

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 3(a) of the Preventive Health Services Amendments Act of 1985 ("Act"), effective February 21, 1986, D.C. Law 6-83, D.C. Official Code § 7-131(a) and Mayor's Order 98-141, dated August 20, 1998, hereby gives notice of the adoption, on an emergency basis, of an amendment to Chapter 2 of Title 22 of the District of Columbia Municipal Regulations (DCMR) (Public Health and Medicine)(August 1986). This emergency rule requires reporting of cases that exhibit symptoms of Severe Acute Respiratory Syndrome. Emergency action is necessary because this disease is in the beginning stages of a worldwide epidemic. To prevent further spread of the disease in the United States and the District of Columbia it is necessary to take emergency action to identify the symptoms of the disease and treat or isolate the persons exhibiting those symptoms before others can become infected.

The emergency rulemaking was adopted on May 20, 2003, and became effective immediately on the date of adoption. The emergency rules will expire September 17, 2003, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of his intent to take final rulemaking action to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 2 of Title 22 DCMR is amended as follows:

I. Section 201.1 is amended by renumbering paragraphs (k) through (p) as paragraphs (l) through (q) and adding a new paragraph (k) to read as follows:

(k) Severe Acute Respiratory Syndrome (SARS);

II. Section 299.1 is amended by adding the following term:

Severe Acute Respiratory Syndrome or SARS--a contagious viral illness that spreads person-to-person by close proximity to an infected person. A suspect case may be identified by onset since February 1, 2003, of a temperature above 100.4 degrees Fahrenheit (100.4° F); one or more findings of respiratory illness including cough, shortness of breath, difficulty breathing, or hypoxia; and travel within ten (10) days of onset of symptoms to an area where there is current, documented community transmission of SARS or close contact within ten (10) days of onset of symptoms with a person known or suspected to have SARS. A probable case may be identified by the above findings plus radiographic evidence of pneumonia, respiratory distress syndrome, or autopsy findings consistent with pneumonia or respiratory distress syndrome without an identifiable cause.

Comments on the proposed rules should be sent in writing to the Department of Health, Office of the General Counsel, 4th Floor, 825 North Capitol Street, NE, Washington, DC 20002, not later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained Monday through Friday, excepting holidays, between the hours of 8:30 A.M. and 4:45 P.M. at the same address.

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

The 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 XI of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (the CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.01 *et seq.*) (2001), as amended on an emergency basis by the Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Emergency Amendment Act of 2003 (the Act), effective April 16, 2003 (D.C. Act 15-74, 50 DCR 3619), hereby gives notice of the adoption of the following emergency rules. These rules explain the requirements for the payment of an active duty pay differential to each District government employee who has been called to active duty from reserve units of the United States Armed Forces as a result of Operation Enduring Freedom, or in preparation for or as a result of Operation Iraqi Freedom. The Act provides that implementing rules must be issued within thirty (30) days of its effective date. The utilization of emergency rulemaking is the only available means of complying with this requirement and, thereby, providing for the continuation of payment of the differential authorized by the Act for eligible employees. Therefore, to ensure the welfare of the public, action was taken on May 27, 2003 to adopt the following rules on an emergency basis effective May 27, 2003. These rules will remain in effect for up to one hundred twenty (120) days, up to and including July 15, 2003, unless earlier superseded by another rulemaking notice.

CHAPTER 11**CLASSIFICATION AND COMPENSATION**

Section 1155 is amended to read as follows:

**1155 OPERATION ENDURING FREEDOM AND OPERATION IRAQI
FREEDOM PAY DIFFERENTIAL**

1155.1 Any full-time permanent employee, term employee, or an employee on a Temporary Appointment Pending Establishment of a Register (TAPER appointment) who serves in a reserve component of the armed forces and who has been ordered to active duty, or was retained for duty as a result of Operation Enduring Freedom, or in preparation for a potential conflict with Iraq, or as a result of Operation Iraqi Freedom, shall be entitled to apply for and receive, or continue to receive, as applicable, a pay differential to compensate the employee for any difference between the employee's District government basic pay and basic military pay.

- 1155.2 An employee as described in § 1155.1 shall not be required to be released from active duty before making application for and receiving the pay differential. However, if the employee has not been released from active duty when he or she makes application for the pay differential, the employee shall provide all documentation required in § 1155.9, except that in lieu of providing a copy of the military orders releasing the employee from active duty, the employee shall provide a letter from his or her commanding officer attesting to the fact that the employee, as of the date of application for the pay differential, is still in an active duty status.
- 1155.3 A pay differential received pursuant to this section shall not be considered basic pay for any purpose.
- 1155.4 Any eligible employee, upon making application for the pay differential and upon approval of the application by his or her department or agency head, shall receive a pay differential that equals the difference between the employee's District government basic pay reduced by the employee's basic military pay.
- 1155.5 The estate of any eligible employee who has been killed while in active duty or who is missing in action as a result of active duty shall be eligible to collect any pay differential to which the employee would have been entitled upon making application on behalf of the employee and upon approval of the application by the employee's department or agency head.
- 1155.6 The period of entitlement to the pay differential shall not exceed:
- (a) The period following the formal inception of Operation Enduring Freedom through the date the employee is released from active duty occasioned by Operation Enduring Freedom; or
 - (b) The period following the formal inception of the preparations for a potential conflict with Iraq and the period following the formal inception of Operation Iraqi Freedom through the date the employee is released from active duty occasioned by, the preparation for, or, Operation Iraqi Freedom.
- 1155.7 The pay differential shall not be payable for any period following the employee's release from active duty and the employee's return to his or her District government position.
- 1155.8 The pay differential shall not be payable for any days for which the employee received pay by reason of any annual leave, military leave, compensatory time, or any other form of paid leave taken by the employee.
- 1155.9 In making application for the pay differential, the employee shall:
- (a) Provide a copy of the military orders activating the employee

for full-time active military service for the Operation Enduring Freedom conflict, or, in preparation for, or, as a result of, the Operation Iraqi Freedom conflict;

- (b) Provide a copy of the military orders releasing the employee from full-time active military service for the Operation Enduring Freedom conflict, or, for the preparation for, or, the Operation Iraqi Freedom conflict; and
- (c) Provide all military pay documentation required to calculate the differential amount.

1155.10 A pay differential under this section shall be paid by the agency that last employed the eligible employee before the employee was ordered to active duty as specified in § 1155.1, out of the agency's funds or appropriations then currently available for salaries and expenses.

1155.99 DEFINITIONS

Active duty — full-time duty in the active military service of the United States for the Operation Enduring Freedom conflict, or, in preparation for, or, for the Operation Iraqi Freedom conflict.

Armed forces — has the meaning prescribed in 10 U.S.C. § 101 (a)(4).

Basic military pay — the basic pay under 37 U.S.C. § 204.

Basic pay — the employee's scheduled rate of pay plus any additional pay that is defined as basic pay for annuity computation purposes in the retirement system in which the employee is a participant.

Employee — any full-time permanent employee, term employee, or an employee on a TAPER appointment who serves in a reserve component of the United States Armed Forces and who has been called to active duty as a result of the Operation Enduring Freedom conflict, or in preparation for, or as a result of the Operation Iraqi Freedom conflict.

Operation Enduring Freedom — the period encompassed within Executive Order 13223 Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, effective September 14, 2001, and amended by Amendment to Executive Order 13223, effective January 16, 2002 and ending on the date the employee is released from active duty occasioned by Operation Enduring Freedom.

Operation Iraqi Freedom — the period encompassed within the Joint Resolution entitled Authorization for Use of Military Force Against Iraq Resolution of 2002, approved October 16, 2002 (P.L. 107-243) and ending on the date the employee is released from active duty occasioned by Operation Iraqi Freedom.

Reserve component — has the meaning prescribed in 37 U.S.C. § 101(24).