

DISTRICT OF COLUMBIA
DEPARTMENT OF MOTOR VEHICLESNOTICE OF PROPOSED RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in Section 1825 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 50-904); § 6 & 7 of the Traffic Act of 1925, March 3, 1925 (43 Stat. 1121; D.C. Official Code §§ 50-2201.03 & 1401.01); Sections 305(e) & 306 of The Traffic Adjudication Act, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-50-2303.04a, 2303.05(e) & 50-2303.06) (2001), Regulation No. 72-13, effective June 30, 1972 (32 DCRR; 18 DCMR §§ 100.4, 101, 104.2, 1041); and Mayor's Order 03-58, effective April 21, 2003, hereby gives notice of the intent to adopt the following rulemaking that will amend Chapters 1, 4, and 10 of Title 18 of the District of Columbia Municipal Regulations (DCMR) (Vehicles and Traffic). The proposed rulemaking will clarify the application of the graduated license statutory provisions to the operation of motorcycles, clarify the expiration of motorcycle endorsements, establish that a new license photograph must be taken if the old photograph is more than six years old, establish the National Automobile Dealers Guide as the determiner of the fair market value of a motor vehicle for excise tax purposes, correct a codification error, establish criteria for the use and issuance of dealer tags by manufacturers (and to change the name of those tags from "dealer tags" to "manufacturer tags"), establish that discontinued personalized tag content is not available to a subsequent applicant for two years, and allow a respondent to request the presence of any parking ticket issuer (not just those in the Metropolitan Police Department and the Department of Public Works as is currently provided by law) at a parking ticket hearing and to establish consequences for the failure of the issuer to appear at that hearing. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 18, DCMR, is amended as follows:

A. Chapter 1, ISSUANCE OF DRIVER'S LICENSES, is amended as follows:

1) Section 104, EXAMINATION OF APPLICATIONS FOR DRIVER'S LICENSES, is amended as follows:

(a) By adding a new subsection 104.13 to read as follows:

104.13 Residents over the age of eighteen (18) may be approved for the operation of motorcycles only if they hold a valid operator's permit or valid provisional operator's permit and pass a motorcycle demonstration test.

(b) Subsection 104.9(b) is amended by inserting after the phrase "road test" the phrase "including the motorcycle road test in the case of a motorcycle endorsement holder,".

2) Section 107, LICENSES ISSUED TO DRIVERS, is amended as follows:

- (a) Subsection 107.3 is amended by inserting after the phrase "photograph of the licensee" the phrase "not more than six (6) years old".
- (b) Subsection 107.13 is amended as follows:
 - A) By striking the phrase "Any person who has been issued a valid District of Columbia driver's license may have the license" and inserting the phrase "Any person eighteen (18) years or older who has been issued a District of Columbia driver's license or provisional operator's permit may have the license or permit" in its place.
 - B) By striking the figure "104.3" and inserting the figure "104.13" in its place.

B. Chapter 4, MOTOR VEHICLE TITLE AND REGISTRATION, is amended as follows:

1) Section 401, APPLICATION FOR A CERTIFICATE OF TITLE, is amended by adding a new subsection 401.16 to read as follows:

401.16 In determining the fair market value of a vehicle for the purposes of calculating the amount of tax due under § 6(j) of the Traffic of 1925, approved July 3, 1926 (43 Stat. 1121; D.C. Official Code § 50-2201.02(j)) (2001), the Director shall use the then current National Automobile Dealers Association (NADA) Guide for the Eastern Region. If the NADA guide does not provide the fair market value for a particular vehicle, the applicable bill of sale shall be used.

2) Section 416, TRANSFER OF REGISTRATION TO ANOTHER VEHICLE, subsection 416.7 is amended by striking the phrase "§§ 416.4 and 416.5" and inserting the phrase "§§ 416.1 and 416.2" in its place.

3) Section 423, PERSONALIZED IDENTIFICATION TAGS, is amended by adding a new subsection 423.15 to read as follows:

423.15 When personalized tags have been surrendered pursuant to § 415, or they are no longer authorized for use by the person to whom they were issued, except as provided in §§ 424 and 425, the tag content shall not be available to anyone other than the prior holder for a two (2) year period.

4) Section 427 is amended to read as follows:

427 MOTOR VEHICLE MANUFACTURER IDENTIFICATION TAGS

427.1 Motor vehicle manufacturers or their branch offices may be issued manufacturer identification tags, to be displayed only on new vehicles withdrawn from inventory

or stock prior to the sale thereof, and to be used only if directly in furtherance of the business of the manufacturer; provided, the manufacturer:

- (a) Is actively engaged in promoting its vehicles in the District of Columbia; and
- (b) Has an established place of business in the District of Columbia located on a street or avenue.

427.2 An applicant may be issued manufacturer identification tags when the applicant's premises are located within an office building although the applicant has not been issued an occupancy permit.

427.3 Manufacturer identification tags shall not be issued to finance companies.

427.4 For the purposes of this section, a manufacturer is a company or corporation in the business of engineering, assembling and promoting new motor vehicles in any jurisdiction.

427.5 An applicant for manufacturer tags shall provide the following:

- (a) Name of the person authorized to apply for the tags, together with proof of authorization;
- (b) The name of the manufacturer, and the trade name if different;
- (c) The location of the manufacturer's headquarters and all business locations in the District of Columbia;
- (d) A valid federal tax identification number;
- (e) Names of employees who will be using the tags, and proof of employment satisfactory to the Director; and
- (f) Any additional information the Director may require.

427.6 Manufacturer identification tags shall only be used by the following persons:

- (a) An employee of the manufacturer, provided the employee possesses an identification card issued by the manufacturer indicating the employee is authorized to operate vehicles owned by the manufacturer.
- (b) The manufacturer's customer, provided:
 - (1) The customer is accompanied by an employee of the manufacturer;
or

- (2) The customer possesses a temporary registration certificate issued pursuant to § 427.7.

427.7 Temporary registration certificates provided for in § 427.9 shall be issued by the manufacturer or branch office, subject to the same requirements in § 505 applicable to dealers.

427.8 Manufacturer identification tags shall bear the abbreviation "MFR".

427.9 Manufacturer identification tags shall be issued in the following amounts: one (1) per full-time, District-based employee, and one (1) additional tag for every three (3) such employees identified in the application.

427.10 Any manufacturer or branch office determined by the Director, after a hearing, to be in violation of this section, or to have submitted erroneous information on its application under § 427.6, shall immediately surrender all manufacturer tags in their possession and shall not be eligible for additional tags for at least one (1) year.

427.11 Any manufacturer receiving tags under this section shall have motor vehicle insurance that covers the number of vehicles that can be operated using all the tags issued to that manufacturer.

427.12 Any tag issued pursuant to this section shall expire on October 31 of each year.

427.13 For each tag issued under this section, the Director shall charge the fee authorized by § 3 of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 679; D.C. Official Code § 50-1501.01).

C. Chapter 10, PROCEDURES FOR ADMINISTRATIVE HEARINGS, is amended by adding a new section 1040 to read as follows:

1040 PRESENCE OF ISSUER AT PARKING TICKET HEARING

1040.1 The issuer of any parking ticket shall appear at a scheduled hearing for that ticket if requested by the respondent at the time the respondent denies the notice of infraction; provided, that the denial was received by the Department within sixty (60) calendar days of the issuance of the notice of the infraction, as provided in sections 304 or 305 of The Traffic Adjudication Act, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code §§ 50-2303.04 or 50-2303.05) (2001).

1040.2 If the issuer fails to appear when required pursuant to § 1040.1, the hearing examiner may:

- (a) Continue the hearing; or

(b) Proceed with the hearing without the presence of the issuer.

1040.3 After a hearing conducted under circumstances provided by § 1040.2(b), the ticket shall be dismissed if the hearing examiner determines that the testimony of the issuer is necessary to determining liability.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Corey Buffo, General Counsel, D.C. Department of Motor Vehicles, 65 K Street, N.E., Room 210, Washington, D.C. 20002. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Copies of this proposal may be obtained, at cost, by writing to the above address.

D.C. OFFICE OF PERSONNEL
NOTICE OF PROPOSED 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 §§ 1103, 1104, 1105, 1106, 1115 and 1116 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 §§ 1-611.03, 1-611.04, 1-611.05, 1-611.06, 1-611.15, and 1-611.16 (2001)) and Council Proposed Resolution No. 15-1045 (deemed approved on December 5, 2004), hereby gives notice of the intent to adopt, in no less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following proposed rules to implement the new compensation system for the Career, Legal, Excepted, and Management Supervisory Services, in accordance with § 1104 (d) of the CMPA (D.C. Official Code § 1-611.04 (d) (2001)). This notice supersedes the notice of proposed rulemaking published at 35 DCR 3044 (April 29, 1988). Upon adoption, these rules will amend Chapter 11, Classification and Compensation, by: 1) supplementing §§ 1100 through 1116 (provisions related to Classification), published at 28 DCR 2318 (May 22, 1981) and amended at 29 DCR 1225 (March 19, 1982) and 47 DCR 2421 (April 7, 2000), which are unaffected by this rulemaking notice and remain in effect as previously published; 2) incorporating herein into a new § 1143 and amending, without changing their intent, meaning, or application, the provisions of § 1152, Additional Income Allowance – Medical and Dental Officers, published at 37 DCR 6361 (October 5, 1990), and the provisions of § 1154, Recruitment and Retention Incentives – Child and Family Services Agency, published at 48 DCR 4179 (May 11, 2001), resulting in the rescission of existing §§ 1152 and 1154; 3) supplementing § 1153, Employment and Salary Reduction of Reemployed Annuitants, published at 47 DCR 2421 (April 7, 2000), which is unaffected by this rulemaking notice and remains in effect as previously published; 4) formally rescinding § 1155, Operation Desert Shield and Desert Storm Pay Differential, published at 39 DCR 2072 (March 27, 1992), which was intended to have been replaced by a notice of emergency rulemaking for a new § 1155, Operation Enduring Freedom and Operation Iraqi Freedom Pay Differential (which is unaffected by this notice), published as emergency rulemaking at 50 DCR 7215 (August 29, 2003) and at 50 DCR 10865 (December 19, 2003); and 5) incorporating herein for ease of reference, and without change, the definitions in § 1199, Definitions, published at 48 DCR 5004 (June 1, 2001), into the proposed § 1199. Sections 1170 through 1175 (Pre-Tax Benefits Program), published at 48 DCR 5004 (June 1, 2001), are unaffected by this rulemaking notice and remain in effect as previously published.

CHAPTER 11

CLASSIFICATION AND COMPENSATION

The following new §§ 1123 through 1153 are to be added to Chapter 11, with new § 1143 replacing and, thereby, rescinding existing §§ 1152 and 1154:

1123 COMPENSATION COMPARABILITY SYSTEM

- 1123.1 Except as specifically indicated, and except for officers and members of the Metropolitan Police Department and the Fire and Emergency Medical Services Department, §§ 1123 through 1199 apply to employees in the Career, Legal, Excepted, and Management Supervisory Services appointed under the authority of titles VIII, VIII-B, IX, and IX-A, respectively, 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 § 1-601.01 *et seq.* (2001)).
- 1123.2 The provisions of a collective bargaining agreement shall take precedence over the provisions of these sections for those employees covered by the agreement, to the extent that there is a conflict.
- 1123.3 Whenever in these sections it is provided that a decision may be made or an act may be taken by the Director of Personnel, by a personnel authority, by an agency head, or by another designated official, then that authority may be delegated to his or her designee, unless specifically indicated otherwise.
- 1123.4 The provisions of the Fair Labor Standards Act (FLSA), as amended, shall apply.
- 1123.5 For the purposes of determining rates of basic pay in this chapter, a rate of basic pay established pursuant to a collective bargaining agreement and applied to a salary or rate schedule shall be deemed to be a separate salary or rate schedule.
- 1123.6 Compensation for an employee subject to this chapter shall be based on the principles set forth in § 1103 of the CMPA (D.C. Official Code § 1-611.03 (2001)).
- 1123.7 When the pay authority finds the rates of pay in local, State, and private enterprise for one (1) or more occupations to be substantially above the rates of pay of District government employees in like occupations as to handicap the District's recruitment or retention of well-qualified individuals, the pay authority may establish higher minimum rates of basic pay for one (1) or more grades, occupational groups, or series and may make corresponding increases in all step rates of the pay range for each grade.
- 1123.8 Higher minimum rates as specified in § 1123.7 shall be established on a special salary or special rate schedule by a Mayor's Order or Wage Order.
- 1123.9 The Director of Personnel shall conduct a periodic review of each special salary or special rate schedule to determine whether there is a continuing need for the schedule and shall revise, modify, or adjust each schedule, as appropriate.
- 1123.10 Whenever a personnel authority or an agency head believes higher minimum rates are necessary for a position or occupation because of the existence of the conditions specified in § 1123.7, he or she may submit recommendations to the Director of Personnel proposing the establishment of a special salary or special rate schedule for that position or occupation.

1123.11 When an employee is receiving a higher minimum rate immediately before a Mayor's Order or Wage Order increase, the employee's rate of basic pay shall be adjusted by the same percentage and on the same effective date as the Mayor's Order or Wage Order increase.

1123.12 The Director of Personnel shall issue procedures to implement these regulations.

1123.13 The Office of the Chief Financial Officer shall ensure that compensation is paid in compliance with the CMPA and these regulations.

1124 COMPENSATION SYSTEM REVIEW AND CHANGES

1124.1 The Director of Personnel annually may recommend Career and Excepted Service compensation system changes to the Mayor for review. These recommendations shall be based on the criteria established under § 1103 of the CMPA (D.C. Official Code § 1-611.03 (2001)).

1124.2 Pursuant to §§ 1105(a) and (b) of the CMPA (D.C. Official Code §§ 1-611.05(a) and (b) (2001)), the Mayor, in consultation with the Board of Education and the Board of Trustees of the University of the District of Columbia, shall periodically review the basic compensation system. This review shall include, at a minimum, the adequacy of rates of basic pay, and may include any other pay-related compensation system components.

1124.3 In accordance with § 1105(c) of the CMPA (D.C. Official Code § 1-611.05(c) (2001)), the Mayor shall provide for appropriate consultations with employee organizations of employees under his or her jurisdiction that have been certified by the Public Employee Relations Board (PERB) for collective bargaining, in the periodic reviews of the compensation system(s).

1124.4 Pursuant to § 1105(d) of the CMPA (D.C. Official Code § 1-611.05(d) (2001)), 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.

1124.5 In accordance with § 1105(e) of the CMPA (D.C. Official Code § 1-611.05(e) (2001)), if the Mayor considers it inappropriate to submit proposed system or salary and rate schedule changes because of economic conditions, the pendency of collective bargaining, or budgetary constraints due to limited appropriations or revenues, the Mayor may submit an alternative plan regarding these changes or adjustments with a statement of the reasons for submitting the alternative plan.

1124.6 Pursuant to § 1106(a) of the CMPA (D.C. Official Code § 1-611.06(a) (2001)), if the Council approves the Mayor's proposal without revisions, and adopts the proposal via resolution, the system and/or salary and rate schedule changes shall become effective on the dates specified by the Mayor in the submission to the Council under § 1124.4.

- 1124.7 Pursuant to § 1106(a) of the CMPA (D.C. Official Code § 1-611.06(a) (2001)), the Mayor's submission date shall be the first day of the sixty-day (60-day) period referred to throughout this section.
- 1124.8 Pursuant to § 1106(a) of the CMPA (D.C. Official Code § 1-611.06(a) (2001)), if the Council fails to act on the Mayor's proposal within sixty (60) calendar days of submission, the proposal is deemed approved on the day immediately following expiration of the sixty-day (60-day) period and the system and/or salary and rate schedule changes are effective as provided in § 1124.6.
- 1124.9 Pursuant to § 1106(b) of the CMPA (D.C. Official Code § 1-611.06(b) (2001)), if the Council revises the Mayor's proposal, the Council's revised proposal shall be returned to the Mayor.
- 1124.10 Pursuant to § 1106 of the CMPA (D.C. Official Code § 1-611.06(b) (2001)), if the Mayor concurs with the Council's revisions, the provisions of the compensation plan shall become effective as may have been specified by the Council in its revisions or, if not so specified, as provided in § 1124.6.
- 1124.11 Pursuant to § 1106(c) of the CMPA (D.C. Official Code § 1-611.06(c) (2001)), if the Mayor does not concur with any one (1) or more of the Council's revisions, the Mayor shall return the revised proposal to the Council within ten (10) calendar days of receipt, with a statement of the reasons for not concurring.
- 1124.12 Pursuant to § 1106(c) of the CMPA (D.C. Official Code § 1-611.06(c) (2001)), the Council reviews the Mayor's proposal and statement and by a two-thirds (2/3) vote of those members present and voting takes either of the following actions within ten (10) calendar days of receiving the proposal:
- (a) If the Council adopts a resolution insisting upon one (1) or more of its revisions, the Council returns the revised proposal to the Mayor within ten (10) calendar days of the Mayor's statement to the Council pursuant to § 1124.11; or
 - (b) If the Council does not act on the Mayor's proposal and statement, or the Council's two-thirds (2/3) vote does not prevail within the ten-day (10-day) period, the Mayor's formal proposal, including any Council revisions to which the Mayor has concurred, shall be effective as provided in § 1124.6.
- 1124.13 In accordance with § 1106 of the CMPA (D.C. Official Code § 1-611.06(c) (2001)), compensation system and/or salary and rate schedule changes implemented as a result of the process covered in § 1124.12(a) shall become effective as specified by the Council in its revisions or, if not so specified, as provided in § 1124.6.
- 1124.14 Salary and rate schedules applicable to employees covered by this chapter shall be issued by Mayor's Order or Wage Order.
- 1124.15 Pursuant to § 1106(d) of the CMPA (D.C. Official Code § 1-611.06(d) (2001)), retroactive pay shall be payable by reason of an increase to the salary or rate schedules under this section only when either of the following occurs:

- (a) The individual is in the service of the District government on the date of final action by the Council on the increase; or
- (b) The individual retired or died during the period beginning on the effective date of the increase and ending on the date of final action by the Council on the increase, and only for the services performed during that period.

1125 PAY SYSTEMS

1125.1 The following pay systems shall apply to all employees appointed under the Career, Legal, Excepted, or Management Supervisory Service:

- (a) District Service Salary System;
- (b) Wage Service Rate System; and
- (c) Recreation Service Rate System.

1125.2 The District Service salary schedules are the annual rate schedules applicable to employees who are paid from the District Service Salary System, which is the basic pay system for positions that are classified pursuant to § 1101 of this chapter and for which compensation is established on an annual basis, and which 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, the symbol for which is LS;
- (d) Excepted Service salary schedule, the symbol for which is ES; and
- (e) Management Supervisory Service salary schedules, the symbol for which is MS.

1125.3 The Wage Service rate schedules are the hourly rate schedules applicable to employees who are paid from the Wage Service Rate System, which is the basic pay system for positions that are classified pursuant to § 1105 of this chapter, and which includes the following schedules:

- (a) Regular Non-Supervisory Wage Service Rate Schedule (union), the symbol for which is RW;
- (b) Regular Non-Supervisory Wage Service Rate Schedule (non-union), the symbol for which is RW;
- (c) Leader Wage Service Rate Schedule (union), the symbol for which is LW;
- (d) Leader Wage Service Rate Schedule (non-union), the symbol for which is LW;
- (e) Supervisory Wage Service Rate Schedule, the symbol for which is SW;

- (f) Printing Wage Service Rate Schedule, the symbol for which is PW; and
- (g) Management Supervisory Service Rate Schedule, the symbol for which is MW.

1125.4 The Recreation Service Rate Schedule, the symbol for which is RS and which shall be comprised of grades and a single rate for each grade, is the hourly rate schedule applicable to employees of the Department of Parks and Recreation who are paid from the Recreation Service Rate System.

1126 DISTRICT SERVICE SALARY SYSTEM—GENERAL PROVISIONS

1126.1 Except as provided in § 1140, this section applies to all Career, Legal, Excepted, and Management Supervisory Service employees paid under a District Service salary schedule.

1126.2 The District Service salary schedules listed in § 1125.2 are the basic pay schedules applicable to employees who are paid from the District Service Salary System.

1126.3 The District Service salary schedules shall be comprised of grades and steps consisting of annual salaries within each grade.

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 § 1131.

1126.5 Except as provided in §§ 1126.6 through 1126.11, a new appointment shall be made at the minimum rate of the grade.

1126.6 At the discretion of the agency head, an individual may be appointed at any step up to the representative rate of the appropriate grade on a CS or MS salary schedule, as applicable.

1126.7 At the discretion of the agency head (in the case of an independent agency as defined in Chapter 36 of these regulations) or at the discretion of the Corporation Counsel (in the case of a subordinate agency as defined in Chapter 36 of these regulations), an individual may be appointed at any step of the appropriate grade on the LS salary schedule.

1126.8 At the discretion of the personnel authority, an individual appointed to the Excepted Service may either:

- (a) Be paid at any rate of the appropriate grade on the ES salary schedule; or
- (b) At grade 11 or above, be paid in accordance with a MS salary schedule and may be placed in any step of the appropriate grade of that schedule.

1126.9 An individual may be appointed at a rate above the representative rate of the appropriate grade on a CS or MS salary schedule, as applicable, on the basis of superior qualifications, as provided in §§ 1126.10 through 1126.12.

- 1126.10 Upon the approval of the personnel authority, an appointment to the Career Service or the Management Supervisory Service at grade 7 and above on a CS or MS 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.
- 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 service.
- 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 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 a MS salary schedule 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 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 a MS salary schedule or MW rate schedule.
- 1126.15 When an employee moves without a break in service from a Career Service position under a CS salary schedule to a Management Supervisory Service position under a MS salary schedule, the rate of pay on the MS salary 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 § 1131.11, of the employee's grade on the CS salary schedule is less than the representative rate of the grade to which he or she is being assigned on the MS salary schedule, the employee shall be entitled to one (1) of the following:
 - (1) Basic pay at the lowest rate of the grade on the MS salary schedule that is equivalent to his or her existing rate of basic pay plus two (2) step increases of the current grade on the CS salary schedule;
 - (2) If the rate determined in (1) above falls between two (2) rates of the new grade on the MS salary schedule, 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 § 1131.11, of the employee's grade on the CS salary schedule is equal to or more than the representative rate of the grade to which he or she is being assigned on the MS salary 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 grade on the MS salary schedule that does not exceed his or her highest previous rate on a CS salary schedule; or

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

1126.16 When an employee moves without a break in service from a Career Service position under the Wage Service Rate System to a Management Supervisory Service position under a MS salary schedule, the rate of basic pay on the MS salary schedule shall be determined under the provisions of § 1128.12, reading "MW rate" as "MS salary."

1126.17 When an employee moves without a break in service from a Management Supervisory Service (MSS) position under the MW rate schedule to a MSS position under a MS salary schedule, the rate of pay on the MS salary schedule shall be determined under the provisions of § 1130.3, using the employee's MW rate schedule as the "current schedule" and the MS salary schedule as the "new schedule."

1126.18 When any action moves an employee from a MS salary schedule ("current" schedule) to another grade within the same MS salary schedule or to any grade within another MS 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 § 1131.11, 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 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 § 1131.11, 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.

1126.19 In accordance with the provisions of § 1126.20, an agency may make a special adjustment in the rate of basic pay of a supervisor in a position subject to a Career Service salary schedule 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.

1126.20 When an agency decides to adjust the rate of basic pay for a supervisor as provided in § 1126.19, 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.

1126.21 The adjustment of a supervisor's rate of basic pay under this section shall be effective on the first day of the first biweekly pay period following the date on which the agency determines to make the adjustment.

1126.22 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 pursuant to §§ 1126.19 through 1126.21.

1127 DISTRICT SERVICE SALARY SYSTEM—WITHIN-GRADE INCREASES

1127.1 In this section, the following term has the meaning ascribed:

Permanent position—a position filled by an employee whose appointment is not designated as temporary by law and not limited to one (1) year or less, and includes a temporary or term promotion of more than one (1) year. "Permanent position" does not include a position filled by an employee whose appointment is limited to one (1) year or less and subsequently extended so the total time of the appointment exceeds one (1) year.

1127.2 This section applies to all employees paid from a schedule under the District Service Salary System.

- 1127.3 An employee occupying a permanent position who has not reached the maximum rate of his or her grade shall be granted a within-grade increase if he or she meets all of the following requirements:
- (a) The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position;
 - (b) The employee must not have received an equivalent increase during the waiting period; and
 - (c) The employee's performance rating assigned for the most recent rating period that ended prior to the completion date of the required waiting period must be either Satisfactory or better or Meets Expectations or better, as applicable.
- 1127.4 For an employee with a scheduled tour of duty, the waiting periods for advancement to the following steps in all District Service salary schedule grades shall be as follows:
- (a) Steps 2, 3, 4, and 5: fifty-two (52) calendar weeks of creditable service; and
 - (b) Steps 6, 7, 8, 9, and 10: one hundred four (104) calendar weeks of creditable service.
- 1127.5 For an employee without a scheduled tour of duty, the waiting periods for advancement to the following steps in all District Service salary schedule grades shall be as follows:
- (a) Steps 2, 3, 4, and 5: two hundred sixty (260) days of creditable service in a pay status over a period of not less than fifty-two (52) calendar weeks; and
 - (b) Steps 6, 7, 8, 9, and 10: five hundred twenty (520) days of creditable service in a pay status over a period of not less than one hundred four (104) calendar weeks.
- 1127.6 Any day on which part-time service is performed by an employee without a scheduled tour of duty shall constitute one (1) full day for the purpose of this section.
- 1127.7 A new waiting period for a within-grade increase shall begin with each of the following:
- (a) On a new appointment as an employee of the District government;
 - (b) After a period of nonpay status or a break in service (alone or in combination) in excess of fifty-two (52) continuous calendar weeks, unless the nonpay status or break in service is due to being on temporary assignment pursuant to the Intergovernmental Personnel Act (IPA) of 1970, approved January 5, 1971 (P.L. 91-648; 84 Stat. 1909; 5 U.S.C. § 3301 *et seq.*) or Chapter 27 of these regulations; or
 - (c) Upon receiving an equivalent increase.

- 1127.8 The waiting period shall not be interrupted by nonworkdays intervening between an employee's last regularly scheduled workday in one position and his or her first regularly scheduled workday in a new position.
- 1127.9 Employment in any District government agency under the pay authority of the Mayor shall be creditable service in the computation of a waiting period.
- 1127.10 Creditable service shall include all periods of annual, sick, and other leave with pay; any absence from duty that occurs during an employee's basic workweek for which pay is received, including authorized absence on a legal holiday or nonworkday established by administrative order; and service under a time-limited appointment that is not interrupted by a break in service or a period of nonpay status in excess of fifty-two (52) calendar weeks.
- 1127.11 For an employee with a scheduled tour of duty, time in a nonpay status, except as provided in §§ 1127.13 through 1127.17, shall be creditable service in the computation of a waiting period when it does not exceed an aggregate of any of the following:
- (a) Two (2) administrative workweeks in the waiting period for steps 2, 3, 4, or 5; or
 - (b) Four (4) administrative workweeks in the waiting period for steps 6, 7, 8, 9, or 10.
- 1127.12 Except as otherwise provided in this section, time in a nonpay status in excess of the allowable amounts set forth in § 1127.11 shall extend a waiting period by the excess amount.
- 1127.13 Leave without pay granted to an employee because of an injury for which compensation is payable under title XXIII of the CMPA (D.C. Official Code § 1-623.01 *et seq.* (2001 & 2003 Supp.)) shall be creditable service.
- 1127.14 An employee separated as a result of an injury incurred while performing assigned duties shall be entitled, upon reemployment with the District government, to have counted as creditable service the entire time during which he or she received compensation.
- 1127.15 Service with the Armed Forces during a period of war or national emergency shall be creditable service when an employee leaves his or her District position to enter the Armed Forces and either of the following occurs:
- (a) The employee is reemployed in a position subject to a District Service salary schedule not later than fifty-two (52) calendar weeks after separation from active military duty; or
 - (b) The employee is restored to the civilian position after separation from active military duty or hospitalization continuing thereafter as provided in Chapter 43 of Part III of Title 38 of the U.S. Code.

- 1127.16 When an employee is restored to duty by an appropriate authority as defined in § 1149.1, the period from the date of separation to the date of return to duty shall be creditable service.
- 1127.17 A period of leave without pay during an employee's assignment with an agency of the federal government, a State or local government, a private sector organization, or an institution of higher education under Chapter 27 of these regulations shall be creditable service.
- 1127.18 When an employee receives more than one (1) increase in his or her rate of basic pay during the waiting period under consideration, no one (1) of which is an equivalent increase, the first and subsequent increases shall be added until the total increase is equal to or greater than an equivalent increase, at which time he or she shall be deemed to have received an equivalent increase.
- 1127.19 An increase in the rate of basic pay of an employee paid from a District Service salary schedule shall not be considered an equivalent increase when it results from any of the following:
- (a) Adjustment of salary and rate schedules;
 - (b) The establishment or adjustment of a higher minimum rate of basic pay as provided in § 1123.7;
 - (c) A temporary or term promotion in which the highest previous rate is not used when returned to the position from which promoted; or
 - (d) An increase resulting when an employee is placed in a supervisory or managerial position, and is returned to a position at the same grade and step held before that placement.
- 1127.20 The agency head shall be responsible for determining what constitutes a performance rating of "Satisfactory" or better or "Meets Expectations" or better, as applicable, and for determining which employees are performing at those levels.
- 1127.21 The decision to grant or deny a within-grade increase shall be deferred when a performance rating has not been assigned for the most recent rating period that ended prior to the completion date of the required waiting period under any of the following circumstances:
- (a) The employee has received a letter of warning of unsatisfactory performance or equivalent;
 - (b) The employee has received a warning letter with postponement of rating; or
 - (c) The rating is postponed in accordance with Chapter 14 of these regulations because of a notice of proposed removal or change to lower grade for cause as defined in Chapter 16 of these regulations.

- 1127.22 When the decision to grant or deny a within-grade increase has been deferred as provided in § 1127.21, the within-grade increase shall be granted as of the date it was otherwise due if the performance rating assigned is "Satisfactory" or better or "Meets Expectations" or better, as applicable.
- 1127.23 An employee who is denied a within-grade increase in accordance with Chapter 14 of these regulations and is reassigned shall become eligible for a within-grade increase upon receipt of a performance rating of "Satisfactory" or better or "Meets Expectations" or better, as applicable.
- 1127.24 When an "Unsatisfactory" performance rating (or equivalent), removal, or change to lower grade for cause, which resulted in a denial of a within-grade increase, is subsequently overturned, the employee shall be granted the within-grade increase for which he or she becomes eligible as of the date on which the within-grade increase otherwise became due.
- 1127.25 An employee shall be notified in writing of the decision to grant or deny a within-grade increase.
- 1127.26 A within-grade increase shall be effective on the first day of the first biweekly pay period following completion of the required waiting period and the requirements of § 1127.3.
- 1127.27 When the effective date of a within-grade increase and the effective date of a personnel action occur at the same time, the agency shall process the actions in the order that gives the employee the maximum benefit.
- 1127.28 When a within-grade increase is delayed beyond its proper effective date through administrative oversight, error, or delay, the agency shall make the increase effective as of the date it was properly due.
- 1127.29 An adjustment in pay under § 1126.19 shall be an equivalent increase in pay for within-grade increase purposes.

1128 WAGE SERVICE RATE SYSTEM—GENERAL PROVISIONS

- 1128.1 This section applies to all Career, Excepted, and Management Supervisory Service employees paid under a Wage Service rate schedule.
- 1128.2 The Wage Service rate schedules listed in § 1125.3 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.
- 1128.4 Except as provided in §§ 1128.5 through 1128.8, a new appointment shall be made at the minimum rate of the grade.

- 1128.5 At the discretion of the agency head, 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 §§ 1128.7 and 1128.8.
- 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.
- 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 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 moves to the Career Service 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 MS salary schedule or 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 Management Supervisory Service without Career Service status who moves to the Career Service 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 or MS salary schedule.
- 1128.12 When an employee moves without a break in service from a Career Service position under a Wage Service Rate System schedule to a Management Supervisory Service position under the MW rate schedule, the rate of pay on the MW rate 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 § 1131.11, 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 on the MW rate schedule, the employee shall be entitled to one (1) of the following:

- (1) Basic pay at the lowest rate of the grade on the MW rate schedule that is equivalent to his or her existing rate of basic pay plus one (1) step increase of the current grade on the Wage Service Rate System schedule;
 - (2) If the rate determined in (1) above falls between two (2) rates of the new grade on the MW rate schedule, 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 § 1131.11, 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 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 § 1126.15, 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 § 1130.2, 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 § 1131.11, 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 § 1131.11, 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.

1129 WAGE SERVICE RATE SYSTEM—WITHIN-GRADE INCREASES

1129.1 In this section, the following term has the meaning ascribed:

Permanent position—a position filled by an employee whose appointment is not designated as temporary by law and not limited to one (1) year or less, and includes a temporary or term promotion of more than one (1) year. The term does not include a position filled by an employee whose appointment is limited to one (1) year or less and subsequently extended so the total time of the appointment exceeds one (1) year.

1129.2 This section applies to all Career, Excepted, and Management Supervisory Service employees paid under a Wage Service rate schedule.

1129.3 Any Wage Service employee occupying a permanent position who has not reached the maximum rate of his or her grade shall be granted a within-grade increase if he or she meets all of the following requirements:

- (a) The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position;
- (b) The employee must not have received an equivalent increase during the waiting period; and
- (c) The employee's performance rating assigned for the most recent rating period that ended prior to the completion date of the required waiting period must be either "Satisfactory" or better or "Meets Expectations" or better, as applicable.

1129.4 Except as provided in § 1129.7, the waiting periods for advancement to the next rate in all grades for a wage employee with a scheduled tour of duty, shall be as follows:

- (a) Rates 2 and 3: fifty-two (52) calendar weeks of creditable service; and

- (b) Rates 4, 5, and 6: one hundred four (104) calendar weeks of creditable service.
- 1129.5 Except as provided in § 1129.6, the waiting period for advancement to the next rates in all grades for a wage employee without a scheduled tour of duty shall be as follows:
- (a) Rates 2 and 3: two hundred sixty (260) days of creditable service in a pay status over a period of not less than twenty-six (26) calendar weeks; and
- (b) Rates 4, 5, and 6: five hundred twenty (520) days of creditable service in a pay status over a period of not less than one hundred four (104) calendar weeks.
- 1129.6 For a wage employee with a scheduled tour of duty paid from the Printing Wage Service Rate Schedule, the waiting periods for advancement to the second and third rates in all grades shall be fifty-two (52) calendar weeks of creditable service.
- 1129.7 For a wage employee without a scheduled tour of duty, paid from the Printing Wage Service Rate Schedule, the waiting periods for advancement to the second and third rates in all grades shall be two hundred sixty (260) days of creditable service.
- 1129.8 Any day on which part-time service is performed by an employee without a scheduled tour of duty shall constitute one (1) full day for the purpose of this section.
- 1129.9 A new waiting period for a within-grade increase shall begin with each of the following:
- (a) On a new appointment as an employee of the District government;
- (b) After a period of nonpay status or a break in service (alone or in combination) in excess of fifty-two (52) continuous calendar weeks, unless the nonpay status or break in service is due to being on temporary assignment pursuant to the Intergovernmental Personnel Act (IPA) of 1970, approved January 5, 1971 (P.L. 91-648; 84 Stat. 1909; 5 U.S.C. § 3301 *et seq.*), or Chapter 27 of these regulations; or
- (c) Upon receiving an equivalent increase.
- 1129.10 The waiting period shall not be interrupted by nonworkdays intervening between an employee's last regularly scheduled workday in one position and his or her first regularly scheduled workday in a new position.
- 1129.11 Employment in any District government agency under the pay authority of the Mayor shall be creditable service in the computation of a waiting period.
- 1129.12 Creditable service shall include all periods of annual, sick, and other leave with pay; any absence from duty that occurs during an employee's basic workweek for which pay is received, including authorized absence on a legal holiday or nonworkday established by administrative order; and service under a time-limited appointment that is not interrupted by a break in service or a period of nonpay status in excess of fifty-two (52) calendar weeks.

- 1129.13 For a wage employee with a scheduled tour of duty, time in a nonpay status, except as provided in §§ 1129.15 through 1129.19, shall be creditable service in the computation of a waiting period when it does not exceed an aggregate of any of the following:
- (a) Two (2) administrative workweeks in the waiting period for rates 2 or 3;
 - (b) Four (4) administrative workweeks in the waiting period for rates 4, 5, or 6.
- 1129.14 Except as otherwise provided in this section, time in a nonpay status in excess of the allowable amounts set forth in § 1129.13 shall extend a waiting period by the excess amount.
- 1129.15 Leave without pay granted to an employee because of an injury for which compensation is payable under title XXIII of the CMPA (D.C. Official Code § 1-623.01 *et seq.* (2001 & 2003 Supp.)) shall be creditable service.
- 1129.16 An employee separated as a result of an injury incurred while performing assigned duties shall be entitled, upon reemployment with the District government, to have counted as creditable service the entire time during which he or she received compensation.
- 1129.17 Service with the Armed Forces during a period of war or national emergency shall be creditable service when an employee leaves his or her District position to enter the Armed Forces and either of the following occurs:
- (a) The employee is reemployed in a position subject to a Wage Service rate schedule not later than fifty-two (52) calendar weeks after separation from active military duty; or
 - (b) The employee is restored to the civilian position after separation from active military duty or hospitalization continuing thereafter as provided in Chapter 43 of Part III of Title 38 of the U.S. Code.
- 1129.18 When an employee is restored to duty by an appropriate authority as defined in § 1149, the period from the date of separation to the date of return to duty shall be creditable service.
- 1129.19 A period of leave without pay during an employee's assignment with an agency of the federal government, a State or local government, a private sector organization, or an institution of higher education under Chapter 27 of these regulations shall be creditable service.
- 1129.20 When an employee receives more than one (1) increase in his or her rate of basic pay during the waiting period under consideration, no one (1) of which is an equivalent increase, the first and subsequent increases shall be added until the total increase is equal to or greater than an equivalent increase, at which time he or she shall be deemed to have received an equivalent increase.

- 1129.21 An increase to the rate of basic pay of an employee paid from a Wage Service rate schedule shall not be considered an equivalent increase when it results from any of the following:
- (a) Adjustment of salary and rate schedules;
 - (b) The establishment or adjustment of a higher minimum rate of basic pay as provided in § 1123.7;
 - (c) A temporary or term promotion in which the highest previous rate is not used when returned to the position from which promoted; or
 - (d) An increase resulting when an employee is placed in a supervisory or managerial position, and is returned to a position at the same grade and step held before that placement.
- 1129.22 The agency head shall be responsible for determining what constitutes a performance rating of "Satisfactory" or better or "Meets Expectations" or better, as applicable, and for determining which employees are performing at those levels.
- 1129.23 The agency head may delegate his or her authority under § 1129.22 to the appropriate supervisory level in his or her agency.
- 1129.24 The decision to grant or deny a within-grade increase shall be deferred when a performance rating has not been assigned for the most recent rating period that ended prior to the completion date of the required waiting period under any of the following circumstances:
- (a) The employee has received a letter of warning of unsatisfactory performance or equivalent;
 - (b) The employee has received a warning letter with postponement of rating; or
 - (c) The rating is postponed in accordance with Chapter 14 of these regulations because of a notice of proposed removal or change to lower grade for cause as defined in Chapter 16 of these regulations.
- 1129.25 When the decision to grant or deny a within-grade increase has been deferred as provided in § 1129.24, the within-grade increase shall be granted as of the date it was otherwise due if the performance rating assigned is "Satisfactory" or better or "Meets Expectations" or better, as applicable.
- 1129.26 An employee who is denied a within-grade increase in accordance with Chapter 14 of these regulations and is reassigned shall become eligible for a within-grade increase upon receipt of a performance rating of "Satisfactory" or better or "Meets Expectations" or better, as applicable.
- 1129.27 When an "Unsatisfactory" performance rating (or equivalent), removal, or change to lower grade for cause, which resulted in a denial of a within-grade increase, is subse-

quently overturned, the employee shall be granted the within-grade increase for which he or she becomes eligible as of the date on which the within-grade increase otherwise became due.

- 1129.28 An employee shall be notified in writing of the decision to grant or deny a within-grade increase.
- 1129.29 A within-grade increase shall be effective on the first day of the first biweekly pay period following completion of the required waiting period and the requirements of § 1129.3.
- 1129.30 When the effective date of a within-grade increase and the effective date of a personnel action occur at the same time, the agency shall process the actions in the order that gives the employee the maximum benefit.
- 1129.31 When a within-grade increase is delayed beyond its proper effective date through administrative oversight, error, or delay, the agency shall make the increase effective as of the date it was properly due.

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;
 - (b) Movement of a Career Service employee from a Career Service position to another Career Service position without a break in service; or
 - (c) Reclassification of an encumbered Career Service position.
- 1130.2 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 § 1131.11, 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 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 § 1131.11, 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.
- 1130.3 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 § 1131.11, 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 § 1131.11, 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.
- 1130.4 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.

- 1130.5 When an encumbered position is reclassified from the Wage Service Rate System into 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 § 1141, the employee shall receive the maximum rate of the new grade.
- 1130.6 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.
- 1130.7 Except as provided in § 1130.8, 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.
- 1130.8 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.
- 1130.9 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.
- 1130.10 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.
- 1130.11 An employee who fails to successfully complete a supervisory or managerial 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 supervi-

sory or managerial position and at the step the employee would have attained but for the managerial or supervisory appointment.

- 1130.12 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.
- 1130.13 When an employee is receiving a retained rate under § 1141.2 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.
- 1130.14 The Director of Personnel 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.
- 1130.15 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 § 1141.

1131 COMPUTATION OF SALARY AND RATE SCHEDULES

- 1131.1 For pay computation purposes, the annual rate of basic pay established by the Council or Mayor's authority shall be deemed payment for employment during fifty-two (52) administrative workweeks of forty (40) hours.
- 1131.2 When it is necessary for pay computation to convert an annual rate of basic pay to an hourly, daily, weekly, or biweekly rate of basic pay, the following rules shall govern:
- (a) To derive an hourly rate, divide the annual rate by two thousand eighty (2,080) (rounded to the nearest cent, counting one-half (½) cent and over as a whole cent);
 - (b) To derive a daily rate, multiply the hourly rate by the number of daily service hours required; and

- (c) To derive a weekly or biweekly rate, multiply the hourly rate by forty (40) or eighty (80), as appropriate.
- 1131.3 A rate computed under § 1131.2 shall be carried three (3) decimal places and rounded to the nearest cent, counting one-half ($\frac{1}{2}$) cent and over as a whole cent.
- 1131.4 When a rate of basic pay is adjusted under § 1124, the computation for determining each salary and rate schedule shall be as follows:
- (a) For each salary schedule under the District Service Salary System:
- (1) Multiply the old step 4 of each grade (representative rate) by the percentage of the increase to derive the new step 4 (rounded to the nearest dollar);
 - (2) Multiply the old step 5 of each grade by the percentage of the increase to derive the new step 5 (rounded to the nearest dollar);
 - (3) Subtract the new step 4 from the new step 5 to derive the new step increment;
 - (4) Subtract the new step increment from the new step 4 to derive the new step 3;
 - (5) Subtract the new step increment from the new step 3 to derive the new step 2;
 - (6) Subtract the new step increment from the new step 2 to derive the new step 1;
 - (7) Add the new step increment to the new step 5 to derive the new step 6;
 - (8) Add the new step increment to the new step 6 to derive the new step 7;
 - (9) Add the new step increment to the new step 7 to derive the new step 8;
 - (10) Add the new step increment to the new step 8 to derive the new step 9; and
 - (11) Add the new step increment to the new step 9 to derive the new step 10.
- (b) For each rate schedule under the Wage Service Rate System:
- (1) Multiply the old step 2 of each grade (representative rate) by the percentage of the increase to derive the new step 2 (rounded to the nearest cent);
 - (2) Multiply the new step 2 by ninety-six percent (96%) to derive the new step 1 (rounded to the nearest cent);
 - (3) Multiply the new step 2 by one hundred four percent (104%) to derive the new step 3 (rounded to the nearest cent);
 - (4) Multiply the new step 2 by one hundred eight percent (108%) to derive the new step 4 (rounded to the nearest cent);

- (5) Multiply the new step 2 by one hundred twelve percent (112%) to derive the new step 5 (rounded to the nearest cent);
- (6) Multiply the new step 2 by one hundred sixteen percent (116%) to derive the new step 6 (rounded to the nearest cent); and
- (7) To derive an annual rate for each step, multiply each step by two thousand eighty (2080).

(c) For the Printing Wage Service Schedule:

- (1) Multiply the current step of each grade by the percentage of the increase and round to the nearest cent; and
- (2) To derive an annual rate for each step, multiply each step by two thousand eighty (2080).

- 1131.5 The pay period for an employee paid under this chapter shall be a biweekly pay period consisting of two (2) consecutive administrative workweeks.
- 1131.6 An employee required by Chapter 4 of these regulations to execute an affidavit shall not be entitled to compensation under this chapter until the affidavit has been executed.
- 1131.7 A promotion shall be effective on the first day of a biweekly pay period.
- 1131.8 When a lump-sum payment for accrued annual leave is authorized under Chapter 12 of these regulations, the employee shall be compensated for all hours of unused annual leave at the employee's rate of basic pay.
- 1131.9 When a lump-sum payment for compensatory time accrued prior to the effective date of this chapter is authorized under Chapter 12 of these regulations, the employee shall be compensated for such compensatory time at the employee's rate of basic pay.
- 1131.10 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.
- 1131.11 The representative rate for the District Service salary schedules, the Wage Service rate schedules, and the Recreation Service Rate Schedule shall be the following:
- (a) The fourth (4th) step of each District Service salary schedule for grades 1 through 16;
 - (b) The first (1st) step of each District Service salary schedule for grades 17 and 18;
 - (c) The second (2nd) step of each Wage Service rate schedule; and
 - (d) The single rate for each grade on the Recreation Service Rate Schedule.

1131.12 For the purpose of § 1131.10, for the Printing Wage Service Rate Schedule, the percentage authorized for a general pay increase, or the dollar amount if so authorized, will be added to each step of the grade, class, or level of the appropriate salary or rate schedule.

1132 PREMIUM PAY—HOLIDAY PREMIUM PAY

1132.1 Holiday premium pay shall not be paid unless specifically authorized by this section.

1132.2 An employee who performs actual work within the hours of his or her scheduled daily tour of duty on a day designated as a holiday under § 1202 of the CMPA (D.C. Official Code § 1-612.02 (2001)), or established as an in-lieu-of day when the employee's regularly scheduled day off falls on a holiday, shall be entitled to pay at the rate of his or her rate of basic pay for the scheduled daily tour of duty plus premium pay paid at the employee's hourly rate of basic pay for each hour worked during the scheduled daily tour of duty.

1132.3 An employee who is required to perform holiday work shall be entitled to a minimum of two (2) hours of holiday premium pay.

1132.4 One-quarter ($\frac{1}{4}$) of an hour shall be the smallest fraction of an hour used for crediting holiday premium pay; but, when such work is performed in other than the full fraction, odd minutes shall be rounded up or rounded down to the nearest full fraction (*i.e.*, quarter) of an hour.

1132.5 An employee shall be entitled to pay for overtime work on a holiday at the same rate as for overtime work on other days.

1132.6 An employee paid at grade 15 or above shall not be entitled to holiday premium pay.

1132.7 Holiday premium pay under this section shall be in addition to other pay and shall not be considered basic pay for any purpose.

1132.8 Holiday premium pay shall not be included in the rate of basic pay used to compute amounts of deductions for retirement and group life insurance.

1133 PREMIUM PAY—SUNDAY PREMIUM PAY

1133.1 Sunday premium pay shall not be paid unless specifically authorized by this section.

1133.2 A full-time employee shall be entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to twenty-five percent (25%) of his or her rate of basic pay for each hour of Sunday work that is not overtime work and that is not in excess of the employee's scheduled daily tour of duty that begins or ends on Sunday.

1133.3 Sunday premium pay shall be credited in increments of one-quarter ($\frac{1}{4}$) of an hour for each fifteen (15) minutes and portion thereof in excess of fifteen (15) minutes.

1133.4 A part-time employee or an employee with no scheduled tour of duty shall not be entitled to premium pay for Sunday work.

1133.5 An employee shall not be entitled to Sunday premium pay for periods of paid leave.

1133.6 Sunday premium pay shall not be considered basic pay for any purpose except for computing overtime under the Fair Labor Standards Act.

1134 PREMIUM PAY—NIGHT DIFFERENTIAL

1134.1 Night differential shall not be paid unless specifically authorized by this section.

1134.2 An employee who performs regularly scheduled night work between the hours of 6:00 p.m. and 6:00 a.m. shall be entitled to premium pay as provided in § 1134.3.

1134.3 An employee who performs regularly scheduled nonovertime night work shall be entitled to pay at a rate equal to ten percent (10%) of his or her rate of basic pay for that work, payable on an hour-for-hour basis, in increments of one-quarter ($\frac{1}{4}$) of an hour for each fifteen (15) minutes and portion thereof in excess of fifteen (15) minutes.

1134.4 An employee shall be entitled to a night differential for night work performed when he or she is assigned temporarily, except on an overtime basis, to a tour of duty other than his or her own.

1134.5 Night differential shall not be considered basic pay for any purpose except for computing overtime under the Fair Labor Standards Act.

1135 PREMIUM PAY—ADMINISTRATIVE CLOSING PAY/LEAVE

1135.1 Administrative closing pay shall not be provided nor shall administrative closing leave be paid unless specifically authorized by this section.

1135.2 An emergency employee who is required to perform non-overtime work within his or her forty-hour (40-hour) basic workweek during a period of early dismissal or government closing in accordance with Chapter 12 of these regulations shall be entitled, as determined by the agency head, to either administrative closing pay or administrative closing leave, but not both, for the hours actually worked.

1135.3 Administrative closing pay shall consist of additional compensation provided on an hour-for-hour basis, equivalent to the employee's rate of basic pay, as compensation for work actually performed during a designated emergency.

1135.4 One-quarter ($\frac{1}{4}$) of an hour shall be the smallest fraction of an hour used for crediting administrative closing pay; but, when such work is performed in other than the full fraction, odd minutes shall be rounded up or rounded down to the nearest full fraction (*i.e.*, quarter) of an hour.

1135.5 Administrative closing pay shall be in addition to other pay and shall not be considered basic pay for any purpose.

- 1135.6 Administrative closing leave shall consist of additional time off earned on an hour-for-hour basis as compensation for work actually performed during a designated emergency.
- 1135.7 One-quarter ($\frac{1}{4}$) of an hour shall be the smallest fraction of an hour used for crediting administrative closing leave; but, when such work is performed in other than the full fraction, odd minutes shall be rounded up or rounded down to the nearest full fraction (*i.e.*, quarter) of an hour.
- 1135.8 Administrative closing leave shall be maintained in a separate account from other forms of leave, but shall be scheduled and granted in accordance with the provisions contained in Chapter 12 of these regulations for annual leave.
- 1135.9 Administrative closing leave that is not used within twelve (12) months of being earned shall be forfeited.
- 1135.10 Upon separation from employment, an employee shall be paid, at his or her rate of basic pay at the time of separation, for any unused administrative closing leave remaining to his or her credit.

1136 PREMIUM PAY—LOCAL ENVIRONMENT PAY

- 1136.1 Local environment pay shall not be paid unless specifically authorized by this section.
- 1136.2 An employee shall be paid local environment pay when exposed to an unusually severe working condition or hazard that falls within one (1) of the categories authorized in a schedule of local environment pay rates as established under § 1136.4.
- 1136.3 Positions for which local environment pay may be authorized shall require the approval of the Director of Personnel.
- 1136.4 A schedule of local environment pay rates and the duties for which they are payable and the period during which they are payable shall be established by the Director of Personnel.
- 1136.5 Any schedule established pursuant to § 1136.4:
- (a) Shall become effective on the first day of the first biweekly pay period following the adoption thereof; and
 - (b) Shall be incorporated in the District Personnel Manual (or any other procedural manual developed).
- 1136.6 Amendments to the schedule authorized in § 1136.4 may be made by the Director of Personnel as follows:
- (a) On his or her own initiative;
 - (b) At the request of an agency;

- (c) At the request of a labor organization made through an agency in which it holds exclusive recognition for a unit of employees; or
 - (d) At the request of an employee, when submitted through the employee's agency.
- 1136.7 The Director of Personnel shall establish and publish in the District Personnel Manual (or any other procedural manual developed) the criteria to be included in any request for the establishment of a schedule of local environment pay rates.
- 1136.8 Any amendments made to categories in the schedule of local environment pay rates as provided in § 1136.6:
- (a) Shall become effective on the first day of the first biweekly pay period following the adoption thereof; and
 - (b) Shall be incorporated in the District Personnel Manual (or any other procedural manual developed).
- 1136.9 The Director of Personnel shall publish a list in the District Personnel Manual (or any other procedural manual developed) of the positions for which local environment pay rates are authorized.
- 1136.10 An agency may request approval of local environment pay for a position in which exposure has not been credited in the classification of a position.
- 1136.11 Payment of the local environment pay to an employee in a position for which local environment pay has been newly authorized shall begin with the first day of the first biweekly pay period following the approval.
- 1136.12 Local environment pay shall be paid either on the basis of full-time exposure or part-time exposure as determined by the Director of Personnel.
- 1136.13 Local environment pay shall be a stated percentage rate for categories of exposure and shall not exceed twenty-seven percent (27%) for any category.
- 1136.14 The local environment pay rate shall be determined by multiplying the local environment pay percentage rate authorized for the described exposure by the second step for grade RW-10 on the current Regular Nonsupervisory Wage Service Rate Schedule for Compensation Unit 2, counting one-half ($\frac{1}{2}$) cent and over as a full cent.
- 1136.15 The cents-an-hour rate determined in § 1136.14 shall be paid uniformly to each employee who qualifies for local environment pay regardless of the salary schedule, rate schedule, or grade level from which he or she is paid.
- 1136.16 The amount paid shall be determined by multiplying the local environment pay rate determined in accordance with § 1136.14 by the number of hours of exposure to the environmental situation.

- 1136.17 Each employee who is officially assigned to a position for which local environment pay is authorized, or who is temporarily assigned to perform work involved in that position, shall be paid the local environment pay when performing duties that expose him or her to an applicable environmental situation.
- 1136.18 An employee subjected at the same time to more than one (1) applicable environmental situation shall be paid for that exposure that results in the highest local environment pay rate but shall not be paid more than one (1) local environment pay rate for the same hours of work.
- 1136.19 An employee who is exposed to a situation for which local environment pay is authorized shall be entitled to the appropriate local environment pay regardless of whether he or she has a full-time, part-time, or intermittent tour of duty; is on regular assignment or detail; or is exposed during straight-time or overtime hours of work.
- 1136.20 Local environment pay that is paid on an actual exposure basis shall be paid for a minimum of one (1) hour's local environment pay for that exposure and in increments of one-quarter ($\frac{1}{4}$) of an hour for each fifteen (15) minutes and portion thereof in excess of fifteen (15) minutes.
- 1136.21 When an employee who is receiving local environment pay on the basis of exposure in his or her regular position is temporarily assigned to perform work involved in another job for which a higher or a lower local environment pay rate is authorized, the following shall apply:
- (a) He or she shall be paid the higher or lower local environment pay rate as the case may be for those hours of duty, or fraction thereof, that he or she is exposed to the environmental situation specified for the other position; and
 - (b) He or she shall be paid the local environment pay authorized for his or her position for those hours of duty, or fraction thereof, that he or she is exposed to the environmental situation specified for his or her regular position.
- 1136.22 When an employee who is officially assigned to a position for which no local environment pay is authorized is temporarily assigned to perform work involved in a job for which local environment pay is authorized, he or she shall be entitled to the local environment pay only for those hours of duty, or fraction thereof, that he or she is actually exposed to the environmental situation specified for that position.
- 1136.23 Payment of the local environment pay to an employee shall cease as follows:
- (a) When authorization for the local environment pay is removed from his or her position;
 - (b) When he or she leaves the position for which local environment pay was authorized; or
 - (c) During temporary assignment to perform work involved in another position for which local environment pay has not been authorized.

1136.24 Local environment pay shall not be considered basic pay for any purpose except for computing overtime under the Fair Labor Standards Act.

1137 ON-CALL PAY

1137.1 On-call pay shall not be paid unless specifically authorized by this section.

1137.2 An agency may designate positions for which on-call pay may be authorized, if both of the following conditions are met:

(a) The work involved in the position is vital to:

- (1) Continuity of public health and human services;
- (2) Public safety and law enforcement;
- (3) Emergency management services and emergency medical services; or
- (4) Other crucial operations such as snow removal, debris removal, transportation, shelter operation, food distribution, and communication; and

(b) The work of the position requires the incumbent, when otherwise off duty, to be available to report for work on short notice, within a maximum of one (1) hour or such lesser time as the agency deems warranted by the nature of the position.

1137.4 For an employee to be eligible to receive on-call pay, all of the following conditions must be met:

- (a) He or she must occupy a position for which on-call pay has been authorized pursuant to § 1137.2;
- (b) The agency must have placed the on-call time on the employee's official work schedule on a holiday or outside the employee's scheduled tour of duty;
- (c) The employee must be required to be in a state of readiness to perform work; and
- (d) When called in, the employee must be able to report for work within the time frame established by the agency pursuant to § 1137.2(b).

1137.5 While in an on-call status, an employee shall be entitled to pay at a rate equal to twenty-five percent (25%) of his or her rate of basic pay, payable on an hour-for-hour basis, in increments of one-quarter ($\frac{1}{4}$) of an hour for each fifteen (15) minutes and portion thereof in excess of fifteen (15) minutes.

1137.6 When an employee who is in an on-call status is called in to perform work, he or she shall be credited with a minimum of two (2) hours of work time.

1137.7 On-call pay may not be provided nor may an employee be placed in an on-call status while on paid leave.

1137.8 On-call pay shall not be considered basic pay for any purpose except for computing overtime under the Fair Labor Standards Act.

1138 OVERTIME

1138.1 Except as provided in § 1138.2, entitlement to and computation of overtime shall be determined in accordance with and shall not exceed the overtime provisions of section 7 of the Fair Labor Standards Act of 1938 (FLSA), as amended (29 USC 207).

1138.2 At the discretion of the agency head or his or her designee, entitlement to overtime may be extended to any non-union Career Service employee at the CS-14 level or below, or equivalent, for hours of work authorized in excess of eight (8) hours in a pay status in a workday or in excess of forty (40) hours in a pay status in a workweek.

1138.3 When compensatory time is earned, it shall be credited in accordance with the provisions of Chapter 12 of these regulations.

1139 EXEMPT TIME OFF

1139.1 Exempt time off shall not be provided unless specifically authorized by this section.

1139.2 This section applies to all employees at grade 14 or below subject to the District Service Salary System, the Wage Service Rate System, or the Recreation Service Rate System who are exempt from the Fair Labor Standards Act (FLSA).

1139.3 Due to exigencies of the public business, an agency head may require an employee to perform work in excess of eighty (80) hours in a biweekly pay period.

1139.4 An employee who is exempt from the FLSA and who performs work as directed pursuant to § 1139.3 may, at the discretion of the agency head, be granted exempt time off, which shall consist of additional time off earned on an hour-for-hour basis as compensation for such work actually performed that is in excess of eighty (80) hours in a biweekly pay period.

1139.5 Exempt time off granted to any individual employee shall not exceed a total of eighty (80) hours in any consecutive twelve-month (12-month) period.

1139.6 Exempt time off shall be maintained in a separate account from other forms of leave, but shall be scheduled and granted in accordance with the provisions contained in Chapter 12 of these regulations for annual leave.

1139.7 Exempt time off shall be forfeited if not used by the end of the leave year following the leave year in which it was earned.

1139.8 Exempt time off not used at the time of an employee's separation from service shall not be included in any form of leave payment.

1140 SPECIAL APPOINTMENTS

- 1140.1 This section applies to Excepted Service employees appointed under the authority of § 904 of the CMPA (D.C. Official Code § 1-609.04 (2001)).
- 1140.2 The rate of basic pay for an employee to whom this section applies shall be set by the personnel authority from a salary or rate schedule authorized by these regulations or from an appropriate Wage Order or Mayor's Order.
- 1140.3 An employee to whom this section applies shall be subject to the provisions of the pay system from which paid, as applicable, unless otherwise provided.
- 1140.4 A request by an agency for the establishment of a rate of basic pay for a special program shall be submitted to the pay authority in accordance with procedures established by the Director of Personnel.
- 1140.5 A request pursuant to § 1140.4 must be approved and an appropriate Wage Order or Mayor's Order issued by the pay authority prior to the appointment of an employee who will be paid a special program rate.
- 1140.6 An employee appointed under the authority of § 904(f) of the CMPA (D.C. Official Code § 1-609.04(6) (2001)) as an intern, resident, or trainee shall receive a stipend commensurate with his or her academic level as provided by the appropriate stipend schedule.
- 1140.7 Additional payments in money or kind for a medical intern or resident shall be considered as part of the stipend and shall not cause the stipend to exceed the amount established by the appropriate stipend schedule for his or her academic level.
- 1140.8 An employee appointed under the authority of § 904(e) of the CMPA (D.C. Official Code § 1-609.04(5) (2001)) as an expert or consultant shall be paid at a rate of basic pay determined by the personnel authority that shall be based upon the following considerations:
- (a) The value of the service to the District government in terms of comparability with positions subject to the District Service Salary System;
 - (b) The individual's stature in his or her field and the extent to which his or her personal qualifications increase the value of the services;
 - (c) Any unusually burdensome aspects of the assignment, such as the necessity for frequently working more than eight (8) hours per day without overtime pay; and
 - (d) The rate paid by any other District agency for the same or similar services of an expert or consultant.
- 1140.9 An expert or consultant with a scheduled tour of duty shall be paid only for the hours actually on duty. An expert or consultant who has no scheduled tour of duty shall be paid for actual hours of service performed.

1140.10 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 the schedule from which paid and in accordance with the rules prescribed in § 1131.

1141 RETAINED RATES

1141.1 This section applies to employees, serving under other than a temporary or term appointment, who are in the Career Service and paid under a District Service salary schedule or a Wage Service rate schedule.

1141.2 A retained rate shall be granted to an employee whose rate of basic pay would otherwise be reduced as a result of any of the following:

- (a) A reclassification process;
- (b) Reduction or elimination of a rate or salary schedule;
- (c) Movement of an employee from a position with a special rate or special salary to a position with a different special rate or special salary with a lower rate of basic pay than the former position; or
- (d) The employee no longer meets a specific condition or requirement established by the agency or the Office of Personnel.

1141.3 When an employee is changed to a lower grade under any of the circumstances specified in § 1141.2, the agency shall pay the employee at any rate of the new grade that does not exceed the employee's existing rate of basic pay; however, if the employee's existing rate of basic pay falls between two (2) rates of the new grade, the agency shall pay the employee at the higher rate.

1141.4 An eligible employee under this section whose existing rate of basic pay exceeds the maximum rate of the grade to which he or she is reduced shall be entitled to a retained rate as provided for in this section.

1141.5 An employee shall be eligible for a retained rate as provided in § 1141.2 for a period of two (2) years beginning on the effective date of the reduction in grade or salary, if the employee has served for fifty-two (52) consecutive weeks or more in a position on a covered salary or rate schedule at a grade or salary higher than the grade or salary to which reduced.

1141.6 An employee shall not be eligible for a retained rate under the following circumstances:

- (a) When a change to lower grade is initiated by the employee for his or her benefit, convenience, or personal advantage, including consent to a change to lower grade in lieu of one as specified in § 1141.6(b);
- (b) When a change to lower grade is based on cause as set forth in Chapter 16 of these regulations;

- (c) When the employee (if he or she is a non-unionized employee in the Career Service) does not satisfactorily complete the supervisory or managerial probationary period and is removed from the supervisory or managerial position; or
 - (d) When the employee elects to retreat to the Career Service upon termination from the Management Supervisory Service in accordance with § 954(a) of the CMPA (D.C. Code § 1-609.54(a) (2001)).
- 1141.7 An employee who is serving on a temporary promotion at the time he or she is changed to a lower grade shall have his or her existing rate of basic pay determined by the rate of basic pay he or she would have been receiving had the temporary promotion not occurred.
- 1141.8 When an employee is promoted, including a temporary promotion during the retained rate period, the agency shall pay the employee at any rate of the new grade that does not exceed the employee's retained rate; however, if the employee's retained rate falls between two (2) rates of the grade to which promoted, the agency shall pay the employee at the higher rate.
- 1141.9 An employee whose retained rate exceeds the maximum rate of the grade of the position to which he or she is promoted, including temporarily promoted, shall be entitled to the retained rate for the unexpired portion of the retained rate period.
- 1141.10 When an employee, during a retained rate period, accepts a temporary promotion to the same grade and step from which reduced upon having been changed to a lower grade, or a higher grade and step, and is then returned to the grade to which he or she was originally changed, the temporary promotion shall not lengthen the retained rate period.
- 1141.11 A retained rate and the retained rate period shall cease to apply if any of the following conditions occur:
- (a) The employee has a break in service of one (1) workday or more;
 - (b) The employee is entitled to a rate of basic pay that is equal to or higher than the retained rate;
 - (c) The employee is subsequently changed to a lower grade for cause or at the employee's request; or
 - (d) The retained rate period expires.
- 1141.12 The retained rate received by an employee during the retained rate period shall be compared to any subsequent increase to the salary or rate schedule from which paid to determine if the employee's retained rate is equal to or higher than a rate on the new schedule.
- 1141.13 When, as a result of an increase to the rate(s) of the grade to which the employee is reduced upon being changed to a lower grade, an employee's retained rate becomes

equal to or lower than a rate of the new grade, the retained rate shall cease and the agency shall adjust the employee's rate of basic pay as follows:

- (a) If the retained rate equals a rate in the new grade, the employee shall receive that rate; or
- (b) If the employee's retained rate falls between two (2) rates of the new grade, the employee shall receive the higher rate.

1141.14 When an employee's retained rate is terminated because of the expiration of the retained rate period, the agency shall adjust his or her rate of basic pay to the maximum rate of the new grade.

1141.15 If the employee's rate of basic pay immediately before eligibility for pay retention exceeds the maximum rate of the new grade, the employee shall be entitled to fifty percent (50%) of any subsequent increases in salary or rate schedules established by the Council or Mayor's authority during the two-year (2-year) pay retention period, except that, at such time as a percentage increase raises the employee's rate of basic pay to a level equal to or higher than the maximum rate of the grade, the employee's pay shall be set at the maximum rate of the grade and pay retention shall cease.

1141.16 An employee who was receiving a retained rate prior to the effective date of this chapter shall be entitled to continue to receive those benefits based upon the laws, rules, and regulations that were in effect on the date the employee became eligible for the retained rate benefits.

1142 PRE-EMPLOYMENT TRAVEL AND RELOCATION EXPENSES

1142.1 In this section, the following term has the meaning ascribed:

Relocation expenses—transportation of an individual, his or her immediate family, household goods, and personal effects to the new employee's first post of duty in the District government.

1142.2 The provisions of this section shall apply to employees in the Career, Legal, and Management Supervisory Services appointed under the authority of titles VIII, VIII-A, and IX-A, respectively, of the CMPA (D.C. Official Code §§ 1-608.01, 1-608.51 *et seq.*, and 1-609.51 *et seq.*, respectively (2001)).

1142.3 An agency may pay travel expenses incurred incidental to pre-employment interviews held for the purpose of ascertaining an applicant's qualifications for a position only if the position has been determined by the personnel authority to be unique, that is, characterized by an unusual combination of duties, responsibilities, and qualification requirements, or to be in a shortage category.

1142.4 An agency or department may pay relocation expenses to the first post of duty for a new employee appointed to a position in the District government, only if the position has been determined by the personnel authority to be unique, that is, characterized by an unusual combination of duties, responsibilities, and qualification requirements, or to be in a shortage category.

1142.5 Payment of expenses under § 1142.4 may only be made after the individual selected for appointment signs a notarized agreement to remain in the District government service for twelve (12) months after his or her appointment unless separated for reasons beyond his or her control that are acceptable to the agency concerned. If the individual violates the agreement, the money spent by the District government for expenses must be reimbursed as a debt due the District government and shall be recoverable from the individual by set-off against accrued pay or any other amount due the individual.

1142.6 Any unused advance for travel and related expenses and relocation expenses must be reimbursed as a debt due the District government.

1143 RECRUITMENT AND RETENTION INCENTIVES—ADDITIONAL INCOME ALLOWANCE AND HIRING BONUS

1143.1 For the purposes of this section, the following terms have the meanings ascribed:

Additional income allowance—an authorized amount or rate of additional compensation paid to an employee who occupies a position determined by the personnel authority to have a significant recruitment and retention problem.

Hiring bonus—a one-time supplemental payment provided to an individual newly hired by an agency to a position determined by the personnel authority to have a significant recruitment and retention problem.

1143.2 This section applies to all employees except as provided in §§ 1143.4 and 1143.39.

1143.3 An additional income allowance, a hiring bonus, or both, under this section may be paid when all of the following conditions have been met:

- (a) The personnel authority, in accordance with the provisions of this section, determines that an agency is experiencing difficulty in recruiting or retaining qualified applicants or employees for a specific position or category of positions;
- (b) The employee occupies an indefinite, permanent or term position with a full-time or part-time tour of duty; and
- (c) A service agreement for a period of no less than one (1) year, but no more than two (2) years, is executed between an agency and an applicant or employee in accordance with the provisions of §§ 1143.19 and 1143.32.

1143.4 For the purpose of § 1143.3(b), employment on less than a half-time basis and intermittent employment shall be excluded from the provisions of this section.

1143.5 An agency may not enter into any service agreement until the agency's request for authorization to pay an additional income allowance or hiring bonus is submitted to and approved by the personnel authority in accordance with this section.

1143.6 When an agency head feels that an additional income allowance, a hiring bonus, or both, may be warranted, he or she may request authorization from the personnel

authority for such allowance or bonus, and the request shall include all of the following:

- (a) The position(s) or categories of positions for which there is a significant recruitment or retention problem;
 - (b) A justification supporting the determination that a recruitment or retention problem exists for each position or category of positions; and
 - (c) The amount of an allowance, a bonus, or both recommended for each position or category of positions.
- 1143.7 An agency head may also request his or her personnel authority to discontinue or revise an approved additional income allowance or hiring bonus.
- 1143.8 The personnel authority shall determine the categories of positions authorized to receive an additional income allowance or a hiring bonus based on any factors determined relevant, such as the location, grade, level of difficulty, and working conditions.
- 1143.9 The agency head may establish as separate categories any additional subdivisions of the categories of positions, authorized under § 1143.8, based on any factors the agency head determines relevant. These may include such factors as the location, grade or level, and specialization of the positions, and the level of qualifications sought by the agency for positions in the category.
- 1143.10 A significant recruitment and retention problem shall be deemed to exist for any position(s) or category of positions if the personnel authority determines that all of the following conditions are met with respect to those positions:
- (a) The agency is unable to recruit and retain sufficient numbers of qualified employees for the position(s) or category of position(s) as documented by such things as the number of vacant positions, the length of time positions have been vacant, and the number of employees who have resigned, including the number resigning for higher paying positions;
 - (b) The qualification requirements being used as a basis for considering candidates for such vacant positions do not exceed the qualifications that are actually necessary for successful performance of the work of those positions;
 - (c) The agency has made efforts to recruit qualified candidates for such positions, as documented by the number of vacancies the agency tried to fill compared to the number of hires and offers made, and to retain the employees presently employed in such positions by offering relevant non-pay solutions such as establishing training programs or improving working conditions; and
 - (d) A sufficient number of qualified candidates is not available to fill the existing vacancies for such positions at a rate of pay the agency is able to offer in the absence of an additional income allowance or a hiring bonus.

- 1143.11 The provisions of § 1143.10 notwithstanding, a personnel authority may authorize an additional income allowance to retain an employee(s) whose services, based upon a written determination, are of a special need essential to an agency's mission.
- 1143.12 The amount of an additional income allowance or a hiring bonus payable under this section shall be the minimum amount necessary to address the recruitment and retention problem identified by application of § 1143.10 or 1143.11.
- 1143.13 In determining the amount of an additional income allowance or a hiring bonus payable under § 1143.12, the personnel authority may compare positions within and outside the District government with respect to the relative earnings, responsibilities, expenses, workload, working conditions, conditions of employment, and personnel benefits.
- 1143.14 The amount of an additional income allowance or a hiring bonus authorized by § 1143.12 for each position or category of positions shall not exceed fifteen percent (15%) of the maximum rate payable for the grade held by the employee.
- 1143.15 The personnel authority shall advise the agency whether a request for an additional income allowance or a hiring bonus is approved, disapproved, or requires modification.
- 1143.16 When an additional income allowance is approved, the agency head shall have sole discretion as to whether to offer the allowance to any or all employees in any position(s) covered pursuant to that approval, and may initiate such an offer at any time to an employee or employees in those positions, except that payment of an additional income allowance to an employee may not begin during a period of employment covered under a service agreement required for payment of a hiring bonus.
- 1143.17 The agency head shall notify each employee being offered an additional income allowance of the offer and of his or her obligation to enter into a service agreement as a condition for accepting the allowance.
- 1143.18 An employee who is employed on a regularly scheduled part-time basis of half-time or more, and who is granted an additional income allowance under this section, shall be entitled to the additional income allowance, prorated according to the proportion of his or her work schedule to full-time employment.
- 1143.19 Each service agreement executed for an additional income allowance as required under § 1143.3(c) shall provide for all of the following:
- (a) The specified period of service in return for the allowance;
 - (b) The amount of the allowance;
 - (c) The terms under which the agreement may be terminated; and
 - (d) The requirement to refund the allowance as provided in § 1143.21.
- 1143.20 An employee shall receive the additional income allowance authorized under this section until the earliest of any of the following:

- (a) His or her position is determined to no longer be one to which the provisions of § 1143.8 or 1143.11 apply;
- (b) He or she no longer occupies the position for which the allowance was authorized; or
- (c) The service agreement expires.

1143.21 If an employee separates from a position covered by an additional income allowance during the period when a service agreement is in effect, the employee shall be required to refund to the District government the amount of the additional income allowance he or she has actually received under the agreement, except as provided in § 1143.22, under any of the following conditions:

- (a) Removal or reduction in grade for cause;
- (b) Resignation, except:
 - (1) A resignation for inability to return to duty due to injury or illness; or
 - (2) A resignation following receipt of a notice of reduction in force announcing the effective date of the employee's release;
- (c) Retirement, other than:
 - (1) Retirement for disability; or
 - (2) Retirement following receipt of a notice of reduction in force announcing the effective date of the employee's release;
- (d) Change to a lower grade at the employee's request;
- (e) Separation for failure to comply with residency requirements; or
- (f) Separation during probationary period.

1143.22 The refund of an additional income allowance required pursuant to § 1143.21:

- (a) Shall not exceed the amount paid to the employee for a period of twenty-six (26) weeks; and
- (b) May be waived in whole or part under the provisions of Chapter 29 of these regulations.

1143.23 An additional income allowance shall not be considered basic pay for any purpose.

1143.24 An additional income allowance shall be paid in the same manner and at the same time intervals as basic pay is paid.

- 1143.25 An additional income allowance shall be subject to federal, District of Columbia, and State income taxes.
- 1143.26 An additional income allowance shall be subject to court ordered garnishments depending upon the specific provisions of the court order.
- 1143.27 An agency head, at his or her convenience and upon providing a notice to the employee of at least fifteen (15) calendar days, may terminate an additional income allowance and the employee's service agreement pertaining thereto.
- 1143.28 The agency head, at his or her sole discretion, and at his or her convenience, may offer an employee the opportunity to renew an additional income allowance for which a service agreement has expired or is about to expire, subject to the execution by the employee of a new service agreement pursuant to § 1143.3(c).
- 1143.29 A termination of an additional income allowance pursuant to § 1143.27 or failure by an agency head to offer an additional income allowance to an employee shall not be grievable or appealable.
- 1143.30 When a hiring bonus has been approved by the personnel authority, the agency head shall have sole discretion as to whether to offer the allowance to any or all individuals hired after the effective date of that approval to fill positions covered pursuant to the approval.
- 1143.31 An employee who is hired to fill a position on a regularly scheduled part-time basis of half-time or more, and who is granted a hiring bonus under this section, shall be entitled to the hiring bonus, prorated according to the proportion of his or her work schedule to full-time employment.
- 1143.32 Each service agreement executed for a hiring bonus as required under § 1143.3(c) shall provide for both of the following:
- (a) The amount of the bonus payment; and
 - (b) The requirement to refund the bonus as provided in § 1143.33.
- 1143.33 If an employee separates from a position for which he or she received a hiring bonus during the period when a service agreement is in effect, he or she shall be required to refund the hiring bonus to the District government if the separation was due to any of the following:
- (a) Removal or reduction in grade for cause;
 - (b) Resignation, except:
 - (1) A resignation for inability to return to duty due to injury or illness; or
 - (2) A resignation following receipt of a notice of reduction in force announcing the effective date of the employee's release.

(c) Retirement, other than:

(1) Retirement for disability; or

(2) Retirement following receipt of a notice of reduction in force announcing the effective date of the employee's release.

(d) Change to a lower grade at the employee's request;

(e) Separation for failure to comply with residency requirements; or

(f) Separation during probationary period.

1143.34 The refund of a hiring bonus as required pursuant to § 1143.33 may be waived in whole or in part under the provisions of Chapter 29 of these regulations.

1143.35 A hiring bonus shall be in addition to basic pay and shall not constitute an increase to an employee's basic pay or rate of basic pay, nor shall it be construed to constitute any portion of an employee's rate of basic pay.

1143.36 A hiring bonus shall be paid on a date to be determined by the agency head.

1143.37 A hiring bonus shall be subject to federal, District of Columbia, and State income taxes.

1143.38 A hiring bonus shall be subject to court ordered garnishments depending upon the specific provisions of the court order.

1143.39 A former employee of the District government who separated within three (3) years of the current appointment date shall not be eligible to receive a hiring bonus under this section.

1143.40 Failure by an agency to offer a hiring bonus to an applicant or employee shall not be grievable or appealable.

1143.41 The personnel authority shall develop and publish appropriate procedures to implement the provisions of this section.

1144 PERFORMANCE ALLOWANCE

1144.1 A personnel authority may authorize a performance allowance for exceptional service for an employee in the Career, Legal, or Management Supervisory Service:

1144.2 A performance allowance may be granted only once in any twelve-month (12-month) period and may not be granted if the employee has received a monetary award for performance pursuant to Chapter 19 of these regulations where that award was based on performance during any or all of the same period of time that would be covered by a performance allowance under this section.

- 1144.3 A performance award may be granted only when the employee's performance rating assigned for the most recent rating period prior to the granting of an incentive is either "Substantially Exceeds Expectations" or better, "Exceeds Expectations" or better, or "Excellent" or better, as applicable.
- 1144.4 A performance allowance shall not exceed ten percent (10%) of the maximum rate of pay for the employee's grade.
- 1144.5 Upon being granted, a performance allowance shall be paid in equal installments over a period of twenty-six (26) consecutive pay periods, except that such award shall not be payable following a separation prior to the end of the period covered by the allowance payment.
- 1144.6 A performance allowance awarded under this section shall not be considered basic pay for any purpose.

1145 CLOTHING AND UNIFORM ALLOWANCES

- 1145.1 Heads of agencies are authorized to provide uniforms or allowances for uniforms to employees of the agency who are required by regulation or statute to wear a prescribed uniform in the performance of official duties.
- 1145.2 An allowance paid under this section shall not be a part of an employee's rate of basic pay.
- 1145.3 This allowance may be discontinued at any time upon written notification from the head of an agency.
- 1145.4 The head of an agency shall prescribe procedures necessary to administer this section.

1146 WITHHOLDING PAY AND ALLOTMENTS, GARNISHMENT, LEVY, AND TAX SET-OFF

- 1146.1 In this section, the following terms have the meaning ascribed:

Allotment—a recurring, specified deduction from pay, for a legal purpose, authorized by an employee to be paid to an allottee.

Allottee—the authorized institution or person(s) to which an allotment is made payable.

Allotter—the employee from whose pay an allotment is made.

Attachment—deducting from the pay of an employee, pursuant to an order of a court or agency having authority to so order, a sum of money to be paid to the court, agency, or third party for the purpose of satisfying a levy or garnishment.

D.C. One Fund Campaign—an organization of voluntary health and welfare agencies authorized to solicit charitable contributions in the Metropolitan Washington Area in accordance with arrangements prescribed by Mayor's Order.

Dues—a voluntary, regular, periodic amount deducted from an employee's pay and submitted to a labor organization, as authorized in a collective bargaining agreement.

Levy—a notice served by the U.S. Internal Revenue Service on an agent of the District of Columbia designated to withhold all or part of the accrued salary or wages due an employee for purposes of satisfying a delinquent tax obligation.

Pay—the pay due an employee after all deductions authorized by law such as retirement or Social Security deductions or federal or District withholding tax, when applicable, have been made.

Service fee—a fee withheld pursuant to a collective bargaining agreement from the pay of a non-member of a union, where the union holds exclusive recognition in the unit where the non-member is employed.

Tax set-off—deducting from the pay of an employee a sum of money owed to the District government for delinquent taxes.

Withholding—a mandatory, specified deduction from pay mandated by law or regulation, such as District and federal income taxes, Civil Service Retirement and FICA contributions.

1146.2 An employee shall be permitted to make allotments as follows:

- (a) Dues to a labor organization in accordance with § 1146.6;
- (b) Charitable contributions to the D.C. One Fund Campaign in accordance with § 1146.10;
- (c) State income tax withholdings in accordance with § 1146.12;
- (d) Savings to financial institutions; and
- (e) Child support or alimony payments in accordance with § 1146.14.

1146.3 The Chief Financial Officer is authorized to develop procedures to carry out the provisions of this section.

1146.4 In addition to those allotments provided for in § 1146.2, the Chief Financial Officer may establish procedures under which each employee of an agency is permitted to make allotments of amounts of his or her pay for such purposes as the Chief Financial Officer considers appropriate.

1146.5 Allotments shall be subject to the following general limitations:

- (a) The allotter shall specifically designate the allottee and the amount of the allotment in writing in an allotment authorization;
- (b) The total amount of allotments shall not exceed the pay due the allotter for a particular period;

- (c) An employee shall request in writing a change in or the revocation of an allotment;
 - (d) Allottees shall agree that the District government shall be held harmless for any authorized allotment disbursed in accordance with the employee's request for an allotment from pay;
 - (e) Allottees shall agree that disputes regarding any authorized allotments shall be a matter between the allotter and allottee;
 - (f) No allotment shall be authorized to pay for any private indebtedness;
 - (g) Except for those employees otherwise provided for in this section, only an employee who is serving under an appointment not limited to six (6) months or less may make an allotment; and
 - (h) The District government shall discontinue paying an allotment when the allottee dies.
- 1146.6 In accordance with § 1707 of the CMPA (D.C. Official Code § 1-617.07 (2001)) and the provisions of the applicable collective bargaining agreement, an employee may authorize an allotment for dues to a labor organization that has been certified as the exclusive representative of employees in the collective bargaining unit in which the employee is employed.
- 1146.7 As provided in § 1707 of the CMPA (D.C. Official Code § 1-617.07 (2001)) and the provisions of the applicable collective bargaining agreement, service fees may be deducted from an employee's salary by the employer if that provision is contained in the collective bargaining agreement.
- 1146.8 The District shall discontinue a dues allotment when the allotter ceases to be a member of the bargaining unit.
- 1146.9 An employee may make an allotment for charitable contributions to the D.C. One Fund Campaign.
- 1146.10 The authorization for the D.C. One Fund Campaign allotment shall be as follows:
- (a) For the term of one (1) year;
 - (b) An equal amount per biweekly pay period, the minimum allotment to be determined by the pay authority;
 - (c) The allotter may not change the amount deducted each biweekly pay period during the term of the allotment;
 - (d) The allotter may voluntarily discontinue the allotment at any time, but a discontinued allotment shall not be reinstated; and

- (e) Allotments shall be discontinued automatically upon expiration of the one-year (1-year) withholding period or upon termination of District service, whichever occurs first.

- 1146.11 When an employee has a legal obligation to pay, but the District government has no legal obligation to withhold State income taxes, the District government shall permit an employee to make an allotment for payment of taxes as provided in § 1146.12.
- 1146.12 An employee shall be permitted to make an allotment for payment of State taxes to the State of Maryland or the Commonwealth of Virginia.
- 1146.13 An employee shall be permitted to make up to two (2) allotments of pay to a financial organization of his or her choice for credit to his or her savings account.
- 1146.14 An employee shall be permitted to make an allotment for alimony, child support, or both, when he or she voluntarily elects to do so. This provision shall not apply to garnishment orders issued to enforce child support, alimony obligations, or both, as provided in 42 U.S.C. 659 and 15 U.S.C. 1673.
- 1146.15 The Mayor shall designate an agent to accept garnishment, levy, and tax set-offs.

1147 DUAL PAY AND DUAL EMPLOYMENT

- 1147.1 In this section, the following terms have the meaning ascribed:

Annuity—the gross amount of the retirement pay, exclusive of deductions, for the period of employment as a reemployed annuitant.

Pay—remuneration paid an employee.

Position—the work, consisting of the official duties and responsibilities assigned by competent authority for performance by an employee.

Reemployed annuitant—a person who is appointed to and occupies a position in the District government, and who is receiving an annuity from a District government civilian retirement system, or who otherwise meets the legal requirements and has filed for an annuity under such a system, except as provided in § 1147.2.

- 1147.2 As provided in § 1103(b) of the CMPA (D.C. Official Code § 1-611.03(b) (2001)), the pay of an individual receiving an annuity under any District government civilian retirement system selected for employment in the District government on or after January 1, 1980, shall be reduced by the amount of annuity allocable to the period of employment as a reemployed annuitant. No reduction shall be made to the pay of a reemployed individual for any retirement benefits received by the reemployed individual pursuant to §§ 2603 through 2612 of the CMPA (D.C. Official Code §§ 1-626.03 through 1-626.12 (2001)); the Judges' Retirement Fund, established by D.C. Official Code § 1-714 (2001); or § 3 of the Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1994 (D.C. Official Code § 5-723(e) (2001)).

1147.3 An employee, except as provided in § 1147.4, shall not be entitled to receive basic pay from more than one (1) position in the District government for more than an aggregate of forty (40) hours of work in one (1) calendar week.

1147.4 The provisions of § 1147.3 shall not apply to the following:

- (a) Pay on a when-actually-employed basis received from more than one (1) consultant or expert position if the pay is not received for the same hours of the same day;
- (b) Pay consisting of fees paid on other than a time/rate basis;
- (c) Pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period;
- (d) Pay for intermittent employment as a teacher in the Department of Corrections;
- (e) Pay for temporary part-time or intermittent employment of a teacher, custodial, or other employee necessary to carry out the recreation programs of the Department of Parks and Recreation;
- (f) Pay for a ninety-day (90-day) period for full-time, part-time, or intermittent employment of a referee, umpire, swimming pool guard or attendant, gymnasium or playground supervisor, or other special employee necessary to carry out the recreation program in the Department of Parks and Recreation;
- (g) Pay for part-time or intermittent employment as a counselor or monitor in connection with summer youth opportunity programs in the District government;
- (h) Pay for part-time or intermittent employment as a teacher in the D.C. Public School system;
- (i) Pay for part-time or intermittent employment as an instructor, teacher, or professor at the University of the District of Columbia;
- (j) Pay for part-time or intermittent employment within the Department of Mental Health as a psychiatric resident or intern who is employed for training purposes under the student-stipend program; or
- (k) Pay for temporary or intermittent employment for services performed due to emergencies resulting from natural disasters or similar unforeseen events or circumstances.

1147.5 An individual shall not be entitled to receive basic pay from more than one (1) position, whether with the Federal Government, the District government, or both, covered by the Civil Service Retirement System (Subchapter III of Chapter 83 of Title 5 of the U.S. Code) for more than an aggregate of forty (40) hours of work in one (1) calendar week.

1148 SEVERANCE PAY

1148.1 In this section, the following terms have the meaning ascribed:

Basic pay—the rate of pay fixed by law or administrative action for the position held by an employee at the time of separation, excluding other additional pay.

Creditable service—all service in the employ of the District or Federal Government that is creditable for purposes of the employee's retirement system.

Equivalent position—a position of like seniority, tenure, and pay other than a retained rate.

Severance pay—pay for a separated employee, computed on the basis of the employee's basic pay, length of creditable service, and age, as follows:

- (a) To a Career Service employee or an attorney in the Excepted Service or Legal Service who is involuntarily separated in accordance with Chapter 24 of these regulations; or
- (b) To a Management Supervisory Service employee who is separated for non-disciplinary reasons under the provisions of Chapter 38 of these regulations.

Severance pay fund—the total severance pay to which an employee is entitled.

1148.2 Except as provided in § 1148.3, this section applies to all of the following full-time or part-time employees with a scheduled tour of duty within each administrative workweek:

- (a) Each employee serving in a career appointment (permanent or probational) in the Career Service who is involuntarily separated under the provisions of Chapter 24 of these regulations;
- (b) Each employee serving in the Management Supervisory Service who is separated from service for non-disciplinary reasons under the provisions of Chapter 38 of these regulations; and
- (c) Each person appointed to the Excepted and Legal Service as an attorney, other than as an attorney in the Senior Executive Attorney Service, who is involuntarily separated under the provisions of Chapter 24 of these regulations.

1148.3 This section does not apply to any of the following:

- (a) An employee serving under an appointment with a definite time limitation, except one so appointed for full-time employment without a break in service of three (3) calendar days following service under an appointment without time limitation, if the employee has served one (1) year;
- (b) An employee who, at the time of separation by reduction in force, is receiving disability compensation under title XXIII of the CMPA (D.C. Official Code

§ 1-623.01 *et seq.* (2001)), other than one receiving this compensation concurrently with pay or on account of the death of another individual;

- (c) An employee who, at the time of separation by reduction in force, is entitled to receive other severance pay from the District government;
 - (d) A member of a board or commission who is compensated under the provisions of § 1108 of the CMPA (D.C. Official Code § 1-611.08 (2001)), or is compensated on an honorarium, stipend, fee, per diem, or any other paid basis;
 - (e) An employee in the Career Service or an attorney in the Excepted Service who is involuntarily separated from the service by removal for cause pursuant to Chapter 16 of these regulations, an employee in the Legal Service separated for disciplinary reasons in accordance with Chapter 36 of these regulations, or an employee in the Management Supervisory Service separated for disciplinary reasons pursuant to Chapter 38 of these regulations;
 - (f) An employee who, at the time of separation by reduction in force, is offered and declines to accept an equivalent position in any District agency, including an agency to which the employee with his or her function is transferred in a transfer of functions between agencies;
 - (g) A Management Supervisory Service employee who at the time of separation from service is offered and declines a retreat under § 954(a) of the CMPA (D.C. Official Code § 1-609.54(a) (2001)); or
 - (h) An employee who is offered an opportunity to transfer with his or her agency or part thereof when it is transferred to or merged with a District controlled corporation, when the statute effecting the transfer or merger includes provisions to assure that an employee who transfers will be regarded as continuing in the employ of the District for purposes of Health, Life Insurance, and Retirement benefits.
- 1148.4 An employee to whom this section applies who has been employed currently for a continuous period of at least twelve (12) months, shall be entitled to severance pay as provided by this section.

1148.5 Severance pay shall consist of all of the following:

- (a) A basic severance allowance computed on the basis of one (1) week's basic pay at the rate received immediately before involuntary separation for each year of creditable service up to and including ten (10) years for which severance pay has not been received under any District authority and two (2) weeks' basic pay at that rate for each year of creditable service beyond ten (10) years for which severance pay has not been received under any District authority;
- (b) Additional service credit for employees who qualify for veterans preference and District residency preference, in accordance with Chapter 24 of these regulations; and

- (c) An age adjustment allowance computed on the basis of ten percent (10%) of the total basic severance allowance, as determined by § 1148.5(a) and (b), for each year by which the age of the employee exceeds forty (40) years at the time of involuntary separation.
- 1148.6 In computing an employee's total years of creditable service under § 1148.5(a) and (b), the agency shall do all of the following:
- (a) Credit him or her with each full year and with twenty-five percent (25%) of a year for each three (3) months of service in excess of one (1) or more full year;
 - (b) Provide additional service credit of four (4) years for an employee who qualifies for veterans preference; and
 - (c) Provide additional service credit of three (3) years for an employee who qualifies for District residency preference.
- 1148.7 In computing an employee's years of age over forty (40) for the age adjustment allowance under § 1148.5(c), the agency shall credit him or her with twenty-five percent (25%) of a year for each three (3) months that his or her age exceeds forty (40).
- 1148.8 The total severance pay received under § 1148.5 shall not exceed twenty-six (26) weeks' pay at the rate received immediately before separation, and total severance pay shall be limited to not more than twenty-six (26) calendar weeks during the total years of service in the District government, except that severance pay totaling twenty-six (26) weeks or less received prior to October 21, 1998 shall not be counted for this purpose.
- 1148.9 Upon an employee's separation, the agency shall compute the severance pay fund, and shall pay him or her, at the same biweekly pay period intervals as if still employed, the same amount as his or her basic pay for the biweekly pay period immediately before separation until the severance pay fund is exhausted, except that the final payment shall consist only of that portion of the severance pay fund remaining.
- 1148.10 If an employee retains entitlement to severance pay, due to the exception specified in § 1148.3(a), severance pay shall be computed on the rate of basic pay received immediately before the termination of the appointment without time limitation.
- 1148.11 An employee shall be considered to be serving under an appointment with a definite time limitation under the following conditions:
- (a) The employee accepts an initial appointment without time limitation in an agency that is scheduled by law or Mayor's Order to be abolished within five (5) years of the date of his or her appointment; and
 - (b) The scheduled date of the agency's abolishment has not been extended beyond five (5) years of the date of appointment at the time the employee is separated.

- 1148.12 The basic pay received immediately before separation for an employee who is in a nonpay status at the time of separation shall be that basic pay he or she would have received had he or she been in a pay status at the time of separation.
- 1148.13 The length-of-service requirement of § 1148.4 shall be deemed to be met if the employee on the date of separation has been on the rolls of one (1) or more District agencies under one (1) or more appointments without time limitation, or temporary appointments that precede or follow an appointment without time limitation, without any break in service of more than three (3) calendar days for at least the preceding twelve (12) calendar months.
- 1148.14 An employee who is separated by an agency as a result of an injury incurred while in the performance of duty, and who is entitled to a continuation of pay or compensation pursuant to title XXIII of the CMPA (D.C. Official Code § 1-623.01 *et seq.* (2001)), shall be entitled, upon reemployment with the District government, to have the entire time, during which he or she was receiving compensation or continuation of pay, counted as continuous service for purposes of determining whether the employee has satisfied the twelve-months' (12-months') continuous service requirement.
- 1148.15 An employee who is separated because of resignation shall be deemed to have been involuntarily separated for purposes of entitlement to severance pay, if he or she has not declined an offer of an equivalent position as specified in § 1148.3(f), (g), or (h), as applicable, when he or she resigns after receiving a specific notice in writing by the agency that the employee is to be involuntarily separated.
- 1148.16 When, with or without a break in service of more than three (3) days, an employee who is entitled to severance pay accepts one (1) or more temporary appointments with any District government agency of one (1) year or less including any authorized temporary extensions thereof, the agency that separated the employee shall suspend the payment of the severance pay for the duration of the appointment and shall, at the termination of the appointment, continue the payment of the severance pay fund as prescribed by this section.
- 1148.17 An employee's service under one (1) or more temporary appointments as set forth in § 1148.16 shall not be creditable for purposes of computing severance pay that it interrupts.
- 1148.18 If an employee is reemployed by the District government, in an appointment other than one under § 1148.16, before the end of the period covered by payments of severance pay, the payments shall be discontinued beginning with the date of reemployment and the service represented by the unexpired portion of the period shall be recredited to the employee for use in any later computations of severance pay.
- 1148.19 If the employee under § 1148.16 becomes entitled to severance pay upon subsequent separation, the agency shall compute his or her severance pay fund at the time of the subsequent separation as the basis of all creditable service and current age and shall deduct from the number of weeks due the number of weeks the employee previously received severance pay.

1148.20 If at the time of separation an employee is receiving a retained rate, that rate shall be his or her rate of basic pay to be used for purposes of computing severance pay.

1148.21 The period for which severance pay is paid shall not be regarded as a period of District service or employment.

1148.22 If the employee dies before the severance pay fund is exhausted, the remaining severance pay shall be paid in a lump sum to the survivor in accordance with § 1150.

1149 BACK PAY

1149.1 In this section, the following terms have the meaning ascribed:

Appropriate authority—an entity having authority to correct or direct the correction of an unjustified or unwarranted personnel action, including but not limited to the following:

- (a) A court having jurisdiction;
- (b) The Office of the Corporation Counsel;
- (c) The head of the employing agency or an agency official to whom corrective action authority is delegated;
- (d) The pay authority;
- (e) The Office of Employee Appeals;
- (f) The Public Employee Relations Board;
- (g) The Office of Human Rights;
- (h) The Equal Employment Opportunity Commission;
- (i) An arbitrator in a binding arbitration case; and
- (j) Any other federal agency authorized to order remedial actions under any program providing federal financial assistance.

Benefits—monetary and employment benefits to which an employee is entitled by law or regulation, including but not limited to health and life insurance, and excluding pay as defined in this section.

Nondiscretionary provision—any provision of law, Mayor's Order, regulation, personnel policy issued by the pay authority, or collective bargaining agreement that requires a personnel authority to take a prescribed action under stated conditions or criteria.

Pay—the rate of basic pay or basic compensation as defined under the applicable pay system; pay increases; within-grade increases; premium pay (including holiday, Sunday, night, administrative closing, and local environment pay); on-call pay; retained rates; and pay adjustments for

District Service supervisors. For the purpose of this section, pay also means annual, sick, court, and military leave.

Unjustified or unwarranted personnel action—an act of commission (that is, an action taken under authority granted to an authorized official) or of omission (that is, non-exercise of proper authority by an authorized official) that is subsequently determined to have violated or improperly applied the requirements of a nondiscretionary provision, as defined herein, and thereby resulted in the withdrawal, reduction, or denial of all or any part of the pay or benefits, as used herein, otherwise due an employee. The words “personnel action” include personnel actions and pay actions, alone or in combination.

- 1149.2 An employee who, on the basis of a timely appeal of an administrative determination is found, by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have undergone an unjustified or unwarranted personnel action resulting in the withdrawal or reduction of all or part of an employee’s pay or benefits, shall be entitled, on correction of the personnel action, to back pay under this section.
- 1149.3 This section applies to the computation, payment, and restoration of pay and benefits for the purpose of making an employee financially whole, when the employee, on the basis of an administrative determination, a timely appeal, grievance, or claim against the District government, is found to have undergone an unjustified or unwarranted personnel action.
- 1149.4 An unjustified or unwarranted personnel action shall only be corrected if it is found by appropriate authority that the withdrawal, reduction, or denial of all or part of the pay or benefits due an employee was the clear and direct result of and would not have occurred but for the unjustified or unwarranted personnel action.
- 1149.5 The requirement for an administrative determination shall be met when an appropriate authority finds that an agency has taken a personnel action it was prohibited from taking, has taken a personnel action not authorized by law or regulation, or has not taken a personnel action it was required to take.
- 1149.6 The requirement for a timely appeal shall be met when an employee or personal representative initiates a claim for settlement of the employee’s claim against the District government in accordance with the procedures included in a collective bargaining agreement, or in other procedures established by an appropriate authority, and the claim is accepted as timely filed by the personnel authority administering the appeal or grievance system, or is found to be timely by the appropriate authority.
- 1149.7 A personnel action, to be unjustified or unwarranted, must be determined by an appropriate authority to be improper or erroneous on the basis of substantive defects, and no employee shall be entitled to back pay or reinstatement solely on the basis of procedural error by the agency.
- 1149.8 The requirement for correction of the personnel action shall be met when appropriate authority, consistent with law, Mayor’s Order, regulation, or collective bargaining

agreement, after a review, makes or directs the correction of an unjustified or unwarranted personnel action.

- 1149.9 Subject to the provisions of §§ 1149.11 and 1149.12, the period for which recomputation is required under § 1149.10 shall be the period covered by the unjustified or unwarranted personnel action that is corrected.
- 1149.10 When an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action, the agency shall determine the employee's back pay entitlement by recomputing for the period covered by the corrective action the pay and benefits of the employee as if the unjustified or unwarranted personnel action had not occurred, but in no case shall the employee be granted more pay or benefits than he or she would have been entitled by law, Mayor's Order, regulation, or agency policy.
- 1149.11 In computing the amount of back pay under this section, the agency shall not include any of the following:
- (a) Any period during which the employee was not ready and able to perform his or her job because of an incapacitating illness, except that the agency shall grant, upon the request of and documentation by the employee, any sick leave or annual leave to his or her credit to cover the period of incapacity by reason of illness;
 - (b) Any period during which the employee was unavailable for the performance of his or her job; or
 - (c) Any period after one (1) year from the date of the unjustified or unwarranted personnel action where it is determined that an employee has not actively sought employment.
- 1149.12 In computing the amount of back pay due an employee, the agency shall deduct both of the following:
- (a) Any amounts earned by the employee from other employment during the period covered by the personnel action being corrected; and
 - (b) Any erroneous payment received from the District or Federal Government as a result of the unjustified or unwarranted personnel action, which, in the case of erroneous payments received from the federal Civil Service Retirement System, Police and Fire Retirement System, and any District retirement system, shall be returned to the appropriate system.
- 1149.13 The agency shall include as other employment under § 1149.12(a) only that employment engaged in by the employee to take the place of the employment from which the employee was separated.
- 1149.14 An employee entitled to back pay under this section shall have included in the back pay computation any pay or benefit that the employee would have received, except that overtime pay shall not be included in the back pay award.

- 1149.15 Back pay awarded under this section shall be subject to any withholdings, allotments (as defined in § 1146), and deductions as required by law or regulation.
- 1149.16 Any indebtedness remaining after liquidation of back pay may be subject to waiver by either of the following:
- (a) The Mayor, for the employee's indebtedness to the District government, pursuant to Chapter 29 of these regulations; or
 - (b) The U.S. Office of Personnel Management, for the employee's indebtedness to the Civil Service Retirement System.

1150 PAYMENT OF MONEY DUE—SETTLEMENT OF ACCOUNTS (DECEASED EMPLOYEES)

1150.1 In this section, the following term has the meaning ascribed:

Money due—the pay and allowances due on account of the services of a deceased employee of the District of Columbia government, not including benefits payable under Title 5 of the U.S. Code.

- 1150.2 The personnel authority shall notify each employee of his or her right to designate a beneficiary or beneficiaries to receive money due, and of the disposition of money due if a beneficiary is not designated.
- 1150.3 An employee who designates a beneficiary or beneficiaries under § 1150.2 shall file the designation in writing with the Office of Pay and Retirement Services or with his or her servicing personnel office, which shall then forward the designation to the Office of Pay and Retirement Services.
- 1150.4 An employee may file, change, or revoke a designation at any time, which shall become effective on the date received in the Office of Pay and Retirement Services.
- 1150.5 In order to facilitate settlement of accounts of a deceased employee, money due an employee at the time of his or her death shall be paid to the person or persons surviving at the date of death, in the following order of precedence:
- (a) First, to the beneficiary or beneficiaries designated by the employee in writing;
 - (b) Second, if there is no designated beneficiary, to the widow or widower of the employee;
 - (c) Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation;
 - (d) Fourth, if none of the above, equally to the parents of the employee or the survivor of them;

- (e) Fifth, if none of the above, to the duly appointed legal representative of the employee's estate; and
- (f) Sixth, if none of the above, to the person or persons entitled under the laws of the employee's domicile at the time of the employee's death.

1150.6 A legal separation agreement shall not divest the widow or widower of a deceased employee of his or her right to unpaid compensation in the absence of the designation of another beneficiary.

1150.7 No payment of money due shall be made to an heir or beneficiary of a deceased employee if that heir or beneficiary is found guilty of feloniously killing the employee upon whose death the payments become due.

1150.8 Payment under § 1150.5 shall bar recovery by another party or parties of the amounts so paid.

1151 WAIVER OF COMPENSATION

1151.1 Any officer or employee of the District government entitled to compensation may decline to accept all or any part of his or her compensation through a waiver signed, notarized, and filed with the Director of Personnel.

1151.2 The amount waived shall not be subject to deduction and withholding for retirement and life insurance, and shall not be considered as salary for the purpose of computing annuities and insurance coverage.

1151.3 The waiver may be revoked in writing at any time; however, the individual may not receive retroactive payment of compensation for the period the waiver was in effect.

1152 PAY CLAIMS

1152.1 A claim for the payment of compensation under this chapter must be filed in writing with the pay authority within three (3) years from the date it first accrued or the claim shall be forever barred.

1152.2 The date of accrual of a claim under § 1152.1 shall be the first day the services were performed or the date other compensation under this chapter was due.

1152.3 Upon receipt of a claim, the pay authority shall investigate the claim, and shall respond in writing to the claimant within ninety (90) days of receipt of the claim.

1152.4 Failure of the pay authority to respond within the time limit specified in § 1152.3 shall constitute a denial of the claim.

1152.5 A denial of the claim by the pay authority or a failure to respond under § 1152.4 shall be considered a final agency decision on a grievance under Chapter 16 of these regulations.

Section 1155, Operation Desert Shield and Desert Storm Pay Differential, is rescinded.

Section 1199 is amended to read as follows, with the definitions in the existing § 1199 incorporated without change:

1199 DEFINITIONS

1199.1 In this chapter, the following terms have the meaning ascribed:

Administrative closing leave—additional time off earned by an emergency employee on an hour-for-hour basis as compensation for work actually performed during a designated emergency.

Administrative closing pay—additional pay earned by an emergency employee on an hour-for-hour basis as compensation for work actually performed during a designated emergency.

Administrative workweek—a period of seven (7) consecutive calendar days, Sunday through Saturday.

Agency—the meaning set forth in § 301(a) of the CMPA (D.C. Official Code § 1-603.01(1) (2001)), excluding the courts.

Agency head—the highest executive official of an agency or an official who has been delegated the authority to act for that official in the matter concerned.

Basic workweek—except as otherwise provided, a workweek of not more than forty (40) hours per week, in a period of not more than five (5) days during an administrative workweek.

Biweekly pay period—two (2) consecutive administrative workweeks as established by the pay authority.

Cafeteria plan—common name (sometimes also called “flexplan”) for a plan offered under § 125 of the Internal Revenue Code, under which an employee chooses benefits from a “menu” of choices.

Calendar week—a period of seven (7) consecutive calendar days, Sunday through Saturday.

Career Service—positions in the District government as provided in §§ 801 and 204 of the CMPA (D.C. Official Code §§ 1-608.01 and 1-602.04 (2001)).

Change to lower grade—the change of an employee to a lower grade when both the old and new positions are under the same salary or rate schedule.

Compensatory time—time off in lieu of overtime pay for overtime work performed.

Consultant—a person who serves as an advisor to an officer or instrumentality of the District government, as distinguished from an officer or employee who carries out the agency’s duties and responsibilities. A consultant gives views or opinions on problems or questions presented by the agency, but neither performs nor supervises performance of operating functions. The

person is expert in the field in which he or she advises, but need not be a specialist. A person's expertness may consist of a high order of broad administrative, professional, or technical experience indicating that his or her ability and knowledge make his or her advice distinctively valuable to the agency.

Days—calendar days, unless otherwise specified.

Dependent—an individual as defined in § 152 of the Internal Revenue Code.

District Service Salary System—the basic pay system for positions that are classified pursuant to § 1101 of these regulations and for which compensation is established on an annual basis.

District Service salary schedules—the pay schedules applicable to employees who are paid under the District Service Salary System.

Emergency employee—an employee who, pursuant to Chapter 12 of these regulations, is designated in writing by an agency head as one who must remain on duty or report to duty to provide minimum required services during a period of early dismissal or government closings, or when it is deemed appropriate in the public interest to excuse most employees from duty because of an unusual situation.

Employee—an individual who performs a function of the District government and who receives compensation for the performance of such services and who occupies a position in the Career, Legal, Excepted, or Management Supervisory Service.

Equivalent increase—an increase or increases in the employee's rate of basic pay equal to or greater than the amount of a within-grade increase in the grade in which the employee is serving.

Excepted Service—positions identified as being statutory, transitional, public employment, special category, training, or policy positions and authorized by title IX of the CMPA (D.C. Official Code §1-609.01 *et seq.* (2001)). These positions are not in the Career, Legal, or Management Supervisory Service.

Executive Service—subordinate agency heads whom the Mayor is authorized to appoint in accordance with title X-A of the CMPA (D.C. Official Code § 1-610.51 *et seq.* (2001)).

Existing rate of basic pay—the rate of basic pay received immediately before the effective date of transfer, reassignment, promotion, change to lower grade, within-grade increase, or salary or rate schedule revision.

Expert—an expert may be a person who performs or supervises regular duties and operating functions and includes (a) a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field; and (b) certain members of boards or commissions.

Flexible spending account—an account provided as part of a cafeteria plan which allows an employee to fund medical care expenses on a pre-tax basis which are not covered under other medical benefits coverage and dependent care expenses. The employee claims reimbursement

for such expenses from funds in the account, up to the total contributed to the account for that year.

Garnishment—a legal obligation served through a writ, court order, or summons from the District of Columbia Superior Court or a U.S. District Court of competent jurisdiction on behalf of a claimant concerning the attachment of pay to satisfy an employee's obligation to pay alimony, child support, or both.

Health care expense—an expense related to the diagnosis, cure, mitigation, treatment, or prevention of disease consisting of expenses for medical care within the meaning of § 213 of the Internal Revenue Code.

Holiday premium pay—additional pay for holiday work.

Holiday work—all work performed within an employee's scheduled tour of duty on a day designated as a holiday under § 1202 of the CMPA (D.C. Official Code § 1-612.02 (2001)) or established as an in-lieu-of day when an employee's regularly scheduled day off falls on a holiday.

Hourly rate of basic pay—the rate of pay derived when the annual rate of basic pay is divided by two thousand eighty (2,080).

Labor organization—an organization certified as an exclusive representative by the Public Employee Relations Board of the District of Columbia.

Legal Service—positions in the District government as provided in title VIII-B of the CMPA (D.C. Official Code § 1-608.51 *et seq.* (2001)).

Local environment pay—additional pay that has been authorized for a duty involving unusually severe hazards or working conditions.

Management Supervisory Service—positions in the District government as provided in title IX-A of the CMPA (D.C. Official Code § 1-609.51 *et seq.* (2001)).

Medical intern or resident—a graduate of a medical school assigned or attached principally for training purposes to a hospital, clinic or medical or dental laboratory operated by an agency for whom the pay authority has approved the use of a stipend.

New appointment—the first appointment, regardless of tenure, as an employee of the District government.

Night differential—additional pay for regularly scheduled night work.

Night work—regularly scheduled work performed between the hours of 6:00 p.m. and 6:00 a.m.

Nonpay status—hours in the categories of leave without pay (LWOP), absence without leave (AWOL), and suspension.

Nonworkday—any calendar day outside of those calendar days within an employee's basic workweek exclusive of holidays and administrative dismissals established by administrative order or Mayor's Order or other days established by statute.

On-call pay—additional compensation provided when a determination has been made that the work of the position requires the employee to remain accessible and available to the point where his or her time cannot be used effectively for his or her own purposes.

Participant—an employee who is eligible and elects to participate in the D.C. Pre-Tax Plan.

Pay authority—the Mayor or the Director of Personnel, who has been delegated the authority to establish the compensation system for the Career, Legal, Excepted, or Management Supervisory Service.

Pay period—see definition of "biweekly pay period."

Personnel authority—an individual or entity listed in § 406(b) of the CMPA (D.C. Official Code § 1-604.06(b) (2001)), or a person delegated that authority by such an individual or entity.

Premium pay—additional pay authorized by this chapter for holiday work, Sunday work, night work, work by an emergency employee during an administrative closing, work involving unusually severe working conditions or hazards, when that work is performed within the employee's scheduled tour of duty.

Pre-tax salary reductions—amount of an employee's salary which is not paid to the employee in cash but used for some other purpose. Such contributions are pre-taxed if they reduce income before taxes and FICA taxes are computed.

Promotion—the change of an employee to a position at a higher grade level within the same job classification system and salary or rate schedule.

Rate of basic pay—except as otherwise provided, the pay rate fixed by law, Wage Order, or Mayor's Order for the position held by an employee before any deductions and exclusive of additional pay of any kind, except as otherwise provided.

Reassignment—a change of an employee from one position to another in the same personnel authority without promotion or change to lower grade and either within the Career Service, within the Legal Service, within the Excepted Service, or within the Management Supervisory Service.

Reduction in force—any reduction in the work force under the provisions of Chapter 24 of these regulations.

Reemployment—employment, including reinstatement or another type of appointment, after a break in service of at least one (1) full workday.

Retained rate—the existing rate of basic pay an employee continues to be paid above the maximum rate of the grade to which he or she is assigned upon being changed to a lower grade.

Retained rate period—the period of not to exceed two (2) years from the effective date of the action changing an employee to a lower grade, during which the employee is provided a retained rate.

Scheduled tour of duty—the hours of a day and the days of a basic workweek that are scheduled in advance and during which an employee is required to perform work on a regularly recurring basis.

Special rate—a rate within a special rate schedule.

Special rate or special salary schedule—a pay schedule with higher minimum rates of basic pay for one (1) or more grades, occupational groups, or series, established by Mayor's Order or Wage Order.

Special salary—a salary within a special salary schedule.

Stipend—a regular allowance paid to a medical intern or resident to defray expenses.

Sunday premium pay—additional pay for Sunday work.

Sunday work—regularly scheduled work that includes all hours that fall between the hours of midnight Saturday and midnight Sunday that is not overtime work within a full-time employee's basic workweek.

Temporary appointment—an appointment with a specific time limitation of one (1) year or less.

Temporary promotion—a promotion for a definite period of thirty (30) days or more, not exceeding one (1) year, that may be extended for up to one (1) additional year.

Term appointment—an appointment with a specific time limitation in excess of one (1) year, but not exceeding four (4) years, unless extended by the personnel authority as provided in Chapter 8 of these regulations, or as otherwise provided by statute.

Term promotion—a promotion for a limited term in excess of one (1) year, but not to exceed four (4) years for a designated project.

Transfer—a change without a break in service of a full workday of (a) a career (probational) or career (permanent) employee to another Career Service position of like tenure under a different personnel authority; (b) a Legal Service employee to another Legal Service position of like tenure under a different personnel authority; (c) an Excepted Service employee to another Excepted Service position under a different personnel authority; or (d) a Management Supervisory Service employee to another Management Supervisory Service position under a different personnel authority.

Wage Order—an order issued by the Director of Personnel to establish, abolish, or modify a salary or rate schedule.

Wage Service rate schedules—the pay schedules applicable to employees who are paid under the Wage Service Rate System.

Wage Service Rate System—the pay system, for which compensation is established on an hourly rate basis, applicable to employees in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement, which positions are classified pursuant to § 1101.5 of these regulations.

Within-grade increase—an increase in an employee's rate of basic pay from one rate of his or her grade to the next and is synonymous with the term "step increase."

Comments on these proposed regulations should be submitted, in writing, to Ms. Lisa R. Marin, SPHR, Acting Director of Personnel, 441 4th Street, NW, Suite 300 South, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice. Additional copies of these proposed rules are available from the above address.

D.C. OFFICE OF PERSONNEL**NOTICE OF PROPOSED 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 sections 1351 through 1353 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-613.51 *et seq.*), hereby gives notice of the 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 rules. These rules would amend Chapter 14 of the *D.C. Personnel Regulations*, Performance Management, to: amend sections 1400, 1414, and 1417 to expressly exclude at-will employees, including Capital City Fellows, from the performance improvement plan requirement in section 1414, and make other modifications to section 1414; amend section 1402 to add language requiring that supervisors inform employees of any deficiencies in their performance, in a timely manner, throughout the rating period so that, to the extent possible, employees are given an opportunity to overcome such deficiencies and improve their performance; amend section 1415 to specify that employees covered under the chapter may request reviews of any performance rating, and clarify the language concerning appeals of final agency decisions affecting performance ratings which result in removals; and make other non-substantive changes throughout the chapter. Upon adoption, these rules will amend Chapter 14 of the *D.C. Personnel Regulations*, Performance Management, published at 47 DCR 5560 (July 7, 2000) and amended at 48 DCR 301 (January 12, 2001), 49 DCR 1862 (March 1, 2002), and 50 DCR 2851 (April 11, 2003).

CHAPTER 14**PERFORMANCE MANAGEMENT**

Chapter 14 of the D.C. Personnel regulations is amended to read as follows:

1400 APPLICABILITY

1400.1 The provisions of this chapter apply to all of the following:

- (a) Employees in the Career Service appointed to supervisory and managerial positions under the authority of section 801 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) (2001), including uniformed members of the Metropolitan Police Department at the ranks of Lieutenant, Captain, Inspector, Commander and Assistant Chief, except as provided in section 1400.3 of this section;

- (b) Employees in the Excepted Service appointed under the authority of section 903 of the CMPA (D.C. Official Code § 1-609.03) (2002 Supp.) and employees in the Excepted Service appointed as Capital City Fellows under the authority of section 904(6) of the CMPA (D.C. Official Code § 1-609.04(6)) (2001), except for the provisions of section 1414 of this chapter;
- (c) Employees in the Management Supervisory Service appointed under the authority of sections 951 through 958 of the CMPA (D.C. Official Code §§ 1-609.51 through 1-609.58) (2001), except for the provisions of section 1414 of this chapter;
- (d) Employees in the Legal Service appointed under the authority of sections 851 through 863 of the CMPA (D.C. Official Code §§ 1-608.51 through 1-608.62) (2001) as supervisory attorneys in the Office of the Attorney General for the District of Columbia, non-supervisory attorneys who report directly to either the Attorney General for the District of Columbia or the Principal Deputy Attorney General, subordinate agency General Counsel, and other subordinate agency supervisory attorneys in the Legal Service; and
- (e) Non-unionized Career Service employees not covered under section 1400.1 (a) of this section employed in agencies under the personnel authority of the Mayor authorized for coverage under the performance management program by the Director of Personnel on an agency-by-agency basis.

1401 EXCLUSIONS

- 1401.1 The provisions of this chapter shall not apply to the following employees, who continue to be covered by the performance evaluation system that was in effect on December 31, 1979:
 - (a) Non-supervisory and non-managerial employees in the Career Service, except as specified in section 1400.1 (e) of this chapter;
 - (b) Unionized employees in the Career Service; and
 - (c) Employees in the Excepted Service other than those appointed under the authority of section 903 of the CMPA (D.C. Official Code § 1-609.03) (2002 Supp.), or as Capital City Fellows under the authority of section 904 (6) of the CMPA (D.C. Official Code § 1-609.04 (6)) (2001).
- 1401.2 The performance evaluation system that was in effect on December 31, 1979 is the system set forth in Part II of Chapter 14 of the District Personnel Manual.
- 1401.3 The provisions of this chapter shall not apply to uniformed members of the Metropolitan Police Department at the ranks of Officer, Master Patrol Officer, Detective, Investigator and Sergeant, who continue to be covered under the performance evaluation system in effect as of the effective date of these regulations.

1401.4 The provisions of this chapter shall not apply to unionized employees in the Legal Service.

1402 PURPOSE

1402.1 The purpose of this chapter is to set forth the parameters of the performance management program, which is the systematic process by which an agency involves its employees, as individuals and members of a group, in improving performance in the accomplishment of agency mission and goals.

1402.2 Performance management integrates the processes an agency uses to do all of the following:

- (a) Communicate and clarify organizational goals to employees;
- (b) Identify individual and, where applicable, team responsibilities and accountability for accomplishing organizational goals;
- (c) Identify and address developmental needs for individuals and, where applicable, teams;
- (d) Assess and improve individual, team, and organizational performance;
- (e) Use appropriate measures of performance as the basis for recognizing and rewarding accomplishments; and
- (f) Use the results of performance appraisal as a basis for appropriate personnel actions.

1402.3 The performance management program implemented by this chapter shall do all of the following:

- (a) Inform employees of work expectations, and require that supervisors inform employees of any deficiencies in their performance, in a timely manner, throughout the rating period so that, to the extent possible, employees are given an opportunity to overcome such deficiencies and improve their performance;
- (b) Hold employees accountable for their performance, which shall include a direct relationship between the rating received pursuant to this chapter and the receipt of any periodic step increases;
- (c) Objectively evaluate employees' work performance based on criteria that have been made known to the employees;
- (d) Improve employee performance through development;
- (e) Recognize employee accomplishments; and
- (f) Include customer satisfaction as an evaluation factor.

1403 RATING PERIOD

1403.1 Except as provided in section 1417 of this chapter, a performance rating period shall be from the beginning of each fiscal year to the end of the fiscal year.

1404 PERFORMANCE RATINGS AND RATING LEVELS

1404.1 An overall performance rating shall be the overall rating that indicates the level of an employee's actual performance of assigned goals and standard competencies during the rating period.

1404.2 The overall performance rating shall be derived from the score on goals for sixty percent (60%) and competencies for forty percent (40%).

1404.3 The rating levels for the performance management program shall be as follows:

- (a) Level 5, Significantly Exceeds Expectations: Consistently and significantly exceeds performance expectations; exceptional accomplishments are obvious to managers and peers;
- (b) Level 4, Exceeds Expectations: Consistently exceeds performance expectations in most areas and meets expectations in others;
- (c) Level 3, Meets Expectations: Consistently meets key performance expectations and may exceed on some expectations;
- (d) Level 2, Needs Improvement: Meets some performance expectations but requires improvement in one (1) or more areas;
- (e) Level 1, Does Not Meet Expectations: Consistently does not meet performance expectations.

1405 ELIGIBILITY TO RECEIVE A PERFORMANCE RATING

1405.1 Except as otherwise provided in this chapter, each non-probationary employee subject to this chapter shall be rated during the first month of each rating period for the preceding rating period.

1405.2 In order to be eligible to receive an annual performance evaluation, a Performance Plan shall be in place for at least ninety (90) days prior to conducting an annual performance evaluation based on that Performance Plan.

1405.3 An employee who has been reassigned to a position with different duties and responsibilities within ninety (90) days of the end of the rating period shall receive an annual performance evaluation not later than thirty (30) days after commencing the duties of the new position.

- 1405.4 An employee promoted or demoted during the ninety (90) days prior to the end of the rating period shall receive an annual performance evaluation not later than thirty (30) days after commencing the duties of the new position.
- 1405.5 The performance evaluation pursuant to sections 1405.3 and 1405.4 of this section shall be issued by the employee's supervisor for the position from which reassigned, promoted, or demoted as specified in those sections.
- 1405.6 An employee who was reinstated or restored to duty during the ninety (90) days prior to the end of the rating period shall be rated at the end of the next rating period.
- 1405.7 An employee who transfers to an agency under the Mayor's personnel authority from another personnel authority or who is newly appointed during the ninety (90) days prior to the end of the rating period shall be rated at the end of the next rating period.
- 1405.8 An employee reinstated, restored, newly appointed, or transferred shall automatically be considered as having been assigned a rating of Meets Expectations, which shall remain the official rating of record until such time as replaced by another official rating.

1406 PERFORMANCE PLANS

- 1406.1 Except as otherwise provided in this chapter, each supervisor shall complete a Performance Plan outlining what is expected for each covered employee as follows:
- (a) Within thirty (30) days of the beginning of each rating period;
 - (b) Within thirty (30) days of the date an employee is promoted, appointed, transferred, reassigned, or demoted to a new position or a position with different duties and responsibilities;
 - (c) Within thirty (30) days of the date an employee is officially detailed when the detail is for a period of more than ninety (90) days;
 - (d) An employee who has been reassigned to a position with different duties and responsibilities within ninety (90) days of the end of the rating period shall receive a Performance Plan for the following fiscal year within thirty (30) days of commencing the duties of the position to which reassigned; or
 - (e) An employee who has been promoted or demoted during the ninety (90) days prior to the end of the rating period shall receive a Performance Plan for the following fiscal year within thirty (30) days of commencing the duties of the new position.
- 1406.2 A Performance Plan shall include all of the following:
- (a) A review of the competencies as specified in section 1407 of this chapter;
 - (b) An Individual Performance Plan as specified in section 1408 of this chapter; and
 - (c) An Individual Development Plan as specified in section 1409 of this chapter.

1407 COMPETENCIES

1407.1 Competencies are behaviors demonstrated on the job. At the beginning of each rating period, each supervisor shall discuss with the employee how each competency relates to his or her job.

1407.2 There are ten (10) competencies for all covered employees:

- (a) Customer Service;
- (b) Flexibility/Adaptability;
- (c) Initiative;
- (d) Professionalism;
- (e) Teamwork;
- (f) Job Knowledge;
- (g) Resource Usage;
- (h) Dependability;
- (i) Communications; and
- (j) Integrity and Trust.

1407.3 There are an additional five (5) competencies applicable to managers and supervisors:

- (a) Managing People;
- (b) Leadership;
- (c) Strategic Planning;
- (d) Operations Planning and Evaluating; and
- (e) Conflict Management.

1408 INDIVIDUAL PERFORMANCE PLANS

1408.1 Each Individual Performance Plan shall establish the performance requirements for the position during the rating period, and shall set forth the goals the employee is expected to accomplish during the rating period.

1408.2 When an employee is functioning under a Performance Improvement Plan pursuant to section 1414 of this chapter, the issuance of a Performance Plan pursuant to section

1406.1 (a) of this chapter may be deferred until thirty (30) days after the completion of any Performance Improvement Plan authorized by section 1414 of this chapter, as applicable.

- 1408.3 Each Individual Performance Plan shall include at least three (3) and not more than five (5) performance goals.
- 1408.4 Employee goals set in the Individual Performance Plan shall be weighted, with the sum of all goal weightings equal to one hundred percent (100%).
- 1408.5 Employee goals set in the Individual Performance Plan shall include a timeframe for their accomplishment, which may include a specific date, week, month, quarter, or an ongoing listing.
- 1408.6 Whenever an agency's goals and objectives change, each supervisor shall review each Individual Performance Plan in effect and, as appropriate, issue modified plans.

1409 INDIVIDUAL DEVELOPMENT PLANS

- 1409.1 Except as provided in section 1417.4 of this chapter, each supervisor, in collaboration with each of his or her employees covered by this chapter, shall prepare an Individual Development Plan for each employee identifying areas for growth and development.
- 1409.2 Each Individual Development Plan may include, but is not limited to, the following:
- (a) Specific objectives designed to improve the knowledge, skills, and abilities of the employee;
 - (b) Specific objectives for areas of ongoing professional development; or
 - (c) Objectives that address areas in which the employee received a rating of "Needs Improvement" or below during the preceding rating year.
- 1409.3 Each individual development objective and plan for addressing it shall be specifically defined, including accountability for completion, and a date by which the development objective shall be accomplished.

1410 SELF-EVALUATION

- 1410.1 Each employee eligible to receive a rating may, at his or her discretion, submit a self-evaluation to his or her supervisor as input into the performance evaluation process.

1411 MID-YEAR EVALUATION

- 1411.1 Each employee entitled to an annual performance rating under section 1405 of this chapter may be evaluated no less than three (3) months prior to the end of the rating period by his or her immediate supervisor or, in the absence of the immediate supervisor, a higher-level official designated by the agency head.

1411.2 The purpose of the mid-year evaluation is to provide feedback to the employee and identify any performance deficiencies that need to be addressed prior to the end of the rating period.

1411.3 A mid-year evaluation shall not become part of the employee's official personnel folder.

1412 ANNUAL PERFORMANCE EVALUATION

1412.1 An Annual Performance Evaluation shall be issued to each eligible employee during the first month of each rating period for the preceding rating period.

1412.2 An Annual Performance Evaluation shall be based on the employee's Performance Plan for that rating period.

1412.3 Except as provided in section 1412.6 of this section, each employee entitled to be rated under section 1405 of this chapter shall be rated, based on his or her position of record, by his or her immediate supervisor or, in the absence of that individual, a higher-level official designated by the agency head.

1412.4 A supervisor leaving his or her position at any time within the last ninety (90) days of the rating period shall conduct an advisory performance evaluation for each subordinate employee covered by this chapter prior to his or her departure.

1412.5 For the purposes of section 1412.4 of this section, the term "advisory performance evaluation" means an unofficial written evaluation that documents the employee's performance during the period in which supervised. The advisory performance evaluation shall be taken into consideration by the new supervisor during the completion of the Annual Performance Evaluation.

1412.6 An employee serving on a detail of more than ninety (90) days at the end of the rating period shall be rated by the employee's immediate supervisor of the position to which detailed, with input from the supervisor of the employee's position of record.

1412.7 When an employee is rated on performance in his or her position of record in accordance with section 1412.3 of this section, appropriate consideration shall be given for work outside the position of record.

1412.8 Except when the agency head is the rating official, a performance rating issued by a rating official shall be subject to the review and approval of a reviewing official, who shall be at a higher level than the rating official.

1413 SALARY INCREASES

1413.1 A rating of Meets Expectations or higher shall constitute performance at an acceptable level of competence for purposes of eligibility for a periodic step increase under Chapter 11 of these regulations.

1413.2 Each failure on the part of an employee to receive a rating of Meets Expectations or higher shall result in the due date for the next scheduled periodic step increase being delayed for an additional year.

1414 PERFORMANCE IMPROVEMENT PLANS

1414.1 The provisions of this section shall not apply to at-will employees described in section 1400.1 (b) and (c) of this chapter.

1414.2 A supervisor shall complete a Performance Improvement Plan when either of the following conditions is met:

(a) At any time during the rating period that an employee's performance becomes deficient; or

(b) When a rating of "Does Not Meet Expectations" (Level 1) or "Needs Improvement" (Level 2) is given pursuant to section 1412 of this chapter.

1414.3 The purpose of a Performance Improvement Plan is to offer the employee placed on it an opportunity to demonstrate improvement. A Performance Improvement Plan issued to an employee shall last for a period of thirty (30) to ninety (90) days, and shall:

(a) Identify the specific performance areas in which the employee is deficient; and

(b) Provide concrete, measurable action steps the employee needs to take to improve in those areas.

1414.4 At the end of the Performance Improvement Plan, the employee's immediate supervisor or, in the absence of that individual, a higher-level official designated by the agency head, shall make a determination as to whether the employee has met the requirements of the Performance Improvement Plan. If the determination is that the employee has met the requirements of the Performance Improvement Plan, the employee's immediate supervisor or higher-level agency official, as appropriate, shall so inform the employee, in writing. If the determination is that the employee failed to meet the requirements of the Performance Improvement Plan, the employee's immediate supervisor or higher-level agency official, as appropriate, shall issue a written decision to the employee to:

(a) Extend the Performance Improvement Plan for an additional thirty (30) to ninety (90) day period to further observe the employee's performance;

(b) Reassign, reduce in grade, or terminate the employee, if he or she has failed to meet the requirements of the Performance Improvement Plan; or

(c) Defer any annual performance rating that may be due until thirty (30) days after the completion of any thirty (30) to ninety (90) day period authorized by this section.

- 1414.5 Any reduction in grade or termination action as specified in section 1414.4 (b) of this section taken against a Career Service employee who has completed a probationary period shall be taken pursuant to Chapter 16 of these regulations.
- 1414.6 Any reduction in grade or termination action as specified in section 1414.4 (b) of this section taken against a Legal Service employee as described in section 1400.1 (d) of this chapter who is not at-will, shall be taken pursuant to Chapter 36 of these regulations.
- 1414.7 The Chief of Police may elect not to use a Performance Improvement Plan for officials above the rank of Captain.

Section 1415 is amended to read as follows:

1415 EMPLOYEE REQUEST FOR REVIEW

- 1415.1 An employee may, within fifteen (15) days of receipt of a performance rating, request a review of the rating. The review process shall be in accordance with procedures developed by the appropriate personnel authority.
- 1415.2 An employee's request for review of a performance rating shall be in writing and shall be submitted in accordance with procedures issued by the appropriate personnel authority.
- 1415.3 If, upon receipt of a request for a review, the agency head or his or her designee finds that a Performance Plan was not provided to the employee for the period covered by the rating:
- (a) The employee's request for review shall be dismissed;
 - (b) A Performance Plan shall be provided to the employee; and
 - (c) The employee shall be provided a new rating ninety (90) days after the date of issuance of the Performance Plan, following which the employee may request a review in accordance with section 1415.1 of this section.
- 1415.4 Any review conducted as a result of a request by an employee shall consist of a review of the record and the burden of proof shall rest with the employee.
- 1415.5 An employee may be eligible to appeal a final agency decision affecting a performance rating which results in removal of the employee.
- 1415.6 The provisions of section 1415.5 of this section shall not apply to any performance rating that results in removal of a Legal Service employee who is a supervisory or non-supervisory employee as described in section 1400.1 (d) of this chapter. The right of appeal of such an employee shall be governed by section 3614 of these regulations.

1416 PERFORMANCE EVALUATION OF PROBATIONARY EMPLOYEES

1416.1 A non-unionized Career Service supervisory or managerial employee serving a probationary period shall not be subject to the performance management program established by this chapter, except that a Performance Plan shall be provided to each probationary employee pursuant to section 1406.1 (b) or (c) of this chapter, and the evaluation of probationer process set forth in the procedures applicable to Chapter 8 of the District Personnel Manual completed after the third (3rd), sixth (6th), and ninth (9th) month of the probationary period.

1417 CAPITAL CITY FELLOWS

1417.1 Capital City Fellows shall be rated at the end of each six-month (6-month) placement as specified in this section, for a total of four (4) individual performance ratings during the two-year (2-year) program.

1417.2 A Performance Plan as described in section 1406 of this chapter shall be completed as soon as practicable, but not later than thirty (30) days after the beginning of each six-month (6-month) placement, outlining what is expected from the Capital City Fellow.

1417.3 Employee goals for each six-month (6-month) placement shall be weighted, with the sum of all goal weightings equal to one hundred percent (100%) for each rating. Goals shall be set as follows:

(a) Twenty five (25%) of the overall rating assigned to program-related activities and participation, to be set by the Director, D.C. Office of Personnel (or his or her designee); and

(b) Seventy five percent (75%) of the overall rating assigned to on-site performance, to be set by each agency supervisor to whom the Capital City Fellow is assigned.

1417.4 Each Capital City Fellow may, at his or her discretion, submit a self-evaluation as input into the performance evaluation process.

1417.5 A rating of Meets Expectations or higher shall constitute performance at an acceptable level of competence for purposes of salary adjustment.

1417.6 Except for section 1415.3 of this chapter, the provisions in section 1415 of this chapter shall apply to Capital City Fellows.

1417.7 The provisions of section 1414 of this chapter shall not apply to Capital City Fellows.

Comments on these proposed regulations should be submitted, in writing, to Ms. Lisa R. Marin, Acting Director of Personnel, 441 4th 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 rules are available from the above address.

D.C. OFFICE OF PERSONNEL**NOTICE OF PROPOSED 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 sections 951 through 958 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.51 *et seq.*) (2001), hereby gives notice of the intent to adopt the following rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. These rules would amend Chapter 38 of the *D.C. Personnel Regulations*, Management Supervisory Service, to: amend section 3817, on performance management, change the title of the section and establish that the performance of Management Supervisory Service employees shall be evaluated utilizing the system in Chapter 14 of the *D.C. Personnel Regulations*, Performance Management, except for section 1414 (performance improvement plans); and amend section 3818, on employee rights, to provide that all Management Supervisory Service termination actions shall be authorized by the agency head (or his or her designee) and the Deputy Mayor for the agency, and make other modifications to the section. Upon adoption, these rules will amend Chapter 38 of the *D.C. Personnel Regulations*, Management Supervisory Service, published at 48 DCR 2812 (March 30, 2001) and amended at 50 DCR 7747 (September 12, 2003) and 51 DCR 9707 (October 15, 2004).

CHAPTER 38**MANAGEMENT SUPERVISORY SERVICE**

Section 3817 is amended to read as follows:

3817 PERFORMANCE EVALUATION SYSTEM FOR MANAGEMENT SUPERVISORY SERVICE EMPLOYEES

3817.1 Except as provided in section 1414, the performance of employees in the Management Supervisory Service shall be evaluated utilizing the performance management system in Chapter 14 of these regulations.

Section 3818 is amended to read as follows:

3818 EMPLOYEE RIGHTS

3818.1 No termination action shall be initiated under this chapter unless first authorized by the agency head (or his or her designee) and the Deputy Mayor for the agency.

- 3818.2 An appointment to the Management Supervisory Service shall be an at-will appointment. A person appointed to a position in the Management Supervisory Service shall serve at the pleasure of the appointing authority, and may be terminated at any time. An employee in the Management Supervisory Service shall be provided a fifteen-day (15-day) notice prior to termination.
- 3818.3 Pursuant to section 954 of the CMPA (D.C. Official Code § 1-609.54(b)) (2001), an employee in the Management Supervisory Service shall be entitled to severance pay upon termination for non-disciplinary reasons.
- 3818.4 Upon termination for non-disciplinary reasons, and at the discretion of the personnel authority, a person with Career or Excepted Service status due to appointment as an attorney in that Service, may retreat, within three (3) months of the effective date of the termination, to a vacant position within the agency to which he or she was promoted and for which he or she qualifies.
- 3818.5 A retreat pursuant to section 3818.4 of this section shall be to a position in the Service in which the person acquired status.
- 3818.6 Terminations from the Management Supervisory Service shall not be subject to administrative appeal.

Comments on these proposed regulations should be submitted, in writing, to Ms. Lisa R. Marin, Acting Director of Personnel, 441 4th 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 rules are available from the above address.

DISTRICT OF COLUMBIA TAXICAB COMMISSION
PANEL ON RATES AND RULES

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), by its Panel on Rates and Rules, pursuant to the authority set forth under sections 8(b)(1)(G) and 9(b) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(b)(1)(G), and 50-308(b)), hereby gives notice of its proposed rulemaking action taken April 6, 2004, to amend § 601.12 of Chapter 6 of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The proposed rulemaking will allow taxicab operators to also utilize a dispatch radio as a safety device. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Amend § 601.12 of Chapter 6 in Title 31 DCMR to read as follows:

601 PARTS AND EQUIPMENT

601.12 In lieu of the partition required by §601.9, as of April 1, 2001, a taxicab may be equipped with safety warning lights for driver safety or a dispatch radio that is used in the regular operation of business to receive and accept radio dispatched calls from a taxicab radio dispatch service. The safety warning lights shall be approved by the Commission, and used by the driver only to summon assistance in the event that he or she has reason to believe that he or she is being threatened with harm. The dispatch radio shall be used by the driver in the regular operation of business and may be used to summon assistance through the radio dispatch service in the event that the driver has reason to believe that he or she is being threatened with harm.

Any person desiring to file written comments on the Panel's proposed rulemaking action must do so not later than thirty (30) days after the publication of this notice in the District of Columbia Register. Comments should be filed with Kimberly A. Lewis, Attorney Advisor and Secretary, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. Copies of the proposed rulemaking may be obtained by writing to the above address.