

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

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**NOTICE OF PROPOSED RULEMAKING**

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The Commissioner of the Department of Insurance and Securities Regulation, pursuant to the authority set forth in section 12(f) of the Compulsory/No-Fault Motor Vehicle Insurance Act of 1982, effective September 18, 1982, D.C. Law 4-155, D.C. Official Code Section 31-2111(f) (2001), hereby gives notice of his intent to adopt the following amendment to be included in Title 26 of the District of Columbia Municipal Regulation ("DCMR"), in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The amendment will prohibit an insurer from requiring the use of an aftermarket crash part in the repair of an automobile unless the aftermarket crash part has been certified by an approved independent third-party certifier to be equivalent to or exceed the original equipment manufacturer's part in terms of fit, finish, quality and performance.

**TITLE 26, CHAPTER 5, DCMR, MOTOR VEHICLE INSURANCE:  
REQUIRED INSURANCE, IS AMENDED TO READ AS FOLLOWS:**

A new section is added to read as follows:

**512 USE OF AFTERMARKET PARTS**

512.1 No insurer shall require the use of aftermarket crash parts in the repair of an automobile unless the aftermarket crash part is certified by an independent third-party certifier to be equivalent to or exceeds the original equipment manufacturer part in terms of fit, finish, quality and performance. All certified aftermarket crash parts shall be presumed to be in compliance with the requirements of D.C. Official Code § 31-223.01 *et seq.*

512.2 In all instances the written estimate prepared by the insurer or the repair facility, or both, shall clearly identify the manufacturer of each such part so long as that manufacturer can be identified by automated processes or through the manufacturer's warranty. A notification shall be attached to, or included in, the estimate and shall contain the following information in no smaller than 12-point type: THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF CRASH PARTS SUPPLIED BY THE MANUFACTURER OF YOUR VEHICLE OR CERTIFIED AFTERMARKET CRASH PARTS SUPPLIED BY AN INDEPENDENT MANUFACTURER. ALL AFTERMARKET CRASH PARTS USED IN THE PREPARATION OF THIS ESTIMATE ARE WARRANTED BY THE MANUFACTURER OR DISTRIBUTOR OF SUCH PARTS AND/OR AN INSURER FOR WHICH THE ESTIMATE WAS WRITTEN.

512.3 No individual, company or agent shall impose any penalty upon an individual leasing or financing a motor vehicle that repairs said vehicle using certified

aftermarket crash parts.

512.4 All independent third-party certifiers must be registered and approved by the Commissioner in order to have their certified parts promoted, sold, or used to repair a motor vehicle in the District of Columbia. Each applicant registering for approval by the Commissioner for status as an independent third-party certifier shall file an application with the Department of Insurance and Securities Regulation. The applicant shall attest to and provide supportive evidence of the qualifications listed in subparagraph 512.5(D). Within 30 days of the filing of the application, the Commissioner shall approve the application if it is determined to be in the public interest. Approval of an independent third-party certifier's registration may be cancelled by the Commissioner, upon 30 days notice, for failure to maintain its accreditation, or for other good cause. The independent third-party certifier shall have the right to appeal such cancellation in accordance with Title 26, DCMR § 3800 et seq.

512.5 For the purpose of this section, the term:

(A) "Aftermarket crash part" means a motor vehicle replacement part, manufactured by other than the original equipment manufacturer, for any of the non-mechanical parts made of sheet metal, plastic, fiberglass or of similar material which generally constitute the exterior of a motor vehicle, including the following parts: outer panels; hoods; fenders; doors; trunk lids; exterior coverings of bumpers but not including windows or hubcaps. The aforementioned categories may be expanded as new certification standards are developed by entities qualified under this subparagraph.

(B) "Car company" means a motor vehicle manufacturer or distributor that produces or markets, under its own name, crash parts for use in motor vehicles that it manufactures or distributes under its own name.

(C) "Non-car company" or "independent manufacturer" means a manufacturer or distributor that produces or markets, under its own name, crash parts for use in motor vehicles that it does not manufacture or distribute.

(D) "Independent third-party certifier" means a certifying entity, qualified and acceptable for purposes of this regulation, that is:

(i) Accredited by American National Standards Institute as a standards developer; and

(ii) Accredited to Insurance Services Office Guides for Laboratories, Product Certification, Quality System Registration and Standards Development.

(E) "Certified aftermarket crash part" means an aftermarket crash part for which a certification has been issued by an independent third-party certifier as defined in this subchapter. All aftermarket crash parts certified shall be warranted by the manufacturer, distributor and/or the insurer as being equivalent to or exceeding the parts placed on the vehicle during initial assembly in terms of fit, finish, quality and performance.

(F) "Insurer" means an insurance company and any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.

(G) "Repair facility" means a motor vehicle dealer, garage, body shop or other commercial entity which undertakes the repair or replacement of those parts that

generally constitute the exterior of the motor vehicle.

Persons desiring to comment on the proposed rulemaking may submit their comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be addressed to Leslie Johnson, Hearing Officer, Department of Insurance and Securities Regulation, 810 First Street, N.E., Room 701, Washington, DC 20002. Copies of the proposed rules may be obtained from the Department at the above address.

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

**NOTICE OF PROPOSED RULEMAKING**

The Commissioner of Insurance and Securities Regulation, pursuant to the authority set forth in section 23 of the District of Columbia Health Maintenance Organization Act of 1996, effective April 9, 1997, D.C. Law 11-235, D.C. Official Code § 31-3422, hereby gives notice of his intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the D.C. Register, the following amendment to Chapter 35 of Title 26 of the District of Columbia Municipal Regulations (DCMR). The purpose of this amendment is to update the rules consistent with the Health Maintenance Organization Amendment Act of 2002, effective March 26, 2003, D.C. Law 14-252, D.C. Official Code §§ 31-3402, 31-3403, 31-3406, 31-3808, 31-3412, 31-3418, 31-3419, 31-3423, 31-3428 and 31-3431, to add provisions governing the renewal fees.

Chapter 35 of Title 26 DCMR, styled "Health Maintenance Organizations (HMOs)," is amended to read as follows:

**3500 ESTABLISHMENT OF HEALTH MAINTENANCE ORGANIZATIONS  
AND RENEWAL OF CERTIFICATE OF AUTHORITY**

- 3500.1 Any person seeking to operate an HMO in the District of Columbia shall file an application for a certificate of authority accompanied by the required supporting documentation with the Commissioner of Insurance and Securities Regulation ("Commissioner"), and are responsible for paying the following fees:
- (a) An initial filing fee in the amount of five hundred dollars (\$500.00).
  - (b) The renewal fee for certificates of authority in the amount of two hundred dollars (\$200.00).
  - (c) The renewal fee must be received by the Commissioner by April 1 of each renewal year.

Persons desiring to comment on these proposed rules should submit comments in writing to Tina L. A. Curtis, Attorney, Department of Insurance and Securities Regulation, Office of Legal Affairs, 810 First Street, N.E. Suite 701, Washington, D.C. 20002, not later than thirty (30) days after publication of this notice in the D.C. Register.

## DEPARTMENT OF INSURANCE AND SECURITIES REGULATION

NOTICE OF PROPOSED RULEMAKING

The Commissioner of the Department of Insurance and Securities Regulation, pursuant to the authority set forth in Section 125 of the Insurance Trade and Economic Development Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-265, D.C. Official Code § 31-2231.); Section 18 of the Captive Insurance Company Act of 2001, effective October 21, 2000 (D.C. Law 13-192, D.C. Official Code § 31-3917 (2001 Ed.)); Section 1229(a) of the Omnibus Reform Amendment Act of 1998, effective April 29, 1998 (D.C. Law 12-86; D.C. Official Code § 31-5328 (2001 Ed.)); Section 23 of the Health Maintenance Organization Act of 1996, effective April 9, 1997 (D.C. Law 11-235, D.C. Official Code § 31-3423 (2001 Ed.)); Section 25 of the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245, D.C. Official Code § 31-3524 (2001 Ed.)); Section 10 of the Risk-Based Capital Act of 1996, effective April 9, 1997 (D.C. Law 11-233; D.C. Official Code § 31-2009 (2001 Ed.)); Section 15 of the Insurance Agents and Brokers Licensing Revision Act of 1996, effective April 9, 1997 (D.C. Law 11-227, D.C. Official Code § 31-814 (2001 Ed.)); Section 9 of the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44, D.C. Official Code § 31-738 (2001 Ed.)); Section 3(h) of the Life Insurance Amendments Reform Act of 1984, effective March 14, 1985 (D.C. Law 5-160, D.C. Official Code § 31-4728 (2001 Ed.)); and Section 1 of Chapter II of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1066; D.C. Official Code § 31-2502.01 (2001 Ed.)); hereby gives notice of its intent to adopt the following rules to be included in Title 26, Chapter 38 of the District of Columbia Municipal Regulations (DCMR), in not less than 30 days from the publication of this notice in the D.C. Register. The rules govern the rules of practice and procedure for certain public hearings held by the Commissioner of the Department of Insurance and Securities Regulation.

This Notice of Proposed Rulemaking supercedes the notice as published in the Notice of Proposed Rulemaking in the D.C. Register on September 6, 2002 at 49 DCR 8450. Technical and substantive amendments were received by the Department during the public comment period and were incorporated in this Notice of Proposed Rulemaking.

A new Chapter 38, Rules of Practice and Procedure for Hearings, is promulgated to read as follows:

**CHAPTER 38  
RULES OF PRACTICE AND PROCEDURE FOR HEARINGS**

**3800            APPLICABILITY**

3800.1            This chapter contains procedures for administrative hearings involving a "contested case" as defined by the District of Columbia Administrative Procedure

Act, effective October 21, 1968 (82 Stat. 1203, Pub. L. 90-614) before the Commissioner of the Department of Insurance and Securities Regulation ("Commissioner"), in matters other than those brought pursuant to the Securities Act of 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601.01 *et seq.*).

3800.2 In any proceeding governed by this chapter the Commissioner or any hearing officer designated by the Commissioner may, on his or her own motion or on application of any person, waive, modify, or extend any provision of the chapter for good cause shown, to promote the interests of justice, or to prevent undue hardship; provided however that no provision may be waived, modified, or extended if its terms are required by any applicable statute. Whenever the Commissioner or any hearing officer waives, modifies, or extends any provision under the authority of this rule, he or she shall duly advise the parties of that fact.

### **3801 DELEGATION OF HEARING AUTHORITY**

3801.1 The Commissioner may, in his or her discretion, delegate authority to conduct a hearing to a hearing officer. The Commissioner shall serve a notice of delegation on all parties and on the hearing officer.

3801.2 The designated hearing officer shall issue a proposed decision and order that includes proposed findings of fact and conclusions of law.

3801.3 The Commissioner may, at his or her discretion, rescind all or part of the authority delegated to the hearing officer. If only part of the delegation is rescinded, the Commissioner shall specify in the order of rescission the portions of the matter for which the delegation has been rescinded. The rescission order shall be effective on the date it is signed by the Commissioner, unless a different effective date is specified in the order.

3801.4 The final decision issued by the Commissioner or proposed decision issued by the designated hearing officer shall reflect the rescission of delegation, and a copy of the rescission order shall be included as part of the record.

### **3802 TIME, PLACE OF FILING, AND COMPUTATION OF TIMING**

3802.1 Papers required or permitted to be filed under this chapter shall be filed by delivery of an original and two copies to the Department of Insurance and Securities Regulation, 810 First Street, NE, Suite 701, Washington, D.C. 20002, or such other places as the Commissioner may designate. Unless specifically authorized by the Commissioner or a designated hearing officer, no filings may be made by telefax or electronic mail.

3802.2 Unless otherwise specifically provided by law or these rules, computation of any

time period prescribed by these rules or by an order of the Commissioner begins with the first day following the act or event that initiates the time period. If the last day of the time period so computed is a Saturday, Sunday, District of Columbia holiday, or any other day on which the Department is closed, in which event the period runs until the end of the next business day.

- 3802.3 If a notice or other filing is served by mail and the party served is entitled or required to take some action within a prescribed time period after service:
- (a) The date of mailing is date of service; and
  - (b) Three (3) days are added to the prescribed time period.
- 3802.4 Except in the case of jurisdictional time periods prescribed by statute, when an act is required or allowed to be done at or within a specific time, the Commissioner on his or her own motion, for good shown, may order the period enlarged.
- 3802.5 Except in the case of jurisdictional time periods prescribed by statute, the Commissioner, at his or her discretion, may order an enlargement of time made pursuant to a motion before or after the expiration of the period proscribed, for good cause shown.
- 3803 SUBPOENAS**
- 3803.1 The Commissioner may issue subpoenas for the attendance of witnesses, or the production of books, papers, records, or other documents at any hearing.
- 3803.2 Subpoenas issued pursuant to this section shall be under seal of the Commissioner, and shall describe the document or name the person ordered to be produced, or required to attend the hearing.
- 3803.3 A subpoena may be served in the same manner and by any person authorized by the Rules of Civil Procedure of the Superior Court of the District of Columbia. A person serving a subpoena shall note the manner, place, and time of service in an affidavit, the original of which shall be made part of the official record.
- 3804 SHOW CAUSE AND SUMMARY SUSPENSION HEARINGS**
- 3804.1 All of the provisions of these rules, except those in § 3806, shall apply to show cause and summary suspension hearings.
- 3804.2 The Commissioner shall serve the summary suspension order or notice to show cause upon each respondent named in the order. Service may be made by personal service or by registered or certified mail by serving the respondent

directly, or by serving the respondent's agent for service of process in the District.

- 3804.3 If the Commissioner is unable to serve an insurer with a summary suspension order or notice to show cause by the means specified in § 3804.2, proper service may be made by serving the Commissioner as the insurer's attorney for service of process in accordance with D.C. Official Code §§ 31-202 (2001 Ed.).
- 3804.4 If the Commissioner is unable to serve an insurance agent or broker with a summary suspension order or notice to show cause by the means specified in § 3804.2, proper service may be made by sending the notice to show cause or summary suspension order by registered or certified mail to the agent's or broker's principal place of business as indicated in the Department's records.
- 3804.5 In addition to any contents required by statute, a summary suspension order or notice to show cause shall advise the respondent of the:
- (a) Respondent's right to a hearing;
  - (b) Time period within which the respondent must request a hearing;
  - (c) Respondent's obligation to file an answer; and
  - (d) Effect of a failure to file an answer and to request a hearing.
- 3804.6 The applicant shall have the burden of proof in a show cause hearing when the Commissioner has proposed to deny an application for licensure.
- 3804.7 The Department shall have the burden of proof in a show cause hearing or summary suspension order when the Commissioner has proposed to take disciplinary action against a licensee.
- 3804.8 A respondent shall file with the Commissioner a written answer to a notice to show cause or summary suspension order within ten (10) business days of service of the order and within five (5) business days of service of any amended order. The parties and the staff of the Department may by agreement extend the time for filing the answer up to 30 calendar days. Any additional extension of time may only be granted by order of the Commissioner.
- 3804.9 The answer shall admit or deny each factual allegation in the notice to show cause or summary suspension order and shall set forth affirmative defenses, if any. A respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state, and such a statement shall be treated as a denial of the allegation in question.

- 3804.10 The answer shall indicate whether the respondent requests a hearing concerning the notice to show cause or summary suspension order.
- 3804.11 If a respondent fails to file a timely answer, the Commissioner may issue a proposed or final decision adverse to that respondent.
- 3805 RESERVED**
- 3806 PUBLIC HEARINGS—PURSUANT TO THE HOLDING COMPANY SYSTEM ACT**
- 3806.1 The provisions of this section shall only apply to hearings held pursuant to D.C. Official Code §§ 31-703(g)(1), (2) and 31-704(e) (2001 Ed.), unless otherwise indicated. Other provisions of these rules, shall apply to hearings held pursuant to the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44, D.C. Official Code § 31-701 *et seq.*).
- 3806.2 The Commissioner shall publish an official Notice of Public Hearing in the District of Columbia Register, not less than thirty (30) days prior to the commencement of the public hearing.
- 3806.3 A Notice of Public Hearing shall contain the following information:
- (a) A statement summarizing the subject matter of the proceedings, including the issues involved and applicable statutes and rules; and
  - (b) That the Commissioner has scheduled a public hearing on the matter, setting forth the date, place and time of the public hearing.
- 3806.4 The Commissioner, in his or her discretion, may order the petitioner making a filing pursuant to D.C. Official Code §§ 31-703 or 31-704 (2001 Ed.) to place the Notice of Public Hearing in a newspaper of general circulation, not less than thirty (30) days prior to the commencement of the public hearing, at the petitioner's expense.
- 3806.5 If more than one day of hearings is held and there are less than thirty (30) days between the first and second hearing dates, the Commissioner shall not be required to publish more than one Notice of Public Hearing. The Commissioner shall either publish the date of any subsequent hearing to be held within thirty (30) days of the first hearing in the Notice of Public Hearing or notify the parties of the subsequent hearing date on the record during the first public hearing.
- 3806.6 A person filing the statement pursuant to D.C. Official Code §§ 31-703 or 31-704 shall be a "party" as defined in D.C. Official Code § 502(10), and shall have all of

the rights afforded to such persons by the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1203, Pub. L. 90-614).

- 3806.7 A person desiring to participate in a hearing as permitted by D.C. Official Code § 31-703(g)(2) (2001 Ed.) shall file a motion to intervene with the Commissioner. The motion to intervene shall include: (1) the name and address of the person or organization; (2) an explanation of how the person or organization is or may be affected by the pending matter, and any relief sought; (3) a statement summarizing the issues, laws, and any other matters that will be pursued during discovery or covered at the hearing; and (4) a statement explaining why the person's or organization's interests would not be adequately represented by the parties that are already participating, including the Department. A copy of the motion to intervene shall be served on all parties.
- 3806.8 A party opposing a person's motion to intervene pursuant to § 3806.3 shall file a written objection, setting forth the grounds for its objection, no later than three (3) business days after service of the letter requesting the right to participate.
- 3806.9 The Commissioner or the designated hearing officer may issue a case management order prior to the hearing. The order may include deadlines for completing discovery, the consolidation of parties and issues, limitations or conditions on the scope of discovery, and any other reasonable provisions reasonably calculated to promote an orderly and efficient hearing process.
- 3806.10 The Commissioner or the designated hearing officer may permit any person that does not want to intervene as a party to offer an oral or written statement at the hearing, which shall be made part of the official record. The Commissioner or the designated hearing officer may reasonably restrict the length of any oral statement made at the hearing. If the Commissioner or designated hearing officer determines that an oral statement is irrelevant, immaterial or unduly repetitious, he or she may further restrict the time allowed to a speaker.
- 3807 **RESERVED**
- 3808 **CONDUCT OF HEARINGS**
- 3808.1 The Commissioner shall preside at all hearings unless the Commissioner has delegated his or her authority to conduct the hearing to a hearing officer in accordance with these rules.
- 3808.2 All hearings shall be open to the public. The Commissioner or designated hearing officer, for good cause shown, may grant a request by a party to keep confidential any proprietary or personal information introduced as evidence in a hearing.

- 3808.3 The proceedings shall be handled in the following manner:
- (a) The Commissioner or designated hearing officer shall call the hearing to order;
  - (b) The Commissioner or designated hearing officer shall explain briefly the purpose and nature of the hearing and the issues involved;
  - (c) The Commissioner or designated hearing officer may allow the parties to present preliminary matters;
  - (d) The parties may make opening statements;
  - (e) The Commissioner or designated hearing officer shall state the order of the presentation of evidence;
  - (f) Witnesses shall be sworn or put under affirmation to tell the truth, and their direct testimony may be admitted in person or in writing, but cross examination shall be in person;
  - (g) The parties may present closing summations and arguments; and
  - (h) Shall exclude any irrelevant, immaterial, and unduly repetitious evidence.
- 3808.4 During the hearing, the Commissioner or designated hearing officer:
- (a) Shall administer the oath or affirmation to each witness;
  - (b) Shall rule on the admissibility of evidence;
  - (c) Shall maintain order and take such action as necessary to avoid delay in the conduct of the hearing; and
  - (d) May question any witness at any time as to any matter that the Commissioner considers relevant and material to the proceeding.
- 3808.5 On a genuine issue of material fact necessary to the determination of a contested case, each party may:
- (a) Call witnesses;
  - (b) Offer direct evidence;
  - (c) Cross-examine witnesses; and

(d) Make opening and closing statements.

3808.6 The Commissioner or designated hearing officer may take official notice of a fact which may be judicially noticed by the District of Columbia courts and may take official notice of general, technical or scientific facts within his or her specialized knowledge or experience. The Commissioner or designated hearing officer shall notify all parties person of the material so noticed and shall permit a party, upon timely request, to contest the facts noticed. The Commissioner or designated hearing officer may use his or her technical experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

3808.7 The Commissioner may impose sanctions on a party that does not comply with his or her orders, including entering orders for decision on one or more issues, limiting the introduction of evidence or a party's participation in the proceeding, and addressing other matters he or she deems appropriate. When a hearing is conducted by a designated hearing officer, the designated hearing officer may propose to the Commissioner that sanctions be imposed at any time during the proceeding, provided however that any such proposal must be in writing and must be served upon the party against whom the sanctions are proposed.

**3809 APPEARANCE AT PUBLIC HEARING**

3809.1 All persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the District of Columbia courts. The Commissioner or designated hearing officer may issue orders appropriate to maintain order, including the exclusion of a disorderly person from the hearing. If the person excluded is a party or its representative, the Commissioner may decide against the party with prejudice.

3809.2 In a proceeding before the Commissioner or designated hearing officer, an individual may appear in his or her own behalf; a receiver or trustee may appear in such capacity; a general partner of a partnership may represent the partnership; an officer or director of a corporation may represent the corporation; an officer or director of an association may be represent the association; and a duly authorized official of any District, Federal, or State governmental agency may represent such agency.

3809.3 A party has the right to waive the right to be present at the hearing, and may be represented by counsel who shall be licensed by the highest court of the District or any state.

**3810 FAILURE TO APPEAR**

- 3810.1 If a party fails to appear at the hearing, either personally or through counsel, the Commissioner or designated hearing officer may proceed to hold the hearing in that party's or absence.
- 3810.2 The Commissioner or designated hearing officer may also hold the absent party in default and may issue a proposed or final decision and order against the defaulted party.
- 3810.3 A party defaulted as a result of a failure to appear at a hearing may file a written motion, within five calendar days of the entry of the order of default, requesting reconsideration by the Commissioner or designated hearing officer. The motion shall state the grounds for the request, and include a proposed order.

**3811 PREHEARING CONFERENCES**

- 3811.1 The Commissioner or designated hearing officer may require parties to appear at a specified date, time, and place for a pre-hearing conference for the purpose of addressing the following matters:
- (a) Simplification of issues;
  - (b) Admissions or stipulations of fact;
  - (c) Requests for official notice;
  - (d) Discovery disputes, where discovery is expressly allowed by statute;
  - (e) Preliminary motions;
  - (f) Admissibility of evidence;
  - (g) Order of presentation;
  - (h) Limitation of the number of witnesses;
  - (i) Exchange of prepared testimony and exhibits between the parties;
  - (j) Scheduling; and
  - (k) Other matters that will promote the orderly and prompt conduct of the hearing.
- 3811.2 The Commissioner or designated hearing officer shall make any action taken at a

pre-hearing conference part of the record.

**3812 RECORD OF PROCEEDINGS**

3812.1 The Department shall cause all oral proceedings, including testimony, to be recorded by a stenographer or by tape recorder or other device. The recording of the proceedings, which need not be transcribed, shall be maintained in the custody of the Department. If the Commissioner or designated hearing officer orders that the proceeding be transcribed by an official court reporter, the respondent shall bear the costs of such recording of the proceeding. If the proceeding is recorded by audio tape, any subsequent preparation of a transcript of the proceeding from the audio tape, for any reason, including an appeal by the respondent, shall be paid for by the respondent, and two complete copies of the transcribed proceedings shall be provided to the Commissioner at the respondent's expense.

3812.2 The record of a hearing shall include:

- (a) All pleadings, motions, orders, and related papers filed with the Commissioner or designated hearing officer;
- (b) All documentary and tangible evidence;
- (c) A statement of matters officially noticed;
- (d) Recordings and any transcripts of oral proceedings;
- (e) The findings of fact and conclusions of law proposed by each party;
- (f) Any exceptions filed by the parties and the rulings of the Commissioner or designated hearing officer on those exceptions;
- (h) If a case has been delegated to a hearing officer for a proposed decision:
  - (1) The notice of delegation,
  - (2) Any order rescinding the delegation, whether in part or in whole,
  - (3) The proposed decision, including proposed findings of fact and proposed conclusions of law, of the hearing officer,
  - (4) Any exceptions filed by the parties with respect to the designated hearing officer's proposed decision,

- (5) The Commissioner's rulings on any exceptions and the designated hearing officer's proposed findings of fact or conclusions of law, and
  - (6) Any additional information or documentation submitted to the Commissioner by the parties;
  - (g) The final findings of fact, conclusions of law, and final decision and order of the Commissioner; and
  - (j) Other documents or material placed in the record as required by law or at the discretion of the Commissioner or designated hearing officer.
- 3812.3 Upon compilation, the record shall be available for public inspection at the Department during normal business hours unless the contents are otherwise protected by law.
- 3812.4 The Department, upon request of any person, shall arrange for a copy of the record to be made, if the requesting person pays in advance to the Department the estimate of the reasonable cost of making the copy. The copy may be certified by the Commissioner upon request by any person.
- 3813 MOTIONS AND OTHER PLEADINGS: COMMUNICATIONS WITH THE COMMISSIONER**
- 3813.1 Except by leave of the Commissioner or designated hearing officer during a hearing, a party seeking an order or other relief or action regarding a pending matter that is the subject of public hearing, shall file a written motion, which shall become part of the public record.
- 3813.2 Responses to written motions shall be filed and served no later than ten (10) calendar days after the motion has been served.
- 3813.3 All motions and responses shall be accompanied by a memorandum setting forth:
- (a) a statement of the facts;
  - (b) legal points and authorities in support thereof; and
  - (c) a proposed order.
- 3813.4 No rejoinders or replies to responses will be accepted without leave of the Commissioner or designated hearing officer.

- 3813.5 The Commissioner or designated hearing officer may, when deemed necessary, act upon a motion at any time without awaiting responses.
- 3813.6 Unless otherwise ordered by the Commissioner or designated hearing officer, no hearing shall be convened on motions.
- 3813.7 Any person seeking to inform the Commissioner of relevant information regarding a pending hearing without seeking any relief in the form of an order, shall so inform the Commissioner by filing such information in the form of a typewritten letter, which shall become part of the public record. The person filing such letter shall serve it on all parties to the proceeding.
- 3813.8 Any person filing a motion, pleading, letter, or other document shall sign and date the filing and include the address and telephone number of the filing party. The document shall contain a certification of service indicating that the filing has been served on all parties to the proceeding.
- 3814 SERVICE OF PLEADINGS**
- 3814.1 Written motions and all other pleadings shall be served on all parties.
- 3814.2 When filed, all pleadings shall be accompanied by proof of service upon all parties. Proof of service of any pleading shall be by certificate of service, affidavit or affirmation regarding delivery, or acknowledgement of receipt.
- 3814.3 Service of pleadings shall be made by one of the following methods:
- (a) United States mail, with first-class postage prepaid;
  - (b) By personal delivery ; or
  - (c) By leaving it at the party's place of business with a person in charge or an employee or, if the place of business is closed or the party has no place of business, by leaving it at the party's usual place of residence with a person of suitable age and discretion who is at least sixteen (16) years of age or older residing there.
- 3814.4 Service by mail is complete upon mailing.
- 3814.5 Service on a general partner shall be valid service on the partnership.
- 3814.6 Service on an officer or director or registered agent of a corporation or association shall be valid service on that corporation or association.

3814.7 When any party is represented in a specific proceeding by an attorney, service of all pleadings in that proceeding shall be made upon the attorney and that service shall be considered service upon that party or those parties.

**3815 EX PARTE COMMUNICATIONS**

3815.1 From the start of the proceeding until the rendering of a final decision, no person may communicate *ex parte* with the Commissioner or designated hearing officer regarding the merits of the proceeding.

3815.2 The Commissioner shall not be prohibited from communicating with officials of the District government and members of the Department on policy and procedural matters during the course of a proceeding before the Commissioner.

3815.3 The Commissioner shall not be prohibited from communicating with any party that is a regulated entity or person of the Department on matters not related to the merits of a matter before the Commissioner.

3815.4 If the Commissioner determines that a person has violated the prohibition on *ex parte* communications, he or she may impose appropriate sanctions against that person, which may include excluding the person from the proceeding or deciding against it with prejudice.

3815.5 As used in this section, the term "*ex parte*" shall mean any oral or written communication related to the merits of a pending matter made to the Commissioner, not in the public hearing record, with respect to which reasonable prior notice to all parties to the proceeding is not given. An inquiry about the status of a proceeding is not considered an *ex parte* communication.

**3816 POST-HEARING PROCEDURES**

3816.1 If the matter is heard before a hearing officer, the hearing officer shall serve proposed findings of fact, proposed conclusions of law, and a proposed order on all parties and the Commissioner within twenty (20) calendar days of the close of the hearing to the Commissioner for adoption, amendment, or rejection.

3816.2 A party served with proposed findings of fact, proposed conclusions of law, and a proposed order shall have the right to file exceptions to the proposed findings of fact, proposed conclusions of law, and proposed order. Such exceptions shall be filed and served within ten (10) calendar days of the date the proposed findings of fact, proposed conclusions of law, or proposed order in question were served. In addition, the party shall have the right to present argument to the Commissioner,

who shall consider the exceptions and argument when rendering his or her final findings of fact, conclusions of law and order.

- 3816.3 If the matter is heard before the Commissioner, the Commissioner shall make a written final order within 60 days of the close of the hearing record. A final order will be in writing. A final order will include findings of fact, conclusions of law, and an order. A copy of a final order shall be served upon each party of record.

**3817 APPEAL RIGHTS**

- 3817.1 Judicial review of an adverse decision of the Commissioner shall be by petition to the District of Columbia Court of Appeals.

**3818 SEVERABILITY**

- 3818.1 If any section or portion of a section of these rules, or the applicability thereof to any person or circumstance is held invalid by any court of competent jurisdiction, the remainder of these rules, or the applicability thereof to other persons or circumstances, will not be affected thereby.

**3819 DEFINITIONS**

"Commissioner" means the Commissioner of the Department of Insurance and Securities Regulation or designated hearing officer.

"District" means the District of Columbia.

"Party" means any person or agency named or admitted as a party, in any proceeding before the Commissioner, but nothing herein shall be construed to prevent the Commissioner from admitting any person or agency as a party for limited purposes.

"Person" means any natural or artificial person, including but not limited to, individuals, partnerships, associations, trusts, or corporations.

"Respondent" means a person against whom an adverse action is contemplated, proposed, or taken.

"Show Cause Order" means an order issued by the Commissioner that alleges facts that constitute a violation of, or a failure to comply with, the law by the respondent and that directs the respondent to explain why the Commissioner should not issue a final order against the respondent based upon the alleged facts, and shall include orders to show cause concerning:

- (a) A cease and desist order, stop order; and
- (b) A denial, suspension, or revocation order.

"Summary Suspension Order" means an order issued by the Commissioner that alleges facts that constitute a violation of, or failure to comply with, the law by the respondent and that directs the respondent immediately to take actions or refrain from certain actions. Summary suspension orders include:

- (a) A summary cease and desist order;
- (b) A stop order issued by the Commissioner;
- (c) A summary postponement or suspension; and
- (d) A summary denial or revocation.

Persons desiring to comment on these emergency and proposed regulations should submit comments in writing to Ms. Leslie Johnson, Hearing Officer, Department of Insurance and Securities Regulation, Office of Legal Affairs, 810 First Street, N.E., Suite 701, Washington, D.C. 20002, not later than thirty (30) days after publication of this notice in the District of Columbia Register. Copies of these rules and related information may be obtained by writing to the address stated above.

DISTRICT OF COLUMBIA  
DEPARTMENT OF MOTOR VEHICLESNOTICE OF PROPOSED RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in Section 1425 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999, (D.C. Law 12-175; D.C. Official Code § 50-901 *et seq.* (2001 Ed.)); section 13 of the District of Columbia Traffic Act, effective March 3, 1925 (43 Stat. 1125; D.C. Official Code § 50-1403.01 (2001 Ed.)); Section 10 of the District of Columbia Traffic Act of 1925 ("Act"), approved March 3, 1925, (43 Stat. 1124; D.C. Official Code § 50-2201.05 (2001 Ed.)), as amended by the Driving Under the Influence Repeat Offenders Amendment Act of 2000, 48 DCR 602, D.C. Law 13-238; Mayor's Order 94-176, effective August 19, 1994; Mayor's Order 2002-72, effective April 3, 2002; Title VIII of the Motor Vehicle and Safe Driving Amendment Act of 2000, effective April 27, 2001, 48 DCR 2057 (D.C. Law 13-592); and section 105 of the District of Columbia Traffic Adjudication Act, approved September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.01 *et seq.* (2001 Ed.)), hereby gives notice of the intent to adopt the following rulemaking that amends Chapters 3 and 99 of Title 18 of the District of Columbia Municipal Regulations (DCMR) (Vehicles and Traffic). The proposed amendment will increase the license revocation period for repeat offenders of the District's driving under the influence laws while establishing an ignition interlock program, to be made available to repeat offenders one year prior to the expiration of the new revocation periods. The rules also establish certification requirements for providers of ignition interlock devices. 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.

Pursuant to title VIII of the Motor Vehicle and Safe Driving Amendment Act of 2000, effective April 27, 2001, (D.C. Law 13-592), these proposed rules are being transmitted to the Council of the District of Columbia, and the final rules may not become effective until the expiration of the forty-five (45) day period of Council review or upon approval by Council resolution, whichever occurs first.

The following rulemaking action is proposed:

Title 18, DCMR, is amended as follows:

A. Chapter 3 is amended as follows:

- 1) Section 306.5 is amended by inserting at the end of the last sentence, the phrase: ", except as provided in §§ 306.6 & 306.7".
- 2) New Sections 306.6 and 306.7 are added to read as follows:

306.6 A person convicted of a second offense of driving under the influence within a 15-year period shall have their license revoked for two (2) years, unless

prior thereto the license is reinstated pursuant to the ignition interlock program established in § 311

- 306.7 A person convicted of a third or subsequent offense of driving under the influence within a 15-year period shall have their license revoked for three (3) years, unless prior thereto the license is reinstated pursuant to the ignition interlock program established in § 311.

Existing subsections 306.6 through 306.9 shall be renumbered 306.8 through 306.11.

- B. Title 18, DCMR, is amended by adding new section 311 to read as follows:

311 IGNITION INTERLOCK PROGRAM – ESTABLISHMENT, APPLICATION PROCESS AND PARTICIPATION COMPLIANCE

- 311.1 There is established an ignition interlock program to allow for a discretionary one-year reduction of the revocation periods imposed by §§ 306.6 and 306.7 on repeat offenders of driving under the influence laws.
- 311.2 For the purposes of this section, the terms certified ignition interlock device and certified provider mean such devices and providers as are certified by the Department pursuant to § 312 of this Title.
- 311.3 A repeat offender may apply for participation in the ignition interlock program after the expiration of at least one (1) year of the revocation period if revoked under §306.6 or two (2) years if revoked under 306.7.
- 311.4 No person may be accepted into the ignition interlock program if he or she has:
- (a) A prior conviction for causing injury or death while operating a motor vehicle in any jurisdiction; or
  - (b) Previously participated in this program or any similar program in another jurisdiction five (5) years prior to the date of the application.
- 311.5 A repeat offender wishing to participate in the ignition interlock program shall file an application in the form prescribed by the Director, together with an application fee of fifty dollars (\$50).
- 311.6 In addition to an other information required by the Director, the applicant shall identify the make, model, and registration number of all vehicles the applicant will be using during program participation, and with respect to each such vehicle provide:
- (a) A copy of the title and registration issued by the Department and, if leased, a valid lease agreement;

- (b) The names, addresses, and social security numbers of all person authorized to use the vehicles;
- (c) The name and address of the registered owners other than lessors and the applicant;
- (d) A release form approved by the Director and signed by all persons identified in response to (c), authorizing the revocation of their vehicle's registration should the applicant withdraw or be terminated from the program;
- (e) The name and address of the certified ignition interlock provider that installed the device and, if different, the name and address of the authorized service center where the vehicle will be brought pursuant to §311.9; and
- (f) Written verification from the certified ignition interlock provider that a certified ignition interlock device has been installed and that the applicant and all persons identified in (b) have received training in the use of the device.

- 311.7 The decision of the Director to deny an application is not subject to a hearing or other administrative review.
- 311.8 If the Director, in his or her discretion, grants the application, the applicant, upon satisfaction of all other prerequisites and the payment of the applicable fees, will receive a restricted license. The license restrictions will prohibit him or her from driving any vehicle other than those identified in the application and only if the vehicles remain equipped with properly functioning ignition interlock devices. The Director may impose such other conditions as her or she deems appropriate. The restriction and conditions shall remain in place for one year, unless extended pursuant to § 311.18(b).
- 311.9 No later than thirty (30) days after the date on which the application was granted, and every thirty (30) days thereafter, the vehicle(s) identified in the application shall be brought to the service center identified in the application for servicing to include downloading of information from the device. If the service center is closed on the date on which service is required, the vehicle shall be brought for service on the next business day.
- 311.10 The Director, in his or her discretion, may grant a one-time exemption to the servicing requirement established in § 311.9 upon a written request and for good cause shown.
- 311.11 The Director shall suspend the registration of any vehicle not serviced within five (5) days after a servicing date, until the participant proves compliance with § 311.9. The Director may terminate the participant from the program if the vehicle is not serviced within ten (10) days after the servicing date.
- 311.12 A participant shall only operate a vehicle identified in the application and only if the vehicle remains equipped with a properly functioning device, approved for use under this program.

- 311.13 A participant shall abide by the terms and conditions of the service agreement with the ignition interlock service provider, including the payment of all costs and fees associated with the program.
- 311.14 A participant shall not tamper with, bypass, or otherwise remove or render the device inoperable, or allow another person to tamper with, bypass, or otherwise remove or render the device inoperable.
- 311.15 A participant shall not allow any other individual to blow into the device, unless that individual will be operating the vehicle.
- 311.16 A participant may be terminated from the program for any violation of §§ 311.12 through 311.15
- 311.17 A participant shall be presumed to be the person whose blood alcohol level was detected by a device installed in a vehicle identified on their application.
- 311.18 A participant shall be presumed to have operated, or to have attempted to operate their designated vehicle whenever the installed device detects a level of alcohol in their blood.
- 311.19 Except as provided in 311.19, a participant who operates or attempts to operate a motor vehicle with a blood alcohol level of .025 or greater shall:
- (a) Be fined up to three hundred dollars (\$300) for the first violation;
  - (b) Receive an additional one (1) year license restriction period for the second violation; and
  - (c) Be terminated from the program for the third violation.
- 311.20 A participant who operates or attempts to operate a motor vehicle with a blood alcohol of .08 percent or greater shall be terminated from the program.
- 311.21 Prior to termination from the program or the imposition of any penalties pursuant to § 311.19, the participant shall be given notice and an opportunity for a hearing. Hearings shall be limited to the issue of whether or not the offense was committed.
- 311.22 The Director shall revoke the driver's license of a person who voluntarily ends their participation in the program or is terminated from the program. The license revocation period shall be one (1) year.
- 311.23 The Director shall revoke the registration of all vehicles identified in the application of a program participant who withdraws from or is terminated from the program for a one-year period.

312 IGNITION INTERLOCK PROVIDERS

- 312.1 All ignition interlock providers and their devices must be certified by the Department in accordance with the requirements of this section.
- 312.2 Providers shall be responsible for device installation, user training, service, and maintenance.
- 312.3 All devices offered in the District shall meet the Model specifications for Breath Alcohol Ignition Interlock Devices from the National Highway Traffic Safety Administration, 57 FR 11772 -- 11787 (1992).
- 312.4 A provider shall certify that the devices for which certification is sought:
- (a) Do not impede the safe operation of the vehicle;
  - (b) Minimize opportunities to bypass devices;
  - (c) Correlate accurately with established measure of blood alcohol levels;
  - (d) Work accurately and reliably in an unsupervised environment;
  - (e) Require a proper and accurate measure of blood alcohol levels;
  - (f) Resist tampering and provide evidence of attempted tampering;
  - (g) Are difficult to circumvent and require premeditation to circumvent;
  - (h) Minimize inconvenience to a sober user;
  - (i) Are manufactured by a party responsible for installation, user training, service, and maintenance;
  - (j) Operate reliably over the range of motor vehicle environments or motor vehicle manufacturing standards;
  - (k) Are manufactured by a party adequately insured for product liability;
  - (l) Provide the option for an electronic log of the driver's experience with the device; and
  - (m) Meet the requirements for certification set forth in the specifications for the devices.
- 312.5 An application for certification shall include:
- (a) The name and address of the provider;

- (b) The name and model number of the device;
  - (c) A detailed description of the device including instructions for its installation and operation;
  - (d) Technical specifications descriptive of the device's accuracy, security, data collection and recording, tamper detection, and environmental features;
  - (e) A description of the provider's present or planned provisions for distribution of the device in the District, including all locations where the device may be purchased, installed, serviced, repaired, calibrated, inspected, and monitored;
  - (f) A certificate from an insurance company licensed in the District evidencing that the provider holds product liability insurance;
  - (g) A certified copy of the drawings, schematics, and wiring protocols for the device and its components, to be treated by the District as confidential commercial information not subject to public disclosure; and
  - (h) A sample warning label advising third parties of applicable misdemeanor penalties, if any, to be affixed to each device.
- 312.6 The ignition interlock device shall correlate with an alcohol concentration recommended in the specifications contained in 57 FR 11772 - 11787 (1992), with the accuracy provided for in the specifications, but may not be higher than 0.025 percent.
- 312.7 A correlation coefficient of 0.90 is considered reliable. Ninety times out of 100, the ignition interlock device shall respond to, detect, and interlock when an individual has an alcohol concentration of 0.025 percent or higher.
- 312.8 In the event of a customer complaint, the provider shall correct any error in operation or misuse with additional instructions, or exchange the device with another in the event of a component failure, within 48 hours of notification of the complaint.
- 312.9 Breath test devices shall use breath specimens that are alveolar air samples ("deep lung air") in accordance with established forensic alcohol standards meeting the specifications contained in 57 FR 11772 - 11787 (1992).
- 312.10 The ignition interlock device shall be calibrated for proper use and accuracy semiannually, or more frequently as the circumstances may require.
- 312.11 The device, the installation of the device, and the monitoring of the device, including the transmission of data to the Department, shall provide for the security features set forth in the specifications in 57 FR 11772 - 11787 (1992).

312.12 The device shall be resistant to environmental conditions including shock and vibration as normally found in a motor vehicle and shall operate accurately over a temperature range of -20 to 100 degrees (F) and an altitude range between 0 to 2,500 feet.

312.13 The device shall have the following design features:

- (a) Be designed to permit a restart (grace period) of a vehicle's ignition within 120 seconds after the ignition has been shut off, without requiring a further test;
- (b) Automatically purge residual alcohol before allowing subsequent tests;
- (c) Be required to be stowed out of the way before starting the vehicle;
- (d) Be designed so that a second breath test is performed once a vehicle has been underway for at least 5 minutes but not more than 30 minutes;
- (e) Cause the vehicle to stop functioning and signal, by activating horns and/or lights, when the device is activated while vehicle has been underway; and
- (f) Have an onboard datalogger, which shall be:
  - (1) Capable of being downloaded in an installation facility or in the field through mobile means;
  - (2) Encrypted with the software programs allowing access to the data stored in the device; and
  - (3) Kept secure and protected from public access.

312.14 The provider shall carry product liability insurance with minimum liability limits of 1 million dollars (\$1,000,000) per occurrence, with 3 million dollars (\$3,000,000) aggregate total. The liability covered shall include defects in product design and materials as well as in the work of manufacture, calibration, installation, and removal of devices. The proof of insurance shall include a statement from the insurance company that 30 days' notice will be given to the Department before cancellation of the insurance.

312.15 The provider shall submit to the Department a statement that the provider is entirely responsible for product liability and shall defend and indemnify the District and the testing laboratory that has verified that the device meets the Department's standards and requirements.

312.16 A provider is responsible for ensuring that proper installation procedures are adhered to, including, but not limited to, the following:

- (a) Devices shall be installed within a building or from a mobile unit fully equipped for adequate installation;

- (b) Customers or other unauthorized persons must not be allowed to witness the installation of the device;
- (c) Each provider shall develop detailed and written instructions for installation of its device in accordance with the guidelines adopted by the Department;
- (d) The installer shall screen the vehicle for acceptable mechanical and electrical conditions, in accordance with the provider's instructions;
- (e) Conditions that would interfere with the function of the device (for example, low battery or alternator voltage, stalling frequently enough to require additional breath tests, etc.) shall be corrected to an acceptable level;
- (f) Installations shall be made in a workmanlike manner in accordance with accepted trade standards, and according to the instructions provided by the manufacturer;
- (g) After a device is installed, the vehicle shall be checked to see that the installation was performed properly and that it does not interfere with the normal operation of the vehicle after it has been started;
- (h) Each installation shall include all of the tamper resistant features required by the provider and the Department;
- (i) The provider shall be responsible for ensuring physical anti-tamper securities which include, but are not limited to:
  - (1) A unique and easily identifiable wire, covering, or sheathing over all wires used to install the device, which are not inside a secured enclosure;
  - (2) A unique and easily identifiable covering, seal, epoxy, or resin at all exposed electrical connections for the device;
  - (3) Connections to the vehicle which shall be under the dash or in an inconspicuous area of the vehicle;
  - (4) A unique and easily identifiable tamper seal, epoxy, or resin at all openings (except the breath and exhaust ports) of the hand-held unit, control, and support units; and
  - (5) Depending on the level of electronic anti-tampering security of a device, additional anti-tamper measures, such as the use of a special mark, seal, paint, epoxy, resin, or other material to mark points likely to be accessed when attempting to bypass or tamper with the device (for example, battery post terminals, wire to started solenoid, wire to ignition, dash screws).

- (j) The provider is responsible for ensuring electronic anti-tampering securities including, but not limited to, the following:
  - (1) The device shall detect when the vehicle has been started without a breath test being passed, and shall either display the tamper or record it, or both, in a way that allows for the retrieval of information at a later date;
  - (2) The device shall retain its tamper detection capabilities when disconnected from the vehicle's power supply, or record that it was disconnected. Devices that lose their memory of tamper events when disconnected from a power source shall have an indicator or interrupt device;
  - (3) The device shall continuously record the time and date for each of the following vehicle and device operations:
    - (i) Breath test fail;
    - (ii) Breath test pass;
    - (iii) Alcohol level of breath test; and
    - (iv) Any attempt to tamper with the device.
  - (4) When a device detects a condition that would be considered tampering, the device shall activate an indicator or interrupt device.

312.17 At the time of device installation, the device shall be checked to make sure that it is functioning properly and accurately. Self-diagnostic features shall also be checked.

312.18 Tamper inspections shall be conducted any time that the device is given routine inspection, maintenance, or repair by the provider. Tamper inspections shall include the following:

- (a) Inspect all external wiring insulation, connection, and sheathing for the device and where the device connects to the vehicle;
- (b) Record or document any electronic indications of tampering;
- (c) Inspect all tamper seals for breaks, tears, or other evidence of tampering. Document and photograph any evidence of tampering;
- (d) Check device for proper operation to ensure tamper detection capabilities;

312.19 The Department or its designees shall have the right to inspect installation and servicing of the devices.

312.20 The provider shall provide the customer with the following:

- (a) Written instructions on how to clean and care for the device;
- (b) Written instructions on what type of vehicle malfunctions or repairs may affect the device, and what to do when such repairs are necessary;
- (c) Written notice about how the device may be affected by high altitudes;
- (d) Written and hands-on training on how to use the device. This shall include all persons authorized to use the vehicle that has had the device installed; and
- (e) An adequate supply of disposable mouthpieces with saliva traps.

312.21 The provider shall provide and emergency 24-hour phone number that a driver may use to receive assistance. Assistance may include technical information, tow service, or road service. Emergency assistance related to the failure of a device shall be provided within 24 hours for vehicles located in or near an area with an installation repair facility. The device shall be made functional within 48 hours from when the call for assistance is made.

312.22 Providers shall ensure the following with respect to personnel who install, calibrate, perform tamper inspections, or perform reporting duties, or all of these:

- (a) Personnel shall have the training and skill necessary to install, troubleshoot, and check for proper operation of the device, and to screen the vehicle for acceptable conditions;
- (b) Personnel may not have been convicted of a crime substantially related to the qualifications, functions, and duties related to the installation and inspection of the devices. This may include, but is not limited to, the following:
  - (1) Convictions for any alcohol or drug-related offense within the last three (3) years;
  - (2) Convictions of more than one (1) alcohol or drug-related offense overall;
  - (3) Convictions of probation violation;
  - (4) Conviction for perjury; or
  - (5) License suspension or revocation for a violation of motor vehicle safety laws.

312.23 Persons who can show acceptable evidence of rehabilitation may be considered for the positions in § 312.22.

312.24 A device must be tested prior to certification.

312.25 Facilities, which may include mobile or satellite units, where interlock devices are installed, serviced, monitored, or removed shall:

- (a) Be in an area where customers are not allowed to watch the installation, calibration, or removal of a device;
- (b) Be open during normal business hours with after hours service capability;
- (c) Be established to service the geographical location and volume of individuals who qualify for and are admitted into the program;
- (d) Have records maintained for 5 years; and
- (e) Have and use the required tools, test equipment, and manuals needed to screen vehicles for acceptable mechanical and electrical conditions to install devices.

312.26 The tools, test equipment, and manuals required under § 312.25 (e) include, but are not limited to, the following:

- (a) Tools necessary to ensure electrical connections are made in a workmanlike manner in accordance with accepted trade standards (for example, properly soldered or mechanically crimped with high quality connectors);
- (b) Heat gun if heat shrink tubing or heat set labels are used;
- (c) Volt/ohmmeter;
- (d) Test light;
- (e) Battery testing equipment and servicing tools (for example, load tester, terminal cleaning tools, battery filler, etc.); and
- (f) Electrical wiring diagrams or reference guide, or both, for electrical systems on import and domestic vehicles, 20 years old or less, necessary for the installation and operation of the device.

312.27 Testing shall be performed under the specifications set forth in 57 FR 11772 – 11787 (1992) by an entity approved by the Department for the purpose of establishing the accuracy and reliability of candidate devices.

312.28 The provider must submit to the Department a notarized letter, affidavit, or both, from a Department-approved testing laboratory certifying that the device by model, class, or both, meets or exceeds all requirements set forth in 57 FR 11772 – 11787 (1992). The affidavit shall also include:

- (a) The name, address, and phone number of the testing laboratory;
- (b) A description of the tests performed;
- (c) Copies of the date and results of the testing procedures; and
- (d) The names and qualifications of the individuals performing the tests.

312.29 The provider shall submit to the Department:

- (a) Annually, a certified statement that the manufacturing of the model or type of device originally certified has not been modified or altered in any way to require laboratory retesting.
- (b) Annually, a summary of all complaints received and corrective actions taken by the provider for each mode or type of certified device;
- (c) Semiannually, a report that the devices were checked for proper use and accuracy, detailing any necessary adjustments;
- (d) A report on any device denied certification in another state, whether the denial of certification occurs before or after certification by the Department; and
- (e) Any other available information upon request.

312.30 The reports required under § 312.29 shall be categorized by:

- (a) Customer error of operation;
- (b) Faulty automotive equipment other than the device;
- (c) Apparent misuse or attempts to circumvent the device causing damage; and
- (d) Device failure due to material defect, design defect, or workmanship errors in construction, installation, or calibration.

312.31 A denial of certification for an ignition interlock model in another state may be cause for de-certification or denial of certification for the same model in the District.

312.32 All costs of obtaining certification of an ignition interlock device shall be borne by the provider.

312.33 When notified in writing by the Department, the approved provider shall remove the device and return the vehicle to normal operating condition. All severed wires shall be permanently reconnected and insulated with heat shrink tubing or its equivalent.

312.34 Whenever a device is removed for repair and cannot immediately be reinstalled, a substitute device shall be used.

312.35 The Department may revoke approval of a device, and remove it from the list of acceptable devices, upon any of the following grounds:

- (a) Evidence of repeated failures due to gross defects in design, materials, or workmanship during manufacture;
- (b) Termination of provider's liability insurance;
- (c) Notification that the provider is no longer in business;
- (d) Voluntary request of provider;
- (e) Any findings that the provider is not in compliance with the provisions of this chapter; or
- (f) A reasonable belief that the device was inaccurately represented to meet the performance standards.

312.36 The effective date of revocation shall be 15 days after notification is sent to the provider via first class mail, except in cases where the Department determines immediate revocation is necessary for the safety and welfare of the public.

312.37 Within 15 days of revocation, providers may request, in writing, review of revocation.

312.38 Upon revocation or voluntary surrender of an approval, a provider shall be responsible for removal of all like devices from customers' vehicles.

312.39 A provider shall be responsible for any costs connected with removal of its revoked devices from customers' vehicles and the installation of new devices from the Department's list of approved devices.

312.40 A provider must allocate 2% of its monthly gross leasing revenue in a fund for indigents, to be made available for indigents applying to the program.

Section 9901, DEFINITIONS, is amended by adding new definitions to read as follows:

**Alcohol** means the generic class of organic compounds known as alcohols and, specifically, the chemical compound ethyl alcohol. For the purposes of ignition interlock devices, there is no requirement expressed or implied that the device be specific for ethyl alcohol.

**Alcohol concentration (BAC)** means the amount of alcohol in a person's blood or breath determined by chemical analysis, which shall be measured by grams of alcohol per:

- (a) 100 milliliters of blood; or
- (b) 210 liters of breath.

**Ignition interlock device or device** means a device that connects a motor vehicle's ignition system to a breath analyzer that measures an individual's alcohol concentration and prevents a motor vehicle ignition from starting the motor vehicle if a driver's alcohol concentration exceeds the calibrated setting of .025, as provided in § 312.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Joan Bailey, D.C. Department of Motor Vehicles, 65 K Street, N.E., Washington, D.C. 20002. 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.