

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupation Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02 (14)), and Mayor's Order 98-140, dated August 20, 1998, gives notice of the intent to adopt the following amendments to chapter 55 of Title 17 of the District of Columbia Municipal Regulations (DCMR). The purpose of the amendments is to clarify the requirements for licensure in the District of Columbia; require proof of competency in English for applicants educated in foreign countries; add regulations for licensure by endorsement; add a continuing education requirement to applications for licensure renewal; clarify the scope, duration, and requirements for the supervised practice of students, graduates, and applicants for licensure by endorsement; clarify the scope of practice for practical nurses in the District; add an assignment of nursing interventions section; add a standards of conduct section, add a provision permitting licensure by re-entry program for health professionals whose licenses have been expired more than five (5) years, and who are not currently licensed in another jurisdiction; and to further ensure the protection and safety of the District's citizens by bringing the regulations in line with the current practices and trends in practical nursing.

Proposed Rulemaking was published on June 4, 2004, at 51 DCR 5774. Two comments were received in connection with this notice recommending changes to § 5514.4(d), which prohibits licensed practical nurses from administering certain intravenous medications. Additionally written and oral comments were received from the Health Regulation Administration requesting clarification of the definitions of "supervisor" and "general supervision" and recommending that applicants for licensure by endorsement be permitted to engage in supervised practice in correctional facilities, dialysis centers, and nursing staffing agencies. Changes were made to §§ 5514.4(d), 5514.5 and 5599.1 of the regulations in response to some of the public comments received.

The Board of Nursing made additional revisions to the rulemaking at §§ 5504.4, 5504.6, 5506.4 5508.3, 5510.3, 5512.2, 5512.4, 5515 and 5599.1 to clarify that the time limitation proscribed to when an applicant has taken and passed the NCLEX examination will be measured by the date the applicant became eligible to apply to take the examination, to eliminate the requirement that an applicant must complete an additional educational program if the applicant has not taken or passed the NCLEX three (3) or more years after the date the applicant became eligible to apply to sit for the exam, to clarify that an applicant whose license has been expired for more than (5) years may apply for licensure by re-entry program, to clarify that the Board will maintain a list of approved continuing education program sponsors, to clarify that a graduate nurse cannot practice under the supervised practice provision if the graduate nurse has failed the NCLEX exam, and to change the term Trained Unlicensed Personnel to Unlicensed Assistive Personnel and to clarify the guidelines for the delegation of health care procedures by licensed practical nurses to unlicensed assistive personnel and clarify the guidelines of practical nursing interventions. The revisions were finally published on October 20, 2006 at 53 DCR 8494. No substantive comments were received or changes made. This rulemaking will become effective upon publication of this notice

in the D.C. Register.

Chapter 55 (PRACTICAL NURSING) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended in its entirety to read as follows:

CHAPTER 55 PRACTICAL NURSING

5500 GENERAL

5500.1 This chapter shall apply to applicants for and holders of a license to practice practical nursing.

5500.2 Chapters 40 (General Rules) and 41 (Administrative Procedures) of this title shall supplement this chapter.

5501 TERM OF LICENSE

5501.1 Subject to § 5501.2, a license issued pursuant to this chapter shall expire at 12:00 midnight of June 30 of each odd-numbered year.

5501.2 If the Director changes the renewal system pursuant to § 4006.3 of chapter 40 of this title, a license issued pursuant to this chapter shall expire at 12:00 midnight of the last day of the month of the birth date of the holder of the license, or other date established by the Director.

5502 EDUCATIONAL REQUIREMENTS

5502.1 Except as otherwise provided in this chapter, an applicant for a license shall furnish proof satisfactory to the Board in accordance with § 504(m) of the Act, D.C. Official Code § 3-1205.04(m), of the following:

- (a) That the applicant has successfully completed an educational program leading to licensure as a practical nurse which was approved by the Board or by a nursing board in the United States or U.S. territory with standards determined by the Board to be substantially equivalent to the standards in the District; or
- (b) That the applicant is a member of or has been honorably discharged from the United States Army with the rating of clinical specialist after completing the MOS 91C practical nursing program.

5503 EDUCATIONAL REQUIREMENTS FOR APPLICANTS EDUCATED IN FOREIGN COUNTRIES

5503.1 An applicant who completed an educational program in a foreign country, which program was not approved in accordance with § 5502.1, shall furnish proof satisfactory to the Board in accordance with § 504(m) of the Act, D.C. Official

Code § 3-1205.04(m) of the following:

- (a) That the applicant's education and training are substantially equivalent to the requirements of this chapter and the Act;
- (b) That the applicant successfully completed the Commission on Graduates of Foreign Nursing Schools (CGFNS) examination by submitting a certificate from CGFNS; and
- (c) That the applicant has spoken and written competency in English by documenting one of the following:
 - (1) Graduation from a nursing program where English was the only language of instruction throughout the applicant's inclusive dates of attendance;
 - (2) Successful completion of the Test of Spoken English (TSE) examination with a passing score of fifty (50);
 - (3) Successful completion of the International English Language Testing System (IELTS) examination with a passing score of six (6.0) overall with a spoken band score of seven (7.0); or
 - (4) Provide proof that the applicant has completed a total of twelve (12) months of full-time employment in the United States during the two (2) years immediately preceding the date of application.

5503.2 If a document required by this chapter is in a language other than English, an applicant shall arrange for its translation into English by a translation service acceptable to the Board and shall submit the translation signed by the translator attesting to its accuracy.

5504 LICENSURE BY EXAMINATION

5504.1 To qualify for a license by examination, an applicant shall:

- (a) Receive a passing score on the National Council Licensure Examination for Practical Nurses (NCLEX-PN) developed by the National Council of State Boards of Nursing, Inc. (NCSBN). The passing score on the NCLEX-RN shall be the passing score established by the NCSBN;
- (b) Meet the educational requirements of this chapter; and
- (c) Meet any other requirements as set forth by the Board.

5504.2 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 submit with the application a sworn affidavit, under penalty of perjury, stating that he or she does not have a social security number; and
 - (2) Two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2") which clearly exposes the area from the top of the forehead to the bottom of the chin.
- (b) Arrange for a certified transcript of the applicant's academic record and a letter of recommendation from the nurse administrator of the school or college to be sent directly from the educational institution to the Board;
- (c) Sit for the NCLEX-PN examination not later than ninety (90) days following submission of the application. The Board may, in its discretion, grant an extension of the time requirement if the applicant's failure to sit for the examination was for good cause. As used in this section "good cause" includes the following:
 - (1) Serious and protracted illness of the applicant; or
 - (2) The death or serious and protracted illness of a member of the applicant's immediate family.
- (d) Submit any other required documents; and
- (e) Pay all required fees.

5504.3 An application that remains incomplete for ninety (90) days or more from the date of submission 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.

5504.4 If an applicant has not yet taken or passed the NCLEX-PN examination three (3) months after the date the applicant became eligible to apply to sit for the exam, the applicant shall complete a review course approved by the Board and provide proof of having completed the course in order to be eligible to sit for the next available NCLEX-PN examination. For purposes of this section:

- (a) Graduates of an educational program in practical nursing approved in accordance with § 5502.1 are eligible to apply to sit for the exam upon graduation.

- (b) Graduates of an educational program in practical nursing in a foreign country not approved in accordance with § 5502.1 are eligible to apply to sit for the exam upon completion of the requirements set forth in § 5503.1.

5504.5 If an applicant has not yet taken or passed the NCLEX-RN examination more than one (1) year after the date the applicant becomes eligible to apply to sit for examination, the applicant shall submit a plan of study for approval by the Board in order to be approved to sit for the NCLEX-RN examination.

5505 LICENSURE BY ENDORSEMENT

5505.1 An applicant is eligible for licensure by endorsement if the applicant is currently licensed as a practical nurse under the laws of a state or territory of the United States; and if the applicant's original licensure in a state or territory was based upon:

- (a) A score of three hundred and fifty (350) on each part of the State Board Test Pool Examination for practical nurses taken before September 1982; or
- (b) A passing score on the NCLEX-PN.

5505.2 To apply for a license by endorsement, 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 submit a sworn affidavit, under penalty of perjury, with the application stating that he or she does not have a social security number; and
 - (2) Two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2") which clearly exposes the area from the top of the forehead to the bottom of the chin.
- (b) Submit a copy of his or her current license with the application;
- (c) Obtain licensure verification from the original state or territory of licensure that the license is current and in good standing:
 - (1) If the license from the original state or territory is not current, an applicant shall obtain verification from a state or territory that the applicant holds a current license in good standing; and
 - (2) The licensure verification form must be sent directly to the Board, by the verifying Board.

- (d) Meet any other requirements as set forth by the Board; and
- (e) Pay all required fees.

5505.3 If the applicant completed an educational program for practical nursing in a foreign country, which program was not approved in accordance with the requirements set forth in § 5502.1, the applicant shall also demonstrate spoken and written competency in English by providing documentation of one of the following:

- (a) Graduation from a nursing program where English was the only language of instruction throughout the applicant's inclusive dates of attendance;
- (b) Successful completion of the Test of Spoken English (TSE) examination;
- (c) Successful completion of the International English Language Testing System (IELTS) examination with a passing score of six (6.0) overall with a spoken band score of seven (7.0); or
- (d) Provide proof that the applicant has completed a total of twelve (12) months of full-time employment at a health care facility in a state or territory of the United States during the two (2) years immediately preceding the date of application.

5505.4 An application that remains incomplete for ninety (90) days or more from the date of submission shall be considered abandoned, and closed by the Board. The applicant shall thereafter be required to reapply, submit the required documents and completed forms, and pay the required fees.

5505.5 Nothing in this section shall be construed to prohibit the Board from utilizing other authorized databases to verify an applicant's current licensure standing in other jurisdictions of the U.S or to review disciplinary records.

5506 LICENSURE BY RE-ENTRY PROGRAM

5506.1 A health professional who fails to apply for reinstatement of a District of Columbia practical nursing license within five (5) years after the license expires, and who is not currently licensed to practice practical nursing under the laws of a state or territory of the United States, may apply for licensure to practice practical nursing in the District of Columbia under licensure by re-entry program.

5506.2 To apply for licensure by re-entry program, 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; and

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

(b) Submit proof of completion of a re-entry program approved by the Board;

(c) Submit any other required documents; and

(d) Pay all required fees.

5506.3 An application that remains incomplete for ninety (90) days or more from the date of submission 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.

5506.4 Board shall periodically conduct a random audit of its active licensees to determine compliance. The nurses selected for the audit shall provide a completed Continuing Education Compliance Audit Form and all supporting documentation to the Board within ten (10) days of receiving notification of the audit.

5507 REACTIVATION OF AN INACTIVE LICENSE

5507.1 A licensee in an inactive status, pursuant to § 511 of the Act, D.C. Official Code § 3-1205.11, may apply for reactivation of the license by submitting a completed application on the forms required by the Board and paying the required fees.

5507.2 A licensee in inactive status, pursuant to § 511 of the Act, D.C. Official Code § 3-1205.11, for twelve (12) months or more, who submits an application to reactivate a license shall:

(a) Submit proof as set forth in § 5508.7 of having completed nine (9) hours of continuing education in the licensee's current area of practice for each year, or any portion thereof, the license was in inactive status up to a maximum of eighteen (18) hours of continuing education. Only continuing education taken in the two (2) years immediately preceding the application date will be accepted; or

(b) Submit proof of a current license in good standing to practice practical nursing from a state or territory of licensure in the United States. Verification of good standing must be sent directly to the Board by the verifying Board.

5507.3 A licensee in an inactive status, pursuant to § 511 of the Act, D.C. Official Code § 3-1205.11, for two (2) years or more, who submits an application to reactivate a license shall:

- (a) Submit proof as set forth in § 5508.7 of having completed nine (9) hours of continuing education in the licensee's current area of practice for each year, or any portion thereof, the license was in inactive status up to a maximum of eighteen (18) hours of continuing education. Only continuing education taken in the two (2) years immediately preceding the application date will be accepted;
- (b) Submit proof of completion of a re-entry program approved by the Board; or
- (c) Submit proof of a current license in good standing to practice practical nursing from a state or territory of licensure in the United States. Verification of good standing must be sent directly to the Board by the verifying Board.

5508 REINSTATEMENT OF AN EXPIRED LICENSE

5508.1 An applicant for reinstatement of a license shall:

- (a) Submit proof as set forth in § 5510 of having completed eighteen (18) hours of continuing education in the applicant's current area of practice in the two years immediately preceding the application date; and
- (b) Meet any other requirements that the Board may set forth to determine whether the license should be reinstated.

5508.2 An applicant for reinstatement of a license shall submit the required documents and completed forms required by the Board and pay the required fees.

5508.3 The Board shall not reinstate the license of an applicant who fails to apply for reinstatement of the license within five (5) years after the license expires. The applicant may become licensed by applying for and meeting the requirement for obtaining an initial license which shall include licensure by the re-entry program.

5509 RENEWAL OF A LICENSE

5509.1 A licensee shall renew his or her license by submitting a completed application on the forms required by the Board and paying the required fees prior to the expiration of the license.

5509.2 The Board's staff shall mail out applications for renewal at least sixty (60) days prior to the date the license expires.

5509.3 A licensee shall have the burden of notifying the Board if a renewal notice is not received.

5509.4 A licensee shall notify the Board in writing of a change of home or business address within thirty (30) days after the change.

- 5509.5 A licensee applying for renewal shall submit proof of completion of eighteen (18) contact hours of continuing education in the licensee's current area of practice commencing with the renewal period of 2007. Only continuing education hours obtained in the two (2) years immediately preceding the application date will be accepted.
- 5509.6 A licensee applying for renewal of a license who fails to submit proof of having completed the continuing education requirements by the date the license expires may renew the license within sixty (60) days after the date of expiration by submitting proof pursuant to § 5510 and by paying the required late fees.
- 5509.7 Upon submitting proof and paying the required late fees, the licensee shall be deemed to have possessed a valid license during the period between the expiration of the license and the submission of the required documents and fees.
- 5509.8 If a licensee applying for renewal of a license fails to submit proof of completion of the continuing education requirements, or pay the late fee within sixty (60) days after the expiration of the applicant's license, the license shall be considered to have lapsed on the date of expiration and the health care professional shall thereafter be required to apply for reinstatement of an expired license and meet all requirements and fees for reinstatement.
- 5509.9 The Board may, in its discretion, grant an extension of the sixty (60) day period to renew the license after expiration, if the licensee's failure to submit proof of completion of the continuing education or pay the late fee was for good cause. As used in this section "good cause" includes the following:
- (a) Serious and protracted illness of the licensee; and
 - (b) The death or serious and protracted illness of a member of the licensee's immediate family.
- 5509.10 The Board may, in its discretion, waive continuing education requirements for a licensee who submits proof of:
- (a) Serving as a speaker at an approved continuing education program. The presentation shall have been completed during the period for which credit is claimed; or
 - (b) Being the author or editor of a published periodical, if the periodical has been published or accepted for publication during the period for which credit is claimed.
- 5509.11 If a licensee has previously received credit in connection with a particular presentation, the Board shall not grant credit for a subsequent presentation unless

the presentation involved either a different subject or substantial additional research concerning the same subject.

5510 CONTINUING EDUCATION

- 5510.1 The Board, in its discretion, may approve continuing education programs and activities that contribute to the growth of an applicant in professional and competence in the practice of practical nursing and which meet the other requirements of this section.
- 5510.2 Continuing education credit may be granted only for programs or activities approved by the Board.
- 5510.3 The Board shall maintain a list of approved continuing education program sponsors which shall be available to the public during regular business hours.
- 5510.4 A licensee shall have the burden of verifying whether a program is approved by the Board pursuant to this section prior to enrolling in a program.
- 5510.5 At the request of a licensee, or the sponsor of a continuing education program, the Board may approve the following types of continuing education programs if the programs meet the requirements of this section:
- (a) An undergraduate course or graduate course given at an accredited college or university;
 - (b) A conference, course, seminar, or workshop;
 - (c) An educational course offered through the Internet; or
 - (d) Other programs approved by the Board which meet the requirements of this section.
- 5510.6 To qualify for approval by the Board, a continuing education program shall meet the following requirements:
- (a) Be current in its subject matter;
 - (b) Be developed and taught by qualified individuals; and
 - (c) Meet one of the following requirements:
 - (1) Be administered and approved by a registered nurse, nursing organization, or health services organization that is recognized by the Board; or
 - (2) Be administered and approved by a health care facility, institution, or

organization, or a college, school or university that is accredited by the Secretary of the United States Department of Education or the Council on Post Secondary Education or the American Nurses Credentialing Council (ANCC).

5510.7 A licensee shall submit the following information with respect to each program for which continuing education is claimed, on a form required by the Board:

- (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 name(s) of the instructor(s);
- (c) The date(s) on which the applicant attended the program;
- (d) The hours of credit claimed; and
- (e) Attach a verification form signed and stamped by the program sponsor.

5510.8 The Board shall grant continuing education credit for whole hours only, with a minimum of fifty (50) minutes constituting one (1) credit hour.

5510.9 For approved undergraduate or graduate courses, each semester hour of credit shall constitute fifteen (15) hours of continuing education credit, and each quarter hour of credit shall constitute ten (10) hours of continuing education credit.

5511 SUPERVISED PRACTICE OF STUDENTS

5511.1 A student may practice practical nursing only in accordance with the Act and this chapter.

5511.2 A student who is fulfilling educational requirements under § 103(c) of the Act, D.C. Official Code § 3-1201.3, shall be authorized to engage in the supervised practice of practical nursing without a District of Columbia license.

5511.3 Only a registered nurse licensed under the Act, who is an appointed faculty member of the accredited school, college, or university, or a preceptor meeting the qualifications set forth in chapter 56 of this title, shall be authorized to supervise the practice of practical nursing by a student.

5511.4 A student who practices pursuant to this section shall only practice at a hospital, long-term care facility, a health facility operated by the District or federal government, a health education center, or other health care facility considered appropriate by the school, college, or university.

5511.5 All supervised practice of a student shall take place under general or immediate

supervision of a registered nurse.

- 5511.6 A person who has been denied a license, disciplined, convicted of an offense that bears directly upon his or her fitness to be licensed, or who has such an action pending in the District of Columbia or other jurisdiction shall not practice pursuant to this section unless first authorized by the Board in writing.
- 5511.7 A student practicing under this section shall not assume administrative or technical responsibility for the operation of a nursing program, unit, service, or institution.
- 5511.8 A student shall identify himself or herself as such before practicing as a practical nurse. A student shall wear a picture identification badge with lettering clearly visible to the client bearing the name of the student and the position title.
- 5511.9 A student shall not receive compensation of any nature, directly or indirectly, from a client or client's family member.
- 5511.10 The appointed supervising faculty member shall be fully responsible for all practice by a student during the period of supervision and may be subject to disciplinary action for violations of the Act or this chapter by the student.
- 5511.11 The Board may deny an application for licensure by, or take other disciplinary action against, a student who is found to have violated the Act or this chapter. The Board may, in addition to any other disciplinary actions permitted by the Act, revoke, suspend, or restrict the privilege of the student to practice.

5512 SUPERVISED PRACTICE OF GRADUATE NURSES

- 5512.1 A graduate nurse may practice practical nursing only in accordance with the Act and this chapter.
- 5512.2 An individual may be authorized to engage in the supervised practice of practical nursing, as a graduate nurse, without a District of Columbia license if the individual:
- (a) Graduated from a nursing program pursuant to § 5502.1, or has met the requirements set forth in § 5503;
 - (b) Has not failed the NCLEX-PN examination; and
 - (c) Has an initial application pending for licensure by examination in the District of Columbia.
- 5512.3 A person who has been denied a license, disciplined, convicted of an offense that bears directly upon his or her fitness to be licensed, or who has such an action pending in the District of Columbia or another jurisdiction shall not practice

pursuant to this section unless first authorized by the Board in writing.

- 5512.4 Within five (5) business days after the application for licensure by exam has been received by the Board's staff, the Board's staff shall, at the request of the applicant, issue a supervised practice letter to the applicant to document that his or her application is pending and that he or she is authorized to practice under the Act and this chapter. The practice letter is not renewable and shall expire:
- (a) Ninety (90) days from the date of issuance;
 - (b) Upon notification that the applicant has failed the NCLEX examination;
 - (c) Upon receipt of written notice from the Board that the application for licensure has been denied, whichever date is the earliest.
- 5512.5 Upon receipt of the practice letter, the graduate nurse shall inform employers of the date of expiration of the letter and shall immediately cease professional nursing practice on that date or upon receipt of written notice from the Board that the application for licensure has been denied, whichever date is the earliest. The graduate nurse thereafter may practice in a non-professional healthcare occupation, until receipt of a license or issuance of a license number.
- 5512.6 Only a registered nurse licensed under the Act, who is a supervisor, shall be authorized to supervise the practice of practical nursing by a graduate nurse.
- 5512.7 All supervised practice of a graduate nurse shall take place under general or immediate supervision.
- 5512.8 A graduate nurse who practices pursuant to this section shall only practice at a hospital, long-term care facility, a health facility operated by the District or federal government, or other health care facility considered appropriate and approved by the Board.
- 5512.9 A graduate nurse shall not be eligible to practice practical nursing in any of the following settings;
- (a) Correctional Facility;
 - (c) Dialysis Center;
 - (c) Home Health Agency;
 - (d) Community Residential Facility;
 - (e) Nursing Staffing Agency;

- (f) Medical Group Practice;
- (g) School, (as a school nurse); and
- (h) Any other setting that does not meet the requirements of § 5512.8.

- 5512.10 A graduate nurse practicing under this section shall not assume administrative or technical responsibility for the operation of a nursing program, unit, service, or institution.
- 5512.11 A graduate nurse shall identify himself or herself as such before engaging in the supervised practice of practical nursing. A student shall wear a picture identification badge with lettering clearly visible to the client bearing the name of the student and the position title.
- 5512.12 A graduate nurse shall not receive compensation of any nature, directly or indirectly, from a client or client's family member, except for a salary based on hours worked under supervision.
- 5512.13 The supervisor shall be fully responsible for the practice by a graduate nurse during the period of supervision and may be subject to disciplinary action for violations of the Act or this chapter by the graduate nurse.
- 5512.14 The Board may deny an application for licensure by, or take other disciplinary action against, a graduate nurse who is found to have violated the Act or this chapter. The Board may, in addition to any other disciplinary actions permitted by the Act, revoke, suspend, or restrict the privilege of the graduate nurse to practice.

5513 SUPERVISED PRACTICE OF APPLICANTS FOR LICENSURE BY ENDORSEMENT

- 5513.1 An applicant may practice practical nursing only in accordance with the Act and this chapter.
- 5513.2 An applicant for licensure by endorsement shall be authorized to engage in the supervised practice of practical nursing in the District of Columbia without a District of Columbia license if the applicant:
- (a) Is currently licensed, in good standing, as a practical nurse under the laws of a state or territory of the United States;
 - (b) Is a graduate of a program approved in accordance with § 5502.1, or can demonstrate competency in English pursuant to § 5505.3; and
 - (c) Has an initial application pending for licensure by endorsement in the District of Columbia.

- 5513.3 A person who has been denied a license, disciplined, convicted of an offense that bears directly upon his or her fitness to be licensed, or who has such an action pending in the District of Columbia or another jurisdiction shall not practice pursuant to this section unless first authorized by the Board in writing.
- 5513.4 Within five (5) business days after the application for licensure by endorsement has been received by the Board's staff, the Board's staff shall issue a practice letter to the applicant to document that his or her application is pending and that he or she is eligible to practice under the Act and this chapter. The practice letter is not renewable and shall expire:
- (a) Ninety (90) days from the date of issuance; or
 - (b) Upon receipt of written notice from the Board that the application for licensure has been denied, whichever date is the earliest.
- 5513.5 Upon receipt of the practice letter, the applicant shall inform employers of the date of expiration of the letter and shall immediately cease professional nursing practice in the District on that date or upon receipt of written notice from the Board that the application for licensure has been denied, whichever date is the earliest. The applicant thereafter may practice in a non-professional healthcare occupation, until receipt of a District of Columbia license to practice practical nursing.
- 5513.6 Only a registered nurse licensed under the Act, who is a supervisor, may be authorized to supervise the practice of practical nursing by an applicant.
- 5513.7 All supervised practice of an applicant shall take place under general or immediate supervision.
- 5513.8 An applicant shall not receive compensation of any nature, directly or indirectly, from a client or client's family member, except for a salary based on hours worked under supervision.
- 5513.9 The supervisor shall be fully responsible for the practice by an applicant during the period of supervision and may be subject to disciplinary action for violations of the Act or this chapter by the applicant.
- 5513.10 The Board may deny an application for licensure by, or take other disciplinary action against, an applicant who is found to have violated the Act or this chapter. The Board may, in addition to any other disciplinary actions permitted by the Act, revoke, suspend, or restrict the privilege of the applicant to practice.

5514 SCOPE OF PRACTICE

- 5514.1 The practice of practical nursing means the following:

- (a) The performance of actions of preventive health care, health maintenance, and the care of persons who are ill, injured, or experiencing alterations in health processes at the direction of the delegating or supervisory registered nurse; and
- (b) The basic knowledge, judgment, and skills in nursing procedures gained through successful completion of an approved educational program in practical nursing.

5514.2

A practical nurse shall accept only those assigned nursing activities and responsibilities as set forth in the Act and this chapter, which the practical nurse can safely perform. That acceptance shall be based on the following requirements in each practice setting which shall include:

- (a) The qualifications of the practical nurse in relation to the client's needs and the integrated plan of care, including:
 - (1) Basic education and preparation of the practical nurse; and
 - (2) Knowledge and skills subsequently acquired through continuing education and practice.
- (b) The degree of supervision by a registered nurse;
- (c) The stability of each of the clients' condition;
- (d) The complexity and frequency of nursing intervention to address the needs of the client or client group;
- (e) The accessible resources within the agency or facility; and
- (f) The established policies, procedures, standards of practice, and communication channels, which lend support to the model of nursing services offered by the agency or facility.

5514.3

The practice of practical nursing shall include the following:

- (a) Participating in the performance of the ongoing comprehensive nursing assessment process of the client's biological, physiological, and behavioral health, including the client's reaction to an illness, injury, and treatment regimens by collecting data and performing focused nursing assessments;
- (b) Recording and reporting the findings and results of the ongoing nursing assessment process;
- (c) Participating in the development and modification of the client-centered plan of care;

- (d) The administration of medication and treatment as prescribed by a legally authorized health care professional, licensed in the District of Columbia, and that is within the scope of practice of a practical nurse;
- (e) Implementing appropriate aspects of the integrated plan of care in which the practical nurse is knowledgeable, skilled, and competent to perform and that is within the scope of practice of the practical nurse;
- (f) Participating in the nursing care management through assigning and directing nursing interventions that may be performed by unlicensed, trained personnel;
- (g) Participating in the evaluation of the client response and outcome to interventions;
- (h) Promoting and maintaining a safe and therapeutic environment;
- (i) Participating in health teaching and counseling to promote, attain, and maintain the optimum health level of the client;
- (j) Communicating and collaborating with other health care team members and other professionals;
- (k) Monitoring intravenous infusion;
- (l) Inserting nasogastric tubes; and
- (m) Other acts or services which are beyond the basic education of a practical nurse as approved by the Board. The acts or services shall be commensurate with the practical nurse's experience, continuing education, and demonstrated competencies.

5514.4 A practical nurse shall not:

- (a) Function as a director of nursing or as an administrator of nursing;
- (b) Supervise the clinical practice of a registered nurse;
- (c) Administer the following medications:
 - (1) Investigational or toxins;
 - (2) Antineoplastic agents;
 - (3) Anesthesia or conscious sedation;

- (4) Hypnotics;
- (5) Oxytocics; or
- (6) Medications by way of intrathecal or epidural route;

5514.5 A practical nurse may administer medications intravenously if the following conditions are met:

- (a) The Administrator for Nursing Services has developed policies, procedures, and practice standards governing the practice of medication administration by practical nurses and established specific criteria for use when approving medications for intravenous administration by practical nurses;
- (b) The practical nurse has successfully completed an educational program for intravenous medication administration;
- (c) The practical nurse has been evaluated and validated for clinical competency in intravenous medication administration; and
- (d) The practical nurse administers the approved medications under the general supervision of a licensed, registered nurse.

5514.6 A practical nurse shall not:

- (a) Administer any medications prohibited under § 5514.4(d); or
- (b) Perform intravenous therapy or administer any intravenous medications in home care settings or community based residential care settings.

5514.7 A practical nurse shall only administer medications which have been approved by the Administrator for Nursing Services.

5514.8 A practical nurse may perform infusion therapy upon successfully completing an approved program of infusion therapy approved by the Board and if the following requirements are met:

- (a) The Administrator of Nursing Services has developed policies, procedures and practice standards which govern the practice of infusion therapy;
- (b) The supervisor maintains documentation to validate the competency of the practical nurse; and
- (b) A registered nurse is present in the facility or on the unit when the practical nurse is performing infusion therapy.

- 5514.9 A practical nurse may perform the following infusion therapy acts:
- (a) Insertion of a peripheral intravenous catheter that is no more than three (3) inches in length;
 - (b) Discontinuing peripheral intravenous catheters that are no more than three (3) inches in length;
 - (c) Initiation of prescribed intravenous fluids;
 - (d) Calculating and adjusting intravenous flow rate, including infusion pumps;
 - (e) Adding intravenous fluids to an established peripheral line. Fluids must be non-medicated, commercially prepared or prepared by a licensed pharmacist. Accepted fluids are limited to those fluids that are generally used as maintenance, and isotonic in nature;
 - (f) Administering pharmacy prepared medications;
 - (g) Insertion of heparin locks, including flushing with normal saline or heparin 100 units;
 - (h) Venipuncture or withdrawal of a blood specimen from a peripheral catheter site; and
 - (i) Changing of injection cap or intravenous tubing for peripheral lines only.
- 5514.10 A practical nurse shall wear a picture identification badge with lettering clearly visible to a client bearing the name of the practical nurse and the title "Licensed Practical Nurse" or "L.P.N.".
- 5515 DELEGATION OF PRACTICAL NURSING INTERVENTIONS**
- 5515.1 Nothing in this section shall be applicable to, restrict, or limit the gratuitous provision of care by self, family, or friends.
- 5515.2 Practical nurses may delegate nursing interventions to be performed by unlicensed assistive personnel. Such delegation shall be in a manner that does not conflict with the Act, this chapter, or with other District and federal laws and regulations which affect the practice of nursing in the District of Columbia.
- 5515.3 Nothing in this chapter shall be construed as permitting or authorizing an unlicensed person to perform duties beyond the scope permitted, or which are prohibited, by any other District or federal laws or regulations.
- 5515.4 A practical nurse may assume the responsibilities of delegating, assigning, directing,

and evaluating nursing interventions to be performed by other practical nurses and unlicensed assistive personnel, after the supervisory registered nurse has met the following requirements:

- (a) Developed a plan of nursing strategies to be integrated within the client-centered plan of care that identifies the needs of the client, nursing diagnoses, and prescribed nursing interventions; and
- (b) Implemented a client-centered plan of care, including an identification of those interventions and activities that the practical nurse has the necessary skills and competence to accomplish safely.

5515.5 The Administrator for Nursing Services, or supervisor, shall be responsible for establishing policies and procedures for nursing practice. The policies and procedures shall include a mechanism for:

- (a) Identifying those individuals, by position title and job description, to whom nursing interventions may be delegated based on education, training, and competency measurements; and
- (b) Assisting the delegating practical nurse in verifying the competency of the unlicensed assistive personnel prior to assigning nursing interventions.

5515.6 If the delegating practical nurse determines that the unlicensed assistive personnel cannot safely perform the nursing intervention, the practical nurse shall not delegate the nursing intervention.

5515.7 The delegating practical nurse shall assign and delegate in a manner that protects the health, safety, and welfare of the client and others. The nursing tasks delegated shall:

- (a) Be within the area of responsibility of the nurse delegating the act;
- (b) Be such that, in the judgment of the nurse, it can be properly and safely performed by the unlicensed assistive personnel without jeopardizing the client welfare; and
- (c) Be a task that a reasonable and prudent nurse would find is within the scope of sound nursing judgment.

5515.8 A practical nurse may assign and direct the following types of nursing activities and interventions:

- (a) Activities and interventions whose results are predictable and whose potential for risk is minimal;

(b) Activities and interventions that frequently recur in the daily care of the client; and

(c) Activities and interventions that utilize a standard and unchanging procedure.

5515.9 A practical nurse that is responsible for assigning and directing other practical nurses and unlicensed assistive personnel shall do the following:

(a) Provide initial instructions;

(b) Monitor the nursing services;

(c) Evaluate the outcome of the assigned activity or intervention; and

(d) Provide feedback to the delegating or supervisory registered nurse.

5515.10 Unlicensed assistive personnel shall practice under general or immediate supervision of a licensed nurse.

5515.11 The delegating licensed nurse shall be fully responsible for providing supervision of the unlicensed assistive personnel. The supervision shall include:

(a) Instructing the unlicensed assistive personnel in the delegated nursing intervention(s);

(b) Monitoring the performance of the delegated nursing intervention(s);

(c) Verifying that the delegated nursing intervention(s) has been implemented; and

(d) Evaluating the client's response and the outcome of the delegated nursing intervention(s).

5515.12 The delegating practical nurse shall determine the required degree of supervision after an evaluation of appropriate factors including:

(a) The stability of the client's condition;

(b) The willingness and ability of the client to be involved in the management of his or her care;

(c) The training, experience, and competency of the unlicensed assistive personnel implementing the nursing intervention; and

(d) The nature of the nursing intervention.

5515.13 The delegating practical nurse shall be responsible at all times for all nursing interventions provided by the unlicensed assistive personnel to whom it was delegated, and is subject to disciplinary action for any violation of the Act or this chapter in connection with the nursing intervention performed by the unlicensed assistive personnel.

5516 STANDARDS OF CONDUCT

5516.1 A practical nurse shall adhere to the standards set forth in the "Code of Ethics for Nurses" as published by the American Nurses Association, as they may be amended or republished from time to time.

5516.2 A practical nurse shall respect the client's right to privacy by protecting confidential information unless obligated or allowed by law to disclose the information.

5516.3 A practical nurse shall not accept or perform professional responsibilities that the nurse is not competent to perform.

5516.4 A practical nurse shall not, after accepting an assignment or responsibility for a client's care, and without giving adequate notice to the supervisor so that arrangements can be made for continuation of nursing care by others:

(a) Unilaterally sever the established nurse-client relationship;

(b) Leave a client for a length of time, or in a manner, that exposes the client unnecessarily to risk of harm; or

(c) Leave a nursing assignment.

5516.5 A practical nurse shall know, recognize, and maintain professional boundaries of the nurse-client relationship.

5516.6 A practical nurse shall provide nursing services, without discrimination, regardless of the age, disability, economic status, gender, national origin, race, religion, or health problems of the client served.

5599 DEFINITIONS

5599.1 As used in this chapter, the following terms have the meanings ascribed:

Act-- 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.*) (2001).

Administrator for nursing services – the licensed registered nurse responsible for

planning, directing, and controlling the operation of nursing service within an agency, health care facility, or setting in which nursing care is being offered or provided.

Activity of daily living (ADL) – getting in and out of bed, bathing, dressing, eating, walking, and taking medications prescribed for self-administration.

Agency – any person, firm, corporation, partnership, or other business entity engaged in the business of referring nursing personnel, as employees or independent contractors, to a health care facility for the purpose of rendering temporary nursing services.

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

Assignment – the transference from the practical nurse to another individual, the authority to act on behalf of the practical nurse in the performance of a nursing intervention, while the practical nurse retains the accountability and responsibility for the assigned act and providing feedback to the delegating or supervisory registered nurse.

Board – the Board of Nursing, established by § 204 of the Act, D.C. Official Code § 1202.04.

Competence – the state or quality of being capable of performing a task or function as the result of having the required knowledge, skills, and ability.

Complex interventions – those interventions that require nursing judgment to safely alter standard procedures in accordance with the needs of the client, require nursing judgment to determine how to proceed from one step to the next, or require implementation of the nursing process.

Educational program – a program accredited by a recognized nursing body approved by the board that leads to a diploma, associate degree, or baccalaureate degree in nursing.

General supervision-- supervision in which the supervisor is available on the premises or within vocal communication either directly or by a communication device at the time the trained unlicensed personnel, or licensed practical nurse is practicing.

Graduate nurse-- an individual who has graduated from a nursing program for practical nursing, who has never taken the NCLEX-PN exam, and whose application for a license by examination in the District of Columbia is pending.

Health professional – a person who holds a license, certificate, or registration

issued under the authority of this title or the Act.

Immediate supervision-- supervision in which the supervisor is with the trained unlicensed personnel or licensed practical nurse and either discussing or observing the person's practice.

Nursing intervention - the initiation and completion of a client focused action necessary to accomplish the goal(s) defined in the client-centered plan of care.

Practical nurse -- a person licensed to practice practical nursing under the Act and this chapter.

Re-entry program-- a formal program of study with both didactic and clinical components, designed to prepare a nurse who has been out of practice to re-enter into nursing practice at the practical nurse level.

Registered nurse -- a person licensed to practice registered nursing under the Act and chapter 54 of this title.

Review course -- a course of study providing review of basic preparation for the NCLEX-PN examination.

Supervisor-- a registered nurse licensed under the Act who is responsible and accountable for assigning, directing, evaluating and managing a unit, service or program that offers or provides nursing care or who is responsible for the supervision of trained unlicensed personnel, students, graduate nurses or other licensed nurses.

Unlicensed assistive personnel -- a person who is not licensed to practice nursing, but has been trained to function in an assistant or subordinate role to the registered or practical nurse in providing nursing care.

5599.2

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

D.C. OFFICE OF PERSONNEL
NOTICE OF FINAL RULEMAKING

The Acting Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title VIII 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 § 1-608.01 *et seq.*) (2001), hereby gives notice that final rulemaking action was taken to adopt the following rules. These rules amend Chapter 8, Career Service, of Title 6 of the District of Columbia Municipal Regulations, for the main purpose of amending the time-in-grade requirements in section 838 of the chapter. In addition, the following changes are being made to the chapter: (1) amendment to section 812.2 of the chapter on the conditions under which an employee in a Career Appointment (Permanent) shall be converted to a Career Appointment (Probationary) and complete a new probationary period; (2) amendment to section 813 of the chapter on the requirements for probationary periods in the Career Service, to clarify the conditions under which an employee who once satisfactorily completed a probationary period shall be required to complete another probationary period, and make other changes to the section; (3) amendment to section 814 of the chapter on termination during probationary period, to delete the reference to managerial probationary periods and modify the language concerning probationer appeal rights; (4) amendment to section 815 of the chapter on the requirements for supervisory and managerial probationary periods in the Career Service, to delete all references to managerial probationary periods. The reason for this change is that managers which were previously appointed to the Career Service are now appointed to the Management Supervisory Service or Excepted Service, serve at-will, and are no longer required to complete probationary periods of any kind. Additional modifications were made to this section; (5) amendment to section 824.1 of the chapter concerning temporary appointments, to specify that *When-Actually-Employed (WAE) appointments* are covered under section 824 of the chapter; (6) rescission of section 825 of the chapter, "*Employment of Annuitants;*" and (7) amendment to section 899, "*Definitions,*" to add definitions for the terms "break in service," "supervisor," and "When-Actually-Employed (WAE) appointment." A Notice of Proposed Rulemaking containing these amendments was published at 53 DCR 7260 (September 1, 2006), however, that notice inadvertently omitted subsection (c) of renumbered section 813.6 of the chapter. Accordingly, an errata notice re-publishing the rulemaking to include subsection 813.6 (c) was published at 53 DCR 9756 (December 8, 2006). No comments were received and no changes were made to the notice of proposed rulemaking published on December 8, 2006. Final rulemaking action was taken on January 16, 2007.

CHAPTER 8

CAREER SERVICE

Chapter 8 of the D.C. Personnel Regulations is amended as follows:

Section 812.2 is amended to read as follows:

812.2 Subject to section 833.2 of this chapter, a Career Appointment (Permanent) shall be converted to a Career Appointment (Probational), and required to complete a new probationary period, when one (1) of the following occurs:

- (a) The employee applies for and is appointed from a register to a uniformed position in the Metropolitan Police Department or the Fire and Emergency Medical Services Department, or to any other position for which a formal suitability determination procedure (including a background investigation) has been established pursuant to law, Chapter 4 of these regulations, or any other regulation or procedure; or
- (b) Any of the criteria listed in section 813.5 of this chapter is met.

Section 813 is amended as follows:

813 PROBATIONARY PERIOD

A new section 813 is added to read as follows:

813.1 An agency shall utilize the probationary period as fully as possible to determine the employee's suitability and qualifications as demonstrated by the employee's knowledge, skills, and abilities as well as his or her conduct.

Sections 813.1 through 813.3 are renumbered as 813.2 through 813.4, respectively, and amended to read as follows:

813.2 An employee who is appointed to a Career Appointment (Probational), including initial appointment with the District government in a supervisory position, shall be required to serve a probationary period of one (1) year, except in the case of an individual appointed on or after the effective date of this provision to an entry-level police officer position, who shall be required to serve a probationary period of eighteen (18) months.

813.3 A person who is transferred under this chapter, or promoted, or reassigned under this chapter before he or she completes probation, shall be required to complete the remaining portion of the probationary period in the new position.

813.4 Except when the appointment is effected with a break in service of one (1) workday or more, or as specified in sections 812.2 (a) of this chapter or section 813.5 of this section, an employee who once satisfactorily completed a probationary period in the Career Service shall not be required to serve another probationary period.

A new section 813.5 is added to read as follows:

813.5 An employee who once satisfactorily completed a probationary period in the Career Service shall be required to serve another probationary period when the employee:

- (a) Is appointed as a result of open competition to a position with a positive educational requirement from a position with no positive educational requirement or a different educational requirement;

- (b) Is appointed as a result of open competition to a position with licensure, certification, or other such requirement, in addition to a positive educational requirement, from a position without such requirements; or
- (c) Is appointed as a result of open competition to a position in a different line of work, as determined by the appropriate personnel authority based on the employee's actual duties and responsibilities.

Sections 813.4 through 813.9 are renumbered as 813.6 through 813.11, respectively, and amended to read as follows:

- 813.6 The probationary period required by section 813.2 of this section shall be extended for an equal amount of workdays in each of the following circumstances:
- (a) For each workday that the employee is placed in a non-pay status for any reason;
 - (b) In the case of an entry-level police officer serving an eighteen-month (18-month) probationary period, for each workday that the employee is not performing the full range of the police duties of the position to which assigned, including, but not limited to, periods of sick leave or non-contact status; and
 - (c) In the case of an entry-level Firefighter/Emergency Medical Technician (EMT), Firefighter/Paramedic, Paramedic, and EMT in the Fire and Emergency Medical Services Department, for each workday that the employee is unable to perform the full range of duties of the position to which assigned, including but not limited to periods of limited duty, sick leave, or non-contact status.
- 813.7 The extension of the probationary period under section 813.6 of this section shall be for an equitable period of time in increments of full workdays.
- 813.8 For an individual serving an eighteen-month (18-month) probationary period, the extension of the probationary period as provided for in section 813.6 (b) of this section may not exceed an additional eighteen (18) months.
- 813.9 Service credit toward completion of the probationary period shall be given for the following periods of absence:
- (a) Absence on leave with pay during which an employee is carried on the rolls, except as provided in section 813.6 (b) of this section;
 - (b) Absence in a nonpay status while on the rolls because of compensable injury or military duty; and
 - (c) Absence following separation, suspension, or furlough during the probationary period, when any of the foregoing is found upon timely appeal or administrative determination to have been unjustified or unwarranted, and the employee is restored retroactively as of the effective date of the original action.

- 813.10 When a decision has been made to terminate an employee during the probationary period and the employee has been so notified in accordance with section 814.2 of this chapter, and an action taken by the employee results in a stay, the period during which the effective date of such action is stayed shall not be credited toward completion of the probationary period.
- 813.11 Prior service in the Career Service under a term, temporary, or TAPER appointment and in the Excepted Service under a special appointment pursuant to section 904 (2) of the CMPA (D.C. Official Code § 1-609.04 (2)) (2001), shall be creditable toward completion of the probationary period under this section if:
- (a) It was rendered immediately preceding a Career Appointment (Permanent) or a Career Appointment (Probational) or a conversion; and
 - (b) It was in the same competitive level, as provided in Chapter 24 of these regulations.

Section 813.10 is deleted.

Section 813.11 is renumbered as 813.12:

- 813.12 Satisfactory completion of the probationary period is a prerequisite to continued employment in the Career Service.

Section 814 is amended as follows:

814 TERMINATION DURING PROBATIONARY PERIOD

Section 814.1 is amended to read as follows:

- 814.1 Except for an employee serving a supervisory or managerial probationary period under section 815 of this chapter, an agency shall terminate an employee during the probationary period whenever his or her work performance or conduct fails to demonstrate his or her suitability and qualifications for continued employment.
- 814.2 An employee being terminated during the probationary period shall be notified in writing of the termination and its effective date.

Section 814.3 is amended to read as follows:

- 814.3 A termination during a probationary period is not appealable or grievable. However, a probationer alleging that his or her termination resulted from a violation of public policy, the whistleblower protection law, or District of Columbia or federal anti-discrimination laws, may file action under any such laws, as appropriate.

Section 815 is amended as follows:

The heading of the section is changed from "Probationary Period for Appointees to Supervisory and Managerial Positions" to "Probationary Period for Appointees to Supervisory Positions:"

815 PROBATIONARY PERIOD FOR APPOINTEES TO SUPERVISORY POSITIONS

Section 815.1 is amended to read as follows:

815.1 A Career Service employee shall be required to serve a one-year (1-year) supervisory probationary period upon initial appointment, promotion, reassignment, or demotion from a non-supervisory to a supervisory position. This requirement shall not apply to temporary, term, or TAPER appointments.

A new section 815.2 is added to read as follows:

815.2 The provisions of this section shall not apply to an employee whose initial appointment with the District government is a Career Appointment (Probational) to a supervisory position. Such an employee is covered under the provisions of sections 812.2, 813, and 814 of this chapter.

Section 815.2 is renumbered as 815.3 and amended to read as follows:

815.3 Agencies shall ensure that new supervisors receive training appropriate to the position being filled for the purpose of developing, maintaining, and enhancing their supervisory skills.

Section 815.3 is deleted.

Sections 815.4 through 815.6 are amended to read as follows:

815.4 An employee who is promoted, reassigned, demoted, or transferred to another Career Service supervisory or managerial position while serving a probationary period under this section shall have the service completed in the former position credited toward completion of the probationary period in the new position.

815.5 An employee shall complete the one-year (1-year) probationary period required after initial assignment to a supervisory position in the Career Service before progressing to a higher grade level, unless the personnel authority determines that an exception is warranted when the employee's performance and experience indicate a high probability of success in the higher grade position.

815.6 Satisfactory completion of the supervisory probationary period prescribed in this section shall be a prerequisite to continued service in the position.

A new section 815.7 is added to read as follows:

815.7 If after a full and fair evaluation of the employee's performance during the supervisory probationary period, supervisory deficiencies are revealed and a determination is made by the immediate supervisor that the employee is not suited to continue to occupy the supervisory position, action shall be initiated prior to the end of the supervisory probationary period to return the employee to a non-supervisory position in accordance with sections 815.8 or 815.9 of this section.

Sections 815.7 and 815.8 are renumbered as 815.8 and 815.9, respectively, and amended to read as follows:

- 815.8 Except as provided in section 815.9 of this section, an employee who does not satisfactorily complete the supervisory probationary period requirement under this section shall be entitled to a non-supervisory position in his or her employing agency of no lower grade than the employee left to accept the supervisory position, and at the step the employee would have attained, but for the supervisory appointment.
- 815.9 An employee who is demoted to a lower grade supervisory position voluntarily or involuntarily, and who, for reasons of performance, does not satisfactorily complete the supervisory probationary period, shall be entitled to be assigned to a non-supervisory position in his or her employing agency, at the same grade and pay as the supervisory position to which the employee has been demoted.

Section 815.9 is deleted.

Sections 815.10 through 815.11 are amended to read as follows:

- 815.10 The agency shall notify the affected employee, in writing, of any action taken under sections 815.8 or 815.9 of this section, of the effective date of the action, and that the action is not appealable or grievable.
- 815.11 Nothing in this section shall prohibit an agency from taking action against an employee for reasons unrelated to supervisory performance.
- 815.12 An action taken under sections 815.8 or 815.9 of this section shall not be subject to the provisions of Chapters 16 or 24 of these regulations.

Section 815.13 is deleted.

Section 824.1 is amended to read as follows:

- 824.1 A personnel authority may develop procedures to effect temporary time-limited appointments in the Career Service, including "When-Actually-Employed" (WAE) appointments, also known as "intermittent" appointments, to meet an administrative need, such as to fill a temporary position or to fill a continuing position for a temporary period of time.

Section 825, Employment of Annuitants, is rescinded.

The heading of section 838 is changed from "Time-In-Grade Requirements for District Service Schedule" to "Time-In-Grade Requirements for Positions under Career Service Salary Schedules (Union and Non-Union);" and the section amended as follows:

838 TIME-IN-GRADE REQUIREMENTS FOR POSITIONS UNDER CAREER SERVICE SALARY SCHEDULES (UNION AND NON-UNION)

Sections 838.1 through 838.5 are amended to read as follows:

- 838.1 This section explains time-in-grade requirements and restrictions for promotions and appointments to higher grade positions; and reinstatements to higher grade positions when such reinstatements are made within one (1) year after separation from nontemporary appointments in the Career Service.
- 838.2 The purpose of the time-in-grade restrictions is to prevent excessively rapid promotions in competitive appointments, and protect competitive principles. Additionally, time-in-grade restrictions provide budgetary control on promotion rates.
- 838.3 The time-in-grade restrictions in this section shall not apply to employees occupying Wage Service positions.
- 838.4 The time-in-grade restrictions in this section shall be applied in conjunction with the restriction in section 833.1 of this chapter on position changes to a different line of work within three (3) months after placement.
- 838.5 Except as specified in sections 838.6 and 838.7 of this section, a Career Service employee shall not advance in grade by promotion to a position under a Career Service Salary Schedule unless the employee meets the following minimum time-in-grade requirements:
- (a) For an employee at grade levels CS-12 or above, only after he or she has served one (1) year at the next lower grade;
 - (b) For an employee at grade levels CS-6 through CS-11, only after he or she has served:
 - (1) One (1) year in a position two (2) grades lower, when the position to which he or she is advanced is in a line of work properly classified at two-grade (2-grade) intervals; or
 - (2) One (1) year at the next lower grade, when the position to which he or she is advanced is in a line of work properly classified at one-grade (1-grade) intervals; and
 - (c) An employee may be advanced to a position at grade levels CS-5 or below which is not more than two (2) grades above the lowest grade he or she held within the preceding year under a nontemporary appointment without regard to time in grade.

New sections 838.6 through 838.9 are added to read as follows:

- 838.6 A Career Service employee who applies for a vacant position competitively who does not meet the time-in-grade requirements in section 838.5 of this section, but who meets the qualifications requirements for the position based on experience or education, if ranked among the best qualified candidates and within reach for selection, may be certified to the selecting official after he or she has served a minimum of six (6) months at the lower grade position.

- 838.7 An employee certified to the selecting official under the conditions described in section 838.6 of this section shall not be eligible to advance more than two (2) grade levels at a time.
- 838.8 A waiver of the time-in-grade requirements in section 838.5 of this section shall be required for any Career Service employee competitively selected to a higher grade position after being certified to the selecting official under the conditions described in section 838.6 of this section.
- 838.9 If selected for the higher grade position, an employee who was granted a waiver of the time-in-grade requirements shall be required to complete one (1) year of service at the position before he or she meets the requirements for advancement to the next grade level.

Sections 838.7 and 838.8 are renumbered as 838.10 and 838.11, respectively, and amended to read as follows:

- 838.10 In applying the time-in-grade requirements of this section and crediting prior service and experience towards meeting time-in-grade, an employee will receive credit for:
- (a) Prior District or federal government service under an appointment at the same level as or a higher level than the employee's current appointment;
 - (b) As appropriate, any specialized experience with the military, state or local governments, or with the private sector; and
 - (c) As appropriate, college or university education.
- 838.11 The personnel authority shall develop procedures for the granting of waivers of the time-in-grade requirements, and the circumstances and conditions for crediting prior service towards meeting time-in-grade.

A new section 838.12 is added to read as follows:

- 838.12 (a) The waiver of time-in-grade provisions in section 838.6 of this section shall not apply to career ladder promotions within the Career Service.
- (b) A career ladder exists when employees occupying a group of similar positions are hired at less than full performance level and are all given grade-building experience such that each may be promoted as he or she qualifies and demonstrates the ability to perform at the next higher grade level, and where there is sufficient work at the full performance level for all employees who qualify and who are performing the work at a given time.

Section 899, "Definitions," is amended to add definitions for the terms "break in service," "supervisor," and "When-actually-employed (WAE) appointment:"

Break in service – a period of one (1) workday or more between separation and reemployment that may cause a loss of rights or privileges.

Supervisor – at grade levels CS-10 and below, a position that accomplishes work through the direction of other people and meets at least the minimum requirements for coverage in accordance with the U.S. Office of Personnel Management Supervisory Grade Evaluation Guide, or other appropriate classification standards adopted by the D.C. Office of Personnel. Those directed may be subordinate District service employees, whether full-time, part-time, intermittent, or temporary; non-District service workers; unpaid volunteers; student trainees, or others. Supervisors exercise delegated authorities such as described in Factor 3 – Supervisory and Managerial Authority Exercised, in the Supervisory Grade Evaluation Guide. A first level supervisor personally directs subordinates without the use of other subordinate supervisors. A “full assistant” shares fully with a higher-level supervisor in all phases of work direction, contractor oversight, and delegated authority over the subordinate staff.

When-actually-employed (WAE) appointment – temporary appointment under which the employee serves on an intermittent basis, that is, non full-time without a prescheduled regular tour of duty. This type of temporary appointment is also referred to as either “intermittent appointment,” or as “intermittent service.”

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

NOTICE OF FINAL RULEMAKING

**FORMAL CASE NO. 1002, IN THE MATTER OF THE JOINT APPLICATION OF
PEPCO AND THE NEW RC, INC. FOR AUTHORIZATION AND APPROVAL OF
MERGER TRANSACTION**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice of its final rulemaking action taken on January 12, 2007, in Order No. 14166, approving the Application of the Potomac Electric Power Company ("Pepco") filed on behalf of the District of Columbia Smart Meter Pilot Program, Inc. ("SMPPI") to implement a District of Columbia smart meter project.¹

2. On June 1, 2006, Pepco filed a Tariff Application on behalf of SMPPI² requesting authority to approve the proposed project Tariff Application to implement a District of Columbia smart meter project.³ Pepco states that SMPPI has designed its program, entitled SmartPowerDC, to be a 2-year pilot program whereby selected District of Columbia residents in all eight wards will be provided with an opportunity to receive time differentiated pricing signals and demand response enabling technology.⁴ According to Pepco, customers participating in the project will have the ability to have greater control over their electricity consumption and an opportunity to control their consumption and reduce their monthly electricity costs.⁵ Pepco avers that participation in the program will be voluntary and limited to approximately 2250 customers (including control group customers).⁶ In its Application, Pepco seeks authority to revise and place in service the following tariff pages:

¹ *Formal Case No. 1002, In the Matter of the Joint Application of Pepco and the New RC, Inc. for Authorization and Approval of Merger Transactions ("F.C. 1002")*, Letter to Dorothy Wideman, Commission Secretary, from Anthony C. Wilson, on behalf of the Smart Meter Pilot Program Inc., filed June 1, 2006 ("Tariff Application").

² SMPPI is comprised of the following entities: Pepco; District of Columbia Office of the People's Counsel ("OPC"); District of Columbia Consumer Utility Board ("CUB"); International Brotherhood of Electrical Workers Local 1900 ("IBEW"); and the Commission.

³ *F.C. 1002*, Tariff Application at 1.

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.* at 3.

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3. Pepco states that participants in SmartPowerDC will be billed under one of three pricing options: Hourly Pricing (“HP”), Critical Peak Pricing (“CPP”), or Critical Peak Rebate (“CPR”).⁷ Pepco maintains that all pricing options are designed to be revenue neutral, assuming that no customer changes consumption in response to price.⁸ According to Pepco, under all three options the generation charge on the customer’s bill is calculated using time-varying prices, and all other components of the bill, including transmission and distribution charges, are calculated using existing rates for those components.⁹

4. A Notice of Proposed Rulemaking (“NOPR”) was published in the D.C. Register on June 30, 2006 inviting the public to comment on Pepco’s Application.¹⁰ No Comments were received. The Commission, in Order No. 14166, approved Pepco’s Tariff Application, effective upon publication of this Notice of Final Rulemaking in the *D.C. Register*.

⁷ *F.C. 1002, Tariff Application, Attachment A at 3.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *53 D.C. Reg. 5275-5276.*