33.00
Van, one-way outside Capitol Beltway	$27.50 + .75 per loaded mile
Van, round-trip outside Capitol Beltway	$44.00 + .75 per loaded mile
Van, one-way outside Capitol Beltway with extra assistant	$33.00 + .75 per loaded mile
Van, round-trip outside Capitol Beltway with extra assistant	$49.50 + .75 per loaded mile
Trip cancellation if cancelled upon arrival	$8.25

995.2 The reimbursement rates for transportation services of a group of ambulatory persons rendered on or after July 5, 2003 are as follows

SERVICE DESCRIPTION	RATE
Van, one way inside the Capitol Beltway	$38.50
Van, round-trip inside the Capitol Beltway	$71.50
Van, one way inside Capitol Beltway with extra assistant	$41.25
Van, round-trip inside Capitol Beltway with extra assistant	$77.00

Van, one-way outside Capitol Beltway	$49.50 + .75 per loaded mile
Van, round-trip outside Capitol Beltway	$82.50 + .75 per loaded mile
Van, one-way outside Capitol Beltway with extra assistant	$52.25 + .75 per loaded mile
Van, round-trip outside Capitol Beltway with extra assistant	$88.00 + .75 per loaded mile
Trip cancellation if cancelled upon arrival	$8.25

995.3 The reimbursement rates for non-emergency stretcher shuttle services rendered on or after July 5, 2003 are as follows:

SERVICE DESCRIPTION	RATE
Shuttle, one way inside the Capitol Beltway	$46.20
Shuttle, round-trip inside the Capitol Beltway	$89.10
Shuttle, one way inside Capitol Beltway with extra assistant	$69.30
Shuttle, round-trip inside Capitol Beltway with extra assistant	$134.20
Shuttle one-way outside Capitol Beltway	$46.20 + 1.50 per loaded mile
Shuttle, round-trip outside Capitol Beltway	$89.10 + 1.50 per loaded mile

Shuttle, one-way outside Capitol Beltway with extra assistant	$70.95 + 1.50 per loaded mile
Shuttle, round-trip outside Capitol Beltway with extra assistant	$134.20 + .1.50 per loaded mile
Trip cancellation if cancelled upon arrival	$11.00

995.4 The reimbursement rate for van transportation for single individuals in wheelchairs rendered on or after July 5, 2003 are as follows:

SERVICE DESCRIPTION	RATE
Wheelchair van, one way inside the Capitol Beltway	$24.75
Wheelchair van, round-trip inside the Capitol Beltway	$35.75
Wheelchair van, one way inside Capitol Beltway with extra assistant	$30.25
Wheelchair van, round-trip inside Capitol Beltway with extra assistant	$41.25
Wheelchair van one-way outside Capitol Beltway	$33.00 + .75 per loaded mile
Wheelchair van, round-trip outside Capitol Beltway	$49.50 + .75 per loaded mile
Wheelchair van, one-way outside Capitol Beltway with extra assistant	$38.50 + .75 per loaded mile
Wheelchair van, round-trip outside Capitol Beltway with extra assistant	$55.00 + .75 per loaded mile

Trip cancellation if cancelled upon arrival	$8.25

Comments on the proposed rules should be sent in writing to Wanda R. Tucker, Interim Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, DC 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.