

**DEPARTMENT OF HEALTH****NOTICE OF PROPOSED RULEMAKING**

The Interim 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 adopt the following amendments to Chapter 45 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 proposed rulemaking is to provide regulations for the random auditing of continuing education credits for renewal applicants as opposed to requiring renewal applicants to submit proof of having completed the required continuing education credits with the renewal applications; clarify that approved continuing education credits must be current and relevant to the practice of nutrition and dietetics, and to add the language "registered" to the term "dietician."

Proposed Rulemaking was published on June 8 2007 at 54DCR 5606. No written comments were received during the thirty (30) day comment period from the public in connection with this notice. However, after publication the Board of Dietetics and Nutrition voted to adopt the Commission on Dietetic Registration (CDR) exam for applicants who are not licensed in another state and who have not obtained another board recognized certification.

Therefore the proposed rulemaking was amended in § 4505 to reflect this change and is being republished to provide thirty (30) days to receive comments on the revised rulemaking. These Proposed Rules supercede those published on June 8, 2007.

**Chapter 45 (Nutrition) of Title 17 (Business, Occupations & Professions)(May 1990) is amended as follows:**

**Section 4502.4(b) is amended to read as follows:**

4502.4 (b) The program was under the direction of a registered dietitian or nutritionist licensed or authorized to practice dietetics or nutrition in the United States;

**Section 4502.4(d) is amended to read as follows:**

4502.4(d) At least one (1) hour per week of experience was under the immediate supervision of a registered dietitian or nutritionist and the remaining experience was under the general supervision of a registered dietitian or nutritionist; and

**The section heading for 4505 is amended to read as follows:**

4505 CDR EXAM

**Section 4505.1 is amended to read as follows:**

4505.1 Except as provided in 4505.2 of this chapter, all applicants for licensure in the District of Columbia shall receive a passing score on the national registration examination for dietitians offered by the Commission on Dietetic Registration ("CDR Exam").

**Section 4505.2 is amended to read as follows:**

4505.2 The following shall not be required to complete the CDR exam:

- (a) An applicant for licensure by endorsement;
- (b) An applicant who is currently certified as a registered dietitian by the Commission on Dietetic Registration of the American Dietetic Association (CDRADA); or
- (c) An applicant who is currently certified by the Certified Board for Nutrition Specialists as a Certified Nutrition Specialist (CNS).

**Section 4505.3 is repealed.**

**Section 4505.4 is amended to read as follows:**

4505.4 An applicant who fails the CDR exam on three (3) consecutive attempts may not retake the examination for one (1) year. Thereafter, the applicant may not retake the examination for one (1) year after each failure.

**Section 4505.5 is amended to read as follows:**

4505.5 An applicant who fails the CDR exam three (3) times is not eligible for licensure in the District unless the applicant successfully completes a course or courses in each area of weakness as determined by the CDRADA's analysis of the previous examination before the applicant may reapply for examination.

**Section 4505.6 is amended to read as follows:**

4505.6 To be eligible to take the CDR exam, an applicant shall submit proof satisfactory to the Board that he or she has met the educational and preprofessional experience training requirements of the Act.

**Section 4506.4 is repealed.**

**Section 4506.7 is amended to read as follows:**

4506.7 To qualify for renewal of a license to practice nutrition in the District an applicant shall:

- (a) Have completed thirty (30) hours of approved continuing education credits ("CEUs") during the two (2) year period preceding the date the license expires in accordance with this section;
- (b) Attest to completion of the required continuing education credits on the renewal application form; and
- (c) Be subject to a random audit for compliance with the continuing education requirement.

**Section 4506.8 is amended to read as follows:**

4506.8 Except as provided in § 4506.9, an applicant under this section shall prove completion of required continuing education credits by submitting with the application the following information with respect to each program:

- (a) The name and address of the sponsor of the program;
- (b) The name of the program, its location, a description of the subject matter covered, and the names of the instructors;
- (c) The dates on which the applicant attended the program;
- (d) The hours of credit claimed; and
- (e) Verification by the sponsor of completion, by signature or stamp.

**Section 4506.9 is amended to read as follows:**

4506.9 Applicants for renewal of a license shall only be required to prove completion of the required continuing education credits by submitting proof pursuant to § 4506.8 if requested to do so as part of the random audit, or if otherwise requested to do so by the Board.

**Section 4506.10 is amended to read as follows:**

4506.10 The Board shall conduct a random audit of continuing education credits at the completion of each renewal period.

**Section 4506.11 is amended to read as follows:**

4506.11 An applicant who falsely certifies completion of continuing education credits shall be subject to disciplinary action.

**A new section 4506.12 is added to read as follows:**

4506.12 An applicant for renewal of a license who fails to renew the license by the date the license expires may renew the license for up to sixty (60) days after the date of expiration by completing the application, submitting the required supporting documents, and paying the required late fee. Upon renewal, the licensee shall be deemed to have possessed a valid license during the period between the expiration of the license and the renewal thereof.

**A new section 4506.13 is added to read as follows:**

4506.13 If an applicant for renewal of a license fails to renew the license and pay the late fee within the sixty (60) days after the expiration of the license, the expired license shall be deemed to have lapsed on the date of expiration and the applicant shall thereafter be required to apply for reinstatement of an expired license and meet all requirements and fees for reinstatement.

**A new section 4506.14 is added to read as follows:**

4506.14 If an applicant's license lapses, the applicant shall be subject to disciplinary action, including denial of a license, if the applicant practices as a nutritionist after the date the license lapses.

**A new section 4506.15 is added to read as follows:**

4506.15 The Board may, in its discretion, grant an extension of the sixty (60) day period to renew the license after expiration, if the applicant's failure to renew was for good cause. As used in this section "good cause" includes the following:

- (a) Serious and protracted illness of the applicant; and
- (b) The death or serious and protracted illness of a member of the applicant's immediate family.

**Section 4507.3(a) is amended to read as follows:**

4507.3(a) Be current and relevant to the practice of nutrition and dietetics in its subject matter;

**Section 4508.1 is amended to read as follows:**

4508.1 The Board may grant continuing education credit for whole hours only, with a minimum of fifty (50) minutes constituting one (1) credit hour, which shall equal one (1) continuing education unit (CEU).

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 the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4<sup>th</sup> 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 Interim 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, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02 (14)) (“Act”), and Mayor’s Order 98-140, dated August 20, 1998, gives notice of his intent to amend chapter 65 of Title 17 of the District of Columbia Municipal Regulations (DCMR).

The purpose of the proposed amendments is to amend and clarify the procedures for obtaining a pharmacist license in the District of Columbia and for registering and practicing as a pharmacy intern in the District of Columbia, to increase the required number of continuing education hours to forty (40) per renewal cycle, to require completion of approved continuing education programs in Human Immunodeficiency Virus (HIV) training and medication/dispensing errors training, beginning with the academic period ending May 2009, to require completion of an additional five hundred (500) hours of independent pre-licensure practice in a pharmacy setting with the emphasis being on the distribution of medicines and prescriptions, and beginning with the academic period ending May 2009 to require all individuals engaging in pre-licensure professional practice or working as a pharmacy intern in the District to register with the Board after entering the first professional year of college of pharmacy whether or not the hours will be counted toward the total requirement for licensure as a pharmacist.

Proposed Rulemaking was published on July 20, 2007 at 54 DCR 6954. The Department received written comments from the National Association of Chain Drugs Stores and Kaiser Permanente.

The Department has amended proposed rulemaking §§ 6508.1, 6508.3, 6511.7, 6513, 6515, and 6599.1. Therefore these rules are being republished to provide thirty (30) days to receive comments on the revised rulemaking. These Proposed Rules supercede those published on July 20, 2007.

Final rulemaking action to adopt this amendment shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

**The following rulemaking action is proposed:**

**17 DCMR Chapter 65, PHARMACISTS, is amended as follows:**

**Section 6502.2(e) is amended to read as follows:**

6502.2 (e) Credit for pre-licensure professional practice performed in the District of Columbia shall:

- (1) Not begin to accrue until the Board has registered the intern in accordance with the procedures set forth in § 6509 of this chapter; and

- (2) Only be given for pre-licensure professional practice hours performed as part of a formalized internship program and under the supervision of the individual's assigned preceptor.

**New sections 6502.3, 6502.4, and 6502.5 are added to read as follows:**

- 6502.3 For independent pre-licensure practice hours completed in the District of Columbia, the Board shall only give credit for the independent pre-licensure professional practice required by §§ 6502.1(b)(2) and (3) if it meets the requirements set forth in § 6502.2 of this chapter.
- 6502.4 For independent pre-licensure practice hours completed outside of the District of Columbia, the Board shall recognize the hours and apply the hours to the applicant's required total for licensure only if:
- (a) The hours have been certified in writing by the Board of Pharmacy of the state in which they were obtained; and
  - (b) The hours were performed within two years from the date of the application for registration in the District of Columbia.
- 6502.5 Beginning with the academic period ending May 2009, in addition to the requirements of §§ 6502.1(b) of this chapter, each applicant for a pharmacist license shall submit proof of having completed an additional five hundred (500) hours of independent pre-licensure practice in a pharmacy setting with the emphasis being on the distribution of medicines and prescriptions.

**Section 6503.2 is amended to read as follows:**

- 6503.2 An applicant under this section shall furnish proof satisfactory to the Board that the applicant holds a degree from a school of pharmacy with at least a five (5) year curriculum at the time of graduation, unless the applicant graduated prior to January 1, 2003 in which case a four (4) year curriculum will be accepted.

**Section 6503.3 is amended to read as follows:**

- 6503.3 An applicant under this section shall possess a Foreign Pharmacy Graduate Examination Committee Certification (FPGEC).

**Section 6503.4 is amended to read as follows:**

- 6503.4 An applicant under this section shall receive passing scores on the North American Pharmacist Licensure Examination (NAPLEX) or its successor, and the Multistate Pharmacy Jurisprudence Examination for the District of Columbia (MPJE) or its successor. The passing score of the NAPLEX and MPJE are the

passing scores established by the National Association of Boards of Pharmacy on each test that forms a part of the examinations.

**Section 6504 is amended to read as follows:**

**6504 LICENSE BY EXAMINATION**

6504.1 To qualify for a license by examination, an applicant shall:

- (a) Meet the education requirements set forth under § 6502.1(a), or if the applicant was educated in a foreign country meet the requirements set forth under § 6503;
- (b) Meet the training requirements set forth under § 6502.1(b);
- (c) Receive a passing score on each test that forms a part of the NAPLEX, or its successor, which shall be the passing score as determined by the NABP;
- (d) Receive a passing score on each test that forms a part of the MPJE for the District of Columbia, or its successor, which shall be the passing score as determined by the NABP;
- (e) Be at least 18 years of age; and
- (f) Have not been convicted of a crime involving moral turpitude or bearing directly on the fitness of the applicant to be licensed.

6504.2 An applicant for licensure by examination, who has previously successfully completed the NAPLEX and/or MPJE examinations, but has not actively engaged in the practice of pharmacy in the United States or was not actively licensed as a pharmacist in the United States for more than five (5) years prior to the date of the application, in addition to the other requirements of this section, shall be required to do the following in order to qualify for licensure under this section:

- (a) Retake the NAPLEX and MPJE examinations; and
- (b) Register as a Pharmacy Intern and complete an additional pharmacy internship consisting of seven hundred and fifty (750) hours of independent pre-licensure professional practice under the supervision of a licensed pharmacist who uses the standards for pre-licensure professional practice described in § 6502 of this chapter.

6504.3 To apply for a license by examination, an applicant shall:

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

- (1) The applicant's social security number on the application. If the applicant does not have a social security number, the applicant shall:
  - (i) Submit with the application a sworn affidavit, under penalty of perjury, stating that he or she does not have a social security number; and
  - (ii) Submit proof acceptable to the Board that he or she is legally authorized to be in the United States, such as a Certificate of Citizenship or Naturalization, Resident Alien Card, a valid foreign passport with a visa; or a work permit card from the Department of Homeland Security (I-766 or I-688B).
- (2) Two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2"), which clearly expose the area from the top of the forehead to the bottom of the chin; and
- (3) One (1) clear photocopy of a U.S. government-issued photo ID, such as a driver's license, as proof of identity.
- (b) Submit official transcripts mailed directly to the Board of Pharmacy from each educational institution in a sealed envelope, which shall verify that the applicant has successfully completed an educational program in the practice of pharmacy meeting the requirements set forth in § 6502.1(a) of this chapter;
- (c) Applicants educated in foreign countries must submit a Foreign Pharmacy Graduate Examination Committee (FPGEC) Certification in lieu of an official transcript;
- (d) Submit proof acceptable to the Board that the applicant has successfully completed a pharmacy internship meeting the training requirements set forth in § 6502.1(b) of this chapter;
- (e) Pay all required fees; and
- (f) Successfully complete the NAPLEX and MPJE examinations after receiving Board approval to take the examinations and arrange to have the score results sent directly to the Board.

6504.4 An applicant under this section shall successfully complete the NAPLEX and MPJE examinations within one (1) year from the date the Board approves the applicant to take the examinations.

6504.5 If an applicant under this section fails to successfully compete the NAPLEX and MPJE examinations within one (1) year from the date of approval to take the

exam, his or her application shall be considered abandoned and closed by the Board. The applicant shall thereafter be required to reapply, comply with the current requirements for licensure, and pay the required fees.

6504.6 If an applicant under this section fails to successfully complete the NAPLEX and MPJE examinations within one (1) year from the date of approval to take the exam, then upon expiration of his or her supervised practice letter, the applicant shall immediately cease from practicing. Thereafter the applicant may perform only the duties of a pharmacy technician until the applicant receives a pharmacist license.

6504.7 A supervised practice letter issued under this section is not renewable and shall expire one (1) year from the date of issuance.

**Section 6505 is amended to read as follows:**

**6505 LICENSE BY SCORE TRANSFER**

6505.1 To qualify for a license by score transfer, an applicant shall:

- (a) Meet the education requirements set forth under § 6502.1(a), or if the applicant was educated in a foreign country meet the requirements set forth under § 6503;
- (b) Meet the training requirements set forth under § 6502.1(b);
- (c) Have received a passing score on each test that forms a part of the NAPLEX, or its successor, which shall be the passing score as determined by the NABP;
- (d) Receive a passing score on each test that forms a part of the MPJE for the District of Columbia, or its successor, which shall be the passing score as determined by the NABP;
- (e) Be at least 18 years of age;
- (f) Have not been convicted of a crime involving moral turpitude or bearing directly on the fitness of the applicant to be licensed; and
- (g) Have requested a score transfer to the District of Columbia at the time the applicant applied to take his or her initial NAPLEX examination.

6505.2 To apply for a license by score transfer, an applicant shall:

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

(1) The applicant's social security number on the application. If the applicant

does not have a social security number, the applicant shall:

- (i) Submit with the application a sworn affidavit, under penalty of perjury, stating that he or she does not have a social security number; and
  - (ii) Submit proof acceptable to the Board that he or she is legally authorized to be in the United States, such as a Certificate of Citizenship or Naturalization, Resident Alien Card, a valid foreign passport with a visa, or a work permit card from the Department of Homeland Security (I-766 or I-688B).  
or a valid foreign passport with a visa.
- (2) Two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2"), which clearly expose the area from the top of the forehead to the bottom of the chin; and
  - (3) One (1) clear photocopy of a U.S. government-issued photo ID, such as a driver's license, as proof of identity.
- (b) Submit the NABP score transfer form with the application for licensure;
  - (c) Submit proof acceptable to the Board that the applicant has successfully completed a pharmacy internship meeting the training requirements set forth in § 6502.1(b) of this chapter;
  - (d) Pay all required fees; and
  - (e) Successfully complete the MPJE examination after receiving Board approval to take the examination and arrange to have the score result sent directly to the Board.

6505.3 An applicant under this section shall successfully complete the MPJE examination within one (1) year from the date the Board approves the applicant to take the examination.

6505.4 If an applicant under this section fails to successfully compete the MPJE examination within one (1) year from the date of approval to take the exam, his or her application shall be considered abandoned and closed by the Board. The applicant shall thereafter be required to reapply, comply with the current requirements for licensure, and pay the required fees.

6505.5 If an applicant under this section fails to successfully complete the MPJE examination within one (1) year from the date of approval to take the exam, then upon expiration of his or her supervised practice letter, the applicant shall immediately cease from practicing. Thereafter the applicant may become registered

as a registered pharmacy technician, if he or she meets the requirements for registration, and perform only the duties of a registered pharmacy technician until the applicant receives a pharmacist license.

6505.6 A supervised practice letter issued under this section is not renewable and shall expire one (1) year from the date of issuance.

**Section 6506 is amended to read as follows:**

**6506 LICENSE BY RECIPROCITY WITH LICENSURE TRANSFER**

6506.1 To qualify for a license by reciprocity with license transfer, an applicant shall:

- (a) Meet the education requirements set forth under § 6502.1(a), or if the applicant was educated in a foreign country meet the requirements set forth under § 6503;
- (b) Have met the training requirements in the state in which his or her initial license was obtained;
- (c) Have received a passing score on each test that forms a part of the NAPLEX, or its successor, which shall be the passing score as determined by the NABP;
- (d) Receive a passing score on each test that forms a part of the MPJE for the District of Columbia, or its successor, which shall be the passing score as determined by the NABP;
- (e) Be at least 18 years of age;
- (f) Have not been convicted of a crime involving moral turpitude or bearing directly on the fitness of the applicant to be licensed; and
- (g) Obtain a NABP licensure transfer to the District of Columbia.

6506.2 To apply for a license by reciprocity with licensure transfer, an applicant shall:

- (a) Submit a completed application to the Board on the required forms and include:
  - (1) The applicant's social security number on the application. If the applicant does not have a social security number, the applicant shall:
    - (i) Submit with the application a sworn affidavit, under penalty of perjury, stating that he or she does not have a social security

number; and

- (ii) Submit proof acceptable to the Board that he or she is legally authorized to be in the United States, such as a Certificate of Citizenship or Naturalization, Resident Alien Card, a valid foreign passport with a visa; or a work permit card from the Department of Homeland Security (I-766 or I-688B).
  - (2) Two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2"), which clearly expose the area from the top of the forehead to the bottom of the chin; and
  - (3) One (1) clear photocopy of a U.S. government-issued photo ID, such as a driver's license, as proof of identity.
- (b) Submit the NABP licensure transfer form to the District of Columbia with the application for licensure;
  - (c) Pay all required fees; and
  - (d) Successfully complete the MPJE examination after receiving Board approval to take the examination and arrange to have the score result sent directly to the Board.

6506.3 An applicant under this section shall successfully complete the MPJE examination within six (6) months from the date the Board approves the applicant to take the examination.

6506.4 If an applicant under this section fails to successfully complete the MPJE examination within six (6) months from the date of approval to take the exam, his or her application shall be considered abandoned and closed by the Board. The applicant shall thereafter be required to reapply, comply with the current requirements for licensure, and pay the required fees.

6506.5 If an applicant under this section fails to successfully complete the MPJE examination within six (6) months from the date of approval to take the exam, then upon expiration of his or her supervised practice letter, the applicant shall immediately cease from practicing. Thereafter the applicant may become registered as a registered pharmacy technician, if he or she meets the requirements for registration, and perform only the duties of a registered pharmacy technician until the applicant receives a pharmacist license.

6506.6 A supervised practice letter issued under this section is not renewable and shall expire six (6) months from the date of issuance.

**Section 6507 is amended to read as follows:**

**6507 LICENSE BY RECIPROCITY WITH WAIVER OF LICENSURE  
TRANSFER FORM**

6507.1 Only applicants who were previously licensed in the District of Columbia to practice pharmacy may apply for licensure by reciprocity with waiver of licensure transfer.

6507.2 To apply for a license by reciprocity with waiver of licensure transfer form, an applicant shall:

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

(1) The applicant's social security number on the application. If the applicant does not have a social security number, the applicant shall:

(i) Submit with the application a sworn affidavit, under penalty of perjury, stating that he or she does not have a social security number; and

(ii) Submit proof acceptable to the Board that he or she is legally authorized to be in the United States, such as a Certificate of Citizenship or Naturalization, Resident Alien Card, a valid foreign passport with a visa; or a work permit card from the Department of Homeland Security (I-766 or I-688B).

(2) Two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2"), which clearly expose the area from the top of the forehead to the bottom of the chin; and

(3) One (1) clear photocopy of a U.S. government-issued photo ID, such as a driver's license, as proof of identity.

(b) Submit proof acceptable to the Board of previous licensure in the District of Columbia to practice pharmacy;

(c) Submit verification of current licensure in good standing in another state to practice pharmacy; and

(d) Pay all required fees.

**Section 6508 is amended to read as follows:**

**6508 SUPERVISED PRACTICE OF PHARMACY**

- 6508.1 Only the following persons may practice pharmacy under supervision:
- (a) An applicant for a pharmacist license whose initial application for licensure is pending before the Board and who has received a supervised practice letter from the Board, but shall be limited to the same scope of duties as a registered pharmacy intern;
  - (b) A licensee who is working under supervised practice pursuant to an Order of the Board;
  - (c) A pharmacy intern who is registered with the Board, subject to the limitations set forth under District of Columbia law and regulations; or
  - (d) An applicant who is required pursuant to this chapter to complete professional practice hours in order to obtain licensure, reinstatement of licensure, or reactivation of licensure.
- 6508.2 A supervisor shall be responsible for ensuring that the individual(s) under his or her supervision is authorized to practice under supervision and may be subject to disciplinary action for supervising unlicensed or unauthorized personnel.
- 6508.3 For purposes of this section, supervision shall mean that the supervisor is physically present in the pharmacy area and shall include personal observation where appropriate, evaluation, oversight, review, and correction of services provided by the supervisee.
- 6508.4 A supervisor shall be fully responsible for supervised practice by a supervisee during the period of supervision, and is subject to disciplinary action for any violation of the Act or this chapter by the person being supervised.
- 6508.5 A supervisee shall be subject to all applicable provisions of the Act and this chapter.
- 6508.6 If the Board finds that a person practicing under supervision has violated the Act or this title, the Board may, in addition to any other disciplinary actions permitted by the Act, deny, revoke, suspend, or restrict the privilege of the supervisee to practice.

**Section 6509 is amended to read as follows:**

**6509 REGISTRATION OF PHARMACY INTERNS**

- 6509.1 Except as provided in 6509.2 of this chapter, this section shall apply to pharmacy interns who are performing independent, pre-licensure professional practice in satisfaction of the internship required by § 6502.1(b)(2) and (3) under the supervision of a pharmacist licensed in the District of Columbia.

- 6509.2 Beginning with the academic period ending May 2009, all individuals engaging in pre-licensure professional practice or working as a pharmacy intern in the District shall register with the Board after entering the first professional year of college of pharmacy whether or not the hours will be counted toward the total requirement for licensure as a pharmacist.
- 6509.3 A pharmacy intern is required to be registered with the Board as an intern before being employed as an intern in a pharmacy in the District or beginning an internship.
- 6509.4 Credit for internship hours performed in the District of Columbia shall not begin to accrue until the Board has registered the intern and shall only be given for pre-licensure professional practice hours performed as part of a formalized internship program and under the supervision of the individual's assigned preceptor.
- 6509.5 To qualify to register to perform a pharmacy internship, an applicant shall:
- (a) Meet the education requirements set forth under § 6502.1(a), or if the applicant was educated in a foreign country meet the requirements set forth under § 6503, or be currently enrolled in an educational program in the practice of pharmacy at an ACPE accredited school or school pending initial ACPE accreditation;
  - (b) Be at least 18 years of age; and
  - (c) Have not been convicted of a crime involving moral turpitude or bearing directly on the fitness of the applicant to be registered.
- 6509.6 To register as a pharmacy intern, an applicant shall:
- (a) Submit a completed application to the Board on the required forms and include:
    - (1) The applicant's social security number on the application. If the applicant does not have a social security number, the applicant shall:
      - (i) Submit with the application a sworn affidavit, under penalty of perjury, stating that he or she does not have a social security number; and
      - (ii) Submit proof acceptable to the Board that he or she is legally authorized to be in the United States, such as a Certificate of Citizenship or Naturalization, Resident Alien Card, a valid foreign passport with a visa; or a work permit card from the Department of Homeland Security (I-766 or I-688B).

- (2) Two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2"), which clearly expose the area from the top of the forehead to the bottom of the chin; and
  - (3) One (1) clear photocopy of a U.S. government-issued photo ID, such as a driver's license, as proof of identity.
- (b) Submit official transcripts mailed directly to the Board of Pharmacy from each educational institution in a sealed envelope, which shall verify that the applicant has successfully completed an educational program in the practice of pharmacy meeting the requirements set forth in § 6502.1(a) or § 6503.1(a) of this chapter or is currently enrolled in an educational program in the practice of pharmacy at an ACPE accredited school ;
- (c) Applicants educated in foreign countries must submit a Foreign Pharmacy Graduate Examination Committee (FPGEC) Certification in lieu of an official transcript;
- (d) Pay all required fees; and
- (e) Submit a completed preceptor form signed by his or her preceptor which shall include:
- (1) The name and District of Columbia pharmacist license number of the preceptor;
  - (2) The location where the internship will be performed;
  - (3) A description of the duties the intern will perform;
  - (4) The expected start date of the internship; and
  - (5) The Oath of the Preceptor set forth in § 6511.3 of this chapter.

6509.7 For applicants who have graduated from a college of pharmacy prior to registering as an intern, a registration as a pharmacy intern shall expire one (1) year from the date of its issuance. The Board may, in its discretion, renew a registration for successive periods of one (1) year if the pharmacy intern demonstrates due diligence in working toward completing the clinical internship requirement of § 6502.1(b)(2) or (3).

6509.8 For applicants enrolled in a college of pharmacy at the time of registering as an intern, a registration as a pharmacy intern shall be valid until whichever of the following occurs first:

- (a) While he or she is enrolled in a pharmacy program and for not more than one year after his or her graduation from the pharmacy program;
- (b) Until such intern is expelled, suspended, dismissed or withdraws from an approved pharmacy program; or
- (c) Until such intern becomes licensed as a pharmacist.

**Section 6510 is amended to read as follows:**

**6510 PRE-LICENSURE PROFESSIONAL PRACTICE OF PHARMACY INTERNS**

- 6510.1 This section shall apply to pharmacy interns who are performing independent, pre-licensure professional practice in satisfaction of the internship required by §§ 6502.1(b)(2) and (3) under the direct supervision of a pharmacist in the District, or who are otherwise registered with the Board to practice as a pharmacy intern.
- 6510.2 No person not properly registered with the Board as a pharmacy intern shall take, use, or exhibit the title of pharmacy intern, intern, extern, graduate pharmacist or any other similar title.
- 6510.3 A pharmacy intern may practice as an intern under the supervision of any pharmacist licensed in good standing in the District of Columbia. However, the Board shall only grant pre-licensure professional practice hours for those pharmacy tasks:
- (a) Performed under the supervision of the intern's Board approved assigned preceptor; and
  - (b) Where the preceptor was physically present on the pharmacy premises and in the pharmacy area at the time.
- 6510.4 A pharmacy intern shall not change preceptors or worksites without first submitting a new preceptor form to the Board.
- 6510.5 A pharmacy intern shall not compound or dispense any drug by prescription except under the direct supervision of a pharmacist licensed under the Act who is physically present and guiding the action.
- 6510.6 A pharmacy intern shall not accept an oral prescription for a Schedule II controlled substance.

- 6510.7 A pharmacy intern may not perform a final review or exercise final decision-making with respect to any of the following without the prior review and approval of the licensed pharmacist: drug utilization review; clinical conflict resolution, prescriber contact concerning prescription drug order clarification or therapy modification; or dispensing process validation.
- 6510.8 A pharmacy intern shall be identified by badge as an intern while performing pharmacy tasks.
- 6510.9 A pharmacy intern shall not in any manner falsely represent or imply to the public that he or she is a pharmacist.
- 6510.10 A pharmacy intern shall not supervise another pharmacy intern, a pharmacy student, or a pharmacy technician.
- 6510.11 The Board shall only give credit for independent pre-licensure professional practice hours required by §§ 6502.1(b)(2) and (3) if the work meets the following requirements set forth in § 6502.2 of this chapter.

**Section 6511 is amended to read as follows:**

**6511 DUTIES OF A PRECEPTOR**

- 6511.1 This section shall apply only to preceptors who are supervising pharmacy interns in the performance of independent, pre-licensure professional practice in satisfaction of the internship required by § 6502.1(b)(2) and (3) of this chapter.
- 6511.2 To qualify to serve as a preceptor, a pharmacist shall:
- (a) Be licensed in good standing to practice pharmacy in the District of Columbia;
  - (b) Have been engaged in the practice of pharmacy for at least two (2) years on a full-time basis immediately prior to serving as a preceptor; and
  - (c) Not currently be the subject of a disciplinary sanction or investigation in any jurisdiction.
- 6511.3 Prior to supervising a pharmacy intern, a preceptor shall sign the "Oath of Preceptor," which states as follows:
- "I submit that I shall answer all questions concerning the training of the pharmacy intern under my supervision truthfully to the best of my knowledge and belief and that the training I provide will in accordance to the requirements set forth in 17 DCMR §§ Chapter 65 and the practice of pharmacy as required by law."

- 6511.4 Before allowing any person to work as a pharmacy intern, the preceptor shall verify that the person is currently registered with the Board.
- 6511.5 A preceptor shall ensure that at least seventy percent (70%) of a pharmacy intern's training consists of learning to perform the following tasks:
- (a) Filling prescriptions;
  - (b) Compounding drugs;
  - (c) Evaluating prescriptions;
  - (d) Handling controlled substances;
  - (e) Handling toxic drugs and substances;
  - (f) Substituting generic drugs for brand name drugs;
  - (g) Storing and packaging drugs;
  - (h) Instructing patients;
  - (i) Maintaining prescription records; and
  - (j) Handling veterinary products.
- 6511.6 A preceptor shall be responsible for the tasks performed by a pharmacy intern. A preceptor may be disciplined for any violation of the Act or this chapter in the performance of pharmacy tasks by the intern and under the preceptor's supervision.
- 6511.7 A preceptor shall not supervise more than one pharmacy intern at one time while the intern is on duty and performing internship tasks without prior approval by the Board. This provision shall not apply to students who are enrolled in ACPE accredited programs while performing clerkship hours toward fulfillment of graduation requirements.
- 6511.8 If the preceptor has evidence of, or strongly suspects, that the pharmacy intern may have violated any law or regulation regarding the practice of pharmacy, prescription drugs or controlled substances, the preceptor shall notify the Board in writing, within ten (10) days or immediately, if any danger to the public health or safety may exist.

**Section 6512 is repealed.**

**A new section 6513 is added to read as follows:**

**6513 CONTINUING EDUCATION REQUIREMENTS**

- 6513.1 Except as provided in § 6513.2, this section shall apply to applicants for the renewal, reactivation, or reinstatement of a license for a term expiring February 28, 2011, and for subsequent terms.
- 6513.2 This section shall not apply to applicants for an initial license by examination or reciprocity, nor does it apply to applicants for the first renewal of a license.
- 6513.3 A continuing education credit shall be valid only if it is part of a program approved by the Board in accordance with § 6514 of this chapter.
- 6513.4 An applicant for renewal of a license shall:
- (a) Have completed a minimum of forty (40) contact hours of continuing education credit in approved programs, which shall include at least two (2) hours in Human Immunodeficiency Virus (HIV) training and at least two (2) hours in medication/dispensing errors training during the two (2) year period preceding the date the license expires;
  - (b) Attest to completion of the required continuing education credits on the renewal application form; and
  - (c) Be subject to a random audit.
- 6513.5 Not more than thirty (30) contact hours of continuing education credit may be accepted in any renewal period, or for reinstatement or reactivation of a license for approved home study or other mediated instruction continuing education courses.
- 6513.6 A minimum of ten (10) contact hours of the required forty (40) continuing education credits shall be obtained by attendance at live continuing education programs.
- 6513.7 To qualify for a license, a person in inactive status within the meaning of § 511 of the Act, D.C. Official Code § 3-1205.11 for five (5) years or less who submits an application to reactivate a license shall submit proof pursuant to § 6513.10 of having completed twenty (20) contact hours of approved continuing education credit in the year immediately preceding the date of the application, which shall include at least two (2) hours in Human Immunodeficiency Virus (HIV) training and at least two (2) hours in medication/dispensing errors training.
- 6513.8 To qualify for a license, a person in inactive status within the meaning of § 511 of the Act, D.C. Official Code § 3-1205.11 for more than five (5) years who submits an application to reactivate a license shall submit proof

pursuant to § 6513.10 of having completed approved continuing education credit in the year immediately preceding the date of the application as follows:

- (a) Forty (40) contact hours of approved continuing education credit which shall include at least two (2) hours in Human Immunodeficiency Virus (HIV) training and at least two (2) hours in medication/dispensing errors training; and
- (b) One hundred sixty (160) hours within a sixty (60) day period of professional practice under the supervision of a pharmacist performing tasks listed in § 6502.2(a).

6513.9 To qualify for a license, an applicant for reinstatement of a license shall submit proof pursuant to § 6513.10 of having completed approved continuing education credit in the year immediately preceding the date of the application as follows:

- (a) Forty (40) contact hours of approved continuing education credit which shall include at least two (2) hours in Human Immunodeficiency Virus (HIV) training and at least two (2) hours in medication/dispensing errors training; and
- (b) One hundred sixty (160) hours within a sixty (60) day period of professional practice under the supervision of a pharmacist performing tasks listed in § 6502.2(a).

6513.10 Except as provided in § 6513.12, an applicant under this section shall prove completion of required continuing education credits by submitting with the application the following information with respect to each program:

- (a) The name and address of the sponsor of the program;
- (b) The name of the program, its location, a description of the subject matter covered, and the names of the instructors;
- (c) The dates on which the applicant attended the program;
- (d) The hours of credit claimed; and
- (e) Verification by the sponsor of completion, by signature or stamp.

6513.11 Beginning with the 2005 renewal period, the Board shall conduct a random audit of continuing education credits at the completion of each renewal period.

6513.12 Applicants for renewal of a license shall only be required to prove completion of the required continuing education credits by submitting proof pursuant to §

6513.10 if requested to do so as part of the random audit, or if otherwise requested to do so by the Board.

6513.13 An applicant for renewal of a license who fails to renew the license by the date the license expires may renew the license for up to sixty (60) days after the date of expiration by completing the application, submitting the required supporting documents, and paying the required late fee. Upon renewal, the applicant shall be deemed to have possessed a valid license during the period between the expiration of the license and the renewal thereof.

6513.14 If an applicant for renewal of a license fails to renew the license and pay the late fee within sixty (60) days after the expiration of applicant's license, the license shall be considered to have lapsed on the date of expiration. The applicant shall thereafter be required to apply for reinstatement of an expired license and meet all requirements and fees for reinstatement.

6513.15 The Board may, in its discretion, grant an extension of the sixty (60) day period, up to a maximum of one (1) year, to renew after expiration if the applicant's failure to renew was for good cause. As used in this section, "good cause" includes the following:

(a) Serious and protracted illness of the applicant; and

(b) The death or serious and protracted illness of a member of the applicant's immediate family.

6513.16 An extension granted under this section shall not exempt the pharmacist from complying with the continuing education requirements for any other renewal period.

**A new section 6514 is added to read as follows:**

**6514 APPROVED CONTINUING EDUCATION PROGRAMS**

6514.1 The Board may, in its discretion, approve continuing education programs that contribute to the growth of an applicant in professional competence in the practice of pharmacy and which meet the other requirements of this section.

6514.2 The Board may approve continuing education programs that meet the requirements of § 6514.3 and provide instruction in one of the following subjects:

(a) Properties and actions of drugs and drug dosage forms;

(b) Etiology, characteristics, and therapeutics of the disease state;

(c) Pharmaceutical practice;

- (d) Legal, psychological, and socio-economic aspects of health care delivery; or
- (e) Principles, techniques, and theories of pharmacy management and administration.

6514.3 To qualify for approval by the Board, a continuing education program shall be a lecture, conference, seminar, course of instruction, or workshop and be prepared, offered, or administered by one of the following:

- (a) Providers approved by the ACPE;
- (b) The Accreditation Council for Continuing Medical Education (sponsored or co-sponsored) and designated as an American Medical Association Physician's Recognition Award Category 1 program by the sponsoring organization;
- (c) A governmental unit;
- (d) A health care facility; or
- (e) An institution of higher learning recognized by an accrediting body approved by the Secretary of the United States Department of Education.

6514.4 The Board may issue a list of approved continuing education programs.

6514.5 An applicant shall have the burden of verifying whether a program is approved by the Board pursuant to this section prior to attending the program.

6514.6 The Board may approve the following continuing education activities by an applicant:

- (a) Serving as an instructor or speaker at a lecture, conference, seminar, workshop, course of instruction, or in-service training; and
- (b) Publication of an article or book review in a professional journal or bulletin or publication of a book or chapter in a book.

**A new section 6515 is added to read as follows:**

**6515 CONTINUING EDUCATION CREDITS**

6515.1 A contact hour shall consist of at least fifty (50) minutes of instruction in an approved continuing education program and shall equal one-tenth (0.1) of a continuing education credit ("CEU").

- 6515.2 For approved undergraduate or graduate courses, each semester hour of credit constitutes fifteen (15) contact hours of continuing education credit, and each quarter hour constitutes ten (10) contact hours of continuing education credit.
- 6515.3 The Board may grant a maximum of ten (10) contact hours of continuing education credits per year to an applicant who attends in-service education programs.
- 6515.4 The Board may grant credit for both preparation and presentation time to an applicant who serves as an instructor or speaker at an acceptable program, subject to the following restrictions:
- (a) The maximum amount of credit which may be granted for preparation time is twice the amount of the associated presentation time; and
  - (b) The maximum amount of credit which may be granted pursuant to this subsection is fifty percent (50%) of an applicant's continuing education requirement; and
  - (c) The presentation must have been completed during the period for which credit is claimed.
- 6515.5 The Board may grant an applicant who is an author or editor of a published book in the field of pharmacy thirty (30) contact hours of continuing education credits, if the book has been published or accepted for publication during the period for which credit is claimed, and the applicant submits proof of this fact with the application.
- 6515.6 The Board may grant an applicant who is an author of a published original paper in the field of Pharmacy eight (8) contact hours of continuing education credits, subject to the same restrictions set forth for books in § 6515.5.
- 6515.7 The Board may grant an applicant who is the sole author of a published book review, review paper, or abstract, in the field of Pharmacy, two (2) contact hours of continuing education credits, subject to the same restrictions set forth for books in § 6515.5.

**Section 6599.1 is amended as follows:**

**The following terms with the ascribed meanings are added as follows:**

**ACPE**— The Accreditation Council for Pharmaceutical Education.

**Act**- The District of Columbia Health Occupation Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 et seq.)

**Department**—The District of Columbia Department of Health.

**Director**— The Director of the District of Columbia Department of Health.

**Distribution**--the actual, constructive, or attempted transfer from one person to another, other than by administering or dispensing, of a drug or medical device whether or not there is an agency relationship.

**Enrolled in a pharmacy program**—In order to be considered enrolled in a school of pharmacy, a person shall not be absent from school for more than two (2) consecutive semesters or three (3) consecutive quarters.

**FPGEC**- Foreign Pharmacy Graduate Examination Committee.

**Home-Study and other Mediated Instruction** - Covers all continuing education activities, including Internet courses, which do not provide for direct interaction between faculty and participants and may include audio tapes, video tapes, cable television, computer assisted instruction, journal articles, monographs, etc.

**MPJE**- Multistate Pharmacy Jurisprudence Examination for the District of Columbia

**NABP**- National Association of Boards of Pharmacy

**NAPLEX**- North American Pharmacist Licensure Examination

**Preceptor** – means a pharmacist licensed in good standing in the District, who has been approved by the Board to supervise the pre-licensure professional practice of a pharmacy intern.

**Supervised practice letter**— document issued by the Board authorizing the individual to practice the same scope of duties as a pharmacy intern under the supervision of a pharmacist licensed under the Act, while his or her application for licensure in the District of Columbia is pending or as otherwise authorized by the Board.

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 the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4<sup>th</sup> 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 Interim Director of the Department of Health, pursuant to the authority set forth in section 1 of An Act To authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408, ch. 691; D.C. Official Code § 7-131) (2001), and section 2 of Mayor's Order 98-141, dated August 20, 1998, hereby gives notice of his intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following amendments to Chapter 2 of Title 22 of the District of Columbia Municipal Regulations (DCMR) (Public Health and Medicine)(August 1986). The proposed rule will make technical amendments, require testing of pregnant women and of newborns for the presence of the Hepatitis B virus, and require vaccination of newborns for the Hepatitis virus.

Chapter 2 of Title 22 of the District of Columbia Municipal Regulations (Public Health & Medicine) (August 1986) is amended as follows:

**Section 202.2 is amended to read as follows:**

202.2 In the report required in section 202.1, the physician, veterinarian, or other person in charge of the case shall include a statement of the person's instructions concerning isolation, restriction of movement, and quarantine; provided, that the statement may be limited to stating that the instructions were in accordance with the provisions of this chapter and with the latest edition of "Control of Communicable Disease in Man", published by the American Public Health Association; or, if not, the instructions shall be set forth in detail.

**Section 202.8 is amended to read as follows:**

202.8 Meeting the requirements of this section and observance of the provisions of the latest edition of "Control of Communicable Disease in Man", published by the American Public Health Association, shall be *prima facie* evidence that the control and management of a carrier, contact, or infected person or animal has been in accordance with good medical and public health practice.

**Section 206.2 is amended to read as follows:**

206.2 Physicians and others licensed to practice in the District under the District of Columbia Health Occupations Revision Act of 1985 (D.C. Official Code § 3-1201.01 *et seq.*), in charge of an AIDS diagnosis, shall report the AIDS diagnosis to the Director within forty-eight (48) hours of diagnosis and furnish information the Director deems necessary to complete a confidential case report. Additionally, physicians and others licensed under the District of Columbia Health Occupations Revision Act of 1985 shall report a HIV positive test result to the Director or his

or her designee. The physician or provider, laboratory, blood bank, or other entity or facility that provides HIV testing shall report all cases of HIV infection to the Director or his or her designee.

**A new section 207 is added to read as follows:**

**207 HEPATITIS B TESTING AND VACCINATION**

207.1 A provider that attends to, treats, or examines a pregnant woman or provides perinatal treatment shall:

- (a) Take a blood sample at the woman's first pregnancy examination, including an initial visit for the purpose of determining pregnancy, and submit the sample to a laboratory approved by the Department for testing for Hepatitis B Surface Antigen (HBsAg);
- (b) Take a blood sample at the time of delivery if the woman has not had prior perinatal services or no documentation of HBsAg, and submit the sample to a laboratory approved by the Department for testing HBsAg;
- (c) Maintain a record of the woman's Hepatitis B status in her patient file; and
- (d) Make a report according to the requirements of section 207.4.

207.2 A provider that delivers a newborn shall:

- (a) Document the mother's Hepatitis B status in the newborn's records;
- (b) Test the newborn for the Hepatitis B virus;
- (c) Make a report according to the requirements of section 207.4; and
- (d) Immunize the newborn for the Hepatitis B virus.

207.3 A newborn whose mother tests positive for HBsAg shall:

- (a) Receive Hepatitis B immunoglobulin and Hepatitis B vaccine according to the recommendations of the Advisory Committee on Immunization Practices (ACIP);
- (b) Receive a complete Hepatitis B series according to the ACIP recommended vaccine schedule; and

- (c) Receive post-vaccination testing for the presence of HBsAg and Hepatitis B Surface Antibody (HBsAb) three (3) months after the last dose of Hepatitis B vaccine.

207.4

In addition to the reporting requirements of section 201.5, a provider shall also report the following in the manner and form the Director requires:

- (a) The date of the Hepatitis test;
- (b) The date and time the Hepatitis B vaccine was administered;
- (c) The date and time the Hepatitis B immunoglobulin was administered;
- (d) The manufacturer of the vaccine; and
- (e) The vaccine lot number.

207.5

The patient or his or her legal guardian shall be deemed to have consented to Hepatitis B testing and vaccination, unless the patient or legal guardian submits a signed request to "opt out" that states the reasons for opting out. A patient or his or her legal guardian may opt out if:

- (a) The patient or his or her legal guardian objects in good faith and in writing that immunization would violate her or his religious beliefs; or
- (b) The patient or his or her legal guardian provides the written certification of a physician that immunization is medically inadvisable.
- (c) The patient or his or her legal guardian may "opt in" by revoking, in writing, the request to opt out of the program.

207.6

Information disclosed to the Department pursuant to this section shall be kept confidential and shall not be disclosed to a third party, except as provided in this subsection. The Department may use and disclose information received pursuant to this section as follows:

- (a) The Director may use patient-specific immunization information:
  - (1) To produce aggregate immunization coverage reports and to track Hepatitis B levels;
  - (2) To ensure that newborns receive Hepatitis B immunization;
  - (3) To conduct follow-up on infants born to HBsAg positive mothers; and

- (4) For statistical and public health purposes.
- (b) Except as provided in subsection (a), the Director may disclose a person's individually identifiable information to a third party only with written consent of the person, or the person's parent or guardian if the person is under eighteen (18) years of age or an unemancipated adult.

**Section 210.8 is amended to read as follows:**

210.8 The Director shall issue a Removal and Detention Order and take whatever further proceedings may be required by sections 1 through 14 of the Act (D.C. Official Code §§ 7-131 through 7-144) (2001), whenever the Director has probable cause to believe that any person is affected with, or is a carrier of, a communicable disease, and whenever the Director has probable cause to believe that that person is likely to be dangerous to the life or health of any other person because of the following reasons:

- (a) Improper facilities or the lack of facilities for isolation; or
- (b) Because of the person's non-cooperation or carelessness, including his or her refusal to submit to examination or refusal to be properly treated or cared for, the person is likely to be a danger to public health.

**Section 299.1 is amended as follows:**

Repeal the definitions for "Commission" and "Commissioner"

Amend the definition for the term "Act" to read as follows:

**Act**—an Act To authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408 ch. 691; D.C. Official Code § 7-131 *et seq.* (2001)), as amended.

Amend the definition for the term "Health care provider" to read as follows:

**Health care provider or provider**—a health care clinic, a physician, a health maintenance organization, a nurse, a hospital, a charitable organization that provides medical care or advice, or any other entity that provides medical care or advice.

Add the following new definitions:

**ACIP**—the Advisory Committee on Immunization Practices of the CDC.

**CDC**—the Centers for Disease Control and Prevention of the federal government.

**HBsAg**—a serological laboratory test marker indicating infection with the Hepatitis B virus.

**HBsAb**—a serological laboratory test marker indicating immunity to Hepatitis B infection.

**Newborn**—an infant born in the District who is under 4 weeks of age.

**Perinatal**—the period before, during, and after the time of birth from the twenty-eighth (28<sup>th</sup>) week of gestation through the first seven (7) days after delivery.

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

**D.C. DEPARTMENT OF HUMAN RESOURCES****NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with section 1106 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA); effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.06) (2006 Repl.), hereby gives notice of the intent to adopt the following rules, upon their approval by the Council of the District of Columbia (Council), pursuant to section 1105 (d) of the CMPA (D.C. Official § 1-611.05 (d)) (2006 Repl.), and in not less than thirty (30) days from the publication of this notice in the *D.C. Register*. These rules would amend Chapter 11, Classification and Compensation, of Title 6 of the District of Columbia Municipal Regulations (DCMR), for the main purpose of adding language to the rules relating to compensation system changes approved in 2004, 2005, 2006, and 2007 establishing open range salary schedules for Senior Executive Attorney Service (SEAS) positions within the Legal Service and non-SEAS management positions in the Legal Service, all Excepted Service positions, Management Supervisory Service white collar positions; and Career Service non-union white collar positions at grade levels 15/16 and 16/17. As a result of these compensation system changes, the following open range schedules were established: *Excepted Service Pay Schedule ("ES Schedule")*; *Legal Service Management Salary Schedule ("LX Schedule")*; *Management Supervisory Service Pay Schedule ("MS Schedule")*; and an *Open Range Salary Schedule for Career Service non-union white collar positions at grade levels 15/16 and 16/17, part of the Non-Union General Career Service Salary Schedule*. The changes to the rules resulting from the establishment of the open range schedules are mainly contained in section 1126 of the chapter. In addition to the amendments resulting from the establishment of the open range salary schedules, amendments were made to sections 1124, 1125, 1128, 1130, 1131, and 1199 of the chapter. Finally, section 1139.5 of the chapter was amended to provide that while exempt time off granted shall not exceed eighty (80) hours in any 12-month consecutive period, the personnel authority may approve a maximum of one hundred twenty (120) hours of exempt time off for eligible employees who are required to perform work in excess of eighty (80) hours in a pay period because of certain emergencies or other unforeseen circumstances or situations. Because Council approval of these rules is required, a rulemaking approval resolution has been submitted to the Council for that purpose along with these rules. Upon adoption, these rules will amend Chapter 11, Classification and Compensation, of Title 6 of the DCMR, published at 28 DCR 2318 (May 22, 1981), and amended at 29 DCR 1225 (March 19, 1982), 37 DCR 6361 (October 5, 1990), 39 DCR 2072 (March 27, 1992), 47DCR 2421 (April 7, 2000), 48 DCR 4179 (May 11, 2001), 48 DCR 5004 (June 1, 2001), 52 DCR 934 (February 4, 2005), and 52 DCR 2729 (March 8, 2005).

**CHAPTER 11****CLASSIFICATION AND COMPENSATION**

*Chapter 11 of the D.C. Personnel Regulations is amended as follows:*

*Sections 1124.1 and 1124.4 are amended to read as follows:*

- 1124.1 (a) The Director, D.C. Department of Human Resources (DCHR), annually may recommend Career, Legal, Excepted, and Management Supervisory Services compensation system changes and adjustments to the Mayor for review. These recommendations shall be based on the criteria established under section 1103 of the CMPA (D.C. Official Code § 1-611.03) (2006).
- (b) To the extent that any recommended compensation system changes may affect or ultimately be applicable to Career, Legal, Excepted, and Management Supervisory Services employees in certain independent agencies, the Director, DCHR, shall consult with such independent authorities before making any recommendations to the Mayor.
- 1124.4 Pursuant to section 1105 (d) of the CMPA (D.C. Official Code § 1-611.05 (d)) (2006), the Mayor shall submit any proposed compensation system changes and adjustments, including employee salary and rate schedules and their proposed effective date(s), to the Council. The submission to the Council shall specify to which agencies, subordinate or independent, the proposed changes shall apply, as well as exclusions, if any.

*A new section 1124.16 is added to read as follows:*

- 1124.16 (a) Whenever a compensation system change or adjustment alters the manner in which employees covered under a salary or rate schedule are to be paid or results in the creation of a new salary or rate schedule that alters the manner in which employees covered under the schedule are to be paid, the submission to the Council shall include an explanation of the changes and how employees shall be paid.
- (b) Immediately upon Council approval of compensation system changes as described in section 1124.16 (a) above, the personnel authority shall:
- (1) Issue procedures, in writing, for the implementation of the new salary or rate schedule, initial placement of employees on the schedule, and advancement; and
  - (2) Inform affected employees of the procedures.

*Section 1125 is amended to read as follows:*

**1125 PAY SYSTEMS**

- 1125.1 The following pay systems shall apply to all employees appointed under the Career, Legal, Excepted, or Management Supervisory Services:
- (a) District Service Salary System; and

(b) Wage Service Rate System.

1125.2 The District Service salary schedules are the annual rate schedules applicable to employees who are paid under the District Service Salary System, which is the basic pay system for positions that are classified in accordance with section 1101 of this chapter and for which compensation is established on an annual basis. The District Service Salary System includes the following schedules:

- (a) Career Service salary schedules (union), the symbol for which is CS;
- (b) Career Service salary schedules (non-union), the symbol for which is CS;
- (c) Legal Service salary schedules (non-union and union), the symbols for which are LX (Senior Executive Attorney Service (SEAS) positions and non-SEAS management positions), and LS, respectively;
- (d) The Excepted Service salary schedule (ES Schedule), the symbol for which is ES; and
- (e) The Management Supervisory Service Pay schedule (MS Schedule), the symbol for which is MS.

1125.3 The Wage Service rate schedules are the hourly rate schedules applicable to employees who are paid under the Wage Service Rate System, which is the basic pay system for positions that are classified in accordance with section 1105 of this chapter and for which compensation is established on an hourly basis. The Wage Service Rate System includes the following schedules:

- (a) The Wage Service Rate Schedule (union), with the rates of pay for the following positions:
  - (1) Regular Non-Supervisory positions, the symbol for which is RW; and
  - (2) Leader positions, the symbol for which is LW.
- (b) The Wage Service Rate Schedule (non-union) with the rates of pay for the following positions:
  - (1) Regular Non-Supervisory positions, the symbol for which is RW;
  - (2) Leader positions, the symbol for which is LW;
  - (3) Supervisory positions, the symbol for which is SW; and
  - (4) Management Supervisory Service positions, the symbol for which is MW.

*Section 1126 is amended as follows:*

**1126 DISTRICT SERVICE SALARY SYSTEM—GENERAL PROVISIONS**

*Sections 1126.1 through 1126.6 are amended to read as follows:*

- 1126.1 This section applies to all employees in the Career, Legal, Excepted, and Management Supervisory Services, as applicable, paid under any of the District Service salary schedules listed in section 1125.2 of this chapter.
- 1126.2 The District Service salary schedules listed in section 1125.2 of this chapter are the basic pay schedules applicable to employees who are paid under the District Service Salary System.
- 1126.3 As applicable, the District Service salary schedules shall be comprised of:
- (a) Grades and steps consisting of annual salaries within each grade; or
  - (b) Pay or Grade levels with a minimum, midpoint, and maximum annual salary range within each pay level.
- 1126.4 When payment is made on an hourly, daily, weekly, or biweekly rate, the rate shall be computed from the appropriate annual rate of basic pay of a District Service salary schedule and in accordance with the rules prescribed in section 1131 of this chapter.
- 1126.5 Except as provided in sections 1126.6 through 1126.11, 1126.21, 1126.22, 1126.29, and 1126.30 of this chapter, a new appointment shall be made at the minimum rate of the grade or pay level.
- 1126.6 At the discretion of the agency head, an initial or first (1<sup>st</sup>) appointment with the District government to a Career Service position under a CS salary schedule with steps may be made at any step up to the representative rate of the appropriate grade on a CS salary schedule, as applicable.

*Section 1126.7 is amended to read as follows:*

- 1126.7 The pay-setting rules listed in the chart below shall apply to all initial or first (1<sup>st</sup>) appointments with the District government, promotions, change to lower grade actions, and reassignments to positions in the Excepted Service or Management Supervisory Service (MSS) paid from the ES Schedule or MS Schedule:

TYPE OF APPOINTMENT	PAY-SETTING RULE
<p><b>Initial or First (1<sup>st</sup>) Appointment with the District government</b></p>	<p>(a) The employing agency may set the initial rate of pay at any amount up to the midpoint range of the grade or pay level for the position. The following factors should be considered when setting the pay at an amount up to the midpoint range:</p> <ul style="list-style-type: none"> <li>(1) Selectee's current salary;</li> <li>(2) Skills set the selectee brings to the job in addition to the minimum qualifications for the position;</li> <li>(3) Effect on agency and budget limitations;</li> <li>(4) Market value of the position; and</li> <li>(5) Internal compensation relationships.</li> </ul> <p>(b) For extraordinary cases, the employing agency shall request approval from the personnel authority to set the initial rate of pay at an amount above the midpoint range of the grade or pay level for the position. The personnel authority shall establish the criteria for the request, which shall be made in writing by the employing agency.</p>
<p><b>Promotion (including Temporary Promotion)</b></p>	<p>The rate of pay of an employee promoted within or to an open range salary schedule shall be set by adding 10% to the employee's current rate of basic pay. Any deviation is subject to approval by the personnel authority.</p>
<p><b>Change to Lower Grade (Demotion)</b> <b>[Non-Disciplinary/Performance Reasons]</b></p>	<p>There shall be no change to the rate of pay of an employee upon a change to lower grade for non-disciplinary reasons; provided that the employee's current salary is within the range of pay for the new (lower) grade or pay level. If the employee's current rate of pay is over or at the maximum rate for the new (lower) grade or pay level, the rate of pay shall be set at the maximum rate for the new (lower) grade or pay level.</p>

TYPE OF APPOINTMENT	PAY-SETTING RULE
<p><b>Change to Lower Grade (Demotion)</b>  <b>[Disciplinary/Performance Reasons]</b></p>	<p>The rate of pay of an employee who is changed to a position at a lower grade due to discipline or performance reasons shall be set at an amount ten percent (10%) lower than the employee's rate of pay at the higher-graded position; provided that the rate of pay shall not be set at an amount lower than the minimum nor higher than the maximum rate for the lower-graded position.</p>
<p><b>Reassignment</b></p>	<p>There shall be no change to the rate of pay of an employee upon reassignment action.</p>

*Section 1126.8 is amended to read as follows:*

1126.8 The provisions of section 1126.7 of this section shall apply to all initial or first (1<sup>st</sup>) appointments with the District government, promotions, change to lower grade actions, and reassignments to non-union Career Service to non-union white collar positions at grade levels 15/16 and 16/17.

*Sections 1126.9 and 1126.10 are amended to read as follows:*

1126.9 An appointment to a Career Service position under a CS salary schedule with steps, whether the initial or first (1<sup>st</sup>) appointment with the District government or a reemployment appointment, may be made at a rate above the representative rate of the appropriate grade on the CS salary schedule on the basis of superior qualifications, as provided in sections 1126.10 through 1126.12 of this section.

1126.10 Upon the approval of the personnel authority, initial appointments with the District government to Career Service positions at grade level 7 and above on a CS salary schedule may be made on the basis of superior qualifications of the candidate.

1126.11 A superior qualifications appointment shall be based on all of the following criteria:

- (a) The special needs of the agency for the candidate's services;
- (b) The candidate's unusually high or unique qualifications for the position; and
- (c) The candidate's rate of basic pay.

*Sections 1126.12 and 1126.13 are amended to read as follows:*

- 1126.12 When a superior qualifications appointment is made by reemployment, the candidate must have a break in service of at least ninety (90) calendar days since his or her last period of District government service.

*Sections 1126.13 and 1126.14 are amended to read as follows:*

- 1126.13 At the discretion of the agency head, the rate of basic pay of an employee in the Management Supervisory Service (MSS) with Career Service status who moves to the Career Service without a break in service of more than three (3) months to a position under a CS salary schedule with steps, may be set at any rate of the appropriate grade on the CS salary schedule that does not exceed the employee's existing rate of basic pay on the MS Schedule (open ranges) or MW rate schedule, except that the rate of basic pay on the CS salary schedule shall not be set below the rate of basic pay that the employee would have attained in the Career Service had the MSS appointment never been effected.
- 1126.14 At the discretion of the agency head, the rate of basic pay of an employee in the Management Supervisory Service without Career Service status who moves to the Career Service without a break in service to a position under a CS salary schedule with steps, may be set at the minimum rate of the appropriate grade on the CS salary schedule or at any rate above the minimum rate that does not exceed the employee's existing rate of basic pay on the MS Schedule (open ranges) or MW rate schedule.

*Section 1126.15 is deleted.*

*Section 1126.16 is renumbered as 1126.15 and amended to read as follows:*

- 1126.15 When an employee moves without a break in service from an Excepted Service position under the ES Schedule to a lower or equivalent grade in a Career Service position under a CS salary schedule with steps, the rate of basic pay on the CS salary schedule shall be set at any step of the grade that does not exceed the employee's highest previous rate. If the employee's rate of basic pay exceeds the rate of pay for the grade on the CS schedule, the rate of basic pay shall be set at the highest step of the grade.

*Sections 1126.17 and 1126.18 are deleted.*

*Sections 1126.19 through 1126.22 are renumbered as 1126.16 through 1126.19 and amended to read as follows:*

- 1126.16 In accordance with the provisions of section 1126.17 of this section, an agency may make a special adjustment in the rate of basic pay of a supervisor in a Career Service position paid under a salary schedule with steps when both of the following are true:
- (a) The supervisor regularly has responsibility for supervision (which must include supervision over the technical aspects of the work concerned) over one (1) or more employees subject to the Wage Service Rate System; and

- (b) The rate of basic pay for the supervisor is less than the highest rate of basic pay for any Wage Service employee he or she supervises.

- 1126.17 When an agency decides to adjust the rate of basic pay for a supervisor as provided in section 1126.16 of this section, the rate of basic pay shall be adjusted to the nearest step, but not above the maximum step, of his or her grade that exceeds the highest rate of basic pay for any Wage Service employee for whom the supervisor regularly has responsibility for supervision.
- 1126.18 The adjustment of a supervisor's rate of basic pay in accordance with sections 1126.16 and 1126.17 of this section shall become effective on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) biweekly pay period following the date on which the agency determines to make the adjustment.
- 1126.19 Neither a retained rate nor any form of premium pay shall be considered part of an employee's rate of basic pay in making determinations relative to pay adjustments effected in accordance with sections 1126.16 through 1126.18 of this section.

*New sections 1126.20 and 1126.21 are added to read as follows:*

- 1126.20 At the discretion of the personnel authority in the case of an independent agency as defined in Chapter 36 of these regulations, or at the discretion of the Attorney General for the District of Columbia (Attorney General) in the case of the Office of the Attorney General for the District of Columbia (OAG), as applicable, a new appointment in the Legal Service to a position paid from a LS salary schedule may be made at any step on the appropriate LS salary schedule.
- 1126.21 At the discretion of the Attorney General (in the case of the OAG), a new appointment in the Legal Service to a SEAS position and a non-SEAS management position may be made at any rate of the appropriate pay level on the schedule as specified in sections 1126.22 through 1126.26 of this section.

*Sections 1126.23 through 1126.25 are deleted.*

*Sections 1126.26 through 1126.30 are renumbered as 1126.22 through 1126.26, respectively; and amended to read as follows:*

- 1126.22 New appointments to OAG section chief and assistant section chief positions shall be made at the lowest pay level on the LX Schedule. New appointments to OAG deputy and assistant deputy positions shall be made at the next highest pay level on the LX Schedule. New appointments to OAG chief deputy positions shall be made at the highest pay level on the LX Schedule.
- 1126.23 The Attorney General shall designate the appropriate starting salary for covered employees within the salary range for the pay level occupied on the LX Schedule for each deputy, assistant deputy, section chief, assistant section chief, general counsel who perform work for a subordinate agency other than the OAG, or any other attorney to be paid from the LX Schedule, as appropriate, based upon criteria which shall include but not be limited to the following:

- (a) Number of employees supervised;
- (b) Complexity of the duties and responsibilities;
- (c) Experience and skills; and
- (d) Job performance.

- 1126.24 The Attorney General, at his or her sole discretion and using the criteria set forth in section 1126.23 of this section, may change the salary of covered employees at any time to any other salary within the salary range for the level occupied.
- 1126.25 The salary of covered employees who are temporarily assigned to positions at a higher or lower level in the LX Schedule shall be set, at the discretion of the Attorney General, at any salary within the salary range of the level to which the employees are temporarily assigned or at a salary within the salary range of the level of the employees' regular position.
- 1126.26 The salary of non-covered employees who are temporarily assigned to covered positions shall be set at the pay level within the LX Schedule designated for the covered positions pursuant to sections 1126.22 and 1126.23 of this section at any salary within the salary range of the level to which the employees are temporarily assigned. Upon termination of the temporary assignments, the employees shall return to the non-covered positions and salaries they occupied prior to the temporary assignments.

*Section 1126.31 is renumbered as 1126.27 and amended to read as follows:*

- 1126.27 Persons paid from a LX salary schedule shall not receive overtime pay.

*Section 1126.32 is deleted.*

*New sections 1126.28 and 1126.29 are added to read as follows:*

- 1126.28 At the discretion of the personnel authority in the case of an independent agency as defined in Chapter 36 of these regulations, a new appointment in the Legal Service to a position paid from a LX salary schedule may be made at any rate of the appropriate pay level on the schedule.
- 1126.29 An independent personnel authority that employs Legal Service attorneys in SEAS and non-SEAS management positions shall:
- (a) Issue pay-setting procedures, in writing, for new appointments that include the same or similar factors listed in sections 1126.22 through 1126.26 of this section; and
  - (b) Inform affected employees of the pay-setting procedures.

*Section 1128 is amended as follows:*

## **1128 WAGE SERVICE RATE SYSTEM—GENERAL PROVISIONS**

*Sections 1128.1 and 1128.2 are amended to read as follows:*

- 1128.1 This section applies to all Career and Management Supervisory Service employees paid under a Wage Service rate schedule.
- 1128.2 The Wage Service rate schedules listed in section 1125.3 of this chapter are the hourly rate schedules applicable to employees who are paid from the Wage Service Rate System.
- 1128.3 The Wage Service rate schedules shall be comprised of grades and steps consisting of hourly rates within each grade.

*Sections 1128.4 through 1126.6 are amended to read as follows:*

- 1128.4 Except as provided in sections 1128.5 through 1128.8 of this section, a new appointment shall be made at the minimum rate of the grade.
- 1128.5 At the discretion of the agency head (or designee), an individual may be appointed at any step up to the representative rate of the appropriate grade on an applicable Wage Service rate schedule.
- 1128.6 An individual may be appointed at a rate above the representative rate of the appropriate grade on the basis of superior qualifications, as provided in sections 1128.7 and 1128.8 of this section.
- 1128.7 A superior qualifications appointment may be made only with the approval of the personnel authority.
- 1128.8 A superior qualifications appointment shall be based on all of the following criteria:
- (a) The special needs of the agency for the candidate's services;
  - (b) The candidate's skills and experience are of an exceptional or highly specialized nature in his or her trade or craft; and
  - (c) The candidate's rate of basic pay.

*Sections 1128.9 through 1128.15 are amended to read as follows:*

- 1128.9 When a superior qualifications appointment is made by reemployment, the candidate must have a break in service of at least ninety (90) calendar days since his or her last period of District government service.
- 1128.10 At the discretion of the agency head, the rate of basic pay of an employee in the Management Supervisory Service (MSS) with Career Service status who is paid

under the MW rate schedule and moves to a Career Service wage position without a break in service of more than three (3) months may be set at any rate of the appropriate grade on the RW, LW, or SW rate schedule that does not exceed the employee's existing rate of basic pay on a MW rate schedule, except that the rate of basic pay on the RW, LW, or SW rate schedule shall not be set below the rate of basic pay that the employee would have attained in the Career Service had the MSS appointment never been effected.

- 1128.11 At the discretion of the agency head, the rate of basic pay of an employee in the MSS without Career Service status who is paid under the MW rate schedule and moves to a Career Service wage position without a break in service may be set at the minimum rate of the appropriate grade on the RW, LW, or SW rate schedule or at any rate above the minimum rate that does not exceed the employee's existing rate of basic pay on a MW rate schedule.
- 1128.12 When an employee moves without a break in service from a position paid under a Wage Service Rate System schedule to a position paid under another Wage Service Rate System Schedule (i.e., movement within the same rate schedule, and movement from a rate schedule to a different rate schedule), the rate of pay shall be determined under one (1) of the following, as appropriate:
- (a) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade on the Wage Service Rate System schedule is less than the representative rate of the grade to which he or she is being assigned, the movement constitutes a promotion, and, the employee shall be entitled to one (1) of the following:
    - (1) Basic pay at the lowest rate of the grade on the rate schedule that is equivalent to his or her existing rate of basic pay, plus two (2) step increases of the current grade on a Wage Service Rate System Schedule;
    - (2) If the rate determined in (1) above falls between two (2) rates of the new grade, he or she shall be entitled to the higher rate; or
    - (3) If the rate determined in (1) above is higher than any rate of the new grade, he or she shall be entitled to the maximum rate of the new grade.
  - (b) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade on the Wage Service Rate System schedule is equal to or more than the representative rate of the grade to which he or she is being assigned on the MW rate schedule, the movement constitutes either a reassignment (when "equal to") or a change to lower grade (when "more than"), and the agency may pay the employee in accordance with either of the following:
    - (1) The agency may pay the employee at any rate of the grade on the MW rate schedule that does not exceed his or her highest previous rate on a Wage Service Rate System schedule; or

- (2) If the employee's highest previous rate on a Wage Service Rate System schedule falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate.
- 1128.13 When an employee moves without a break in service from a Career Service position under the CS salary schedule to a Management Supervisory Service position under the MW rate schedule, the rate of basic pay on the MW rate schedule shall be determined under the provisions of section 1126.15 of this chapter, reading "MS salary" as "MW rate."
- 1128.14 When an employee moves without a break in service from a Management Supervisory Service (MSS) position under the MS salary schedule to a MSS position under a MW rate schedule, the rate of pay on the MW rate schedule shall be determined under the provisions of section 1130.3 of this chapter, using the employee's MS salary schedule as the "current schedule" and the MW rate schedule as the "new schedule."
- 1128.15 When any action moves an employee from one MW rate schedule ("current" schedule) to another grade within the same rate schedule or to any grade within another MW rate schedule ("new" schedule), the rate of pay on the new schedule shall be determined under one (1) of the following, as appropriate:
- (a) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade in his or her current schedule is less than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the employee shall be entitled to one (1) of the following:
- (1) Basic pay at the lowest rate of the new grade that is equivalent to his or her existing rate of basic pay plus one (1) step increase of the current grade;
  - (2) If the rate determined in (1) above falls between two (2) rates of the new grade, he or she shall be entitled to the higher rate; or
  - (3) If the rate determined in (1) above is higher than any rate of the new grade, he or she shall be entitled to the maximum rate of the new grade.
- (b) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade in his or her current schedule is equal to or more than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the agency may pay the employee in accordance with either of the following:
- (1) The agency may pay the employee at any rate of the new grade that does not exceed his or her highest previous rate; or

- (2) If the employee's highest previous rate falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate.

*Section 1130 is amended to read as follows:*

**1130 CAREER SERVICE POSITION CHANGES—SETTING PAY**

- 1130.1 Except as may be provided elsewhere in this chapter, this section shall be used to determine the appropriate rate of basic pay upon either of the following:
- (a) Reinstatement to or a promotion in a position in the Career Service paid under a salary or rate schedule with steps;
  - (b) Movement without a break in service of a Career Service employee from a Career Service position paid under a salary or rate schedule with steps to another Career Service position paid under a salary or rate schedule with steps; or
  - (c) Reclassification of an encumbered Career Service position involving salary or rate schedules with steps.
- 1130.2 When an employee moves without a break in service from a non-union Career Service position at grade levels 15/16 or 16/17 to a Career Service position under a CS salary schedule with steps, the rate of basic pay on the CS salary schedule shall be set at any step of the grade that does not exceed the employee's highest previous rate.
- 1130.3 When any action moves an employee from a CS salary schedule ("current" schedule) to another grade within the same CS salary schedule or to any grade within another CS salary schedule or Wage Service rate schedule ("new" schedule), the rate of pay on the new schedule shall be determined under one (1) of the following, as appropriate:
- (a) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade in his or her current schedule is less than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a promotion, and the employee shall be entitled to one (1) of the following:
    - (1) Basic pay at the lowest rate of the new grade that is equivalent to his or her existing rate of basic pay plus two (2) step increases of the current grade;
    - (2) If the rate determined in (1) above falls between two (2) rates of the new grade, he or she shall be entitled to the higher rate; or
    - (3) If the rate determined in (1) above is higher than any rate of the new grade, he or she shall be entitled to the maximum rate of the new grade.

- (b) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade in his or her current schedule is equal to or more than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a reassignment (when "equal to") or a change to lower grade (when "more than"), and the agency may pay the employee in accordance with either of the following:
- (1) The agency may pay the employee at any rate of the new grade that does not exceed his or her highest previous rate; or
  - (2) If the employee's highest previous rate falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate.

1130.4 When any action moves an employee from one Wage Service rate schedule ("current" schedule) to another grade within the same rate schedule or to any grade within another Wage Service rate schedule or CS salary schedule ("new" schedule), the rate of pay on the new schedule shall be determined under one (1) of the following, as appropriate:

- (a) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade in his or her current schedule is less than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a promotion, and the employee shall be entitled to one (1) of the following:
- (1) Basic pay at the lowest rate of the new grade that is equivalent to his or her existing rate of basic pay plus a two (2) step increase of the current grade (for a rate schedule with ten (10) steps);
  - (2) If the rate determined in (1) above falls between two (2) rates of the new grade, he or she shall be entitled to the higher rate; or
  - (3) If the rate determined in (1) above is higher than any rate of the new grade, he or she shall be entitled to the maximum rate of the new grade.
- (b) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 or 1199 of this chapter, of the employee's grade in his or her current schedule is equal to or more than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a reassignment (when "equal to") or a change to lower grade (when "more than"), and the agency may pay the employee in accordance with either of the following:
- (1) The agency may pay the employee at any rate of the new grade that does not exceed his or her highest previous rate; or

- (2) If the employee's highest previous rate falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate.
- 1130.5 When an employee is reinstated in accordance with Chapter 8 of these regulations, the agency may pay the employee at any rate of the grade that does not exceed his or her highest previous rate; however, if the employee's highest previous rate falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate.
- 1130.6 When an encumbered position is reclassified from the Wage Service Rate System into a Career Service salary schedule with steps under the District Service Salary System, the agency shall pay the employee at the highest rate of the new grade that does not exceed his or her highest previous rate; however, if the employee's highest previous rate falls between two (2) rates of the new grade, the agency shall pay the employee at the higher rate. If the employee's highest previous rate exceeds the maximum rate of the new grade, and the employee is not eligible for a retained rate in accordance with section 1141 of this chapter, the employee shall receive the maximum rate of the new grade.
- 1130.7 The highest previous rate shall be based on a scheduled tour of duty at a rate under an appointment not limited to ninety (90) days or less, or for a continuous period of not less than ninety (90) days under one (1) or more temporary appointments without a break in service.
- 1130.8 Except as provided in section 1130.9 of this section, when an employee's rate of basic pay is one received under the higher minimum rate provision, the highest previous rate shall be the rate to which he or she would have been entitled had the special rate or special salary not applied.
- 1130.9 With the prior approval of the personnel authority, an agency may use a special rate or special salary as the highest previous rate when both of the following are true:
- (a) The employee is reassigned to a position for which no special rate or special salary, or a lesser special rate or special salary, has been established; and
  - (b) The agency head determines that the need for the employee's services, and his or her contribution to the agency's program, will be greater in the position to which reassigned.
- 1130.10 In the application of the highest previous rate provisions, a rate of pay earned under any District government salary or rate schedule shall be the current rate of the same grade and step of that schedule.
- 1130.11 Upon completion or termination of a term or temporary promotion, the agency shall return the employee to the position from which he or she was promoted or to a position of equivalent grade. If the employee served one (1) year or less in the temporary or term promotion, the pay in the grade to which returned shall be at the step the employee would have attained had the promotion not occurred. If the

employee served more than one (1) year in the temporary or term promotion, the pay received in the promotion may be used as the highest previous rate when returned to the former grade.

- 1130.12 An employee who fails to successfully complete a supervisory probationary period and is returned to the grade from which he or she was promoted shall not be entitled to the highest previous rate provisions or a retained rate, but shall be returned to a position of no lower grade than the employee left to accept the supervisory or managerial position and at the step the employee would have attained but for the managerial or supervisory appointment.
- 1130.13 Whenever a special rate or special salary schedule is established, the salary of an employee covered by the special rate or special salary shall be adjusted to the step and grade on the special rate or special salary schedule that corresponds to his or her existing step and grade.
- 1130.14 When an employee is receiving a retained rate under section 1141.2 of this chapter and his or her position becomes subject to a special rate or special salary schedule, the employee's pay shall be adjusted under the provisions of the highest previous rate rule without regard to his or her retained rate. However, if the employee's retained rate is higher than the maximum rate of the special rate or special salary schedule, the employee shall be entitled to receive the retained rate for the remainder of the retained rate period and then shall be placed at the maximum rate of the special rate or special salary schedule.
- 1130.15 The Director, DCHR, shall initiate action to discontinue or revise special rates or special salaries when these rates are no longer necessary for recruitment and retention of personnel.
- 1130.16 When special rates or special salaries for a position are discontinued, the rate of basic pay for an employee shall be determined as follows:
- (a) If the employee is receiving a rate of basic pay equal to one of the rates on the appropriate schedule for his or her grade, the employee's basic pay shall be fixed at that rate;
  - (b) If the employee is receiving a rate of basic pay at a rate between two (2) rates on a salary or rate schedule for his or her grade, the employee's basic pay shall be fixed at the higher of the two (2) rates; or
  - (c) If the employee is receiving a rate of basic pay in excess of the maximum rate under the appropriate schedule for his or her grade, the employee's rate of basic pay shall be fixed in accordance with the provisions of section 1141 of this chapter.

*Section 1131.4 (c) is deleted.*

*Section 1131.10 is amended to read as follows:*

1131.10 As applicable for the purpose of computing salary and rate schedules, the percentage authorized for a general pay increase, or the dollar amount if so authorized, shall be added to the representative rate of the appropriate salary or rate schedule and this new rate shall be used as the basis for the determination of the other rates contained on the schedule.

*Section 1131.11 is amended to read as follows:*

1131.11 The representative rate for District Service salary schedules comprised of grades and steps consisting of annual salaries within each grade and the Wage Service rate schedules shall be the following:

- (a) For grades 1 through 14, the fourth (4th) step of each District Service salary schedule comprised of grades and steps consisting of annual salaries within each grade; and
- (b) The fourth (4<sup>th</sup>) step of each Wage Service rate schedule.

*Section 1131.12 is amended to read as follows:*

1131.12 The representative rate for District Service salary schedules comprised of ranges shall be the midpoint for the grade or pay level of the appropriate salary schedule.

*Section 1139.5 is amended to read as follows:*

1139.5 Exempt time off granted to any individual employee in accordance with this section shall not exceed a total of eighty (80) hours in any consecutive twelve-month (12-month) period; except that, upon request from an agency, the personnel authority may authorize exempt time off, up to a maximum of one hundred twenty (120) hours, for FLSA exempt employees required to perform work in excess of eighty hours in a biweekly pay period because of emergencies or other unforeseen circumstances or situations such as but not limited to the following:

- (a) Work resulting from weather-related events such as snow, hurricanes, or other severe weather conditions;
- (b) Work resulting from publicly scheduled events in the District of Columbia requiring infrastructure support; or
- (c) Emergency situations so declared by the Mayor or designee.

*The text of section 1140 is deleted and the section is reserved:*

**1140      RESERVED**

*Section 1199, "Definitions," is amended as follows:*

**1199      DEFINITIONS**

*The definition of the term “reassignment” is amended to read as follows; and a definition for the term “representative rate” is added to read as follows:*

**Reassignment** – a change of an employee from one position to another position of the same (exact) representative rate.

**Representative rate** – as provided in section 1131.11 of this chapter, the rate used to determine the nature of a job change when the job change involves different salary or rate schedules (specifically, the representative rate is used to determine if the job change is a promotion, change to lower grade, or reassignment, by comparing the representative rates of the different salary or rate schedules involved). A representative rate is the going rate of the jobs or grades between which the employee is being changed.

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4<sup>th</sup> Street, N.W., Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.

**D.C. DEPARTMENT OF HUMAN RESOURCES  
METROPOLITAN POLICE DEPARTMENT**

**NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Department of Human Resources (DCHR), with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title XVI of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-616.51 *et seq.*) (2006 Repl.), hereby gives notice of the intent to adopt the following proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The main purpose of these rules is to amend section 1603, *Definition of Cause: General Discipline*, of Chapter 16, General Discipline and Grievances, of Title 6 of the District of Columbia Municipal Regulations (DCMR). Specifically, section 1603.3 is amended to modify the definition of the causes for which disciplinary action may be taken; and a new section 1619, *Table of Appropriate Penalties*, is being added to the chapter listing the causes in subsection 1603.3, infractions or offenses under each cause, and the penalty. The other changes to section 1603 are as follows: sections 1603.1 and 1603.2 are amended; a new section 1603.4 is added to specify that the causes in section 1603.3 shall include but not necessarily be limited to the infractions or offenses under each cause contained in section 1619 of the chapter; section 1603.4 is renumbered as 1603.5 and amended; sections 1603.5 through 1603.7 were deleted; section 1603.8 was renumbered as 1603.6 and amended; a new section 1603.7 was added to provide that, on a case-by-case basis, a personnel authority may approve penalty guidelines or requirements, other than those listed in sections 1603.3, 1603.5, and 1603.6, developed by a subordinate agency head for employees of the agency, and that the Director, DCHR, shall publish in the District Personnel Manual any such penalty guidelines or requirements he or she approves for subordinate agencies; sections 1603.9 through 1603.11 were renumbered as 1603.8 through 1603.10 and amended; and sections 1603.12 and 1603.13 were deleted. The following changes were made to other sections of the chapter: a new section 1600.1 was added to reference the statutory authority for the rules on adverse and corrective actions; section 1600.1 was renumbered as 1600.2 and amended; a new section 1600.3 was added listing the categories of employees excluded from sections 1601 through 1619 of the chapter; section 1601.1 was amended; a new section 1604.3 was added to provide that a proposing official may attempt to resolve a proposed corrective action of a suspension of less than ten (10) days by conducting a Resolution Conference with the employee. A successful Resolution Conference shall result in a written agreement between the proposing official and affected employee to a suspension less than originally contemplated or an official reprimand in lieu of the period of suspension without pay; section 1606.1 was amended, section 1606.2 was deleted; section 1606.3 was renumbered as 1606.2 and amended; new sections 1606.3 through 1606.5 were added on an agency's responsibility concerning the causes listed in sections 1603.3 (m) and 1603.3 (s), and concerning nexus, respectively; a new section 1606.5 was added to provide that an agency may rely on federal case law, arbitration decisions, or other relevant authorities in taking action for cause or demonstrating nexus; section 1606.4 was renumbered as 1606.6 and amended; section 1606.5 was deleted; section 1606.6 was renumbered as 1606.7 and amended; section 1608.9 was amended; section 1619, *Enforced Leave*, was renumbered as 1620 and amended; and section 1699 was amended to add a definition of the

terms "covered supervisor," "nexus," "temporary appointment," and "term appointment;" and amend the definition of the terms "deciding official," "enforced leave" and "grievance." Upon adoption, these rules will amend Chapter 16, General Discipline and Grievances, of Title 6 of the DCMR, published at 34 DCR 1845 (March 20, 1987), and amended at 37 DCR 8297 (December 21, 1990), 46 DCR 7208 (September 10, 1999), 47 DCR 7094 (September 1, 2000), 49 DCR 11781 (December 27, 2002), 50 DCR 3185 (April 25, 2003), and 51 DCR 7951 (August 13, 2004).

## CHAPTER 16

### GENERAL DISCIPLINE AND GRIEVANCES

*Chapter 16 of the D.C. Personnel Regulations is amended as follows:*

*Section 1600 is amended as follows:*

#### **1600 APPLICABILITY: GENERAL DISCIPLINE**

*A new section 1600.1 is added to read as follows:*

1600.1 The rules for the adverse and corrective action system specified in sections 1601 through 1619 of this chapter are established in accordance with the provisions of sections 604 and 1651 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-606.04 and 1-616.51) (2006 Repl.).

*Section 1600.1 is renumbered as 1600.2 and amended to read as follows:*

1600.2 Sections 1601 through 1619 of this chapter shall apply to each District government employee in the Career Service who has completed a probationary period.

*A new section 1600.3 is added to read as follows:*

1600.3 The following employees are excluded from coverage under sections 1601 through 1619 of this chapter:

- (a) An employee serving under a Career Service appointment (Probational);
- (b) An employee serving on a term appointment during the period in which he or she is completing the required probationary period;
- (c) An employee given a temporary appointment in the Career Service;
- (d) An employee of the Board of Trustees of the University of the District of Columbia;
- (e) An employee in the Legal Service;

- (f) An employee in the Excepted Service;
- (g) An employee in the Management Supervisory Service; and
- (h) Any 905 series attorney not in the Legal Service.

*Section 1601.1 is amended to read as follows:*

1601.1 An employee covered by section 1600.2 of this chapter may not be suspended, reduced in grade, removed, given an official reprimand, or placed on enforced leave except as provided in this chapter or in chapter 24 of these regulations.

*Section 1603 is amended as follows:*

**1603 DEFINITION OF CAUSE: GENERAL DISCIPLINE**

*Sections 1603.1 through 1603.3 are amended to read as follows:*

- 1603.1 There must be full accountability for managers and supervisors for all disciplinary actions taken under sections 1601 through 1619 of this chapter. Therefore, no corrective or adverse action may be initiated under those sections unless the action is first authorized by a manager or supervisor who the Mayor or an agency head may remove from his or her position at will.
- 1603.2 In accordance with section 1651 (1) of the CMPA (D.C. Official Code § 1-616.51 (1)) (2006 Repl.), disciplinary actions may only be taken for cause.
- 1603.3 For the purposes of this chapter, except as provided in section 1603.5 of this section, cause for disciplinary action for all employees covered under this chapter is defined as follows:
- (a) Conviction of a felony;
  - (b) Conviction of a misdemeanor based on conduct relevant to an employee's position, job duties, or job activities;
  - (c) Any knowing or negligent material misrepresentation on an employment application;
  - (d) Any knowing or negligent material misrepresentation on other document given to a government agency;
  - (e) Any on-duty or employment-related act or omission that an employee knew or should reasonably have known is a violation of law;
  - (f) Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include:
    - (1) Unauthorized absence;

- (2) Absence without official leave;
  - (3) Neglect of duty;
  - (4) Insubordination;
  - (5) Incompetence;
  - (6) Misfeasance;
  - (7) Malfeasance;
  - (8) Unreasonable failure to assist a fellow government employee in carrying out assigned duties; and
  - (9) Unreasonable failure to give assistance to the public;
- (g) Any other on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious;
- (h) Any act which constitutes a criminal offense whether or not the act results in a conviction; and
- (i) Use of illegal drugs, unauthorized use or abuse of prescription drugs, use of alcohol while on duty, or a positive drug test result.

*A new section 1603.4 is added to read as follows:*

1603.4 The causes specified in section 1603.3 of this section shall include but not necessarily be limited to the infractions or offenses under each cause contained in the Table of Appropriate Penalties in section 1619 of this chapter.

*Section 1603.4 is renumbered as 1603.5 and amended to read as follows:*

1603.5 Cause for disciplinary action under this chapter shall also mean the following for the five (5) categories of employees described in subsection 1603.5 (b)(1) through (5) below, whether on or off duty:

- (a) Any act or omission which constitutes a criminal offense, whether or not such act or omission results in a conviction; and
- (b) Any credible evidence of use of an illegal drug, unauthorized use or abuse of prescription drugs including, without limitation, the results of any drug test:
  - (1) All employees of the MPD;
  - (2) All employees of the Department of Corrections, including correctional officers;

- (3) Any commissioned special police officer employed by the District government;
- (4) Any employee of the Department of Youth Rehabilitation Services covered by the law enforcement retirement provisions of the Civil Service Retirement System or the detention officer provisions of the District government's retirement benefits program established in accordance with sections 2605 through 2614 of the CMPA (D.C. Official Code §§ 1-626.05 through 1-626.14) (2006 Repl); or
- (5) Any other District government employee authorized to carry a firearm while on duty, including employees of the Office of the Inspector General covered by this chapter.

*Sections 1603.5 through 1603.7 are deleted.*

*Section 1603.8 is renumbered as 1603.6 and amended to read as follows:*

1603.6 The authority to adopt corrective or adverse action penalty guidelines or requirements is held exclusively by the Mayor and independent personnel authorities covered under this chapter, except that with regard to the MPD, such authority is held by the Mayor and the Chief of Police.

*A new section 1603.7 is added to read as follows:*

1603.7 Notwithstanding the provisions in sections 1603.3, 1603.5, and 1603.6 of this section, the Director, D.C. Department of Human Resources (DCHR), or independent personnel authority may, on a case-by-case basis, approve the use of penalty guidelines or requirements developed by an agency head for employees of the agency covered under this chapter. The Director, DCHR, shall publish in the District Personnel Manual any such guidelines or requirements approved for a subordinate agency.

*Sections 1603.9 through 1603.11 are renumbered as 1603.8 through 1603.10, respectively, and amended to read as follows:*

1603.8 Unless otherwise required by law, in selecting the appropriate penalty to be imposed in a disciplinary action, consideration will be given to any mitigating or aggravating circumstances that have been determined to exist, to such extent and with such weight as is deemed appropriate.

1603.9 In any disciplinary action, the District government will bear the burden of proving by a preponderance of the evidence that the action may be taken or, in the case of summary action, that the disciplinary action was taken for cause, as that term is defined in this section. A criminal conviction will estop the convicted party from denying the facts underlying the conviction.

1603.10 All notices issued in connection with an adverse or corrective action under this chapter

shall conform to all requirements of the Fifth Amendment Due Process Clause of the United States Constitution.

*Sections 1603.12 and 1603.13 are deleted.*

*Section 1604 is amended as follows:*

**1604 CORRECTIVE ACTION: GENERAL DISCIPLINE**

1604.1 A corrective action shall be an official reprimand, or a suspension of less than ten (10) days.

*Section 1604.2 is amended to read as follows:*

1604.2 Except as provided in section 1604.3 of this section, a corrective action may be contested as a disciplinary grievance pursuant to section 1617 of this chapter.

*A new section 1604.3 is added to read as follows:*

- 1604.3 (a) Notwithstanding the provisions of section 1604.1 of this section or any other provision of this chapter, a proposing official may attempt to resolve a proposed corrective action of a suspension of less than ten (10) days by conducting a Resolution Conference with the employee subject to the proposed suspension and his or her union representative (unless representation is voluntarily waived by the employee), if applicable. The following conditions shall apply:
- (1) Resolution Conferences shall be limited to proposed suspensions of less than ten (10) days proposed under this chapter;
  - (2) Any Resolution Conference shall be conducted immediately after the issuance of the advance written notice;
  - (3) A successful Resolution Conference shall result in a written agreement between the proposing official and affected employee to a suspension less than originally contemplated, or an official reprimand in lieu of a period of suspension without pay;
  - (4) A lesser suspension or official reprimand penalty shall not be instituted unless the proposing official and affected employee reach mutual agreement in writing and the employee voluntarily waives his or her right to file an administrative grievance under section 1617 of this chapter or to appeal under a negotiated grievance procedure, as applicable;
  - (5) If an agreement is not reached, normal procedures to effect the suspension action originally proposed shall be followed; and
  - (6) Statements concerning an agreement resulting from a Resolution Conference shall not be used by either party as evidence or precedent in another disciplinary action, except that the outcome of a Resolution

Conference may be considered in the future for purposes of progressive discipline.

- (b) The personnel authority shall set forth procedures for Resolution Conferences under this section.

*Section 1606 is amended as follows:*

**1606 AGENCY RESPONSIBILITY: GENERAL DISCIPLINE**

*Section 1606.1 is amended to read as follows:*

1606.1 In taking disciplinary actions under this chapter, each agency head shall ensure the following:

- (a) That actions covered by this chapter are taken in accordance with the provisions herein;
- (b) That each employee covered by this chapter is afforded fair and equitable treatment, as well as the rights and protections provided herein; and
- (c) That the employee, the employee's representative, and witnesses, have freedom from restraint, coercion, interference, or reprisal by any official of the agency.

*Section 1606.2 is deleted.*

*Section 1606.3 is renumbered as 1606.2 and amended to read as follows:*

1606.2 In determining the penalty for a disciplinary action under this chapter, documentation appropriately placed in the OPF regarding prior corrective or adverse actions, other than a record of the personnel action, may be considered for not longer than three (3) years from the effective date of the action, unless sooner ordered withdrawn in accordance with section 1601.7 of this chapter.

*New sections 1606.3 through 1606.5 are added to read as follows:*

1606.3 When a disciplinary action is proposed for cause as provided in section 1603.3 (b) of this chapter, the agency shall present evidence to demonstrate that the employee engaged in the alleged conduct during duty hours or off-duty hours, when such evidence is relevant to assessing a penalty.

1606.4 In showing that an employee's conduct would affect or has affected adversely the ability of the employee or the employing agency to perform effectively, the agency must demonstrate nexus, which may include but is not limited to one (1) or more of the following:

- (a) That the agency is less able to carry out its assigned functions;

- (b) That the employee is unable or unsuitable to perform his or her assigned duties;
- (c) That other employees refuse to work with the employee who engaged in the misconduct;
- (d) That the conduct has been publicized or has gained notoriety which has a deleterious effect on the operation of the agency; or
- (e) That there is otherwise an adverse effect on the operation of the agency.

1606.5 Federal case law, arbitration decisions, or other relevant authorities may be relied upon by the agency in taking any action for cause or in demonstrating nexus.

*Section 1606.4 is renumbered as 1606.6 and amended to read as follows:*

1606.6 Except as provided by sections 1601.2 and 1601.5 of this chapter, no provision in this chapter shall be interpreted to permit a modification of the corrective action procedures and standards in this chapter by contract, memorandum of understanding, informal agreement, past practices, or agency order. Any modification of these corrective action procedures and standards shall be done explicitly by the adoption and issuance of additional regulations.

*Section 1606.5 is deleted.*

*Section 1606.6 is renumbered as 1606.7 and amended to read as follows:*

1606.7 In appropriate discipline-related cases, agency heads may utilize the counseling program for troubled employees as provided under section 2007 of the CMPA (D.C. Official Code § 1-620.07) (2006 Repl).

*Section 1608.9 is amended to read as follows:*

1608.9 An employee against whom a corrective or adverse action is proposed shall be entitled to be retained in an active duty status during the notice period, except when the employee has been placed on administrative leave as provided in sections 1608.8 or 1620.1 of this chapter.

*A new section 1619 is added to read as follows:*

**1619 TABLE OF APPROPRIATE PENALTIES: GENERAL DISCIPLINE**

1619.1 The Table of Appropriate Penalties, which begins on the next page, shall be used as specified in this chapter:

SPECIFICATIONS/GENERAL CONSIDERATIONS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<p align="center"><b>CAUSES</b></p> <p align="center"><b>SPECIFICATIONS/GENERAL CONSIDERATIONS</b></p>			
<p><b>1. Conviction of a Felony:</b>                      Conviction including a plea of <i>nolo contendere</i> of a felony at any time following submission of an employee's job application.   <u>Notes:</u> A felony is a serious crime usually punishable by a prison term of more than one (1) year. The term "<i>nolo contendere</i>" means a plea entered by the defendant in response to being charged with a crime. If a defendant pleads <i>nolo contendere</i>, he or she is neither admitting nor denying commission of the crime, but agreeing to a punishment (usually a fine or jail time) as if guilty.   <u>Proof Needed:</u> Court Order or Decision</p>	Removal	N/A	N/A
<p><b>2. Conviction of a Misdemeanor Based on Conduct Relevant to an Employee's Position, Job Duties, or Job Activities:</b>                       Includes conviction of a misdemeanor at any time following the submission of an employee's job application, when the conviction is based on conduct that would affect adversely the employee's or the agency's ability to perform effectively, or conduct that is relevant to the employee's position, job duties, or job activities.   <u>Notes:</u> A plea of guilty or a conviction following a plea of <i>nolo contendere</i> to a charge of a misdemeanor involving the specified conduct shall constitute prima facie evidence of the elements of the misdemeanor.                       A misdemeanor is a less serious crime than a felony, punishable by no more than one (1) year in jail.</p>	Removal	N/A	N/A
<p><b>3. Any Knowing or Negligent Material Misrepresentation on an Employment Application:</b>                       The willful and deliberate misrepresentation or omission of any facts in the employment application which would have precluded or cast doubt upon the selection for appointment or promotion.   <u>Note:</u> Misrepresentation or omission is related to major requirements of the position, educational background, work history, arrest record, drug use, licenses, and proof of residency.   <u>Proof Needed:</u> Corroboration that the statement is false. Example, transcripts, certification from license agencies that the person is unlicensed, arrest records, affidavits indicating person is not a resident.</p>	Removal	N/A	N/A

CAUSES SPECIFICATIONS/GENERAL CONSIDERATIONS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<b>4. Any Knowing or Negligent Material Misrepresentation on Other Document Given to a Government Agency:</b>			
<p>(a) A non-intentional false statement as a result of negligence.</p> <p>(b) An intentional false statement or omission with respect to other government documents or making a false entry on government records which call into question the credibility of the document.</p> <p><u>Note:</u> Aggravating factors to consider include whether as a result of the falsification the employee received financial gain, misused government property or jeopardized the safety of others.</p> <p><u>Examples:</u> Falsification of time and attendance records, travel vouchers or other documents related to entitlements.</p>	<p>Suspension for 5-15 days</p> <p>Suspension for 15 days</p>	<p>Suspension for 30 days to Removal</p> <p>Suspension for 30 days to Removal</p>	<p>Removal</p> <p>Removal</p>
<b>5. Any On Duty or Employment-Related Act or Omission that the Employee Knew or Should Reasonably Have Known is a Violation of Law:</b>			
<p>Engaging in activities that have criminal penalties or are in violation of federal or District of Columbia laws and statutes, such as:</p> <p>(a) Unauthorized smoking in the workplace; incidents of a sexual or ethnic nature involving unwelcoming remarks, joking, offensive comments or slurs; and acts of insubordination that are verbally abusive.</p> <p><u>Note:</u> Certain on-duty acts are more egregious than others, requiring more severe discipline.</p> <p>(b) Misuse of resources or property; unwanted sexual advances or propositions; etc.</p> <p>(c) Assault or fighting on duty; battery, violation of EEO laws; such as incidents of sexual harassment involving physical or financial threats; touching (Class Four felony or stalking); or other violations of EEO law that result in the loss of employment; misuse of funds; resources or property; unfair labor practices or illegal work stoppage; use or distribution of controlled substances, etc.</p>	<p>Suspension for 5-15 days</p> <p>Suspension of 30-days up to Removal</p> <p>Removal</p>	<p>Suspension for 10-30 days</p> <p>Removal</p> <p>N/A</p> <p>N/A</p>	<p>Removal</p> <p>Removal</p> <p>N/A</p> <p>N/A</p>

CAUSES SPECIFICATIONS/GENERAL CONSIDERATIONS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<p><b>6. Any on-Duty or Employment-Related Act or Omission that Interferes with the Efficiency and Integrity of Government Operations:</b></p> <p>(a) Unauthorized Absence: Ten (10) consecutive days or more constitutes abandonment</p> <p>(b) Absence Without Official Leave</p> <p>(c) Neglect of Duty: Failure to follow instructions or observe precautions regarding safety; failure by a supervisor to investigate a complaint; failure to carry out assigned tasks; careless or negligent work habits.</p> <p>(d) Insubordination: Includes refusal to comply with direct orders, accept an assignment or detail; and carry out assigned duties and responsibilities.</p> <p>(e) Incompetence: Includes careless work performance; serious or repeated mistakes after given appropriate counseling or training; failing to complete assignment timely.</p> <p>(f) Misfeasance: Includes careless work performance, failure to investigate a complaint, providing misleading or inaccurate information to superiors; dishonesty; unauthorized use of government resources using or authorizing the use of government resources for other than official business.</p> <p>(g) Malfeasance: Doing something illegal. This term is often used when a professional or public official commits an illegal act that interferes with the performance of his or her duties. This includes misuse, mutilation or destruction of government property; concealment, misuse, removal, mutilation, alteration of government property, public records or funds; misuse of official position for unlawful or personal gain.</p> <p><u>Example:</u> A contracting officer accepts a bribe in exchange for issuing a contract to a vendor.</p>	<p>Removal</p> <p>Reprimand to Removal</p> <p>Reprimand to Removal</p> <p>Reprimand to Suspension for up to 10 days</p> <p>Suspension for 5-15 days</p> <p>Suspension for 15 days</p> <p>Suspension for 30 days to Removal</p>	<p>N/A</p> <p>Suspension for 10-20 days</p> <p>Suspension for 15-days to Removal</p> <p>Suspension for 15-30 days</p> <p>Suspension of 20-30 days</p> <p>Suspension for 20-30 days</p> <p>Suspension for 45 days to Removal</p>	<p>N/A</p> <p>Suspension for 30 days to Removal</p> <p>Suspension for 30-days to Removal or Reduction Grade</p> <p>Reduction in Grade to Removal</p> <p>Suspension for 45 days to Removal</p> <p>Removal</p> <p>Removal</p>

CAUSES SPECIFICATIONS/GENERAL CONSIDERATIONS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<b>6. Any on-Duty or Employment-Related Act or Omission that Interferes with the Efficiency and Integrity Government Operations (Continued):</b>			
(h) Unreasonable Failure to Assist a Fellow Government Employee in Carrying Out Assigned Duties: Refusal of an employee to carry out a directive by a superior to perform a duty that is outside the normal scope of the employee's duties or responsibilities.	Reprimand to Suspension for up to 10 days	Suspension for 15-25 days	Suspension for 30 days to Removal
(i) Unreasonable Failure to Give Assistance to the Public: Includes discourteous treatment of the public; violation of department customer services standards; failure to return phone calls; failure to offer assistance when requested, etc.	Reprimand to Suspension for up to 10 days	Suspension for 15-25 days	Suspension for 30 days to Removal
<b>7. Any Other On Duty or Employment-Related Reason for Corrective or Adverse Action that is not Arbitrary or Capricious:</b>			
<p>“Catchall” phrase; may include any activities for which the investigation can sustain that is not “de minimis” (i.e., very small or trifling matters) can include:</p> <ul style="list-style-type: none"> <li>• Drunkenness on duty</li> <li>• Gambling</li> <li>• Arguing</li> <li>• Use of abusive or offensive language</li> <li>• Rude or boisterous playing</li> <li>• Sleeping on the job</li> </ul> <p>In most instances, the behavior can be placed in one of the categories outlined above.</p>	Reprimand to Suspension for up to 15 days	Suspension for 20-30 days	Removal
<b>8. Any Act which Constitutes a Criminal Offense whether or not the Act Results in a Conviction:</b>			
Conviction not needed; may act on the arrest if the arrest is related to the job.  Proof Needed: Arrest record	Suspension for 10 days to Removal	Removal	N/A

CAUSES SPECIFICATIONS/GENERAL CONSIDERATIONS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<p><b>9. Use of Illegal Drugs; Unauthorized Use or Abuse of Prescription Drugs; or Positive Drug Test Result:</b></p>			
<p>The District government has a drug-free work policy that prohibits not only the use of illegal drugs, but extends to the inappropriate use (or abuse) of prescription drugs and over-the-counter drugs.</p>	<p>Suspension for 15 days to Removal</p>	<p>Removal</p>	<p>N/A</p>

*Section 1619 is renumbered as 1620 and amended to read as follows:*

**1620 ENFORCED LEAVE**

- 1620.1 Notwithstanding any other provision of this chapter, a personnel authority may authorize placing an employee on enforced leave if:
- (a) A determination has been made that the employee utilized fraud in securing his or his or her appointment or that he or she falsified official records;
  - (b) The employee has been indicted on, arrested for, or convicted of a felony charge (including conviction following a plea of *nolo contendere*); or
  - (c) The employee has been indicted on, arrested for, or convicted of any crime (including conviction following a plea of *nolo contendere*) that bears a relationship to his or her position; except that no such relationship need be established between the crime and the employee's position in the case of uniformed members of the Metropolitan Police Department or correctional officers in the D.C. Department of Corrections.
- 1620.2 Placement of an employee on enforced leave pursuant to this section is not a corrective or adverse action.
- 1620.3 A personnel authority may propose the placing of an employee on enforced leave in accordance with this section as follows:
- (a) For actions based on any of the conditions described in section 1620.1 (a) or (c) of this section, only if the personnel authority has a good faith belief that any of the conditions described in section 1620.1 (a) or (c) of this section are met after reviewing and considering the information contained in affidavits, legal indictments, charges or complaints, arrest records, or other documents or other credible information; and
  - (b) For actions based on any of the conditions described in section 1620.1 (b) of this section, only after the personnel authority has obtained official documentation such as affidavits, legal indictments, charges or complaints, arrest records, or other documentation, to support the determination that any of the conditions described in section 1620.1 (b) of this section are met.
- 1620.4 If the personnel authority determines that the conditions described in section 1620.1 of this section are met, an employee shall initially be placed on administrative leave for a period of five (5) workdays.
- 1620.5 The first day of the administrative leave period shall be the first workday that immediately follows the day on which the employee was placed on administrative leave pursuant to section 1620.4 of this section.
- 1620.6 The proposing official shall issue a written notice to propose placement of an employee on enforced leave. The notice shall inform the employee of the following:

- (a) The reasons for the proposed enforced leave;
  - (b) The specific basis, including affidavits or other documentation, upon which the decision to propose placement of the employee on enforced leave was based and which establishes that the conditions described in section 1620.1 of this section have been met. The employee shall be provided with a copy of the notice;
  - (c) The beginning and ending dates of the five (5) workdays of administrative leave;
  - (d) The beginning date of the proposed enforced leave;
  - (e) The right to make a written or oral response, or both, to the notice, and to furnish written statements of witnesses or other documentation in support of the response, all within one (1) workday of receipt of the notice of proposal;
  - (f) The person to whom the response is to be presented;
  - (g) The right to be represented by an attorney or other representative; and
  - (h) The right to a written final decision within the five (5) workdays of administrative leave.
- 1620.7 Prior to actual delivery of the notice under section 1620.8 of this section, initial delivery of the notice proposing placement of an employee on enforced leave may be accomplished by reading the notice to the employee over the telephone.
- 1620.8 During the five-day (5-day) period of administrative leave under section 1620.4 of this section, the agency shall deliver the notice proposing placement of an employee on enforced leave to the employee personally, or by leaving a copy at the employee's home with some person of suitable age and discretion who is present.
- 1620.9 The response period provided for in section 1620.6 (e) of this section shall begin the first workday that immediately follows the day on which initial delivery of the notice is made, regardless of the method by which delivery was accomplished.
- 1620.10 If a determination is made to place the employee on enforced leave, the written final decision shall inform the employee of the following:
- (a) The placement on enforced leave as provided in section 1620.12 of this section;
  - (b) The date the enforced leave is to commence; and
  - (c) The right to grieve the action under the procedure set forth in section 1636 of this chapter, and that if the enforced leave lasts ten (10) days or more, the employee has the right to file an appeal with the Office of Employee Appeals within thirty (30) days of the final decision.

- 1620.11 The enforced leave period shall commence on the first workday that immediately follows the five (5) workdays of administrative leave, as provided in section 1620.4 of this section.
- 1620.12 During the period in which the employee is in the enforced leave status, each day of absence is to be charged against the employee in the following sequence:
- (a) Accrued annual leave, if available, until exhausted;
  - (b) Compensatory time which is authorized and recorded on time and attendance reports, if available, until exhausted; or
  - (c) Leave without pay when annual leave and compensatory time are exhausted or not available.
- 1620.13 If a determination is made not to place the employee on enforced leave, the written final decision shall so inform the employee.
- 1620.14 An employee shall remain on enforced leave until such time as disciplinary action, in accordance with this chapter and taken as a result of the event that caused the administrative action, is effected, or a determination is made that no disciplinary action will be taken.
- 1620.15 If the basis for placing an employee on enforced leave pursuant to this section does not result in disciplinary action pursuant to the provisions of this chapter, any annual leave, compensatory time, or pay lost as a result of the administrative action shall be restored retroactively.

**1621 – 1629 RESERVED**

*Section 1699, Definitions, is amended to add the definition of the terms “covered supervisor,” “nexus,” “temporary appointment,” and “term appointment;” and amend the definitions of the terms “deciding official,” “enforced leave,” and “grievance:”*

**Covered supervisor** – a Career Service employee in covered under the provisions of section 1600.2 of this chapter who occupies a supervisory position.

**Deciding official** – the individual who issues a final decision on a disciplinary action in accordance with section 1613 of this chapter, or enforced leave action, in accordance with section 1620 of this chapter.

**Enforced leave** – involuntary placement of an employee on annual leave, compensatory time authorized and recorded on the appropriate time and attendance reports, or leave without pay, as applicable, as provided in section 1620 of this chapter.

**Grievance** – any matter under the control of the District government which impairs or adversely affects the interest, concern, or welfare of employees, including but not limited to a request by an employee for relief concerning a final written decision that involuntarily placed him or her on enforced leave that lasts less than ten (10) days, as provided in section 1620.10 (c) of this chapter; or a request by an applicant for

employment for non-monetary relief in matters involving the application of the merit staffing process; or a request by a former employee for relief in a matter of concern or dissatisfaction that is subject to the control of the District government, and that is related to an employment condition, as provided in section 1636 of this chapter. This definition does not include adverse actions resulting in removals, suspension of ten (10) days or more, reductions in grade, or enforced leave actions that last ten (10) days or more; reductions in force; or classification matters, nor is it intended to restrict matters that may be subject to a negotiated grievance and arbitration procedure in a collective bargaining agreement between the District and a labor organization representing employees.

**Nexus** – a reasonable connection between the conduct of an employee and the ability of the employee to perform his or her job or the ability of the employing agency to perform effectively, determined in accordance with sections 1606.4 and 1606.5 of this chapter.

**Temporary appointment** – a Career Service appointment effected as provided in Chapter 8 of these regulations that has a specific time limitation of one (1) year or less.

**Term appointment** – a Career Service appointment effected as provided in Chapter 8 of these regulations that has a specific time limitation in excess of one (1) year, but not exceeding four (4) years, unless extended by the personnel authority

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4<sup>th</sup> Street, N.W., Suite 310S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.

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

**NOTICE OF PROPOSED RULEMAKING**

**FORMAL CASE NO. 990, IN THE MATTER OF THE DEVELOPMENT OF  
LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR  
THE DISTRICT OF COLUMBIA**

1. The Public Service Commission of the District of Columbia ("Commission"), pursuant to its authority under District of Columbia Official Code § 34-401,<sup>1</sup> hereby gives notice of its intent to adopt the following amendments to Chapter 27 of Title 15 of the District of Columbia Municipal Regulations ("DCMR") in not less than thirty (30) days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. Chapter 27, which is entitled "Regulation of Telecommunications Service Providers," contains the Commission's rules and service quality standards for telecommunications service providers in the District of Columbia. The following proposed amendments to Chapter 27 will establish the Commission's reporting requirements for service outages and incidents resulting in personal injury requiring hospitalization and/or death for Verizon Washington, DC, Inc. in accordance with the "Omnibus Utility Amendment Act of 2004."<sup>2</sup>

**2740 REPORTING REQUIREMENTS FOR SERVICE OUTAGES AND  
INCIDENTS RESULTING IN PERSONAL INJURY**

2740.1 The provisions of this section shall apply to Verizon Washington, DC, Inc. ("Verizon DC"), the incumbent local exchange carrier.

2740.2 Verizon DC shall report to the Commission and to the Office of the People's Counsel certain telecommunications service outages as well as incidents that result in the loss of human life or personal injury requiring hospitalization directly or indirectly arising from or connected with its maintenance or operation of the telecommunications network within the District of Columbia.

2740.3 For outages in the District of Columbia, Verizon DC shall submit the same reports in the same timeframe as required by the regulations established by the Federal Communications Commission for reporting outages (47 C.F.R.

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<sup>1</sup> D.C. Official Code § 34-401 (2006 Supp.).

<sup>2</sup> D.C. Official Code § 34-401 (2006 Supp.).

§ 4.1 *et seq.*) to the Commission and to the Office of the People's Counsel. The Commission may request the submission of additional information, if necessary.

2740.4 Verizon DC shall report by telephone and email all incidents that result in the loss of human life and/or personal injury requiring hospitalization, directly or indirectly arising from or connected with Verizon DC's maintenance or operation, to the Commission and the Office of the People's Counsel within two hours upon receiving notice of the incident.

2740.5 At a minimum, each telephone and email report concerning the loss of human life and/or personal injury requiring hospitalization shall state clearly the following information:

- (a) The location of the incident(s);
- (b) The date and time of the incident(s);
- (c) The total number of persons affected;
- (d) A brief description of the incident; and
- (e) Identification of a contact person and contact information.

2740.6 Preliminary written reports concerning all incidents that result in the loss of human life and/or personal injury requiring hospitalization, directly or indirectly arising from or connected with Verizon DC's maintenance or operation, shall be submitted to the Commission and the Office of the People's Counsel within five (5) days of the event occurrence.

2740.7 At a minimum, each preliminary written report concerning the loss of human life and/or personal injury shall state clearly the following information:

- (a) A description of the incident(s) and information as to the cause of the event(s);
- (b) The location of the incident(s);
- (c) The exact date and time of the incident(s) occurrence;
- (d) The total number of persons affected; and
- (e) Any other known information about the incident not provided in the original notification.

2740.8 A final written report shall be submitted to the Commission and to the Office of the People's Counsel within thirty (30) days after the completion of any internal or governmental investigation of the incident. If there is no investigation, the report shall be submitted thirty (30) days after the incident. The report shall include:

- (a) Any new or amended information not provided in the previous reports; and
- (b) The steps Verizon DC will undertake to prevent such an occurrence in the future.

3. All persons interested in commenting on the subject matter of this proposed rulemaking action may submit written comments and reply comments not later than thirty (30) and forty-five (45) days, respectively, after publication of this notice in the *D.C. Register* with Dorothy M. Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, DC 20005. Copies of these proposed rules may be obtained, at cost, by writing the Commission Secretary at the above address.