DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in D.C. Official Code § 47-2853.10 (a)(12) and Mayor's Order 2000-70, dated May 2, 2000, hereby gives notice of the adoption of amendments to 17 DCMR Chapter 23 (Real Estate Appraisers). This rulemaking will update the District of Columbia's Real Estate Appraiser regulations to reflect recent changes to industry standards implemented by the Appraisal Foundation's Appraisal Qualifications Board. The Appraisal Foundation is congressionally authorized to establish and enforce national standards and qualifications for real property appraisers who appraise real property in federally related real estate transactions. All jurisdictions that license real estate appraisers must adopt standards that meet the minimum industry requirements established by the Appraisal Qualifications Board (AQB). These rules were previously published as a proposed rulemaking in the *D.C. Register* on August 15, 2008. No comments were received in response to that notice and no changes have been made. These final rules will be effective upon publication of this notice in the *D.C. Register*.

Title 17 DCMR Chapter 23 is amended as follows:

Section 2300.2 is amended to read as follows:

2300.2 17 DCMR Chapter 33 (General Rules) shall supplement this chapter and establish the procedural requirements associated with initiating and holding disciplinary proceedings against licensees. In the event that a provision within 17 DCMR Chapter 33 conflicts with this chapter or the Non-Health Related Occupations and Professions Licensure Act of 1998, effective April 20, 1999 (D.C. Law 12-261; D.C. Official Code § 47-2853.01 *et seq.* (2001)) (the Act), the applicable provision within this chapter or the Act shall control.

Section 2302.1 is amended to read as follows:

2302.1 Prior to applying for licensure applicants for the Appraiser Trainee classification shall fulfill the requirements set forth in § 2323 of this chapter.

Section 2302.2 is amended to read as follows:

2302.2 Applicants for the Licensed Residential Real Property Appraiser classification shall complete one hundred fifty (150) classroom hours of courses in subjects related to real estate appraisal, including those subjects listed in § 2302.10.

Section 2302.3 is amended to read as follows:

2302.3 Applicants for the Certified Residential Real Property Appraiser classification shall complete two hundred (200) classroom hours in subjects related to real estate

appraisal, including those courses listed in § 2302.10. The two hundred (200) classroom hours may include the one hundred fifty (150) classroom hour requirement for the Licensed Real Property Appraiser classification. Applicants shall also have at least a two-year associate's degree or have completed twenty-one (21) hours of college course work. The twenty-one (21) hours of college course work shall have been earned from an accredited college, junior college, community college, or university in the following subjects:

(a) English composition;

(b) Principles of economics (Micro or Macro);

(c) Finance;

(d) Algebra, geometry, or higher mathematics;

(e) Statistics;

(f) Introduction to computers, Word processing/spreadsheets; and

(g) Business or real estate law.

Section 2302.4 is amended to read as follows:

2302.4 Applicants for the Certified General Real Property Appraiser classification shall complete three hundred (300) classroom hours of courses in subjects related to real estate appraisal, including those courses listed in § 2302.10. The three hundred (300) hours may include the one hundred fifty (150) classroom hours required for the Licensed Residential Appraiser classification or the two hundred (200) classroom hours required for the Certified Residential Real Property Appraiser Classification. Applicants shall also possess at least a bachelor's degree or have completed thirty (30) hours of college course work earned from an accredited college, junior college, community college, or university in the following subjects:

(a) English composition;

(b) Microeconomics;

(c) Macroeconomics;

(d) Finance;

(e) Algebra, geometry, or higher mathematics;

(f) Statistics;

(g) Introduction to computers, Word processing/spreadsheets;

(h) Business or real estate law; and

(i) Two (2) elective courses in accounting, geography, ag-economics, business management, or real estate.

Section 2302.12 is amended to read as follows:

2302.12 Curriculum content for each course listed in § 2302.10 shall comply with the applicable portions of the Required Core Curriculum Content Guide Note published by the Appraisal Foundation and the AQB as part of the Real Property Appraiser Qualification Criteria. The Board may add additional requirements to the curriculum of any license classification if the Board's additions substantially comply with AQB criteria. Additions to the curriculum content shall be effective only after the Department has published a Notice of Final Rulemaking in the *D.C. Register*.

Section 2303.3 is amended to read as follows:

2303.3 Courses offered by real estate appraisal or real estate related organizations deemed acceptable by the Board shall be acceptable for credit.

Section 2303.4 is amended to read as follows:

2303.4 Appraisal and appraisal related courses taught by institutions of higher learning recognized by an accrediting body approved by the Secretary of the United States Department of Education shall be acceptable for prelicensure or precertification credit if the course has been approved by the AQB.

Section 2303.5 is amended to read as follows:

2303.5 All courses approved by the AQB shall be acceptable for credit.

Section 2304.12(b) is amended to read as follows:

(b) 100% credit for a whole real estate or real property appraisal if the appraiser did 100% of the appraisal;

Section 2306.1 is amended to read as follows:

2306.1 Pursuant to Section 1121 of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1811, and the Act, the Board shall issue an individual a temporary license if the individual completes an application provided by the Board and provides documentation that he or she meets the following requirements:

(a) The individual is licensed or certified and in good standing under the laws of another state;

(b) The property to be appraised by the individual is part of a federally related transaction, is located in the District, and the assignment and property are specifically identified in the application;

(c) The appraisal assignment is of a temporary nature and is limited to one (1) specific assignment or six (6) months, whichever is shorter;

(d) Upon completion of the assignment, the temporary license is surrendered to the Board; and

(e) The individual pays the applicable fee.

Section 2306.4 is amended to read as follows:

2306.4 An individual shall not hold more than two (2) temporary licenses at a time.

Section 2309.1 is amended to read as follows:

2309.1 At least sixty (60) days prior to the expiration of a license, the Board shall send a renewal application by first class mail to the holder of a license at the licensee's address on record with the Board.

Section 2309.4 is amended to read as follows:

2309.4 The failure of a holder of a license to receive the notice required by § 2309.1 of this section does not relieve the holder of the responsibility of renewing the license.

Section 2309.8 is amended to read as follows:

2309.8 Denial of an application for renewal for failure to complete the continuing education requirements shall require the applicant to complete the continuing education requirements prior to submitting an application for reinstatement pursuant to § 2310 of this chapter.

Section 2310.1 is amended to read as follows:

2310.1 Except as provided in § 2310.2, this section shall apply to all applicants for the renewal or reinstatement of each license classification.

Section 2310.2 is amended to read as follows:

2310.2 An applicant for renewal or reinstatement of a real estate appraiser license shall be required to satisfactorily complete continuing education courses according to the following schedule:

(a) Applicants obtaining a license one hundred eighty-five (185) days or less from the renewal date required by the license cycle are not required to complete any hours of continuing education for that license cycle;

(b) Applicants obtaining a license during the last twelve (12) months of a license cycle, but before the one hundred eighty-five (185) day period must complete fourteen (14) hours of continuing education for that license cycle; and

(c) All other licensees must complete the full twenty-eight (28) hours of continuing education for the license cycle.

Section 2310.3 is amended to read as follows:

2310.3 Repealed.

Section 2310.7 is amended to read as follows:

2310.7 Repealed.

Section 2310.8 is amended to read as follows:

2310.8 Continuing education credit for the National USPAP Update Course shall only be awarded to licensees completing USPAP continuing education courses taught by an AQB certified instructor.

Section 2312.2 is amended to read as follows:

2312.2 The Board may approve educational offerings that include, but are not limited to, the following real estate related appraisal topics:

(a) Ad valorem taxation;

(b) Arbitration, dispute resolution;

(c) Courses related to the practice of real estate appraisal or consulting;

(d) Development cost estimating;

(e) Ethics and standards of professional practice, USPAP;

(f) Land use planning, zoning;

(g) Management, leasing, timesharing;

(h) Property development, partial interests;

(i) Real estate law, easements, and legal interests;

(j) Real estate litigation, damages, condemnation;

(k) Real estate financing and investment;

(m) Real estate appraisal related computer applications; and

(n) Real estate securities and syndication.

A new section 2312.6 is added to read as follows:

2312.6 A sponsor of a continuing education program shall submit a completed application to the Board no less than sixty (60) days prior to the date of the presentation for each program for which the sponsor seeks approval.

Section 2317.1 is amended to read as follows:

2317.1 In accordance with the requirements of Section 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. § 3338), $50.00 (fifty dollars) of the biennial renewal fee assessed for all licensed and certified real estate appraisers, except licensed appraisal trainees, shall be submitted by the Department to the Appraisal Subcommittee.

Section 2320.2 is amended to read as follows:

2320.2 An appraiser instructor of a prelicensing (residential appraisal) course shall possess one hundred five (105) classroom hours of real estate appraisal education and two thousand (2,000) hours experience as a residential real estate appraiser within the previous five (5) years.

Section 2320.3 is amended to read as follows:

2320.3 An appraiser instructor of a precertification (general appraisal) course shall possess two hundred five (205) classroom hours of real estate appraisal education and two thousand (2,000) hours experience as a general real estate appraiser within the previous five (5) years, with at least one-half of such experience being in income property appraising.

Section 2322.2 is amended to read as follows:

2322.2 The Board may authorize the Fund to be used for expenditures for conferences, workshops, and educational programs for real estate appraisal officials as provided in §§ 2322.3 and 2322.4.

Section 2322.4 is amended to read as follows:

2322.4 The Board may use the Fund to pay the entire permissible cost for a real estate appraisal official, whose duties relate in whole or in part to the enforcement of real estate appraisal license laws, to participate in a conference, workshop, or educational program that the Board determines is qualified pursuant to § 2322.5.

Section 2323.1(a)(5) is amended to read as follows:

2323.1(a)(5) The core curriculum of the prelicensure education requirements that appraiser trainees must complete prior to applying for licensure are thirty (30) hours in Basic Appraisal Principles, thirty (30) hours in Basic Appraisal Procedures, and the fifteen (15) hour National USPAP Course or its equivalent. The content of the curriculum offered in the courses, seminars, workshops, or conferences used by an appraiser trainee to meet the prelicensure education requirements shall follow the guidelines established by the AQB in the publication known as AQB Guide Note 1 (GN-1).

Section 2324.1 is amended to read as follows:

2324.1 If the Board, subject to the applicant or licensee's right to a hearing as provided by the Act, finds that an applicant or licensee has violated any applicable provision of this chapter or the Act, the Board may deny an application, revoke or suspend a license or privilege, levy a civil penalty, issue a reprimand, require a course of remediation, or refer an applicant or licensee to the Office of the Attorney General for criminal prosecution.

Section 2324.2 is amended to read as follows:

2324.2 The Board may, prior to a hearing but after an investigation, issue an order requiring any person alleged to be in violation of this chapter or the Act to cease and desist immediately from the alleged activity if the alleged activity has caused or may cause immediate or irreparable harm to the public. The Board shall deliver the order to the person affected pursuant to the provisions of D.C. Official Code § 47-2844.01.

Section 2324.4 is amended to read as follows:

2324.4 If the Director suspends or restricts a licensee's license or certification to practice pursuant to § 2324.3 of this chapter, the licensee is entitled to notice and a hearing pursuant to the provisions of D.C. Official Code § 47-2853.18.

Section 2399 is amended as follows:

A new definition of "AQB" is added to read as follows:

AQB – the Appraisal Qualifications Board.

The definition of "classroom hour" is amended to read as follows:

Classroom hour - A classroom hour is equal to fifty (50) minutes of each sixty (60) minute segment and includes time devoted to tests that are considered part of the course.

The definition of "distance education" is deleted.

The definition of "feasibility analysis" is deleted.

The definition of "fee appraisal" is deleted.

A new definition of "Fund" is added to read as follows:

Fund – the Appraisal Education Fund.

The term "real estate consulting" is amended to read as follows:

Real estate appraisal consulting

The definition of "staff appraisal" is deleted.

THE OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

ERRATA NOTICE

Notice of Final Rulemaking, 17 DCMR § 8399,
Issued by the Department of Health,
Published at 55 DCR 9317 on August 29, 2008

The Administrator of the Office of Documents and Administrative Issuances (ODAI), pursuant to D.C. Official Code § 2-559 (2006 Repl.), entitled "**Correction of errors in documents**," hereby gives notice of the correction to the text of the Notice of Final Rulemaking published in the *District of Columbia Register*, and issued by the Department of Health on August 29, 2008, which implemented Title I of the SafeRx Act of 2008, which "requires individuals engaged in the practice of pharmaceutical detailing in the District to be licensed and regulated by the Board of Pharmacy" See Notice of Final Rulemaking published at 55 DCR 9317 (August 29, 2008).

Two (2) definitions from 17 DCMR § 8399 were inadvertently omitted. The complete text of these two definitions appears below:

> **Practice of Pharmaceutical detailing-** the practice by a representative of a pharmaceutical manufacturer or labeler of communicating in person with a licensed health professional, or an employee or representative of a licensed health professional, located in the District of Columbia, for the purpose of selling, providing information about, or in any way promoting a pharmaceutical product.
>
> **Prescriber-** a person who is licensed, registered, or otherwise authorized by the District to prescribe and administer prescription drugs in the course of a professional practice.

No changes have been made to the text of the rulemaking as originally published as a Notice of Proposed Rulemaking on June 27, 2008 (55 DCR 7104). The Notice of Final Rulemaking became effective on the date of its publication in the *District of Columbia Register* on August 29, 2008.

Inquiries regarding this notice shall be addressed by mail to Gregory Fields, Staff Attorney, Office of Documents and Administrative Issuances, 441 4th Street, N.W., Suite 520 South, Washington, D.C. 20001 or via telephone at (202) 727-5090.

THE OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

ERRATA

The Administrator of the Office of Documents and Administrative Issuances (ODAI), pursuant to D.C. Official Code § 2-559 (2006 Repl.), entitled "**Correction of errors in documents**," hereby gives notice of the correction of to the text of the Notice of Final Rulemaking published in the *District of Columbia Register*, and issued by the Department of Insurance, Securities, and Banking on September 12, 2008, which set forth "the use of the 2001 CSO Preferred Class Structure Mortality Table in determining minimum reserve liabilities for life insurance companies." See Notice of Final Rulemaking published at 55 DCR 9734 (September 12, 2008).

Page three (3) of the rulemaking was inadvertently omitted from the publication of the Notice of the Final Rulemaking by ODAI. Therefore, the entire text of the Notice of the Final Rulemaking as submitted by the Department of Insurance, Securities, and Banking is republished in its entirety immediately following this notice in this edition of the *District of Columbia Register*. No changes have been made to the text of the rulemaking as originally published as a Notice of Proposed Rulemaking on February 29, 2008 (55 DCR 1961). The Notice of Final Rulemaking became effective on the date of its publication in the *District of Columbia Register* on September 12, 2008.

Inquiries regarding this notice shall be addressed by mail to Gregory Fields, Staff Attorney, Office of Documents and Administrative Issuances, 441 4th Street, N.W., Suite 520 South, Washington, D.C. 20001 or via telephone at (202) 727-5090.

DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING

NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Insurance, Securities, and Banking, pursuant to the authority set forth in section 3(h) of the Life Insurance Amendments Reform Act of 1984 [adding a new section 28 to chapter V of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1125)], effective March 14, 1985 (D.C. Law 5-160; D.C. Official Code § 31-4728 (2001)), hereby gives notice of his adoption of the following amendments to Chapter 30 (Valuation of Life Insurance Policies) of Title 26 (Insurance) of the District of Columbia Municipal Regulations. The purpose of the rulemaking is to the use of the 2001 CSO Preferred Class Structure Mortality Table in determining minimum reserve liabilities for life insurance companies. A notice of proposed rulemaking was published in the District of Columbia Register on February 29, 2008 (55 DCR 1961). No changes have been made to the text of the final rulemaking as originally proposed. This rulemaking shall become effective on the date of publication in the D.C. Register.

Chapter 30 (Valuation of Life Insurance Policies) of Title 26 (Insurance) of the District of Columbia Municipal Regulations is amended as follows:

The first paragraph on subsection 3004.1 is amended to read as follows:

3004.1 The definition of terms found in D.C. Official Code §§ 31-4701 et seq. (2001 and 2007 Supp.) shall apply to this chapter. For purposes of this chapter, the following terms shall have the meanings ascribed below:

The definition of "2001 CSO Mortality Table" in subsection 3004.1 is amended to read as follows:

> **"2001 CSO Mortality Table"** means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners ("NAIC") in December 2002 and supplemented by the NAIC in September 2006. The 2001 CSO Mortality Table is included in the Proceedings of the National Association of Insurance Commissioners (2nd Quarter 2002) and is supplemented by the 2001 CSO Preferred Class Structure Mortality Table included in the Proceedings of the NAIC (3rd Quarter 2006). Unless the context indicates otherwise, the 2001 CSO Mortality Table includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

Add the following definitions in subsection 3004.1:

"2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for the super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers, and residual standard smoker splits of the 2001 CSO nonsmoker and smoker tables as adopted by the NAIC in September 2006 and published in the Proceedings of the NAIC (3rd Quarter 2006). Unless the context indicates otherwise, the phrase "2001 CSO Preferred Class Structure Mortality Table" includes: both the ultimate form of that table and the select and ultimate form of that table; both the smoker and nonsmoker mortality tables; both the male and female mortality tables and the gender composite mortality tables; and both the age-nearest-birthday and age-last-birthday bases of the mortality table.

"Statistical agent" means an entity with: proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

Subsection 3005.1(b) is amended by adding the phrase "through § 3005.5" after the phrase "§ 3005.2".

The lead-in text of subsection 3005.2 is amended by adding the phrase "under § 3005.1" after the phrase "2001 CSO Mortality Table".

Subsection 3005.4 is amended to read as follows:

3005.4 At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions set forth in this section, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. No such election shall be made until the company demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this section, shall be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to this section.

New subsections 3005.5 and 3005.6 are added to read as follows:

3005.5 The following conditions shall apply to the use of the 2001 CSO Preferred Class Structure Mortality Table:

(a) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(1) The present value of death benefits over the next 10 years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class; and

(2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

(1) The present value of death benefits over the next ten (10) years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class; and

(2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.

(c) Unless exempted by the Commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the Commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the Commissioner, statistical reports showing mortality and such other information as the Commissioner may deem necessary or expedient for the administration of the provisions of this subsection. The form of the reports shall be established by the Commissioner or the Commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the Commissioner.

3005.6 If any provision of these regulations or its application to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FINAL RULEMAKING

The Director of the District Department of the Environment (DDOE) in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code 8-151.01 *et seq.*), and the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code §§ 34-2202.06a, 34-2202.06b, and 34-2202(16), and Mayor's Order 6006-61, effective June 14, 2006, hereby gives notice of his intent to establish stormwater fees. On June 26, 2008, the Council enacted legislation, the Fiscal Year 2009 Budget Support Act of 2008 (D.C. Law 17-219, effective August 16, 2008). Section 6009 of that Act amended Section 216(d) of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2202.16(1)), giving the D.C. Water and Sewer Authority (WASA) the authority to collect a stormwater charge established by the Director of the District Department of the Environment. This rulemaking establishes new stormwater fees to be collected by the DC Water and Sewer Authority (WASA). The regulations will be published in Chapter 5 of the District of Columbia Municipal Regulations (DCMR) (Water Quality and Pollution).

The rulemaking is being adopted to increase the stormwater fee to fund stormwater management activities required to comply with the municipal separate storm sewer system permit (MS4 Permit) issued by the U.S. Environmental Protection Agency (EPA) to the District. The MS4 Permit requires the District to implement a wide range of stormwater management activities to restore the District's streams and rivers. The MS4 Permit activities extend to approximately two-thirds of the city's stormwater control infrastructure. Funding raised by the stormwater fees are directed to DDOE, the District Department of Transportation, the Department of Public Works, WASA, and other agencies to implement stormwater management activities and water pollution control measures, such as enhanced street cleaning, installation of stormwater controls on roadways, and increased cleaning and maintenance of stormwater drains.

An increase in the stormwater fee is needed to generate the approximately $13 million necessary to meet increased federal requirements for controlling stormwater pollution. The stormwater fee was first enacted by the Council in 2001 and has raised approximately $3.1 million in revenue each year. The fee has not been increased since 2001. By contrast, the District's stormwater management responsibilities have grown considerably since 2001. The failure to generate sufficient revenue will restrict the District's ability to implement the stormwater management measures required by the MS4 Permit, and could lead to violations by the District and substantial fines. The required stormwater management measures and associated costs are best illustrated by the provisions of the November 2007 MS4 Permit Enhancement Agreement between the District and the U.S. EPA Region III (available on the DDOE website at http://ddoe.dc.gov/ddoe/frames.asp?doc=/ddoe/lib/ddoe/stormwaterdiv/DC_BMP_Enhan

cements_Letter_Agreement_112707.pdf) and the 2008 Storm Water Management Administration Study conducted by RESOLVE, Inc. (available on the DDOE website at http://ddoe.dc.gov/ddoe/cwp/view,a,1209,q,497549.asp). Under the 2007 MS4 Permit Enhancement Agreement, there are measureable and quantifiable milestones with specific deadlines. Copies of both documents may also be obtained by calling DDOE at (202) 535-2600.

The rulemaking was published as proposed in the DC Register at 55 DCR 008890 (August 15, 2008). The public presented its views and comments on the proposed fee increases at a public hearing on September 15, 2008. The District received two set of comments on the stormwater fee increase. The Department has considered the coments and have determined that no changes will be made to the proposed rules published on August 15, 2008. Comments and the Department's response may be obtained by calling DDOE at (202) 535-2600. The rulemaking increasing the stormwater fee shall become effective on October 1, 2008.

Chapter 5 of Title 21 of the District of Columbia Municipal Regulations, Water Quality and Pollution, is amended by adding new sections and definitions as follows:

553 NOTICE OF PROPOSED STORMWATER FEE RATE CHANGE AND PUBLIC HEARING

553.1 Except as provided in § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968, D.C. Official Code § 2-505(c), before establishing or changing fees used to fund the District's costs of complying with the National Pollution Discharge Elimination System permit for the municipal separate storm sewer system (MS4 Permit), including the costs of the Stormwater Administration, the Water and Sewer Authority's costs for billing and collecting the stormwater fee, and all administrative, operating, and capital costs associated with the stormwater management activities in the District of Columbia, the Director shall first publish notice of his or her intention to do so in the D.C. Register. The notice may also be published in a newspaper of general circulation in the District of Columbia.

553.2 The notice shall state as follows:

(a) The rate under consideration by the Director;

(b) The date, time, and location of a public hearing to be held by the Director on the proposed rate, or a statement that the date, time and location will be specified in a forthcoming notice;

(c) The time period during which written comments may be submitted for consideration by the Director; and

(d) The requirements of § 554 of this chapter.

554 PUBLIC HEARING

554.1 The hearing shall be conducted not earlier than thirty (30) days after publication of the notice specified in § 553.1 of this chapter.

554.2 The Director, or his or her designee, shall conduct the public hearing.

554.3 Any member of the public who wants to testify at the public hearing shall submit his or her name, and the name of any organization(s), if any, which he or she represents, to the Department at least three (3) days before the date of the hearing, except that this requirement may be waived by the Director at the hearing.

554.4 Statements of members of the public who are testifying on their own behalf shall be limited to five (5) minutes, and statements of those who are appearing on behalf of organizations shall be limited to ten (10) minutes, except that this requirement may be waived by the Director at the hearing.

554.5 Others present at the hearing who wish to be heard may testify after those on the witness list have been called and heard.

554.6 If, in the opinion of the Director, or his or her designee conducting the hearing, a witness is abusive or unruly, such that his or her behavior is disrupting the conduct of the hearing, the Director, or his or her designee conducting the public hearing may call for a recess, order the witness to cease the behavior, or order the witness to leave the hearing. A person who is ordered to leave a hearing may submit written comments, pursuant to the requirements of this section.

554.7 In addition to, or in place of, oral testimony, members of the public may submit written testimony or comments during the period specified in the notice of proposed ratemaking. Either form of comment shall be given equal weight.

555 ADOPTION OF STORMWATER FEE

555.1 Following the completion of the hearing and the comment period specified in the notice of the proposed stormwater fee adjustment, a rate may be established or adjusted by the Director.

555.2 An approved stormwater fee shall take effect on the date identified in the final rulemaking published in the D.C. Register.

556 STORMWATER FEES

556.1 Beginning October 1, 2008, the stormwater fee collected from each District of Columbia retail water and sewer customer shall be as follows:

(a) For single family homes, the fee shall be one dollar and ninety-eight cents ($1.98) per month or twenty-three dollars and seventy – six cents ($23.76) per year;

(b) For multifamily residential buildings, the fee shall be equal to four and four tenths percent (4.4%) of the charge for water and sewer services; or

(c) For all other properties, the fee shall be equal to six and three tenths percent (6.3%) of the charge for water and sewer services.

556.2 A landlord shall not pass a stormwater charge to a tenant that is more than the stormwater charge prescribed by the Director.

FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

NOTICE OF FINAL RULEMAKING

The Chief of the Fire and Emergency Medical Services Department, pursuant to the authority set forth in § 8(a) of the Fire-Standard-Compliant Cigarettes Act of 2008, effective May 13, 2008 (D.C. Law 17-157; D.C. Official Code § 7-1757(a)), and Mayor's Order 2008-90, dated June 23, 2008, hereby gives notice of the adoption of the following new chapter to Title 20 of the District of Columbia Municipal Regulations, (DCMR). The Chief of the Fire and Emergency Medical Services Department took final rulemaking action with respect to the new Chapter 26 on September 11, 2008. The rule establishes standards for regulating the sale and distribution of cigarettes designed to self-extinguish if unattended.

Notice of the Emergency and Proposed Rulemaking was published on July 4, 2008, in the *D.C. Register* at 55 DCR 7316. No comments were received in response to this notice, and no changes have been made to the rule since publication. This rulemaking will become effective upon publication in the *D.C. R*egister.

Title 20 (Environment) (February 1997) of the District of Columbia Municipal Regulations is amended as follows:

A new Chapter 26 is added to read as follows:

CHAPTER 26 FIRE-STANDARD-COMPLIANT CIGARETTES

2600 GENERAL PROVISIONS

2600.1 This chapter shall apply to manufacturers and retail and wholesale dealers of cigarettes sold or offered for sale in the District of Columbia after July 1, 2008, except as provided in § 2600.3.

2600.2 This chapter governs the possession, manufacture, storage, handling, sale, and use of fire-standard-compliant cigarettes.

2600.3 A wholesale dealer or retail dealer may continue to sell after July 1, 2008, cigarettes that are not labeled as fire-standard-compliant cigarettes, provided that the cigarettes were part of its inventory on or before July 1, 2008, and the dealer can demonstrate each of the following:

(a) Tax stamps were fixed to the cigarettes before July 1, 2008, and

(b) The dealer purchased the inventory before July 1, 2008, in comparable quantity to the inventory purchased during the same period of the prior year.

2600.4 A manufacturer may continue to manufacture cigarettes that are not fire-standard-compliant, provided that the cigarettes will be stamped for sale outside of the District of Columbia and the manufacturer has taken reasonable steps to ensure that the cigarettes will not be sold in the District. A wholesale dealer may continue to sell cigarettes that are not fire-standard-compliant, provided that the dealer has taken reasonable steps to ensure that the cigarettes will be sold outside of the District.

2600.5 This chapter shall not apply to cigarettes distributed solely for the purpose of consumer product testing.

2601 FIRE-STANDARD-COMPLIANT CIGARETTES

2601.1 No person shall sell or offer for sale a cigarette unless:

(a) The cigarette has been tested by a method approved under § 2602;

(b) The cigarette satisfies the performance standards required by § 2602;

(c) The cigarette manufacturer has filed a written certification with the Department as required by § 2603; and

(d) The cigarette bears fire-standard-compliant markings as required by § 2603.

2602 TESTING AND PERFORMANCE STANDARDS

2602.1 The testing methods and performance standards for cigarettes to be sold or offered for sale in the District shall be as follows:

(a) A laboratory that conducts a test under this section shall implement a quality control and quality assurance program;

(b) Except as provide in § 2602.2, manufactures shall test cigarettes to determine compliance with this chapter in accordance with the American Society of Testing and Materials (ASTM) "Standard Test for Measuring the Ignition Strength of Cigarettes" (ASTM Standard E2187-04);

(c) Cigarette testing shall be conducted on ten (10) layers of filter paper;

(d) No more than twenty-five per cent (25%) of the cigarettes tested in a test trial shall exhibit fill-length burns;

(e) The performance standard required by this section shall apply only to a complete test trial; and

(f) A complete test trial shall consist of forty (40) replicate tests for each cigarette tested.

2602.2 If the Chief determines that a manufacturer's cigarettes cannot be tested according to the test method prescribed by § 2602.1, the Chief may approve a test method or performance standard the manufacturer, or another entity, proposes if the Chief determines that the alternative method is equivalent to and as effective as the test method or performance standard prescribed by § 2602.1.

2602.3 If the Chief approves an alternative test method or performance standard, the manufacturer may use that test method or performance standard as the test method or performance standard required by § 2602.1

2603 CERTIFICATION, PACKAGING, AND MARKING

2603.1 A manufacturer shall submit a written certificate to the Chief attesting that its cigarettes have been tested according to an approved method under § 2602 and has achieved the required performance standard for sale in the District. A cigarette certified under this subsection shall be recertified every 3 years.

2603.2 A cigarette that is listed for certification under § 2603.1 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standards in § 2602 shall have at least two (2) nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters (15 mm.) from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two (2) bands fully located at least fifteen millimeters (15 mm.) from the lighting end and ten millimeters (10 mm.) from the filter end of the tobacco column, or ten millimeters (10 mm.) from the labeled end of the tobacco column for non-filtered cigarettes.

2603.3 A cigarette manufacturer shall submit a complete description of each cigarette being certified, including the:

(a) Brand;

(b) Style;

(c) Length in millimeters;

(d) Circumference in millimeters;

(e) Flavor, if applicable;

(f) Filter or non-filter;

(g) Package description, such as a soft pack or box; and

(h) Mark required pursuant to § 2603.5.

2603.4 Packaging for certified fire-standard-compliant-cigarettes shall be marked in eight (8) point type or larger to indicate that the cigarettes have been tested using the test method and meet the performance standard required by this chapter.

2603.5 A manufacturer shall use only one (1) mark and the mark shall consist of:

(a) The letters "FSC," which signify that the cigarette is fire-standard-compliant: or

(b) Any mark approved for sale in New York State or another state that has enacted fire-standard-compliance standards for cigarettes that include the test method and performance standard specified in § 2602.

2604 DATA REQUIREMENTS

2604.1 A manufacturers shall retain and make data available as follows:

(a) Retain data from tests conducted on cigarettes that are offered for sale in the District pursuant to this chapter for three (3) years; and

2. Make data available to the Chief and the Attorney General upon written request to verify compliance with the performance standard required under § 2602.

2605 PENALTIES

2605.1 A manufacturer or wholesale dealer who knowingly fails to comply with the provisions of the Act or of this chapter shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each violation and not to exceed one hundred thousand dollars ($100,000) for all violations within a thirty (30) day period. Each day of violation shall constitute a separate offense. This penalty shall apply for a violation of D.C. Official Code § 7-1755(b) for each day after the sixtieth (60th) day of noncompliance.

2605.2 A retail dealer who knowingly fails to comply with the provisions of the Act or of this chapter shall be subject to a civil penalty not to exceed five thousand dollars ($5,000) for each violation and not to exceed twenty-five thousand dollars ($25,000) for all violations within a thirty (30) day period. Each day of violation shall constitute a separate offense.

2605.3 A manufacturer that knowingly makes a false certification under § 2603.1 shall be subject to a minimum civil penalty of seventy-five thousand dollars ($75,000) and a maximum civil penalty of two hundred and fifty thousand dollars ($250,000) for each knowing false certification.

2605.4 The Chief, law enforcement personnel, or other duly authorized representatives of the Mayor may seize and take possession of cigarettes that do not bear proper markings as required by § 2603. Cigarettes seized pursuant to this subsection shall be turned over to the Attorney General for forfeiture to the District and destruction. Before cigarettes seized under this section are destroyed, the true holder of the trademark rights in the cigarette brand may inspect the cigarettes.

2606 **INSPECTIONS**

2606.1 Inspections of wholesale and retail dealers shall be conducted on a random basis by the Chief or any other law enforcement or government entity authorized by the Chief.

2699 DEFINITIONS

2699.1 When used in this chapter, the following terms shall have the meanings ascribed:

Act—the Fire-Standard-Compliant Cigarettes Act of 2008, effective May 13, 2008 (D.C. Law 17-157; D.C. Official Code § 7-1751 *et seq.*).

Chief—the Chief of the Fire and Emergency Medical Services Department.

Cigarette—a product that contains any amount of nicotine, regardless of size, shape, or presence of other ingredients, that is intended to be burned or heated and consists of or contains any roll of tobacco wrapped in paper, or in any other substance other than tobacco, and because of its appearance, the type of tobacco used, and its packing or labeling is offered to or purchased by consumers for smoking.

Consumer testing—an assessment of cigarettes that a manufacture conducts or is under the control and direction of a manufacturer for the purpose of evaluating consumer acceptance of the cigarette, utilizing only the quantity of cigarettes that is reasonably necessary for the assessment, and in a controlled setting where the cigarettes are either consumed on-site or returned to the testing administrators at the conclusion of the testing.

Fire-standard-compliant-cigarette—a cigarette that has been tested pursuant to, and has met the performance standards of, the Act and its implementing rules.

Manufacturer—a person or entity that manufactures or produces cigarettes or causes cigarettes to be manufactured or produced, whether in or outside the District, for sale in the District, directly or through an importer, wholesale dealer, or retailer dealer, including any first purchaser that intends to resell cigarettes.

Quality control and quality assurance program—Laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing and that maintain a repeatability value of no greater than nineteen hundredths (0.19).

Repeatability—a range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95% of the time.

Retail dealer—a person, other than a manufacturer or wholesale dealer, engaged in the sale of cigarettes.

Sale or selling—a transfer of title or possession, or both, exchange or barter, conditional or otherwise, including the giving of cigarettes as samples, prizes, or gifts and the exchange of cigarettes for any consideration.

Wholesale dealer—a person, including a wholesale dealer's agent that sells cigarettes to retail dealers or other persons for resale, including any person that owns, operates, or maintains a cigarette vending machine in the District of Columbia.

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

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION OF THE PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

1. The Public Service Commission of the District of Columbia ("Commission") pursuant to the D.C. Official Code, 2001 Ed. § 2-505 and § 34-802, hereby gives notice of final rulemaking action, repealing and adopting a new Chapter 3 of Title 15 of the District of Columbia Municipal Regulations ("DCMR"), commonly referred to as the "Consumer Bill of Rights" ("CBOR"). The Commission issued a Notice of Proposed Rulemaking ("NOPR") which was published in the *D.C. Register* on July 25, 2008, giving notice of the Commission's intent to adopt Chapter 3 of Title 15 DCMR.[1] Comments were filed in response to the NOPR; however, after reviewing all comments, the Commission determined that further revisions were unwarranted.

2. As indicated in the NOPR, the regulations update the existing CBOR, which was developed to address the provision of utility services in a traditionally regulated environment, to reflect the competitive nature of the energy and telecommunications industries and to provide appropriate safeguards for consumers who purchase services in this new, more competitive environment. The replacement of the existing rules with the new provisions will: promote administrative efficiency; create uniformity of requirements and responsibilities for the utilities, competitive energy and telecommunications service providers, and consumers; and inform members of the public of their rights and responsibilities regarding electric, natural gas, and telecommunications services in the District of Columbia. Accordingly, the Commission hereby adopts Chapter 3 of Title 15 DCMR governing the Consumer Bill of Rights as contained in the *D.C. Register* on July 25, 2008. The rules will become effective January 1, 2009. Copies of the rules may be obtained by contacting Dorothy Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, D.C. 20005. Copies may also be obtained on the Commission's website at www.dcpsc.org.

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[1] 55 D.C. Register 8015-8076 (July 25, 2008). In an effort to propose comprehensive rules, the Commission previously published several NOPRs. *See* 51 *D.C. Register* 11065-11152 (2004); 53 *D.C. Register* 7657-7716 (2006); 54 *D.C. Register* 7292-7353 (2007); and 55 *D.C. Register* 3899-3961 (2008). The Commission considered all comments received on various provisions throughout the process and now adopts final rules.