

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Interim Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the D.C. Health Occupations Revision Act of 1985, effective March 15, 1986 (D.C. Law 6-99, D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapter 43 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The purpose of the proposed rules is to clarify the training required for dental hygienists to administer local anesthesia and nitrous oxide.

Chapter 43 (Dental Hygiene) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended by adding a new section 4311 to read as follows:

4311 ANESTHESIA AND NITROUS OXIDE TRAINING

4311.1 Prior to administering local anesthesia and nitrous oxide, a dental hygienist shall provide proof of satisfactorily completing a minimum of thirty-two (32) hours of training. The training shall include a minimum of twenty (20) hours of lecture and a minimum of twelve (12) hours of clinical training covering all of the following topics including but not limited to anatomical considerations of:

- (a) Basic injection techniques;
- (b) Basic placement techniques;
- (c) Nitrous oxide administration;
- (d) Records keeping;
- (e) Armamentarium exercise;
- (f) Local anesthesia and nitrous oxide;
- (g) Techniques of maxillary anesthesia;
- (h) Techniques of mandibular injections;
- (i) Partner injections and partner administration of nitrous oxide;
- (j) Neurophysiology;

- (k) Pharmacology of local anesthetics and nitrous oxide;
- (l) Pharmacology of vasoconstrictors;
- (m) Physical and psychological evaluation;
- (n) Local and systemic complications; and
- (o) Contraindications.

4311.2 All training as set forth in § 4311.1 shall be provided by an educator sponsored by the ADA or the American Dental Hygienist's Association (ADHA) or provided by a dental or dental hygiene program accredited by the American Dental Association Commission on Dental Accreditation (ADACDA).

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not less than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be sent to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the Department at the same address during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

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), Sections 2 and 7 of An Act To provide for annual inspection of all motor vehicles in the District of Columbia, approved February 18, 1938 (52 Stat. 78; D.C. Official Code §§ 50-1102 & 50-1107); Section 2(g) of Title IV of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 679; D.C. Official Code § 50-1501.02(g)); 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 4, 5, 6, and 30, of Title 18 of the District of Columbia Municipal Regulations (DCMR) (Vehicles and Traffic). The proposed rulemaking will require the surrender of a registration card and tag if it was issued in error, add procedures for the suspension and revocation of motor vehicle dealer registrations, establish guidelines for the disapproval of personalized identification tag applications, cap the late inspection penalty at \$480, require yearly commercial motor vehicle inspections, require the purchasers of previous-owned vehicles to submit the vehicle for inspection as a prerequisite to registration, and remove the provision stating that the Department will supply parking tickets to all issuing agencies. 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*.

This notice of proposed rulemaking supercedes a notice of proposed rulemaking published in the *D.C. Register* on February 7, 2003, at 50 DCR 1230.

Title 18, DCMR, is amended as follows:

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

- 1) Section 415, SURRENDER OF OWNER'S IDENTIFICATION TAGS AND REGISTRATION CARD, subsection 415.5, is amended by adding a new paragraph (d) to read as follows:
 - (d) The identification tags, registration certificate, or reciprocity sticker was issued in error, following written notice by the Department.
- 2) Section 422, DISPLAY OF IDENTIFICATION TAGS, subsection 422.1 is amended by inserting at the end of the sentence the phrase “; except that motor vehicles need only display a special use identification tag on the rear of the vehicle only”.
- 3) Section 423, PERSONALIZED IDENTIFICATION TAGS, is amended by adding a new subsection, 423.13, to read as follows:

- 423.13 The Director shall reject any proposed tag content that conveys a message, or displays an image, that is confusing or offensive to the general public.
- 423.14 For the purposes of § 423.13, the Director shall reject any combination of letters or numbers that:
- (a) Is vulgar, derogatory, profane, scatological or obscene, with any connotation, in any language;
 - (b) Connote, in any language, breast, genitalia, pubic area, or buttocks or relate to sexual or eliminatory functions;
 - (c) Connote, in any language (i) any illicit drug, narcotic, intoxicant, or related paraphernalia; (ii) the sale, user, or purveyor of such a substance; or (iii) the physiological state produced by such a substance;
 - (d) Refer, in any language, to a race, religion, color, deity, ethnic heritage, gender, sexual orientation, disability status, or political affiliation;
 - (e) Suggest, in any language, a government or governmental agency;
 - (f) Suggest, in any language, a privilege not given by law in this state;
 - (g) Form, in any language, a slang term, abbreviation, phonetic spelling or mirror image of a word described in this subsection.

B. Chapter 5, MOTOR VEHICLE DEALERS, Section 507, REFUSAL TO REGISTER: SUSPENSION AND REVOCATION OF REGISTRATION, is amended as follows:

- 1) Subsection 507.2 is amended by adding, after the last sentence, the phrase “, or any violation of Chapters 4 or 5 of this Title”.
- 2) New subsections 507.6 through 507.8 shall be added to read as follows:
 - 507.6 Any order of suspension or revocation under § 507.2 shall notify the person that the order will take effect within ten (10) days unless the person files an objection together with a request for a hearing.
 - 507.7 The filing of a request for a hearing under § 507.6 shall operate as a stay of the order until the Director or hearing examiner renders a written decision on the objection.
 - 507.8 If a person to whom a notice of infraction has been issued fails to appear at a hearing for which he or she received notice, the hearing examiner may enter a default judgment sustaining the charges and order the suspension or revocation proposed.

- C. Chapter 6, INSPECTION OF MOTOR VEHICLES, Section 601, INSPECTION REQUIREMENTS, is amended to read as follows:

601 INSPECTION REQUIREMENTS

- 601.1 Inspections shall be made and stickers obtained with respect to the items of equipment designated by the Director.
- 601.2 Inspections shall be conducted in accordance with the standards contained in the Motor Vehicle Inspection Manual of the District of Columbia (also referred to as the "District Inspection Manual" or "Manual"), and in the event existing standards do not apply to a particular piece of equipment, a standard specified by the Director.
- 601.3 The 1982 and 1999 issues of the Motor Vehicle Inspection Manual of the District of Columbia are incorporated in this chapter by reference. In the event of any inconsistency between a Motor Vehicle Inspection Manual of the District of Columbia and this Title, the provisions of this Title shall govern.
- 601.4 Except as provided in § 601.5, vehicles registered in the District of Columbia shall be inspected periodically for safe operating condition, exhaust emissions, and compliance with this Title as follows:
- a) Passenger vehicle: every two (2) years;
 - b) Motorcycle: every two (2) years;
 - c) Bus: semiannually;
 - d) Taxicab and other public vehicles for hire: semiannually;
 - e) Motorized bicycle, except those rented to or offered to be rented to the public: every two (2) years;
 - f) Motorized bicycle rented to or offered to be rented to the public: annually;
 - g) Commercial vehicle: annually;
 - h) Tow truck: annually;
 - i) Vehicle registered as an historic motor vehicle: one (1) time, at time of registration; and
 - j) All other motor vehicles: every two (2) years.

- 601.5 Notwithstanding § 601.4, the purchaser of a previously-owned vehicle must submit the vehicle for safety inspection and emissions testing in order to register the vehicle, regardless of whether the vehicle is due for its periodic inspection.
- 601.6 All taxicabs shall also be inspected semiannually for compliance with respect to identification color, trade signs, insignia, rate signs, zone maps, cruising lights, upholstery, and sanitation, and for compliance with inspection requirements established by the District of Columbia Taxicab Commission through rulemaking as of September 1, 2002.
- 601.7 At the discretion of the Director, imported vehicles may be exempt from certain inspection requirements, such as emissions, safety glass and headlights.
- 601.8 The fees for inspections shall be as follows:
- a) Passenger vehicle, including historic motor vehicle: \$ 25;
 - b) Motorized bicycle: \$ 25;
 - c) Motorcycle: \$ 25;
 - d) Commercial vehicles and vehicles for hire, including all buses: \$ 25;
 - e) Trailers, based upon the manufacturer's shipping weight: \$ 25
 - f) Tow truck: \$ 25;
 - g) Salvage vehicle: \$ 25;
 - h) New vehicles for which an inspection is not required but for which a sticker is required: \$ 10; and
 - i) All other motor vehicles: \$ 25.
- 601.9 For any inspections performed off-site, an additional fee of five hundred dollars (\$ 500) shall be charged per day or portion of a day, regardless of the number of vehicles inspected.
- 601.10 The inspection fees included above shall include two re-inspections performed within twenty (20) days of the initial inspection. The fee for all other re-inspections shall be in accordance with the above inspection fee schedule.
- 601.11 Any re-inspection fees due shall be paid at the time of re-inspection.
- 601.12 Inspection fees may be collected at the time of registration.

601.13 The total cumulative amount of any late inspection penalty assessed pursuant to § 6 of An Act to Provide for annual inspection of all motor vehicles in the District of Columbia, approved February 18, 1938 (52 Stat. 78; D.C. Official Code § 50-1106), shall not exceed four hundred and eighty dollars (\$480), all or part of which may be waived by the Director upon submission of proof that the owner was unable to have the vehicle inspected due to one or more of the following:

- (a) Military duty;
- (b) Incarceration;
- (c) Medical emergency;
- (d) The vehicle was involved in an accident (police report required); or
- (e) Exceptional circumstances, as determined by the Director.

D. Chapter 30, ADJUDICATION AND ENFORCEMENT, Section 3001, TICKET SUPPLIES, DISTRIBUTION, AND SECURITY, is repealed.

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 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 §§ 1651 through 1654 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 § 1-616.51 *et seq.*), as amended by D.C. Law 15-162, the Enforced Leave Amendment Act of 2004 (Act), effective May 18, 2004 (D.C. Act 15-397, 51 DCR 3628), 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*. The Act provides that enforced leave that lasts ten (10) days or more may be appealed to the Office of Employee Appeals (OEA), and that the written final decision to place an employee on enforced leave shall inform the employee of his or her right to file an appeal with the OEA for any enforced leave that lasts ten (10) days or more. Accordingly, the main purpose of these rules is to amend Chapter 16 of the *D.C. Personnel Regulations, General Discipline and Grievances*, to add the aforementioned provisions of the Act to the chapter. Additionally, these rules would renumber § 1615, Enforced Leave: General Discipline, as 1619 and rename the section; renumber §§ 1616 through 1619 as 1615 through 1618, respectively; make corresponding changes to sections referencing the renumbered sections; and make other minor modifications to the chapter. Upon adoption, these rules will amend Chapter 16 of the *D.C. Personnel Regulations, General Discipline and Grievances*, published at 34 DCR 1845 (March 20, 1987) and amended at 37 DCR 8297 (December 21, 1990), 47 DCR 7094 (September 1, 2000), 49 DCR 11781 (December 27, 2002), and 50 DCR 3185 (April 25, 2003).

CHAPTER 16**GENERAL DISCIPLINE AND GRIEVANCES*****Section 1600.1 is amended to read as follows:***

1600.1 Sections 1601 through 1618 apply to each employee of the District government in the Career Service who has completed a probationary period.

Section 1604.2 is amended to read as follows:

1604.2 A corrective action may be contested as a disciplinary grievance pursuant to § 1617.

Section 1605.2 is amended to read as follows:

1605.2 An adverse action may be appealed to the Office of Employee Appeals pursuant to § 1618. In lieu of appealing to the Office of Employee Appeals, an employee may elect to contest an adverse action as a disciplinary grievance pursuant to § 1617.

Section 1608.1 is amended to read as follows:

- 1608.1 Except in the case of a summary suspension action pursuant to § 1615 or a summary removal action pursuant to § 1616, an employee against whom corrective or adverse action is proposed shall have the right to an advance written notice, as follows:
- (a) In the case of a proposed adverse action, an advance written notice of fifteen (15) days; or
 - (b) In the case of a proposed corrective action, an advance written notice of ten (10) days.

Section 1608.9 is amended to read as follows:

- 1608.9 An employee against whom a corrective or adverse action is proposed shall be entitled to be retained in an active duty status during the notice period, except when the employee has been placed on administrative leave as provided in §§ 1608.8 or 1619.1.

Section 1614.1 is amended to read as follows:

- 1614.1 The employee shall be given a notice of final decision in writing, dated and signed by the deciding official, informing him or her of all of the following:
- (a) Which of the reasons in the notice of proposed corrective or adverse action have been sustained and which have not been sustained, or which of the reasons have been dismissed with or without prejudice;
 - (b) Whether the penalty proposed in the notice is sustained, reduced, or dismissed with or without prejudice;
 - (c) When the final decision results in a corrective action, the employee's right to grieve the decision as provided in § 1617;
 - (d) When the final decision results in an adverse action, the right to appeal to the Office of Employee Appeals as provided in § 1618. The notice shall have attached to it a copy of the OEA appeal form; and
 - (e) The effective date of the action.

Section 1614.3 is amended to read as follows:

- 1614.3 The final decision in the case of a summary suspension or summary removal action taken pursuant to §§ 1615 or 1616, respectively, shall be rendered not later than forty-five (45) days from the date of delivery of the summary suspension or summary removal notice, as appropriate, except that the period may be extended as follows:
- (a) When the employee requests and is granted an extension of time in which to respond under § 1611.2; or

- (b) When the employee agrees to an extension of time requested by the agency.

Section 1614.9 is amended to read as follows:

- 1614.9 The decision made by the deciding official, in the case of a corrective action, shall be the final decision for the purpose of a disciplinary grievance pursuant to § 1617.

Section 1614.10 is amended to read as follows:

- 1614.10 The decision made by the deciding official in the case of an adverse action shall be the final agency decision for the purpose of an appeal to the Office of Employee Appeals pursuant to § 1618.

Sections 1616 through 1619 are renumbered as 1615 through 1618 and amended to read as follows:

1615 SUMMARY SUSPENSION: GENERAL DISCIPLINE

- 1615.1 An agency head may summarily suspend an employee when the employee's conduct:

- (a) Threatens the integrity of government operations;
- (b) Constitutes an immediate hazard to the agency, to other District employees, or to the employee; or
- (c) Is detrimental to public health, safety, or welfare.

- 1615.2 An agency head may summarily suspend an employee under this section only if at the time the summary suspension action is taken, a good faith effort has been made to determine that at least one (1) of the conditions described in § 1615.1 is met; and only if the action is taken for cause pursuant to § 1603. Otherwise, an employee shall be entitled to an advance written notice as specified in § 1608.

- 1615.3 An employee who is notified by written or oral directive of a summary suspension from his or her position pursuant to this section shall immediately leave his or her duty station or District government facility.

- 1615.4 Within three (3) days of the summary suspension, the agency head or his or her designee shall provide a written summary suspension notice to the employee that includes all of the following:

- (a) The reason for the summary suspension action;
- (b) The effective date of the summary suspension action and its duration;
- (c) The right to review any material upon which the summary suspension action was based and to receive a copy, if requested;

- (d) The right to prepare a written response, including affidavits and other documentation within six (6) days of receipt of the notice;
 - (e) The person to whom the written response is to be presented;
 - (f) In the case of a summary suspension of ten (10) days or more, the right to be represented by an attorney or other representative; and
 - (g) The right to a final decision as provided in § 1614.3.
- 1615.5 The deciding official shall issue a final decision sustaining, reducing, or dismissing the summary suspension action with or without prejudice.
- 1615.6 When the final decision is to sustain or reduce the summary suspension action, the final decision shall inform the employee of his or her right to file a disciplinary grievance when the summary suspension is for less than ten (10) days, or to appeal to the Office of Employee Appeals when the summary suspension is for ten (10) days or more, as applicable.
- 1615.7 When the final decision is to dismiss the summary suspension action or to reduce it to a lesser penalty, any pay lost as a result of the summary suspension action, to the extent that the pay loss exceeds the pay lost as a result of the final decision, shall be restored to the employee.
- 1616 SUMMARY REMOVAL: GENERAL DISCIPLINE**
- 1616.1 An agency head may remove an employee summarily when the employee's conduct:
- (a) Threatens the integrity of government operations;
 - (b) Constitutes an immediate hazard to the agency, to other District employees, or to the employee; or
 - (c) Is detrimental to public health, safety, or welfare of others.
- 1616.2 An agency head may summarily remove an employee under this section only if at the time the summary removal action is taken, a good faith effort has been made to determine that at least one (1) of the conditions described in § 1616.1 is met; and only if the action is taken for cause pursuant to § 1603. Otherwise, the employee shall be entitled to an advance written notice as specified in § 1608.
- 1616.3 An employee who is notified by written or oral directive of a summary removal from his or her position pursuant to this section shall immediately leave his or her duty station or District government facility.
- 1616.4 Within three (3) days of the summary removal, the agency head or his or her designee shall provide a written summary removal notice to the employee that includes all of the following:

- (a) The reason for the summary removal action;
 - (b) The effective date of the summary removal action;
 - (c) The right to review any material upon which the summary removal action was based;
 - (d) The right to prepare a written response, including affidavits and other documentation within six (6) days of receipt of the notice;
 - (e) The person to whom the written response is to be presented;
 - (f) The right to be represented by an attorney or other representative;
 - (g) The right to an administrative review, as provided in § 1612; and
 - (h) The right to a final decision as provided in § 1614.3.
- 1616.5 An administrative review, as provided for in § 1612, shall be conducted prior to the issuance of a notice of final decision.
- 1616.6 The deciding official, after considering the report and recommendation of the hearing officer pursuant to § 1612, shall do one (1) of the following, as appropriate:
- (a) Remand the summary removal action to the hearing officer;
 - (b) Designate a new hearing officer to conduct a review de novo; or
 - (c) Issue a final decision sustaining, reducing, or dismissing the summary removal action.
- 1616.7 When the final decision is to sustain the summary removal action, or to reduce it to a suspension of ten (10) days or more or to a reduction in grade, the final decision shall inform the employee of his or her right to appeal to the Office of Employee Appeals, in which case the decision shall have attached to it a copy of the OEA appeal form.
- 1616.8 When the final decision is to reduce the summary removal action to an official reprimand or a suspension of less than ten (10) days, the final decision shall inform the employee of his or her right to file a disciplinary grievance.
- 1616.9 When the final decision is to dismiss the summary removal action, the employee shall be restored to active duty status, and receive back pay and other entitlements, for the period during which the summary removal was in effect.
- 1616.10 Except as provided in § 1616.11, when the final decision is to reduce the summary removal action to a lesser penalty, the employee shall be restored to active duty status, and receive back pay and other entitlements, for the period during which the summary removal was in effect.

1616.11 When the final decision is to reduce the summary removal action to a suspension, the number of days during which the employee was separated from government service shall be applied to reduce the number of days of the suspension imposed by the deciding official, as applicable.

1616.12 For time and attendance purposes, a summary removal action taken pursuant to this section shall become effective at the end of the employee's scheduled tour of duty on the effective date of the action.

1617 DISCIPLINARY GRIEVANCES: GENERAL DISCIPLINE

1617.1 An employee against whom a corrective action has been taken shall be entitled to contest the final decision as a disciplinary grievance under the procedure set forth in § 1636.

1617.2 The filing of a disciplinary grievance shall not serve to stay or delay the effective date of the final decision.

1618 APPEALS TO THE OFFICE OF EMPLOYEE APPEALS

1618.1 Unless otherwise authorized or required as provided in §§ 1601.2 through 1601.5, an employee shall be entitled to appeal the following final agency actions to the Office of Employee Appeals (OEA):

(a) Any final decision regarding an adverse action; or

(b) Any final decision placing an employee on enforced leave that lasts ten (10) days or more.

1618.2 Any enforced leave lasting less than ten (10) days may be grieved as specified in § 1635.

1618.3 Any appeal of an action described in § 1618.1 shall be in accordance with the regulations issued by the OEA, and shall be filed within thirty (30) days of the effective date of the appealed agency action.

1618.4 The filing of an appeal to the OEA shall not serve to stay or delay the effective date of the final decision.

1618.5 When upon appeal, the action taken by an agency is reversed by the OEA, the remedial action directed by the OEA shall be taken within thirty (30) days of the final decision of the Office, unless the decision is reopened or reviewed in accordance with the regulations of the OEA.

Section 1615 is renumbered as 1619 and amended to read as follows:

1619 ENFORCED LEAVE

- 1619.1 Notwithstanding any other provision of this chapter, a personnel authority may authorize placing an employee on enforced leave if:
- (a) A determination has been made that the employee utilized fraud in securing his or his or her appointment or that he or she falsified official records;
 - (b) The employee has been indicted on, arrested for, or convicted of a felony charge (including conviction following a plea of *nolo contendere*); or
 - (c) The employee has been indicted on, arrested for, or convicted of any crime (including conviction following a plea of *nolo contendere*) that bears a relationship to his or her position; except that no such relationship need be established between the crime and the employee's position in the case of uniformed members of the Metropolitan Police Department or correctional officers in the D.C. Department of Corrections.
- 1619.2 Placement of an employee on enforced leave pursuant to this section is not a corrective or adverse action.
- 1619.3 A personnel authority may propose the placing of an employee on enforced leave in accordance with this section as follows:
- (a) For actions based on any of the conditions described in § 1619.1(a) or (c), only if the personnel authority has a good faith belief that any of the conditions described in § 1619.1(a) or (c) are met after reviewing and considering the information contained in affidavits, legal indictments, charges or complaints, arrest records, or other documents or other credible information; and
 - (b) For actions based on any of the conditions described in § 1619.1(b), only after the personnel authority has obtained official documentation such as affidavits, legal indictments, charges or complaints, arrest records, or other documentation, to support the determination that any of the conditions described in § 1619.1(b) are met.
- 1619.4 If the personnel authority determines that the conditions described in § 1619.1 are met, an employee shall initially be placed on administrative leave for a period of five (5) workdays.
- 1619.5 The first day of the administrative leave period shall be the first workday that immediately follows the day on which the employee was placed on administrative leave pursuant to § 1619.4.

- 1619.6 The proposing official shall issue a written notice to propose placement of an employee on enforced leave. The notice shall inform the employee of the following:
- (a) The reasons for the proposed enforced leave;
 - (b) The specific basis, including affidavits or other documentation, upon which the decision to propose placement of the employee on enforced leave was based and which establishes that the conditions described in § 1619.1 have been met. The employee shall be provided with a copy of the notice;
 - (c) The beginning and ending dates of the five (5) workdays of administrative leave;
 - (d) The beginning date of the proposed enforced leave;
 - (e) The right to make a written or oral response, or both, to the notice, and to furnish written statements of witnesses or other documentation in support of the response, all within one (1) workday of receipt of the notice of proposal;
 - (f) The person to whom the response is to be presented;
 - (g) The right to be represented by an attorney or other representative; and
 - (h) The right to a written final decision within the five (5) workdays of administrative leave.
- 1619.7 Prior to actual delivery of the notice under § 1619.8, initial delivery of the notice proposing placement of an employee on enforced leave may be accomplished by reading the notice to the employee over the telephone.
- 1619.8 During the five-day (5-day) period of administrative leave under § 1619.4, the agency shall deliver the notice proposing placement of an employee on enforced leave to the employee personally, or by leaving a copy at the employee's home with some person of suitable age and discretion who is present.
- 1619.9 The response period provided for in § 1619.6(e) shall begin the first workday that immediately follows the day on which initial delivery of the notice is made, regardless of the method by which delivery was accomplished.
- 1619.10 If a determination is made to place the employee on enforced leave, the written final decision shall inform the employee of the following:
- (a) The placement on enforced leave as provided in § 1619.12;
 - (b) The date the enforced leave is to commence; and

- (c) The right to grieve the action under the procedure set forth in § 1636, and that if the enforced leave lasts ten (10) days or more, the employee has the right to file an appeal with the Office of Employee Appeals within thirty (30) days of the final decision.
- 1619.11 The enforced leave period shall commence on the first workday that immediately follows the five (5) workdays of administrative leave, as provided in § 1619.4.
- 1619.12 During the period in which the employee is in the enforced leave status, each day of absence is to be charged against the employee in the following sequence:
- (a) Accrued annual leave, if available, until exhausted;
 - (b) Compensatory time which is authorized and recorded on time and attendance reports, if available, until exhausted; or
 - (c) Leave without pay when annual leave and compensatory time are exhausted or not available.
- 1619.13 If a determination is made not to place the employee on enforced leave, the written final decision shall so inform the employee.
- 1619.14 An employee shall remain on enforced leave until such time as disciplinary action, in accordance with this chapter and taken as a result of the event that caused the administrative action, is effected, or a determination is made that no disciplinary action will be taken.
- 1619.15 If the basis for placing an employee on enforced leave pursuant to this section does not result in disciplinary action pursuant to the provisions of this chapter, any annual leave, compensatory time, or pay lost as a result of the administrative action shall be restored retroactively.

Subsections 1631.1(d), (e), (f), (u), and (y) are amended to read as follows:

- (d) Forfeiture of position due to failure to maintain bona fide District residency, or to meet the residency or domicile requirements, respectively, as provided in Chapter 3 of these regulations;
- (e) Termination or discipline of an employee serving a probationary period as provided in Chapter 8 of these regulations;
- (f) The return or assignment to the position from which promoted or to an equivalent position of an employee who does not successfully complete a supervisory probationary period pursuant to Chapter 8 of these regulations;
- (u) Non-selection for any competitive or non-competitive appointment or promotion from a group of candidates who were properly qualified, ranked, or certified;

- (y) The disallowance of an employee's representative pursuant to this chapter; or

Section 1634.1 is amended to read as follows:

- 1634.1 If otherwise in a duty status, each employee submitting a grievance under the provisions of this chapter may be granted a reasonable amount of official time for preparation or presentation of the grievance.

Section 1635 is amended to read as follows:

1635 TIME LIMITS FOR FILING: GRIEVANCES

- 1635.1 Except as provided in § 1635.2, an employee, former employee or applicant for employment filing a grievance under this chapter shall present the grievance within forty-five (45) days, not including Saturdays, Sundays, and legal holidays, after the date that he or she knew or should have known of the act or occurrence that is the subject of the grievance.
- 1635.2 An employee may file a disciplinary grievance or a grievance of enforced leave that lasts less than ten (10) days, within ten (10) days of receipt of the final decision on the corrective action or the enforced leave.

Section 1699 is amended to modify the definitions of the terms "deciding official," "disciplinary grievance," "enforced leave," "grievance," "summary removal," and "summary suspension:"

Deciding official – the individual who issues a final decision on a disciplinary action or enforced leave, in accordance with §§ 1613 and 1619.

Disciplinary grievance – a request for personal relief concerning the final decision on a corrective action, as provided in § 1617.

Enforced leave – involuntary placement of an employee on annual leave, compensatory time authorized and recorded on the appropriate time and attendance reports, or leave without pay, as applicable, as provided in § 1619.

Grievance – any matter under the control of the District government which impairs or adversely affects the interest, concern, or welfare of employees, including but not limited to a request by an employee for relief concerning a final written decision that involuntarily placed him or her on enforced leave that lasts less than ten (10) days, as provided in § 1619.10(c); or a request by an applicant for employment for non-monetary relief in matters involving the application of the merit staffing process; or a request by a former employee for relief in a matter of concern or dissatisfaction that is subject to the control of the District government, and that is related to an employment condition, as provided in § 1636. This definition does not include adverse actions resulting in removals, suspension of ten (10) days or more, reductions in grade, or enforced leave actions that last ten (10) days or more; reductions in force; or classification matters, nor is it intended to restrict matters that may be subject to a negotiated grievance and arbitration procedure in a collective bargaining agreement between the District and a labor organization representing employees

Summary removal – an action taken to immediately separate an employee pursuant to § 1616.

Summary suspension – an action to immediately suspend an employee pursuant to § 1615.

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.

**DISTRICT OF COLUMBIA
DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Deputy Mayor for Planning and Economic Development, pursuant to the authority set forth in the Tax Increment Financing Authorization Act of 1998, effective September 11, 1998 (D.C. Law 12-143; D.C. Official Code § 2-1217.03 *et seq.*), and Mayor's Order 2001-108, August 6, 2001, hereby gives notice of the adoption on an emergency basis of an amendment to Title 10 DCMR, by adding a new Chapter 60. The new Chapter 60 to Title 10, DCMR, will establish criteria to be used in determining whether or not a project for which tax increment financing is sought has "special merits" that may warrant the use of such financing.

This emergency action is necessary for the immediate preservation of the public welfare, which will be achieved by the expeditious introduction to the financial marketplace of the existing tax increment financing projects during a financially advantageous period.

This rulemaking was adopted on an emergency basis on June XX, 2004, and became immediately effective on that date.

The District of Columbia Chief Financial Officer and the Deputy Mayor for Planning and Economic Development also give notice of intent to take final rulemaking action to adopt this amendment in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The emergency rule will expire on September 31, 2004, or upon publication of a Notice of Final Rulemaking in the Register, whichever occurs first.

Title 10 DCMR is amended by adding a new Chapter 60 – SPECIAL MERITS, to read as follows:

CHAPTER 60 – SPECIAL MERITS

6000 AUTHORITY AND SCOPE

6000.1 The Tax Increment Financing ("TIF") program is administered jointly by the Office of the Chief Financial Officer ("OCFO") and the Office of Deputy Mayor for Planning and Economic Development ("ODMPED"). The TIF program is intended to enhance the feasibility of private capital projects that are of significant economic, cultural, social, and financial value, which cannot otherwise proceed because of the high costs of urban development. This rulemaking describes the standards and procedures

under which the OCFO and the ODMPED shall determine whether a project for which TIF assistance is sought has Special Merits.

6001 DETERMINATION OF SPECIAL MERITS

6001.1 Except for the determination required of the OCFO pursuant to Section 4(c)(3) of the TIF Act, the designation of Special Merits is within the discretion of the ODMPED.

6001.2 In evaluating whether a Project has Special merits, ODMPED will take into consideration the criteria set forth in this subsection. The ODMPED will be entitled to give priority or more weight to any one of these criteria based on its view of the current needs of the District or as directed by law. These criteria are not intended to be used in a mathematical equation; consequently, mere compliance with a majority of these criteria does not guarantee a designation of Special Merits. The following criteria shall be used by the ODMPED to determine Special Merits:

- (a) the quantity and quality of housing units (both rental and owner-occupied) to be constructed by the Project that are affordable to low-and-moderate-income residents;
- (b) the quantity and quality of housing units that are available and accessible to physically or mentally challenged persons;
- (c) the quantity of permanent full time jobs and part time administrative, managerial, technical and service jobs that will be generated during construction and operation of the Project after its completion that pay 10% or more above Minimum Wage;
- (d) the quantity of the jobs set forth in subparagraph (c) above that pay wages that are equal to or exceed the prevailing wages in comparable jobs in the area;
- (e) the quantity of jobs generated during construction of the Project that pay 10% or more above the Minimum Wage;
- (f) the quantity of jobs generated during construction of the Project that will pay Davis Bacon wages;
- (g) the amount of expected Local Small Disadvantaged Business Enterprise ("LSDBE") participation in the Project above the LSDBE Minimum Requirement;
- (h) the extent to which the Project is expected to serve as a catalyst for other related development, particularly development that will not require additional public subsidy;
- (i) the extent to which the Project will increase property values and growth in net tax revenue collection by the District;

- (j) the extent to which the Project takes unproductive property and makes it more productive and profitable to the District from the standpoint of tax revenue generation;
- (k) the history of efforts to develop the proposed site of the Project;
- (l) the extent to which the Project is a rehabilitation of an historically significant site;
- (m) the amount of direct and indirect tax revenues that will flow to the District after payment of debt service on the TIF Bonds;
- (n) the extent to which the Project draws new and diverse businesses into the District, both in terms of the quantity of employers and the types of businesses (e.g., high-tech companies and scientific research companies);
- (o) the extent to which the Project reduces the need for other direct expenditures by the District, such as for streets, traffic controls, and sewers that otherwise would be funded from the General Fund;
- (p) the extent to which the Project maximizes the use of the District's public transportation infrastructure or enhances the utilization of mass transit facilities;
- (q) the extent to which the Project provides parking in excess of legal requirements;
- (r) the extent to which the Project improves environmental air, water, and soil quality within the District;
- (s) the extent to which the Project provides community meeting and recreational space;
- (t) the extent to which the Project will have a positive effect on tourism by increasing the quantity of tourists who come to the District, the length of their stay, or the amount of money that they spend, or by enhancing the experience of tourists in the District in a manner that strengthens the District's reputation as an important and attractive tourist destination;
- (u) the extent to which the Project contributes to the expansion of shopping, dining, cultural, and educational activities in the Downtown Area;
- (v) the extent to which the Project will improve the vitality or economic health of a neighborhood commercial center or corridor;
- (w) the extent to which the Project will encourage activities within the District, including the production and performance or display of works of art including, but not limited to, music, drama, dance, film, and writing;

- (x) the extent to which the Project will enhance a District-sponsored or supported development project which already has been approved or is already developed.

6001.3 Any application for tax increment financing that was filed with the OCFO prior to April 30, 2001, was the subject of a favorable Special Merits ruling issued in the form of a memorandum from the ODMPED to the OCFO prior to April 30, 2001, and was approved by resolution of the Council of the District of Columbia prior to April 30, 2001, shall be deemed to have Special Merits as defined by this rulemaking.

6099 **DEFINITIONS**

District – the Government of the District of Columbia

Downtown Area – the Downtown Area, as defined by § 2 of the TIF Act

Project – a private capital improvement project for which tax increment financing is sought.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the Register. Comments should be filed with the Office of the Deputy Mayor for Planning and Economic Development at 1350 Pennsylvania Avenue, N.W., Suite 317, Washington, D.C. 20004. Copies of these proposed rules may be obtained from the Office of the Deputy Mayor for Planning and Economic Development at the same address.