

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF PROPOSED RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by section 202(a) of the District of Columbia Procurement Practices Act of 1985, as amended, ("PPA"), effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-302.02(a)), and Mayor's Order 2002-207 dated December 18, 2002, hereby gives notice of his intent to adopt the following new chapter 46 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements) entitled "Privatization Contracts" in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The Chief Procurement Officer will submit the rules to the Council of the District of Columbia for a sixty (60) day period of review pursuant to subsection 205(a) of the PPA (D.C. Official Code §2-302.05(a)), and will not take final rulemaking action until completion of the 60-day review period or Council approval of the rules by resolution before the end of the review period.

The proposed new rules are intended to help streamline and clarify the District's procurement law with regard to privatization. These rules will define objective criteria for identifying programs or services that are appropriate for privatization and defining core or uniquely governmental responsibilities that are inappropriate for privatization; establish procedures to assist public employees to submit bids for a proposed privatization contract; and set forth guidelines for the cost analysis, economic impact analysis and performance analysis required in the law.

The following new chapter 46, Privatization Contracts, of Title 27 of the DCMR (Contracts and Procurements) will read as follows:

4600 GENERAL PROVISIONS

4600.1 The provisions of this Chapter shall apply to all privatization contracts in accordance with Section 105(b) of the District of Columbia Procurement Practices Act of 1985 ("the Act"), D.C. Official Code §2-301.05(b), as amended by §3 of the "Equity in Contracting Amendment Act of 2000", effective April 4, 2001, D.C. Law 13-274. The Act, as amended, governs the process whereby using agencies may:

- (a) Determine if a particular function or activity is appropriate for privatization; and
 - (b) Prepare a cost analysis, a performance analysis, and an economic impact analysis.
- 4600.2 These rules also govern the process whereby prospective affected employees can create or associate with a business, and submit a bid in response to the privatization solicitation.
- 4600.3 Using agencies contemplating privatization of a function currently being performed by District government employees, through either the issuance of a contract or modification of an existing contract, shall determine whether the function is a core or uniquely governmental responsibility, as defined in §4601.
- 4600.4 A contracting officer may award a privatization contract to a private sector contractor, or modify an existing contract, only in those cases where the using agency head determines that the function under consideration is not a core or uniquely governmental responsibility.
- 4600.5 Using agencies shall prepare a cost analysis as detailed in §4602, a performance analysis as detailed in §4603, and an economic impact analysis as detailed in §4604, and submit them to the contracting officer responsible for issuing the privatization solicitation.
- 4600.6 The contracting officer shall incorporate performance measures, including but not limited to those developed in §4603, into the privatization solicitation.
- 4600.7 The contracting officer shall retain the cost analysis, performance analysis, and economic impact analysis as part of the contract file.
- 4600.8 The Mayor or independent agency head shall submit a determination and findings for the proposed privatization contract to the Council of the District of Columbia, which shall include the using agency's findings of cost analysis, performance analysis, and economic impact analysis.
- 4600.9 District government employees performing the functions under consideration for privatization may form a business entity, and submit a bid in response to the privatization solicitation as detailed in §4605.
- 4601 DETERMINING CORE OR UNIQUELY GOVERNMENTAL RESPONSIBILITIES**
- 4601.1 A using agency shall use the following methodology to determine whether a function is a core or uniquely governmental responsibility:

- (a) The function is so closely related to the highest and best interests of the citizens of the District of Columbia and the public at large that it mandates performance by District government employees; or
- (b) The function involves making decisions in applying the authority of the District government, including but not limited to the following:
 - (1) The conduct of inter- and intra-governmental relations;
 - (2) The determination of overall District government policy, District agency policy, District government program priorities, and the content and application of District government regulations;
 - (3) The approval of Freedom of Information Act (FOIA) responses or the administrative appeals of denials of FOIA requests;
 - (4) The command and control of public safety;
 - (5) The direction and control of District government employees, including:
 - (i) Hiring and firing decisions;
 - (ii) Determining compensation packages and adjustments;
 - (iii) Approving position descriptions; and
 - (iv) Establishing performance standards.
 - (6) The managing of monetary transactions and financial entitlements on behalf of the District government, including:
 - (i) Formulating and approving the District government's financial plan and budget;
 - (ii) Issuing bonds and other financial instruments;
 - (iii) Controlling and disbursing fees, royalties, duties, fines, taxes and other public funds; and
 - (iv) Controlling treasury accounts.
 - (7) The management of procurement and contractual transactions, including:

- (i) Determining goods or services to be acquired by contract;
 - (ii) Determining whether the cost of executing contracts are reasonable, allocable, and allowable;
 - (iii) Approving contract documents, including documents defining requirements, incentive plans, and evaluation criteria;
 - (iv) Approving decisions based on evaluating contractor performance, including the acceptance or rejection of goods or services;
 - (v) Awarding, administering, and terminating contracts; and
 - (vi) Approving change orders to contract performance or contract quantities.
- (8) Determining which District government owned or controlled real and personal property shall be disposed, and the process to be used.

4602 COST ANALYSIS

- 4602.1 Before the issuance of the solicitation for a privatization contract, the using agency shall calculate both the total and the per-unit cost to the District government of providing the good or service.
- 4602.2 The using agency shall generally use the costs for providing the good or service for the last completed fiscal year.
- 4602.3 If the using agency incurred extraordinary costs in providing the good or service in the last completed fiscal year, the using agency shall instead calculate total costs using the previous three-year average cost.
- 4602.4 If the using agency uses the previous three-year average cost, the using agency shall provide a written justification for doing so to the contracting officer as part of the cost analysis. The written justification shall include an enumeration and explanation of the extraordinary cost.
- 4602.5 The using agency shall calculate the total cost to the District government of providing the good or service by totaling the costs of the items listed below:
- (a) Salaries and wages for District government employees currently providing the good or service under consideration for privatization, including but not limited to:

- (1) Scheduled or planned raises or promotions;
 - (2) Fringe benefits;
 - (3) Shift differentials;
 - (4) Premium payments;
 - (5) Overtime; and
 - (6) Any other known or planned pay adjustments.
- (b) Materials and supplies associated with providing the good or service, including office supplies and equipment, consumable materials and other minor equipment;
- (c) Major capital equipment, depreciated in accordance with generally accepted accounting principles as outlined by the Government Accounting Standards Board; and
- (d) General and administrative overhead, and any other direct or indirect costs associated with the good or service, including but not limited to:
- (1) Rent;
 - (2) Debt payment;
 - (3) Facilities maintenance;
 - (4) Equipment maintenance;
 - (5) Utilities;
 - (6) Insurance;
 - (7) Training; and
 - (8) Travel costs.

4602.6 The using agency shall calculate the per unit cost of providing the good or service using the following means:

- (a) If the privatization contract is for goods, the using agency shall divide the total cost by the number of units of the goods.

- (b) If the candidate privatization activity is for services with regular or easily defined outputs, the using agency shall divide the total cost by the number of outputs provided.
 - (c) If the candidate privatization activity is for services without regular or easily defined outputs, the using agency shall divide the total cost by the number of labor hours expended.
- 4602.7 After the solicitation has been issued, and a prospective contractor selected, the using agency shall calculate both the total and the per-unit cost of privatizing the goods or services.
- 4602.8 The using agency shall calculate the total cost of privatizing the goods or services by totaling the following:
- (a) The costs of eliminating District government employee positions, including but not limited to:
 - (1) Severance pay;
 - (2) Buyback of accrued vacation and sick day costs;
 - (3) Early retirement benefits; and
 - (4) Unemployment benefit costs.
 - (b) Contract monitoring costs, including but not limited to:
 - (1) Direct using agency costs including employee, equipment, and supplies and materials costs.
 - (2) Indirect costs incurred by the Office of Contracting and Procurement, including the costs of the contracting officer and the cost of terminating existing contracts and leases no longer needed as a result of the privatization contract.
 - (c) The cost of the prospective privatization contract to provide the good or service; and
 - (d) All other costs associated with issuing and managing a privatization contract, including the cost of existing major capital equipment if the District government allows the contractor to use the District government's existing major capital equipment.
- 4602.9 The using agency shall determine the per-unit cost of privatizing the good or service using the following means:

- (1) If the candidate privatization activity is for goods, the using agency shall divide the total contracting cost by the number of units of the goods the prospective contractor intends to provide during the contract period.
 - (2) If the candidate privatization activity is for services with regular or easily defined outputs, the using agency shall divide the total contracting cost by the number of such outputs the prospective contractor intends to provide during the contract period.
 - (3) If the candidate privatization activity is for services without regular or easily defined outputs, the using agency shall divide the total prospective contracting cost by the number of labor hours the prospective contractor intends to provide during the contract period.
- 4602.10 If the using agency determines that the total cost to the government of providing the good or service supports a level of performance that meets acceptable standards of quantity provided or performed, the using agency shall perform a cost comparison between the total cost to the government of providing the good or service as calculated in §4602.5, and the cost of privatizing the good or service as calculated in §4602.8.
- 4602.11 If the using agency determines that the total cost to the government of providing the good or service supports a level of performance below acceptable standards of quantity provided or performed, the using agency shall perform a cost comparison between the unit cost to the government of providing the good or service as calculated in §4602.6, and the cost of privatizing the goods and service as calculated in §4602.9.
- 4602.12 For both §§ 4602.10 and 4602.11, if the total cost to the District of Columbia of providing the good or service plus five (5) percent is more than or equal to the total cost of privatizing the good or service, then the Mayor or independent agency head shall submit a determination and findings to the Council of the District of Columbia that there is financial justification to privatize the activity.
- 4603 PERFORMANCE ANALYSIS**
- 4603.1 The using agency shall determine performance measures for each major activity under consideration for privatization, using the following methodology:
- (a) Establish quantitative and qualitative performance standards for each activity;
 - (b) Develop quantifiable results or outcomes for each performance standard;

- (c) Develop measures for each result or outcome; and
 - (d) Develop a methodology for determining the degree to which each measure is achieved.
- 4603.2 The using agency shall describe performance measures in clear, concise, commonly used, easily understood, measurable terms.
- 4603.3 Whenever possible, the using agency shall use industry standard performance measures.
- 4603.4 In those cases in which industry standard performance measures do not exist, the using agency shall use reasonable standards in developing the performance measures.
- 4603.5 The using agency shall calculate the performance measures for the last completed fiscal year for the using agency's existing goods or services under consideration for privatization.
- 4603.6 If the using agency's actual performance over the last completed fiscal year is significantly less favorable than those established in §4603.1, the using agency shall calculate the agency's performance measures using the previous three-year average measures.
- 4603.7 If the using agency uses the previous three-year average measures, the using agency shall provide a written justification for doing so to the contracting officer as part of the performance analysis. The written justification shall include an enumeration and explanation of why the previous years are significantly less favorable than the standards established in §4603.1.
- 4603.8 The contracting officer shall include in the solicitation performance measures that are at least as favorable as the performance measures in §4603.1, except in cases where the using agency's measures are contrary to health and safety, or other statutory or regulatory requirements.
- 4603.9 The using agency shall develop a performance analysis, which shall include the following information regarding both the using agency and the contractor performance measures:
- (a) Quantitative and qualitative performance standards for each activity;
 - (b) Quantifiable results or outcomes for each performance standard;
 - (c) Measures for each result or outcome;
 - (d) A description of the expected impact of the proposed privatization on the quality of the goods and services provided to or on behalf of the District of Columbia. This description shall include:
 - (1) Expected changes in performance as expressed by the measures developed for §4603.1.

- (2) Expected changes in subjective quality elements not captured by the performance measures.

4604 ECONOMIC IMPACT ANALYSIS

- 4604.1 The using agency shall perform a market review and survey of the amount of economic activity generated, and the resulting tax base, of businesses providing the good or service under consideration for privatization in the District of Columbia.
- 4604.2 The using agency shall collect the following data for the most recently completed fiscal year to determine the amount of economic activity generated by, and the tax base of, businesses providing the good or service related to the proposed privatization:
- (1) The number of employees working in the District of Columbia;
 - (2) The number of jobs created in the District of Columbia on an annual basis;
 - (3) The number of new startup firms in the District of Columbia;
 - (4) The number of firms that relocate to the District of Columbia;
 - (5) The number of firms that leave the District of Columbia;
 - (6) The amount of sales, income, property, employment, permits, fees and any other tax revenue paid to the District government; and
 - (7) Any other available data on the state of the District of Columbia's overall economy, and that of businesses providing the good or service under consideration for privatization by the District government.
- 4604.3 The using agency may use the following sources to collect the data detailed in §4604.1:
- (a) The U.S. Department of Commerce;
 - (b) The U.S. Department of Labor,
 - (c) The U.S. Bureau of Labor Statistics;
 - (d) The U.S. Census Bureau;
 - (e) The D.C. Department of Employment Services;

- (f) The D.C. Office of Tax and Revenue;
 - (g) The D.C. Chamber of Commerce; and
 - (h) The D.C. Better Business Bureau.
- 4604.4 The using agency may also collect additional information from interviews with and surveys of local area suppliers and businesses.
- 4604.5 The using agency shall assess the impact of the privatization on the District of Columbia's economy and tax base by calculating the following:
- (a) The number of employees the prospective contractor will use to provide the privatized good or service; and
 - (b) The amount of supplies, materials and new capital investments the prospective contractor will use to provide the privatized good or service.
- 4604.6 The using agency shall determine whether the planned privatization will have a positive or negative impact on employment opportunities, business creation, business development, and business retention in the District of Columbia.
- 4604.7 The using agency shall determine the impact on employment opportunities by using the following process:
- (a) Calculate the total salaries and fringe benefits of District government employees who reside in the District of Columbia whose positions will be eliminated as a result of the privatization; and
 - (b) Compare the salaries and benefits of new jobs, if any, the prospective contractor plans to create in order to provide the required services, to that of the eliminated District government employees.
- 4604.8 The using agency shall prepare an economic impact analysis, to include the following information:
- (a) An introduction that summarizes the District of Columbia's overall economic climate, and describes the state of economic activity for businesses that provide the good and service under consideration for privatization;
 - (b) A summary of economic impact in a format that provides boxes for the user to check which indicates net positive impact, net negative impact, unknown impact, no economic impact, or not applicable for each of the following items:
 - (1) Employment Opportunities;

- (2) Business Creation;
 - (3) Business Development;
 - (4) Business Retention;
 - (5) Tax Revenues;
 - (6) Overall Impact; and
- (c) A summary of the using agency's thought process and reasoning used to reach the conclusions.

4605 SUBMISSION OF BIDS OR PROPOSALS BY DISTRICT EMPLOYEES

4605.1 District government employees performing functions under consideration for privatization may submit bids or proposals for a privatization contract under the following conditions:

- (a) The using agency identifies the function as a candidate for privatization and informs prospective affected employees of the proposed privatization;
- (b) The prospective affected employees form a legal business entity that is an individual or sole proprietorship, partnership, corporation, joint venture, joint stock company, or any other legal organization through which business is conducted in the District of Columbia;
- (c) The prospective affected employees prepare and submit a bid or proposal in response to the privatization solicitation as representatives of the business; and
- (d) The prospective affected employees do not engage in activities related to the solicitation, including attending pre-bid or pre-proposal conferences in their official capacity as District government employees, including those activities enumerated in §4605.2.

4605.2 In their official capacity as District government employees, prospective affected employees shall not participate in the procurement process relating to the issuance or award of any privatization contract, including:

- (a) Preparing the statement of work;
- (b) Participating in pre-bid or pre-proposal conferences; or
- (c) Participating in any proposal evaluation process in their official capacity.

- 4605.3 Any business, as defined in §4605.1, that submits a bid or proposal to the Office of Contracting and Procurement in response to a privatization solicitation shall be deemed ineligible for an award if any District government employees having a legal or financial or ownership interest in, or association with, or plan to have an association with, the business, participated in any aspect of the procurement process on behalf of the District government.
- 4605.4 Prospective affected employees having a financial or ownership interest in, or association with, a business that is notified of a prospective privatization contract award, shall resign from their positions prior to contract award.
- 4605.5 Prospective affected employees shall submit their bid or proposal in response to a privatization solicitation in accordance with the following:
- (a) The employees shall form or associate with a business as described in §4605.1;
 - (b) The business shall possess all appropriate business licenses and permits to allow it to operate within the District of Columbia, and to contract with the District government as applicable to the activity;
 - (c) The business shall receive a privatization solicitation from the contracting officer that is identical to the one that the contracting officer issues to all other bidders or offerors;
 - (d) The business shall comply with any procedures specified in the solicitation; and
 - (e) The business shall be subject to all applicable rules and regulations governing the conduct of District bidders, offerors, and contractors.
- 4605.6 The business shall submit to the Office of Contracting and Procurement required documentation demonstrating its viability as a business, including:
- (a) Federal Tax Identification Number (TIN);
 - (b) Dun and Bradstreet number;
 - (c) Tax registration or compliance record from the District Office of Tax and Revenue (OTR);
 - (d) Unemployment tax records and First Source Agreement from the District Department of Employment Services (DOES);
 - (e) Business licenses or permits from the District Department of Consumer and Regulatory Affairs (DCRA);

- (f) A complete list of prospective District government employees having a legal, financial or ownership interest in, or association with, or plan to become associated with, the business, including a complete description of the nature and extent of each employee's legal, financial, or ownership interest in, or association with the business; and
- (g) A notarized affidavit setting forth the employees' intent to resign from District employment prior to contract award from each District government employee having a legal, financial or ownership interest in, or association with, or plan to become associated with, the business, pursuant to D.C. Personnel Regulations, Chapter 18, Employee Conduct.

4699 DEFINITIONS

4699.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Candidate privatization activity — Services with regular or easily defined outputs. The using agency shall divide the total cost by the number of outputs provided.

Contracting Officer — the individual with authority to enter into, administer, and terminate contracts.

The District — the government of the District of Columbia.

The District of Columbia — the city of the District of Columbia.

Good or Service — a product, item, material, component, subsystem, or system that is sold or traded to the general public by a vendor in the course of normal business operations at an established catalog price or market price.

Performance Measure — a quantifiable and measurable characterization of the performance of a task or activity. The measures define what data should be collected and what calculations need to be performed when assessing performance.

Privatization — a process in which the District government enters in to a contract with a private sector firm, non-profit organization, or other external entity, to provide a good or service to or on behalf of the District that has been provided, prior to contracting out, by District government employees, departments, or agencies, including the modification of an existing contract to provide goods or services to or on behalf of the District that are currently provided by District government employees, departments, or agencies.

Public Safety Workers — Operational workers involved in police, fire, emergency medical and emergency management tasks.

Using Agency — The District of Columbia government agency, department or entity on whose behalf the contracting officer issues a privatization solicitation, or whose existing contract the contracting officer modifies to provide goods or services to or on behalf of the District that are currently provided by District government employees, departments, agencies or entities.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, and send them to the Chief Procurement Officer, 441 4th Street, 700 South, Washington, D.C. 20001. Comments must be received no later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the intent to adopt an amendment to section 901 to Chapter 9, of Title 29 of the District of Columbia Municipal Regulations entitled, "Medically Needy Income Levels". The proposed rules would modify the medically needy income levels to 50% of the federal poverty level (FPL) and facilitate implementation of the Medical Assistance Expansion Program Act of 1999, effective October 20, 1999 (D.C. Law 13-38; D.C. Official Code §1-307.03), which requires the Mayor to establish a program to expand medical assistance to traditionally non-Medicaid eligible populations.

A Notice of Proposed Rulemaking governing medically needy income levels was published in the *D.C. Register* on July 20, 2001 (47 DCR 6451). The Council of the District of Columbia (Council) and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) must approve the corresponding amendment to the District of Columbia State Plan for Medical Assistance (State Plan) prior to publication of final rules. The Council approved the State Plan amendment during October 2002. The July 2001 rulemaking was not finalized because the income levels have been updated since Council approval of the State Plan amendment. This notice of proposed rulemaking reflects the current medically needy income levels.

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*.

Amend Chapter 9, Title 29 DCMR by deleting subsection 901.1 in its entirety and replacing it with the following:

901.1 The medically needy income levels (MNILs), for each household size in the District of Columbia, shall be based on 50% of the respective amounts of the Federal poverty guidelines published each year by the United States Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. The current MLIN calculations, based on the FY 2003 Federal poverty guidelines shall be as follows::

HOUSEHOLD SIZE	MONTHLY INCOME
1	\$ 479.75
2	505.00
3	635.83
4	766.67

5	897.50
6	1,028.33
7	1,159.17
8	1,290.00
9	1,420.83
10	1,551.67
11	1,682.50
12	1,813.33
13	1,944.17
14	2,075.00
15	2,205.83
16	2,336.67
17	2,467.50
18	2,598.33
19	2,729.17
20	0

Comments on the proposed rules should be sent in writing to Wanda R. Tucker, Interim Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, 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 and corresponding Medicaid State Plan Amendment may be obtained from the same address.

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 1425 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999, 45 DCR 4794 (D.C. Law 12-175; D.C. Official Code § 50-901 *et seq.*) (2001 Ed.), Mayor's Order 94-176, effective August 19, 1994; section 7 of the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1121, D.C. Official Code § 50-1401.01(a) (2001 Ed.)), and 18 DCMR 104.9, hereby gives notice of the intent to adopt the following rulemaking that amends Chapters 1, 3, 4, 7, 10, 26, and 30, of Title 18 of the District of Columbia Municipal Regulations (DCMR) (Vehicles and Traffic). The amendments will: provide that the Director may require an applicant for reinstatement to pass a breathalyzer test, establish grounds for the waiver of written and road tests for driver licenses, recognize road tests taken in Maryland or Virginia for applicants for motorcycle endorsements, place a new restriction on road tests in the District, require notification if a person develops certain medical conditions after license issuance, provide that persons applying to register their vehicle obtain a District of Columbia operator's permit or special identification card, and increase the traffic adjudication appeal transcript deposit fee to \$50. The rulemaking also corrects some inaccuracies in the traffic regulations resulting from recent legislative changes, including legislation regarding the tinting of motor vehicle windows. In addition, Section 3014 was rewritten to correct a codification error and to clarify the intent of the Director. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Title 18, DCMR, is amended as follows:

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

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

(a) By amending subsection 104.9 to read as follows:

104.9 Except as provided in section 111, The Director or his or her designee is authorized to exercise discretion and waive the written test or the road test to an applicant presenting a permit which has expired for a period of not more than six (6) months, as follows:

(a) The written examination may be waived if the applicant presents a District driver's license which has expired for a period of ninety (90) days or less;

- (b) Except as provided in (c), the road test may be waived if the applicant presents a driver's license issued by the District or any other jurisdiction, including a foreign country, which has expired for period of one hundred and eighty (180) days or less; and
 - (c) If the applicant, within two (2) years prior to date of the application, has been adjudicated or deemed liable for any moving violations for which points are assessable, and such points have not been waived, the road test may only be waived if the permit has been expired for a period of ninety (90) days.
- (b) By amending subsection 104.10 to delete the phrase: "who are seventy-five (75) years of age or over".
- (c) By adding a new subsection 104.12 to read as follows:
- 104.12 No road test shall be given to an applicant who drives himself or herself to the road test unaccompanied by a person with a valid driver's license. Any applicant who violates this section shall not be permitted to take the road test for six (6) months.
- 2) Section 105 is amended by adding new subsections 105.10 through 105.13 to read as follows:
- 105.10 Any permittee who develops glaucoma or cataracts or whose corrected visual acuity or field of vision becomes less than the minimum requirement established by this section shall immediately surrender his or her driver's license to the Director.
- 105.11 A violation of § 105.10 is grounds for revocation pursuant to § 302.2.
- 105.12 Any permittee whose license was surrendered or revoked under §§ 105.10 or 105.11 shall not have their license reinstated until their tested visual acuity and field of vision meets the minimum requirements.
- 105.13 The Director, in his or her discretion, may issue a temporary license to anyone surrendering his or her license under § 105.10.
- 3) Section 106 is amended by adding new subsections 106.12 through 106.15 to read as follows:
- 106.12 Any permittee who develops a physical condition covered by this section, except the physical condition set forth in § 106.11, shall immediately surrender his or her driver's license to the Director.
- 106.13 A violation of § 106.12 is grounds for revocation pursuant to § 302.2.

106.14 Any permittee whose license was surrendered or revoked under §§ 106.12 or 106.13 shall submit the applicable form, certificate, or affidavit required by this section before the license may be reinstated.

106.15 The Director, in his or her discretion, may issue a temporary license to anyone surrendering his or her license under § 106.12.

- 4) Section 107, LICENSES ISSUED TO DRIVERS, subsection 107.13, is amended to read as follows:

107.13 Any person who has been issued a valid District of Columbia driver's license may have the license endorsed for the operation of motorcycles, upon successful completion of an examination required by the Director pursuant to § 104 and subject to the provision of § 103; except that if an applicant for a motorcycle license endorsement completed a motorcycle demonstration course in Virginia or Maryland, the demonstration requirement of § 104.3 may be waived by the Director, provided that (1) the course was completed within six (6) months of the person's application for a District of Columbia motorcycle endorsement, and (2) the person presents a certificate of successful completion of the course.

- B. Chapter 3 CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES, is amended as follows:

- 1) Section 306, PERIOD OF SUSPENSION OR REVOCATION, is amended by adding a new subsection 306.9, to read as follows:

306.9 An applicant for reinstatement after a suspension or revocation for an alcohol-related offense may be required to pass a breathalyzer test, at the discretion of the Director.

- 2) Subsection 310.4 is amended by deleting the word "businessmen" and inserting the word "businesspeople".

- C. Chapter 4, MOTOR VEHICLE TITLE AND REGISTRATION, Section 412, REFUSAL OF REGISTRATION, subsection 412.1 is amended by adding new paragraphs (l) and (m) to read as follows:

(l) If a person does not have a District of Columbia operator's permit or special identification card.

(m) If a person is not domiciled in the District of Columbia.

- C. Chapter 7, MOTOR VEHICLE EQUIPMENT, section 734, is amended as follows:

- 1) Subsection 734.8 is amended to read as follows:

734.8 No motor vehicle may be operated or parked upon the public streets or spaces of the District of Columbia with window tinting in violation of D.C. Code § 50-2207.02 (2001 Ed.).

- 2) Subsections 734.9 through 734.19 repealed.

- E. Chapter 10, PROCEDURES FOR ADMINISTRATIVE HEARINGS, Section 1016, STYLE OF PLEADINGS AND PETITIONS, subsection 1016.1 is amended by deleting the words "Public Works" and inserting the words "Motor Vehicles".
- F. Chapter 26, Section 2601, PARKING AND OTHER NON-MOVING INFRACTIONS, is amended to include in the list of fines the following:

Glazing Materials [D.C. Code § 50-2207.02 (2001 Ed.)]	\$50.00
Failure to correct, first occasion	\$1,000.00
Failure to correct, second or subsequent occasion	\$5,000.00

- G. Chapter 30, ADJUDICATION AND ENFORCEMENT, is amended as follows:

- 1) Section 3014, APPEALS, subsection 3014.10, is amended to read as follows:

3014.10 The appeal shall be considered filed when all of the following conditions are satisfied:

- (a) The fines and penalties assessed by the hearing examiner have been paid by the respondent;
- (b) The appeal fee, required by § 3015, has been paid by the respondent;
- (c) The deposit for the transcript, required by § 3017, has been paid by the respondent; and
- (d) A notice of appeal form has been completed and submitted.

- 2) Section 3017, TRANSCRIPTS OF HEARINGS, subsection 3017.3 is amended by deleting the phrase "thirty dollars (\$30)" and inserting the phrase "fifty dollars (\$50)".

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing to Angell Jacobs, Deputy Director, D.C. Department of Motor Vehicles, 301 C Street, N.W., Washington, D.C. 20001. 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 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 IX 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 § 1-609.01 *et seq.*) (2001) (the "CMPA"), as amended by § 3 (c) of the Technical Amendments Act of 2002, effective October 19, 2002 (D.C. Law 14-213; 49 DCR 8140) (the "Act"), hereby gives notice of the intent to adopt the following rules in no less than thirty (30) days from the publication of this notice in the *D.C. Register*. Section 3 (c) of the Act amended § 905 of the CMPA (D.C. Official Code § 1-609.05) (2001) to, among other things, specify that explaining the reasons for the termination of an Excepted Service employee in the 15-day advance written notice is discretionary. These rules will amend Chapter 9 of the *D.C. Personnel Regulations*, Excepted Service, to incorporate this particular provision of the Act. In addition, the rules are amended to delete the amount previously specified as the limit allowed for the payment of relocation expenses, temporary housing allowances, or both; clarify the provisions regarding payment of performance incentives and performance management for Excepted Service; and other modifications to the chapter. Upon adoption, these rules will amend Chapter 9, Excepted Service, published at 32 DCR 2271 (April 26, 1985) and amended at 36 DCR 7931 (November 17, 1989), 39 DCR 6171 (August 21, 1992), and 47 DCR 8093 (October 6, 2000).

CHAPTER 9**EXCEPTED SERVICE**

Chapter 9 of the D.C. Personnel Regulations is amended as follows:

900 APPLICABILITY

900.1 This chapter applies to all appointments in the Excepted 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 § 1-609.01 *et seq.*) (2001). Unless otherwise required by law, all Excepted Service appointments, other than those appointed under the authority of § 904 of the CMPA (D.C. Official Code § 1-609.04) (2001), serve at the pleasure of the appointing personnel authority.

901 EXCEPTED SERVICE CLASSIFICATION STANDARDS

901.1 Each position in the Excepted Service shall be classified as prescribed in Chapter 11 of these regulations, except that:

- (a) Statutory positions shall be classified in a manner consistent with their governing statutes; and
- (b) The personnel authority may adjust the grade or salary of a position to reflect the professional, scientific, or technical stature of an individual appointed as an expert or consultant.

902 EXCEPTED SERVICE QUALIFICATION STANDARDS

- 902.1 A person appointed to a position in the Excepted Service, other than a person appointed to a statutory position, shall meet the minimum qualification standards for the position to which the appointment is to be made.
- 902.2 The qualification standards for a position in the Excepted Service, other than a statutory position, to which a personnel authority may make any such appointment, shall be established and published by the appropriate personnel authority in consultation with the Director of Personnel.
- 902.3 A noncitizen's failure to have a valid authorization to work issued by federal officials pursuant to Part 274a of Title 8 of the Code of Federal Regulations shall automatically disqualify an applicant for appointment to a position in the Excepted Service.
- 902.4 Pursuant to § 408 of the CMPA (D.C. Official Code § 1-604.08) (2001), each personnel authority shall designate a person to administer the oath of office to each new employee of an agency. The oath shall be as follows: "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 of which I am about to enter."
- 902.5 Accordingly, each personnel authority shall determine whether an applicant or appointee is or has been involved in any activities that constitute a reasonable basis for concluding that the candidate would not faithfully discharge the duties of the position for which he or she is being considered.
- 902.6 For purposes of this chapter, no person shall be considered suitable for employment in the District of Columbia who advocates the overthrow of the governments of the United States or the District of Columbia by unconstitutional means.

903 AGE REQUIREMENTS

- 903.1 The minimum age for employment in the Excepted Service, unless a different age requirement is specifically provided in the law authorizing such appointment or position, shall be sixteen (16), except that the minimum age for a junior youth aide of the Department of Parks and Recreation and for summer employment shall be fourteen (14) for a person appointed to a transitional position.

904 EXCEPTED SERVICE POSITIONS

- 904.1 Statutory positions shall include those occupied by employees who by statute serve at the pleasure of the appointing authority, or as provided by statute for a term of years, subject to removal for cause as may be provided in their appointing statute, pursuant to § 908 of the CMPA (D.C. Official Code § 1-609.08) (2001).
- 904.2 Public employment positions shall include positions created under public employment programs established by law (§ 904 of the CMPA; D.C. Official Code § 1-609.04 (1)) (2001).
- 904.3 Transitional positions shall include positions established under special employment programs of a transitional nature designed to provide training or job opportunities for rehabilitation purposes, including developmentally disabled or handicapped persons, ex-offender or other disadvantaged groups (§ 904 (2) of the CMPA; D.C. Official Code § 1-609.04 (2)) (2001).
- 904.4 Special category positions shall include the following:
- (a) Positions occupied by Federal, state, or local government employees under the mobility provisions of the Intergovernmental Personnel Act of 1970, approved January 5, 1971 (P.L. 91-648; 84 Stat. 1909; 5 U.S.C. § 3301 *et seq.*), or a temporary personnel exchange agreement as authorized under Chapter 27 of these regulations (§ 904 (3) of the CMPA; D.C. Official Code § 1-609.04 (3)) (2001);
 - (b) Positions established by personnel authorities, other than the D.C. Board of Education or the Board of Trustees of the University of the District of Columbia, under federal grant-funded programs that have a limited or indefinite duration and are not subject to state merit requirements (§ 904 (4) of the CMPA; D.C. Official Code § 1-609.04 (4)) (2001); and
 - (c) Professional, scientific, or technical expert or consultant positions (§ 904 (5) of the CMPA; D.C. Official Code § 1-609.04 (5)) (2001).
- 904.5 Training positions shall consist of positions established under cooperative educational and study programs, positions established under a predoctoral or postdoctoral training program under which employees receive a stipend, and positions occupied by persons who are graduate students under temporary appointments when the work performed is the basis for completing certain academic requirements for advanced degrees (§ 904 (6) of the CMPA; D.C. Official Code § 1-609.04 (6)) (2001).
- 904.6 Pursuant to § 903 (a) of the CMPA (D.C. Official Code § 1-609.03 (a)) (2002 Supp.), policy positions shall consist of the following:
- (a) Positions on the staff of the Mayor and paid from funds appropriated for the Office of the Mayor;

- (b) Not more than two hundred twenty (220) positions in subordinate agencies as designated by the Mayor, sixty (60) of which may be allotted to and designated by the Office of the Inspector General and, in a control year, up to twenty (20) shall be allocated to and designated by the Office of the Chief Financial Officer;
- (c) Positions occupied by all employees of the Council of the District of Columbia, except those permanent technical and clerical employees appointed by the Secretary or General Counsel;
- (d) The District of Columbia Auditor may designate four (4) positions;
- (e) Not more than twenty-five (25) positions selected by the D.C. Board of Education;
- (f) Positions occupied by persons appointed by the Board of Trustees of the University of the District of Columbia as officers of the University, those who report directly to the President, those who head major units of the University, academic administrators, and persons in a confidential relationship to any of the foregoing, exclusive of those appointed under § 801 (a) of the CMPA (D.C. Official Code § 1-608.01 (a)) (2001);
- (g) Not more than ten (10) positions selected by the District of Columbia Health and Hospitals Public Benefit Corporation;
- (h) Not more than six (6) persons appointed by the District of Columbia Lottery and Charitable Games Control Board who report directly to either the Executive Director or Deputy Director, or who head major units of the Board;
- (i) The Chief of Police may designate up to one percent (1%) of the total number of authorized positions within the Metropolitan Police Department, no more than ten (10) of which may be filled by sworn members or officers;
- (j) Notwithstanding any other law or regulation, the Chief of the Fire and Emergency Medical Services may designate up to eleven (11) positions, no more than four (4) of which may be filled by sworn members;
- (k) All employees of the Criminal Justice Coordinating Council;
- (l) The Advisory Commission on Sentencing may appoint six (6) persons; and
- (m) Not more than two (2) positions selected by each other personnel authority.

904.7 A statutory or policy position described in § 904.1 or § 904.6 and occupied by a person holding an appointment to an attorney position shall be treated solely as a statutory or policy position, as the case may be.

905 METHOD OF MAKING EXCEPTED SERVICE APPOINTMENTS

- 905.1 A person may be appointed to any position in the Excepted Service by the appropriate personnel authority non-competitively, so long as the individual appointed meets the qualification standards established for the position.
- 905.2 An appointment to a statutory position shall be made as specified in the law authorizing the position.
- 905.3 An appointment to a special category position under a federal grant-funded program shall be either for an indefinite period or a time-limited appointment, reflecting the duration of the grant.
- 905.4 An appointment to a policy position shall be subject to the following provisions:
- (a) Each person holding an appointment to a policy position should be an individual whose duties include policy determination or are of a confidential or policy advocacy character;
 - (b) Each personnel authority authorized to make appointments to policy positions shall ensure that the position to which the appointment is to be made, together with the position qualifications, standards, and salary range, is published in the *D.C. Register*;
 - (c) The position shall become a position in the Excepted Service automatically upon being filled by a policy appointment, and shall remain an Excepted Service position only for so long as filled by a policy appointment; if a Career or Educational Service employee holds a position converted to an Excepted Service position, and the employee is not afforded or does not accept a policy appointment to that position, the employee shall have all rights and remedies available under Chapter 24 of these regulations;
 - (d) An appointment to a policy position may be either for an indefinite or time-limited period;
 - (e) Each personnel authority, within forty-five (45) days of filling any such designated position by a policy appointment, shall publish in the *D.C. Register* the name of the person accepting the policy appointment, and the position to which appointed; and
 - (f) The authority to make policy appointments may be delegated or redelegated in whole or in part.

906 EXCEPTED SERVICE APPOINTMENT OF PERSONS FROM CAREER OR EDUCATIONAL SERVICE

- 906.1 Any person holding a position in the Career or Educational Service may be detailed, temporarily promoted, temporarily transferred, or temporarily reassigned to a position

that would otherwise be in the Excepted Service without losing his or her existing status in the Career or Educational Service.

906.2 To effect an appointment to a position in the Excepted Service without a break in service, a person holding a position in the Career or Educational Service must have been informed of the conditions of employment under the new appointment.

906.3 Any person tendered an appointment to a position in the Excepted Service who declines or refuses to accept such appointment shall continue to be subject to the rules applicable to the service in which he or she has existing status as provided in § 906.1.

907 EMPLOYEE RIGHTS

907.1 A person appointed to a position in the Excepted Service shall not acquire permanent Career status.

907.2 A person appointed to the Excepted Service shall serve at the pleasure of the appointing personnel authority, and may be terminated at any time, with or without a stated reason, except as provided in this section.

907.3 A person holding an appointment in a statutory position, who is appointed pursuant to a statute that provides for a term of years subject only to removal for cause, may be removed only as provided for in the applicable statute.

907.4 Except as provided in § 907.3, a person holding an appointment in the Excepted Service shall be entitled to advance written notice of at least fifteen (15) days when termination is contemplated. The notice may explain the reason for the termination.

907.5 The fifteen-day (15-day) notice shall not be required for termination on the date previously anticipated for termination, such as in the case of an employee with a not-to-exceed (NTE) date or other date of anticipated termination included on the appointing personnel action form.

907.6 Any person holding an appointment in the Excepted Service to a policy position, whose position ceases to be authorized as a policy position by reason of a notice published in the *D.C. Register* in accordance with § 905.4, shall be terminated not later than thirty (30) days from the date of the published notice, except that the minimum advance written notice provision of § 907.4 shall apply if applicable.

908 RESTRICTIONS ON SUBSEQUENT APPOINTMENT TO THE CAREER, MANAGEMENT SUPERVISORY, OR EDUCATIONAL SERVICES

908.1 Except as provided in § 908.2, no person holding an Excepted Service appointment pursuant to § 904.1 or § 904.6 may be appointed to a position in the Career, Management Supervisory, or Educational Service during the six-month (6-month) period immediately preceding a Mayoral election.

- 908.2 Upon termination, a person holding an Excepted Service appointment pursuant to § 904.1 or 904.6 who has Career or Educational Service status may retreat, at the discretion of the terminating personnel authority, within three (3) months of the effective date of the termination, to a vacant position in such service for which he or she is qualified.
- 908.3 The provisions of §§ 908.1 and 908.2 shall not apply to employees of the Council of the District of Columbia.

909 RESIDENCY REQUIREMENTS

- 909.1 The residency requirements imposed by law and Chapter 3 of these regulations shall apply to all persons appointed to positions in the Excepted Service.

910 DUAL COMPENSATION AND ANNUITY OFF-SET

- 910.1 A person holding an appointment in the Excepted Service shall be subject to the dual compensation and annuity off-set requirements of law and regulations.

911 PRE-EMPLOYMENT TRAVEL, RELOCATION, AND TEMPORARY HOUSING ALLOWANCE

- 911.1 An agency may pay to an individual reasonable travel expenses, up to a maximum of five thousand dollars (\$5000), incurred incidental to pre-employment interviews held for the purpose of ascertaining his or her qualifications for a hard-to-fill policy (§ 903 (a) of the CMPA; D.C. Official Code § 1-609.03 (a)) (2002 Supp.) position in the Excepted Service at grade level DS-11 or above.
- 911.2 An agency may pay reasonable relocation expenses for an individual and his or her immediate family when that individual is selected for or appointed to a hard-to-fill policy (§ 903 (a) of the CMPA; D.C. Official Code § 1-609.03 (a)) (2002 Supp.) position in the Excepted Service at grade level DS-11 or above, if relocation is to the District of Columbia from outside the Greater Washington Metropolitan Area.
- 911.3 In the case of an individual eligible for relocation expenses pursuant to § 911.2, an agency may pay reasonable temporary housing allowance for a period not to exceed sixty (60) days for the individual and his or her immediate family.
- 911.4 The personnel authority may designate a position as a hard-to-fill position on the basis of demonstrated recruitment and retention problems inherent in the position due to the uniqueness of the duties and responsibilities and the unusual combination of highly specialized qualification requirements for the position.
- 911.5 Payment of expenses under § 911.2 and § 911.3 may only be made after the selectee or appointee signs a notarized agreement to remain in the District government service for twelve (12) months after his or her appointment unless separated for reasons beyond his or her control which are acceptable to the agency head concerned.

911.6 Any expense incurred for which reimbursement is sought pursuant to this section must be supported by valid receipts or invoices, the originals of which must be submitted with the request for reimbursement.

911.7 If an individual violates an agreement under § 911.5, the money paid by the District government for expenses shall be a debt due the District government and shall be recoverable by set-off, in accordance with Chapter 29 of these regulations, against accrued pay or any other amount due the individual, and by other lawful collections actions.

912 PERFORMANCE INCENTIVES FOR EXCEPTED SERVICE

912.1 A personnel authority may authorize performance incentives for exceptional service by an employee in an Excepted Service policy position under § 903 (a) of the CMPA; D.C. Official Code § 1-609.03 (a) (2002 Supp.).

912.2 A performance incentive may be paid only once in any fifty-two-week (52-week) period and only when the employee is subject to an annual performance contract that clearly identifies measurable goals and outcomes and the employee has exceeded contractual expectations in the year for which the incentive is to be paid.

912.3 When there is no annual performance contract as described in § 912.2, the employee's annual individual performance plan pursuant to Chapter 14 of these regulations shall be considered the annual performance contract for the purpose of authorizing a performance incentive.

912.4 A performance incentive shall not be paid unless the employee has served in the position for which the incentive is proposed for a continuous fifty-two week (52-week) period prior to the granting of the performance incentive.

912.5 A performance incentive shall not exceed ten percent (10%) of the employee's rate of basic pay. For the purposes of determining the percentage of a performance incentive, the amount of the incentive shall be calculated based on the employee's scheduled rate of basic pay during the performance rating period in which the exceptional service occurred, pursuant to Chapter 19 of these regulations. The percentage scale provided in Chapter 19, and the documentation required therein, shall also apply to performance incentives pursuant to this section.

912.6 Excepted Service employees are eligible for incentive awards pursuant to Chapter 19 of these regulations, except for monetary awards.

912.7 Performance incentives shall be submitted, processed and approved in accordance with Chapter 19 of these regulations.

912.8 A performance incentive awarded under this section shall not be considered base pay for any purpose, and shall be subject to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable.

913 SEPARATION PAY

- 913.1 Subject to the provisions of this section, the personnel authority shall authorize an individual appointed to a policy (§ 903 (a) of the CMPA; D.C. Official Code § 1-609.03 (a)) (2002 Supp.) position or a statutory (§ 908 of the CMPA; D.C. Official Code § 1-609.08) (2001) position to be paid separation pay at his or her rate of basic pay upon separation for non-disciplinary reasons, as follows:
- (a) An individual at grade level DS-15 (or equivalent) or above shall be paid separation pay in increments of weeks up to a maximum of eight (8) weeks, unless the personnel authority specifies that separation pay of up to twelve (12) weeks is warranted; and
 - (b) An individual at grade level DS-14 (or equivalent) or below shall be paid separation pay in increments of weeks up to a maximum of four (4) weeks, unless the personnel authority specifies that separation pay of up to twelve (12) weeks is warranted.
- 913.2 The number of weeks of separation pay authorized pursuant to this section shall not exceed the number of weeks between the individual's separation and the individual's appointment to another position in the District government.
- 913.3 Separation pay shall be provided at the time of separation as a lump-sum, one-time payment, subject only to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable.
- 913.4 Separation pay shall not be payable to any individual who either:
- (a) Has accepted an appointment to another position in the District government without a break in service; or
 - (b) Is eligible to receive an annuity under any retirement program for employees of the District government, excluding the District retirement benefit program under § 2605 of the CMPA (D.C. Official Code § 1-626.05) (2001).
- 913.5 An individual who receives separation pay pursuant to this section, but who is subsequently appointed to any position in the District government during the period of weeks represented by that payment, shall be required to repay the amount of separation pay attributable to the period covered by such appointment. The pro-rated amount to be repaid shall be based on the entire amount of the separation pay, including all required deductions, and shall be paid to the General Fund of the District of Columbia.
- 913.6 Separation pay for any individual covered by this section shall not exceed four (4) weeks of his or her basic pay unless he or she has been a District government employee for at least one (1) year prior to the separation.

914 PERFORMANCE MANAGEMENT FOR EXCEPTED SERVICE

914.1 Employees in the Excepted Service shall be subject to the provisions of Chapter 14 of these regulations.

999 DEFINITIONS

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

Attorney – a position that is classified as part of Series 905, except for a position that is in the Legal Service.

Consultant – a person who serves as an advisor to an officer or instrumentality of the District government, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. A consultant gives views or opinions on problems or questions presented by the agency, but neither performs nor supervises performance of operating functions. The person is an expert in the field in which he or she advises, but need not be a specialist. A person's expertness may consist of a high order of broad administrative, professional, or technical experience indicating that his or her ability and knowledge make his or her advice distinctively valuable to the agency.

Consultant position – a position requiring the performance of purely advisory or consultant services, not including performance of operating functions.

Days – calendar days, unless otherwise specified.

Excepted Service – positions identified as being statutory, transitional, public employment, special category, training, or policy positions, and authorized by §§ 901 through 908 of the CMPA (D.C. Official Code § 1-609.01 through 1-609.08) (2001). These positions are not in the Career, Educational, Management Supervisory, Legal or Executive Service.

Expert – an expert may be a person who performs or supervises regular duties and operating functions and shall include the following:

- (a) A person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field; and
- (b) Certain members of boards or commissions.

Expert position – (a) a position that, for satisfactory performance, requires the services of an expert in the particular field, as defined above, and with duties that cannot be performed satisfactorily by someone not an expert in that field; or (b) a position that is occupied by members of certain boards and commissions.

Greater Washington Metropolitan Area – the Consolidated Metropolitan Statistical Area, which includes Washington, D.C. (the “Washington-Baltimore, DC-MD-VA-WV CMSA”), as defined by the Office of Management and Budget June 30, 1998 (revised November 3, 1998), and which consists of the following:

- (a) The Baltimore, MD Primary Metropolitan Statistical Area (PMSA), consisting of Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County, Queen Anne's County, and Baltimore City;
- (b) The Hagerstown, MD PMSA, consisting of Washington County; and
- (c) The Washington, DC-MD-VA-WV PMSA, consisting of the District of Columbia; Calvert County, MD; Charles County, MD; Frederick County, MD; Montgomery County, MD; Prince George's County, MD; Arlington County, VA; Clarke County, VA; Culpeper County, VA; Fairfax County, VA; Fauquier County, VA; King George County, VA; Loudoun County, VA; Prince William County, VA; Spotsylvania County, VA; Stafford County, VA; Warren County, VA; Alexandria City, VA; Fairfax City VA; Falls Church City, VA; Fredericksburg City, VA; Manassas City, VA; Manassas Park City, VA; Berkeley County, WV; and Jefferson County, WV.

Hard-to-fill position – a position designated as a hard-to-fill position pursuant to § 911.4 on the basis of demonstrated recruitment and retention problems inherent in the position due to the uniqueness of the duties and responsibilities and the unusual combination of highly specialized qualification requirements for the position.

Performance contract – an agreement between an employee in an Excepted Service policy position under § 903 (a) of the CMPA (D.C. Official Code § 1-609.03 (a)) (2002 Supp.) and the personnel authority that may be entered into and that clearly identifies measurable goals and outcomes.

Personnel authority – those personnel authorities listed in § 406 (b) of the CMPA (D.C. Official Code § 1-604.06 (b)) (2001).

Pre-employment travel expenses – expenses allowed for an individual pursuant to § 911.1, which may include such items as hotel accommodations, travel (commercial carrier, privately owned vehicle, *etc.*), and a per diem allowance.

Relocation expenses – expenses allowed for an individual and his or her immediate family pursuant to § 911.2, which may include such items as transportation of family, transportation of household goods and expenses related thereto, temporary storage expenses, relocation services company, property management services, and a per diem allowance.

Temporary housing allowance – subsistence expenses incurred by an individual and his or her immediate family while occupying lodging obtained for the purpose of temporary occupancy when authorized pursuant to § 911.3.

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 service.

Comments on these proposed regulations should be submitted, in writing, to Ms. Judy D. Banks, Interim Director of Personnel, 441 4th Street, N.W. 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.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Case No. 02-41
(Map Amendment – A Portion of US Reservation 501 (Parcel 236, Lot 114))

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code, 2001 Ed. §6-641.01), hereby gives notice of its intent to amend the Zoning Map of the District of Columbia. The purpose of this Zoning Map amendment is to establish a zoning designation for unzoned property that is owned by the United States Government (the National Park Service) with jurisdictional authority transferred to the District of Columbia (Department of Parks and Recreation) and which has been leased to a non-profit organization (Building Bridges Across the River, Inc.) that will operate a community center and related facilities to be known as the Town Hall Education Arts Recreation Center (THE ARC). Final rulemaking action shall be taken in not less than thirty (30) days from the date this notice is published in the *D.C. Register*.

The Zoning Map of the District of Columbia is amended as follows:

The property located on the southern side of Mississippi Avenue, S.E., between Stanton Road, S.E. and Southern Avenue, S.E., which is a portion of US Reservation 501 (Parcel 236, Lot 114) shall be changed from **unzoned** to the **SP-1** District.

All persons wishing to comment on the subject matter of this proposed rulemaking should file comments in writing to Alberto Bastida, Secretary to the Zoning Commission for the District of Columbia, Office of Zoning, 441 Fourth Street, N.W., Suite 210S, Washington, D.C. 20001. Comments must be received no later than thirty (30) days after the date of publication on this notice in the *D.C. Register*. Copies of this proposal may be obtained at cost by writing to the above address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Board of Nursing ("Board") pursuant to the authority set forth under § 601(b) of the Use of Trained Employees to Administer Medication to Persons with Mental Retardation or Other Disabilities Act of 1995 effective September 22, 1995 (D.C. Law 11-52; D.C. Official Code § 21-1205), hereby gives notice of the adoption, on an emergency basis of an amendment to Chapter 61 of Title 17 DCMR, "Trained Medication Employees."

Emergency action is necessary to safeguard the health, safety, and welfare of individuals with mental retardation and other developmental disabilities in agencies licensed, certified, or approved by the District government as a child care facility, private school, day program, community based residence, or other agency providing residential services, education, habilitation, vocational, or employment training services. Because of the shortage of nurses available to provide medications to the residents of these facilities, it is necessary to provide training to individuals who will then provide medications in a timely manner.

The emergency rulemaking was adopted on March 5, 2003 and will become effective on the date of publication of this notice of emergency rulemaking in the D.C. Register. The emergency rule will expire one hundred twenty (120) calendar days after adoption or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Board gives notice of its intent to take final rulemaking action to adopt these emergency and proposed rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended as follows:

Section 6100.1(c) is amended to read as follows:

6100.1 (c) The certification of medication administration trainers and master trainers;
and

Section 6101.1 is amended to read as follows:

6101.1 The supervisory registered nurse for each program shall obtain and maintain on file, at the program's facility, and at the facility where the program participant most often receives medications, instructions written by the licensed practitioner responsible for prescribing medication for the program participant. A program shall ensure that a copy of a participant's medication instructions is provided to the participant's residential facility. The instructions shall state the following:

(a) The name of the program participant who is to receive the medication;

- (b) The name and strength of the medication;
- (c) The name and telephone number of the licensed practitioner prescribing the medication;
- (d) The time of administration, dosage, method of administration, and duration of medication;
- (e) Compatibility with other prescribed and non-prescription medications;
- (f) Known program participant allergies;
- (g) Medication usage warnings;
- (h) Side effects; and
- (i) Other potential adverse reactions.

Section 6101.3 is amended to read as follows:

6101.3 The information contained in the written instructions shall at all times be the current instructions of the licensed practitioner.

Section 6104.2 is amended to read as follows:

6104.2 The medications shall be stored according to the package insert in either a cabinet or a medication refrigerator at a temperature between thirty-six (36) and forty-six (46) degrees Fahrenheit that offers sufficient store space and lighting. The cabinet or refrigerator shall be locked when not in use.

Section 6104.5 is amended to read as follows:

6104.5 Non-oral medications such as lotions and ointments shall be stored separately from those medications taken orally.

Section 6105.1 is amended to read as follows:

6105.1 The licensed nurse or trained medication employee shall document in the Medication Administration Record ("MAR") medications that have been administered to the program participant and whether the medications ordered have been taken as ordered.

Section 6105.4 is amended to read as follows:

- 6105.4 The following information shall be recorded in the MAR for all medications ordered for the program participant:
- (a) The name, strength, and frequency of the medication;
 - (b) The prescribed dosage of medication;
 - (c) The route of medication administration;
 - (d) The date the medication is prescribed by the licensed practitioner;
 - (e) The date and time the medication is to begin;
 - (f) The date the medication is to be continued if specified by the licensed practitioner;
 - (g) Indications for the medication; and
 - (h) Any known allergies.

Section 6105.5 is amended to read as follows:

- 6105.5 All information shall be recorded on the MAR in permanent blue or black ink. All errors shall be appropriately corrected and there shall be no erasures or whiteouts.

Section 6105.8 is amended to read as follows:

- 6105.8 All medication errors and omissions, and any related actions that have been taken, shall be recorded on the MAR by the trained medication employee and reported to the licensed nurse.

Section 6105.10 is amended to read as follows:

- 6105.10 The MAR shall be reviewed and signed by a registered nurse at least once each month.

Section 6105.11 is amended to read as follows:

- 6105.11 When a new medication is ordered for a program participant the licensed nurse shall be notified before the administration of the medication and a photocopy of the prescription shall be placed in the MAR.

Section 6106.1 is amended to read as follows:

- 6106.1 Upon successful completion of a Trained Medication Employee Course approved by the Board, a trained medication employee applicant shall submit:
- (a) Documentation signed by the Medication Administration Trainer verifying satisfactory completion of the Trained Medication Employee Course;
 - (b) Proof of a least one (1) year of clinical experience in a program or a health care facility;
 - (c) Proof of satisfactory current completion of cardio-pulmonary (CPR) training and a First Aid program; and
 - (d) A completed application and required fee.

Section 6106.2 is amended to read as follows:

- 6106.2 An applicant may request a waiver from participation in the Medication Administration Course if the applicant has successfully completed a substantially equivalent course in another jurisdiction. Program employees that have successfully completed a Medication Administration Course approved by the State of Maryland or the Commonwealth of Virginia need not participate in the Medication Administration Course.

Section 6106.3 is amended to read as follows:

- 6106.3 An applicant requesting a waiver from participation in the Medication Administration Course shall submit to the Board:
- (a) Proof of current certification in the administration of medication in Maryland or Virginia or any other jurisdiction approved by the Board;
 - (b) Proof of at least one (1) year of clinical experience in a program or a health care facility;
 - (c) Proof of satisfactory current completion of a cardio-pulmonary (CPR) training and First Aid program; and
 - (d) A completed application and required fee.

Section 6106.4 is amended to read as follows:

6106.4 The Board shall issue to qualified applicants a certification as a trained medication employee authorized to administer medication to program participants in a program licensed, certified or approved by the District of Columbia government as defined in D.C. Official Code § 21-1201(10). The certificate issued pursuant to this section shall state the name of the program for which the employee will be administering medications. If a trained medication employee changes jobs to work in a different program, the certificate shall be amended to reflect the name of the new program.

Section 6106.5 is amended to read as follows:

6106.5 The Board shall maintain a registry of certified trained medication employees.

Section 6106.6 is amended to read as follows:

6106.6 If, after certification, the supervisory registered nurse or licensed practitioner observes serious or multiple deficiencies or errors, he or she shall report the deficiencies to the Board in writing.

Section 6106.7 is amended to read as follows:

6106.7 If a licensed nurse or licensed practitioner observe serious or multiple deficiencies or errors that have jeopardized the health or welfare of any program participant which include, but are not limited to, errors involving medication administration, dosage documentation and storage of medications, the licensed nurse or licensed practitioner shall report the deficiencies to the Board and the employing program shall prohibit the trained medication employee from administering medication until the Board has taken action on the notice of deficiency.

Sections 6106.8, 6106.9, 6106.10, 6106.14, 6106.15, 6106.16, 6106.17, 6106.18 and 6106.19 are repealed.

Section 6107.1 is amended to read as follows:

6107.1 Recertification of a trained medication employee shall be required every two (2) years, and shall include verification of a Board-approved twelve (12) hours of in-service training in pharmacology or medication administration and the supervisory registered nurse's verification of the trained medication employee's continued adequacy of performance.

Section 6107.2 is amended to read as follows:

6107.2 Recertification applications shall be submitted to the Board before the expiration

of the current certification and shall:

- (a) Be signed by the trained medication employee;
- (b) Include the supervisory registered nurse's written verification of the trained medication employee's continued adequacy of performance;
- (c) Include documentation verifying successful completion of twelve (12) hours of board approved in-service training; and
- (d) Be accompanied by the required registration fee.

Section 6108.1 is amended to read as follows:

6108.1 Before administering medication to a program participant, all trained medication employees shall:

- (a) Observe a supervisory registered nurse administering medication to a program participant on at least two (2) occasions;
- (b) Be observed by a supervisory registered nurse on at least four (4) separate occasions while engaged in the process of administration, documentation, and monitoring side effects at one hundred percent (100%) proficiency;
- (c) Demonstrate his or her proficiency and knowledge of all medication procedures for the storage of medications, and all program policies pertaining to the administration of medication; and
- (d) Demonstrate knowledge of medications to be administered by reviewing the following with the supervisory nurse:
 - (1) Compatibility with other prescribed and non-prescribed medications;
 - (2) Known patient allergies;
 - (3) Usage warnings;
 - (4) Side effects;
 - (5) Indications for usage; and
 - (6) Other potential adverse reactions.

Section 6108.2 is amended to read as follows:

6108.2 A registered nurse shall review the completed MAR monthly for proper and accurate documentation, including vital signs.

Section 6108.3 is amended to read as follows:

6108.3 A registered nurse shall observe, review and evaluate in writing the ability of the trained medication employee to properly administer, document and store medication for a program participant every three (3) months for the first year of certification and every six (6) months thereafter.

Section 6108.4 is amended to read as follows:

6108.4 The supervisory registered nurse shall be available to the trained medication employee for general or direct supervision.

Section 6108.5 is repealed.

Section 6108.6 is amended to read as follows:

6108.6 The supervisory registered nurse shall, on a monthly basis, review the licensed practitioner's orders, MAR, and medication intervals for all program participants.

Section 6108.7 is amended to read as follows:

6108.7 The supervisory registered nurse shall review with the trained medication employee any errors in documentation that are noted. Serious or multiple errors or omissions shall be reported to the Board of Nursing.

Section 6108.8 is amended to read as follows:

6108.8 Only a licensed nurse shall accept a telephone medication order from a licensed practitioner for a new prescription or change in dosage or frequency.

Section 6108.9 is amended to read as follows:

6108.9 The licensed nurse receiving the verbal order pursuant to § 6108.7 or receiving an order directly from a licensed practitioner, shall order medication from the pharmacy and enter that specific medication, as ordered, on the program participant's medication administration record.

Section 6108.10 is amended to read as follows:

6108.10 If the trained medication employee observes a change in the program participant's condition after administration of medication, the trained medication employee shall notify the registered nurse immediately.

Sections 6108.11 and 6108.12 are repealed.**The section heading for 6109 is amended to read as follows:****6109 TRAINING PROGRAMS AND TRAINER****Section 6109.1 is amended to read as follows:**

6109.1 A Medication Administration Course to train program employees as trained medication employees shall consist of a program that is:

- (a) Approved by the Board for the instruction of applicants seeking certification as a trained medication employee; or
- (b) Taught by a Medication Administration Trainer approved by the Board.

Section 6109.2 is amended to read as follows:

6109.2 A Medication Administration Course for Medication Administration Trainers shall be:

- (a) Approved by the Board for the instruction of applicants seeking certification as Medication Administration Trainers; or
- (b) Taught by a Master Medication Administration Trainer approved by the Board.

Section 6109.3 is amended to read as follows:

6109.3 A person seeking approval from the Board of Nursing as a Medication Administration Trainer shall:

- (a) Be licensed in the District of Columbia as a registered nurse; and
- (b) Be certified as a Medication Administration Trainer in another jurisdiction approved by the Board; or
- (c) Have successfully completed a Medication Administration Trainer Program approved by the Board.

Section 6109.4 is amended to read as follows:

- 6109.4 A person seeking approval from the Board of Nursing as a Master Medication Administration Trainer shall:
- (a) Meet the criteria pursuant to § 6109.3; and
 - (b) Have two (2) years experience teaching a Medication Administration Course for Trained Medication Employees or other Board-approved medication administration course.

Section 6109.5 is amended to read as follows:

- 6109.5 The Board shall maintain a list of approved Medication Administration Trainers and Master Medication Administration Trainers.

Section 6109.6 is repealed.

The section heading for 6110 is amended to read as follows:

6110 PROGRAM RESPONSIBILITIES

Section 6110 is amended by adding two new subsections numbered 6110.4 and 6110.5 to read as follows:

- 6110.4 Every program shall, before hiring a person certified as a trained medication employee, verify with the Board of Nursing that the certification is current and the trained medication employee has not had disciplinary action taken against him or her.
- 6110.5 Every program shall ensure that the trained medication employee's certificate states the name of the program for which the employee will be administering medication.

Section 6111.1 is amended to read as follows:

- 6111.1 An anaphylaxis emergency treatment kit, epipen, AnaKit or equivalent injection system of epinephrine may be administered by a trained medication employee as prescribed by a licensed practitioner pursuant to the program's protocol or procedures.

Section 6112.1 is amended to read as follows:

- 6112.1 Each program shall develop guidelines to assess whether a program participant:
- (a) Has the ability to self-administer his or her medications;
 - (b) Requires the prescribed medication to be administered by a trained medication employee; or
 - (c) Requires the prescribed medication to be administered by a licensed practical or registered nurse.

Subsection 6199.1 is amended as follows:**a) The following terms with the ascribed meanings are added as follows:**

Direct supervision - supervision in which the supervising nurse is available to the trained medication employee on the premises and within vocal communication either directly or by a communication device.

General supervision - supervision in which the supervising nurse is available to the trained medication employee for consultation either in person or by a communication device, but need not be physically present on the premises at the time the actions are performed.

b) The definition for trained medication employee is amended to read as follows:

Trained medication employee - an individual employed to work in a program who has successfully completed a training program approved by the Board and is certified to administer medication to program participants.

All persons wishing to comment on the proposed rulemaking shall submit written comments no later than thirty (30) days after the date of publication of this notice in the D.C. Register, 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 between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, excluding holidays, at the address listed above.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Human Services ("DHS"), pursuant to the authority set forth in Section 2 of the Interim Disability Assistance Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-252; D.C. Official Code § 4-204.07) as amended by Section 2(b) of the Interim Disability Assistance Emergency Amendment Act of 2003 ("2003 Act"), effective January 22, 2003 (D.C. Act 15-2; 50 DCR 1424) and Mayor's Order 2002-152, dated August 29, 2002 hereby gives notice of intent to adopt on an emergency basis the following new Chapter 66 of Title 29 of the District of Columbia Municipal Regulations entitled "Interim Disability Assistance." The purpose of the rules is to establish guidelines for the Interim Disability Assistance (IDA) program that provides interim assistance to applicants who have applied for Supplemental Security Income (SSI) and are awaiting a determination.

This emergency action is required to comply with the requirements of the Act, which authorizes the Mayor to establish standards for processing applications for interim assistance. The SSI program is a Federal program, which is administered by the Social Security Administration. The SSI program provides that where a State grants interim assistance to applicants awaiting SSI benefits rulings who are later determined to be entitled retroactively to such benefits, the State may be reimbursed from the eventual Federal payment of SSI for the amounts of State paid interim assistance during the application period. (42 U.S.C. § 1383(b)). To accomplish this protection against what would otherwise constitute double payments, the State must enter an agreement with the Social Security Administration to make payments to the State or its political subdivision as reimbursement for the paid interim assistance. When an applicant is found eligible for SSI benefits, the initial retroactive check is sent to the State. When the Federal check is greater than the amount of the State interim assistance paid to the recipient, the State pays the balance of such payment in excess of the reimbursable amount to the recipient. The interim assistance program provides an eligible SSI recipient a means of support during the frequently extended Federal application review process, which sometimes can extend over several years.

Action was previously taken to adopt the emergency rules at a time when DHS had rulemaking authority pursuant to the "Interim Disability Assistance Temporary Amendment Act of 2002" ("2002 Act"), effective May 21, 2002 (D.C. Law 14-141; D.C. Official Code § 4-204.07). However, the agency's rulemaking authority for the 2002 Act expired on January 1, 2003. Consequently, the rules could not be published until the 2003 Act became effective on January 22, 2003.

This emergency rule was adopted on March 16, 2003, and became effective immediately upon that date. The emergency rule will expire 120 days after the effective date, or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

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

Title 29 DCMR is amended by adding the following new Chapter 66.

CHAPTER 66 INTERIM DISABILITY ASSISTANCE

6600 PURPOSE

- 6600.1 The Interim Disability Assistance (IDA) Program shall provide temporary financial assistance to disabled adults who are ineligible for Temporary Assistance for Needy Families (TANF) and who have applied for and are waiting approval of Supplemental Security Income (SSI). Approval of IDA shall be contingent on the availability of funds.
- 6600.2 If funds are exhausted at the time the individual is determined to meet all of the eligibility requirements, he or she shall be placed on a waiting list and approved when funds become available.
- 6600.3 The application processes shall be administered in accordance with the rules applicable to the Medicaid Program.
- 6600.4 The monthly grant shall be the same as that for a family size of one (1) or two (2) under the TANF Program as set forth in section 552 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.52(c)), as amended.

6601 ELIGIBILITY REQUIREMENTS

- 6601.1 An individual shall be eligible for IDA if he or she is:
- (a) A United States citizen; or
 - (b) An alien who meets the alien eligibility requirements for SSI under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, approved August 22, 1996 (110 Stat. 2260; 8 U.S.C. §§ 1601-1646);
 - (c) A resident of the District of Columbia, as determined under § 503 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.3);
 - (d) Financially in need, meets the following income and asset limits, and financial eligibility is verified:
 - (1) There is no gross income limit for the household. The household's net income is at least ten dollars (\$10) less than that the TANF payment level for a family of the same size;

- (2) No earned income or unearned income deductions are allowed, when calculating a household's countable income. Income is deducted dollar-for-dollar from the payment level to determine the household's financial eligibility and benefit amount;
 - (3) The income of a spouse who lives with the applicant and is not included in the IDA household is deemed using the following formula: total income of non-IDA spouse minus TANF payment level for one (1) person equals net income;
 - (4) The one (1) person household asset limit is two thousand dollars (\$2,000);
 - (5) The two (2) person household asset limit is three thousand dollars (\$3,000); and
 - (6) All liquid and non-liquid resources are countable for the purpose of determining IDA eligibility, except those excluded for SSI under Title 16, Section 1613 of the Social Security Act;
- (e) Ineligible for a category of cash assistance in which there is federal financial participation, except that an individual who has applied for Social Security Disability Insurance (SSDI) or SSI may be eligible during the period that the SSDI or SSI application is being processed; and
 - (f) Determined by the Department of Human Services (Department) to meet the definition of disability.

6601.2 For the purposes of this section, except as indicated, income means both earned and unearned income as defined for the SSI program in Title 16, Section 1612 of the Social Security Act. In addition, regular and presumptive SSI payments shall be counted and in-kind maintenance and support benefits shall be excluded when determining IDA eligibility.

6601 .3 An individual may not receive assistance unless he or she does the following:

- (a) Applies to the Social Security Administration (SSA) for SSI benefits;
- (b) Signs an Interim Assistance Reimbursement Authorization form;
- (c) Provides a social security number or verification of application for a social security number; and

- (d) Cooperates with the Disability Entitlement Advocacy Program, which includes:
- (1) Providing materials needed to pursue the SSI application such as medical reports;
 - (2) Keeping appointments with medical providers;
 - (3) Keeping appointment with his or her disability advocate;
 - (4) Keeping appointments with SSA and its representatives; and
 - (5) Participating in treatment programs, as required.

6601.4 Failure to cooperate with the Disability Entitlement Advocacy Program or the case manager may result in termination of IDA benefits, unless a good cause reason can be established for non-cooperation.

6601.5 Good cause for non-cooperation with case management shall include circumstances that are beyond the recipient's control such as, but not limited to, the following:

- (a) Personal illness;
- (b) Illness of another household member that requires the presence or care of the recipient; and
- (c) A household emergency such as a death in the family.

6602 APPLICATION PROCESS

6602.1 A qualified individual's eligibility for IDA benefits shall begin on the first of the month following the month that he or she applied for IDA or the month following the month in which his or her application for SSI was filed with the Social Security Administration (SSA), whichever is later.

6602.2 Each individual shall have the right to file an application for IDA on the same day that he or she contacts the Income Maintenance Administration (IMA).

6602.3 Each application for IDA shall be submitted in person by the applicant or his or her authorized representative at an IMA designated service center, using the Combined Application that is used to apply for multiple programs. The application shall be considered filed when it is on the prescribed form, contains a name and an address, unless the person is homeless, has a signature and a face-to-face interview is completed.

- 6602.4 Any individual or spouse of a married couple may file an application for IDA. The applicant may designate an authorized representative to act on his or her behalf.
- 6602.5 A face-to-face interview with the applicant or his or her authorized representative is required for all applications for IDA. During the application interview, the IMA Social Service Representative (SSR) shall:
- (a) Inform the applicant of his or her rights and responsibilities;
 - (b) Explain the program and related services;
 - (c) Outline the conditions of eligibility and indicate what verification and information are necessary to determine eligibility;
 - (d) Advise the applicant of the opportunity to register to vote;
 - (e) Notify the applicant that the information he or she provides will be matched by the computer with information from other local, state and federal agencies;
 - (f) Complete the Authorization for Reimbursement of Interim Assistance Form;
 - (g) Complete SSA Form 1696-U4, Appointment of Representative, authorizing an IMA-designated organization to act as the applicant's representative to SSA;
 - (h) Issue medical report forms, as needed;
 - (i) Complete a social information form; and
 - (j) Explore and resolve any unclear or incomplete information.
- 6602.6 A final determination shall be made within sixty (60) days, counting from the day after the application was filed. If by the sixtieth (60th) day following the date of application, the applicant has not provided all verifications, the Department shall issue a denial notice and deny the application. An applicant shall be given an extension of up to fifteen (15) days to establish eligibility as stated in subsection 6603.2.
- 6602.7 If all financial and non-financial conditions of eligibility are met and funds are currently available, the Department shall approve the benefits.

6603 DENIAL OF APPLICATION

6603.1 The application for IDA shall be denied if:

- (a) The applicant refuses to cooperate with the Income Maintenance Administration (IMA) in providing the information needed to determine eligibility;
- (b) The conditions of non-financial eligibility have not been met;
- (c) The income and/or assets exceed established limits;
- (d) The application has been voluntarily withdrawn or abandoned; or
- (e) The funding for the program is exhausted.

6603.2 An applicant shall be given an extension of up to fifteen (15) days to establish IDA eligibility under the following circumstances:

- (a) A determination of disability is pending with the Medical Review Team (MRT); or
- (b) The MRT has found that additional information is needed to determine disability and the information cannot be provided by the sixtieth (60th) day.

6603.3 The applicant shall be notified of the denial, the reason for the denial, and his or her right to a fair hearing.

6604 DURATION OF BENEFITS

6604.1 A qualified individual's eligibility for IDA benefits shall end either at the end of the month in which SSA makes a final decision on the application for SSI benefits, if the SSA's decision is a denial of the application; or at the end of the month in which SSA begins payment of benefits, if the decision is favorable.

6604.2 For purposes of this section, the final decision of the SSA shall be the decision by the Appeals Council of the Office of Hearings and Appeals, or the denial by the Disability Determination Division or Administrative Law Judge, if the IDA recipient fails, without good cause, to file a timely appeal of that decision.

6604.3 If the decision of the Administrative Law Judge is a denial and an appeal is filed timely, the Department shall immediately make a determination whether to refer the IDA recipient for appropriate vocational rehabilitation services.

6604.4 If an IDA recipient requests a fair hearing to contest the termination of his or her IDA benefits, any IDA benefits paid pending the outcome of the hearing shall terminate as of the last month of the period of eligibility, as defined in these rules, regardless of whether the fair hearing process is complete.

6605 PAYMENTS

6605.1 IDA benefits shall be issued through electronic benefit transfer (EBT) accounts.

6605.2 Rental vendor payments shall not be deducted from IDA benefits.

6606 DISABILITY REQUIREMENTS

6606.1 If an applicant for IDA has previously been determined by SAA not to satisfy the disability requirements for SSI, the Department shall evaluate disability in the same manner as under the Medicaid Program, as provided in 42 C.F.R. 435.541.

6606.2 An applicant shall be ineligible for IDA unless he or she:

- (a) Alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination;
- (b) Alleges more than twelve (12) months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of the Social Security Act, and has not applied to SSA for a determination with respect to these allegations; or
- (c) Alleges less than twelve (12) months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of SSA, and has applied to SSA for reconsideration or reopening of its disability decision.

6607 REPAYMENT OF BENEFITS

6607.1 For any month or period of months in which an IDA recipient receives both IDA and SSI, he or she shall repay to the District of Columbia:

- (a) The entire amount of the IDA payments received if the SSI benefits received for the same period equaled or exceeded the IDA payment; or
- (b) That portion of the IDA payments equal in amount to the SSI benefits received for the period if the SSI benefits received were less than the IDA payment.

- 6607.2 To make repayment, an IDA applicant shall sign an Interim Assistance Reimbursement Authorization form, which:
- (a) Permits SSA to send the individual's past due SSI benefit payment to the Department; and
 - (b) Permits the Department to deduct from these payments an amount equal to the IDA benefits provided.
- 6607.3 Upon receipt of an IDA recipient's past-due SSI benefit, DHS shall calculate the amount of the benefit due to DHS as repayment and the amount, if any, due to the IDA recipient.
- 6607.4 The Department shall provide the IDA recipient with a written explanation of the calculation set forth in subsection 6607.3 and shall pay any amount due to the IDA recipient, in accordance with section 1631 of the Social Security Act, approved October 30, 1972 (86 Stat. 1475; 42 U.S.C. § 1382 (g)) and the SSA Interim Assistance regulations, 20 C.F.R. 416.1901-1922.
- 6607.5 If an IDA recipient is determined by SSA to meet the disability requirements for purposes of SSI eligibility but withdraws the SSI application prior to payment of the past-due benefits, the IDA benefits received by that individual shall be considered an overpayment and that individual shall be liable to the District for repayment of all IDA benefits received.
- 6608 RECERTIFICATION FOR BENEFITS; REINSTATEMENT**
- 6608.1 An IDA recipient shall recertify for benefits within twelve (12) months of the month of the individual's approval and every twelve (12) months thereafter.
- 6608.2 The following eligibility requirements shall be redetermined and reverified at the IDA interview:
- (a) Residency;
 - (b) Income;
 - (c) Resources; and
 - (d) Status of the SSI claim.
- 6608.3 No IDA recipient shall be required to submit new medical information to continue IDA eligibility.

- 6608.4 If the IDA recipient provides all information needed to redetermine eligibility, confirming that he or she continues to meet all financial and non-financial requirements, the SSR shall recertify IDA benefits for an additional twelve (12) months.
- 6608.5 An IDA recipient shall report, within ten (10) days, any changes that affect his or her eligibility for benefits.
- (a) If any change results in an increase in the recipient's benefits, the SSR shall make the change for the following month; and
- (b) If any change results in a decrease in the recipient benefits, the SSR shall make the change for the month following the fifteen (15) days notice of the intended reduction in benefits, except that if the recipient reports the approval of SSI benefits, the recipient's benefits may be changed for the following month.
- 6608.6 An IDA recipient may be reinstated for benefits if he or she provides by the effective date of closing, all information needed to re-establish eligibility.
- 6608.7 An individual who does not provide all needed information by the effective date of closing shall re-apply for IDA.
- 6608.8 At re-application, the applicant shall verify all eligibility requirements and he or she shall provide current medical information if the Medical Review period has expired. Representation and reimbursement agreements shall also be resigned.
- 6608.9 If, at re-application, the applicant re-establishes eligibility but IDA funds are exhausted, the applicant shall be added to the waiting list, effective the date of re-application.

6609 HEARING RIGHTS

- 6609.1 Any applicant or recipient who is dissatisfied with an action taken by the Department, which affects his or her IDA benefits, participation or requirements, shall have the right to request a fair hearing.
- 6609.2 The hearing process shall be conducted in accordance with rules established in D.C. Official Code § 4-210.01 *et seq*; except that, if a recipient requests continuation of benefits while the fair hearing is pending, benefits may not be continued after a final determination of SSI eligibility has been made.

6699 DEFINITIONS

- 6699.1 The following terms and phrases shall have the meanings ascribed:

“Applicant” - a person who is applying for Interim Disability Assistance and applying for benefits. He or she may assert eligibility for himself or herself or as the authorized representative of an applicant.

“Assistance Unit” - all individuals whose needs, income and resources are considered in determining eligibility for, and the amount of, IDA assistance.

“Authorized Representative” - an adult who acts on behalf of another person in applying for, obtaining or using program benefits for Interim Disability Assistance

“Case Management Services” - services received by IDA households when assigned a disability advocate to assist them in the process of qualifying for SSI by acquiring and providing information to process the SSI claim, setting up necessary appointments, tracking the progress of the claim, and representing the household throughout the appeals process.

“Council” - the Council of the District of Columbia.

“Department” - the Department of Human Services of the District of Columbia, or any successor organizational Unit (in whole or in part).

“Disability” - this term as defined at 20 CFR 416.905 shall have the same meaning as that employed by the Social Security Administration, which is the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months. To meet this definition, an applicant shall have a severe impairment that makes him or her unable to continue in his or her previous line of work or to perform any other substantial gainful activity, which exists in the national economy. Residual functional capacity, age, education, and work experience are all considered in making disability determinations.

“Disability Entitlement Advocacy Program” - the Income Maintenance Administration program that provides IDA case management and legal advocacy services in the SSI application and appeal process.

“District” - the District of Columbia Government.

“Earned Income” - income in cash or in kind that is produced as a result of the performance of services currently rendered by an individual.

“Fair Market Value” - the value at which an asset could be sold in the open market in a transaction between unrelated parties.

“Gross Income” - the total earned income before any deductions required by law.

“Impairment” - a deficiency, which results from anatomical, physiological or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms and laboratory findings not only by a statement of symptoms.

“Income” - earned or unearned money received by an individual that is of gain and benefit to the individual or assistance unit; and includes the following: salary, gross income from self-employment, training allowances, stipends or other payments for work experience (to the extent that they are countable as income pursuant to D.C. Official Code § 4-205.13a), District public assistance payments, federal public assistance payments (to the extent permitted by law), pensions, retirement benefits, annuities, unemployment compensation, worker’s compensation, or alimony payments made directly to a member of the assistance unit, interest, dividends, scholarships, rent received from a tenant or lessee, and money that is required by the District or federal laws to be deemed from person who is not a member of the assistance unit. The term “income” does not include a non-recurring lump-sum payment (which shall be considered a resource); payments made by a government agency to a third party for child care, housing, or medical assistance; or any payment that is specifically excluded by federal or District law from consideration as income for the purpose of determining eligibility for public substantial assistance.

“Ineligible Spouse” - someone who lives with a person as a husband or wife and who is not eligible for SSI benefits.

“Interim Disability Assistance” – (IDA) a District of Columbia public assistance program for adults with disabilities who are waiting on a pending application for SSI benefits.

“Lump-sum Payment or Settlement” - a nonrecurring earned or unearned income including retroactive monthly payments and payments in the nature of a windfall.

“Mayor” - the Mayor of the District of Columbia or the agents, agencies, officers, and employees designated by him or her to perform any function vested in them by this chapter.

“Medical Review Team” - the administrative unit within the Income Maintenance Administration that adjudicated disability claims for federal medical assistance.

“Public Assistance” - payment in or by money, medical care, remedial care, goods or services to, or benefit of, needy persons.

“Recipient” - a person to whom or on whose behalf public assistance is granted.

“Representative Payee” - a person or organization selected by the Social Security Administration to receive benefits on behalf of a Old Age Survivors Disability insurance or Supplemental Security income recipient and obligated to use those benefits for the personal care and well-being

“Resident” - a person who is living in the District of Columbia voluntarily and not for a temporary purpose.

“Resources” - cash or other liquid assets or any real or personal property that a member of an assistance unit owns and could convert to cash to be used for support and maintenance.

“Residual Functional Capacity” - activities an applicant can perform despite any impairment and any related symptoms such as pain, physical or mental limitations.

“Social Security Administration” - the federal agency that administers Social Security Income (SSI) among other programs.

“Social Service Representative” - the IMA case manager who is responsible for processing the applicant’s Interim Disability Assistance application.

“Sponsor” - an individual who signs an affidavit of support agreeing to support a person as a condition of the person’s admission as an alien for permanent residency in the United States. “Sponsor” does not include an organization such as the congregation of a church or service club, or an employer who only guarantees employment for a lien upon entry but does not sign an affidavit of support.

“Substantial Gainful Activity” - work activity that, as defined in 20 CFR 416.972, is both substantial and gainful:

- (a) Substantial work activity is work activity that that involves doing significant physical or mental activities. Work may be substantial even if it is done on a part-time basis or if it represents a cutback, warrants less pay, or entails less responsibility than prior positions.
- (b) Gainful work activity is work activity that is done for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

- (c) Generally, other activities like taking care of one's self, household tasks, hobbies, therapy, school attendance, club activities, or social programs are not considered substantial gainful activity.

"Supplemental Security Income" - the federal program for the aged, blind and disabled.

"TANF" - the Temporary Assistance for Needy Families Program.

All persons desiring to comment on the proposed rules should do so in writing no later than thirty (30) days after the publication of this notice in the D.C. Register. Comments should be filed with Kate Jesberg, Administrator, Income Maintenance Administration, Department of Human Services, 645 H Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of these proposed rules may be obtained by writing to the above address.