

D.C. OFFICE OF PERSONNEL**NOTICE OF PROPOSED RULEMAKING**

The Interim Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title IV 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 § 1-604.01 *et seq.*) (2001), hereby gives notice of the intent to adopt the following rules in not less than thirty (30) days from publication of this notice in the *D.C. Register*. These rules would amend Chapter 4 of the *D.C. Personnel Regulations*, Organization for Personnel Management, to add provisions on suitability to the chapter. Specifically, the following new sections are being added: § 402, Suitability Policy; § 403, General Provisions on Suitability; § 404, Applicability – Suitability; § 405, Suitability Checks and Background Investigations; 406, Background Investigations for Information Technology Systems Personnel in Subordinate Agencies; § 407, Suitability Actions Against Employees Initiated by Personnel Authorities; and § 408, Suitability Records. In addition, § 401, Variations, is renumbered as 400 and amended, § 400, Appointment Affidavit, is renumbered as 401 and amended; and § 499 is amended to add definitions for the terms “background investigation,” “independent agency,” “material,” “subordinate agency,” and “suitability.” Upon adoption, these rules will amend Chapter 4 of the *D.C. Personnel Regulations*, Organization for Personnel Management, published at 32 DCR 75 (January 4, 1985) and amended at 33 DCR 4447 (July 25, 1986), and 51 DCR 928 (January 23, 2004).

CHAPTER 4**ORGANIZATION FOR PERSONNEL MANAGEMENT**

Section 401 is renumbered as 400 and amended to read as follows; § 400 is renumbered as 401 and amended to read as follows; and new §§ 402 through 408 are added to read as follows:

400 VARIATIONS

- 400.1 The Director, D.C. Office of Personnel, is authorized to grant variations from the letter of the D.C. personnel regulations issued under the authority of the Mayor pursuant to § 404 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 § 1-604.04) (2001) whenever there are practical difficulties and unnecessary hardships in complying with the strict letter of the regulations.
- 400.2 The Director, D.C. Office of Personnel, shall be authorized to grant a variation as specified in § 400.1 if:
- (a) Such a variation is within the spirit of the regulations;

- (b) The efficiency of the District government is being protected and promoted; and
 - (c) The integrity of the Career, Legal, Excepted, Management Supervisory, or Executive Services, as applicable, is being protected and promoted.
- 400.3 Whenever a variation is granted, the Director, D.C. Office of Personnel, shall publish in the District Personnel Manual (or any other procedural manual or manuals developed) an issuance showing the following:
- (a) The particular practical difficulty or hardship involved;
 - (b) The variation being permitted, the difference from the requirements of the regulations, and to whom it applies;
 - (c) The specific circumstances which protect or promote the efficiency of the District government and the integrity of a particular Service or Services; and
 - (d) The steps that will be taken to limit the application of the variation only to the duration of the conditions that gave rise to it.
- 400.4 Like variations shall be granted whenever like conditions exist.

401 APPOINTMENT AFFIDAVIT

- 401.1 Each personnel authority shall designate in writing a person or persons authorized to administer the oath of office to each employee of an agency.
- 401.2 As provided in § 408 of the CMPA (D.C. Official Code § 1-604.08) (2001), each covered employee of an agency shall swear or affirm to the following oath of office: "I, (employee's name), do solemnly swear (or affirm) that I will faithfully execute the laws of the United States of America and of the District of Columbia, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States, and will faithfully discharge the duties of the office on which I am about to enter."
- 401.3 As part of the oath of office, each employee shall execute the following:
- (a) An affidavit stating: "I have not, nor has anyone acting in my behalf, given, transferred, promised, or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment;" and
 - (b) An affidavit on the "Declaration of Appointee Form," stating: "The answers in the Declaration of Appointee are true and correct and I have read and understand the information thereon."
- 401.4 The appointee, on the "Declaration of Appointee Form," shall be required to provide information concerning the following:

- (a) Application for or receipt of an annuity under any District government civilian retirement system, or other compensation based upon District government service; and
 - (b) Certification of notification of the prohibition to strike pursuant to § 1705 of the CMPA (D.C. Official Code § 1-617.05) (2001).
- 401.5 The provision in § 401.3(a) shall not be applicable to elected officials and members of boards and commissions.
- 401.6 Any individual initially appointed to the District government and any individual reappointed after a break in service of one (1) or more days shall take the oath of office and execute the appointment affidavit as soon as administratively practicable, but not later than thirty (30) days after the effective date of his or her appointment.
- 401.7 Any individual who refuses to swear or affirm to the oath of office as provided in §§ 401.2 or 401.6 shall not be appointed or shall have his or her appointment terminated.
- 401.8 The appointment of an employee may become effective before the oath of office (oath) is executed although the employee has no right to continued employment until the oath is executed. The oath, when executed, shall refer to the date of entrance on duty so as to entitle the employee to pay from that date.
- 401.9 An individual who is retroactively restored to duty without a break in service shall not be required to execute a new appointment affidavit.
- 401.10 In the administration of the oath of office (oath), the following shall apply:
- (a) The oath may be administered on an individual or group basis;
 - (b) The person administering the oath shall read the oath aloud to the appointee(s);
 - (c) The appointee(s) taking the oath shall stand, raise his or her right hand, and repeat the oath aloud, except as provided in § 401.11 and with regard to any physical handicap the appointee(s) may have that may necessitate reasonable accommodation;
 - (d) The appointee(s), after taking the oath and in the presence of the person administering the oath, shall sign the appointment affidavit; and
 - (e) The person administering the oath, upon signature by the appointee(s), shall sign the appointment affidavit.
- 401.11 When a group of appointees is taking the oath of office (oath), the person

administering the oath may ask the appointees to swear or affirm to the oath by saying "yes" after the oath is read aloud to them.

401.12 The oath of office should be administered, if practicable, before the flags of the United States and District of Columbia.

401.13 The appointment affidavit shall be filed as a permanent record in each employee's official personnel folder and a copy filed with the employing agency.

402 SUITABILITY POLICY

402.1 It shall be the policy of the District government to consider persons for employment who are suitable in efficiency, character, conduct and reputation; and to conduct suitability investigations as specified in this chapter for the purpose of ascertaining the fitness of applicants for employment as to their character, knowledge, and ability to perform the duties of the position sought.

402.2 Appointees and employees to Information Technology Systems positions must be particularly suitable in character, conduct and reputation because they have access to systems that house financial, proprietary, or sensitive personal data. Any misconduct, illegal action, or inaction on their part could directly compromise the security of the District government. For those reasons, these individuals shall be subject to suitability investigations as specified in § 406.

402.3 Each personnel authority shall determine, as part of suitability investigations described in this chapter, whether a person being considered for employment is or has been involved in any act that constitutes a reasonable basis for concluding that the person would not faithfully discharge the duties of the position for which he or she is being considered.

402.4 No person who advocates the overthrow of the governments of the United States, the District of Columbia, or both by unconstitutional means shall be considered suitable for employment in the District government.

403 GENERAL PROVISIONS ON SUITABILITY

403.1 The provisions of suitability or background check programs negotiated between the District government and a labor organization, if any, shall take precedence over the provisions of this chapter for employees in a bargaining unit represented by a labor organization, to the extent that there is a difference.

403.2 In securing information about individuals as part of pre-employment inquiries or background investigations under this chapter, each individual shall be afforded the necessary rights and protections.

- 403.3 When taking administrative action against an employee under this chapter, personnel authorities shall ensure that the affected employee is afforded due process, and fair and equitable treatment.
- 403.4 Except as otherwise specified in this chapter, pre-employment inquiries and background investigations shall be conducted after the person being considered for employment has a conditional job offer, but before actual employment commences. For the purposes of this chapter, any job offer made under these circumstances is conditional and non-binding on the appropriate personnel authority.
- 403.5 The Mayor may delegate his or her personnel authority, in whole or in part, to subordinate agency heads to conduct suitability investigations and take suitability action against employees as described in this chapter.

404 SUITABILITY: APPLICABILITY

- 404.1 The provisions of §§ 404 through 408 shall apply to persons being considered for employment and employees occupying positions in the:
- (a) Career Service under the authority of § 801 of the CMPA (D.C. Official Code § 1-608.01) (2001);
 - (b) Legal Service under the authority of §§ 851 through 862 of the CMPA (D.C. Official Code § 1-608.51 through 1-608.62) (2001);
 - (c) Excepted Service under the authority of §§ 901 through 908 of the CMPA (D.C. Official Code §§ 1-609.01 through 1-609.08) (2001); and
 - (d) Management Supervisory Service under the authority of §§ 951 through 958 of the CMPA (D.C. Official Code §§ 1-609.51 through 1-609.58) (2001).
- 404.2 Persons being considered for employment in the Executive Service under the authority of §§ 1051 through 1063 of the CMPA (D.C. Official Code §§ 1-610.51 through 1-610.63) (2001) shall be subject to pre-employment inquiries and background investigations as prescribed by the Director, D.C. Office of Personnel, or in the case of the Director of Personnel him or herself, as prescribed by the Mayor.

405 SUITABILITY CHECKS AND BACKGROUND INVESTIGATIONS

- 405.1 Each personnel authority shall establish the suitability for employment of an appointee by conducting investigations as described in §§ 405.2, 405.3, and 406, as applicable.
- 405.2 Each personnel authority shall conduct pre-employment inquiries as follows:
- (a) Every appointment to a position in one of the Services listed in § 404.1 shall be subject to completion of at least three (3) reference checks to ascertain character, reputation, relevant traits and characteristics, and other relevant personal qualities,

and whether the reference would recommend the appointee for the position for which he or she is being considered;

- (b) Prior employment checks to verify:
- (1) Dates of employment;
 - (2) Salary or other compensation received;
 - (3) Titles held and nature of duties performed;
 - (4) Reasons for leaving employment; and
 - (5) Performance.
- (c) Possession of a college degree shall be verified if the education was substituted for experience in qualifying the person for the position;
- (d) Possession of a professional or other type of license shall be verified if it is a prerequisite for employment;
- (e) Possession of a college degree from an accredited school and in the appropriate professional field shall be verified, including semester hours or other measures of credit completed, periods of attendance, type of degree and date conferred, if the degree is required as a job-related qualification standard such as is the case in the professional engineering field;
- (f) Miscellaneous checks such as professional standing and other inquiries may also be conducted, if considered necessary by the personnel authority, and in addition to the pre-employment inquiries required under § 405.2(a) through (e); and
- (g) The minimum number of reference checks specified in § 405.2(a) shall be made with an appointee's or selectee's former employer, except that personal references may be utilized instead of, or in addition to, checks with former employers as deemed necessary by the personnel authority.

405.3 Based on the duties of the position, or if required by law or regulation, each personnel authority shall determine which positions, in addition to being subject to pre-employment inquiries pursuant to § 405.2, shall be subject to background investigations, and mandatory criminal background checks. The vacancy announcements for such positions, and for positions described in § 406, shall include a statement informing applicants of the background investigation requirement. The Director, D.C. Office of Personnel (or his or her designee), shall publish in the District Personnel Manual (or any other procedural manual or manuals developed) positions in subordinate agencies subject to background investigations pursuant to this subsection, § 406, or any other law or regulation, as applicable.

- 405.4 Except for a mandatory criminal background check required by law or regulation, a background investigation pursuant to § 405.3 shall be conducted in accordance with the following:
- (a) Before conducting the investigation, the personnel authority shall determine the degree of sensitivity of the position being filled in order to determine the scope of the investigation. Based on that determination, the investigation may cover, in addition to the requirements in § 405.2(a) through (g), the following:
 - (1) Additional reference checks;
 - (2) Employment history for a specific number of past years;
 - (3) Highest education completed or last school attended beyond high school;
 - (4) A credit check that adheres to the notification and consent requirements of the Fair Credit Reporting Act, approved October 26, 1970 (P.L. 91-508; 15 U.S.C. § 1681) and any other applicable law or regulation;
 - (5) A traffic record check; or
 - (6) A newspaper/magazine/media search on the appointee.
 - (b) In conducting the background investigation, a personnel authority shall attempt to verify any derogatory information by seeking it from more than one (1) source, asking former employers and other sources for permission to name them as the source and, as needed, obtaining a written release from the subject.
- 405.5 Unless otherwise provided by law or regulation, in filling a position subject to background investigation, the investigation need not be conducted if the prior position that the person held was subject to one, and the nature of the personnel action for the new appointment is one (1) of the following:
- (a) Promotion;
 - (b) Demotion;
 - (c) Reassignment; or
 - (d) Appointment, or conversion to an appointment made by a District government agency of an employee of that agency who has been serving continuously with that agency for at least one (1) year in one (1) or more positions under an appointment subject to investigation.
- 405.6 Upon completing the pre-employment inquiry pursuant to § 405.2 or background investigation pursuant to § 405.3, the personnel authority shall inform the agency of the results of the inquiry or investigation. Based on the results, a personnel authority may make a determination that an appointee is not suitable for employment, and may thereby:

- (a) Deny him or her examination for, or appointment to, the position for which the person had been considered; or
 - (b) Instruct the employing agency to terminate the person from District government service in the case of a person who began employment with the District government before the pre-employment inquiry pursuant to § 405.2 or background investigation pursuant to § 405.3 was completed.
- 405.7 Before taking action against an appointee for suitability disqualification, at the discretion of the personnel authority, the person may be given an opportunity to explain the derogatory information, in writing, within fifteen (15) days of being notified thereof, to allow the appointee to provide information that would explain any discrepancies, omissions, or misinformation, or mitigating circumstances that may exist which are unknown to the personnel authority.
- 405.8 The reasons which may be used in making a determination of disqualification of an appointee due to unsuitability may include, but shall not be limited to the following:
- (a) Delinquency or misconduct in prior employment;
 - (b) Criminal, dishonest, or other conduct of a nature that causes discredit to the District government;
 - (c) An intentional false statement of any material fact or deception or fraud in the examination or appointment;
 - (d) Illegal use of drugs; or
 - (e) Any other legal disqualification for appointment.
- 405.9 In making its determination of disqualification of an appointee due to unsuitability, the personnel authority shall consider the following additional factors, to the extent that these factors are deemed pertinent to the individual case:
- (a) The kind of position for which the person is being considered or in which the person is employed, including its sensitivity;
 - (b) The nature and seriousness of the conduct, occurrence or information;
 - (c) The circumstances surrounding the conduct or occurrence;
 - (d) The recency of the conduct or information;
 - (e) The age of the appointee at the time of the conduct or occurrence;
 - (f) Contributing social or environmental conditions;
 - (g) The absence or presence of rehabilitation or efforts toward rehabilitation; or

- (h) In the case of criminal conduct, its relevance or relationship to the duties of the position.
- 405.10 Unless otherwise provided pursuant to law, regulation, or this chapter, an appointment to a position subject to background investigation pursuant to § 405.3 shall be subject to investigation for one (1) year from the date of appointment to continue the personnel authority's jurisdiction to investigate the qualifications and suitability of the person after appointment, if needed, and to authorize the personnel authority to require termination when it finds that the employee is not suitable for District government employment, or to take any of the other actions specified in § 407, as applicable.
- 405.11 Unless otherwise provided pursuant to law or regulation, when an appointee is disqualified for any of the reasons listed in § 405.8, or for other reasons not listed, the personnel authority, at its discretion, may continue to rely on that determination with regard to subsequent applications for employment to a position in one of the Services listed in § 404.1, for a period of not more than three (3) years from the date of determination of disqualification, after which a new background investigation shall be required.
- 405.12 Upon expiration of the three-year (3-year) period under § 405.11, a new background investigation shall be conducted and a re-determination made before the person may be appointed to any position in one of the Services listed in § 404.1.
- 406 BACKGROUND INVESTIGATIONS FOR INFORMATION TECHNOLOGY SYSTEMS PERSONNEL IN SUBORDINATE AGENCIES**
- 406.1 Background investigations shall be conducted for employees and persons being considered for employment in positions associated with the design, use, or operation of District government automated information technology systems.
- 406.2 Notwithstanding any other provision in this chapter, Mayor's Order 2003-136, dated September 25, 2003, delegated personnel authority to subordinate agency heads to conduct background investigations for persons being considered for employment in information technology (IT) systems positions in their agencies. The background investigations for IT personnel shall be conducted as specified in this section.
- 406.3 The Director, D.C. Office of Personnel (or his or her designee), shall develop procedures to set forth the policies, standards, and criteria for background investigations pursuant to this section, and publish the procedures in the District Personnel manual (or any other procedural manual or manuals developed).
- 406.4 As specified in the procedures developed by the Director, D.C. Office of Personnel, each subordinate agency head (or his or her designee) shall be required to inform the D.C. Office of Personnel of the results of background investigations conducted pursuant to this section.

- 406.5 An employee for whom a background investigation pursuant to this section was conducted shall not be subject to further background investigation after the effective date of the appointment, except when:
- (a) Derogatory information about the employee, of a nature that may impact the employee's suitability to continue performing the duties of the position, is disclosed to the employing agency or personnel authority by credible source(s); or
 - (b) As a result of a promotion, reassignment, or other position change, the employee moves to a position with higher security requirements, as determined by the employing agency.
- 406.6 Notwithstanding the provisions of § 406.2, the Director, D.C. Office of Personnel (or his or her designee), shall conduct background investigations for cases described in §406.5(a).
- 407 SUITABILITY ACTIONS INITIATED BY PERSONNEL AUTHORITIES AGAINST EMPLOYEES**
- 407.1 Personnel authorities may take a suitability action against a District government employee pursuant to this section.
- 407.2 When the personnel authority makes a determination that an employee was involved in a material, intentional false statement or deception or fraud in his or her examination or appointment, the personnel authority shall:
- (a) Require that the employing agency remove the employee from District government service;
 - (b) Require that the employing agency remove the employee from District government service; and cancel any reinstatement eligibility obtained as a result of a false statement, deception or fraud in the examination or appointment process, as applicable; or
 - (c) In addition to the actions specified in § 407.2(b), deny the employee examination for and appointment to, a position in the agency for a period of not more than three (3) years from the date of the determination of unsuitability.
- 407.3 In the event that a determination is made that the suitability violation does not rise to the standard of a material, intentional false statement or deception or fraud in examination or appointment described in § 407.2, the personnel authority may require that the employing agency take an administrative action against the employee that is less than removal.
- 407.4 The appropriate personnel authority shall determine the specific duration of any period of debarment imposed under § 407.2(c).
- 407.5 Subordinate agencies shall refer any case of a material, intentional false statement or deception or fraud in examination or appointment to the Director, D.C. Office of

Personnel (or his or her designee), for determination. The Director, D.C. Office of Personnel (or his or her designee), may also initiate a suitability action against an employee pursuant to this section based on information obtained independently by the D.C. Office of Personnel from the employing agency.

- 407.6 The appropriate personnel authority shall ensure that any suitability action taken against an employee pursuant to this section is based on information or documentation that is accurate, timely, relevant, and complete; and that before any action is taken, the subject employee is provided an opportunity to respond to the charge of material, intentional false statement or deception or fraud in examination or appointment.
- 407.7 Before taking any of the actions listed in §§ 407.2 and 407.3, the employee shall be given an opportunity to explain the derogatory information, in writing, within fifteen (15) days of being notified thereof, to allow the appointee to provide information that would explain any discrepancies, omissions, or misinformation, or mitigating circumstances that may exist which are unknown to the personnel authority.
- 407.8 The Mayor (or his or her designee) shall take suitability disqualification action against a subordinate agency head when a determination has been made that the subordinate agency head was involved in a material, intentional false statement or deception or fraud in examination or appointment; or in any other, lesser examination or appointment violation.

408 SUITABILITY RECORDS

- 408.1 Records and files created and maintained pursuant to §§ 405 through 407 shall be subject to the following:
- (a) Information related to suitability investigations and suitability actions shall be kept in strict confidence in accordance with this section and with Chapter 31 of these regulations;
 - (b) Sources of information shall not be disclosed except as specifically authorized in this chapter and in Chapter 31 of these regulations;
 - (c) Reports of investigations conducted by a personnel authority shall not be disclosed to the person investigated, nor may the information be discussed with him or her in a manner that would reveal or permit him or her to deduce the source of the information;
 - (d) The restrictions contained in § 408.1(c) shall not apply to the following:
 - (1) Information of public record; and
 - (2) Information from District government personnel records which could be obtained on request by the subject employee under the provisions of Chapter 31 of these regulations; and

- (e) Other sources of information in reports of investigation may be disclosed to the subject of the investigation only if the personnel authority obtains the information independently, such as by interviewing the subject, or by obtaining permission, in writing, from the sources named to use the information and to identify the source.

408.2 A subordinate agency head (or his or her designee) delegated personnel authority pursuant to §§ 403.5 or 406, shall provide the Director, D.C. Office of Personnel (or his or her designee), information to document the results of each suitability investigation conducted by the subordinate agency. Unless otherwise specified, the information shall be provided prior to the effective date of appointment of a selectee or appointee.

Section 499 is amended to add definitions for the terms "background investigation," "material," "subordinate agency," and "suitability:"

499 DEFINITIONS

499.1 When used in this chapter, the following terms have the meaning ascribed:

Agency – any unit of the District of Columbia government, excluding the courts, required by law, by the Mayor of the District of Columbia, or by the Council of the District of Columbia to administer any law, rule, or any regulation adopted under authority of law. The term "agency" shall also include any unit of the District of Columbia government created by the reorganization of one (1) or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency.

Background investigation – thorough inquiry into the past and present conduct and behavior of an applicant to determine his or her suitability for appointment.

Days – calendar days, unless otherwise specified.

Employee – an individual who performs a service for the District government and who receives compensation for the performance of such service.

Personnel authority – an individual or entity with the authority to administer all or part of a personnel management program as provided in Title IV of the CMPA (D.C. Official Code § 1-604.01 *et seq.*) (2001).

Material – a statement that is capable of influencing, or has a natural tendency to affect, an official decision.

Subordinate agency – any agency under the direct administrative control of the Mayor, including but not limited to, the agencies listed in § 301(q) of the CMPA (D.C. Official Code § 1-603.01(17)) (2001).

Suitability – the quality or state of being acceptable for District government employment with respect to the character, reputation, and fitness of the person under consideration.

Comments on these proposed regulations should be submitted, in writing, to Ms. Rosalind R. Inge, Interim Director of Personnel, 441 4th Street, N.W., Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.

D.C. OFFICE OF PERSONNEL

NOTICE OF PROPOSED RULEMAKING

The Interim Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title VIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.01 *et seq.*) (2001), hereby gives notice 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 proposed rules. These rules would amend Chapter 8 of the *D.C. Personnel Regulations*, Career Service, to: rescind § 811, on suitability, because Chapter 4 of the *D.C. Personnel Regulations*, Organization for Personnel Management, is being amended simultaneously to this notice to include suitability provisions applicable to all Services; rescind § 848 on medical qualifications requirements, because Chapter 20 of the *D.C. Personnel Regulations*, Health, is being amended simultaneously to this notice to include provisions on pre-employment and other physical examinations, including fitness-for-duty examinations, applicable to all Services; and add the definition of the term "break in service" to § 899. Upon adoption, these rules will amend Chapter 8 of the *D.C. Personnel Regulations*, Career Service, published at 32 DCR 1857 (April 5, 1985) and amended at 35 DCR 1087 (February 19, 1988), 36 DCR 6069 (August 25, 1989), 37 DCR 3952 (June 15, 1990), 37 DCR 7117 (November 9, 1990), 42 DCR 3520 (July 7, 1995), 45 DCR 1641 (March 20, 1998), 47 DCR 2419 (April 7, 2000), 48 DCR 8973 (September 28, 2001), 49 DCR 6842 (July 19, 2002), and 49 DCR 9298 (October 11, 2002).

CHAPTER 8

CAREER SERVICE

Sections 811 and 848 are rescinded.

Section 899 is amended to add the definition of the term "break in service:"

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

Comments on these proposed regulations should be submitted, in writing, to Ms. Rosalind R. Inge, Interim Director of Personnel, 441 4th Street, N.W., Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.

D.C. OFFICE OF PERSONNEL**NOTICE OF PROPOSED RULEMAKING**

The Interim 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 §§ 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 delete the suitability provisions in § 3810, and renumber §§ 3811 through 3819 as §§ 3810 through 3818. The reason for this change is that Chapter 4 of the *D.C. Personnel Regulations*, Organization for Personnel Management is being amended simultaneously to this notice to include suitability provisions applicable to all Services, including the Management Supervisory Service. 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).

CHAPTER 38**MANAGEMENT SUPERVISORY SERVICE**

Section 3810 is deleted; §§ 3811 through 3819 are renumbered as 3810 through 3818; and corresponding changes due to the deletion of § 3810 are made to §§ 3803.3, 3806.2, 3807.1(b), 3808.1(d), 3809.9, and renumbered 3811.5, 3811.7, 3811.8, 3814.5, 3818.4, and 3818.7:

3800 APPLICABILITY

- 3800.1 This chapter applies to all appointments to the Management Supervisory Service under the authority 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 § 1-609.51 *et seq.*) (2001).
- 3800.2 The Management Supervisory Service is established within the District government to ensure that each agency has the highest quality of managers and supervisors who are responsive to the needs of the government.
- 3800.3 The Management Supervisory Service consists of all employees who meet the definition of "management employee" pursuant to § 1411 (5) of the CMPA (D.C. Official Code § 1-614.11 (5)) (2001), that is, employees whose functions include responsibility for project management and supervision of staff and the achievement of the project's overall goals and objectives.

- 3800.4 The following employees are excluded from the Management Supervisory Service:
- (a) Employees appointed to the Career Service under the authority of § 801 of the CMPA (D.C. Official Code § 1-608.01) (2001);
 - (b) Employees appointed to the Educational Service under the authority of § 801-A of the CMPA (D.C. Official Code § 1-608.01a) (2001);
 - (c) Employees appointed to the Legal Service under the authority of § 851 of the CMPA (D.C. Official Code § 1-608.51 *et seq.*) (2001);
 - (d) Employees appointed to the Excepted Service under the authority of §§ 901 through 908 of the CMPA (D.C. Official Code §§ 1-609.01 through 1-609.08) (2001);
 - (e) Employees appointed to the Executive Service under the authority of § 1051 of the CMPA (D.C. Official Code § 1-610.51) (2001);
 - (f) Employees of the Board of Education;
 - (g) Employees of the Board of Trustees of the University of the District of Columbia;
 - (h) Uniformed members of the Metropolitan Police Department and the Fire and Emergency Medical Services Department;
 - (i) Employees occupying positions included in recognized collective bargaining units; and
 - (j) Employees with acting supervisory or managerial responsibilities only in the absence of the regular supervisor or manager.
- 3800.5 Positions that have some supervisory duties and responsibilities but less than those described in the appropriate classification guide shall be excluded from the Management Supervisory Service.
- 3800.6 Persons appointed to the Management Supervisory Service are not in the Career, Educational, Legal, Excepted, or Executive Service.
- 3801 COMPENSATION SYSTEM AND PAY SCHEDULES**
- 3801.1 Until such time as the Mayor adopts a new compensation system, the compensation system that was in effect on December 31, 1979 is the system applicable to the compensation for positions in the Management Supervisory Service.
- 3801.2 Individuals appointed to the Management Supervisory Service shall be paid from the appropriate Management Supervisory Service Pay Schedule.

3801.3 The rates of pay on the Management Supervisory Service Pay Schedules shall not be used to set pay upon subsequent appointment to a position in the Career Service.

3802 INCUMBENT CLASSIFICATION SYSTEM

3802.1 Until such time as the Mayor adopts a new classification system, the classification system that was in effect on December 31, 1979 is the system applicable to the classification of positions in the Management Supervisory Service.

3803 METHOD OF MAKING MANAGEMENT SUPERVISORY SERVICE APPOINTMENTS

3803.1 Except as specifically limited in this chapter, all initial appointments and subsequent assignments and promotions to the Management Supervisory Service shall be by open competition, involving positive recruitment and examining procedures designed to achieve maximum objectivity, reliability, and validity. All such initial appointments and subsequent assignments and promotions shall be made on the basis of merit by selection from the highest qualified available eligibles based on specific job requirements with appropriate regard for affirmative action goals as provided by law and as determined under this chapter.

3803.2 An appointment to the Management Supervisory Service may be for an indefinite period, or a time-limited appointment.

3803.3 As an appointment to the Management Supervisory Service is an at-will appointment, a date specifying the duration of a time-limited appointment shall not prevent termination of the employee occupying such a position prior to the date specified; provided that the termination is effected pursuant to § 3818.

3804 SUPERIOR QUALIFICATIONS APPOINTMENT

3804.1 As provided in Chapter 11 of the District Personnel Manual, superior qualifications appointments may be made at such step of the appropriate grade as the personnel authority may authorize for this purpose.

3804.2 Superior qualifications appointments shall only apply to initial appointments with the District government.

3805 PROHIBITED PERSONNEL PRACTICES

3805.1 No person shall interfere in the competitive process by influencing another person to withdraw from competition for any position in the Management Supervisory Service for the purpose of either improving or injuring the prospects of any applicant for appointment or selection.

3805.2 In accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977 (D.C. Official Code § 2-1401.01 *et seq.*) (2001) (Act), no person who has authority to take or recommend any personnel action with regard to the Management Supervisory

Service shall discriminate against applicants or employees in any aspect of employment on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination also prohibited by the Act.

3805.3 No public official may appoint, employ, promote, advance, or advocate for appointment, employment, or promotion, an individual who is a relative of the public official, in or to a position in the agency in which he or she is serving or over which he or she exercises jurisdiction or control.

3805.4 A personnel authority may not appoint, employ, promote, or advance an individual in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official who is serving in or exercising jurisdiction or control over the agency and is a relative of the individual.

3805.5 A public official who appoints, employs, promotes, advances, or advocates such appointment, employment, promotion, or advancement of any individual in violation of § 3805.3 shall be required to reimburse the District for any funds improperly paid to the individual.

3806 QUALIFICATION STANDARDS AND GENERAL REQUIREMENTS FOR SELECTION PROCEDURES

3806.1 A person selected to a position in the Management Supervisory Service shall meet the minimum qualification standards for the position for which selected.

3806.2 The Director of Personnel shall establish standards with respect to education, training, experience, suitability, or other requirements used to evaluate applicants and employees for placement in the Management Supervisory Service, consistent with all applicable laws and regulations. Suitability requirements applicable to the Management Supervisory Service are specified in Chapter 4 of these regulations.

3806.3 The Director of Personnel may adopt new qualification standards under § 3806.2. Until such adoption, the federal qualification standards series of handbooks and applicable supplementary publications shall remain applicable.

3806.4 Whenever the practice of certain occupations and professions is subject to licensure requirements (as established by District, State, or federal law), the possession of a license shall constitute a qualification requirement.

3806.5 As applicable, each personnel authority shall establish employee selection procedures for the Management Supervisory Service. Such procedures shall be consistent with the standards established by these regulations and applicable law, including § 953 of the CMPA (D.C. Official Code § 1-609.53) (2001), and federal issuances pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e *et seq.*), and professionally developed standards for examination and selection.

- 3806.6 The applicant evaluation and qualification standards, and the employee selection procedures for the Management Supervisory Service developed by the personnel authority as required by §§ 3806.2 through 3806.5 shall be incorporated in their entirety, or by reference, in the District Personnel Manual (or any other procedural manual developed). An independent personnel authority with Management Supervisory Service employees may adopt the provisions of the District Personnel Manual (or any other procedural manual developed) applicable to the Management Supervisory Service or incorporate them in a personnel manual developed by the independent personnel authority.
- 3806.7 All personnel actions appointing employees to the Management Supervisory Service, or affecting employees within the Management Supervisory Service, shall comply with the standards and selection procedures established by the personnel authority, and applicable rules as set forth in these regulations.
- 3806.8 When the personnel authority finds that an agency has not complied with competitive principles of this chapter, either in an individual case or on a program basis, the personnel authority shall require the agency to rectify the error or omission.
- 3806.9 All competitive placements shall be made in accordance with the general principles in this section and the specific requirements of applicable sections of this chapter. These principles and requirements shall also govern noncompetitive placements, to the maximum extent practicable.
- 3806.10 Selection procedures for competitive placement shall do the following:
- (a) Be practical in character and fairly test the relative ability and fitness of candidates for jobs to be filled;
 - (b) Result in selection from among the best qualified candidates;
 - (c) Be developed and used without discrimination; and
 - (d) Comply with other requirements of applicable equal employment opportunity and affirmative action laws and regulations.
- 3806.11 Selection procedures for the Management Supervisory Service shall be based on a job analysis (which may cover a single position or group of positions, or an occupation or a group of occupations having common characteristics) to identify and evaluate the factors that are important in evaluating candidates, and the following:
- (a) The basic duties and responsibilities; or
 - (b) The tasks or the knowledge, skills, and abilities required to perform the duties and carry out the responsibilities.
- 3806.12 A minimum educational requirement shall not be established except as authorized under §§ 3806.2 through 3806.4.

3806.13 The personnel authority may require an applicant to provide documentary evidence of his or her qualifications for an appointment in the Management Supervisory Service.

3807 COMPETITIVE PLACEMENT

3807.1 Except as provided in this chapter, competitive procedures shall apply to all initial appointments to the Management Supervisory Service, and to subsequent assignments and placements to positions in that service, including the following:

- (a) Promotions;
- (b) Temporary promotions under § 3813 exceeding one hundred twenty (120) days;
- (c) Selection for details for more than two hundred forty (240) days to a position at a higher grade or to a position at the same grade level with known promotion potential; and
- (d) Selection for a position, including by reassignment or demotion, with more promotion potential than the last grade held under a Management Supervisory Service competitive appointment.

3808 NONCOMPETITIVE PLACEMENT

3808.1 Competitive procedures shall not apply to the following actions within the Management Supervisory Service:

- (a) The following types of Management Supervisory Service promotions:
 - (1) A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error;
 - (2) A promotion resulting from an employee's position being reclassified at a higher grade because of accretion of additional duties and responsibilities without planned management action;
 - (3) A career ladder promotion if the original competition for the position clearly established the career ladder; or
 - (4) A temporary promotion under this chapter for a period of one hundred twenty (120) days or less.
- (b) Indefinite reassignment or transfer to a position of the same grade with no known promotion potential;
- (c) A temporary reassignment for a period of one hundred twenty (120) days or less;
- (d) A reassignment or demotion pursuant to §§ 3811.4 through 3811.6;

- (e) Consideration of a candidate not given proper consideration in a competitive promotion action; or promotion of an employee who was denied promotion as a result of other error, on order of the D.C. Office of Personnel or independent personnel authority; and
- (f) Detail of two hundred forty (240) days or less to a position at a higher grade or to a position with known promotion potential.

3809 EXAMINING SYSTEM, ESTABLISHMENT AND TERMINATION OF REGISTERS

- 3809.1 Competitive selection procedures shall consist of assembled examining procedures, which may include written, oral, or performance examinations, or a combination thereof; or unassembled examining procedures which may include establishment of rating and ranking plans or selection panels, or both.
- 3809.2 Each competitive selection shall be as a result of a vacancy announcement, available to the public for not less than five (5) workdays, and appropriate recruitment activities.
- 3809.3 The personnel authority shall prescribe the absolute and relative weights to be assigned the individual components of the examination, and, where numerical weights are used, shall assign final ratings on a scale with a maximum value of one hundred (100). In these circumstances, candidates who do not receive at least a rating of seventy (70) shall be rated as "ineligible."
- 3809.4 Where numerical ratings are not used, and the results of the examination are to be used only to distinguish those who successfully completed the examination from those who did not, candidates may be rated as "eligible" or "ineligible."
- 3809.5 When categorical rankings are used, candidates may be rated as "Highly Qualified," "Well Qualified," "Qualified," or "Ineligible."
- 3809.6 Each applicant who meets the minimum requirements for entrance to an examination and is rated seventy (70) or more (when numerical ratings are used), or at least "qualified" (when categorical rankings are used), or "eligible" (when pass-fail ratings are used) in the examination is eligible for consideration for appointment.
- 3809.7 The personnel authority shall add five (5) points to the earned numerical rating of each applicant claiming or entitled to residency preference, as appropriate, under Chapter 3 of these regulations.
- 3809.8 All job-related experience, regardless of whether pay was received shall be creditable.
- 3809.9 The name of each applicant determined to be eligible for the position to be filled, subject to any subsequent suitability determination pursuant to Chapter 4 of these regulations, shall be listed on a register in accordance with §§ 3809.3 through 3809.7.

- 3809.10 Unless otherwise required by an affirmative action plan established in accordance with applicable legal requirements or by law or court order, applicants shall be certified from the register in order of their relative standing on the register, except that applicants who claimed or are entitled to a residency preference pursuant to Chapter 3 of these regulations shall be listed before non-preference candidates as specified in that chapter, and shall be properly identified on the selection certificate as having claimed or being entitled to a residency preference.
- 3809.11 A maximum of ten (10) eligibles shall be certified for each vacancy, and the determination of the number of persons certified shall be based on an evaluation of the internal statistical characteristics of each selection procedure involved, the quantity and quality of competitors, residency preference considerations, equal employment opportunity considerations, and any other appropriate factors; however, more than the maximum of ten (10) may be submitted if an agency provides written justification to the personnel authority.
- 3809.12 Selecting officials may select candidates for appointment from among those listed, provided that a non-preference candidate shall not be selected when there is a residency preference candidate on the selection certificate, or return the certificate to the personnel authority without selection.
- 3809.13 The Director of Personnel or independent personnel authority shall publish instructions and procedures in the District Personnel Manual (or any other procedural manual developed) to set forth the basic rating and ranking plan requirements, and all other requirements of the examination process.

3810 MERIT PROMOTION REQUIREMENTS

- 3810.1 Except as specified in this chapter, all promotions to or within the Management Supervisory Service shall be by open competition. Promotions shall be based on merit.
- 3810.2 The personnel authority shall ensure that each employee within the area of consideration who is absent for legitimate reason, for example, on detail, leave, at training courses, in the military service, on disability compensation, or on temporary assignment under Chapter 27 of these regulations, receives appropriate consideration for promotion.
- 3810.3 To be eligible for promotion, a candidate shall meet minimum qualification standards adopted in accordance with § 3806.3.
- 3810.4 Due weight may be given to performance evaluations and incentive awards of a candidate.
- 3810.5 Selection procedures shall provide for an agency's right to select or not select from among a group of best-qualified candidates.
- 3810.6 The area of consideration shall be sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of positions covered.

- 3810.7 The minimum area of consideration shall be the agency, except that a smaller area may be authorized by the personnel authority in a situation that meets criteria established by the personnel authority.
- 3810.8 Administration of the promotion procedures shall include record keeping, the provision of necessary information to applicants and the public, and ensuring that each individual's right to privacy is protected.
- 3810.9 Each personnel authority shall maintain a record of each promotion sufficient to allow reconstruction of the promotion action, including documentation of how each candidate was rated and ranked.
- 3810.10 All promotion records shall be retained as specified in the appropriate personnel retention schedules or other appropriate retention document.

3811 PLACEMENT BY REASSIGNMENT OR DEMOTION

- 3811.1 A personnel authority may fill a vacancy within the Management Supervisory Service by reassignment of a Management Supervisory Service employee to another position of the same grade, either competitively or non-competitively, as provided in this section.
- 3811.2 A temporary reassignment may be made for a period not to exceed one (1) year.
- 3811.3 A temporary reassignment exceeding one hundred twenty (120) days to a position with established promotion potential higher than the currently held position shall be effected competitively.
- 3811.4 An agency may reassign, or reduce the grade of, an employee who has been placed on a Performance Improvement Plan pursuant to Chapter 14 of these regulations and who, at the end of the Performance Improvement Plan, is found to have failed to meet the requirements of the Plan.
- 3811.5 Any reassignment or demotion pursuant to § 3811.4 shall be to a vacant Management Supervisory Service position for which the affected employee qualifies; provided that there is no diminution in the benefits of the employee, and the position has no greater promotion potential than the position previously held.
- 3811.6 When, as a result of attrition, reductions in force, reorganizations, or approved realignments within an agency, a Management Supervisory Service employee ceases to perform managerial or supervisory functions or duties, the personnel authority may abolish the Management Supervisory Service position, and reassign or demote the employee to a vacant Management Supervisory Service position for which he or she qualifies; provided that there is no reduction in the benefits of the employee, and the position has no greater promotion potential than the position previously held.
- 3811.7 Any reassignment or demotion pursuant to §§ 3811.4 through 3811.6 shall be effected non-competitively.

3811.8 An employee may voluntarily accept a reassignment or demotion pursuant to §§ 3811.4 through 3811.6, or be terminated as specified in § 3818.

3812 TAPER APPOINTMENT

3812.1 A personnel authority may fill a Management Supervisory Service vacancy in a continuing position, in the absence of lists of eligibles, by a Temporary Appointment Pending Establishment of a Register (TAPER appointment).

3812.2 A person appointed to a TAPER appointment shall meet the minimum qualifications standards for the position.

3812.3 A TAPER appointment shall be terminated as soon as lists of eligibles for Management Supervisory Service appointment can be established by open competition in accordance with this chapter; shall not exceed ninety (90) days; and may be extended for an additional period of ninety (90) days only upon determination that a list of eligibles cannot be created.

3812.4 A person appointed to a TAPER appointment may be converted to a Management Supervisory Service appointment non-competitively if the TAPER appointment was made as a result of open competition.

3813 TEMPORARY PROMOTION

3813.1 A Management Supervisory Service employee may be temporarily promoted to a higher-grade Management Supervisory Service position without competition for any period of thirty (30) days or more and not exceeding one hundred twenty (120) days.

3813.2 Competitive procedures shall be used for a temporary promotion over one hundred twenty (120) days. In computing the days, prior service under all details to higher grade positions or temporary promotions shall be counted, whether competitive or noncompetitive, during the preceding twelve (12) months.

3813.3 A competitive temporary promotion shall be in accordance with the following:

(a) It shall be for a period of one (1) year or less; and

(b) It may be made for an indefinite period without further competition, provided that the original competition made known to all potential applicants the fact that it might lead to an indefinite promotion.

3813.4 A temporary promotion shall not be used for the purpose of training or evaluating an employee in a higher-grade position.

3813.5 A Career or Excepted Service employee may be temporarily promoted to a Management Supervisory Service position for which he or she qualifies, as specified in this section, except that a Career Service employee may be promoted to a Management Supervisory Service position without losing his or her existing status in the Career Service.

3814 DETAIL

- 3814.1 A Management Supervisory Service employee may be detailed to another Management Supervisory Service position to meet a temporary employment need for a period of not more than one hundred twenty (120) days to an established position or two hundred forty (240) days to an unestablished position; and, unless prohibited by this section, the detail may be extended by the personnel authority in increments of one hundred twenty (120) days.
- 3814.2 A detail to an established position as defined in Chapter 11 of these regulations may be made for up to one (1) year during a major reorganization.
- 3814.3 All details to established higher graded positions extending beyond two hundred forty (240) days shall be made by competition.
- 3814.4 No detail to a higher graded position or to an unestablished position as defined in Chapter 11 of these regulations shall extend beyond one (1) year, unless the personnel authority determines that highly unusual circumstances warrant an extension beyond one (1) year.
- 3814.5 The provisions of §§ 3814.2 through 3814.4 shall apply to a detail of a Career or Excepted Service employee to a position that would otherwise be in the Management Service and for which the employee qualifies, except that a Career Service employee may be detailed to a Management Supervisory Service position without losing his or her existing status in the Career Service.

3815 MANDATORY CONTINUING EDUCATION AND TRAINING

- 3815.1 Each employee appointed to the Management Supervisory Service shall be required to maintain and enhance his or her management and supervisory skills and to attend requisite training courses every year as prescribed by the personnel authority.
- 3815.2 The Director of Personnel shall publish instructions and procedures in the District Personnel Manual (or any other procedural manual developed) to set forth the basic requirements for mandatory continuing education and training pursuant to this section.
- 3815.3 Failure of an employee to complete the prescribed training within time frames specified by the personnel authority may result in administrative action against the employee.

3816 PERFORMANCE MANAGEMENT FOR MANAGEMENT SUPERVISORY SERVICE

- 3816.1 Employees in the Management Supervisory Service shall be subject to the provisions of Chapter 14 of these regulations.

3817 RESIDENCY PREFERENCE FOR MANAGEMENT SUPERVISORY SERVICE

3817.1 The residency preference provisions of § 801(e) (1), (2), (3), (5), (6), and (7) of the CMPA (D.C. Official Code § 1-608.01(e) (1), (2), (3), (5), (6), and (7)) (2001) and Chapter 3 of these regulations shall apply to employment in the Management Supervisory Service.

3818 EMPLOYEE RIGHTS

3818.1 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 not acquire Career Service status, shall serve at the pleasure of the appointing personnel authority, and may be terminated at any time.

3818.2 An employee in the Management Supervisory Service shall be provided a 15-day notice prior to termination.

3818.3 Pursuant to § 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 A Management Supervisory Service employee who has been placed on a thirty (30) to ninety (90) day Performance Improvement Plan pursuant to Chapter 14 of these regulations and who, at the end of the Performance Improvement Plan is found to have failed to meet the requirements of the Plan, may be terminated as specified in § 3818.2.

3818.5 Placement of an employee on a Performance Improvement Plan shall not prevent termination of the employee prior to the end of the thirty (30) to ninety (90) day period of such plan, provided that the termination is for reasons not related to performance.

3818.6 Upon termination for non-disciplinary reasons, and at the discretion of the personnel authority, a person with Career or Educational Service status or with 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.

3818.7 A retreat pursuant to § 3818.6 shall be to a position in the Service in which the person acquired status.

3818.8 Terminations from the Management Supervisory Service shall not be subject to administrative appeal.

Section 3899 is amended to delete the definition of the term "disqualification; and to amend the definition of the terms "eligibles" and "suitability:"

3899. DEFINITIONS

For the purposes of this chapter, the following terms have the meaning ascribed:

Agency – any unit of the District of Columbia government, excluding the courts, required by law, by the Mayor of the District of Columbia, or by the Council of the District of Columbia to administer any law, rule, or any regulation adopted under authority of law. The term "agency" shall also include any unit of the District of Columbia government created by the reorganization of one (1) or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency.

Area of consideration – the area in which the agency makes a search for eligible candidates and from which applications will be accepted in a specific competitive recruitment action.

Background investigation – thorough inquiry into the past and present conduct and behavior of an applicant to determine his or her suitability for appointment.

Days – calendar days, unless otherwise specified.

Demotion – the change of an employee to a lower grade, or to a position with a lower basic pay rate, when both the old and new positions are under the same pay schedule or in different pay schedules.

Detail – the temporary assignment of an employee to a different position for a specified period, with the employee returning to the position from which detailed at the end of the detail. A position is not filled by a detail, as the employee continues to be the incumbent of the position from which detailed.

Eligibles – those qualified persons to be chosen for appointment on the basis of any of the following (subject to possible suitability determination pursuant to Chapter 4 of these regulations):

- (a) Having received a rating of seventy (70) or more under § 3809.3.
- (b) Having successfully completed an examination under § 3809.4.
- (c) Having been rated "Highly Qualified," "Well Qualified," or "Qualified" under § 3809.5; or
- (d) Having been rated "eligible" under § 3809.6.

Management Supervisory Service – all positions in the District of Columbia government as provided for in §§ 951 through 958 of the CMPA (D.C. Official Code § 1-609.51 *et seq.*) (2001).

Manager – an employee vested with the authority to direct the work of an organization, held accountable for the success of specific line or staff functions; responsible for supervision of staff, monitoring and evaluating the progress of an organization toward meeting goals, and making adjustments in objectives, work plans, schedules and commitment of resources. These positions

shall serve as head or assistant head of a major organization, or direct a specialized project of marked difficulty, responsibility or community significance.

Minimum area of consideration – the agency in which a vacancy for competitive recruitment occurs, or a portion thereof.

Open competition – the use of examination procedures that permit application and consideration of all persons without regard to current or former employment with the District government.

Personnel authority – an individual or entity with the authority to administer all or part of a personnel management program as provided in § 401 of the CMPA (D.C. Official Code § 1-604.01 *et seq.*) (2001).

Placement – term that includes the development and use of examinations that affect the measurement, ranking, and selection of individuals for initial appointment and subsequent assignment or promotion in the Management Supervisory Service.

Planned management action – an action wherein management has a recognized option or alternative to assign work between two (2) or more employees, and assigns the work to a particular employee.

Project – part of the mission, functions, programs, activities, laws, rules, and regulations which an agency is authorized and funded to administer or enforce. The focus of a project may be on providing products and services to the public, State and local government, private industry, etc. A project may be professional, scientific, technical, administrative or fiscal in nature. Typically, projects involve broad objectives such as protective services, law enforcement, public health, safety and well being of citizens, collection of revenue, regulation of trades, development and maintenance of information systems, delivery of benefits and services, etc. Included in this definition are specialized or staff projects that may be considerably narrower in scope, *e.g.*, human resources, contracting and procurement, and budget and fiscal operations. Projects are usually of such magnitude that they must be carried out through a combination of line and staff functions.

Promotion – the change of an employee while continuously employed, from one grade to a higher grade under the Management Supervisory Service Schedule, or between pay systems. When an action involves a change between two (2) pay systems (*i.e.*, from the District Service Schedule to the Management Supervisory Service Schedule), the action is a promotion if the representative rate of the grade to which changed is higher than the representative rate of the grade currently held by the employee.

Public official – an officer, an employee, or any other individual in whom authority by law, rule, or regulation is vested, or to whom the authority has been delegated, to select, appoint, employ, promote, reassign, demote, separate, or recommend individuals for any of these actions.

Qualified candidates – those who meet established qualification requirements for the position, including any selective factors.

Reassignment – the change of an employee while continuously employed, from a Management Supervisory Service position to another Management Supervisory Service position of the same grade and without a change to the rate of pay of the employee being reassigned.

Register – a list of eligible applicants compiled in order of relative standing for certification.

Relative – an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

Selection certificate – list of eligible candidates from a register for appointment to a position submitted by a personnel authority to a public official.

Selective factors – knowledge, skills, or abilities essential for successful performance on the job, which represent an addition to the basic qualification standard for a position.

Sensitivity – the degree of public trust required of an incumbent of a position as determined by the personnel authority.

Suitability – Pursuant to Chapter 4 of these regulations, the quality or state of being acceptable for District government employment with respect to the character, reputation, and fitness of the person under consideration.

Supervisor – incumbent of a position that accomplishes work through the direction of other employees and meets at least the minimum requirements for coverage under the appropriate supervisory grade evaluation guide.

TAPER appointment – a time-limited appointment pending the establishment of a register when there are insufficient candidates on a register appropriate for filling a Management Supervisory Service position and the public interest requires that the vacancy be filled before eligibles can be certified.

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

Time-limited appointment – an appointment with a specific time limitation consistent with the anticipated duration of the programs, projects, problems, or phases thereof, requiring such services.

Transfer – a change, without a break in service of a full workday of a Management Supervisory Service employee to another Management Supervisory Service position under a different personnel authority.

Comments on these proposed regulations should be submitted, in writing, to Ms. Rosalind R. Inge, Interim Director of Personnel, 441 4th Street, N.W., Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the D.C. Register. Additional copies of these proposed regulations are available from the above address.

DISTRICT OF COLUMBIA BOARD OF EDUCATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Executive Director of the D.C. Board of Education, pursuant to the authority set forth in D.C. Code, 2001 edition, Section 38-101, hereby gives notice of emergency and proposed rulemaking action taken by the Board at its July 12, 2004 Board meeting to amend Chapter 16 of the Board Rules, Title 5 of the D.C. Municipal Regulations, regarding administrative services credentialing.

The emergency is necessitated by the need to address the ability of administrators, who were serving as administrators on July 1, 2000 and have not experienced a break in service as administrators, to be eligible for application for administrative positions without meeting the eligibility requirements set forth in 5 DCMR §§1667.2 and 1667.3. The emergency rulemaking took effect on July 12, 2004, following approval by the Board of Education. It shall expire within 120 days of its effective date or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first. The Board of Education also gives notice of its intent to recommend final rulemaking action to adopt this emergency and proposed rulemaking in not less than thirty (30) days from publication of this notice in the *D.C. Register*.

Section 1667 is revised as follows by adding 1667.4 a and b:

1667 ADMINISTRATIVE SERVICES CREDENTIALING

1667.4

- a.) Notwithstanding the provisions in sections 1667.2 and 1667.3, persons at the principal, supervisory or other level, as of July 12, 2004, who have experienced continuous employment, with no break in service, as an administrator, may apply for administrative positions other than which they currently hold, without complying with any additional requirements. Those appointed to such positions since July 1, 2000, and those selected henceforth, must achieve full licensure no later than two years from July 12, 2004, or from the effective date of the new appointment, whichever is later.
- b.) All selections for positions as provided in subsection 1667.4 a) above must be individually reviewed, interviewed and approved by the Superintendent of Schools prior to effectuation of appointment.

Renumber subsequent sections accordingly.

Written comments on the proposed rulemaking are invited from interested citizens. Such comments should be addressed to Mr. Russell Smith, Executive Secretary, D.C. Board of Education 825 North Capitol Street, N.E., Suite 9108, Washington, D.C. 20002. Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

**THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in D.C. Official Code § 3-1306, District of Columbia Financial Responsibility and Management Assistance Authority Order issued September 21, 1996, and Office of the Chief Financial Officer Financial Management Control Order No. 96-22 issued November 18, 1996, hereby gives notice of the adoption of amendments to Chapter 9 of Title 30 DCMR, "Lottery and Charitable Games" on an emergency basis. These amendments are necessary to avoid significant financial loss to the District and loss of goodwill to the District of Columbia Lottery and Charitable Games Control Board. This emergency rulemaking was adopted on August 5, 2004 and became effective on that date. The Executive Director also gives notice of her intent to take final rulemaking action to adopt these amendments in no less than thirty (30) days from the date of publication of this notice in the D.C. Register.

These emergency rules will expire in one hundred twenty (120) days from the effective date or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

AMEND CHAPTER 9, "DESCRIPTION OF ON-LINE GAMES"

Amend subsection 925.4 to read as follows:

925.4 KENO drawings will occur at the following times and intervals:

- (a) Every four (4) minutes during KENO hours of operation designated by the Executive Director, the first drawing occurring four (4) minutes after the start of sales at 6:00 am each day and the last drawing occurring at 12:56 am each day; or
- (b) Other KENO drawing times and intervals designated by the Executive Director and made available to agents and the public in game instructions issued pursuant to Chapter 7 and 8 of this Title.

Amend subsection 926.4 to read as follows:

926.4 The top prizes for the 8,9, and 10 Spot Games are each capped at a maximum top prize pool liability of \$1,000,000 per drawing. The maximum top prize pool liability may reduce top prize payments in the 8,9, and 10 Spot Games under the following circumstances:

- (a) If the \$1,000,000 maximum top prize pool liability for any 8,9, or 10 Spot Game is exceeded, all top prizes for the 8,9, or 10 Spot Game winners will be paid the minimum top prize allowed for that Spot Game based on a \$1 dollar wager;
- (b) If the payment of the minimum top prizes for the 8,9, or 10 Spot Game is less than the \$1,000,000 maximum top prize pool liability, the balance of the \$1,000,000 maximum top prize pool liability will be paid to the 8,9, or 10 Spot Game top prize winners in proportion to the amount each winner wagered; and

- (c) If payment of the minimum top prizes for the 8,9, or 10 Spot winners exceeds the \$1,000,000 maximum top prize pool liability limit, the winnings will be distributed equally among the top prize 8,9, or 10 Spot Game top prize winners.

Amend Chapter 9 by adding a new section 928 to read as follows:

928 DESCRIPTION OF KENO SPIN

- 928.1 The Agency may offer a game enhancement to the KENO Game that shall be known as KENO SPIN. Nothing in sections 928 and 929 shall be construed to repeal, amend or modify any provisions of this title concerning KENO except as provided herein.
- 928.1 KENO SPIN offers KENO players a chance to multiply their KENO winnings by a factor of 1,2,3,4,5, or 10 in any single drawing.
- 928.2 If a player wins KENO and played KENO SPIN, the player's winnings will be multiplied by the KENO SPIN number that was selected in the KENO SPIN drawing. The KENO SPIN drawing selections are 2,3,4,5,10, or "Try Again". The notation, "Try Again" represents the number one (1) in the KENO SPIN drawing.
- 928.3 A KENO player must complete the following steps to add KENO SPIN to a wager:
 - (a) Complete a KENO bet slip marking the KENO SPIN box on the bet slip; and
 - (b) Pay the total amount wagered for the KENO and KENO SPIN wager.
- 928.4 A KENO SPIN wager is an additional \$1.00 for every dollar wagered for KENO. For example, if a player wagers \$2.00 for 3 consecutive drawings, the KENO amount wagered is \$6.00. If the player wants to add KENO SPIN the ticket cost will double for a total cost of \$12.00. The maximum KENO SPIN wager is \$200.
- 928.5 A separate random KENO SPIN drawing will be conducted for each KENO drawing. The KENO SPIN drawing will be selected by a computer-driven random number generator. The results of each KENO SPIN drawing will be displayed along with the corresponding KENO drawing results on a monitor at identified agent locations. Drawing results are also available on all lottery agent or claim center lottery terminals.
- 928.6 The following table sets forth the probability of various KENO SPIN numbers being selected during a single KENO SPIN drawing:

KENO SPIN NUMBER	Percent Drawn
1	40%
2	42.5%
3	6.25%
4	6.25%
5	3.75%
10	1.25%
Total	100%

928.7 The Executive Director may notify the public of starting and ending dates for KENO SPIN by issuing game instructions to the agents and public in game instructions issued pursuant to Chapter 7 and 8 of this Title.

Amend Chapter 9 by adding a new section 929 to read as follows:

929 KENO SPIN Prize Chart

929.1 Except as provided in section 926.4, winning KENO and KENO SPIN tickets pay the following prizes based on a \$1.00 KENO wager and a \$1.00 KENO SPIN wager.

KENO 10 Spot Game		KENO SPIN Prize if Multiplier of:				
Match	\$1 Play Wins*	2 is Drawn	3 is Drawn	4 is Drawn	5 is Drawn	10 is Drawn
10	\$100,000	\$200,000**	\$300,000**	\$400,000**	\$500,000**	\$1,000,000**
9	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000	\$50,000
8	\$500	\$1,000	\$1,500	\$2,000	\$2,500	\$5,000
7	\$46	\$92	\$138	\$184	\$230	\$460
6	\$10	\$20	\$30	\$40	\$50	\$100
5	\$2	\$4	\$6	\$8	\$10	\$20
0	\$5	\$10	\$15	\$20	\$25	\$50
Total Odds 1:9.05						

KENO 9 Spot Game		KENO SPIN Prize if Multiplier of:				
Match	\$1 Play Wins*	2 is Drawn	3 is Drawn	4 is Drawn	5 is Drawn	10 is Drawn
9	\$20,000	\$40,000**	\$60,000**	\$80,000**	\$100,000**	\$100,000**
8	\$2,000	\$4,000	\$6,000	\$8,000	\$10,000	\$20,000
7	\$100	\$200	\$300	\$400	\$500	\$1,000
6	\$15	\$30	\$45	\$60	\$75	\$150
5	\$5	\$10	\$15	\$20	\$25	\$50
4	\$1	\$2	\$3	\$4	\$5	\$10
0	\$2	\$4	\$6	\$8	\$10	\$20
Total Odds 1:4.61						

KENO 8 Spot Game		KENO SPIN Prize if Multiplier of:				
Match	\$1 Play Wins*	2 is Drawn	3 is Drawn	4 is Drawn	5 is Drawn	10 is Drawn
8	\$10,000	\$20,000**	\$30,000**	\$40,000**	\$50,000**	\$100,000**
7	\$500	\$1,000	\$1,500	\$2,000	\$2,500	\$5,000
6	\$50	\$100	\$150	\$200	\$250	\$500
5	\$7	\$14	\$21	\$28	\$35	\$70
4	\$1	\$2	\$3	\$4	\$5	\$10
0	\$2	\$4	\$6	\$8	\$10	\$20
Total Odds 1:5.25						

KENO 7 Spot Game		KENO SPIN Prize if Multiplier of:				
Match	\$1 Play Wins*	2 is Drawn	3 is Drawn	4 is Drawn	5 is Drawn	10 is Drawn
7	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000	\$50,000
6	\$150	\$300	\$450	\$600	\$750	\$1,500
5	\$20	\$40	\$60	\$80	\$100	\$200
4	\$2	\$4	\$6	\$8	\$10	\$20
0	\$1	\$2	\$3	\$4	\$5	\$10
Total Odds 1:5.46						

KENO 6 Spot Game		KENO SPIN Prize if Multiplier of:				
Match	\$1 Play Wins*	2 is Drawn	3 is Drawn	4 is Drawn	5 is Drawn	10 is Drawn
6	\$1,500	\$3,000	\$4,500	\$6,000	\$7,500	\$15,000
5	\$53	\$106	\$159	\$212	\$265	\$530
4	\$5	\$10	\$15	\$20	\$25	\$50
3	\$1	\$2	\$3	\$4	\$5	\$10
Total Odds 1:6.19						

KENO 5 Spot Game		KENO SPIN Prize if Multiplier of:				
Match	\$1 Play Wins*	2 is Drawn	3 is Drawn	4 is Drawn	5 is Drawn	10 is Drawn
5	\$400	\$800	\$1,200	\$1,600	\$2,000	\$4,000
4	\$10	\$20	\$30	\$40	\$50	\$100
3	\$3	\$6	\$9	\$12	\$15	\$30
Total Odds 1:10.34						

KENO 4 Spot Game		KENO SPIN Prize if Multiplier of:				
Match	\$1 Play Wins*	2 is Drawn	3 is Drawn	4 is Drawn	5 is Drawn	10 is Drawn
4	\$65	\$130	\$195	\$260	\$325	\$650
3	\$5	\$10	\$15	\$20	\$25	\$50
2	\$1	\$2	\$3	\$4	\$5	\$10
Total Odds: 1:3.86						

KENO 3 Spot Game		KENO SPIN Prize if Multiplier of:				
Match	\$1 Play Wins*	2 is Drawn	3 is Drawn	4 is Drawn	5 is Drawn	10 is Drawn
3	\$23	\$46	\$69	\$92	\$115	\$230
2	\$2	\$4	\$6	\$8	\$10	\$20
Total Odds: 1:6.55						

KENO 2 Spot Game		KENO SPIN Prize if Multiplier of:				
Match	\$1 Play Wins*	2 is Drawn	3 is Drawn	4 is Drawn	5 is Drawn	10 is Drawn
2	\$10	\$20	\$30	\$40	\$50	\$100
Total Odds: 1:16.63						

KENO 1 Spot Game		KENO SPIN Prize if Multiplier of:				
Match	\$1 Play Wins*	2 is Drawn	3 is Drawn	4 is Drawn	5 is Drawn	10 is Drawn
1	\$2.50	\$5	\$7.50	\$10	\$12.50	\$25
Total Odds: 1:4.00						

* For wagers over \$1.00, multiply the prize amount by the amount wagered. The top prizes for any non-KENO SPIN Spot Games are capped at \$100,000.

** The amount paid for KENO SPIN top prizes for the 8,9, and 10 Spot Games may be less than amount shown under the circumstances described in section 926.4.

929.2 A KENO SPIN ticket and not the bet slip, is proof of a KENO SPIN wager.

930 [RESERVED]

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days from the date of publication of this notice in the Register. Comments should be filed with the Executive Director, District of Columbia Lottery and Charitable Games Control Board, 2101 Martin Luther King, Jr., Avenue, S.E., Washington, D.C. 20020. Copies of these proposed rules may be obtained at the address stated above.