

**DISTRICT DEPARTMENT OF THE ENVIRONMENT
OFFICE OF ENVIRONMENTAL PROTECTION - TOXIC SUBSTANCES DIVISION
UNDERGROUND STORAGE TANK/LEAKING UNDERGROUND STORAGE TANK BRANCH**

NOTICE OF PROPOSED RULEMAKING

District of Columbia Underground Storage Tank Regulations

The Director of the District Department of the Environment (DDOE), pursuant to the authority set forth in the District of Columbia Underground Storage Tank Management Act of 1990, effective March 8, 1991, D.C. Law 8-242, D.C. Official Code, § 8-113.01 *et seq.* (2008 Repl.), as amended, and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of his intent to adopt the following proposed amendments and restatements of selected provisions within Chapters 55 through 70 of Title 20 of the District of Columbia Municipal Regulations (DCMR) (Underground Storage Tank Regulations), published at 40 DCR 7835 (November 12, 1993), at 43 DCR 2799 (May 24, 1996) and at 46 DCR 40 (October 1, 1999), in no less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of these proposed amendments is to incorporate provisions of the federal Solid Waste Disposal Act (42 U.S.C. § 6991) ("SWDA"), enacted by the Underground Storage Tank Compliance Act, as part of the Energy Policy Act of 2005 (Public Law 109-58, Subtitle B, August 8, 2005) ("Energy Policy Act"). The Energy Policy Act requires that each state that receives funding under Subtitle I of the SWDA must comply with the underground storage tank requirements of the Energy Policy Act. The proposed amendments incorporate Energy Policy Act provisions for Delivery Prohibition, Secondary Containment, Public Record and Operator Training. This proposed rulemaking also incorporates changes to certain enforcement nomenclature in Chapter 66, and corrects a printing mistake in the October 1999 final rulemaking. The printing mistake was in Section 5705.2 and is specific to spill prevention equipment for new and upgraded underground storage tanks (USTs) that shall have a minimum capacity of five (5) gallons, instead of the ten (10) gallons incorrectly printed in the District Register. In addition, several minor modifications have been made to the UST regulations, as provided below.

Any person desiring to comment on the subject matter of this proposed rulemaking should file 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 submitted to Alex Bako, Associate Director, Toxic Substances Division, DDOE, 51 N Street, N.E., 6th Floor, Washington, D.C. 20002. Copies of the proposed rulemaking may be obtained by writing to the address stated above.

The following rulemaking action is proposed:

TITLE 20 DCMR (ENVIRONMENT) IS AMENDED AS FOLLOWS:

CHAPTER 55, GENERAL PROVISIONS, is amended as follows:

Sections 5501.1 and 5501.2 are amended to read:

- 5501.1 The requirements of this Subtitle shall apply to all underground storage tanks and UST systems located in the District of Columbia, except as otherwise provided in this chapter, and to each owner, operator, regulated substance delivery persons and/or companies, and other responsible or remediating party as set forth in this Subtitle.
- 5501.2 Except as provided in this Subtitle, all persons, parties, and entities listed in §5501.1, above, shall comply with the requirements of this Subtitle. Where neither an owner nor operator complies with the requirements of this Subtitle, both may be held jointly and individually liable for violations of these provisions and any penalties assessed for those violations. A responsible or remediating party may be held jointly and individually liable for violations of those provisions governing LUSTs and corrective actions and any penalties assessed for those violations.

The heading for section 5503 is amended to read:**5503 PARTIAL APPLICABILITY OF UST REGULATIONS TO HEATING OIL TANKS FOR CONSUMPTIVE USE ON THE PREMISES STORED****Section 5503.2 is amended to read:**

- 5503.2 Owners or operators of heating oil tanks having a capacity of one-thousand-one-hundred (1,100) gallons or more shall comply only with the following:
- (a) The provisions of Chapter 56 except the requirement of §5600.7(d);
 - (b) Sections 5700.6 and 5703;
 - (c) For new heating oil tanks installed after November 12, 1993, §§ 5700.7, 5700.9 through 5700.10, 5704 through 5706;
 - (d) Chapter 59; and
 - (e) Tanks that are fifteen (15) years old or older, shall use one of the release detection methods set forth below, as applicable:
 - (1) Statistical Inventory Control (SIR) pursuant to §6005;
 - (2) Tank Tightness Testing, once every three (3) years, pursuant to §6007;
 - (3) Automatic Tank Gauging pursuant to §6008;
 - (4) Monthly Ground-water Monitoring pursuant to §6010;
 - (5) Continuous Interstitial Monitoring pursuant to §6011; or
 - (6) Section 6012 (Other Methods);

- (f) The provisions of Chapter 61 pertaining to closure of heating oil tanks; and
- (g) Chapter 62, except that the Director may waive or modify any requirements of Chapter 62 that are inappropriate or unduly burdensome upon consideration of the nature of the release and the degree of contamination.

Section 5505 is amended as follows:

Section 5505.2 is amended to read:

- 5505.2 Emergency power generator tanks, that are 15 years old or older, shall use one of the release detection methods set forth below:
- (a) Statistical Inventory Reconciliation (SIR) pursuant to §6005; or
 - (b) Manual Tank Gauging pursuant to §6006; or
 - (c) Automatic Tank Gauging pursuant to § 6008; or
 - (d) Monthly Ground Water Monitoring pursuant to § 6010; or
 - (e) Continuous Interstitial Monitoring pursuant to § 6011; or
 - (f) §6012 (Other Methods).

Section 5505.3 is renumbered as section 5505.4 and a new section 5505.3 is added to read as follows:

- 5505.3 New or replaced emergency power generator tank systems, including systems replaced in accordance with the requirements of §§ 5902.5, 5902.6, 5902.7 and 5902.13, including all piping, shall be constructed to include secondary containment and interstitial monitoring as set forth in §§ 5701.4, 5701.5, and 5701.6.

CHAPTER 56, TANK NOTIFICATION AND REGISTRATION, RECORDKEEPING, REPORTS, AND NOTICES, is amended as follows:

Section 5600.7 is amended to read:

- 5600.7 The owner or operator of an UST system shall sign the notification form required under this section and shall certify compliance with the following requirements except as provided in § 5503.2:
- (a) Section 5700.1;
 - (b) Sections 5706.2; 5706.4 through 5706.6;

- (c) Sections 5701.2, 5701.3, 5702.2, 5702.3, 5703.2, 5703.3, 5704.3 and 5704.4;
- (d) Chapter 60; and
- (e) Chapter 67.

Section 5601 is amended as follows:

Sections 5601.3, 5601.9, 5601.11 and 5601.12 are amended to read:

- 5601.3 An owner of a tank that is brought into use after November 12, 1993, shall register the tank and shall pay the prescribed registration fee before depositing a regulated substance into the tank, except as provided in §§ 5601.1 and 5601.7, and accept deposit of a regulated substance for the purposes of testing the tank or providing an initial “hold-down” load to ballast the tank.
- 5601.9 The annual registration fee shall be six hundred and fifty dollars (\$650) for each tank having a capacity of over ten thousand (10,000) gallons; three-hundred and ninety dollars (\$90) for each petroleum tank having a capacity of ten-thousand (10,000) gallons or less; and one hundred and thirty dollars (\$30) for each home heating oil tank having a capacity of ten-thousand (10,000) gallons or less.
- 5601.11 A copy of the current registration certificate shall be posted in a visible location at the facility at all times.
- 5601.12 No person shall deposit a regulated substance into an UST, without first confirming that the facility is a currently registered facility, and that the facility has not been found to be in violation of these regulations by:
- (a) Ensuring that a current certificate of registration is present at the facility; and
 - (b) Ensuring that the facility is not on the list of facilities at which delivery of a regulated substance has been prohibited by the Director.

Section 5605.1 is amended to read:

- 5605.1 The Director shall charge fees for the following oversight activities as set forth herein:
- (a) Review of plans and specifications and performing site inspections for UST installations shall be two hundred dollars (\$200.00) per tank; and
 - (b) Performing site inspections and review of reports related to UST abandonment shall be two hundred dollars (\$200.00) per tank;

A new section 5607 is added to read:**5607 PUBLIC RECORD INFORMATION**

- 5607.1 The District will, no later than December 31 of each year, make information available to the public regarding:
- (a) Percent of overall regulatory compliance within the District, and numbers of underground storage tanks, facilities, and inspections; and
 - (b) Confirmed releases from underground storage tanks within the District, and sources and causes of releases.
- 5607.2 The public record will be posted or downloadable from the District Department of the Environment's website. Provisions will be made available for those who request information, but do not have electronic access.

CHAPTER 57, NEW TANK PERFORMANCE STANDARDS, is amended as follows:**A new section 5701.7 is added to read:**

- 5701.7 All new motor fuel dispenser systems shall contain under-dispenser containment.
- (a) Under-dispenser containment shall be designed, constructed and installed to prevent leaks from the dispenser from reaching soil or groundwater. Such containment must:
 - (1) Be liquid-tight on its sides, bottom, and at any penetrations;
 - (2) Be compatible with the substance conveyed by the piping; and
 - (3) Allow for visual inspection and access to the components in the containment system and/or be monitored to detect a failure of the containment system.

Section 5703.4 is amended to read:

- 5703.4 Secondary containment systems shall be designed, constructed, and installed to do the following:
- (a) Contain regulated substances released from the tank system until they are detected and removed;
 - (b) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

- (c) In accordance with § 6003.5, check for evidence of a release at least every thirty (30) days.

Section 5704.5 is amended to read:

5704.5 Except as provided in § 5704.7, underground piping for hazardous substance USTs, and pressurized underground piping and non-safe suction piping for all petroleum USTs, shall be equipped with secondary containment features that are designed and constructed in compliance with the requirements of § 5701.4 of this chapter.

- (a) Suction piping that does not comply with the requirements of § 6004.8 (a) through (e), shall be considered non-safe suction piping.

Section 5705.2 is amended to read:

5705.2 The spill prevention equipment shall have a minimum capacity of five (5) gallons.

CHAPTER 59, OPERATION AND MAINTENANCE OF UNDERGROUND STORAGE TANKS, is amended as follows:

The heading for section 5902 is amended to read:

5902 REPAIR OR REPLACEMENT OF UST SYSTEMS

Section 5902 is amended as follows:

Section 5902.6 is amended to read:

5902.6 Fiberglass pipes and fittings that have released a regulated substance as a result of damage, or appear to have incurred sufficient damage to constitute a threat of a release shall be replaced in accordance with §5704 and the manufacturer's specifications.

A new section 5902.13 is added to read:

5902.13 A repair that involves removing and putting back in 100 % of the piping, excluding connectors, connected to a single underground tank is considered to be a replacement.

CHAPTER 60, RELEASE DETECTION, is amended as follows:

Section 6000.14 is amended to read:

6000.14 When a release detection method operated in accordance with the performance standards of §§ 6004 through 6012 indicates that a release may have occurred, the owner or operator shall notify the Director, in accordance with the provisions of Chapter 62.

Section 6003 is amended as follows:

Section 6003.5 is renumbered as section 6003.6, and a new section 6003.5 is added to read:

6003.5 New or replaced underground storage tank systems, including systems replaced in accordance with the requirements of §§ 5902.5, 5902.6, 5902.7 and 5902.13, shall be constructed to include secondary containment and interstitial monitoring as set forth in §§5701.4, 5701.5, and 5701.6.

Section 6003.6 is amended to read:

6003.6 Secondary containment systems on underground tanks installed or replaced after February 8, 2007 shall be checked for evidence of a release at least once every thirty (30) days using interstitial monitoring.

Section 6004 is amended as follows:

Section 6004.5 is amended to read:

6004.5 Underground piping that conveys regulated substances under pressure shall have an annual line tightness test conducted in accordance with §6004.7 or have monthly monitoring conducted in accordance with §6004.9.

A new section 6004.10 is added to read:

6004.10 Secondary containment systems on underground piping installed or replaced after February 8, 2007 shall be checked for evidence of a release at least once every thirty (30) days using interstitial monitoring.

Section 6011 is amended as follows:

Section 6011.1 is amended to read:

6011.1 Interstitial monitoring between an UST system and a secondary barrier immediately around or beneath the UST system may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank or piping that routinely contains product and also meets the requirements of this section which are applicable to the particular UST system.

A new section 6011.9 is added to read:

6011.9 Interstitial monitoring shall be used to check for evidence of a release at least once every thirty (30) days on secondary containment systems on underground tanks and piping installed or replaced after February 8, 2007.

CHAPTER 63, RIGHT OF ENTRY FOR INSPECTIONS MONITORING, TESTING AND CORRECTIVE ACTION, is amended as follows:

Section 6301.4 is amended to read:

6301.4 When requiring the owner, operator or a responsible party to take action pursuant to the Act or this Subtitle, the Director may issue a Directive, which shall advise the owner, operator or a responsible party of the action he or she is required to take and shall state the time period within which the action must be performed, or may take other enforcement actions pursuant to Chapter 66.

Section 6302.5 is amended to read:

6302.5 Except as provided in §6302.4, the written notice of intention to begin corrective action shall contain the following information:

- (a) The name and address of the owner of the property;
- (b) The name and address of the owner or operator or other responsible party to whom the notice is directed;
- (c) A statement of the authority pursuant to which the director is taking the corrective action;
- (d) A brief summary of the corrective actions to be taken and the conditions in need of correction;
- (e) A description of the location where work will take place, including both street address, and lot and square numbers or, where there are no lot and square numbers, the parcel number;
- (f) Notice of any applicable hearing rights to which the owner or operator is entitled under the Act or under Chapter 66, if such a notice has not already been served;
- (g) A statement that the Director will pursue cost recovery against the responsible party for all corrective action costs and related expenses;
- (h) The name, position, office address, and phone number of the employee issuing the notice and the name and phone number of the appropriate contact person within the Department; and

- (i) The signature of the Program Manager of the Toxic Substances Division, Environmental Protection Administration, or other designated representative of the Director.

CHAPTER 65, LICENSING AND CERTIFICATION OF TANK INSTALLERS, REMOVERS, TESTERS, AND OPERATORS, is amended as follows:

The heading of Chapter 65 is amended to read:

**CHAPTER 65 LICENSING AND CERTIFICATION OF TANK INSTALLERS,
REMOVERS, TESTERS, AND OPERATOR TRAINING
REQUIREMENTS**

Section 6500 is amended as follows:

Section 6500.5 is amended to read:

- 6500.5 Each UST System Technician, UST Closure Specialist and UST System Tester who provides his or her services for UST system installation, upgrade, retrofit, repair, or permanent closure in the District of Columbia shall be certified to perform UST system activities by the Director in accordance with the provisions of this chapter and licensed to do business in the District of Columbia.

A new section 6500.10 is added to read:

- 6500.10 An owner of any active regulated UST system in the District shall designate at least one Class A, one Class B, and one Class C operator for each active UST facility, and all designated classes shall comply with the requirements of § 6502.

Section 6501 is amended as follows:

Sections 6501.1, 6501.2, 6501.3, 6501.4, and 6501.6, are amended to read:

- 6501.1 The Director shall certify to perform UST System activities as set forth in §6500 in the District of Columbia, any individuals who satisfy the following requirements:
- (a) Show evidence of having satisfactory completion of a recognized training program in the UST System activity(ies) for which the applicant seeks certification;
 - (b) Submission of a completed application and payment of the initial application fee of \$200.00 in the form of a check made payable to the D.C. Treasurer;

- (c) Possess a current OSHA certification; and
- (d) Satisfactory completion of a test upon their knowledge in the technical area in which they seek certification as well as the District's statutes and regulations pertaining to USTs.

6501.2 The Director shall certify to perform UST System activities as set forth in §6500, businesses that wish to perform UST System activities in the District of Columbia, provided they satisfy the following requirements:

- (a) Submission of a completed application and payment of the initial application fee of \$350.00 in the form of a check made payable to the D.C. Treasurer;
- (b) Demonstrate, to the satisfaction of the Director, that the business is qualified to perform the UST System activities for which it seeks certification;
- (c) Demonstrate, to the satisfaction of the Director that the business employs at least one individual who has expertise and is certified in the District in each of the UST System activities the business will offer;
- (d) Possess a current OSHA certification; and
- (e) Possess a valid, current District of Columbia business license for the business in which certification is sought.

6501.3 The Director may recognize individuals or businesses that are certified by neighboring states and so certify, to perform UST System activities as set forth in § 6500, individuals or businesses that satisfy the requirements of this section:

- (a) Possess a current valid certification as a UST System Technician, Closer Specialist or Tester, or an equivalent certification category as determined by the Director, issued by either of the states of Virginia West Virginia, Maryland, Delaware, or Pennsylvania;
- (b) Is currently in good standing in each of the states, named in §6501.3(a), for which it holds a certification;
- (c) Possess a current OSHA certification;
- (d) Possess a valid, current District of Columbia business license for the business in which certification is sought;
- (e) Demonstrate, to the satisfaction of the Director, a knowledge of the provisions of this Subtitle; and

- (f) Submits a completed application form and pays an initial application fee of \$150.00 for individuals or \$250 for businesses.

6501.4 An applicant certified in one of the states in §6501.3(a) may be tested by the Director to verify the knowledge of the provisions of this subtitle or shall submit the following documents or information with the application for certification:

- (a) A letter or statement from the state official or office in which the individual or business is currently certified stating that the individual or business is currently in good standing in that state;
- (b) A list of additional states in which the individual or business is certified and/or licensed as a UST System Technician, Closer Specialist or Tester, or an equivalent certification category;
- (c) A copy of the current OSHA certification;
- (d) A copy of a valid, current District of Columbia business license for the business in which certification is sought;
- (e) Submission of an initial application fee of \$100 for individual or \$250 for business by check or money order made payable to the D.C. Treasurer; and
- (f) Evidence of possession of the District of Columbia UST regulation and its amendments.

6501.6 The initial certification issued by the Director shall be valid for no more than one (1) year from date of issue. The Certification may be renewed annually for a fee of \$100 for individuals or \$150 for businesses upon presentation of the expiring certification or renewed bi-annually for a fee of \$200 for individuals, or \$300 for businesses, upon presentation of the expiring certification.

A new section 6502 is added to read:

6502 OPERATOR TRAINING

6502.1 An owner of any active regulated UST system in the District shall designate at least one Class A, one Class B, and one Class C operator for each active UST facility.

6502.2 A facility may not dispense or store a regulated substance after August 8, 2012, unless operators have been designated and trained as required in this Section.

- 6502.3 Trained operators shall be readily available to respond to suspected or confirmed releases, other unusual operating conditions, emergencies and equipment failures as follows:
- (a) Either the Class A or the Class B operator shall be available for immediate telephone consultation at all times when a facility is in operation;
 - (b) A Class A or B operator shall be on-site at the UST facility within 24 hours of being contacted;
 - (c) For manned facilities, a Class C operator shall be on-site whenever the facility is in operation; and
 - (d) For unmanned facilities, a Class C operator shall be available for immediate telephone consultation and shall be able to be on-site within 2 hours of being contacted.
- 6502.4 Emergency contact information shall be prominently displayed at the facility. Emergency procedures for users of unmanned facilities shall also be prominently posted at the facility.
- 6502.5 Designated operators shall successfully complete required initial training under this Section by August 8, 2012.
- 6502.6 An operator may be designated as more than one class of operator.
- 6502.7 All operators designated as Class A and/or Class B for a petroleum UST system that has been determined to be out of compliance with a requirement or standard in this Subtitle shall, at a minimum, be required to repeat the training applicable to the area(s) with which the UST system has not complied. Operators shall complete the required retraining within a reasonable time, not to exceed sixty (60) days of being notified that the UST system is out of compliance.
- 6502.8 A Class A operator has primary responsibility to operate and maintain the UST system and facility. The Class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements. In general, a Class A operator focuses on the broader aspects of the statutory and regulatory requirements and standards necessary to properly operate and maintain the UST system and facility. Class A operators shall:
- (a) Ensure that UST systems are properly installed and expeditiously repaired and that records of UST financial responsibility, system installation, modification and repair are retained and made available to the Director;

- (b) Be familiar with training requirements for each class of operator and may provide required training for Class C operators; and
- (c) Prepare facility procedures for Class B and C operators.

6502.9 A Class B operator implements applicable UST system regulatory requirements and standards in the field or at the UST facility. A Class B operator oversees and implements the day-to-day aspects of operations, maintenance, and recordkeeping for the UST(s) at one or more facilities as stated in this regulation. Class B operators shall:

- (a) Check spill prevention and overfill control equipment and corrosion protection equipment to ensure proper function and that any required system tests are performed at appropriate intervals;
- (b) Ensure release detection equipment is operational, release detection is performed at proper intervals and release detection records are retained and made available to the Director; and
- (c) Shall be familiar with all aspects of Class B and Class C operator responsibilities and may provide required training for Class C operators.

6502.10 A Class C operator is the first line of response to events indicating an emergency condition. A Class C operator is responsible for responding to alarms or other indications of emergencies caused by a spill or release from a UST system and equipment failures. The Class C operator notifies the Class A or B operator and appropriate emergency responders when necessary. There may be more than one Class C operator at a UST facility. Class C operators shall:

- (a) Control or monitor the dispensing and sale of regulated substances; and
- (b) After August 8, 2012, follow written instructions or procedures on how to respond to alarms or releases provided by the Class A or Class B operators and made visible at manned UST facilities, and shall be readily available for unmanned facilities for persons performing the duties of the Class C operator.

6502.11 Class A operators shall successfully complete a training course approved by the Director that includes a general knowledge of UST system requirements. At the completion of the training course, the operator shall be able to demonstrate knowledge and be able to make informed decisions regarding compliance and ensuring that appropriate persons are fulfilling operation, maintenance and recordkeeping requirements and standards, including the following:

- (a) Spill and overfill prevention;

- (b) Release detection and related reporting requirements;
- (c) Corrosion protection;
- (d) Emergency response;
- (e) Product and equipment compatibility;
- (f) Financial responsibility;
- (g) Notification and UST registration requirements;
- (h) Temporary and permanent UST closure requirements; and
- (i) Class B, and C operator training requirements.

6502.12 Class B operators shall successfully complete a training course approved by the Director that includes in-depth understanding of operation and maintenance aspects of UST systems and related regulatory requirements. Training shall provide specific information pertaining to the components of UST systems, materials of construction, methods of release detection, and release prevention applied to UST systems and components. Training and knowledge shall address the operation and maintenance requirements of this regulation including the following:

- (a) Spill and overflow prevention;
- (b) Release detection and related reporting requirements;
- (c) Corrosion protection;
- (d) Emergency response;
- (e) Product and equipment compatibility;
- (f) Report and recordkeeping requirements; and
- (g) Class C operator training requirements.

6502.13 At a minimum, training provided by the Class A or B operator shall enable the Class C operator to take action in response to emergencies or alarms caused by spills or releases from a UST system. Training shall include written instructions or procedures for the Class C operator to follow and to provide notification necessary in the event of emergency conditions. After the initial training, Class C operators shall be briefed by the Class A or B operator on these instructions or procedures at least annually (every 12 months).

- 6502.14 Successful completion of training for Class A and B operators means attendance for the entire training course and demonstration of knowledge of the course material as follows:
- (a) Receipt of a passing grade (80% or higher) on an examination containing material presented in the training course; or demonstration to the trainer at the conclusion of on-site training, through practical (hands-on) application, of operation and maintenance checks of UST equipment, including performance of release detection at the UST facility; and
 - (b) Receipt of a training certificate by an approved trainer upon verification of successful completion of training course.
- 6502.15 Class A or Class B operators may meet the operator training requirements of this Section by presenting proof of successful completion of Class A and Class B operator training from another State, in accordance with regulatory standards consistent with 40 CFR Part 280 and with Title 20 Chapter 65 of the District of Columbia Municipal Regulations (20 DCMR Chapter 65).
- 6502.16 An owner shall ensure that all Class A, B, and C operators are trained no later than August 8, 2012.
- 6502.17 When a Class A or B operator is replaced, a new operator shall be trained within 30 days of assuming duties for that class of operator.
- 6502.18 Class C operators shall be trained before assuming duties of a Class C operator.
- 6502.19 The owner of an underground storage tank shall maintain a list of designated operators. The list shall represent the current Class A, B, and C operators for the petroleum storage facilities and shall include:
- (a) The name of each operator, class of operation designated and the date each operator successfully completed training; and
 - (b) For Class A and B operators that are not permanently on-site or who are assigned to more than one facility, emergency telephone numbers to contact the operators.
- 6502.20 A copy of the following documentation shall be on-site, and readily available for inspection at the facility:
- (a) Certificates of training for Class A and B operators;
 - (b) A copy of the facility list of Class A, B, and C operators; and

(c) Class C operator instructions or procedures.

6502.21 Class C operator and owner contact information, including names and telephone numbers and any emergency information, shall be conspicuously posted at unmanned facilities.

A new section 6503 is added to read:

6503 APPROVAL OF TRAINING PROGRAMS FOR OPERATOR TRAINING

6503.1 All training providers shall have obtained written approval from the Director prior to delivering the training course in the District of Columbia for Class A and B Operators, pursuant to Section 6502. Approval of the training course shall be at the discretion of the Director. Delivery of operator training prior to obtaining the Director's approval shall be subject to enforcement action in accordance with these regulations.

CHAPTER 66, ENFORCEMENT PROCEDURES, is amended as follows:

Section 6601.3 is renumbered as Section 6601.4, and a new Section 6601.3 is added to read:

6601.3 A Directive issued pursuant to § 6301.4 may serve as a notice of violation or threatened violation, provided it meets the requirements of this section.

Section 6606.7 is amended to read:

6606.7 Any situation or activity, related to underground storage tanks regulated by this Subtitle, that is conducted in violation of these regulations or that endangers or causes damage to public health or the environment shall warrant a prohibition on delivery of product through issuance of an immediate cease and desist order, including but not limited to:

- (a) An accumulation of toxic, flammable or explosive vapors in a structure, sewer or excavation;
- (b) Floating free product on surface or ground water;
- (c) Potential for migration of release to surface waters or other sensitive environmental receptors;
- (d) An open pit or excavation that is not secured properly during or left in place after corrective action;
- (e) Anything which may cause potential exposure of humans, plants or animals to hazardous substances; or

- (f) Missing or inoperable spill prevention, overfill protection, release detection, or corrosion protection required equipment or material.

Section 6608.1 is amended to read:

6608.1 Penalties for failure to comply with a final compliance order, a final cease and desist order, or a final suspension, revocation or denial order shall be in accordance with D.C. Code §§ 8-113.09(d) through (g).

Section 6610.1 is amended to read:

6610.1 In any instance where a civil fine, penalty or fee has been established pursuant to the "Civil Infractions Act" (D.C. Law 6-42, D.C. Code § 2-1801.01 *et seq.*) and the "Civil Infractions Regulations" (16 DCMR § 3651) promulgated pursuant thereto, the civil fine, penalty or fee may be imposed as an alternative sanction to the penalties set forth in D.C. Code §§ 8-113.09(d) through (g).

CHAPTER 70, DEFINITIONS, IS AMENDED AS FOLLOWS:

The following definitions are added to read:

Class A operator - This operator has primary responsibility to operate and maintain the UST system and facility. The Class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements. In general, this person focuses on the broader aspects of the statutory and regulatory requirements and standards necessary to properly operate and maintain the UST system and facility.

Class B operator - This operator implements applicable UST system regulatory requirements and standards in the field or at the UST facility. This operator oversees and implements the day-to-day aspects of operations, maintenance, and recordkeeping for the USTs at one or more facilities.

Class C operator - This operator is the first line of response to events indicating an emergency condition. This person is responsible for responding to alarms or other indications of emergencies caused by a spill or release from a UST system and equipment failures. The Class C operator notifies the Class A or B operator and appropriate emergency responders when necessary.

Secondary Containment – A release prevention and release detection system for an underground tank and/or piping. The release prevention part of secondary containment is an underground tank and/or piping having an inner and outer barrier. Between these two barriers is a space for monitoring. The release detection part of secondary containment is a method of monitoring the space between the inner and outer barriers for a leak or release of regulated substances from the underground tank and/or piping (called interstitial monitoring). Interstitial monitoring must meet the release detection requirements in 20 DCMR §6011.

Suction Piping - Underground piping that conveys regulated substances under suction. Release detection is required and must be conducted in accordance with 20 DCMR §6004.6 except for suction piping that is designed and constructed to meet the following standards:

- (a) The below-grade piping operates at less than atmospheric pressure;
- (b) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
- (c) Only one check valve is included in each suction line;
- (d) The check valve is located directly below and as close as practical to the suction pump; and
- (e) A method is provided that allows compliance with paragraphs (b)(2) (ii)–(iv) of this section to be readily determined.

All suction piping not meeting the definitions of (a) through (e) would be considered “nonsafe suction piping”.

Under-Dispenser Containment (UDC) – Containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater. Such containment must:

- (a) Be liquid-tight on its sides, bottom, and at any penetrations;
- (b) Be compatible with the substance conveyed by the piping; and
- (c) Allow for visual inspection and access to the components in the containment system and/or be monitored.

UST Closure Specialist – Person performing the oversight of UST System closures including but not limited to tank removal, abandonment, inspection, review and submittal of closure report. Person shall also possess a current UST System Technician certification with the District’s UST Program.

UST System Technician – Person responsible for conducting or providing continuous on-site supervision of the installation, upgrade, repair, retrofit, abandonment or removal of UST tanks.

UST System Tester – Person conducting or providing continuous on-site supervision of UST tank tightness testing.

The following definitions are amended to read:

Department - the District Department of the Environment.

Director - the Director of the District Department of the Environment or the Director's designee.

Environmentally sensitive receptors — wetlands, wildlife breeding and wintering areas for species of concern, habitats for endangered plant and animal species, and Federal and local parks. For purposes of the District of Columbia UST risk-based corrective action program, groundwater and surface waters shall be treated as receptors when preparing exposure or risk assessments.

Program Manager - Program Manager of the Underground Storage Tank Branch of the Department of the Environment or the Program Manager's designee.

UST Branch – the District Department of the Environment, Toxic Substances Division, Underground Storage Tank Branch.

UST system or tank system – Either an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, or any combination thereof.

DEPARTMENT OF HEALTH**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth in section 402 of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127, D.C. Official Code § 44-104.02), Mayor's Order 2005-137, dated September 27, 2005, section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42, D.C. Official Code § 2-1801.04), Mayor's Order 99-68, dated April 28, 1999, and Reorganization Plan No. 4 of 1996., hereby gives notice of the intent to adopt the following amendments to Chapter 36 (Civil Infractions) of Title 16 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register and upon completion of the sixty (60) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules. The amendments prescribe civil infraction fines for violations of the law governing the licensing and operating standards of assisted living facilities.

The proposed rulemaking was published in the *D.C. Register* on August 8, 2008 and the comment period was extended on October 3, 2008. The Department received three (3) sets of comments which resulted in several revisions to the rulemaking.

Chapter 36 (Civil Infractions) of Title 16 DCMR is amended by adding a new section 3663 to read as follows:

3663 LICENSING OF ASSISTED LIVING FACILITIES

3663.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) D.C. Official Code § 44-103.01 (operating an assisted living facility without a license);
- (b) D.C. Official Code § 44-103.07(b) (describing, marketing or offering a business as an assisted living facility without having obtained a license);
- (c) D.C. Official Code § 44-105.09(a) (failure to develop and implement policies and procedures on abuse, neglect and exploitation of residents);
- (d) D.C. Official Code § 44-105.09(b)(1) and (b)(2) (failure to report abuse of a resident);
- (e) D.C. Official Code § 44-105.09(b)(3) (failure to thoroughly investigate an allegation of abuse, neglect or exploitation against a

- resident; failure to take preventive action; failure to report results of investigation);
- (f) D.C. Official Code § 44-106.01(a) (accepting a resident for whom the facility cannot provide appropriate services or failure to make or allow arrangements with a third party to provide appropriate services);
 - (g) D.C. Official Code § 44-106.01(b) (failure to determine that a resident is appropriate for admission and that the resident's needs can be met in addition to the needs of other residents);
 - (h) D.C. Official Code § 44-106.01(c) (admitting an individual who is younger than eighteen (18) years of age);
 - (i) D.C. Official Code § 44-106.01(d)(1) (admitting an individual who upon admission is dangerous to him or herself or others);
 - (j) D.C. Official Code § 44-106.01(d)(2) (admitting an individual who is at high risk for health or safety complications and who requires more than thirty-five (35) hours per week of skilled nursing and home care services combined);
 - (k) D.C. Official Code § 44-106.01(e) (admitting an individual who requires more than intermittent skilled nursing care, treatment of stage three (3) or four ulcers, ventilator services or treatment for an active, infectious and reportable disease or condition that requires more than contact isolation);
 - (l) D.C. Official Code § 44-106.02 (failure to provide a written contract to the resident that the resident or representative signs prior to admission);
 - (m) D.C. Official Code § 44-106.04(a) (failure to develop an Individualized Service Plan (ISP) for a resident prior to admission);
 - (n) D.C. Official Code § 44-106.04(e) (failure to appropriately transfer resident when appropriate services cannot be provided);
 - (o) D.C. Official Code § 44-106.07 (failure to provide twenty-four (24) hour supervision, three (3) nutritious meals per day, fresh and seasonal foods assistance with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL), laundry and housekeeping services, access to appropriate health and social

- services and transportation or arrangement for transportation to community-based services);
- (p) D.C. Official Code § 44-106.08(e) (failure to comply with provisions on discharge);
 - (q) D.C. Official Code § 44-107.01(a) (failure to have the assisted living residence supervised by an assisted living administrator who is responsible for all personnel and services);
 - (r) D.C. Official Code § 44-107.01(b) (failure of the assisted living administrator to ensure that each resident has access to appropriate medical, rehabilitation, psychosocial services, oversight and monitoring);
 - (s) D.C. Official Code § 44-108.01 (failure to complete a resident assessment that will be the basis of the resident's service plan);
 - (t) D.C. Official Code § 44-108.02(a) (failure to complete a medical, rehabilitation and psychosocial assessment within thirty (30) days prior to admission);
 - (u) D.C. Official Code § 44-108.02(c) (failure to obtain the appropriate examination from the resident's primary health practitioner within thirty (30) days prior to admission); and
 - (v) D.C. Official Code § 44-108.04 (for individuals who will be admitted for no longer than thirty (30) days, failure to obtain an analysis of the resident's physical condition, medical status and functional assessment and as well as a resident agreement).
 - (x) D.C. Official Code § 44-107.01(e) (failure of newly hired staff to timely document their communicable disease status);
 - (y) D.C. Official Code § 44-107.01(f) (failure of employee to document annual freedom from tuberculosis in a communicable form);
 - (z) D.C. Official Code § 44-107.01(h) (allowing an employee who has not completed training to work unsupervised by a trained person);
 - (aa) D.C. Official Code § 44-110.02 (failure to comply with fire safety requirements);
 - (bb) D.C. Official Code § 44-108.05 (failure to comply with requirements on emergency placements);

- (cc) D.C. Official Code § 44-109.01 (failure to comply with requirements on medication management); and
- (dd) D.C. Official Code § 44-109.02 (failure to comply with requirements on medication management assessments).

3663.2 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) D.C. Official Code § 44-103.02 (failure to comply with initial license and application requirements);
- (b) D.C. Official Code § 44-103.04 (failure to comply with license and application requirements for license renewals);
- (c) D.C. Official Code § 44-103.07 (using the word "hospital", "nursing", "sanitorium", "convalescent", "rehabilitative", "subacute" or "hospice" in the facility's title);
- (d) D.C. Official Code § 44-105.01 (failure to care for residents in a manner and in an environment that promotes maintenance and enhancement of the residents' quality of life and independence by providing or arranging for twenty-four (24) hour supervision and assistance in activities of daily living);
- (e) D.C. Official Code § 44-105.02 (failure to comply with requirements on self-determination, choice, independence, participation and privacy);
- (f) D.C. Official Code § 44-105.03 (failure to comply with requirements on residents' dignity);
- (g) D.C. Official Code § 44-105.04 (failure to comply with requirements on accommodation of needs);
- (h) D.C. Official Code § 44-105.05 (failure to comply with requirements on representation and resolution of grievances and complaints);
- (i) D.C. Official Code § 44-105.06 (failure to comply with requirements on privacy and confidentiality);
- (j) D.C. Official Code § 44-105.07 (failure to disclose fair and reasonable contract terms and billing practices);

- (k) D.C. Official Code § 44-105.08 (failure to post and distribute notice of residents' rights);
- (l) D.C. Official Code § 44-105.09(c) (failure to post policies and procedures on prohibiting abuse, neglect and exploitation of residents);
- (m) D.C. Official Code § 44-106.01(f) (failure to maintain records on denial of admissions);
- (n) D.C. Official Code § 44-106.01(g) (automatically excluding from admission a person with primary or secondary mental health issues);
- (o) D.C. Official Code § 44-106.04(b) (failure to require items in the ISP);
- (p) D.C. Official Code § 44-106.04(c) (failure to confer with resident or surrogate during the ISP development process);
- (q) D.C. Official Code § 44-106.04(d) (failure to timely and appropriately review and update ISP);
- (r) D.C. Official Code § 44-106.05 (failure to comply with requirements on shared responsibility agreements);
- (s) D.C. Official Code § 44-106.06 (failure to comply with requirements on residents' records);
- (t) D.C. Official Code § 44-106.08(b) (failure to give appropriate timely notice when there is an immediate transfer of a resident);
- (u) D.C. Official Code § 44-106.08(c) (failure to renegotiate an ISP after a resident has been immediately transferred);
- (v) D.C. Official Code § 44-106.08(d) (failure to give appropriate and timely notice of discharge);
- (w) D.C. Official Code § 44-107.01(c) (failure of ALA to be at least twenty-one (21) years of age);
- (x) D.C. Official Code § 44-107.01(c)(2) (failure of ALA to have requisite education and experience);
- (y) D.C. Official Code § 44-107.01(c)(3) (failure of ALA to have requisite satisfactory knowledge);.

- (z) D.C. Official Code § 44-107.01(d) (failure to employ staff and develop a staffing plan based on required criteria to assure the safety and proper care of residents);
- (aa) D.C. Official Code § 44-107.01(g) (failure of staff to have requisite qualifications and experience);
- (bb) D.C. Official Code § 44-107.02 (failure to comply with requirements on staff training);
- (cc) D.C. Official Code § 44-109.03 (failure to comply with requirements on on-site medication review);
- (dd) D.C. Official Code § 44-109.05 (failure to comply with requirements on medication administration);
- (ee) D.C. Official Code § 44-110.01 (failure to comply with other applicable laws, regulations and codes);
- (ff) D.C. Official Code § 44-110.03 (failure to comply with requirements on the building exterior);
- (gg) D.C. Official Code § 44-110.04 (failure to comply with requirements on the building interior);
- (hh) D.C. Official Code § 44-110.05 (failure to comply with requirements on accessibility);
- (ii) D.C. Official Code § 44-110.10 (failure to comply with requirements on laundry);
- (jj) D.C. Official Code § 44-110.11 (failure to comply with requirements for seventeen (17) beds or more); and
- (kk) D.C. Official Code § 44-111.01 (failure to comply with requirements on insurance).
- (ll) D.C. Official Code § 44-108.02 (failure to have a medical, rehabilitation and psychosocial assessment of the resident done 30 days prior to admission and/or failure to maintain the appropriate assessment information);
- (mm) D.C. Official Code § 44-109.04 (failure to comply with requirements on medication storage); and

- (nn) D.C. Official Code § 44-109.07 (failure to comply with requirements on medication control).

3663.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) D.C. Official Code § 44-103.05(b) (failure to timely submit a written request for a change in the license or to pay the license fee);
- (b) D.C. Official Code § 44-103.05(c) (failure to notify residents of a request for change in licensure);
- (c) D.C. Official Code § 44-106.03 (failure to comply with requirements on financial agreements);
- (e) D.C. Official Code § 44-108.01(c)(1) (failure to include a medical history with a resident's recent evaluation);
- (f) D.C. Official Code § 44-108.03 (failure to comply with requirements on functional assessments);
- (i) D.C. Official Code § 44-110.06 (failure to comply with requirements on bathrooms);
- (j) D.C. Official Code § 44-110.07 (failure to comply with requirements on heat, light and ventilation);
- (k) D.C. Official Code § 44-110.08 (failure to comply with requirements on bedrooms); and
- (l) D.C. Official Code § 44-110.09 (failure to comply with kitchen requirements).

Comments on this proposed rulemaking should be submitted, in writing, to Feseha Woldu, Ph.D., Senior Deputy Director, Health Regulation and Licensing Administration, Department of Health, at 717 14th Street, Suite 600, Washington, DC. 20005, within thirty (30) days of the date of publication of this notice in the D.C. Register. Additional copies of this rulemaking are available from the above address.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupation Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02 (14)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapter 43 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The purpose of the proposed amendments is to create a grandfathering provision for dental hygienists who completed a training program under the Board’s previous regulations and who have been administering local anesthesia or nitrous oxide during the past two (2) years.

17 DCMR Chapter 43, DENTAL HYGIENE, is amended to read as follows:**A new section 4311.7 is added to read as follows:**

4311.7 A District of Columbia licensed dental hygienist who was permitted to administer local anesthesia and nitrous oxide in the District of Columbia pursuant to the former 17 DCMR § 4311, may apply for authorization to administer in the District by submitting the following:

- (a) A completed application and payment of the required fee;
- (b) A copy of a valid CPR certification for healthcare providers at the basic level;
- (c) Proof satisfactory to the Board of completion of a board-approved training program in the administration of local anesthesia and nitrous oxide which was completed between April 1, 2004 and January 31, 2009 and meeting the requirements under the regulations that were in effect at that time; and
- (d) Proof satisfactory to the Board that the dental hygienist has administered local anesthesia or nitrous oxide to at least twenty (20) patients during the two (2) years immediately preceding the date of the application. Proof satisfactory to the Board may include a notarized affidavit from the applicant’s supervising dentist attesting to the applicant’s completion of the required number of procedures and the corresponding dates.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to Kenneth Campbell, General Counsel, the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take action to adopt the following amendments to Title 17 (Business, Occupations & Professions) (May 1990) of the District of Columbia Municipal Regulations in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

This rulemaking will establish licensure regulations for the profession of audiology, and will implement the Audiology and Speech-Language Pathology Amendment Act of 2006, which was effective March 4, 2007 (D.C. Law 16-0219; D.C. Official Code § 3-1201.02(2B)(A)). This Act requires licensure of audiologists and speech-language pathologists by the Board of Audiology and Speech-Language Pathology.

Title 17 (Business, Occupations & Professions) (May 1990) is amended as follows:

I. The table of contents is amended as follows:

A. A new Chapter heading for Chapter 78 is added to read as follows:

CHAPTER 78 AUDIOLOGY

B. Section headings for Chapter 78 are added to read as follows:

7800	GENERAL PROVISIONS
7801	TERM OF LICENSE
7802	EDUCATIONAL REQUIREMENTS
7803	SUPERVISED EXPERIENCE REQUIREMENTS
7804	APPLICANTS EDUCATED IN FOREIGN COUNTRIES
7805	NATIONAL EXAMINATION
7806	CONTINUING EDUCATION REQUIREMENTS
7807	APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES
7808	[RESERVED]

- 7809 CONTINUING EDUCATION CREDITS
- 7810 LICENSURE BY ENDORSEMENT
- 7811 WAIVER OF SUPERVISED EXPERIENCE REQUIREMENTS
- 7812 PRACTICE OF SPEECH-LANGUAGE PATHOLOGY BY STUDENTS AND GRADUATES
- 7813 STANDARDS OF CONDUCT
- 7899 DEFINITIONS

II. A new Chapter 78 is added to read as follows:

CHAPTER 78 AUDIOLOGY

7800 GENERAL PROVISIONS

- 7800.1 This chapter shall apply to applicants for and holders of a license to practice audiology.
- 7800.2 Chapter 40 (Health Occupations: General Rules) and 41 (Health Occupations: Administrative Procedures) of this title shall supplement this chapter.
- 7800.3 Audiologists currently practicing in the District of Columbia without a license shall be required to have a license within six (6) months of the effective date of the final rulemaking.

7801 TERM OF LICENSE

- 7801.1 Subject to § 7801.2, a license issued pursuant to this chapter shall expire at 12:00 midnight of December 31st of each even-numbered year.
- 7801.2 If the Director changes the renewal system pursuant to § 4006.3 of chapter 40 of this title, a license issued pursuant to this chapter shall expire at 12:00 midnight on the last day of the month of the birth of the holder of the license, or other date established by the Director.

7802 EDUCATIONAL REQUIREMENTS

- 7802.1 Except as otherwise provided in this chapter, an applicant for a license shall furnish proof satisfactory to the Board, in accordance with § 841 of the Act, D.C. Official Code § 3-1208.41, of the following:

- (a) That the applicant has graduated with a Master's degree or a Doctoral Degree in audiology from a recognized educational institution whose audiology program is accredited by the Council on Academic Accreditation in Audiology and Speech Language Pathology, an accrediting body recognized by the United States Department of Education, or an equivalent accrediting body as determined by the Board;
- (b) That the applicant met the requirements set forth in section 7805 of these regulations; and
- (c) That the applicant has completed a period of supervised experience as required by these regulations.

7803 SUPERVISED EXPERIENCE REQUIREMENTS

- 7803.1 A person completing the supervised experience requirements shall comply with the following:
 - a) A supervisee shall have a Masters or Doctoral degree and shall commence a clinical fellowship within two (2) years from the date of conferral of the degree, and shall complete the clinical fellowship within three and a half (3.5) years from the date of conferral of the degree; or
 - b) A candidate for a Doctor of Audiology degree shall in the fourth year of study practice under general supervision. The Board has deemed the fourth year in a doctoral program as the equivalent of a clinical fellow year.
 - c) The Board may extend the period of supervised experience for good cause shown.
- 7803.2 The Board may accept completion of the clinical fellowship required for the American Speech-Language-Hearing Association Certificate of Clinical Competence as meeting the requirements for supervised experience in this chapter.
- 7803.3 To complete the supervised experience requirements, the applicant shall be employed with or without direct compensation, as a professional in the field of audiology under general supervision for a period of not less than nine (9) months with a minimum of thirty (30) hours of work per week. This requirement may also be met with part-time employment as follows:

- (a) Fifteen (15) to nineteen (19) hours a week for a period of eighteen (18) months;
- (b) Twenty (20) to twenty-four (24) hours a week for a period of fifteen (15) months; or
- (c) Twenty five (25) to twenty-nine (29) hours a week for a period of twelve (12) months.

7803.4 At least eighty (80) percent of the supervisee's supervised experience shall be in direct client contact which includes the following:

- (a) Assessment, diagnosis, evaluation and treatment;
- (b) Screening;
- (c) Habilitation and rehabilitation; and
- (d) Activities related to case management.

7803.5 The remaining twenty (20) percent shall be comprised of supervised activities such as writing, research, or planning.

7803.6 The activities during the supervised experience shall consist of the following:

- (a) Conducting evaluations and treatment procedures;
- (b) Interpreting test results;
- (c) Determining case selections;
- (c) Designing treatment programs;
- (d) Collecting data and documenting performance;
- (e) Maintaining clinical records;
- (f) Providing written or oral reports (progress notes, diagnostic reports) regarding patients' or clients' status;
- (g) Making referrals; and
- (i) Participating in case conferences.

7803.7 An individual serving as a supervisor for the supervised experience requirement:

- (a) Shall hold a valid District of Columbia license in audiology, a license in another jurisdiction with requirements substantially similar to the licensure requirements in the District, or, for states that do not require licensure, a Certificate of Clinical Competence from the American Speech-Language Hearing Association in audiology, or board certification from the American Board of Audiology;
- (b) Shall have been in practice for a minimum of two (2) years after licensure or certification;
- (c) May not supervise more than three (3) individuals at one time;
- (d) May not have been disciplined by a board within the previous five (5) years;
- (e) Shall provide a minimum of thirty six (36) hours of supervisory activities during the supervised experience including a minimum of two (2) hours of monitoring activities each month.

7803.8 An individual serving as a supervisor in the District shall be legally responsible for services provided by the supervisee.

7803.9 An applicant for a license shall demonstrate qualifications required by §§ 7803.3-7803.7 by submitting with the application a signed statement from each supervisor who supervised the applicant during the required period of experience which sets forth the following:

- (a) The number of hours of the applicant's practice of audiology;
- (b) The number of hours of general supervision of the applicant;
- (c) The specific nature of and responsibilities included in the applicant's practice;
- (d) A rating of the applicant's performance;
- (e) The location at which and period(s) of time during which the supervision took place; and
- (f) The license number and jurisdiction in which the supervisor was licensed during the supervised period, or proof that the supervisor has a Certificate of Clinical Competence from the American

Speech-Language Hearing Association or board certification from the American Board of Audiology if the supervised experience is in a state that does not require licensure.

7804 APPLICANTS EDUCATED IN FOREIGN COUNTRIES

- 7804.1 The Board may grant a license to practice audiology to an applicant who completed an educational program in a college or university in a foreign country which was not accredited in accordance with § 7802 if the applicant meets the following requirements:
- (a) Meets all requirements of this chapter except for § 7802.1; and
 - (b) Demonstrates to the satisfaction of the board that the applicant's education and training are substantially equivalent to the requirements of this chapter and the Act in ensuring that the applicant is qualified to practice audiology by submitting documentation required by § 7804.2 of this section.
- 7804.2 An applicant under this section shall, in lieu of meeting the requirements of § 7802.1, submit one of the following:
- (a) Proof satisfactory to the Board that the applicant has received a Master's degree or higher from a foreign institution which was accredited, at the time the degree was conferred, by an accrediting body recognized by the national government of the country in which the institution is located; or
 - (b) A certification from a private education evaluation service approved by the Board that the applicant's foreign education is substantially equivalent to the education provided in an accredited program.
- 7804.3 The Board may interview an applicant under this section to determine whether the applicant's education or training meets the requirements of the Act and this chapter.
- 7804.4 If a document required by this chapter is in a language other than English, an applicant shall arrange for its translation into English by a translation service acceptable to the Board and shall submit a translation signed by the translator attesting to its accuracy.

7805 NATIONAL EXAMINATION

7805.1 To qualify for a license by examination, an applicant shall submit proof of having obtained a score of 600 on the National Examination in Audiology (PRAXIS II: Subject Assessment in Audiology) within the five (5) years before applying for licensure.

7805.2 If an applicant took the National Examination in Audiology more than five (5) years ago, the applicant shall submit the following:

(a) Proof that the applicant has practiced audiology for a total of three (3) years of the five (5) years before applying for licensure, and

(b) Proof of ASHA certification or board certification from the American Board of Audiology, or proof that the applicant obtained a score of 600 on the National Examination in Audiology.

7806 CONTINUING EDUCATION REQUIREMENTS [RESERVED]**7807 APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES [RESERVED]****7808 [RESERVED]****7809 CONTINUING EDUCATION CREDITS [RESERVED]****7810 LICENSURE BY ENDORSEMENT**

7810.1 The Board may issue a license by endorsement to an audiologist who has a valid, unrestricted license in good standing from another jurisdiction of the United States with standards which are, as determined by the Board, substantially equivalent to the District of Columbia laws and regulations.

7810.2 To apply for licensure by endorsement, an applicant shall:

(a) Submit a completed application to the Board on the required forms and include:

(i) The applicant's social security number, or, if the applicant does not have a social security number, a sworn affidavit, under penalty of perjury, that the applicant does not have a social security number; and

(ii) Two (2) recent passport-type photos

- (b) Submit a copy of his or her current license with the application;
- (c) Obtain licensure verification from the original state or territory of licensure that the license is current and in good standing. The licensure verification form must be sent directly to the Board by the verifying jurisdiction;
- (d) Meet any other requirements set by the Board; and
- (e) Pay all required fees.

7811 WAIVER OF SUPERVISED EXPERIENCE REQUIREMENTS

7811.1 The Board may waive the supervised experience requirements for applicants who:

- (1) Provide proof of employment in the practice of audiology for at least ten (10) of the fifteen (15) years immediately preceding the effective date of these regulations;
- (2) Meet all other requirements of these regulations; and
- (3) Apply by December 31, 2009.

7812 PRACTICE OF AUDIOLOGY BY GRADUATE STUDENTS

7812.1 A graduate student whose practice fulfills education requirements under § 841 of the Act, D.C. Official Code § 3-1208.41 may practice audiology in the District in accordance with this section 7812 only under the direct supervision of an audiologist licensed in the District of Columbia. This section shall not apply to doctoral students in audiology who are completing their fourth year supervised experience requirements.

7812.2 A graduate student under supervision shall identify himself or herself as such at all times when practicing audiology.

7812.3 Both the supervisor and the graduate student shall sign reports with their full name and credentials.

7812.4 A student may sign only with the highest degree earned.

7812.5 The title or designation of “graduate student” shall be placed after the student’s name in the report statement.

7812.6 If electronic records only accept one (1) signature, the supervisor shall

sign.

- 7812.7 A supervisor shall not supervise more than two (2) full-time students per day in off-site placements from a university.
- 7812.8 A supervisor shall be personally responsible for each patient the student evaluates and treats during the period of supervision and is subject to disciplinary action for any violation of the Act or this chapter by the student.
- 7812.9 An individual serving as a supervisor for a graduate student in the District:
- a) Shall hold a valid District of Columbia license in audiology: and
 - b) May not have been disciplined by a board within the previous five (5) years.

7813 STANDARDS OF CONDUCT

- 7813.1 A licensee, student or graduate shall adhere to standards set forth in the “Code of Ethics” as published by the American Speech-Language-Hearing Association or the Code of Ethics for the American Academy of Audiology as they may be republished from time to time.

7899 DEFINITIONS

- 7899.1 As used in this chapter, the following terms shall have the meanings ascribed:

Applicant – a person applying for a license to practice audiology under this chapter.

Board – the Board of Audiology and Speech-Language Pathology, established by § 841, D.C. Official Code § 4-1208.41 (2006).

Direct supervision – supervision in which the supervisor is immediately available on the premises and within vocal communication either directly or by a communication device.

General supervision – supervision in which the supervisor is available to the person supervised, either in person or by a communications device.

Good cause – serious illness of the applicant, the death or serious illness of a member of the applicant’s immediate family, or other cause sufficient to the Board.

Practice of audiology – means the planning, directing, supervising, and conducting of habilitative or rehabilitative counseling programs for individuals or groups of individuals who have, or are suspected of having, disorders of hearing; any service in audiology, including prevention, identification, evaluation, consultation, habilitation or rehabilitation, instruction, and research; participating in hearing conservation, hearing aid and assistive listening device evaluation, selection, preparation, dispensing and orientation; fabricating ear molds; providing auditory training and speech reading; or administering tests of vestibular function and tests for tinnitus. The practice of audiology includes speech and language screening limited to a pass-or-fail determination for the purpose of identification of individuals with disorder of communication. The practice of audiology does not include the practice of medicine or osteopathic medicine, or the performance of a task in the normal practice of medicine or osteopathic medicine by a person to whom the task is delegated by a licensed physician.

Supervised experience- the clinical fellowship year required for applicants for licensure with a Masters or Doctoral degree, or the period of supervised practice during the fourth year of an audiology doctoral program.

Supervisor – an audiologist who is qualified under 7803.7 and who is providing general supervision to an individual completing the supervised experience requirements in section 7803, or an audiologist qualified under 7812.9 who is providing direct supervision to a graduate student under 7812.

Supervisee- an individual who is completing the supervised experience requirements.

7999.2 - The definitions in § 4099 of chapter 40 of this title are incorporated by reference into and are applicable to this chapter.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty days after the date of publication of this notice in the D.C. Register. Comments should be sent to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rule may be obtained from the Department at the same address during the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take action to adopt the following amendments to Title 17 (Business, Occupations & Professions) (May 1990) of the District of Columbia Municipal Regulations in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

This rulemaking will establish licensure regulations for the profession of speech language pathology, and will implement the Audiology and Speech-Language Pathology Amendment Act of 2006, which was effective March 4, 2007 (D.C. Law 16-0219; D.C. Official Code § 3-1201.02(2B)(A)). This Act requires licensure of audiologists and speech-language pathologists by the Board of Audiology and Speech-Language Pathology.

Title 17 (Business, Occupations & Professions) (May 1990) is amended as follows:**I. The table of contents is amended as follows:****A. A new Chapter heading for Chapter 79 is added to read as follows:****CHAPTER 79 SPEECH-LANGUAGE PATHOLOGY****B. Section headings for Chapter 79 are added to read as follows:**

7900	GENERAL PROVISIONS
7901	TERM OF LICENSE
7902	EDUCATIONAL REQUIREMENTS
7903	CLINICAL FELLOWSHIP REQUIREMENTS
7904	APPLICANTS EDUCATED IN FOREIGN COUNTRIES
7905	NATIONAL EXAMINATION
7906	CONTINUING EDUCATION REQUIREMENTS
7907	APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES

- 7908 [RESERVED]
- 7909 CONTINUING EDUCATION CREDITS
- 7910 LICENSURE BY ENDORSEMENT
- 7911 WAIVER OF CLINICAL FELLOWSHIP REQUIREMENTS
- 7912 PRACTICE OF SPEECH-LANGUAGE PATHOLOGY BY GRADUATE STUDENTS
- 7913 STANDARDS OF CONDUCT
- 7999 DEFINITIONS

II. A new Chapter 79 is added to read as follows:

CHAPTER 79 SPEECH-LANGUAGE PATHOLOGY

7900 GENERAL PROVISIONS

- 7900.1 This chapter shall apply to applicants for and holders of a license to practice speech-language pathology.
- 7900.2 Chapter 40 (Health Occupations: General Rules) and 41 (Health Occupations: Administrative Procedures) of this title shall supplement this chapter.

7901 TERM OF LICENSE

- 7901.1 Subject to § 7901.2, a license issued pursuant to this chapter shall expire at 12:00 midnight of December 31st of each even-numbered year.
- 7901.2 If the Director changes the renewal system pursuant to § 4006.3 of chapter 40 of this title, a license issued pursuant to this chapter shall expire at 12:00 midnight on the last day of the month of the birth of the holder of the license, or other date established by the Director.

7902 EDUCATIONAL REQUIREMENTS

- 7902.1 Except as otherwise provided in this chapter, an applicant for a license shall furnish proof satisfactory to the Board, in accordance with § 841 of the Act, D.C. Official Code § 3-1208.41, of the following:

(a) That the applicant has graduated with a Master's degree or a Doctoral

Degree in speech-language pathology from a recognized educational institution whose speech language pathology program is accredited by the Council on Academic Accreditation in Audiology and Speech Language Pathology, an accrediting body recognized by the United States Department of Education, or an equivalent accrediting body as determined by the Board.

(b) That the applicant met the requirements set forth in section 7905 of these regulations; and

(c) That the applicant has completed a period of clinical fellowship as required by these regulations.

7903 CLINICAL FELLOWSHIP REQUIREMENTS

7903.1 A person completing the clinical fellowship requirements shall have a Master's or Doctoral degree and shall commence a clinical fellowship within 2 years from the date of conferral of the degree, and shall complete the clinical fellowship within three and a half (3.5) years from the date of conferral of the degree.

7903.2 The Board may extend the period of clinical fellowship for good cause shown.

7903.3 The Board may accept completion of the clinical fellowship required for the American Speech-Language-Hearing Association Certificate of Clinical Competence as meeting the requirements for clinical fellowship in this chapter.

7903.4 To complete a clinical fellowship the applicant shall be employed, with or without direct compensation, as a professional in the field of speech-language pathology under general supervision for a period of not less than nine (9) months with a minimum of thirty (30) hours of work per week. This requirement may also be met with part-time employment as follows:

(a) Fifteen (15) to nineteen (19) hours a week for a period of eighteen (18) months;

(b) Twenty (20) to twenty four (24) hours a week for a period of fifteen (15) months; or

(c) Twenty five (25) to twenty nine (29) hours a week for a period of twelve months.

7903.5 At least eighty percent (80%) of the supervisee's clinical fellowship shall be in direct client contact which includes the following:

- (a) Assessment, diagnosis, evaluation and treatment;
- (b) Screening;
- (c) Habilitation and rehabilitation; and
- (d) Activities related to case management.

7903.6 The remaining twenty percent (20%) shall be comprised of supervised activities such as writing, research or planning.

7903.7 The activities included in a clinical fellowship shall consist of the following:

- (a) Conducting evaluations and treatment procedures;
- (b) Interpreting test results;
- (c) Determining case selections;
- (d) Designing treatment programs;
- (e) Collecting data and documenting performance;
- (f) Maintaining clinical records;
- (g) Providing written or oral reports (progress notes, diagnostic reports) regarding patients' or clients' status;
- (h) Making referrals; and
- (i) Participating in case conferences.

7903.8 An individual serving as a supervisor for the clinical fellowship requirement:

- (a) Shall hold a valid District of Columbia license in speech language pathology, a license in another jurisdiction with requirements substantially similar to the licensure requirements in the District, or if in a state that does not require licensure, a Certificate of Clinical Competence from the American Speech-Language Hearing Association in speech-language pathology;

- (b) Shall have been in practice for a minimum of two (2) years after licensure or certification;
- (c) May not supervise more than three (3) individuals at one time;
- (d) May not have been disciplined by a board within the previous five (5) years; and
- (e) Shall provide a minimum of thirty six (36) hours of supervisory activities during the clinical fellowship including a minimum of two (2) hours of monitoring activities each month.

7903.9 An individual serving as a supervisor in the District shall be legally responsible for services provided by the supervisee.

7903.10 An applicant for a license shall demonstrate qualifications required by §§ 7903.3-7903.6 by submitting with the application a signed statement from each supervisor who supervised the applicant during the required fellowship period which sets forth the following:

- (a) The number of hours of the applicant's practice of speech-language pathology;
- (b) The number of hours of general supervision of the applicant;
- (c) The specific nature of responsibilities included in the applicant's practice;
- (d) A rating of the applicant's performance;
- (e) The location at which and period(s) of time during which the supervision took place; and
- (f) The license number and jurisdiction in which the supervisor was licensed during the supervised period, or proof that the supervisor has a Certificate of Clinical Competence if the clinical fellowship is in a state that does not require licensure.

7904 APPLICANTS EDUCATED IN FOREIGN COUNTRIES

7904.1 The Board may grant a license to practice speech-language pathology to an applicant who completed an educational program in a college or university in a foreign country which was not accredited in accordance with § 7902 if the applicant meets the following requirements:

- (a) Meets all requirements of this chapter except for § 7902.1; and
- (b) Demonstrates to the satisfaction of the Board that the applicant's education and training are substantially equivalent to the requirements of this chapter and the Act that the applicant is qualified to practice speech-language pathology by submitting documentation required by § 7904.2 of this section.

7904.2 An applicant under this section shall, in lieu of meeting the requirements of § 7902.1, submit one of the following:

- (a) Proof satisfactory to the Board that the applicant has received a Master's degree or higher from a foreign institution which was accredited, at the time the degree was conferred, by an accrediting body recognized by the national government of the country in which the institution is located; or
- (b) A certification from a private education evaluation service approved by the Board that the applicant's foreign education is substantially equivalent to the education provided in an accredited program.

7904.3 The Board may interview an applicant under this section to determine whether the applicant's education or training meets the requirements of the Act and this chapter.

7904.4 If a document required by this chapter is in a language other than English, an applicant shall arrange for its translation into English by a translation service acceptable to the Board and shall submit a translation signed by the translator attesting to its accuracy.

7905 NATIONAL EXAMINATION

7905.1 To qualify for a license by examination, an applicant shall submit proof of having obtained a score of 600 on the National Examination in Speech-Language Pathology (PRAXIS II: Subject Assessment in Speech-Language Pathology) within the five (5) years before applying for licensure.

7905.2 If an applicant for licensure took the National Examination in Speech-Language Pathology more than 5 years ago, the applicant shall submit the following:

- (a) Proof that the applicant has practiced speech-language pathology for a total of three (3) years of the five (5) years before applying for licensure, and

- (b) Proof of American Speech-Language-Hearing Association certification or that the applicant obtained a score of 600 on the National Examination in Speech-Language Pathology.

7906 CONTINUING EDUCATION REQUIREMENTS [RESERVED]

7907 APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES [RESERVED]

7908 [RESERVED]

7909 CONTINUING EDUCATION CREDITS

7910 LICENSURE BY ENDORSEMENT

7910.1 The Board may issue a license by endorsement to a speech-language pathologist who has a valid, unrestricted license in good standing from another jurisdiction of the United States with standards which are, as determined by the Board, substantially equivalent to the District of Columbia laws and regulations.

7910.2 To apply for licensure by endorsement, an applicant shall:

- (a) Submit a completed application to the Board on the required forms and include:
 - (i) The applicant's social security number, or, if the applicant does not have a social security number, a sworn affidavit, under penalty of perjury, that the applicant does not have a social security number; and
 - (ii) Two (2) recent passport-type photos.
- (b) Submit a copy of his or her current license with the application.
- (c) Obtain licensure verification from the original state or territory of licensure that the license is current and in good standing. The licensure verification form must be sent directly to the Board by the verifying jurisdiction;
- (d) Meet any other requirements set by the Board; and
- (e) Pay all required fees.

7911 WAIVER OF CLINICAL FELLOWSHIP REQUIREMENTS

7911.1 The Board may waive the clinical fellowship requirements for applicants who:

(1) Provide proof of employment in the practice of speech language pathology for at least ten (10) of the last fifteen (15) years immediately preceding the effective date of these regulations;

(2) Meet all other requirements of these regulations; and

(3) Apply by December 31, 2009.

7912 PRACTICE OF SPEECH-LANGUAGE PATHOLOGY BY GRADUATE STUDENTS

7912.1 A graduate student whose practice fulfills education requirements under §841 of the Act, D.C. Official Code § 3-1208.41, may practice speech-language pathology in accordance with this section 7912 only under the direct supervision of a speech-language pathologist licensed in the District of Columbia.

7912.2 A graduate student under supervision shall identify himself or herself as such at all times when practicing speech-language pathology.

7912.3 Both the supervisor and the graduate student shall sign reports with their full name and credentials.

7912.4 A student may sign only with the highest degree earned.

7912.5 The title or designation of “graduate student” shall be placed after the student’s name in the report statement.

7912.6 If electronic records only accept one (1) signature, the supervisor shall sign.

7912.7 A supervisor shall not supervise more than two (2) full-time students per day in off-site placements from a university.

7912.8 A supervisor shall be personally responsible for each patient the student evaluates and treats during the period of supervision and is subject to disciplinary action for any violation of the Act or this chapter by the student.

- 7912.9 An individual serving as a supervisor for a graduate student in the District:
- a) Shall hold a valid District of Columbia license in speech language pathology; and
 - b) May not have been disciplined by a board within the previous five (5) years.

7913 STANDARDS OF CONDUCT

- 7913.1 A licensee, student or graduate shall adhere to standards set forth in the “Code of Ethics” as published by the American Speech-Language-Hearing Association as it may be republished from time to time.

7999 DEFINITIONS

- 7999.1 As used in this chapter, the following terms shall have the meanings ascribed:

Applicant – a person applying for a license to practice speech-language pathology under this chapter.

Board – the Board of Audiology and Speech-Language Pathology, established by § 841, D.C. Official Code § 3-1208.41 (2006).

Direct supervision – supervision in which the supervisor is immediately available on the premises and within vocal communication either directly or by a communication device.

General supervision – supervision in which the supervisor is available to the person supervised, either in person or by a communications device.

Good cause – serious illness of the applicant, the death or serious illness of a member of the applicant’s immediate family, or other cause sufficient to the Board.

Practice of speech-language pathology – means the application of principles, methods, or procedures related to the development and disorders of human communication, including any condition, whether of organic or non-organic origin, that impedes the normal process of human communication including disorders and related disorders of speech, articulation, fluency, voice, oral, or written language; auditory comprehension and processing; oral, pharyngeal or laryngeal sensorimotor competencies; swallowing; auditory or visual processing; auditory or visual memory or cognition; communication; and assisted augmentative communication treatment and devices. The term “practice of speech language pathology” also includes the planning, directing, supervising, and conducting of a habilitative and rehabilitative counseling program for individuals or groups of individuals who have, or are suspected of having, disorders of communication,

and any service in speech-language pathology including prevention, identification, evaluation, consultation, habilitation or rehabilitation, instruction or research. The practice of speech-language pathology may include pure-tone air conduction hearing screening, screening of tympanometry, and acoustic reflex screening, limited to a pass-or-fail determination for the identification of individuals with other disorders of communication and may also include aural habilitation or rehabilitation, which means the provision of services and procedures for facilitating adequate auditory, speech, and language skills in individuals with hearing impairment. The practice of speech-language pathology does not include the practice of medicine or osteopathic medicine, or the performance of a task in the normal practice of medicine or osteopathic medicine by a person to whom the task is delegated by a licensed physician.

Clinical fellowship- the experience required by section 7903 of these regulations.

Supervisor – a speech-language pathologist who is qualified pursuant to section 7903.7 and who is providing general supervision to an individual completing the clinical fellowship requirements, or a speech language pathologist who is qualified pursuant to 7912.9 and who is providing direct supervision to a graduate student under 7912.

Supervisee- an individual who is completing the clinical fellowship requirements.

7999.2 - The definitions in § 4099 of chapter 40 of this title are incorporated by reference into and are applicable to this chapter.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty days after the date of publication of this notice in the D.C. Register. Comments should be sent to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rule may be obtained from the Department at the same address during the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 19(a)(3) of the District of Columbia Pharmacist and Pharmacy Regulation Act of 1980, effective September 16, 1980, (D.C. Law 3-98; D.C. Official Code § 47-2885.18.01(a)(3)); the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981, (D. C. Law 4-29; D.C. Official Code § 48-901.01); Mayor's Order 98-48, dated April 15, 1998, Section 4902 of the Fiscal Year 2002 Budget Support Act of 2001, effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code § 7-731); Section 15 of the District of Columbia Drug Manufacture and Distribution Licensure Act of 1990, effective June 13, 1990, (D.C. Law 8-137; D.C. Official Code § 48-714(a)); and Mayor's Order 98-88, dated May 29, 1998; hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapter 13 (Prescriptions and Distribution) of Title 22 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The purpose of this amendment is to allow the District's regulations to coincide with its Federal counterpart as set forth in 21 CFR § 1306.12, which allows practitioners to issue multiple prescriptions for controlled substance listed in Schedule II authorizing the patient to receive a total of up to a 90-day supply.

Section 1306.2 is amended to read as follows:

- 1306.2 A prescription for a controlled substance listed in Schedule II shall not be filled if submitted more than thirty (30) days after the date on which the prescription is written; except as follows:
- (a) A pharmacist may fill a prescription for a controlled substance listed in Schedule II that was submitted to the pharmacy more than thirty (30) days after the date on which it was written, if it is clear on the face of the prescription that the individual practitioner issued multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of the Schedule II controlled substance and:
 - (i) Each separate prescription was issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice;
 - (ii) The individual practitioner provided written instructions on each prescription (other than the first prescription, if the prescribing practitioner intends for that prescription to be filled immediately)

indicating the earliest date on which a pharmacy may fill each prescription, and

- (iii) The prescription is presented to the pharmacy for filling not more than seventy (70) days after the date on which the prescription was written.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Kenneth Campbell, General Counsel, the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Small and Local Business Development, pursuant to section 2372 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.72) and Mayor's Order 2009-58, dated April 15, 2009, hereby gives notice of the intent to amend Chapter 8 (Local, Small and Disadvantaged Business Enterprises (LSDBE) Contracting) of Title 27 (Contracts and Procurements) of the District of Columbia Municipal Regulations (DCMR) to establish revised LSDBE rules for District contracting and procurement. Final rulemaking action will be taken to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 8 of Title 27 DCMR is amended to read as follows:

CHAPTER 8 (LOCAL, SMALL AND DISADVANTAGED BUSINESS ENTERPRISES CONTRACTING)

Secs.	
800	GENERAL PROVISIONS
801	APPLICATION FOR CERTIFIED BUSINESS ENTERPRISE STATUS
802	LOCAL BUSINESS ENTERPRISE REQUIREMENTS
803	DISADVANTAGED BUSINESS ENTERPRISE; ADDITIONAL REQUIREMENTS
804	RESIDENT-OWNED BUSINESS ENTERPRISE; ADDITIONAL REQUIREMENTS
805	LONG-TIME RESIDENT BUSINESS ENTERPRISE; ADDITIONAL REQUIREMENTS
806	DEPARTMENT PROCESS FOR CERTIFIED BUSINESS ENTERPRISE STATUS
807	DETERMINATION OF ASSET LOCATION
808	UPGRADE
809	SCOPE AND TERM OF CERTIFICATE OF REGISTRATION
810	PROVISIONAL CERTIFICATION
811	APPLICATION FOR JOINT VENTURES
812	REPORTING REQUIREMENTS FOR JOINT VENTURES
813	BID AND PROPOSAL PREFERENCES FOR JOINT VENTURE
814	CONTINUING ELIGIBILITY AND REPORTING REQUIREMENTS
815	COMPLIANCE REVIEW
816	COMPLAINT PROCEDURE
817	GROUNDINGS FOR REVOCATION
818	OPPORTUNITY FOR A HEARING; REVOCATION AND DENIAL
819	ADDITIONAL REQUIREMENTS FOR CERTIFICATION UPON REVOCATION
820	COMPUTATION OF TIME

821	SERVICE
822	INFORMAL DISCOVERY
823	SUBPOENAS
824	CONDUCT OF HEARINGS
825	EVIDENCE AT HEARINGS
826	DECISIONS
827	REOPENING AND RECONSIDERATION
828	JUDICIAL REVIEW
829	LIST OF CERTIFIED BUSINESS ENTERPRISES
830	AGENCY EXPENDABLE BUDGETS; CERTIFIED BUSINESS ENTERPRISE EXPENDITURE
831	AGENCY ALLOCATION LETTER FOR SMALL BUSINESS ENTERPRISES
832	AGENCY PROCUREMENT PLAN
833	AGENCY PROGRAM REPORTS
834	AGENCY SET-ASIDE AND PREFERENCE PROGRAM IMPLEMENTATION
835	AGENCY CERTIFIED BUSINESS ENTERPRISES SUBCONTRACTING
836	RESERVED
837	RESERVED
838	EQUITY AND DEVELOPMENT PARTICIPATION PROGRAM
839	EQUITY AND DEVELOPMENT PARTICIPATION REQUIREMENTS
840	EVALUATION OF EQUITY AND DEVELOPMENT PARTICIPATION
841	RESERVED
842	CHANGES IN EQUITY AND DEVELOPMENT PARTICIPATION
843	CLOSING REQUIREMENTS REGARDING EQUITY AND DEVELOPMENT PARTICIPATION
844	EQUITY AND DEVELOPMENT PARTICIPATION RESTRICTIVE COVENANT
845	RESERVED
846	DEPARTMENT ASSISTANCE FOR COVERED PROJECTS
847	EQUITY OR DEVELOPMENT PARTICIPANT LOSS OF CERTIFICATION
848	EQUITY AND DEVELOPMENT REPORTS
849-850	RESERVED
851	MICROLOAN FUND
852	NON-IMPAIRMENT OF CONTRACTS AND SOLICITATIONS
899	DEFINITIONS

800 GENERAL PROVISIONS

800.1 This chapter is promulgated pursuant to the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 (Act), effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*).

801 APPLICATION FOR CERTIFIED BUSINESS ENTERPRISE STATUS

801.1 An applicant for certification with the Department shall submit a completed application that is signed and sworn to by the applicant, setting forth the basis for

certification as a CBE, accompanied by documentation requested by the Department.

801.2 An applicant for certification, along with the application, shall also submit documentation that includes, but is not limited to:

- (a) Business documentation, including articles of incorporation, by-laws, certificates of good standing, stock voting rights, minutes of organizational meetings, partnership agreements, profit sharing agreements, buy-out rights, joint venture agreements, tax returns, and annual reports;
- (b) Stock options or other ownership options which are outstanding, evidence of loans or other debts between owners, evidence of loans or other debts between owners and third parties which are related to the business, and identification of trusts affecting the finances or control of the business;
- (c) Copies of current financial or operating statements, including balance sheets, income statements, statements of retained earnings, and statements of cash flows, being current up to the ninety-day period prior to the application date, along with federal and District of Columbia and/or applicable state tax returns for the past three most recent years;
- (d) Type, quantity, and value of equipment owned;
- (e) Bonding limit, name of bonding company, sources of letters of credit, other sources of capital and other financing, and trade references;
- (f) Experience of firm owners and managers in areas such as supervision; accounting, bookkeeping, and other recordkeeping; use of suppliers; and use of equipment;
- (g) Lease or ownership information for every property at which the applicant maintains an office;
- (h) A list of all employees, including name, home address, and the office to which he or she reports; and
- (i) Any other documentation the Department may require.

801.3 An applicant may also be required to demonstrate compliance with the requirements of the Act, this chapter, and other laws of the District of Columbia. In furtherance of such demonstration, the applicant shall:

- (a) Permit the Department to enter and conduct an on-site inspection of the applicant's business premises;

- (b) Provide the Department, during the on-site inspection, with immediate access to any records or area of the premises that the Department deems necessary to review to determine whether the applicant is in compliance with the Act and these regulations; and
- (c) Provide any other information the Department deems necessary to evidence compliance with the Act and these regulations.

801.4 An applicant currently certified as a CBE seeking an upgrade shall submit to the Department an upgrade application that is signed and sworn to by the applicant and shall provide additional information and/or documentation indicating the applicant's qualifications for the upgrade, which may include but not be limited to:

- (a) A detailed resume of all individuals that the Department is to consider;
- (b) Transcript from a university or other institution indicating education or training in an area related to the upgrade; and
- (c) Any other information requested by the Department.

802 LOCAL BUSINESS ENTERPRISE REQUIREMENTS

802.1 An applicant for certification as a local business enterprise must demonstrate, *inter alia*, that the principal office of the business enterprise is located in the District of Columbia. To be considered the principal office:

- (a) The applicant must own, or lease for a minimum of 12 months, the office;
- (b) To the extent the applicant owns or leases property located outside of the District of Columbia, the applicant shall have no more employees reporting to or working from any single location outside of the District than employees reporting to or working from the principal office location. The number of employees in each jurisdiction shall be determined by the number of employees for whom the applicant pays unemployment tax in each jurisdiction. If the business enterprise has been in business for less than 4 months, the number of employees in each jurisdiction shall be determined by the number of employees subject to unemployment tax in each jurisdiction; and
- (c) The insignia, signs, printed material, business cards, letterhead, legal documents where the principal office or headquarters is identified, and website, if applicable, must indicate that the office located in the District of Columbia is the principal office or headquarters.

802.2 In determining the principal office for the business enterprise, the Department

may also consider:

(a) The totality of the business activities in which routine and essential business functions occur such as the following:

- (1) Bookkeeping and other recordkeeping;
- (2) Payroll maintenance;
- (3) Receipt of business telephone calls;
- (4) Receipt of correspondence;
- (5) Storing of books and records; and
- (6) Directing, controlling and coordinating activities and policies by officers, principals and managers; and

(b) The number of vehicles owned by the applicant that are registered in jurisdictions outside of the District of Columbia in comparison to the number of such vehicles registered in the District of Columbia.

802.3 If the business enterprise is owned or operated by an individual or individuals who perform other work functions outside of the business, the Department will consider the time the individual or individuals spend(s) performing duties in the office relative to time spent performing other work functions outside of the business.

803 DISADVANTAGED BUSINESS ENTERPRISE; ADDITIONAL REQUIREMENTS

803.1 An applicant seeking certification as a Disadvantaged Business Enterprise (“DBE”), in addition to satisfying the requirements of a CBE, shall demonstrate to the Department that the individual(s) representing more than fifty percent (50%) of those who own, operate, and control the business enterprise are:

- (a) Socially disadvantaged because the individuals have faced chronic, non-fleeting instances of prejudice or bias without regard to their qualities as individuals over which they have no control due to their identity as members of a group as evidenced by the following:
- (1) Documentation proving that the individuals seeking socially disadvantaged status as members of a group hold themselves out as members of that group;
 - (2) Documentation proving that the individuals seeking socially disadvantaged status have been isolated from the mainstream of

American society in ways not common to business persons generally; and

(3) Documentation proving that the individuals seeking socially disadvantaged status have personally suffered social disadvantage through treatment they have experienced; and

(b) Economically disadvantaged because of diminished opportunities that have precluded these individuals from successfully competing in the open marketplace as evidenced by documentation on the following:

(1) The personal financial statement of the individual(s) seeking economically disadvantaged status;

(2) The financial condition of the business enterprise; and

(3) The applicant's lack of access to credit and capital as compared to others in the same line of business.

803.2 An applicant seeking DBE certification shall provide the Department with a narrative describing how the owner or owners of more than 50% of the business interests is/are socially and economically disadvantaged as described in this section. The applicant shall also provide the Department with the personal financial statement of the owner or owners claiming to be economically disadvantaged demonstrating that his or her personal net worth, excluding the value of his or her primary residence and the value of his or her ownership interest in the CBE, is less than \$1,000,000.

804 RESIDENT-OWNED BUSINESS ENTERPRISE; ADDITIONAL REQUIREMENTS

804.1 An applicant requesting certification as a resident-owned business enterprise must provide proof of residency, including but not limited to, personal income tax returns, a deed, mortgage, or lease for his or her primary residence, a District of Columbia driver's license or identification card, and utility bills for the residence.

805 LONG-TIME RESIDENT BUSINESS ENTERPRISE

805.1 An applicant requesting certification as a longtime resident business enterprise must provide evidence that the business enterprise has been continuously eligible for certification as a local business enterprise, as defined in section 2331 of the Act, for 20 consecutive years, or a small business enterprise, as defined in section 2332 of the Act, for 15 consecutive years.

805.2 Evidence that the business enterprise has been continuously eligible for certification as a local business enterprise shall include information required by the Department for certification under §§ 801 and 802.

806 DEPARTMENT PROCESS FOR CERTIFIED BUSINESS ENTERPRISE STATUS

- 806.1 Upon receipt of an application for certification as a CBE, the Director shall conduct a preliminary review of the submission for compliance with the requirements of the Act and this chapter and take one of the following actions:
- (a) If the application is complete, it shall be accepted for review by the Department; or
 - (b) If the application is incomplete or lacks the required verification, it shall be returned to the applicant with a notice indicating the need for additional actions or materials in order for the application to be accepted for review.
- 806.2 The Director, or his/her designee, may conduct site inspections and hold interviews or discussions with an applicant or applicant's representative(s) as part of the review process.
- 806.3 Upon completion of the Department's review, the Director shall determine the eligibility of the applicant and advise the applicant in writing of the determination regarding its application. The Department shall deny an application if the applicant fails to demonstrate eligibility for certification.
- 806.4 In addition to the information supplied in the application and documents accompanying the application, the Director may require an applicant to supply or provide access to additional information and documents relevant to the Department's investigation and determination of the applicant's eligibility as a CBE.
- 806.5 An applicant shall report to the Department any changes that may affect the eligibility for certification of the applicant.
- 806.6 Upon the denial of an application for certification, the Department shall not accept, review, or evaluate for a period of six (6) months from the date the applicant receives notice of the decision to deny certification:
- (a) Amendments to or new information on the denied application; or
 - (b) A new certification application from the applicant, its agent(s), representative(s), or other members of the public on the applicant's behalf.

807 DETERMINATION OF ASSET LOCATION

- 807.1 In determining whether the applicant has more than fifty percent (50%) of the assets of the business enterprise located in the District, the Department shall

consider the location of fixed assets, including property, plant, and equipment, and exclude bank accounts, accounts receivable, and intangible assets, such as goodwill, patents, copyrights, or trademarks.

808 UPGRADE

808.1 An applicant that has been certified by the Department as a CBE in one or more areas may expand the areas in which it is certified by submitting to the Department a completed application for an upgrade. Each application for an upgrade shall comply with the requirements of this chapter and shall be accompanied by documentation indicating the applicant's qualifications, expertise, and/or resources which justify the upgrade.

- (a) With respect to each category of construction and non-construction services for which an applicant seeks certification, the applicant shall demonstrate that the applicant has the expertise, personnel, facilities, equipment, and experience to perform the services on an on-going basis.
- (b) With respect to SBEs as suppliers of goods and equipment, the applicant shall submit evidence that the applicant is a manufacturer of or regular dealer in such goods.
 - (1) In order to qualify as a manufacturer, an applicant shall own or lease on a regular basis an establishment that produces on the premises the materials, supplies, articles or equipment of the character in which the applicant claims to be a manufacturer; but the term does not include a business which performs only minimal operations on or minimal assembly of the items being produced.
 - (2) In order to qualify as a regular dealer under this section, an applicant shall meet the following minimum eligibility requirements:
 - (A) Maintain an establishment in which materials, supplies, articles, or equipment of the character in which the applicant claims to be a regular dealer are bought, kept in stock, and sold to customers on a recurring basis in the usual course of business; and
 - (B) Demonstrate that its business is an established and on-going entity regularly dealing in the particular materials, supplies, articles, or equipment of the character offered in the District of Columbia.
 - (3) In making the determination whether the applicant is a regular dealer, the Department shall consider the following factors:

- (A) Whether the applicant has performed the particular services for a client in the course of its business in the one-year period prior to the application date;
- (B) If the applicant is newly providing this type of service, whether the applicant has made plans and committed resources to performing the particular services for clients; or
- (C) The customary practice in the industry.

809 SCOPE AND TERM OF CERTIFICATE OF REGISTRATION

- 809.1 A certificate issued to Certified Business Enterprises shall:
- (a) Authorize the CBEs to receive the benefits as outlined in the Act and this chapter on all District government solicitations; and
 - (b) Be effective for a period of two (2) years from the date of issuance, provided that the CBE remains in compliance with the Act and these regulations.
- 809.2 A CBE that was previously certified but the certification has expired shall not be eligible for any benefits provided under the Act or these regulations until such time as the CBE has been recertified.
- 809.3 A CBE shall submit an application for certification at least ninety (90) days prior to the expiration of its registration with the Department. The application shall be signed and sworn to on a form prescribed by the Department and accompanied by documentation and/or other supporting information required by the Department.

810 PROVISIONAL CERTIFICATION

- 810.1 An applicant seeking provisional certification shall submit the following:
- (a) A request in writing to the Department for a provisional certification;
 - (b) A copy of the solicitation or other contract or procurement opportunity indicating the date upon which a response to the solicitation is due; and
 - (c) A completed application, including all supporting documentation.
- 810.2 In considering whether to certify an applicant, the Department shall examine information submitted under § 810.1(b) and (c) and preliminarily verify, based on the documentation and without conducting a site visit, that the applicant complies with the Act and these regulations.

810.3 If an applicant that receives a provisional certification is selected for a District of Columbia contract or procurement and the provisional preference points are outcome determinative, the contract or procurement official must immediately inform the Department. The Department shall complete its investigation and site visit to confirm the applicant's qualifications for certification prior to award. The Department shall inform the District contract or procurement official regarding its final decision before the award.

810.4 A provisional certification shall be effective for forty-five (45) business days or until the Department makes a decision regarding the business enterprise under § 810.3, whichever is a shorter period of time.

811 APPLICATION FOR JOINT VENTURES

811.1 An applicant for certification as a joint venture shall:

- (a) Submit an executed copy of the applicant's joint venture agreement which must:
 - (1) Specify in reasonable detail the purpose of the joint venture, including the specific procurement, solicitation, or project the applicant wishes to be certified to perform;
 - (2) Identify the parties to the joint venture and define their respective obligations, rights, and responsibilities, including the management structure, control of the joint venture, financial contributions, bonding requirements, service and labor contributions, revenue or fees for services or labor, and distribution of profits;
 - (3) Demonstrate that one of the joint venturers is a CBE or an applicant for CBE certification;
 - (4) Provide for the establishment and administration of a separate bank account in the name of the joint venture into which all funds received will be deposited and through which all expenses will be paid, and which requires all withdrawals and deposits to be approved by the CBE member of the joint venture management committee;
 - (5) Contain an itemized description of all major equipment, facilities, and other resources to be furnished by each participant in the joint venture with a detailed schedule of costs;
 - (6) Contain a provision indicating that the CBE's interest in the joint venture shall not be reduced or diluted;

- (7) Contain a provision indicating that the CBE's financial risk is commensurate with its percentage interest in the joint venture;
 - (8) Contain a provision indicating that the joint venture agreement is the controlling agreement between the parties regarding interest, ownership, control, responsibilities, duties, and functions of the parties and the joint venture agreement shall prevail if there is any conflict between the joint venture agreement and any other agreement between the parties;
 - (9) Specify the responsibilities of the parties in at least the areas of negotiations with the owners, subcontract negotiation, contract and subcontract performance; and
 - (10) Indicate that the CBE shall perform services of the joint, receive profits of the joint venture, provide labor hours required of the joint venture, or perform other work for the joint venture as approved by the Department that is at a minimum equal to its percentage of ownership interest in the joint venture.
- (b) Submit additional information that must:
- (1) Inform the Department of whether the CBE has relinquished its ownership interest in any joint venture within the one-year period prior to the application date; and
 - (2) Demonstrate that each participant in the joint venture has the competence and expertise necessary to perform the type of work in connection with which the applicant wishes to be certified.
- (c) Submit all other agreements between the parties regarding the operations of the joint venture;
- (d) Submit the most current audited financial statement for the non-CBE participant;
- (e) Submit its certified payroll upon request; and
- (f) Permit the Department to enter and conduct an onsite inspection or re-inspection of the applicant's business premises.

811.2 An application for joint venture certification may be submitted to and reviewed by the Department simultaneously with an application for certification of one or more of the individual venturers as a CBE.

811.3 The Department may deny certification of any joint venture whose joint venture agreement lacks any of the provisions in § 811.1.

- 811.4 The joint venture shall make its records available to the Department at any time deemed necessary by the Department.
- 811.5 The Commission may revoke the certification of a joint venture for failure to comply with the Act and these regulations.
- 811.6 Upon receipt of an application for certification as a joint venture, the Department will follow the process outlined in § 806.

812 REPORTING REQUIREMENTS FOR JOINT VENTURES

- 812.1 A joint venture shall submit to the Department quarterly income statements showing all income or contract receipts and all expenses (including but not limited to, fees for services and labor, salaries of the joint venture principals, and distribution of profits) no later than sixty (60) days after the end of each operating quarter of the calendar year.
- 812.2 A joint venture shall submit to the Department the information contained in § 812.1 and a project-end income statement no later than forty-five (45) days after completion of the contract with a statement of final profit distribution.
- 812.3 Information provided under §§ 812.1 and 812.2 shall be considered commercial or financial information which, if disclosed, could result in substantial harm to the competitive position of the provider of the information and, accordingly, shall be exempt from disclosure under D.C. Official Code § 2-534(a)(1).

813 BID AND PROPOSAL PREFERENCES FOR JOINT VENTURE

- 813.1 Bid and proposal preferences shall be assigned by the Department upon certification of a joint venture as follows:
- (a) For joint ventures in which all venturers are CBEs, the joint venture shall be assigned: the points allotted to the majority CBE; or if there is no majority CBE, then the managing CBE; plus up to four (4) points for any CBE whose percentage of ownership in the joint venture is greater than thirty-five percent (35%) and less than or equal to fifty percent (50%); plus two (2) points for any CBE whose percentage of ownership in the joint venture is greater than twenty percent (20%) and less than or equal to thirty-five percent (35%). The total number of points allotted to the joint venture shall not exceed twelve (12).
 - (b) For joint ventures in which there are non-CBE participant(s), if the percentage of ownership of the CBE(s) in the venture is:

- (1) More than fifty percent (50%) of the joint venture and the CBE(s) has(have) more than 50% control and collectively receive more than fifty percent (50%) of the profits of the joint venture, the joint venture shall receive the points allotted to the majority CBE;
 - (2) Greater than or equal to thirty-five percent (35%) and less than or equal to fifty percent (50%), the joint venture shall receive up to four (4) points;
 - (3) Greater than or equal to twenty percent (20%) and less than or equal to thirty-five percent (35%), the joint venture shall receive two (2) points; or
 - (4) Less than twenty percent (20%), the joint venture shall receive zero (0) points.
- (c) The percentage of ownership of each venturer shall be determined based on, but not limited to, the defined financial contribution and benefit, the work performed, the allocation of profits and fees, management control, and the labor contribution.

814 CONTINUING ELIGIBILITY AND REPORTING REQUIREMENTS

- 814.1 During the term of a certificate, a CBE shall report to the Department any change of address, change of ownership, or other change that may affect the continued eligibility of the CBE within thirty (30) days of the date of the change.
- 814.2 Upon learning of any changes, the Department may request documentation regarding compliance with the Act and these regulations and conduct onsite inspections.

815 COMPLIANCE REVIEW

- 815.1 The Commission or the Department may conduct periodic compliance reviews of CBEs to assure their continued compliance with the eligibility requirements of the Act and these regulations.
- 815.2 In conducting a compliance review, the Commission or the Department may perform site visits, review documents, and interview witnesses to determine the continued eligibility of a CBE.
- 815.3 Where a CBE is found to be non-compliant, a notice shall be issued to the CBE within 30 days which shall specify:
- (a) The nature of the non-compliance;
 - (b) The corrective action that must be taken; and

(c) The date by which the deficiencies must be corrected.

815.4 If the CBE fails to take corrective action within 30 days of the notice, the Department may institute revocation proceedings.

816 COMPLAINT PROCEDURE

816.1 Any person may file a complaint with the Commission, pursuant to 2363(b)(1) of the Act, by submitting a completed notarized complaint form, provided by the Department, to the Department identifying the nature of the complaint and swearing to the truth of the allegations in the complaint.

816.2 The Department will forward the complaint to the Commission for review. The Commission shall take up the complaint at its next scheduled meeting and determine the action to be taken as outlined in the Act.

816.3 If the Commission determines that a complaint is not frivolous or otherwise without merit, it shall instruct the Department to investigate the facts surrounding the allegations, including reviewing the file and all paperwork contained therein, interviewing witnesses, or any other reasonable action necessary given the nature of the allegations in the complaint.

816.4 Within 45 days of the Commission's determination and instruction to the Department to investigate, the Department shall provide the results of the investigation to the Commission.

817 GROUNDS FOR REVOCATION

817.1 Upon a finding that the CBE is engaged in conduct set forth in section 2363 of the Act, the Commission may revoke the certificate of registration for the CBE under procedures set forth in section 2363 of the Act.

817.2 In considering whether the registration of certification of a CBE should be revoked, in addition to any other consideration, the Commission shall consider whether any member of the CBE has been convicted of a crime that bears directly on the fitness of the CBE to participate in programs established pursuant to the Act and these regulations.

817.3 Upon revocation, the Department shall not accept, review, or evaluate for a period of twelve (12) months from the date the applicant receives notice of the decision to revoke:

- (a) Amendments to or new information on the revoked certification; or
- (b) A new certification application from the applicant, its agent(s), representative(s), or other members of the public on the applicant's behalf.

818 OPPORTUNITY FOR A HEARING: REVOCATION AND DENIAL

818.1 A CBE may request a hearing in response to any action taken by the Commission to revoke its certification.

818.2 The procedures described in §§ 818.2 through 818.6 of these regulations shall apply to a CBE when the certificate of registration is revoked. The Commission shall give the CBE written notice of an opportunity for a hearing prior to the revocation of its registration. The Commission shall serve on the CBE such notice, which shall set forth the following:

- (a) The action;
- (b) The basis for the action in the Act or this chapter;
- (c) A brief summary of the deficiencies or factual allegations in support of the action; and
- (d) A statement which informs the CBE that the Commission's decision will be final unless the CBE:
 - (1) Submits a written request for a hearing in the manner provided in the notice within ten (10) days after service of the notice; and
 - (2) Appears at the hearing.

818.3 A CBE shall request a hearing in writing and serve the request on the Department within ten (10) days of the service of the notice for revocation of registration. A request for a hearing timely received by the Department shall stay the revocation of the certificate of registration until resolution of the matter.

818.4 The Commission shall, within twenty (20) days following receipt of a request for a hearing by a CBE, notify the CBE in writing of the date, time, and place of the hearing as well as the rights of the CBE at the hearing. The notice shall be provided at least thirty (30) days prior to the hearing, unless the Commission, the Department, and the CBE agree to an earlier hearing date.

818.5 A CBE entitled to a hearing has the following rights:

- (a) To be represented by an attorney;
- (b) To present relevant evidence, including the testimony of witnesses and the submission of documents;
- (c) To rebut all opposing evidence, including the cross-examination of all opposing witnesses on any matter relevant to the issues; and

- (d) To have subpoenas issued to compel the attendance of witnesses and the production of relevant documents.

818.6 If a CBE does not timely respond to a notice or appear at the scheduled hearing, the Commission's revocation action shall be final.

818.7 The procedures described in §§ 818.7 through 818.11 of these regulations shall apply to an applicant for certification whose certification application has been denied. The Department shall serve written notice of the denial on the applicant, which shall include the following:

- (a) The basis for the denial in the Act or these regulations;
- (b) A brief summary of the deficiencies or factual allegations in support of the action; and
- (c) A statement which informs the applicant that he or she may appeal the Department's decision by submitting a written request to the Commission for a hearing within twenty (20) days after service of the notice, along with a written response addressing the basis for the denial.

818.8 The Commission shall deny the request for the appeal if the applicant fails to timely respond to the Department's notice or fails to respond with sufficient specificity for the Commission to determine that there is a genuine issue of material fact that is in dispute or an interpretation of law that needs to be addressed by the Commission.

818.9 The Commission shall notify the applicant of his or her rights, as described in § 818.5, and of the date, time, and place of the hearing.

818.10 An applicant is entitled to the rights in § 818.5 for a hearing on the denial of certification by the Department.

818.11 Any decision issued by the Commission will be final for the purposes of judicial review in accordance with section 828.

819 ADDITIONAL REQUIREMENTS FOR CERTIFICATION UPON REVOCATION

819.1 An applicant whose certification was revoked:

- (a) May submit an application and all required supporting documentation as required by this chapter;
- (b) Shall demonstrate compliance with the requirements of the Act and this chapter; and

(c) Shall satisfy the requirements under § 819.2.

819.2 An applicant for certification after revocation may be required to demonstrate fitness to be issued a certificate by submitting evidence satisfactory to the Department that the applicant has the requisite business integrity, qualifications, financial responsibility and resources, competency, and knowledge of District and federal laws necessary to resume doing business with the District government as a CBE, and that the applicant's contracting with the District government will not be detrimental to the public interest or the integrity of these programs.

819.3 In making determinations for certification after revocation, the Department shall consider, among other factors, the following:

- (a) The nature and circumstances of the violation for which the applicant's certification was revoked;
- (b) The conduct of the applicant and its participants since the revocation, including the steps taken to remedy the prior violation and prevent future violations; and
- (c) The present character of the applicant or its participants.

820 COMPUTATION OF TIME

820.1 In computing any period of time specified in this chapter, the day of the act, event, or default shall not be counted, and the last day of the period shall be counted unless it is not a business day, in which event the time period shall continue until the next business day. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. "Legal holidays" shall include those holidays as defined in section 899 of Title 27.

820.2 Where the Department or a respondent to an action pursuant to this chapter has the right or is required to perform some act within a specified period of time, and that act is completed by mail, three (3) days shall be added to the prescribed period.

821 SERVICE

821.1 Documentation that is required by this chapter to be served on an applicant or a respondent shall be served at the last known address of the applicant or respondent on file with the Department, or any representative thereof.

821.2 A document that is required by this chapter to be served on the Assistant Attorney General of record in the matter shall be served at the address on file with the Department.

821.3 Service under this chapter, unless indicated otherwise, shall be effected by:

- (a) Personal delivery;
- (b) Use of a process server;
- (c) Certified or registered mail, return receipt requested; or
- (d) Electronic mail, provided, that all parties consent in writing to service in this manner.

822 INFORMAL DISCOVERY

822.1 The applicant or respondent shall consult with the Department, through the Office of the Attorney General, to seek informal discovery prior to requesting a subpoena. The Commission shall not accept a motion or a request for a subpoena unless the applicant or respondent certifies in writing that he has made a bona fide attempt to secure the requested documents from the Office of the Attorney General on a voluntary basis and that the Office of the Attorney General has refused to provide the documentation.

823 SUBPOENAS

823.1 The Commission may upon its own motion, or upon the request of the applicant or respondent, the Department, or the Assistant Attorney General of record, issue a subpoena requiring:

- (a) The attendance and testimony of witnesses;
- (b) The production of evidence, including, but not limited to books, records, correspondence, or documents in the possession or under the control of the person subpoenaed; and
- (c) Access to evidence for the purpose of examination and copying.

823.2 The issuance and manner of service of a subpoena shall be as prescribed by the Civil Rules of the District of Columbia Superior Court.

823.3 The form of a subpoena may be prescribed by the Commission and subscribed by the Chairperson. A subpoena shall state the name and address of its issuer; identify the evidence or person subpoenaed; the person to whom and the place, date, and time at which it is returnable; the nature of the evidence which is to be examined or copied; and the date and time when access is requested. A subpoena shall be returnable to the Chairperson of the Commission.

823.4 Upon failure of any person to comply with a subpoena issued under this section, the Commission may seek enforcement of the subpoena through the District of Columbia Superior Court.

824 CONDUCT OF HEARINGS

824.1 Commission hearings shall be open to the public.

824.2 The Commission may exclude or order the removal of any participant in a hearing who becomes disruptive to the hearing process.

824.3 The Commission may bar a participant who has been excluded or removed from a hearing from participation in future hearings.

824.4 The Commission may continue a hearing if an applicant or a respondent, or a representative thereof, has been excluded or removed from the hearing in order to provide the respondent with an opportunity to obtain another representative, unless the applicant or respondent expressly waives a continuance.

824.5 Upon the request of either party, the Commission shall sequester witnesses who may testify at the hearing.

825 EVIDENCE AT HEARINGS

825.1 In a proceeding before the Commission under this chapter, each party shall have the right to:

- (a) Present in person, or by counsel, that party's case or defense, including oral and documentary evidence;
- (b) Submit rebuttal evidence; and
- (c) Cross-examine opposing witnesses.

825.2 For documentary evidence to be admitted at a proceeding before the Commission, it shall be submitted to the Commission at least five (5) days prior to the hearing, unless otherwise allowed by the Commission.

825.3 Testimonial evidence received at Commission hearings shall be under oath or affirmation.

825.4 The Commission shall exclude irrelevant, immaterial, or unduly repetitious evidence.

825.5 The Commission may take official notice of the following:

- (a) The laws of the District of Columbia, the United States, and any state or jurisdiction of the United States; or
- (b) Any fact that is not subject to reasonable dispute because it is generally known within the District of Columbia or is capable of accurate and ready determination by resorting to reliable sources.

825.6 In an appeal of the Department's decision to deny an applicant for certification, the burden of proof is on the applicant to establish that he or she is eligible for certification by a preponderance of the evidence.

825.7 In an action to revoke the respondent's certificate of registration, the burden of proof is on the Department to establish by a preponderance of the evidence the basis for the revocation.

826 DECISIONS

826.1 The Commission shall issue a decision in writing no later than ninety (90) days after a hearing record is closed.

826.2 A decision of the Commission that is adverse to an applicant or respondent shall contain the following:

- (a) Findings of fact;
- (b) Conclusions of law;
- (c) An order; and
- (d) A statement informing the applicant or respondent of the right to have the decision reviewed by the District of Columbia Court of Appeals and the time within which a petition for judicial review is required to be submitted by the rules of that Court.

826.3 The Commission shall serve a copy of the decision on the applicant or respondent and the Assistant Attorney General of record in the matter within ten (10) days of the date the Commission issues the decision.

826.4 If a Commission decision is wholly or partially based on official notice of a material fact that is not on the record, the applicant or respondent and the Assistant Attorney General of record in the matter may oppose the taking of official notice in a motion for reconsideration submitted to the Commission.

826.5 The Commission's decision may modify the period of time which bars a submission of an application or respondent for certification.

826.6 A respondent who has been denied the renewal of a certificate or whose certificate has been revoked shall not be eligible to receive any preferences for being a CBE or be awarded any SBE set-aside contracts.

827 REOPENING AND RECONSIDERATION

827.1 An applicant or respondent may file a motion for reconsideration with the Commission, based on new evidence, misapplication of law, or misstatement of a material fact within ten (10) days after the date on which the applicant or respondent was served with the Commission's decision.

827.2 The motion for reconsideration shall be in writing and shall state the following:

- (a) The matters of record alleged to have been erroneously decided;
- (b) The grounds relied upon; and
- (c) The relief sought.

827.3 If a motion under this section is based wholly or partially on new evidence, the new evidence or arguments shall be set forth in an affidavit which verifies that the petitioner could not with due diligence have become aware of the new evidence prior to the Commission hearing.

827.4 The government may file a response to a motion to reconsider and the Commission may decide a motion to reconsider without a hearing.

827.5 The Commission may reopen a hearing where an applicant or respondent has failed to appear at a scheduled hearing, provided that the applicant or respondent submits a motion in writing setting forth good cause for the applicant's or respondent's failure to appear. The failure to report a change of address pursuant to this chapter does not constitute good cause.

827.6 A motion to reopen a hearing shall be filed within ten (10) days of the date of the hearing.

827.7 Neither the submission nor the granting of a motion under this section shall operate as a stay of a decision unless so ordered by the Commission.

827.8 The failure of the Commission to issue an order in response to a motion under this section within thirty (30) days of the submission of the motion shall constitute a denial of the motion.

828 JUDICIAL REVIEW

828.1 A respondent aggrieved by a final decision of the Commission after a hearing on the matter may seek review of the decision by the District of Columbia Court of Appeals pursuant to section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510).

829 LIST OF CERTIFIED BUSINESS ENTERPRISES

829.1 The Department shall establish and maintain a centralized list of CBEs.

829.2 The Department's centralized list of CBEs shall set forth the name of each CBE, contact information for each CBE, the CBE's certification categories, the procurement categories along with the names of the CBEs certified in each procurement category, and the expiration date of the CBE's registration.

830 AGENCY EXPENDABLE BUDGETS; SMALL BUSINESS ENTERPRISE EXPENDITURE

830.1 The expendable budget of each agency, including an agency that contracts or procures in whole or in part through the Office of Contracting and Procurement, as defined in section 2302 of the Act, shall include the total budget of the agency, reduced by funding sources, object classes, objects, and other items identified by the agency and approved by the Director of the Department of Small and Local Business Development.

830.2 Sixty (60) days prior to the beginning of each fiscal year, the Department shall provide each agency with a list of the comptroller object codes that shall be excluded from the agency's appropriated budget.

830.3 No later than thirty (30) days prior to the beginning of each fiscal year, each agency shall provide the dollar amount in each comptroller object code along with the amount of the total appropriated budget.

830.4 No later than thirty (30) days prior to the beginning of each fiscal year, each agency may request special exceptions under other comptroller object codes not included in the list provided by the Department for exclusion from the amount of the total appropriated budget for the agency. If so requested, the agency must provide the comptroller source group, comptroller object code, a specific description of the expenditure, vendor name, and the dollar amount in each other comptroller object code.

830.5 If an agency receives unanticipated funding, experiences a reduction in funding, or experiences any other change in circumstances that affects its expendable budget or special exceptions, then the agency shall communicate that change to the Department in writing and the Department shall adjust accordingly the expendable budget or special exceptions of the agency.

830.6 The Department shall approve the special exceptions under subsection 830.4 if no Small Business Enterprises can provide the required goods or services, the expenditure cannot be made to Small Business Enterprises because the goods or services are proprietary, the line item is not for goods or services, there are federal or other restrictions on how the funds may be expended, or the goods or services must be provided by an organization not certified by the Department.

830.7 Only budget items approved by the Department as special exceptions shall be excluded from the agency's expendable budget.

830.8 The Department shall inform each agency of the agency's projected expendable budget and its projected goal under section 2341 of the Act and provide to Council information on each agency's total budget, exclusion from the agency's total budget by comptroller object code, each agency's expendable budget, and the projected goal for each agency under section 2341 of the Act.

831 AGENCY ALLOCATION LETTER FOR SMALL BUSINESS ENTERPRISES

831.1 The Department shall provide an agency allocation letter to each agency two (2) months prior to the beginning of each fiscal year that details the following:

- (a) The name of the agency;
- (b) The fiscal year for which the agency is submitting the allocation letter;
- (c) The budget of the agency approved by Council for the fiscal year;
- (d) The expendable budget of the agency for the fiscal year; and
- (e) The agency's SBE expected minimum expenditures for the fiscal year.

832 AGENCY PROCUREMENT PLAN

832.1 One month prior to the beginning of each fiscal year, each agency shall submit to the Department the agency's procurement plan as described in section 832.5 for the fiscal year, on a form designated by the Department.

832.2 Failure of an agency to submit, timely or otherwise, a procurement plan for the fiscal year shall:

- (a) Be reported to the City Administrator within 30 days after the start of the fiscal year; and

- (b) Require the agency to request written authorization from the Department to place any solicitation, including but not limited to, Requests for Proposals (“RFPs”), Invitations for Bids (“IFBs”), Requests for Qualifications (“RFQs”), and Calls for Expressions of Interest, on the open market until the plan is filed.

- 832.3 The report of the failure of an agency to submit a procurement plan for the fiscal year, an increase in the agency’s set-aside, or the failure of the Department to provide an agency allocation letter shall not eliminate the requirement for the agency to submit a procurement plan to the Department.

- 832.4 The Director may consider the quarterly reports submitted by the agency for the previous fiscal year in determining the increased set-aside for the agency.

- 832.5 An agency procurement plan shall specifically set forth the following information for the fiscal year covered by the plan:
 - (a) Contracts or procurements that the agency intends to award;
 - (b) Contracts or procurements that the agency has set-aside for SBEs;
 - (c) A description of the contract or procurement;
 - (d) Whether the contract or procurement is a new or existing contract or procurement;
 - (e) The anticipated start and end date for each procurement; and
 - (d) Particular dollar amounts relating to the procurements specified in each of the above paragraphs of this subsection.

- 832.6 If an agency cannot include with its procurement plan all of the information required by this section, it shall submit with its plan a statement and supporting documentation which establishes good cause for the failure, as well as a request for an extension of time for submission of the required information.

- 832.7 If an agency's procurement plan sets forth SBE expenditures pursuant to paragraphs 832.5(f) and (g) that are below the required program goals set forth in section 2341 of the Act, the agency shall submit with its plan a request for an adjustment of program goals and supporting documentation which establishes good cause for the requested adjustment.

- 832.8 The Department shall notify an agency in writing of its approval or rejection of an agency's procurement plan within two months of its receipt of the plan.

- 832.9 The Department shall include in any notification of rejection of an agency's procurement plan the following:
- (a) Deficiencies in the plan and a requirement that the deficiencies be remedied within a stated time period;
 - (b) Information that the failure of the agency to comply with the notice may result in Department enforcement action pursuant to section 2352 of the Act;
 - (c) Requirements that the agency submit supporting documentation relating to the required elements of the plan as appropriate; and
 - (d) Recommendations for correcting the deficiencies in the plan, including attendance at meetings with the Department.

833 AGENCY PROGRAM REPORTS

- 833.1 Quarterly reporting periods are as follows: October 1 through December 31, January 1 through March 31, April 1 through June 30, and July 1 through September 30.
- 833.2 Each agency shall submit quarterly reports on Department forms within thirty (30) days after the end of each quarter.
- 833.3 If an agency cannot include with a quarterly report all the information required by the Act, it shall submit with the report a statement and supporting documentation which establishes good cause for the failure as well as the manner and time in which the agency will submit the required information.
- 833.4 If an agency's quarterly report indicates that the agency is not currently meeting its SBE contracting and procuring requirements under section 2341 of the Act and its procurement plan, the agency shall submit with its report:
- (a) The explanation for the contracting shortfall; and
 - (b) The specific steps it will take to remedy the shortfall, along with supporting documentation.
- 833.5 The Department shall notify an agency in writing of any deficiencies in the agency's quarterly report within thirty (30) days of its receipt of the report.
- 833.6 If an agency's quarterly report contains deficiencies, the Department's notification under § 833.5:
- (a) Shall identify the deficiencies in the report and require that the deficiencies be remedied within a stated time period;

- (b) May require that the agency submit supporting documentation relating to the required elements of the report; and
- (c) May include recommendations concerning how best to remedy the deficiencies in the report, including attendance at meetings with the Department.

834 AGENCY SET-ASIDE AND PREFERENCE PROGRAM IMPLEMENTATION

- 834.1 When an entire solicitation has been placed in the SBE set-aside program, the solicitation shall:
- (a) State that it is a set-aside for certified small business enterprise offerors under the provisions of the Act; and
 - (b) Require that responses include a copy of the SBE's letter of certification.
- 834.2 Once a solicitation has been placed in the SBE set-aside market as required by sections 2344 and 2345 of the Act, the agency shall not remove it from the set-aside market unless:
- (a) At least one attempt to solicit bids or proposals for the procurement in the SBE set-aside market has failed to produce a responsive bid or proposal;
 - (b) There is no SBE that qualifies for the procurement;
 - (c) The prices of the bids or proposals are 12% or more above the likely price on the open market; or
 - (d) The removal is authorized by law.
- 834.3 Each agency shall provide to the Department, if requested, the following types of procurement records:
- (a) Small purchase sources;
 - (b) Term contracts;
 - (c) Blanket purchases orders;
 - (d) Repetitive or recurring procurement; and
 - (e) GSA Schedule procurement.
- 834.4 If an agency with independent contracting authority or the Office of Contracting and Procurement ("OCP") intends to place a solicitation on the open market for a

contract or procurement of \$100,000 or less, the agency or OCP shall provide a written notice to the Department as soon as practicable that the agency intends to exclude the contract or procurement from its set-aside program. The written notice shall include, at a minimum, a description of:

- (a) The steps taken to identify SBEs that may be able to provide the goods or services; and
- (b) The information contained in the written determination(s) required under section 2344 or 2345 of the Act.

835 AGENCY CERTIFIED BUSINESS ENTERPRISES SUBCONTRACTING

835.1 When determining whether a prime contractor has willfully breached a subcontracting plan under section 2348 of the Act, the Department shall consider:

- (a) Notification of the Department by the prime contractor prior to the breach;
- (b) The prime contractor’s efforts at replacing the subcontractor with another subcontractor certified by the Department in the same categories;
- (c) Changes in the business operation or certification of the subcontractor;
- (d) Changes in economic conditions from the time the plan was developed; and
- (e) The extent of the breach.

835.2 Notwithstanding § 835.2, failure to achieve at least ninety percent (90%) of the identified subcontracting expenditure shall create a rebuttable presumption of a willful breach.

835.3 Contracting officers seeking a waiver or modification of the subcontracting requirements of sections 2346 and 2350 of the Act shall submit to the Director a written request detailing the reasons that support waiver or modification, including the efforts of the contracting officer to secure CBE involvement, particularly SBEs. Such a request shall be submitted prior to the acceptance of bids or proposals.

836 RESERVED

837 RESERVED

838 EQUITY AND DEVELOPMENT PARTICIPATION

- 838.1 Local, Small, and Disadvantaged Business Enterprises (“LSDBEs”) shall receive a minimum of 20% Equity Participation and a minimum of 20% Development Participation in any Covered Project.
- 838.2 For the LSDBE to be a Development Participant, an entity, including a special purpose entity, must be certified by the Department under the Act as an LSDBE.
- 838.3 For the LSDBE to be an Equity Participant, an entity, including a special purpose entity, must be certified by the Department under the Act as an LSDBE.
- 838.4 As appropriate, the Director may provide guidance to District agencies, business enterprises, and interested members of the public regarding the equity and development participation requirements.
- 838.5 An Agency considering a solicitation for a Covered Project may contact the Department as needed to coordinate outreach efforts to Equity Participants and Development Participants and provide the Department with the specific details regarding the Covered Project.
- 838.6 With respect to solicitations, including but not limited to Requests for Proposals (“RFPs”), Invitations for Bids (“IFBs”), Requests for Qualifications (“RFQs”), and Calls for Expressions of Interest, issued by District agencies in connection with Covered Projects. The solicitation shall include the following:
- (a) The Equity Participation and Development Participation requirements and an agreement that the party responding to the solicitation agrees to satisfy the Equity Participation and Development Participation requirements;
 - (b) A statement that the District is interested in Component Development by Development Participant(s) where feasible and consistent with the District’s goals with respect to the project for which the solicitation is issued; and
 - (c) A statement that the Equity Participation and Development Participation requirements are only minimum levels, and the District is interested in Covered Projects that exceed these minimum requirements.
- 838.7 The Director, or the Director’s designee, may review responses to solicitations for all Covered Projects to ensure that the responses are consistent with the equity and development participation requirements.
- 838.8 At least three (3) business days prior to the issuance of any request for proposals, request for qualifications, calls for expressions of interest or other similar documents relating to any Covered Project, the District agency involved shall notify the Director of its intent to issue such a document and prior to issuance

provide the Director with an electronic copy of the document. The Department may advertise such EDP Program opportunities on its website after the solicitation is issued.

839 EQUITY AND DEVELOPMENT PARTICIPATION REQUIREMENTS

- 839.1 The Equity Participant(s) shall receive a return on investment in a Covered Project that is *pari passu* with all other sources of Sponsor Equity.
- 839.2 The Equity Participation shall be maintained for the duration of the Covered Project. Culmination of the Covered Project shall be measure by the issuance of a certificate of occupancy, or multiple certificates of occupancies, as determined by the Department.
- 839.3 The Equity Participant(s) shall not bear financial or execution requirements that are disproportionate with its equity position in the Covered Project.
- 839.4 The Equity Participant(s) and/or Development Participant(s) shall have management control and approval rights in line with their equity position(s).
- 839.5 The Equity Participant(s) and/or Development Participant(s) shall be consistently included in representing the entity to the public (e.g., through joint naming, advertising, branding, and etc.).

840 EVALUATION OF EQUITY AND DEVELOPMENT PARTICIPATION

- 840.1 When evaluating the percentage of Equity Participation by an Equity Participant in a Covered Project, the Department shall take the following into account:
- (a) The financing plan for the project;
 - (b) The amount and nature of leverage in the form of debt or other sources incurred by the Sponsor Entity;
 - (c) The amount of institutional equity being provided for the benefit of the Sponsor Entity;
 - (d) The amount of mezzanine financing being provided for the benefit of the Sponsor Entity, including the roles and rights of the mezzanine financier;
 - (e) The total amount of equity required from the Sponsor Entity;
 - (f) The percentage of the Sponsor Entity's equity being provided by an Equity Participant and the terms thereof;
 - (g) The percentage of institutional equity being provided by an Equity Participant;

- (h) Provisions in funding documents related to the sale, dilution, or conversion of equity interests prior to project completion that may result in a change in the amount of the Equity Participant's Equity Participation and ownership;
- (i) Whether Equity Participants are treated similarly, with respect to the determination of returns, as compared to other entities with similar risk profiles on a Covered Project; and
- (j) The amount of sweat equity and the categories in which the Equity Participant(s) is(are) certified.

840.2 When evaluating the percentage of Development Participation by a Development Participant in a Covered Project, the Department shall take the following into account:

- (a) The overall project scope and total development cost;
- (b) Whether development fees are shared and if so, what percentage is shared with the Development Participant and how that percentage is calculated; and
- (c) Whether development services have been divided among members of the development team and, if so, what services are being provided by the Development Participant and what percentage of the development work is represented by that division.

841 RESERVED

842 CHANGES IN EQUITY AND DEVELOPMENT PARTICIPATION

842.1 Once the selection of an Equity Participant or a Development Participant to participate in a Covered Project has been approved by the Department, there can be no change in the Equity Participant or Development Participant and no dilution of a participant's Equity Participation or Development Participation without the express written consent of the Director.

842.2 Once the Department has approved the determination of returns for Equity Participants in a Covered Project, the determination of returns for Equity Participants shall not be materially altered or adjusted from that previously presented to the Department without the Director's express written consent.

843 CLOSING REQUIREMENTS REGARDING EQUITY AND DEVELOPMENT PARTICIPATION

- 843.1 The closing documents executed in connection with any Covered Project shall contain provisions indicating there can be no change of the Equity Participant or Development Participant, no dilution of a participant's Equity Participation or Development Participation, and no material alteration of the determination of returns for the Equity Participant without the Director's express written consent.
- 843.2 The closing documents shall expressly covenant and agree that the Department shall have third-party beneficiary rights to enforce the provisions, for and in its own right.
- 843.3 The agreements and covenants in the closing documents shall run in favor of the Department for the entire period during which the agreements and covenants shall be in force and effect, without regard to whether the District was or is an owner of any land or interest therein or in favor of which the agreements and covenants relate.
- 843.4 The Department shall have the right, in the event of a breach of the agreement or covenant in the closing documents, to exercise all the rights and remedies, and to maintain any actions or suits, at law or in equity, or other proceedings to enforce the curing of the breach of agreement or covenant to which it may be entitled.

844 EQUITY AND DEVELOPMENT PARTICIPATION RESTRICTIVE COVENANT

- 844.1 If there is a transfer of title to any District-owned land that will become part of a Covered Project, the Department may require that a restrictive covenant be filed on that land requiring compliance with the Equity Participation and Development Participation requirements of the Act.
- 844.2 A restrictive covenant requiring compliance with the Equity Participation and Development Participation shall run with the land and otherwise remain in effect until released by the Department following the completion of construction of and the issuance of certificates of occupancy for the Covered Project. A release of the restrictive covenant shall be executed by the Department only after either the Developer and the Equity and Development Participants submit a sworn certification together with documentation demonstrating to the satisfaction of the Department that, or the Department otherwise determines that:
- (a) The Development Participants received at least 20% of the development fees for the Covered Project based on the final development expenditures for such Covered Project; and
 - (b) The Equity Participant has maintained at least a 20% ownership interest in the Sponsor Entity in the Covered Project throughout its development.

845 RESERVED

846 DEPARTMENT ASSISTANCE FOR COVERED PROJECTS

- 846.1 If a District agency receives no response to develop a Covered Project from a Qualified Responder, it may contact the Director for further assistance. The Director may:
- (a) Assist the District agency to restructure the Covered Project to increase the likelihood of finding Qualified Responders (for example, determining whether the Covered Project could be separated into components such that one or more portions could be developed by a Development Participant as a Component Developer);
 - (b) Assist the District agency and its respondents who were not Qualified Respondents in identifying qualified Equity Participants and Development Participants; or
 - (c) Evaluate a request by the District agency for a modification of some or all of the EDP Program requirements.

847 EQUITY OR DEVELOPMENT PARTICIPANT LOSS OF CERTIFICATION

- 847.1 If an Equity Participant or Development Participant loses its LSDBE certification during the course of a Covered Project resulting in less than the minimum Equity Participation or Development Participation requirement under Section 2349a of the Act, the Department shall evaluate on a case-by-case basis whether:
- (a) Another Equity Participant or Development Participant can participate in the Covered Project without causing any detriment to the overall project or the Master Developer, so that the 20% Equity Participation and 20% Development Participation requirements are met;
 - (b) To modify or waive some or all of the EDP Program requirements for the Covered Project; or
 - (c) After assessing the circumstances, some other appropriate action is warranted.

848 EQUITY AND DEVELOPMENT REPORTS

- 848.1 Developers must submit quarterly reports to the Department regarding the fulfillment of the EDP Program requirements on such forms as determined by the Department. The reports shall include information regarding:
- (a) Changes in ownership interest of the owners/partners;

- (b) Additions or deletions of an owner/partner;
- (c) Changes in the legal status of an existing owner/partner;
- (d) Changes in the percentage of revenue distribution to an owner/partner;
- (e) A description of team member activities; and
- (f) The amount of development fees paid to each team member, participant, partner, or owner.

848.2 Information provided under § 848.1 shall be considered commercial or financial information which could result in substantial harm if disclosed to the competitive position of the provider of the information and shall be exempt from disclosure under D.C. Official Code § 2-534(a)(1).

849-850 RESERVED

851 MICROLOAN FUND

851.1 The Department shall implement and administer the Microloan Fund (“Microloan Fund”) established pursuant to section 2375(b) of the Act. The Microloan Fund is a financing tool designed to sustain and/or increase the level of business activity, job creation and retention, and provide access to capital for the sustainability and expansion of designated categories of CBEs.

851.2 Funding issued from the Microloan Fund may be structured as a grant, senior or subordinated secured loan, or as a loan guarantee. The Department may, in its discretion, outsource the loan underwriting process to a qualified non-profit organization or financial institution.

851.3 To be eligible for funding from the Microloan Fund a recipient must:

- (a) Be certified pursuant to the Act as an SBE and a DBE;
- (b) Be independently owned, operated, and controlled;
- (c) Be in good standing with the Department of Consumer and Regulatory Affairs; and
- (d) Have a Certificate of Clean Hands from the Office of Tax and Revenue.

851.4 The following are ineligible to receive funding from the Microloan Fund:

- (a) Businesses that have operated for less than two (2) years;

- (b) Street vendors; and
- (c) Regional or national franchise businesses.

851.5 The Department shall give preference for financial assistance to (i) eligible recipients that are certified pursuant to the Act as a Resident Owned Business, and (ii) eligible recipients that serve or whose principal office is located in a DC Main Streets corridor, a Neighborhood Investment Program Target Area, or another area identified by the Mayor for economic development or commercial revitalization. The Department shall maintain and make available a list of such eligible target areas. The preference may be in the form of higher funding amounts, different rates or terms for funding, or such other form as the Department may determine in its discretion best serves the goals and purposes of the Microloan Fund.

851.6 An eligible recipient may use proceeds from the Microloan Fund for the following purposes:

- (a) Working capital;
- (b) Inventory;
- (c) Acquisition or repair of furniture, fixtures, machinery, or equipment;
- (d) Ecologically-efficient improvements;
- (e) Contract cash flow assistance;
- (f) Purchase or implementation of financial management systems (e.g., point of sale, upgrades to meet prime contractor standards);
- (g) Leasehold improvements; or
- (h) Property renovation.

851.7 The Department shall develop underwriting criteria and rates and terms for funding from the Microloan Fund. Such criteria shall include, at minimum, the maximum funding amount(s), interest rate(s) and any applicable deferral periods, term limits, security or collateral requirements and fees and costs. The Department shall include the underwriting criteria with the application and/or publish the underwriting criteria on its website. The Department may modify the underwriting criteria as necessary to account for changes in budgeted amounts of the Microloan Fund or changing needs of the local business community. The Department may work with a qualified non-profit organization and/or financial institution to develop and/or modify as necessary the underwriting criteria.

851.8 An eligible recipient seeking funding from the Microloan Fund shall submit a written application to the Department on such form or forms as may be prescribed

by the Department. The application shall include, at a minimum, submission of the following documents and information:

- (a) Current CBE Certification and evidence that the applicant is certified as an SBE and a DBE;
- (b) Clean Hands Certification from the Office of Tax and Revenue;
- (c) Certificate of Good Standing from the Department of Consumer and Regulatory Affairs;
- (d) Financial status of the applicant including, but not limited to, current and past tax returns, balance sheet(s) and profit and loss statements;
- (e) Amount of funding from the Microloan Fund requested by the applicant;
- (f) Reason for requesting funding from the Microloan Fund; and
- (g) Any other information or documents the Department may require in order to assess the applicant's eligibility and/or credit worthiness.

851.9 The Department, and/or any qualified non-profit organization or financial institution to which the Department has outsourced the underwriting process, shall review and evaluate an application for funding from the Microloan Fund for completeness, underwriting analysis and funding determination. Incomplete applications shall be returned to the applicant.

851.10 Within sixty (60) days of receipt of a complete application, the Department or its non-profit or financial institution partner shall notify the applicant whether the funding request has been approved, denied, or if additional information is needed to make a determination. If an application is denied, the Department or its non-profit/financial institution partner shall provide the applicant an explanation of the underwriting determination.

851.11 The Department may, in its discretion, require the potential borrower or borrower to participate in targeted training, technical assistance, and/or periodic monitoring to help strengthen business operations as a condition of funding from the Microloan Fund or as a pre-condition for future funding.

852 NON-IMPAIRMENT OF CONTRACTS AND SOLICITATIONS

852.1 A failure to comply with a regulation set forth in this chapter shall not affect the validity of a contract entered into by the District, including memorandums of understanding and term sheets, or a solicitation issued by the District.

899 DEFINITIONS

899.1 The definitions set forth in the Act are incorporated by reference into this chapter. As used in this chapter, the following words and phrases shall have the meanings ascribed:

Application date – the date on which an application is received by the Department.

Agency – any agency, department, office, board, commission, or instrumentality of the District of Columbia government, including but not limited to, an entity established as a government corporation, corporate body, or independent authority created to effectuate certain public purposes, with or without a legal existence separate from that of the District government, and any agency or subsidiary thereof.

Business Enterprise – a business entity organized for profit.

Certificate – a letter issued by the Department indicating that a firm is a business enterprise or joint venture certified pursuant to Part D of the Act.

Certified Business Enterprise (“CBE”) – any entity certified as a local business enterprise, small business enterprise, disadvantaged business enterprise, resident-owned business enterprise, longtime resident business enterprise and/or local business enterprise with principal offices located in an enterprise zone, as such terms are defined in the Act and codified at D.C. Official Code §§ 2-218.31, 2-218.32, 2-218.33, 2-218.35, 2-218.36, and 2-218.37, respectively.

Commission – the District of Columbia Small and Local Business Opportunity Commission, established by section 2321 of the Act.

Component Developer – an entity that solely develops a distinct part or subdivision of a Covered Project (e.g., one building out of a five building project).

Contracting Effort – for subcontracting purposes, may include the typical work performed by a general contractor selected as prime contractor on a project, including but not limited to, management duties and contract administration.

Contractor – means any natural person or business organization, such as a corporation, partnership, joint venture, limited liability company, or similar enterprise that enters into a contract with the District, a public employee, or private developer to provide goods and/or services.

Construction – the building, alteration, repair, or improvement of real property. This term does not include the operation or routine maintenance of real property.

Covered Project – any development project subject to Section 2349a of the Act.

Day – a calendar day.

Department – the Department of Small and Local Business Development, established by section 2311 of the Act.

Development Participant – a CBE that participates in one or more phases of project development in a Covered Project including project design, construction management, real estate finance, legal issues, real estate development, sales and marketing.

Development Participation – participation by a person or entity in one or more phases of project development including project design, construction management, real estate finance, legal issues, real estate development, sales and marketing.

Development Project – a private development or redevelopment of real property improvements on land disposed of by or leased from the District and private development or redevelopment of real property improvements to which the District has contributed through a grant at least 15% of the development costs or \$500,000, whichever is less. Development Projects shall not include improvements on real property where the owner will occupy at least 25% of the real property and the development budget is \$500,000 or less.

Director – the Director of the Department of Small and Local Business Development.

Disadvantaged Business Enterprise – a business enterprise as described in section 2333 of the Act (“DBE”).

Eligible Recipient – a CBE that meets the requirements of subsections 851.3 and 851.4 of this chapter.

Enterprise Zone – the following locations represent the economic development zones for the District:

- (1) The area of the District designated as the District of Columbia Enterprise Zone under section 1400 of the Internal Revenue Code of 1986, approved August 5, 1997 (111 Stat. 863; 26 U.S.C. § 1400); or
- (2) An economic development zone designated by the Mayor and approved by the Council pursuant to sections 1 through 4 of the Economic Development Zone Incentives Amendment Act of 1988, effective October 20, 1988 (D.C. Law 7-177; D.C. Official Code § 6-1501 *et seq.*).

Entity – an organization, including but not limited to, a government agency, corporation, partnership, limited liability company, sole proprietor, or trust.

Equity Participant – a CBE that provides capital or other monetarily valued services in exchange for an ownership interest in a Covered Project.

Equity Participation – an ownership interest acquired by an Equity Participant in any phase of a Covered Project, including the purchase, acquisition, protection, financing, construction,

expansion, reconstruction, restoration, rehabilitation, repair, interpretation, furnishing, equipping and operation of a Covered Project.

Expendable Budget – the total budget of an agency, reduced by such funding sources, object classes, objects, and other items as shall be identified by the Department.

Fiscal year – October 1 of each year through September 30 of the following year.

Grant – as used in Chapter 8 of Title 27, grant shall mean a public subsidy for which the District does not anticipate repayment, such as a cash contribution, tax increment financing, payment in lieu of taxes, or similar programs or agreements. A Grant shall not include a public contribution for which the District anticipates repayment, such as a loan.

Joint Venture – a combination of property, capital, efforts, skills, or knowledge of two or more persons or businesses to carry out a single object.

Local Business Enterprise – a business enterprise as described in section 2332 of the Act (“LBE”).

Longtime Resident Business – a business which has been continuously eligible for certification as a local business enterprise, as defined in section 2331 of the Act, for 20 consecutive years, or a small business enterprise, as defined in section 2332 of the Act, for 15 consecutive years.

Qualified Responder – an individual or entity that seeks to develop a Covered Project and demonstrates the Development Participation and Equity Participation by one or more Equity Participants and Development Participants required by the Act.

Resident-Owned Business – a local business enterprise owned by an individual who is, or a majority number of individuals who are, subject to personal income tax in the District of Columbia.

Respondent – an applicant for or holder of a certificate against whom a denial or adverse action is proposed or taken.

Small Business Enterprise – a business enterprise as described in section 2332 of the Act (“SBE”).

Special Purpose Entity – a legal entity consisting of one or more members, at least one of which must be a CBE, formed to participate in the Equity and Development Program.

Sponsor Equity – the equity that is intended to be contributed by the non-institutional investors or by the private developer.

Sponsor Entity – an individual or an entity with the day-to-day responsibilities for a development project (e.g., a Managing Member, or a General Partner).

Supported by District funds – includes, but is not limited to, projects financed by any funds of or controlled by the District or any agency, such as funds from the General Fund, an Enterprise

Fund, a trust fund, a special purpose fund, a revenue bond, a refunding bond, a note, loan, or other obligation issued by the District or any agency, a grant, tax increment financing, payments in lieu of tax, or similar financing tools.

Persons wishing to comment on these rules should submit their comments in writing to Lee A. Smith III, Director, Department of Small and Local Business Development, 441 4th Street, NW, Room 970N, Washington, D.C. 20001, Attn: Duane Kokesch, General Counsel. All comments must be received by the Department of Small and Local Business Development not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of this rulemaking and related information may be obtained on the DSLBD website at dslbd.dc.gov, by writing to the above address, or by calling the Department of Small and Local Business Development at (202) 727-3900.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors (“Board”) of the District of Columbia Water and Sewer Authority (“Authority”), pursuant to the authority set forth in the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996, as amended (D.C. Law 11-111, §§ 203(3), (5), and (6) and 205(a)(3) and (7); D.C. Code §§ 34-2202.03(3), (5), and (6) and 34-2202.05(a)(3) and (7)), and Board Resolution # 09-87 adopted at its regular meeting held on July 2, 2009, hereby gives notice of its intent to adopt the following amendment to Title 21 of the District of Columbia Municipal Regulations (DCMR) Chapter 53, Water and Sanitation, District of Columbia Water and Sewer Authority Procurement Regulations, subsection 5332.4.

21 DCMR Chapter 53, DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY PROCUREMENT REGULATIONS, is amended as follows:**Paragraphs 5332.4(h) and (i) are amended to read:**

- (h) Intergovernmental agreements and cooperative agreements with other institutions where the primary purpose is not the purchase of goods, services or construction;
- (i) Travel services; and

Subsection 5332.4 is amended by adding new paragraph 5332.4(j) to read as follows:

- (j) The following services provided by the Metropolitan Washington Council of Governments:
 - (1) Services and equipment related to pollution control measures and water quality management required by the Blue Plains Intermunicipal Agreement;
 - (2) Studies, including modeling and water sampling for the purpose of validating assumptions on the effect of pollutants discharged into the Potomac River and its tributaries by wastewater treatment facilities; and
 - (3) Specialized security equipment for detection of chemical, biological and radiological contaminants in the waterways.

Comments on these proposed rules should be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the D.C. Register, to Linda R. Manley, Secretary to the Board of Directors, 5000 Overlook Ave., S.W., Washington, D.C. 20032, or email Lmanley@dcwasa.com. Copies of these proposed rules may be obtained from the Authority at the same address. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.