HISTORIC PRESERVATION REVIEW BOARD AND THE DISTRICT OF COLUMBIA OFFICE OF PLANNING

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Office of Planning and the Historic Preservation Review Board, pursuant to the authority set forth in section 10 of the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144; D.C. Official Code § 6-1109), Mayor's Order 79-50, dated March 21, 1979, section 6 of Mayor's Order 83-119, dated May 6, 1983, section III(B)(8) of Reorganization Plan No. 1 of 1983, effective March 31, 1983, and section 402(b) of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000 (D.C. Law 12-172; 47 DCR 6308), hereby gives notice of intent to adopt the following amended Chapter 23 "Standards for Window Repair and Replacement" to Subtitle C of Title 10 of the *District of Columbia Municipal Regulations*, Historic Preservation, not less than thirty (30) days after publication of this notice in the *D.C. Register*. The purpose of the rulemaking is to adopt amended standards for the repair and replacement of windows on historic properties. This proposed rulemaking includes revisions that provide additional flexibility for window replacement for historic property based on advances in products and technologies, clarify some terminology, and refine some requirements.

Chapter 23, Title 10 DCMR C, Historic Preservation, is amended to read as follows:

CHAPTER 23: STANDARDS FOR WINDOW REPAIR AND REPLACEMENT (WINDOW STANDARDS)

Secs.

2300 General Provisions
2301 Window Types
2302 Window Components and Attributes
2303 Window Maintenance and Repair
2304 Storm Windows and Window Screens
2305 Window Replacement: General Provisions
2306 Window Replacement: Historic Landmarks
2307 Window Replacement: Contributing Buildings in Historic Districts (Major Buildings)
2308 Window Replacement: Contributing Buildings in Historic Districts (Small Buildings)
2309 Window Replacement: Contributing Buildings in Historic Districts (Large Buildings)
2310 Window Replacement: Non-Contributing Buildings in Historic Districts
2311 Windows in New Additions to Historic Buildings
2312 Windows in New Construction in Historic Districts
2313 Supplemental Information for Window Permit Applications

2300 GENERAL PROVISIONS

2300.1 Windows are an important and integral part of the design of most buildings. They typically comprise thirty to forty percent of the surface area of the building's principal façade. In making a determination on proposed changes to

windows, the Board and staff evaluate the effect of the proposal on the aesthetic values and the historical and architectural significance of the affected historic building. Factors in this evaluation include the architectural style and integrity of the historic building, the design, material, color, and general appearance of the proposed work, and, if applicable, the compatibility with the surrounding historic district or property.

2300.2 These window standards are based on the following principles:

(a) The historic character of a property and its distinguishing qualities shall be retained and preserved. The removal of historic materials or alteration of distinctive architectural features should be avoided.

(b) Deteriorated architectural features should be repaired rather than replaced.

(c) Retention and repair of historic windows is consistent with and reinforces the city's goals for promoting sustainability and energy efficiency. The long life span and repairability of historic windows, and the ability to improve their energy efficiency through repair, reglazing or the addition of storm windows makes window retention an environmentally responsible alternative to window replacement.

(d) In the event that replacement is necessary, the new feature should match the historic in design, size, dimensions, profiles, fit, color, finish, and other visual qualities, and, where possible, materials.

(e) The purpose of review for non-historic property, including non-contributing buildings and new construction, is to encourage general compatibility with surrounding historic property. It is not intended to discourage good contemporary design or encourage historic replication.

2300.3 To the maximum extent possible, these standards shall be applied so as to minimize harm to National Historic Landmarks and National Historic Landmark Districts.

2300.4 The following terms specifically applicable to this chapter are defined in Chapter 99:

(a) Façade;

(b) Principal façade;

(c) Secondary elevation; and

(d) Character-defining feature.

2301 WINDOW TYPES

2301.1 An "existing window" means a window existing at the time of designation, if supported by documentary evidence, or a window that has been changed subsequent to designation pursuant to a valid permit reviewed by the Board.

2301.2 A "historic window" means:

(a) A window that appears to date from the construction of the historic building, as determined with a reasonable degree of certainty by professional evaluation;

(b) A window that is of a type characteristic of the building when constructed, as supported by documentary evidence which may include typologies of similar buildings in similar periods and styles; or

(c) A window that was incorporated into the building by a major alteration undertaken within the period of significance of the historic landmark or district, as supported by documentary evidence.

2301.3 A "special window" means a window that creates a special architectural effect, or is a custom design, not typically found in a manufacturer's catalogue. These windows may or may not be repetitive, and usually involve one or more of the following attributes:

(a) Non-rectilinear frame or sash;

(b) Transom or side light configuration;

(c) Multi-pane configuration with twelve or more panes in a single sash;

(d) Curved glass;

(e) Stained, leaded, or artistically crafted glazing;

(f) Decorated, carved, or embellished sash, frame, or surround; or

(g) Projecting bay or oriel.

2302 WINDOW COMPONENTS AND ATTRIBUTES

2302.1 "Configuration" means the number, shape, organization and relationship of panes or lights of glass, as defined by sash, frame, muntins, or tracery.

2302.2 "Dimensions" means the size and measurements of both stationary and moveable portions of a window and its applied moldings.

2302.3 "Fenestration" means the way in which windows are arranged in a façade, including configuration, profile, material, and finish.

2302.4 "Finish" means the visual characteristics, including color, texture and reflectivity of all exterior materials. A replacement window does not match the finish of a wood window if it is clad with metal or vinyl.

2302.5 "Frame" means the stationary portion of a window unit, which is affixed to the façade and which holds the sash or other operable portions of the window.

2302.6 "Glazing" means the glass or other material forming the transparent portion of the window, often in a configuration of separate pieces referred to as panes or lights.

2302.7 "Match" means a closely approximate, but not necessarily an exact, replication. Tolerances permitted in determining the acceptable level of approximation shall in general be in fractions of inches. In making this determination, the staff considers overall sizes of window openings and proportions of elements making up the window. In all cases, there shall be minimum variation in the distance between the plane of glass and the plane of adjacent exterior surfaces (muntins, sash and frame).

2302.8 "Meeting rail" means the horizontal portion of sash in a double hung window designed to interlock with the other sash member, usually at the middle of the window.

2302.9 "Method of operation" means the manner in which a window opens, closes, locks, or functions. If non-operable, a window or window element, such as a sidelight, is identified as "fixed."

2302.10 "Molding" means a trim piece which introduces varieties of outline or contour in edges or surfaces of window elements such as jambs and heads. Moldings are generally rectilinear, curved, or a composite of curves.

2302.11 "Mullion" means a vertical primary framing member which separates paired or multiple windows within a single opening.

2302.12 "Muntin" means a tertiary framing member which subdivides window sash into individual panes, lights or panels. For the purposes of these standards, the term includes lead cames associated with stained glass windows. False muntins or "grids" placed between two sheets of glass are not considered muntins.

2302.13 "Panning" (also known as "capping" or "wrapping") means a material, usually

metal or vinyl, applied to cover the exterior surface of an existing window frame or mullion.

2302.14 "Profile" means the three-dimensional appearance of a window, particularly as perceived under the conditions of sunlight and shadow. Profile is established by the contours of frame and sash elements, and by the successive depth of recess of the window within the opening, the sash within the frame, and the glass within the sash.

2302.15 "Sash" means the secondary part of a window, either operable or fixed, which holds the glazing in place. Sash is usually constructed of horizontal rails and vertical stiles, and it may be subdivided with muntins.

2303 WINDOW MAINTENANCE AND REPAIR

2303.1 Proper maintenance and repair of historic windows is the most appropriate historic preservation approach, since it promotes the long-term preservation of the physical fabric, historic integrity, and appearance of historic buildings and districts. Historic windows should be repaired where possible.

2303.2 A permit is not required to undertake the following maintenance work:

(a) Replacement of glass in non-rated windows, together with associated replacement of glazing compound and, if necessary, of damaged moldings and muntins with material of matching characteristics.

(b) Scraping, priming and repainting of window sash or frames.

(c) Caulking around frames and sill.

(d) Repair and replacement of window hardware, including pulley chains.

(e) Installation of weather-stripping.

(f) Rebuilding portions of sills, sash, molding, and other window members, using the same material and to the same configuration, size, shape, and profile.

(g) Consolidating wood members with epoxy or other wood fillers.

2303.3 A permit is required for repair work that involves any change in configuration, shape, size or profile of any component of the total window assembly, or any change in the type of material used for replacement work, or in wholesale replacement of any window element.

2304 STORM WINDOWS AND WINDOW SCREENS

2304.1 The use of secondary windows or storm windows, either exterior or interior, is encouraged as a means of preserving historic windows. Under the D.C. Construction Code (12 DCMR § 105.2), a permit is not required for the installation of storm windows in historic landmarks or in historic districts. The following design principles for storm windows and screens are advisory to assist property owners in achieving compatible installations.

2304.2 Interior Storm Windows

(a) Storm panels should have no intermediate dividing members (mullions or muntins), except on large windows, where any necessary dividing members should align with major divisions of the historic window.

(b) Frames should be narrow and not visible or minimally visible when viewed from the exterior of the building.

(c) Glazing should be only of clear glass or other transparent material.

2304.3 Exterior Storm Windows

(a) Sash should fit tightly within window openings without the need for a subframe or panning around the perimeter.

(b) Sash should have no intermediate dividing members (mullions or muntins), except on large windows, where any necessary dividing members should align with major divisions of the historic window.

(c) Meeting rails should be used only in conjunction with double-hung windows and should be in the same relative location as in the primary sash.

(d) The color of the frame members should approximate the color of the primary window frame or sash.

(e) Glazing should be only of clear glass.

(f) The plane of glass in the secondary (storm) sash shall be no more than two (2) inches further forward (towards the exterior) from the plane of the glass in the primary window unless unusual conditions make this infeasible.

2304.4 Window Screens

(a) The color of frame members should approximate the color of the primary window frame.

(b) Half screens, covering only the lower sash, should be used on double hung windows. If feasible, half screens should be located in the same plane as the upper sash of the window.

2305 WINDOW REPLACEMENT: GENERAL PROVISIONS

2305.1 Replacement of historic windows should be considered only if the preferred option of preserving historic windows is not feasible, given the facts and circumstances of each particular case.

2305.2 Under the D.C. Construction Code (12 DCMR § 105.2.5), a permit is required for the replacement of windows in historic landmarks or buildings within an historic district.

2305.3 The requirement for a permit applies equally to the removal or replacement of sash in existing frames, and to the removal or replacement of both sash and frames. If repair or rehabilitation of frames is proposed, that work shall also be indicated on the permit application.

2305.4 Replacement sash and frames shall match the historic sash and frames in all respects—configuration, method of operation, profile, dimensions, material, finish, and any other salient character-defining features, except as provided below.

2305.5 Replacement windows shall be measured and installed to properly fit and fill historic window openings to match the historic exterior appearance. New window installations shall not result in an increase in the dimensions of the exterior framing or a diminution in the dimensions of glazing. Reducing the size of an historic window opening with trim, panels, or other materials is not permitted.

2305.6 Panning, capping, or wrapping of window piers, mullions, frames, and sills is generally discouraged. Where panning is determined appropriate, it shall be shaped or extruded to match window profiles when used on principal façades.

2305.7 Replacement windows may be double-glazed, but they shall have either "true-divided" lights (muntins which structurally support individual panes of glass), or "simulated-divided" lights (integrally applied external and internal muntins which convey the appearance of "true divided" light windows), as appropriate to match the configuration and profiles of the historic window. False muntins or "grids" located between two panes of glass, and removable "snap-ins" applied either internally or externally are not considered acceptable muntins.

2305.8 Glazing in replacement windows shall be clear, non-reflective glass unless otherwise historically appropriate or determined compatible by the staff. Replacement of stained or specialty glass shall match the historic glass or be historically appropriate or compatible.

2305.9 The standards for window replacement reflect a hierarchy of building importance, as delineated in the following sections. The strictest standard shall be applied to National Historic Landmarks, historic landmarks, major buildings in historic districts, and primary elevations of contributing buildings in historic districts. A more flexible standard shall be applied to secondary elevations of contributing buildings in historic districts and larger buildings with bays of repetitive windows. The most flexible standard shall be applied to non-contributing buildings and new construction.

2305.10 Replacement of windows in a building with multiple owners, such as cooperatives and condominiums, should be coordinated among the owners, the building's board of directors, and, if applicable, the management company. In instances where individual owners will be responsible for their own window replacement, preparation of a window replacement master plan is strongly encouraged.

2305.11 If the existing windows in an historic building are not historic windows, replacement windows should be consistent with the historic window design if known, or should be consistent with the period of the building and compatible with its general historic character.

2306 WINDOW REPLACEMENT: HISTORIC LANDMARKS

2306.1 Principal Façades

(a) If historic windows cannot reasonably be restored, replacement windows shall be approved if they match the historic windows with respect to the characteristics of configuration, method of operation, profile, dimensions, finish, and any other salient character-defining features. Matching the original material of historic windows is strongly encouraged, however, alternative materials may be approved if they can be shown to replicate the appearance of the historic windows. A stricter standard of reasonableness shall be applied to special windows.

(b) Variations in profile shall be permitted if these variations do not significantly affect visual characteristics of the historic window. In evaluating "significant" effect, factors to be considered shall be the age of the building, its architectural quality, and the extent of diminution in the

total glazed area of the sash. Exact replication of profiles may be required if warranted by the significance of the historic building,

(c) The color of replacement windows shall match or approximate the historic color of the historic windows, if this can be determined. Otherwise, the color shall be historically appropriate.

(d) With respect to matching of materials, it shall be understood that a wood historic window shall be replaced in wood, or a milled or molded material which, once painted, is not appreciably distinguishable from wood. A metal historic window shall be replaced with metal but not necessarily of the same metal. Exact replication of materials may be required if warranted by the significance of the historic building.

(e) Alteration of window openings on principal façades is strongly discouraged, and shall generally require approval by the Board. For basement openings not prominently visible from a street or public open space, the HPO staff may approve alterations that do not compromise historic or architectural characteristics.

2306.2 Secondary Elevations

(a) If existing windows are visible from a street or public open space, a permit shall be issued if replacement windows match the historic windows in terms of configuration, method of operation, profile, dimensions, and finish, and provided that they do not replace special windows. Matching the historic material is encouraged but not required.

(b) If existing windows are not visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of configuration, method of operation and dimensions, and provided that they do not replace special windows.

(c) Alteration of window openings on elevations that are architecturally composed or contribute to the overall character and design of a landmark is discouraged, but some flexibility may be applied. Selective alteration or filling in window openings on elevations that are strictly utilitarian shall be permitted if compatible in general character with the elevation.

2307 WINDOW REPLACEMENT: CONTRIBUTING BUILDINGS IN HISTORIC DISTRICTS (MAJOR BUILDINGS)

2307.1 For the purposes of these standards, a “major building” in a historic district is a contributing building that is individually distinguished by characteristics like symbolic value, visual prominence, substantial size, architectural elaboration, or

historical association. These buildings often meet the criteria for historic landmark designation, and typically include public and institutional buildings, schools, mansions, and places of worship or public assembly.

2307.2 Major buildings in historic districts shall be treated on a case-by-case basis, usually according to the same standards applicable to historic landmarks.

2308 WINDOW REPLACEMENT: CONTRIBUTING BUILDINGS IN HISTORIC DISTRICTS (SMALL BUILDINGS)

2308.1 For the purposes of these standards, a "small building" in a historic district shall be defined as a building of four (4) stories or less, unless the building has a street frontage of one hundred (100) feet or more on any single street.

2308.2 Principal Façades

(a) If historic windows cannot reasonably be restored, replacement windows shall be approved if they match the historic windows with respect to their configuration, method of operation, profile, dimensions, and finish. Matching the original material of historic windows is strongly encouraged. Alternative materials may be approved if they can convincingly replicate the appearance of the historic window and are appreciably indistinguishable from the original material. A stricter standard of reasonableness shall be applied to special windows.

(b) Variations in profile shall be permitted if these variations do not significantly affect visual characteristics of the historic window. In evaluating "significant" effect, factors to be considered shall be the age of the building, its architectural quality, and the extent of diminution in the total glazed area of the sash. Exact replication of profiles may be required if warranted by the significance of the historic building.

(c) With respect to matching of materials, it shall be understood that a wood historic window shall be replaced in wood or a milled or molded material that, when painted, is not appreciably distinguishable from wood. A metal historic window shall be replaced with metal but not necessarily of the same metal. Exact replication of materials may be required if warranted by the significance of the building.

(d) The color of replacement windows should be historically appropriate for the character of the building.

(e) Alteration of window openings on principal façades is strongly discouraged, and shall generally require approval by the Board. For basement openings not prominently visible from a street or public open

space, the HPO staff may approve alterations that do not compromise historic or architectural characteristics.

2308.3 Secondary Elevations

(a) If existing windows are visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of configuration, method of operation, profile, and dimensions, and provided that they do not replace special windows. Based on the angle of sight and distance from the street or public open space, windows that are prominently visible shall be held to a stricter standard of matching the visual characteristics of historic windows. Matching the material and finish of historic windows is encouraged but shall not be required unless the windows are prominently visible.

(b) If existing windows are not visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of method of operation and dimensions, and provided that they do not replace special windows. Matching the configuration, profile, material, and finish is encouraged but not required.

(c) Alteration of window openings on elevations that are architecturally composed or contribute to the overall character and design of a small contributing building is discouraged, but some flexibility may be applied. Selective alteration or filling in window openings on elevations that are strictly utilitarian shall be permitted if compatible in general character with the elevation.

2309 WINDOW REPLACEMENT: CONTRIBUTING BUILDINGS IN HISTORIC DISTRICTS (LARGE BUILDINGS)

2309.1 For the purposes of these standards, a “large building” in a historic district shall be defined as a building of five (5) or more stories in height, or a building of less than five (5) stories with a street frontage of one hundred (100) feet or more on any single frontage.

2309.2 Principal façades

(a) If historic windows cannot be reasonably restored, replacement windows shall be approved if they match the historic windows with respect to the characteristics of configuration, operation, profile, dimensions, and finish. Matching the original material of historic windows is encouraged. Alternative materials may be approved if they can convincingly replicate the appearance of the historic windows.

(b) Where the historic windows possess special architectural value, including special windows, replacement windows shall match the material of the historic windows. Special architectural value often applies to large buildings with ground floor or lower floor windows that are distinctively different from the typical upper floor windows. In these cases, the staff may deem it appropriate to require matching the material on the lower windows (or to require retention of the original lower windows), while allowing replacement in a different material for the upper windows.

(c) Alteration of window openings on principal façades is strongly discouraged, and shall generally require approval by the Board. For basement openings not prominently visible from a street or public open space, the HPO staff may approve alterations that do not compromise historic or architectural characteristics.

2309.3 Secondary Elevations

(a) If existing windows are visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of configuration, method of operation, profile, and dimensions, and provided that they do not replace special windows. Matching the material and finish is encouraged but not required.

(b) If existing windows are not visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of method of operation and dimensions, and provided that they do not replace special windows. Flexibility is allowed in the choice of configuration, method of operation, profile, material, and finish.

(c) Alteration of window openings on elevations that are architecturally composed or contribute to the overall character and design of a large contributing building is discouraged, but some flexibility may be applied. Selective alteration or filling in window openings on elevations that are strictly utilitarian shall be permitted if compatible in general character with the elevation.

2310 WINDOW REPLACEMENT: NON-CONTRIBUTING BUILDINGS IN HISTORIC DISTRICTS

2310.1 For replacement windows in a non-contributing building within an historic district, a permit shall be issued if the windows are appropriate for the building and its context, and are generally consistent in character with windows found in the historic district.

2310.2 This guidance is intended to promote design compatibility with historic districts, rather than to discourage good contemporary design or creative architectural expression.

2311 WINDOWS IN NEW ADDITIONS TO HISTORIC BUILDINGS

2311.1 Windows in additions to historic buildings should be appropriate for the new addition and in most cases consistent in overall character with the windows found on the historic building. This is generally most important for windows in close proximity to a principal façade.

2311.2 Windows in an addition distinguished by deliberate contrast should be compatible in scale and character with the historic building overall.

2311.3 This guidance is intended to promote design compatibility with historic buildings and districts, rather than to discourage good contemporary design or creative architectural expression.

2312 WINDOWS IN NEW CONSTRUCTION IN HISTORIC DISTRICTS

2312.1 Windows in new construction within an historic district should be appropriate for the building and its context, and in most cases generally consistent in character with the windows found in the historic district.

2312.2 Windows in a building distinguished by deliberate contrast should be compatible in scale and general character with the historic district or context.

2312.3 This guidance is intended to promote design compatibility with historic buildings and districts, rather than to discourage good contemporary design or creative architectural expression.

2313 SUPPLEMENTAL INFORMATION FOR WINDOW PERMIT APPLICATIONS

2313.1 Permit applications for window work shall include close-up photographs of existing windows in the building or other materials adequate to document the condition of existing windows.

2313.2 For applications to replace windows, supplemental materials shall include documentation sufficient to indicate the design and construction of the proposed new windows, such as drawings from the manufacturer’s catalogue or other drawings with comparative dimensions, details of construction and installation, configuration, color and finish.

2313.3 If necessary, the staff may request material samples or an on-site mock-up.

All persons wishing to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments may be sent to Tersh Boasberg, Chairman, HPRB, c/o Steve Callcott, 1100 4th Street, SW, Suite 650-E, Washington, DC 20024, or to steve.callcott@dc.gov. Copies of these proposed rules may be obtained at the same address and on the Office of Planning website at www.planning.dc.gov.

D.C. OFFICE OF HUMAN RIGHTS

NOTICE OF PROPOSED RULEMAKING

The Director of the Office of Human Rights, pursuant to section 301(c) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c)), and Mayor's Order 2009-45, dated March 31, 2009, hereby gives notice of the intent to amend Title 4, Chapter 16 of the District of Columbia Municipal Regulations. The purpose of this amendment is to provide guidelines for implementing the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq.*). Specifically, this amendment would provide information with respect to the role of the Office of Human Rights, Department of Human Resources, rights and responsibilities of employees and employers, notice requirements, investigations, the hearing procedure, and interaction with federal law.

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

Chapter 16 of Title 4 DCMR is deleted in its entirety and amended to read as follows:

CHAPTER 16 DISTRICT OF COLUMBIA FAMILY AND MEDICAL LEAVE ACT

Section
1600 Authority and Purpose
1601 Applicability—Covered Employers—In General
1602 Applicability—Covered Employers—Joint Employment
1603 Applicability—Eligible Employees
1604 Entitlements—Generally
1605 Entitlements—Medical Leave
1606 Entitlements—Family Leave
1607 Cumulative Nature of Family and Medical Leave
1608 Interaction with the Fair Labor Standards Act
1609 Employment and Benefits Protection
1610 Complaint Procedure
1611 The Role of the Office of Human Rights—District Government Only
1612 Notice to be Provided by OHR to Employers and Employees
1613 Notice to be Provided by Employers
1614 Reasonable Notice by Employee to be Provided to Employer
1615 Claims for Leave—Medical Certification
1616 Calculation of Leave
1617 Administration and Employer Recordkeeping

1618 Exception to Eligibility—School Employees
1619 Exception to Eligibility—Uniformed Employees
1620 Interaction with Federal Law
1621 Prohibited Acts
1622 Investigation
1623 Hearings
1624 Findings and Recommendations of the Hearing Examiner
1625 Final Decision of the Director After the Hearing
1699 Definitions

1600 AUTHORITY AND PURPOSE

1600.1 The provisions of this chapter are promulgated to implement the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq.*) (Act or DCFMLA).

1600.2 The Director of the Office of Human Rights (OHR), under Mayor's Order 2009-45, dated March 31, 2009, is delegated the authority to issue rules to implement the Act.

1600.3 The purpose of these regulations is to provide guidance on, and procedures and standards for, the implementation of the DCFMLA and to notify the District government as an employer, other covered employers within the District, and eligible employees of their rights and responsibilities under the Act.

1600.4 An employer cannot create a rule or policy which diminishes the rights of employees or the obligations of employers.

1601 APPLICABILITY—COVERED EMPLOYERS — IN GENERAL

1601.1 This chapter shall apply to all employers in the District of Columbia that employ twenty (20) or more persons in the District of Columbia on or after April 1, 1991; provided, that this chapter shall not apply to the United States government.

1601.2 A private employer shall be covered if it maintains twenty (20) or more employees on the payroll during twenty (20) or more calendar workweeks (whether consecutive or not) in either the current or the preceding calendar year.

1601.3 Once a private employer meets the threshold of twenty (20) employees during twenty (20) workweeks as specified in § 1601.2, the employer shall remain covered until it no longer has employed twenty (20) employees for

twenty (20) workweeks (whether consecutive or not) in the current or preceding year.

1601.4 For example, if an employer employed twenty (20) employees during twenty (20) workweeks in the calendar year as of September 1, 2008, then subsequently dropped below twenty (20) employees before the end of calendar year 2008 and continued to employ fewer than twenty (20) employees during that year, the employer would continue to be covered throughout calendar year 2009 because it met the coverage criteria for twenty (20) workweeks of the preceding calendar year 2008.

1601.5 If the employer employs at least twenty (20) employees in the District, its eligible employees shall include those employees who work within seventy five (75) miles of the District.

1601.6 The District of Columbia government shall be considered as a single employer under the DCFMLA, and the DCFMLA is applicable to every District government agency, office, and other subdivision, without regard to its individual size.

1602 APPLICABILITY—COVERED EMPLOYERS — JOINT EMPLOYMENT

1602.1 Where two (2) or more businesses have a contractual or business relationship by which they exercise some control over the work or working conditions of the employee, the businesses may be considered joint employers under the DCFMLA. Joint employers may be separate and distinct entities with separate owners, managers, and facilities.

1602.2 Where the employee performs work which simultaneously benefits two (2) or more employers, or works for two (2) or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(a) Where there is an arrangement between employers to share an employee's services or to interchange employees;

(b) Where one (1) employer acts directly or indirectly in the interest of the other employer in relation to the employee; or

(c) Where the employers are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one (1) employer controls, is controlled by, or is under the common control of the other employer (for example, a temporary agency employer).

Joint employment will ordinarily be found to exist when a temporary placement agency supplies employees to a second employer.

1602.3 A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship viewed in the totality.

1602.4 In joint employment relationships, only the primary employer is responsible for giving the required notices to its employees, providing DCFMLA leave, and maintenance of health benefits.

1602.5 Factors considered in determining which is the primary employer include authority or responsibility to hire and fire, assign, or place the employee, make payroll, and provide employment benefits. For employees of temporary placement agencies, for example, the placement agency most commonly would be the primary employer.

1602.6 Employees jointly employed by two (2) employers shall be counted by both employers, whether or not the employee is maintained on only one (1) of the employers' payrolls, in determining coverage and employee eligibility.

1602.7 The employee who is contracting with the secondary employer may be included in the secondary employer's count of eligible employees under DCFMLA. This employee shall be included, if the secondary employer has the expectation that the employee is returning to the secondary employer's business.

1602.8 Job restoration is the primary responsibility of the primary employer.

1602.9 The secondary employer is responsible for accepting the employee returning from DCFMLA leave in place of the replacement employee if the secondary employer continues to utilize an employee from the primary employer, and the primary employer chooses to place the employee with the secondary employer.

1602.10 The secondary employer is also subject to § 1621 with respect to its joint employees, whether or not the secondary employer is covered by DCFMLA.

1603 APPLICABILITY – ELIGIBLE EMPLOYEES

1603.1 An eligible employee is any individual who has been employed by the same employer for one (1) year without a break in service except for regular holiday, sick, or personal leave granted by the employer and has

worked at least one thousand (1,000) hours during the 12-month period immediately preceding the request for family or medical leave.

1603.2 The 12-month threshold need not be immediately preceding the DCFMLA request, but if the break in service between the request for FMLA leave and the last date of service is greater than seven (7) years, the time need not be included in determining eligibility.

1603.3 Except as provided in § 1603.1, whether an employee has worked the minimum one thousand (1,000) hours of service shall be determined according to the principles established under the Fair Labor Standards Act (FLSA) for determining compensable hours of work. (*See* 29 CFR part 785.)

1603.4 The primary factor in determining whether the employee has worked the one thousand (1,000) hours shall be the number of hours an employee has worked for the employer within the meaning of the FLSA. The determination is not limited by methods of recordkeeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employer. Any accurate accounting of actual hours worked under FLSA principles may be used.

1603.5 Pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* (2006) (USERRA), an employee returning from fulfilling his or her National Guard or Reserve military obligation shall be credited with the hours of service that would have been performed but for the period of military service in determining whether the employee worked the one thousand (1,000) hours of service. Accordingly, a person reemployed following military service shall be credited with the hours that would have been worked for the employer added to any hours actually worked during the previous 12-month period in calculating whether the one thousand (1,000) hour requirement is met.

1603.6 In order to determine the hours that would have been worked during the period of military service, the employee's pre-service work schedule may be used for calculations.

1603.7 If an employer does not maintain an accurate record of hours worked by an employee, including for employees who are exempt from FLSA's requirement that a record be kept of their hours worked (for example, bona fide executive, administrative, and professional employees, as defined in 29 CFR part 541), the employer has the burden of showing that the employee has not worked the requisite hours.

1603.8 The determination of whether an employee has worked for the employer for at least one thousand (1,000) hours in the past twelve (12) months and

has been employed by the employer for a total of at least twelve (12) months must be made as of the date the FMLA leave is to start. An employee may be on "non-FMLA leave" at the time he or she meets the eligibility requirements, and in that event, any portion of the leave taken for an FMLA-qualifying reason after the employee meets the eligibility requirement would be "FMLA leave."

1603.9 In determining DCFMLA eligibility for a District of Columbia government employee, the one thousand (1,000) hour requirement need not have been met with work in one (1) agency; rather, the employee may have worked at least one thousand (1,000) hours in total for the District government at large, in any agency or combination of agencies.

1603.10 Whether twenty (20) employees are employed by an employer shall be determined when the employee gives notice of the need for leave. Once an employee is determined eligible in response to a notice of the need for leave, the employee's eligibility shall not be affected by any subsequent change in the number of employees employed by that employer, even if the leave is taken on an intermittent or reduced leave schedule, if the leave is taken based on the same notice of the need for leave. An employer may not end employee leave that has already started if its number of employees drops below twenty (20).

1603.11 If an employer undergoes a business change, such as a merger, acquisition, or name change, the employer's successor-in-interest shall be considered the same as the original employer for purposes of determining whether an employee has worked for the employer for the requisite number of months and hours to be eligible for DCFMLA leave.

1604 ENTITLEMENTS—GENERALLY

1604.1 In any twenty-four (24)-month employment period, an eligible employee of a covered employer may take job-protected, unpaid leave, or paid leave if the employee has earned or accrued the paid leave, for sixteen (16) workweeks for medical leave purposes and sixteen (16) workweeks for family leave purposes. The medical leave and family leave taken by the employee must meet the standards set forth in §§ 1605 and 1606, respectively, and any other applicable provisions in this chapter.

1604.2 Nothing in this chapter shall prohibit an employer and an employee with a serious health condition from agreeing mutually to alternative employment for the employee throughout the duration of the serious health condition of the employee. A period of alternative employment shall not be considered use of medical leave under the DCFMLA and shall not cause a reduction in the amount of family or medical leave to which the employee is entitled under this chapter.

1605 ENTITLEMENTS— MEDICAL LEAVE

1605.1 An employee who becomes unable to perform the functions of his or her position because of a serious health condition shall be entitled to medical leave for the period during which the employee is unable to perform the functions, except that the medical leave shall not exceed sixteen (16) workweeks during any twenty-four (24)-month period. The medical leave may be taken intermittently or on a reduced schedule basis for planned and/or unanticipated medical treatment or recovery when medically necessary.

1605.2 For purposes of this chapter, "serious health condition" means a physical or mental illness, injury, or impairment that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or supervision at home by a health care provider or other competent individual. For the purposes of this definition:

(a) The term "treatment" includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment such as the taking of over-the-counter medications, bed rest, or similar activities that can be initiated without a visit to a health care provider is not, by itself, sufficient to constitute continuing treatment for purposes of DCFMLA leave.

(b) The term "inpatient care" is the care of a patient in a hospital, hospice, or residential medical care facility for a duration of one (1) overnight or longer**,** or any subsequent treatment in connection with such inpatient care.

(c) The term "incapacity" means inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment of the serious health condition, or recovery from the serious health condition.

(d) Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, are not "serious health conditions" within this definition unless they render the recipient of such treatment incapacitated or unless complications develop.

1605.3 A serious health condition involving continuing treatment by a health care provider includes any one (1) or more of the following:

(a) A period of incapacity of more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:

(1) Treatment two (2) or more times within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (for example, physical therapist) under orders of, or on referral by, a health care provider. Whether additional treatment visits or a regimen of continuing treatment is necessary within the thirty (30) day period shall be determined by the health care provider;

(2) The term "extenuating circumstances" in subparagraph (a)(1) of this paragraph means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the thirty (30)-day period, but the health care provider does not have any available appointments during that time period. The requirement for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within ten (10) days after the first day of incapacity; or

(3) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider. The requirement for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit shall take place within ten (10) days after the first day of incapacity.

(b) Any period of incapacity due to pregnancy, or for prenatal care. *See also* 29 CFR § 825.120;

(c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(1) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (such as asthma, diabetes, and epilepsy);

(d) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease; or

(e) Any period of absence to receive multiple treatments (including any period of recovery from the treatments) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(1) Restorative surgery after an accident or other injury; or

(2) A condition that would likely result in a period of incapacity of more than three (3) consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (such as chemotherapy and radiation), severe arthritis (physical therapy), or kidney disease (dialysis).

1605.4 Absences attributable to incapacity under § 1605.3(b) or (c) shall qualify for DCFMLA leave even if the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three (3) consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. As a further example, an employee who is pregnant may be unable to report to work because of severe morning sickness.

1605.5 Nothing in this section shall require an employer to provide paid medical leave. Should an employee wish to use paid medical, sick, vacation, personal, or compensatory leave which the employee has accrued, the employee may use such paid leave, provided that it otherwise meets the

employer's requirements for the taking of such paid leave. Any paid medical, sick, vacation, personal, or compensatory leave provided by an employer that the employee elects to use for medical leave under this chapter shall count against the sixteen (16) workweeks of allowable medical leave provided by the DCFMLA.

1605.6 If an employer has a program that allows an employee to use the paid leave of another employee under certain conditions (commonly referred to as a leave bank), and the conditions for the employee's use of the leave bank have been met, the employee may use the paid leave as medical leave, and the leave shall count against the sixteen (16) workweeks of medical leave provided by the DCFMLA.

1606 ENTITLEMENTS – FAMILY LEAVE

1606.1 An employee shall be entitled to a total of sixteen (16) workweeks of family leave during any twenty-four (24)-month period for:

(a) The birth of a child of the employee;

(b) The placement of a child with the employee for adoption or foster care;

(c) The placement of a child with the employee, if the employee permanently assumes and discharges parental responsibility for the child; or

(d) The care of a family member of the employee who has a serious health condition.

1606.2 The entitlement to family leave shall expire twelve (12) months after the birth of the child or placement of the child with the employee.

1606.3 In the case of care for a family member who has a serious health condition, the family leave may be taken intermittently or on a reduced schedule basis when medically necessary.

1606.4 Upon agreement between the employer and the employee, family leave for the birth, adoption, or foster care or other placement of a child may be taken on a reduced leave schedule, during which the sixteen (16) workweeks of family leave may be taken over a period not to exceed twenty-four (24) consecutive workweeks.

1606.5 With respect to joint employers, both employers must agree to the reduced schedule in order for the employee to be eligible for the reduced leave schedule.

1606.6 Nothing in this section shall require an employer to provide paid medical leave.

1606.7 Should an employee wish to use paid medical, sick, vacation, personal, or compensatory leave which the employee has accrued, the employee may use such paid leave, provided that it otherwise meets the employer's requirements for the taking of such paid leave. Any paid medical, sick, vacation, personal, or compensatory leave provided by an employer that the employee elects to use for family leave under this chapter shall count against the sixteen (16) workweeks of allowable family leave provided pursuant to the DCFMLA.

1606.8 If an employer has a program that allows an employee to use the paid leave of another employee under certain conditions (commonly referred to as a leave bank), and the conditions for the employee's use of the leave bank have been met, the employee may use the paid leave as family leave and the leave shall count against the sixteen (16) workweeks of family leave provided in this chapter.

1606.9 If two (2) family members are employees of the same employer:

(a) The employer may limit to sixteen (16) workweeks during a twenty-four (24)-month period the aggregate number of family leave workweeks to which the family members are entitled; and

(b) The employer may limit to four (4) workweeks during a twenty-four (24)-month period the aggregate number of family leave workweeks to which the family members are entitled to take simultaneously.

1606.10 For the purposes of § 1606.9, the term "same employer" includes an office, division, subdivision, agency, or other organizational section of an employer in which both employees have the same or interrelated duties and the absence of both employees would disrupt unduly the conduct of the employer's business.

1606.11 The limitation on the aggregate number of family leave workweeks to which the family members are entitled shall apply only if the family members seek to take leave for the same underlying reason, for example, care for the same family member or due to the birth of the same child.

1606.12 Information that an employee gives to an employer regarding a family relationship, pursuant to which the employee seeks to take family leave under this section, shall be used only to make a decision in regard to the

provisions of this chapter. An employer shall keep any information regarding the family relationship confidential.

1607 CUMULATIVE NATURE OF FAMILY AND MEDICAL LEAVE

1607.1 The entitlement to sixteen (16) weeks of family leave during any twenty-four (24)-month period shall be separate from and in addition to the entitlement to sixteen (16) weeks of medical leave during any twenty-four (24)-month period. This means that an eligible employee may take both up to sixteen (16) weeks of medical leave and up to sixteen (16) weeks of family leave during the same twenty-four (24)-month period, notwithstanding 29 CFR § 825.701(a)(1).

1608 INTERACTION WITH THE FAIR LABOR STANDARDS ACT

1608.1 The provision by an employer of unpaid DCFMLA leave to an employee who is exempt from minimum wage and overtime requirements of FLSA based on his or her status as a salaried executive, administrative, professional, or computer employee (*see* 29 CFR part 541) shall not cause the employee to lose the FLSA exemption.

1608.3 If an employer provides unpaid DCFMLA leave to an employee who is considered an exempt employee under 29 CFR part 541, the employer may deduct pay from the employee's salary for any hours taken as DCFMLA leave within a workweek without affecting the exempt status of the employee.

1608.4 When an exempt employee takes unpaid DCFMLA leave, an employer may deduct a proportionate part of the full salary for the time for which DCFMLA leave is taken. For example, if an exempt employee who normally works forty (40) hours per week uses four (4) hours of DCFMLA leave, the employer could deduct ten percent (10%) of the employee's normal salary that week.

1608.5 When calculating the amount of pay allowed to be deducted under § 1608.3, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee.

1608.6 For an employee paid in accordance with the fluctuating workweek method of payment for overtime (*see* 29 CFR § 778.114), the employer, during the period in which intermittent or reduced schedule DCFMLA leave is taken, may compensate an employee on an hourly basis and pay only for the hours the employee works, including time and one-half the employee's regular rate for overtime hours.

1608.7 The change to payment on an hourly basis shall include the entire period during which the employee is taking intermittent leave, including weeks in which no leave is taken.

1608.8 The hourly rate shall be determined by dividing the employee's weekly salary by the employee's normal or average schedule of hours worked during weeks in which DCFMLA leave is not being taken.

1608.9 If an employer chooses to follow this exception from the fluctuating workweek method of payment, the employer must do so uniformly with respect to all employees paid on a fluctuating workweek basis who take DCFMLA leave.

1608.10 If an employer does not elect to convert the employee's compensation to hourly pay, no deduction may be taken for DCFMLA leave absences.

1608.11 Once the need for intermittent or reduced scheduled leave is over, the employee may be restored to payment on a fluctuating workweek basis.

1609 EMPLOYMENT AND BENEFITS PROTECTION

1609.1 An employee who takes family or medical leave under this chapter shall not lose any employment benefit or seniority accrued before the date on which the family or medical leave commenced.

1609.2 During any period in which an employee takes family or medical leave, the employer shall maintain coverage for the employee under any group health plan, as defined in § 5000(b) of the Internal Revenue Code of 1986 (approved October 21, 1986 (100 Stat. 2012; 26 U.S.C. 5000(b)). For the purposes of this subsection, the term "group health plan" shall also include a group health plan provided by the District of Columbia government.

1609.3 The employer shall maintain coverage for the duration of the family or medical leave at the same level and under the same conditions that coverage would have been provided if the employee had not taken the family or medical leave.

1609.4 An employer may require the employee to continue to make any contribution to a group health plan that the employee would have made if the employee had not taken family or medical leave. If an employee is unable or refuses to make the contribution to the group health plan, the employee shall forfeit the health plan benefit until the employee is restored to employment pursuant to § 1609.6 and resumes payment to the plan.

1609.5 When the employee who agreed to alternative employment is able to

perform the functions of the employee's original position, the employee shall be restored to the employee's original position.

1609.6 Except as provided in § 1609.8 and applicable provisions of a negotiated collective bargaining agreement, upon return from family or medical leave:

(a) The employee shall be restored by the employer to the position of employment held by the employee when the family or medical leave commenced; or

(b) If the position held by the employee when the family or medical leave commenced is no longer available, the employee shall be restored to a position of employment equivalent to the position held by the employee when the family or medical leave commenced. The position shall include equivalent employment benefits, pay, seniority, and other terms and conditions of employment.

1609.7 Except as provided in § 1609.2, nothing in this section shall entitle an employee restored by an employer to a position of employment to:

(a) The accrual of any seniority or employment benefit during any period of family or medical leave; or

(b) Any rights, employment benefit, or position of employment other than any right, employment benefit, or position of employment to which the employee would have been entitled had the employee not taken the family or medical leave.

1609.8 Except as provided in § 1609.6, an employer in the District may deny restoration of employment to a salaried employee if the employee is among the five (5) highest paid employees of an employer of fewer than fifty (50) persons or among the highest paid ten percent (10%) of employees of an employer of fifty (50) or more persons and the following conditions are met:

(a) The employer demonstrates that denial of restoration of employment is necessary to prevent substantial and grievous economic injury to the employer's operations and the injury is not directly related to the leave that the employee took pursuant to this chapter; and

(b) The employer notifies the employee of the intent to deny

restoration of employment and the basis for the decision at the time it provides the eligibility letter to the employee following the employee's request for leave, as described in § 1613.

1609.9 Section 1609.8 shall not apply if:

(a) The employer is under a contract to provide work or services and the absence of the employee prohibits the employer from completing the contract in accordance with the terms of the contract;

(b) Failure to complete the contract will cause substantial and grievous economic injury to the employer; and

(c) After the employer made reasonable attempts, the employer failed to find a temporary replacement for the employee.

1610 COMPLAINT PROCEDURE

1610.1 Any person or organization, whether or not an aggrieved party, may file with OHR a complaint of a violation of the provisions of the DCFMLA. The complaint shall state the name and address of the person alleged to have committed the violation, hereinafter called the respondent, and shall set forth the substance thereof, and such other information as may be required by OHR.

1610.2 The Director on his or her own initiative may investigate individual instances and patterns of conduct prohibited by the provisions of this chapter and may initiate complaints in connection with such individual instances or patterns of conduct.

1610.3 A complaint under this chapter shall be filed with OHR within one (1) year after the occurrence of the unlawful practice, or the discovery of the unlawful practice. The filing of a timely complaint with OHR shall toll the deadline by which an employee may file a civil action as specified in section 11(b) of the DCFMLA (D.C. Official Code § 32-510(b)) during all times that the employee has a complaint pending with OHR.

1610.4 Complaints filed with OHR under the provisions of this chapter may be voluntarily withdrawn at the request of the complainant at any time prior to the completion of OHR's investigation and findings as specified in D.C. Official Code § 2-1403.05. The circumstances accompanying a withdrawal may be investigated by OHR.

1610.5 All complaints shall be mediated before OHR commences a full investigation. During the mediation, the parties shall discuss the issues of

the complaint in an effort to reach an agreement that satisfies the interests of all concerned parties. OHR shall grant the parties up to forty-five (45) days within which to mediate a complaint. If an agreement is reached during the mediation process, the terms of the agreement shall control resolution of the complaint. If an agreement is not reached, OHR shall proceed with an investigation of the complaint.

1610.6 With the exception of a private cause of action in a competent court of jurisdiction, the enforcement procedure contained in this chapter is the only administrative procedure that may be utilized to resolve an alleged violation of the DCFMLA.

1611 THE ROLE OF THE OFFICE OF HUMAN RIGHTS-DISTRICT GOVERNMENT ONLY

1611.1 OHR shall periodically examine DCFMLA use by employees of District agencies by assessing the following factors:

(a) Whether the agencies have appointed an FMLA Coordinator;

(b) How many DCFMLA requests were made during the previous fiscal year;

(c) How many DCFMLA requests were granted during the previous fiscal year;

(d) How many DCFMLA requests were denied during the previous fiscal year and the reason given for each denial;

(e) How long each employee was out during his or her DCFMLA leave; and

(f) Whether each request was for intermittent leave or for an extended period of time.

1611.2 After an initial compliance review in FY 2010, OHR shall determine each agency's compliance with the DCFMLA on a quarterly basis. Beginning with the first quarter in FY 2011, a quarterly assessment of the factors contained in § 1611.1 shall be conducted by each agency's director or his or her designee, and a report thereof shall be sent to OHR. OHR shall make an end of the fiscal year assessment of the quarterly reports and submit the results to the City Administrator.

1611.3 With respect to District of Columbia government, each agency shall be responsible for its own compliance with DCFMLA. The Department of Human Resources may play a consultative role and may issue

administrative issuances, but it shall not be responsible for DCFMLA compliance of other agencies.

1612 NOTICE TO BE PROVIDED BY OHR TO EMPLOYERS AND EMPLOYEES

1612.1 OHR shall provide to employers and employees information regarding their rights and obligations under the DCFMLA.

1613 NOTICE TO BE PROVIDED BY EMPLOYERS

1613.1 Each employer and each District of Columbia government agency, through its FMLA Coordinator or designee, shall provide written and verbal notice to employers of their DCFMLA rights and responsibilities and shall also answer questions from employees concerning their rights and responsibilities under the DCFMLA.

1613.2 An employer shall make DCFMLA information available to employees by posting it and including it in its employee handbook or manual. Posting includes displaying a hard copy in a conspicuous place frequented by employees or an electronic copy on the employer's website. If an employer does not maintain an employee handbook or manual, it shall distribute DCFMLA information to new employees in another form (such as through a handout or electronic (e-mail) distribution.

1613.3 When an employee requests DCFMLA leave, or when an employer acquires knowledge that an employee's leave may be for a DCFMLA-qualifying reason, the employer shall notify the employee of his or her eligibility under the Act in accordance with § 1613.4.

1613.4 Within five (5) days after an employee's request for leave under the DCFMLA, an employer shall provide written notice to the employee in the form of an eligibility letter. The eligibility letter shall notify the employee of the following:

(a) Whether the employee is an "eligible employee" for the purposes of the DCFMLA, as described in § 1603.1;

(b) If the employer determines that the employee is not an "eligible employee" for the purposes of the DCFMLA, as described in § 1602.1, the reasons for the employee's ineligibility;

(c) The specific expectations and obligations of the employee under the DCFMLA and, if applicable, federal FMLA (29 U.S.C. § 2601 *et seq.*);

(d) The employee's rights under the DCFMLA and, if applicable, federal FMLA;

(e) The number of hours of leave which are available to the employee under the DCFMLA and, if applicable, federal FMLA; and

(f) If applicable, a notice that the employee must submit a certification as referenced in § 1615, if such certification is required by the employer.

1613.5 As described in § 1615, an employer may require that an employee submit a medical certification to the employer's FMLA Coordinator or designee within fifteen (15) days after the issuance of the eligibility letter, if the employee seeks to take medical leave. In addition, an employer may require the employee to submit a medical certification for leave related to a family member's serious health condition.

1613.6 After an employer receives a medical certification from an employee, as provided in § 1615, the employer, through its FMLA Coordinator or designee, shall be responsible for designating leave as DCFMLA or federal FMLA-qualifying, and for giving notice in writing of the designation to the employee within five (5) business days after receiving the medical certification, unless there are extenuating circumstances.

1613.7 If family or medical leave taken by an employee qualifies as DCFMLA and/or federal FMLA leave, the employer may designate the leave as DCFMLA and/or federal FMLA leave, regardless of whether the employee requested to have the leave designated.

1613.8 Notices provided to employees with limited English proficiency must comply with the Language Access Act of 2004 (D.C. Official Code § 2-1931 *et seq.*).

1613.9 Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's DCFMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered.

1613.10 If an employee uses fourteen (14) weeks of family leave or fourteen (14) weeks of medical leave within a twenty-four (24)-month period, the employer shall notify the employee in writing of the employee's remaining amount of leave time under this chapter, the date on which the employee's leave time will expire, the date on which the employee is expected to return

to work after the expiration of the employee's DCFMLA leave time, and the consequences to the employee for not returning to work by this date.

1614 REASONABLE NOTICE BY EMPLOYEE TO BE PROVIDED TO EMPLOYER

1614.1 If an employee has, or reasonably should have, at least thirty (30) days notice of the need for family or medical leave, the employee shall notify the employer of his or her intention to take family or medical leave at least thirty (30) days before the employee wishes the leave to begin. When the need for family or medical leave is known at least thirty (30) days in advance and an employee fails to give timely notice to the employer with no reasonable excuse, the employer may delay FMLA coverage until thirty (30) days after the date the employee provides notice.

1614.2 If an employee could not reasonably have foreseen the need for family or medical leave at least thirty (30) days in advance, the employee shall notify the employer of the need for leave as soon as practicable prior to the date on which the employee wishes the leave to begin.

1614.3 If the approximate timing of the need for leave is not foreseeable, the employee shall request family or medical leave from the employer not later than five (5) business days after the absence begins, or as soon as practicable thereafter. Notice may be given by the employee's spokesperson (for example, the employee's spouse, an adult family member, a health care provider, or another responsible party) if the employee is unable to do so personally.

1614.4 Notwithstanding § 1614.3, if the necessity for leave is foreseeable based on an expected birth or placement of a child with an employee, the employee shall provide the employer with at least thirty (30) days advance notice of the expected birth or placement of a child with the employee. If the exact date of birth or placement of a child is unknown, the employee may fulfill this advance notice requirement by communicating to the employer with sufficient notice the expected approximate birth or placement date.

1614.5 Notwithstanding § 1614.3, if the necessity for family or medical leave under this section is foreseeable based on planned medical treatment or supervision, an employee shall:

(a) Provide the employer with at least thirty (30) days advance notice of the medical treatment or supervision; and

(b) Make a reasonable effort to schedule the medical treatment or

supervision, subject to the approval of the health care provider, in a manner that does not disrupt unduly the operations of the employer.

1614.6 For purposes of the District of Columbia government, each employee must provide notice to their FMLA Coordinator or designee. An employee's contact with the District of Columbia Department of Human Resources, if that agency is not the employer agency, shall not constitute the required notice under this section.

1614.7 When an employee or an employee's spokesperson gives notice of the employee's need for leave under this chapter, the employee or employee's spokesperson does not need to expressly assert the employee's rights under this chapter, nor does the employee or employee's spokesperson need to mention the DCFMLA or FMLA in order to meet the employee's obligation to provide notice. Rather, an employee giving notice of the need for DCFMLA leave need only explain the reason for the needed leave so as to allow the employer to determine whether the leave qualifies under this chapter. If an employer is unable to tell based on the notice given by an employee whether the leave requested by the employee might qualify as DCFMLA leave, it shall request additional information from the employee so as to make this determination.

1615 CLAIMS FOR LEAVE—MEDICAL CERTIFICATION

1615.1 An employer may require that an employee support a claim for family leave under the DCFMLA for the care of a family member who has a serious health condition by submitting a medical certification issued by the family member's health care provider.

1615.2 An employer may require that a claim for medical leave under the DCFMLA for an eligible employee who has a serious health condition be supported by a medical certification issued by the employee's health care provider. If the employee's employer requests such a certification, the employee shall submit the requested certification to the employer within fifteen (15) days, unless it is not practicable for the employee to do so under the particular circumstances, despite the employee's diligent, good-faith efforts. For example, if the employee has diligently submitted the certification request to the employee's health care provider in a timely manner, but the employee's health care provider has not returned the completed certification before the fifteen (15) day deadline, the employee may need additional time to communicate with the health care provider regarding the need to return the completed certification or to see another health care provider who can complete the certification.

1615.3 The medical certification shall state the following:

(a) The date on which the serious health condition began, or is expected to begin;

(b) The probable duration of the condition;

(c) The appropriate medical facts known to the health care provider that would entitle the eligible employee to leave under the DCFMLA; and

(d) For purposes of medical leave, a statement that the employee is unable to perform the essential functions of the employee's position; or, for purposes of family leave, an estimate of the amount of time that the employee is needed to care for the family member.

1615.4 The certification shall not include any genetic information or family medical history of the employee or the employee's family members. An employer shall not require, and an employee is under no obligation to provide, genetic information or family medical history of the employee or the employee's family members.

1615.5 If the employer believes that the medical certification returned by an employee does not provide the information required by § 1615.3, the employer shall notify the employee in writing of the missing or deficient information within five (5) days of receipt of the medical certification. The employee shall then have ten (10) days to correct the certification by providing the missing or deficient information to the employer, unless it is not practicable for the employee to do so, despite the employee's diligent good-faith efforts.

1615.6 If the employer has reason to doubt the validity of the certification provided under this section, the employer may require that the employee obtain, at the expense of the employer, the opinion of a second health care provider approved by the employer, in regard to any information required to be certified.

1615.7 If the second opinion provided under this subsection differs from the original certification provided for in this section, the employee may obtain the opinion of a third health care provider mutually agreed upon by the employer and the employee, in regard to any information required to be certified under this section. The employer shall pay the cost of the opinion of the third health care provider. The third health care provider approved or mutually agreed upon by the employer and employee may not be a health care provider retained on a regular basis by the employer or employee, or a health care provider who otherwise bears such a close

relationship to the employer or employee that there would be the appearance that the certification is biased.

1615.8 The opinion of the third health care provider shall be final and binding on the employer and employee.

1615.9 The employer may require that the employee obtain subsequent recertifications if:

(a) The employee requests an extension of leave or a different type or frequency of leave, beyond what the employee requested in the employee's initial certification or request for DCFMLA leave;

(b) The employer obtains new information which causes it to doubt the validity of the employee's stated reason for the leave or the continuing validity of the certification; or

(c) More than six (6) months has passed since the employee previously submitted a certification for the leave.

1615.10 Certification information requested under this section shall be used only to make a decision in regard to the provisions of this chapter. An employer shall keep any medical information obtained from a certification request confidential.

1615.11 For family leave under the DCFMLA for the care of a family member who has a serious health condition, in addition to requiring submission of a medical certification, an employer may require that an employee support a claim for family leave by submitting a signed affidavit stating that the employee is, in fact, the person who will be taking care of the specific family member with the serious health condition.

1616 CALCULATION OF LEAVE

1616.1 A private employer may choose any of the following methods for determining the twenty-four (24)-month period in which the sixteen (16) weeks of family leave and sixteen (16) workweeks of medical leave under DCFMLA may be taken by an employee:

(a) The calendar year;

(b) Any fixed twelve (12)-month leave year, such as a fiscal year, a year required by state law, or a year starting on an employee's anniversary date;

(c) The twenty-four (24)-month period measured forward from the date any employee's first DCFMLA leave begins; or

(d) The twenty-four (24)-month period measured backward from the date an employee uses (or would use, pursuant to a request) DCFMLA leave.

1616.2 Employers may choose any of the alternatives described in § 1616.1 for the leave entitlements, provided that the alternative chosen is applied consistently and uniformly to all employees. Employers shall inform employees of the method it has chosen to calculate DCFMLA leave entitlements either as part of its general notice to employees, as described in § 1613, or in its eligibility notices to employees.

1616.3 For District government purposes, the FMLA Coordinator shall utilize the "twenty-four (24)-month period forward" alternative described in § 1616.1 (c).

1616.4 For intermittent or reduced schedule leave, leave shall be counted based on the proportion of a normal workweek that the employee misses for DCFMLA leave purposes. For example, if an employee, who normally works five (5) days a week, takes two (2) days of intermittent DCFMLA leave, that leave shall be counted as two fifths (2/5) of one (1) workweek. If an employee who normally works forty (40) hours per week decreases to working thirty (30) hours per week due to reduced schedule DCFMLA leave, that leave shall be counted as one forth (1/4) of one (1) workweek for each week that such reduced schedule leave is maintained.

1616.5 The employer may designate leave on an hourly basis. Six hundred forty (640) hours shall equal 16 workweeks for a forty (40)-hour per week schedule).

1617 ADMINISTRATION AND EMPLOYER RECORDKEEPING

1617.1 All District government agencies shall designate an FMLA Coordinator for the agency. The FMLA Coordinator may be the individual designated as the Human Resource Specialist for the agency.

1617.2 All private employers are encouraged to designate an FMLA Coordinator or a specific person to administer DCFMLA and the federal FMLA.

1617.4 An FMLA Coordinator shall be knowledgeable of the requirements of to ensure proper handling and processing of all FMLA requests.

1617.5 The FMLA Coordinator of a District of Columbia government agency, or the FMLA designee of a private employer, shall have the following responsibilities:

(a) Notifying the employees of their rights under the applicable law through posters, the employee handbook or manual, and trainings on the subject;

(b) Providing information to an employee regarding his or her rights and obligations if an employee requests DCFMLA leave or if the employee gives notice of a DCFMLA-qualifying event;

(c) Issuing an eligibility letter within five (5) days after request for the leave; and

(d) Issuing a designation letter within five (5) days after the submission of the employee's medical certification.

1617.6 Each employer subject to the Act, through its FMLA Coordinator or other person coordinating FMLA compliance and/or responding to a DCFMLA request on behalf of a private employer, shall maintain records which document on an annual basis the following:

(a) The total number of employees who have taken leave pursuant to the DCFMLA;

(b) The annual additional cost to the employer for the expenses incurred to replace an employee during the time the employee is on leave granted pursuant to the DCFMLA;

(c) The annual additional cost incurred to pay for the employee's health insurance during the time the employee is on leave granted pursuant to the DCFMLA;

(d) The length of leave taken by an employee pursuant to the DCFMLA;

(e) The reason(s) an employee took leave pursuant to the DCFMLA;

(f) The salary, hourly wage, or grade level of the employee who has taken leave pursuant to the DCFMLA;

(g) The employee's request and supporting documents for leave requested pursuant to the DCFMLA; and

(h) The employer's disposition of the employee's request for leave

pursuant to the DCFMLA.

1617.7 The employer shall preserve the confidentiality of information relating to the circumstances and the particular reasons for an employee's request for leave pursuant to the DCFMLA.

1617.8 Only individuals with a demonstrated need to know an employee's DCFMLA status or request can be provided such information. Even if the information is provided, information contained on the DCFMLA questionnaire or medical certification shall not be disclosed or shared with a supervisor, manager, or other agency official unless it is determined that the supervisor, manager, or other agency official has demonstrated the need to know particular information contained on the DCFMLA questionnaire or medical certification for work-related reasons.

1617.9 Given the confidential nature of DCFMLA requests, DCFMLA forms and supporting medical certifications shall be maintained in a segregated and locked file, and the documents shall be stored separate and apart from the agency's human resources files.

1617.10 Employer records relating to leave requests made pursuant to the DCFMLA shall be available for inspection by a representative of OHR during an employer's regular business hours at the employer's place of business in the District of Columbia as required by section 9(a) of the DCFMLA (D.C. Official Code § 32-508(a)).

1618 EXCEPTION TO ELIGIBILITY — SCHOOL EMPLOYEES

1618.1 If the conditions of eligibility in § 1604 are met, a local educational agency ("educational agency") or private elementary or secondary school ("school") may require an employee who is employed principally in an instructional capacity to elect to:

(a) Take family or medical leave for periods not to exceed the exact duration of inpatient care or continuing treatment by a medical provider; or

(b) Transfer temporarily to an available alternative position offered by the educational agency or school for which the employee is qualified, which has equivalent pay and benefits, and better accommodates the recurring periods of leave than the employee's regular employment position.

1618.2 This section shall apply if the employee described in § 1618.1:

(a) Elects to take family leave or medical leave that is

foreseeable based on planned medical treatment or supervision;

(b) Would be on leave for greater than twenty percent (20%) of the total number of working days in the period during which leave would extend; and

(c) Complies with sections 3(g) or 4(c) of the DCFMLA (D.C. Official Code §§ 32-502(g) or § 32-503(c)).

1618.3 If an employee of an educational agency or school who is employed principally in an instructional capacity begins family or medical leave more than five (5) weeks before the end of the academic term, the educational agency or school may require the employee to continue to take leave until the end of the term if:

(a) The leave is at least three (3) weeks in duration; and

(b) The return to employment would occur during the three (3) week period before the end of the academic term.

1618.4 If an employee of an educational agency or school who is employed principally in an instructional capacity begins medical or family leave under § 1605 or § 1606 during the period that commences from more than three (3) weeks and up to and including five (5) weeks before the end of the academic term, the educational agency or school may require the employee to continue to take leave until the end of the term if:

(a) The leave is greater than two (2) weeks in duration; and

(b) The return to employment would occur during the two (2) week period before the end of the academic term.

1618.5 If an employee of an educational agency or school who is employed principally in an instructional capacity begins leave under § 1605 or § 1606 during the period that commences three (3) weeks or less before the end of the academic term and the duration of the leave is greater than five (5) working days, the educational agency or school may require the employee to continue to take leave until the end of the term.

1618.6 For purposes of a restoration of employment determination under section 6(d)(2) of the DCFMLA (D.C. Official Code § 32-505(d)(2)), in the case of an educational agency or school, the determination shall be made on the basis of established educational agency or school policies, practices, and collective bargaining agreements.

1619 EXCEPTION TO ELIGIBILTY — UNIFORMED EMPLOYEES

1619.1 A uniformed member of the Metropolitan Police Department (MPD) or Fire and Emergency Medical Services Department (FEMS) is eligible for family and medical leave to the same extent as any other District government employee. However, rights provided under DCFMLA may be suspended temporarily if the employee is required by rules, regulations, or orders of MPD or FEMS, or by the provisions of a collective bargaining agreement, to be on duty.

1620 INTERACTION WITH FEDERAL LAW

1620.1 Both DCFMLA and federal FMLA apply to employers who have at least fifty (50) employees within the District of Columbia provided an exception does not apply.

1620.2 For leave which qualifies under both DCFMLA and federal FMLA, the leave shall count against an employee's entitlement for both laws and shall be counted or applied concurrently under both laws.

1620.3 Nothing in the DCFMLA shall modify or affect any federal or District law prohibiting discrimination on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation, including the District of Columbia Human Rights Act (D.C. Official Code § 2-1401.01 *et seq.*) (DCHRA) and Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000(e) *et. seq.*).

1620.4 The DCFMLA is not intended to modify or affect the Rehabilitation Act of 1973 (29 U.S.C. § 701 *et seq.*), the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101 to 12213) (ADA), or the disability provisions of the DCHRA or the regulations issued under those Acts.

1620.5 The leave provisions of the DCFMLA are wholly distinct from the reasonable accommodation obligations of employers covered under the ADA and the DCHRA. The purpose of the DCFMLA and federal FMLA is to make leave available to eligible employees and employers within its coverage, and not to limit already existing rights and protections. An employer shall therefore provide leave under whichever statutory provision provides the greater rights to employees.

1620.6 When an employer violates both the DCFMLA or federal FMLA and a discrimination law, an employee may recover under either or both statutes, if not otherwise prohibited by law. Double relief, however, shall not be awarded for the same loss. When remedies coincide, a claimant may utilize whichever avenue of relief is desired, if not otherwise restricted by law.

1620.7 If an employee is a qualified individual with a disability within the meaning of the ADA, the employer must make reasonable accommodations, barring undue hardship, in accordance with the ADA. At the same time, the employer must afford an employee his or her DCFMLA and federal FMLA rights. The ADA's "disability" and DCFMLA and federal FMLA's "serious health condition" are different concepts, and must be analyzed separately. DCFMLA entitles eligible employees to sixteen (16) weeks of medical leave in any twenty-four (24)-month period due to their own serious health condition, whereas the ADA allows an indeterminate amount of medical leave, barring undue hardship, as a reasonable accommodation.

1620.8 The DCFMLA and federal FMLA require employers to maintain employees' group health plan coverage during DCFMLA and FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period. However, ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances. When evaluating a situation where both the DCFMLA or federal FMLA and the ADA apply to an individual, the law that provides the greater right or benefit to the individual shall be applied. (*See* 29 CFR § 825.702 for specific examples of the interaction of the federal FMLA with the ADA.)

1620.9 Under Title VII of the Civil Rights Act of 1964 and the DCHRA, an employer shall provide the same benefits for women who are pregnant as the employer provides to other employees with short-term disabilities. Because Title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than twelve (12) months by the employer (and, therefore, not an "eligible" employee under DCFMLA) may not be denied maternity leave if the employer normally provides short-term disability benefits or the ability to take similar periods of medical leave to employees with the same tenure who are experiencing other short-term disabilities.

1620.10 Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. § 4301 *et seq.*) (USERRA), veterans are entitled to receive all rights and benefits of employment that they would have obtained if they had been continuously employed. Therefore, under USERRA, a returning service member would be eligible for DCFMLA or federal FMLA leave if the months and hours that he or she would have worked for the civilian employer during the period of military service, combined with the months employed and the hours actually worked, meet the DCFMLA or federal FMLA eligibility thresholds.

1621 PROHIBITED ACTS

1621.1 It shall be unlawful for any person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided by this chapter. Such unlawful interference shall include discriminating in any manner against any person because the person engages or attempts to engage in any practice authorized by this chapter, including but not limited to requesting, inquiring about, or taking a period of family or medical leave. An employer shall not use the fact that an employee has requested, inquired about, or taken a period of family or medical leave under this chapter as a negative factor in employment actions, such as hiring, promotions, terminations, or disciplinary actions. An employer also shall not interfere with an employee's ability to take leave under this chapter by, for example, transferring the employee to another worksite or reducing the employee's hours so as to render the employee ineligible for such leave.

1621.2 It shall be unlawful for an employer to discharge or discriminate in any manner against any person because the person:

(a) Opposes any practice made unlawful by this chapter; or

(b) Participates in any procedure related to this chapter by doing any of the following:

(1) Filing or attempting to file a charge;

(2) Instituting or attempting to institute a proceeding;

(3) Facilitating the institution of a proceeding; or

(4) Giving any information or testimony in connection with an inquiry or proceeding related to this chapter.

1622 INVESTIGATION

1622.1 An aggrieved person (a "complainant") shall file a written complaint with OHR alleging a violation of the DCFMLA within one (1) year after the occurrence or the discovery of the action or occurrence that the person alleges to be a violation.

1622.2 OHR shall serve a copy of the complaint filed pursuant to § 1622.1 on the employer who is alleged to have violated the DCFMLA (the "respondent"). OHR shall serve the copy of the complaint by certified mail within five (5) business days after the date the complaint is filed.

1622.3 The respondent shall file a response with OHR within fifteen (15) business days after the respondent receives the complaint.

1622.4 OHR shall investigate the complaint and, where necessary, conduct a hearing to decide if a violation of the DCFMLA occurred.

1622.5 OHR may accept statements of evidence with respect to the allegations made in the complaint and the response of the employer. OHR shall use such means as it considers suitable to conduct an investigation, including, but not limited to, written or verbal inquiry, field visits, fact-finding conferences, or other methods or a combination of methods.

1622.6 OHR shall complete its investigation within ninety (90) days after it commences the investigation or as soon as practicable thereafter.

1622.7 OHR shall issue a written determination as to whether there exists probable cause to believe that a violation of the DCFMLA occurred. All determinations shall be supported by substantial evidence.

1622.8 The complaint shall be considered dismissed if no probable cause is found. The complainant may seek whatever judicial review may be available pursuant to section 10(c) of the DCFMLA (D.C. Official Code § 32-509(c)).

1622.9 If OHR determines that probable cause exists that a violation of the DCFMLA has occurred, it shall serve on the parties a notice indicating this determination, together with a Notice of Hearing setting a hearing date on the alleged violation.

1622.10 OHR shall schedule the hearing to be held within thirty (30) days after it serves the Notice of Hearing or as soon as practicable thereafter.

1623 HEARINGS

1623.1 Hearings shall be conducted in accordance with the Subchapter I of the Administrative Procedure Act (D.C. Official Code § 2-501 *et seq.*) and shall be conducted by hearing examiners employed by, or providing pro bono assistance, to OHR.

1623.2 Discovery may be obtained through any of the following methods; provided, that all requests for discovery shall be filed with the hearing examiner and served on the adverse party no later than fifteen (15) calendar days prior to the hearing:

(a) Deposition upon oral examination or written questions;

(b) Written interrogatories;

(c) Request for production of documents, objects, or permission to enter upon premises for inspection;

(d) Physical or mental examination by a qualified practitioner; or

(e) Requests for admissions.

1623.3 If a party fails to answer a request for discovery, the requesting party may move for an order from the hearing examiner compelling discovery by filing a motion to compel discovery. The party shall also file the motion on the adverse party.

1623.4 An evasive or incomplete answer to a request for discovery shall be considered a failure to answer.

1623.5 Should the party resisting discovery find that the discovery request is unduly burdensome, it may file a motion to quash with the hearing examiner. In its opposition to the motion, the requesting party shall show a substantial need for the requested material and its inability to obtain the material by alternate means.

1623.6 The party resisting discovery may file a response with the hearing examiner and serve the adverse party with the response within five (5) calendar days after the original request for an order.

1623.7 The hearing examiner may issue an order compelling the discovery, limiting its scope, issuing a protective order, or granting any other relief as the case and the interests of justice demand.

1623.8 Any party may request that the hearing examiner issue a subpoena compelling the appearance and testimony of a witness or the production of documents. The application for any subpoena shall state, with particularity, the testimony or evidence being sought and the time and place for production. The adverse party may challenge the issuance of a subpoena by filing a motion to quash with the hearing examiner and serving the motion to quash on the adverse party within five (5) calendar days after the service of the subpoena on the party challenging the subpoena.

1623.9 The hearing examiner shall have the same powers and remedies available in ruling on challenges to subpoenas as in ruling on challenges to discovery.

1623.10 A party that fails to obey an order of the hearing examiner with respect to discovery or a subpoena shall be subject to those sanctions or remedies

which exist for similar failures to obey orders in civil cases in the Superior Court of the District of Columbia.

1623.11 Pre-hearing statements, if any, shall be filed by the parties at least ten (10) calendar days prior to the scheduled hearing date and served on the opposing party.

1623.12 Hearings shall be conducted in an impartial manner. The hearing examiner may ask questions of witnesses, request the submission of additional documents or other evidence, may issue subpoenas for witnesses who refuse to attend, and may otherwise act to ensure both the protection of the substantive rights of the parties and the presentation of all relevant issues necessary for consideration and decision.

1623.13 The party alleging violation of the DCFMLA bears the burden of coming forward with evidence to establish a *prima facie* case that the DCFMLA was violated. Once a *prima facie* case is established, the respondent employer shall bear the burden of producing evidence to the contrary. The complainant shall bear the burden of proof that the violations of the DCFMLA occurred; provided, that the employer shall bear the burden of proof that it should receive a reduction in damages pursuant to section 10(b)(6)(C) of the DCFMLA (D.C. Code § 32-509(b)(6)(C)).

1623.14 If either party fails to appear without good cause, the hearing examiner may hold that party in default, or may go forward with the hearing and decide the case on the basis of the record and the evidence presented by the appearing party.

1623.15 The hearing examiner may exclude evidence from the record if it is incompetent, irrelevant, immaterial, or unduly repetitious.

1623.16 Admissions or representations made in connection with prior settlement negotiations shall be excluded from the record.

1623.17 Hearsay evidence may be admitted into the record at the discretion of the hearing examiner and accorded such weight as the hearing examiner considers warranted by the circumstances.

1623.18 The parties may stipulate as to any matter of fact. A stipulation shall satisfy a party's burden of proving that fact.

1623.19 The hearing examiner may, on the motion of a party or on its own initiative, take official notice of matters of common knowledge or of any information contained in the records of OHR or of other matters that can be verified. Official notice of any fact shall satisfy a party's burden of proving that fact.

1623.20 When a witness is unavailable, as defined by the Civil Rules of the Superior Court of the District of Columbia, to testify in person, or upon the agreement of the parties, the hearing examiner may admit the content of the proffered testimony, in an alternate form, such as the following:

(a) An affidavit attested to by the witness;

(b) A transcript of the deposition of the witness; or

(c) Written responses by the witness to interrogatories propounded by the parties.

1623.21 If a party seeks the admission of an alternate form of testimony, the hearing examiner shall require that party to provide notice and evidence of the witness's unavailability, as well as a proffer of the relevance of the testimony.

1624 FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

1624.1 Within thirty (30) days after receipt of the transcript or post hearing submissions, whichever is later, the hearing examiner shall transmit to the Director the following:

(a) The complaint file;

(b) The record of the hearing;

(c) A report, including a brief and concise statement of the history of the subject matter of the complaint;

(d) Proposed findings of fact;

(e) Proposed conclusions of law;

(f) Analysis and recommendations addressing the following:

(1) Whether a violation of the Act occurred;

(2) Whether the employer shall pay the employee damages and, if so, in what amount;

(3) Any reduction in damages for an employer who acted in good faith and has reasonable grounds to conclude that its conduct was not violative of the Act; and

(4) Any award of costs and reasonable attorney's fees to the prevailing party; and

(g) A proposed decision and order.

1624.2 A copy of the hearing examiner's report shall be transmitted to the parties or their representatives and, if not a party, to the agency involved, including a notice of the date on which the report was transmitted to the Director.

1624.3 Any party who is aggrieved by the adoption of the hearing examiner's report and proposed recommendation or order, may, within twenty (20) days after receipt of the report, submit to the Director a proposed substitute order or findings, along with arguments in support of the proposed substitute.

1625 FINAL DECISION OF THE DIRECTOR AFTER THE HEARING

1625.1 Following receipt of the hearing examiner's recommendations or proposed decision or order, and any argument or proposed substitute order or findings submitted by a party, the Director shall do one of the following:

(a) Render a final decision which may adopt, reject, or modify the decision of the hearing examiner in whole or in part; or

(b) Remand the matter for further hearing.

1625.2 If the Director rejects or modifies the recommended decision of the hearing examiner, the final decision of the Director shall set forth in detail the specific reasons for rejection or modification.

1625.3 The final decision of the Director shall be served on the parties or their representatives and, if not a party, the agency involved.

1625.4 Either party may file a written request with the Director for reconsideration or to reopen the case within fifteen (15) days after the date of issuance of the final decision.

1625.5 A party seeking reconsideration of the Director's final decision shall submit an application for reconsideration to the Director in writing, stating specifically the grounds upon which the request for reconsideration is based. The grounds shall be limited to misapplication of law, material misstatement of fact, or discovery of evidence not available during the investigation.

1625.6 A request for reconsideration shall only be considered if the requesting party demonstrates that there is newly discovered evidence that is competent, relevant, and material and was not reasonably discoverable prior to issuance

of the final decision by the Director and that such evidence, if credited, would alter the ultimate outcome in the case**.**

1625.7 The letter transmitting the final decision of the Director shall advise the parties of their right to request reconsideration of the case pursuant to § 1625.4 or to seek judicial review of the decision by a court of competent jurisdiction.

1625.8 If either party requests reconsideration or the reopening of the case pursuant to § 1625.4, and the Director determines that the case should be reconsidered, the Director shall inform the parties that the case is being reconsidered or reopened and that the final decision previously issued by the Director is vacated or stayed.

1625.9 If neither party requests reconsideration or the reopening of the case pursuant to § 1625.4, the final decision of the Director shall become the final administrative action of the District government fifteen (15) days after issuance of the decision, and the parties shall be deemed to have exhausted all administrative remedies.

1625.10 If the Director decides not to grant a request for reconsideration, the Director shall so notify the parties in writing. At the time the notification is issued, the decision previously issued shall become the final administrative action of the District government.

1625.11 If no action is taken on a request for reconsideration or to reopen a case within ninety (90) days after the request is filed, the request shall be deemed disapproved, and the decision previously issued shall become the final administrative action of the District government.

1625.12 In the interests of justice, the Director may, on his or her own initiative, reopen or reconsider a case in which the Director has issued a decision at any time prior to the filing of an appeal by either party with a court of competent jurisdiction.

1625.13 If the Director reconsiders or reopens a case and modifies the case findings, the Director shall inform the parties that the decision previously issued by the Director is vacated and issue a second decision and order.

1625.14 A party may appeal the final decision of OHR to the Superior Court of the District of Columbia.

1625.15 The appealing party must file a Petition for Review with the Clerk of the Superior Court's Civil Division within thirty (30) days after service of notice of the final decision.

1699 DEFINITIONS

1699.1 For the purposes of this chapter, the following terms and phrases shall have the meanings ascribed:

Agency or agencies – an agency or agencies of the District of Columbia government.

Child – (a) a person under twenty-one (21) years of age; (b) a person, regardless of age, who is substantially dependent upon the employee by reason of physical or mental disability; and (c) a person who is under twenty-three (23) years of age who is a full-time student at an accredited college or university.

Committed relationship – a domestic partnership, as defined in section 2(4) of the Health Care Expansion Act of 1992; D.C. Official Code § 32-701(4), or a familial relationship between two individuals demonstrated by such factors as, but not limited to, mutual economic interdependence, including joint bank accounts, joint tenancy, shared lease, and joint and mutual financial obligations such as loans; domestic interdependence, including close association, public presentment of the relationship, and exclusiveness of the relationship; length of the relationship; and the intent of the relationship, as evidenced by a will or life insurance.

Director – the Director of the Office of Human Rights.

Employee employed in an instructional capacity – an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, or auxiliary personnel, such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

Employer – an individual, firm, association, or corporation, a receiver or trustee of any individual firm, association, or corporation, or the legal representative of a deceased employer, including the District of Columbia government, who employs the services of another individual for pay in the District.

Employment benefit – a benefit, other than salary or wages, provided or made available to an employee by an employer, including, but not limited to, group life, health, and disability insurance; sick and annual leave; and educational and pension benefits, regardless of whether the benefit is provided by a policy or practice of an employer or by an employee welfare benefit plan as defined in title 1, subtitle A, section 3(3) of the Employee Retirement Income Security Act of 1974, effective September 2, 1974 (88 Stat. 833; 29 U.S.C. § 1002(1)).

Family member – (a) a person related by blood, legal custody, or marriage; (b) a foster child; (c) a child who lives with an eligible employee and for whom the eligible employee permanently assumes and discharges parental responsibility; or (d) a person with whom the eligible employee shares or has shared, within the last year, a mutual residence and with whom the eligible employee maintains a committed relationship.

Health care provider – a person licensed under federal, state, or District law to provide healthcare services.

Intermittent leave – leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time. Intermittent leave may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six (6) months, such as for chemotherapy.

Local educational agency – this term shall have the same meaning as the term has in section 1471(12) of the Elementary and Secondary Education Act of 1965, approved April 28, 1988 (102 Stat. 201; 20 U.S.C. § 2891(12)).

Mayor – the Mayor of the District of Columbia.

Primary employer – an employer that shares a joint employment relationship with a secondary employer regarding an employee. The primary employer generally has the following authority or responsibilities: hiring and firing, assigning or placing the employee, making payroll, and provision of employment benefits. For a joint employment relationship that exists when a temporary placement agency supplies employees to a second employer, the placement agency most commonly would be the primary employer.

Reduced leave schedule – leave that is scheduled for a fewer number of hours than the employee is officially scheduled to work each workweek or workday. A reduced leave schedule is one that includes less than forty (40) hours or five (5) days in a given week. Examples of reduced schedule leave would include where an employee who typically works a full-time schedule works less than full-time due to the fatigue, pain, or anxiety caused by the employee's normal schedule or due to a serious health condition, or where an employee works a reduced schedule in order to provide care or psychological comfort to a family member with a serious health condition who does not require full-time care.

Secondary employer – an employer that shares a joint employment relationship with a primary employer regarding an employee. A secondary employer generally lacks authority over an employee regarding things such as hiring and firing, assigning or placing the employee, making payroll, and provision of employment benefits. For a joint employment relationship that exists when a temporary placement agency supplies

employees to another employer, that employer which receives the employees would generally be the secondary employer.

State – a state of the United States, the District of Columbia, or a territory or possession of the United States.

Workweek – a period of not more than 40 hours over seven (7) consecutive days, beginning on a day designated by the employer.

Persons desiring to comment on these proposed rules should submit comments in writing to the Office of Human Rights, Office of the General Counsel, 441 4th Street, N.W., Suite 570N, Washington, D.C. 20001, or via email at DCFMLA@dc.gov, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained between 8:30 a.m. and 5:00 p.m. at the address stated above.

DEPARTMENT OF MENTAL HEALTH

THIRD NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Mental Health ("DMH"), pursuant to the authority set forth in sections 104 and 105 of the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code §§ 7-1131.04 and 7-1131.05), hereby gives notice of his intent to adopt a new Chapter 23 of Title 22A of the District of Columbia Municipal Regulations ("DCMR"), entitled "Home First Subsidies for Mental Health Consumers", and to amend sections 2205, 2207, and 2299, and subsection 2201.3 of Chapter 22 of Title 22A, in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

The purpose of the new Chapter 23 of Title 22A DCMR is to provide standards for the Home First Subsidy program. The new chapter establishes application and eligibility criteria, provides standards to determine the amount of a Home First Subsidy, annual recertification, maintenance of a waiting list, voluntary transfer to a different unit, and termination of a Home First Subsidy. Finally, the new chapter sets forth rights and responsibilities of landlords, Core Service Agencies, eligible consumers, and DMH and establishes due process procedures for Home First Subsidy recipients. This rulemaking also amends Chapter 22 of Title 22A DCMR to require Housing Safety/Quality Checklists and Home Visit Reports to be conducted monthly, instead of quarterly.

This notice supersedes the Second Notice of Proposed Rulemaking that was published in the *D.C. Register* on June 26, 2009, at 56 DCR 5083. Several changes were made to the amendments published with that prior notice in response to comments requesting, among other things, greater enumeration of consumers' rights and landlord responsibilities.

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

A new Chapter 23 is added to Title 22A DCMR to read as follows:

CHAPTER 23 HOME FIRST SUBSIDIES

2300 HOME FIRST SUBSIDIES FOR MENTAL HEALTH CONSUMERS

2300.1 These rules provide standards for the Department of Mental Health ("Department") Home First Subsidy ("HFS") program.

2300.2 The purpose of the HFS is to provide a temporary or "bridge" subsidy that will assist eligible consumers in obtaining safe and affordable permanent housing until the consumer is able to fund his or her housing through income alone, a permanent housing voucher, or other means.

2300.3 These rules shall not apply to temporary loan assistance granted by the Department for consumers residing in community residential facilities.

2300.4 Nothing in these rules shall be interpreted to mean that an HFS provided by the Department is an entitlement. The HFS program is dependent upon the availability of funds, the needs of individual consumers, and the priorities established by the Department.

2300.5 The Department may execute contracts and agreements and issue grants as necessary to carry out the provisions of this chapter.

2300.6 The Department may set aside HFS funds to use as project-based subsidies, for which these regulations may be waived pursuant to section 2301.1.

2300.7 The consumer always has the right to file a grievance in accordance with 22A DCMR Chapter 3 for any dissatisfaction with the HFS Program.

2300.8 Consumers have the right to be free from retaliation for exercising their rights, including filing grievances, requests for review or appeal, or for reporting any problems with their housing.

2300.9 Consumers have the right to receive services under this chapter free from unlawful discrimination.

2301 WAIVER OF RULES

2301.1 Upon determination of good cause, the Director may waive any provision under this chapter subject to the statutory limitations of other District laws. The Director shall provide each waiver in writing and shall support each waiver by documentation of the facts and the grounds upon which a waiver is based.

2302 ALLOCATION OF FUNDS

2302.1 For each annual appropriation of funds for HFS, the Director is authorized to make HFS payments consistent with this chapter.

2302.2 The Department may only provide HFS to extent of the annual appropriations and the availability of funds for HFS, as determined by the Director.

2302.3 The Department shall maintain a system to ensure that HFS payments do not exceed the total appropriations available for HFS in any fiscal year. This system may include, but is not limited to, the following:

(a) Providing notice of a temporary suspension of new subsidies for applicants and eligible consumers while an HFS financial audit is conducted:

(1) At each Core Service Agency ("CSA");

(2) On the Department's website; and

(3) To each eligible consumer on the waiting list who has received authorization to begin a housing search in accordance with section 2317;

(b) If applicable, providing notice that the Department is no longer approving HFS for eligible consumers due to the unavailability of HFS funds:

(1) At each Core Service Agency ("CSA");

(2) On the Department's website; and

(3) To each eligible consumer on the waiting list who has received authorization to begin a housing search in accordance with section 2317.

2303 AUTHORIZED PERSONAL REPRESENTATIVE

2303.1 A personal representative ("authorized personal representative") as defined in section 2399 may act on behalf of a consumer for purposes of this chapter.

2304 APPLICATION PROCESS

2304.1 Each application for an HFS shall be in writing on a form prescribed by the Department and signed by:

(a) The consumer who is applying; or in the case of an authorized personal representative, the representative (hereafter known as "the applicant"); and

(b) The Community Support Worker or other qualified practitioner at the CSA or other mental health provider agency where the consumer is actively engaged.

2304.2 Each application form shall include the Department's Consumer Rights Statement.

2304.3 Each applicant shall sign a document acknowledging receipt of the Department Consumer Rights Statement and a release of information that allows the Department to obtain or verify information necessary to determine eligibility for an HFS. The release of information shall be consistent with D.C. Official Code § 7-1201.01, *et seq.*

2304.4 Each applicant shall cooperate fully with the Department in establishing his or her eligibility, or, in the case of the applicant being a legal guardian, of the ward. The

applicant shall provide documentation required by the Department, including, but not limited to, evidence of:

(a) The consumer's serious and persistent mental illness ("SPMI");

(b) Annual Income;

(c) Registration, or verification of an appointment for registration, at the District of Columbia Housing Authority ("DCHA") for any permanent housing assistance for which the applicant may be eligible (unless the applicant is ineligible to register with DCHA); and

(d) Enrollment with a CSA.

2304.5 An applicant's CSA shall encourage and assist the applicant in applying for any public benefit for which he or she may be eligible.

2304.6 The application is complete when all of the information required by the Department is furnished to the Department.

2304.7 If requested by an applicant with a disability, or if the CSA or mental health provider is aware that the applicant needs assistance due to a disability, the CSA or mental health provider where an applicant is actively engaged shall assist the applicant with any aspect of the application process necessary to ensure that the applicant with a disability has an equal opportunity to submit the application.

2304.8 An applicant or CSA may submit a completed application to the Department for review. The Department shall record the date that the completed application is received and shall provide a dated notice of receipt to the applicant.

2304.9 If the Department determines that an application is not complete, the Department shall notify the applicant and the CSA or other mental health provider in writing within five (5) business days of receiving the incomplete application. The notice shall identify the additional information needed to process the application.

2304.10 The Department will retain an incomplete application for fifteen (15) business days following notification to the applicant that the application is incomplete. The CSA or applicant shall submit the required documents and/or information within fifteen (15) business days of notification. If the required information is not submitted by the required date, the Department will consider the application canceled and the CSA and applicant must submit a new application.

2304.11 The Department shall determine each applicant's eligibility no later than fifteen (15) business days after the date a complete application is received. The Department shall not be responsible for delays caused by:

(a) The applicant's failure to supply information to verify facts stated in the application, without which the Department is not able to determine eligibility;

(b) The inability to contact the applicant or authorized personal representative by written correspondence and by telephone;

(c) Evidence of misrepresentation in the application that may result in further investigation; or

(d) Any other delay in receipt of information or documentation necessary to complete the application over which the CSA, mental health provider, Department, or consumer has no control.

2304.12 If a housing emergency occurs during the application process, the CSA or other mental health provider, and the Department shall take reasonable steps to process the completed application within five (5) business days of receiving notification of the housing emergency. Examples of housing emergencies include, but are not limited to:

(a) Incidents of domestic violence or abuse at the applicant's current housing;

(b) Witnessing or becoming the victim of crime at the housing location;

(c) Loss of housing pursuant to Title14 DCMR, Section 115.1;

(d) Receipt of a notice to quit or vacate;

(e) A medical emergency or substantial change in medical condition that requires a change in unit location or configuration; or

(f) Any other situation that the Director on a case-by-case basis qualifies as an emergency, based upon the consumer's health or safety issues, or as required to comply with applicable laws.

2304.13 Once an applicant is determined eligible for an HFS pursuant to section 2305, and an HFS becomes available, the Department shall send a written eligibility determination to the applicant, CSA or other mental health provider, and a representative payee, if appropriate. The eligibility determination shall include, at a minimum:

(a) A statement of the eligibility determination;

(b) Written approval to search for housing in accordance with section 2317;

(c) The amount of financial contribution that the eligible consumer is required to contribute per month; and

(e) The contact name and telephone number of a Department representative.

2304.14 If an applicant is determined eligible, but no HFS is available, the Department shall send a written eligibility determination to the applicant, CSA or other mental health provider. This eligibility determination shall include, at a minimum:

(a) A statement of the eligibility determination;

(b) A statement identifying the date that the eligible consumer will be placed on the waiting list; and

(c) The contact name and telephone number of a Department representative.

2304.15 If an applicant is determined eligible, but no HFS is available due to a lack of funding, the Department shall place the eligible consumer on a waiting list pursuant to section 2306.

2304.16 If an applicant is determined ineligible, the Department shall send written determination of ineligibility to the applicant, CSA or other mental health provider. This ineligibility determination shall include, but is not limited to:

(a) A statement of the denial of eligibility;

(b) A statement of the factual basis for the denial;

(c) A statement of the applicant's right to request that the Department review the determination pursuant to section 2323; and

(d) The contact name and telephone number of a Department representative.

2305 ELIGIBILITY CRITERIA

2305.1 The Department may determine an applicant is eligible to receive an HFS, if he or she:

(a) Is a consumer of mental health services, as defined in D.C. Official Code § 7-1131.02(2) who is actively engaged with a CSA, or other mental health provider as defined in subchapter 2399;

(b) Has a serious and persistent mental illness (“SPMI”);

(c) Is eighteen (18) years of age or older or is the legal guardian of a child receiving mental health services as defined in D.C. Official Code § 7-1131.02(18) and is residing with the child;

(d) Demonstrates that his or her household income does not exceed the amount specified in section 2305.2;

(e) Demonstrates that the applicant has registered for, or has a verifiable appointment to register for permanent housing assistance through DCHA, unless the applicant is ineligible to register with DCHA; and

(f) Has a demonstrable need for the HFS because no other suitable housing options are available for the consumer.

2305.2 The eligible individual's adjusted income, as defined in section 2399, in the sixty (60) day period immediately preceding the date of application, shall not exceed thirty percent (30%) of the Area Median Income for the Metropolitan Washington D.C. Area, as defined by the U.S. Department of Housing and Urban Development.

2305.3 The Department may require the applicant or other household members to execute one or more Department Authorizations that authorize a federal, state or private source of information to release to the Department information necessary to verify eligibility. The release of information shall be consistent with D.C. Official Code § 7-1201.01 *et seq*., and other applicable federal and local privacy laws.

2306 WAITING LIST

2306.1 A determination of eligibility shall be sufficient to place an eligible consumer on the waiting list, in the manner described in this section.

2306.2 The Department shall place an eligible consumer on a waiting list when:

(a) The Department has no funds to issue any new Home First subsidies pursuant to section 2302;

(b) The eligible consumer does not submit the HFS Package identified in subsection 2309.4(d) to the Department within the required timeframe pursuant to subsection 2317.4; or

(c) The eligible consumer is incarcerated, or hospitalized.

2306.3 An eligible consumer shall be placed on the waiting list in chronological order by the date the Department receives the consumer's completed application.

2306.4 If the Department establishes preferred selection pursuant to section 2307, the Department may place an eligible consumer who meets the preferred selection criteria at the top of the waiting list.

2306.5 The eligible consumer or CSA shall provide the Department with the eligible consumer's current mailing address and telephone number. Each change of address shall be reported in writing to the Department within five (5) business days of the change.

2306.6 If the eligible consumer fails to ensure the Department has the consumer's current mailing address and/or telephone number and the Department needs to contact the consumer because a subsidy is now available for the consumer's use, the Department will make a good faith effort to contact the consumer through the consumer's CSA. If the consumer cannot be contacted within 30 calendar days of the first day of attempted contact, the consumer will move to the end of the waiting list and the next person on the list will be contacted for utilization of the subsidy. The Department shall document all attempted contacts.

2306.7 When an eligible consumer is notified that funding for an HFS for his or her use in accordance with this chapter is now available, the Department shall re-determine the eligibility status and income of the consumer.

2307 PREFERRED SELECTION

2307.1 Consistent with the Mental Health Establishment Amendment Act of 2001 and D.C. Official Code § 21-501 *et seq.*, the Director may establish priorities for receipt of an HFS for eligible consumers.

2307.2 Consumers who are being discharged from a hospital pursuant to D.C. Official Code § 21-526(e) will have highest priority for receipt of an HFS if one is available and the consumer qualifies for it, in order to ensure the person is timely discharged.

2307.3 The Director may, as necessary, consider the following factors when establishing priorities:

(a) Discharge from St. Elizabeths Hospital;

(b) Homeless consumers;

(c) Consumers with critical health care needs or requirements;

(d) Consumers who are children or have children with special needs; and

(e) Emergency situations involving the health or safety of the consumer of consumer's family.

2308 COMPUTATION OF PAYMENT

2308.1 The Department shall determine the amount of each HFS payment made on behalf of an eligible consumer based on:

(a) The eligible consumer's adjusted income reported in the application or the most recent re-certification; and

(b) Rental rates established by the Department. The Department may approve an HFS in an amount not to exceed eighty percent (80%) of the annual Fair Market Rent Value calculated by the U.S. Department of Housing and Urban Development for the Metropolitan Washington D.C. area.

2308.2 An eligible consumer shall pay thirty percent (30%) of his or her adjusted income ("Total Consumer Rent Payment") toward the total rent due under the lease.

2308.3 For each approved HFS, the Department shall issue the HFS on a monthly basis to the landlord on behalf of the eligible consumer that is equal to the rent charged by the landlord, minus the Total Consumer Rent Payment, as determined by the Department in accordance with this chapter.

2308.4 The amount of the total rent due under a lease shall not exceed the limits set by the Department pursuant to subsection 2308.1(b). If utilities are included in the total rent, a higher rent may be considered for approval. The HFS, however, will be based on the rent limit set by the Department pursuant to subsection 2308.1(b) and not on the actual rent charged by the landlord which includes a utility fee. The difference between the Department limits and the higher rent will not exceed the amounts in the *U.S. Housing and Urban Development, Section 8 Housing Allowances for Tenant Furnished Utilities and Other Services* schedule, or its replacement schedule, as maintained by the District of Columbia Housing Authority, in effect at the time of lease-up.

2308.5 Rent rates established by the Department pursuant to subsection 2308.1(b) shall be effective for new leases and lease renewals that occur after the effective date of this chapter.

2309 HOME FIRST SUBSIDY PAYMENT

2309.1 The Department shall not provide an HFS if permanent housing that does not require the eligible consumer to relocate is available. Permanent housing may include, but is not limited to, a Housing Choice Voucher or other permanent housing assistance pursuant to a federal or District housing subsidy program.

2309.2 Once the Department has identified funds for an HFS for an eligible consumer, the Department shall notify in writing the consumer, the CSA, and the consumer's personal representative, if applicable, of the availability of the subsidy.

2309.3 Upon written notification by the Department of the availability of HFS funds, the consumer will have ninety (90) days to submit a complete HFS package (described below in subsection 2309.5(d)). The consumer, CSA or authorized representative may request up to three thirty (30) day extensions in which to submit a completed HFS package in accordance with subsection 2317.5.

2309.4 The Department may approve an HFS for an eligible consumer only after the following conditions are met:

(a) The eligibility status and income of the consumer is re-determined by DMH to ensure the consumer remains eligible for the HFS;

(b) A housing unit which complies with the requirements of this chapter is available;

(c) The amount of rent charged for the available unit is consistent with subsection 2308.1(b);

(d) The housing unit has a valid business license and certificate of occupancy, as required by applicable District law;

(e) The eligible consumer, CSA or other mental health provider submits to the Department an HFS Package, which includes:

(1) A Program Agreement signed by the eligible consumer;

(2) A Subsidy Approval Form signed by the landlord;

(3) A completed Housing Pre-Inspection Checklist; and

(f) The Department approves the HFS Subsidy Approval Form in writing.

2309.5 The Department shall render its initial response to the HFS package within ten (10) days of receipt.

2309.6 If the HFS package is approved, the Department shall notify the eligible consumer and CSA or other mental health provider that the HFS is approved by providing the eligible consumer a copy of the HFS Subsidy Approval Form signed by the Department.

2309.7 If the HFS package is not approved due to missing information, the Department shall notify the eligible consumer and CSA or other mental health provider of the reason(s) for disapproval. The consumer and CSA or other mental health provider have ten (10) business days to provide the Department a completed HFS package or the Department may deny the HFS package, and the consumer will be placed back on the waiting list.

2309.8 The Department may authorize payment of an HFS for an eligible consumer only after the eligible consumer, CSA or other mental health provider provides the Department with a copy of the executed lease agreement signed by the eligible consumer and the landlord.

2309.9 The Department shall issue an approved HFS in the form of non-cash payment directly to the landlord.

2309.10 The Department shall only provide an HFS for actual rent obligations incurred by the consumer in a manner consistent with this chapter.

2310 ANNUAL TENANT RE-CERTIFICATIONS

2310.1 The Department or its designee shall examine and re-determine the eligibility status and annual income of each eligible consumer receiving an HFS at least annually, to ensure that HFS are provided to consumers who continue to meet the eligibility requirements.

2310.2 The annual re-certification date shall be the anniversary date of the first day of the month in which the eligible consumer began receiving an HFS.

2310.3 The Department or its designee will also examine and re-determine the eligibility status and annual income of a consumer as necessary, such as if a consumer has a change in income or in household composition prior to his or her annual re-certification date.

2310.4 The Department shall re-determine the eligibility status and income of a consumer who is on the waiting list at the time an HFS becomes available for the consumer.

2310.5 The Department shall send written notice of the re-certification requirement and an appointment date and time for re-certification, to each eligible consumer who is receiving an HFS, and his or her CSA or mental health provider, at least ninety (90) calendar days before the annual re-certification date.

2310.6 If the consumer fails to appear for the first appointment, a second appointment will be scheduled within the 90-day period. If the consumer fails to appear for the second scheduled appointment, absent good cause, the HFS may be suspended in accordance with subsection 2310.9.

2310.7 Each eligible consumer shall sign a Department Authorization to authorize the Department to obtain information necessary to verify continuing eligibility for the HFS.

2310.8 The Department shall continue providing HFS payments during the re-certification process.

2310.9 If the re-certification process is not completed within ninety (90) calendar days of the re-certification date due to a delay caused by an eligible consumer, the Department may suspend an HFS until the re-certification process is finished.

2310.10 The Department shall provide an eligible consumer, his or her CSA and any authorized representative, written notice of a suspension. An eligible consumer may appeal the suspension pursuant to section 2324.

2310.11 If an HFS is suspended pursuant to subsection 2310.9, the Department shall not retroactively pay the suspended amount of the HFS when the re-certification process is finished.

2310.12 The Department shall provide written notification to each consumer, his or her CSA and any authorized representative if the consumer's HFS is terminated as a result of the annual re-certification. A consumer may appeal termination of a subsidy pursuant to section 2324.

2310.13 Termination of the HFS because the consumer's income exceeds thirty percent (30%) of the Area Median Income for the Metropolitan Washington D.C. Area, as defined by the U.S. Department of Housing and Urban Development, will occur when the consumer's average income for the previous 12 months exceeds the 30% threshold.

2310.14 A re-certification that results in a decrease in the amount of the HFS shall be effective thirty (30) calendar days after written notice is provided to an eligible consumer. The eligible consumer may appeal the reduction in the amount of the HFS pursuant to section 2324.

2310.15 A re-certification that results in an increase in the amount of the HFS shall be effective the first day of the month following the completion of the re-certification process. The Department shall provide written notification to each consumer, his or her CSA and any authorized representative, if the consumer's HFS is increased as a result of the annual re-certification.

2311 CONSUMER PARTICIPATION

2311.1 Each applicant and eligible consumer may exercise rights granted pursuant to applicable District laws and regulations, including but not limited to the Department of Mental Health Consumers' Rights Protection Act of 2001, D.C. Official Code § 7-1231.01 *et seq*.

2311.2 Each program participant shall:

(a) Maintain registration for permanent housing assistance through the DCHA (unless ineligible);

(b) Comply with the terms of the lease as required by District law;

(c) Provide proof of annual income required pursuant to subsection 2304.4(b);

(d) Attend an orientation session scheduled by the Department within the first three (3) months of occupancy;

(e) Pay the Total Consumer Rent Payment for which he or she is responsible;

(f) Permit the CSA or other mental health provider access to his or her housing unit on a monthly basis as required for completing a Housing Safety/Quality Checklist and Home Visit Report pursuant to subsection 2207.3;

(g) Notify the Department and CSA of any change in annual income or household composition within fifteen (15) calendar days of the change, so that re-certification and recalculation of the HFS, if necessary, can occur pursuant to section 2310;

(h) Report any damages or problems in the housing unit to the landlord and CSA immediately after occurrence;

(i) Refrain from illegal activities or other acts that endanger the health or safety of the consumer or any other individual on the premises;

(j) Maintain the unit in a clean, safe, and habitable condition;

(k) Provide to the Department and the landlord at least thirty (30) calendar days in advance, a written notice of intent to terminate a lease or relocate from the premises, unless emergency conditions exist pursuant to subsection 2319.3;

(l) Maintain active engagement with a CSA or other mental health provider while receiving an HFS;

(m) Notify his or her representative payee of eligibility for and receipt of an HFS, if applicable; and

(n) Execute and comply with a Program Agreement with the Department, which shall incorporate the rules in this chapter.

2311.3 The consumer is not responsible for payment of the portion of the rent owed to the Landlord that is to be paid through the HFS as covered in the Subsidy Approval between DMH and the Landlord.

2311.4 The consumer shall not be required to pay any additional rent to the Landlord than what is required as the Total Consumer Rent Payment in the lease.

2311.3 If an eligible consumer fails to comply with any paragraph of subsection 2311.2, the Department and CSA shall utilize all available means to engage the consumer and ensure compliance.

2312 CORE SERVICE AGENCY AND OTHER MENTAL HEALTH PROVIDER RESPONSIBILITIES

2312.1 Each CSA or other mental health provider shall:

(a) Designate at least one (1) staff member to coordinate activities for supportive housing and attend monthly housing meetings scheduled and facilitated by the Department's Housing Program;

(b) Make available to the public HFS applications provided by the Department and accept applications from applicants who request an HFS;

(c) Advise each applicant of the eligibility requirements before submitting an application;

(d) Ensure that each applicant signs a Department Consumer Rights Statement and a release of information that allows the Department to obtain or verify information necessary to process an application and determine eligibility. The CSA or other mental health provider shall include the signed Department Consumer Rights Statement and release of information form in the application package submitted to the Department;

(e) Submit each completed application to the Department for review and processing;

(f) Provide the Department with a monthly Housing Safety/Quality Checklist and Home Visit Report, for each eligible consumer receiving an HFS no later than the fifth (5^{th}) day of the subsequent month, in accordance with subsection 2207.3;

(g) Ensure proper documentation is provided to the Department within fifteen (15) calendar days of notification by an eligible consumer of any change in benefits, income, or family composition;

(h) Notify the Department when it becomes aware of any change in the consumer's benefits, income, or household composition;

(i) Provide statistical data and reports related to the HFS as requested by the Department;

(j) Inform the Department of any change in the applicant's or eligible consumer's CSA or other mental health provider and provide the Department a copy of the transition plan;

(k) Ensure supportive housing services are specific to each eligible consumer's rehabilitation needs and treatment or recovery plan; and

(l) Assist the consumers in applying for emergency rental assistance when needed.

2312.2 If requested by an eligible consumer, or if aware of the eligible consumer's need for assistance, each CSA or mental health provider shall:

(a) Assist each applicant with applying for any public benefits for which he or she may be eligible;

(b) Assist each applicant with registering for any housing assistance program for which he or she may be eligible, including but not limited to the DCHA Housing Choice Voucher Program and Public Housing, if requested;

(c) Assist each applicant with completing an HFS application form;

(d) Assist each applicant with completing an HFS request for voluntary relocation form;

(e) Assist an applicant with gathering documentation necessary to establish proof of:

(1) Annual Income; and

(2) Registration or an appointment to register at DCHA for a Housing Choice Voucher;

(f) Submit in a timely manner a completed HFS package to the Department;

(g) Accompany an eligible consumer to an orientation session scheduled by the Department;

(h) Use community resources available to assist each eligible consumer in locating housing that complies with sections 2203 and 2318;

(i) Assist consumers in obtaining any necessary reasonable accommodations;

(j) Assist each eligible consumer with moving into or relocating to an available housing unit after written approval is provided by the Department;

(k) Accompany each eligible consumer to sign the lease; and

(l) Intervene on the consumer's behalf to resolve disputes between the consumer and landlord whenever possible through non-adversarial process involving negotiation, mediation and conciliation. The CSA may refer the consumer and landlord to the Department for additional dispute resolution resources.

2313 LANDLORD PARTICIPATION

2313.1 Each landlord who agrees to accept an HFS on behalf of an eligible consumer shall:

(a) Execute a lease agreement with an eligible consumer that complies with applicable District laws;

(b) Execute a Subsidy Approval Form with the Department, and agree to comply with the rules in this chapter;

(c) Provide habitable housing in the District of Columbia in accordance with applicable federal and District laws relating to accessibility, health and safety;

(d) Agree to hold harmless and release the Department from any and all claims, actions, judgments and attorney fees arising from any damage or necessary repairs to the unit or property;

(e) Accurately report to the Department the date of scheduled move in, move out, the contract rent of each eligible consumer, and if the eligible consumer stops paying rent, the date of the most recent rent payment;

(f) Agree to allow DMH to conduct annual inspections of the unit;

(g) Agree to make necessary repairs identified during the annual inspection, or any other repairs necessary to remedy any housing code violations, within thirty (30) days of notification, to avoid abatement of the HFS;

(h) Notify the Department within five (5) calendar days if an HFS recipient is no longer living in a unit;

(i) Agree to accept an HFS from the Department as late as the 15th day of each month and waive penalties and fees for late payments if received by the 15th of each month;

(j) Agree to not levy fines or penalties against the consumer, or take action against the consumer to terminate the tenancy, for late payment of the HFS;

(k) Notify the Department as well as the consumer when initiating any legal action against the consumer;

(l) Participate in a mediation program before initiating a notice to quit, if an eligible consumer also agrees to participate.

2313.2 A landlord shall neither demand nor accept any rent payment from the eligible consumer in excess of the Total Consumer Rent Payment, i.e. the amount approved by the Department in writing.

2313.3 A landlord shall not take adverse action against an HFS recipient who is a tenant of the property while the Department and the landlord are actively working to resolve verification and payment issues.

2313.4 A landlord who accepts an HFS for a consumer who is no longer a tenant of the property, shall return the HFS to the Department within fifteen (15) calendar days of receipt.

2313.5 Nothing in this chapter shall be construed to create any rights, substantive or procedural, enforceable at law by a landlord in any matter, administrative, civil or criminal against the District.

2314 DEPARTMENT RESPONSIBILITIES

2314.1 The Department shall:

(a) Administer the HFS in accordance with this chapter;

(b) Facilitate a housing meeting with CSA's and other mental health providers at least monthly;

(c) Provide application forms to each CSA, other mental health providers, and to the public;

(d) Provide a written determination of eligibility to each applicant, and his or her CSA or other mental health provider, within fifteen (15) business days of receiving a complete application, as described in section 2304;

(e) In case of an adverse decision as to eligibility, provide each applicant with notice of the right to file a grievance pursuant to , and the right to appeal pursuant to section 2323;

(f) Provide a housing vacancy list at least monthly to each CSA, other mental health provider, and other agency acting on behalf of an eligible consumer, with the understanding by all recipients that the list is not exhaustive and

consumers and mental health providers should not rely solely on the Department vacancy list to locate housing;

(g) Inspect each unit prior to authorization of an HFS;

(h) Conduct, or have its designee conduct, housing code inspections of the unit annually, and upon request of the consumer or landlord;

(i) If requested and appropriate, refer a landlord, CSA, other mental health provider, or eligible consumer to available dispute resolution services;

(j) Determine, in its sole discretion, whether to enter into or dissolve a Subsidy Agreement with a landlord;

(k) Maintain a waiting list in accordance with section 2306;

(l) Review and approve requests for reasonable accommodations;

(m) Process annual and interim recertifications, unless that task has been designated to another agency or designee; and

(n) Provide notice to consumers of the right to review, in accordance with Section 2323, if they are determined to be ineligible for an HFS; and of their right to appeal, in accordance with Section 2324, if their HFS is reduced, suspended or terminated.

2315 DAMAGE TO PROPERTY

2315.1 Each eligible consumer shall be responsible for damages he or she causes to a unit or any common area, in accordance with the terms of the lease. Damages do not include normal wear and tear.

2315.2 An eligible consumer, CSA, or landlord may request that the Department arrange an inspection, by an agency other than the Department, to assess the nature and extent of the damage identified by the landlord or consumer.

2315.3 The Department's payment of an HFS shall not be deemed to create a relationship of partnership, joint venture, or agency between the Department, consumer, and participating landlord. The Department shall not be held liable as a result of the Department's payment of an HFS for the unit for any damage to the unit caused by the consumer.

2316 UTILITY EXPENSE

2316.1 The Department may approve an HFS for a unit that includes utility costs paid for by a landlord as part of the rent rate, only if payment of utilities by the landlord is

evidenced by the lease agreement and the total rent rate does not exceed the Department approved rent rate pursuant to subsection 2308.5.

2316.2 Utility costs are the consumer's responsibility and will not be included in determining the consumer's obligation to pay 30% of household income towards the monthly rent.

2316.3 The Department shall not pay utility costs incurred by any consumer. These costs include(s) water, gas, electric, telephone and cable.

2317 HOUSING SEARCH

2317.1 An eligible consumer may only search for HFS-eligible housing after he or she receives written authorization to begin a housing search from the Department.

2317.2 The Department shall provide at least monthly each CSA and other mental health providers a list of vacant units, with the understanding by all recipients that the list is not exhaustive and consumers and mental health providers should not rely solely on the Department vacancy list to locate housing. Consumers and mental health providers are encouraged to utilize other resources within the public domain to identify appropriate and available housing.

2317.3 Consumers who have been notified that an HFS is available, pursuant to section 2309.2, shall also be provided a list of vacant units.

2317.4 In addition to reviewing the list of vacant units provided by the Department, each eligible consumer, with the assistance of his or her CSA or other mental health provider, if requested, shall use other available community resources to find a unit of the size and rent that meets the criteria set forth in this chapter.

2317.5 If an eligible consumer does not locate housing within ninety (90) calendar days of receiving Department authorization to begin a housing search, the eligible consumer shall be placed on the waiting list in chronological order by the date the ninety (90) day timeline expires.

2317.6 A consumer, CSA, or authorized representative may request an extension of time to search for housing from the Department based on the eligible consumer's needs. An extension shall not exceed thirty (30) days. No more than three (3) thirty (30) day extensions may be granted. If the consumer does not submit an HFS Package to the Department by the extension deadline, the eligible consumer shall be placed on the waiting list in chronological order by the date the extension expired.

2318 ELIGIBLE UNITS

2318.1 The Department may only provide an HFS for units that comply with this section, sections 2203, 2204, and 14 DCMR, Subtitle A, Chapters 1-12, as applicable.

2318.2 The following units shall not be eligible for an HFS:

(a) Units that do not comply with this section, sections 2203, 2204, and 14 DCMR, Subtitle A, Chapters 1-12;

(b) Units owned by the eligible consumer's personal representative;

(c) Units owned by Department employees, employees of the Department's designee, or employees of any organization or entity that has administrative responsibility for the HFS;

(d) Units owned by an individual employee of a CSA;

(e) Units owned by a treating mental health provider as defined in section 2399;

(f) Units on the grounds of educational institutions or units that are available only to students, staff or faculty of an educational institution; and

(g) Nursing homes.

2318.3 The Director may waive for good cause upon the request of a consumer.

2319 VOLUNTARY RELOCATION

2319.1 To request relocation to another housing unit, an eligible consumer shall submit a written request for relocation to their assigned CSA, other mental health provider, or Department. The Department shall approve or deny each request for relocation in writing no later than fifteen (15) business days after the date a complete written request for relocation is received.

2319.2 The Department may provide written approval of an eligible consumer's request to relocate with an HFS only if:

(a) The request was submitted for approval before relocating;

(b) The consumer has not yet relocated;

(c) The consumer is not in arrears of the lease, unless there are housing code violations as determined by DCRA in the current housing unit;

(d) The consumer will not incur penalties under the lease, or has reached an agreement with the landlord for the relocation;

(e) The unit is not damaged and in need of repairs beyond normal

wear and tear due to the consumer's actions;

(f) The rental amount for the new unit is consistent with the Department's rates in accordance with subsection 2308.1; and

(g) The HFS recipient is in good standing and is not currently in violation of any obligations under this chapter.

2319.3 The Department may approve a transfer that does not meet the conditions specified in subsection 2319.2, if the Department determines that:

(a) An emergency situation exists pursuant to subsection 2304.11;

(b) The landlord is in violation of the lease, housing code, or requirements of this chapter, and continued occupancy in the unit jeopardizes the safety or health of the consumer;

(c) The Department has terminated its Subsidy Approval with the landlord; or

(d) The Director determines that unusual circumstances warrant relocation.

2319.4 If a transfer or relocation request is approved, an HFS Package, completed in accordance with subsection 2309.2, for the eligible consumer's new location must be submitted to the Department and approved prior to the consumer moving to the new location.

2320 TEMPORARY ABSENCES

2320.1 If an eligible consumer is absent from the unit for more than thirty (30) calendar days, he or she shall provide notification to the Department, CSA or other mental health provider as soon as possible, but no later than the thirtieth (30th) day of his or her absence.

2320.2 Upon receiving proper notification of an absence, the Department may continue to provide an HFS during a temporary absence of up to ninety (90) calendar days, if the absence is a result of:

(a) Short-term placement in an assisted living facility, nursing home or mental health facility;

(b) Short-term inpatient treatment;

(c) Incarceration;

(d) Family emergency; or

(e) Other circumstances for which the Director has determined that the absence is necessary or appropriate.

2320.3 The Department may approve in writing an extension of no more than thirty (30) additional days of absence on a case by case basis.

2320.4 The Department may terminate an HFS if:

(a) The Department does not receive notification of a temporary absence of more than thirty (30) days from a housing unit;

(b) The absence is for a period of time beyond ninety (90) calendar days, or the date a Department approved extension expires; or

(c) The absence does not result from the conditions set forth in subsection 2320.2.

2320.5 The Department shall provide written notification at least thirty (30) days before termination to each consumer whose HFS is subject to termination pursuant to subsection 2320.4. A consumer may appeal a written notice of termination of a subsidy pursuant to section 2324.

2321 EVICTIONS AND LEASE TERMINATIONS BY LANDLORDS

2321.1 Landlords receiving an HFS may only terminate a program participant's tenancy in accordance with lease terms and applicable District law.

2321.2 The Department may terminate HFS payments to the Landlord when the tenancy is terminated by the Landlord in accordance with the lease and applicable District law. The consumer remains a program participant unless and until the Department terminates the HFS pursuant to sections 2322 - 2324.

2322 TERMINATION OF ASSISTANCE

2322.1 The Department may terminate an HFS for an eligible consumer for any of the following reasons:

(a) The consumer no longer meets the HFS eligibility requirements described in this chapter;

(b) The consumer was offered, and accepted, permanent housing assistance through any other federal or District program or private source;

(c) The consumer fails to permit the CSA or other mental health provider to conduct an in-home visit to his or her housing unit on a monthly basis as required for completing a Housing Safety/Quality Checklist and Home Visit

Report, and repeated attempts by the CSA and Department to work with the eligible consumer to allow visits to his or her housing unit have failed;

(e) The tenant fraudulently misrepresents eligibility for assistance, annual income or other information, with the intention of obtaining unauthorized assistance;

(f) The consumer is absent from the unit, as set forth in subsection 2320.3 or no longer resides in the unit;

(g) The consumer voluntarily relinquishes the HFS; or

(h) The death of a consumer.

2322.2 The Department shall provide a consumer written notice of termination, effective sixty (60) calendar days from the date the Department issues the notification. A consumer may appeal a written notice of termination pursuant to section 2324, or file a grievance in accordance with 22A DCMR Chapter 3.

2322.3 Termination of the subsidy is effective immediately upon notification of a consumer's death.

2322.3 If the Department suspects tenant fraud, it may refer the case to the proper authorities for investigation.

2322.4 If a consumer has an HFS terminated, he or she may re-apply for the HFS in accordance with section 2304, and upon determination of eligibility will be placed on the waiting-list pursuant to section 2306.

2323 RIGHT TO REVIEW

2323.1 The Department may afford an applicant the opportunity to seek review of the Department's decision to deny eligibility for an HFS.

2323.2 An applicant may request a review within fifteen (15) business days of the Department's denial of eligibility.

2323.3 Each request for a review shall contain a concise statement of the reason why the applicant should be determined eligible to receive an HFS, with supporting documentation, if available.

2323.4 Each administrative review shall be conducted by the Director and shall be completed within fifteen (15) business days of the receipt of the applicant's request.

2323.5 The Director shall issue a written decision which sets forth his or her evaluation and resolution of the denial and describes the actions required of the Department and actions required of the applicant in implementing the decision.

2324 RIGHT TO A HEARING

2324.1 A consumer who is receiving an HFS may request a hearing from the Department within thirty (30) business days of receiving written notice of reduction, suspension or termination of an HFS.

2324.2 A timely request for a hearing shall automatically stay the Department's decision to reduce, terminate or suspend an HFS pending the completion of a hearing.

2324.3 Each request for a hearing shall contain a concise statement of the reason why the HFS should not be reduced, terminated or suspended.

2324.4 During the course of the hearing, the appellant shall have the right to:

(a) Present any testimony, witnesses or other evidence, both orally and in writing;

(b) Cross-examine any witness presented by the Department; and

(c) Be represented by counsel, a relative, or other authorized personal representative at the appellant's expense.

2324.5 The recommendation of the hearing officer shall be issued in writing within thirty (30) business days of the hearing and shall include findings of fact based exclusively on evidence presented at the hearing and conclusions of law.

2324.6 The Director shall review the recommendations of the hearing officer and render a final decision within fifteen (15) business days of receiving the hearing officer's recommendations. The Director shall describe the actions required of the Department and actions required of the consumer in implementing the decision.

2324.7 The Director may overrule the hearing officer in instances where he or she does not agree with findings, conclusions or recommendations presented for decision. In such cases, the reasons for the Director's decision shall be specified in writing.

2399 DEFINITIONS

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

Actively Engaged - a consumer interacts with or is provided services from a CSA or other mental health provider at least once every thirty (30) days, or in accordance with the consumer's individual recovery plan.

Application - the Department's Home First Subsidy Application, which determines whether or not a consumer is eligible to receive a home First Subsidy

Authorized personal representative - either of the following:

(a) An individual, whether or not an attorney, designated by a consumer of mental health services to represent the consumer's personal interests with regard to his or her mental health and housing needs, for whom the Department has received a completed and signed Department Authorization to Use or Disclose Protected Health Information; or

(b) An individual specifically authorized by a court of competent jurisdiction as the legal representative or guardian of a consumer, for whom the Department has received a copy of the court authorization.

Annual Income - annual income as defined in Title 24 of the Federal Code of Regulations, Subtitle A, Part 5, Subpart F.

Adjusted Income - adjusted income as defined in Title 14, DCMR subsection 6099.1.

Community Residence Facility - a licensed residence which provides twenty four (24) hour on-site supervision, lodging, and meals in a supportive, homelike environment for individuals who require supervision within a structured environment that can include specialized services such as medical, psychiatric, nursing, behavioral, vocational, social, or recreational services.

Consumer - a person 18 years of age or older eligible to receive mental health services and mental health supports as defined in § 102 of the Act (D.C. Official Code § 7-1131.02(18) and (19)).

Core Services Agency or CSA - a community-based provider of mental health services and mental health supports that is certified by DMH in accordance with rules published in the D.C. Municipal Regulations, and acts as the clinical home for consumers of mental health services by providing a single point of access and accountability for mental health rehabilitation services.

Department Authorization to Use or Disclose Protected Health Information or Department Authorization - a document prepared and distributed by the Department of Mental Health which is signed by a consumer to allow the Department and other service providers to share specific protected health information. For purposes of this chapter, the Department Authorization may be

used to verify income and eligibility requirements necessary to apply for and receive an HFS.

Department Consumer Rights Statement - a document prepared and distributed by DMH to all Mental Health providers which describes all the consumer rights and protections available under federal and District laws and regulations.

Director - The Director of the District of Columbia Department of Mental Health.

District of Columbia Housing Authority or DCHA - The agency of the District of Columbia to whom authority and responsibility for the implementation and enforcement of Title 14 has been delegated by the Mayor.

DMH or Department - the District of Columbia Department of Mental Health.

Eligible Consumer - a consumer who the Department determines is eligible for an HFS pursuant to section 2305.

HFS Application Package - the documents necessary to apply for participation in the DMH housing subsidy program to become an "eligible consumer."

HFS Approval Package - the documents necessary to initiate payment of the subsidy to the landlord, once the eligible consumer has been notified that a subsidy is available.

Homeless Consumer - a consumer who:

(a) Lacks a fixed, regular, and adequate nighttime residence; or

(b) Has a primary nighttime residence that is:

(1) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(2) an institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) Is institutionalized with no home to return to upon discharge.

Landlord - any person who, alone or jointly or severally with others, meets either of the following criteria:

(a) Has legal title to any building arranged, designed, or used (in whole or in part) to house one or more habitations; or

(b) Has charge, care, or control of any building arranged, designed or used (in whole or in part) to house one or more habitations, as owner or agent of the owner, or as a fiduciary of the estate of the owner or any officer appointed by the court. Any persons representing the actual owner shall be bound to comply with the terms of this chapter, and any notice or rules and regulations issued pursuant to this chapter, to the same extent as if he or she were the landlord.

Other mental health provider - a subprovider, specialty provider, or free standing mental clinic that is certified by and receives funds from the Department of Mental Health, or a mental health professional or mental health entity that enters into a written agreement with the Department which describes each party's responsibilities specific to housing.

Program Agreement - a document signed by the Program participant which outlines the responsibilities of the consumer receiving an HFS.

Program Participant - a consumer currently receiving an HFS.

Project-based subsidy - a subsidy that is attached to a specific unit, regardless of who resides in that unit.

Serious and Persistent Mental Illness or "SPMI" - a diagnosable mental, behavioral or emotional disorder which substantially impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria with the Diagnostic and Statistical manual of Mental Disorders - IV ("DSM-IV") or its International Classification of Diseases, Ninth Revision, Clinical Modification ("ICD-9-CM") equivalent with the exception of DSM-IV "V" codes, substance abuse disorders, mental retardation and other developmental disorders, or seizure disorders, unless those exceptions co-occur with another diagnosable mental illness.

Specialty provider - a community-based organization MHRS provider certified by DMH to provide specialty services either directly or through contract. Each specialty provider shall enter into an affiliation agreement with each DMH-certified CSA.

Subprovider - a community-based organization certified by DMH to provide one or more core service(s) through an affiliation agreement with a CSA.

Unit - any habitable room or group of habitable rooms located within a residential building and forming a single unit which is used or intended to be used for living, sleeping, and the preparation and eating of meals.

Utility - water, electricity, gas or other fuels, sewer or refuse service.

Subsection 2201.3 of Chapter 22 of Title 22A DCMR is deleted in its entirety and amended to read as follows:

2201.3 Each CSA providing housing support, either directly or through a specialty or subprovider, shall notify, in writing, each consumer receiving housing support of the need for the CSA to conduct initial, and thereafter monthly, inspections in compliance with the requirements of this rule. This notification must include provision of a copy of the DMH provided Housing Safety/Quality Checklist and Home Visit Report that is used to evaluate housing. Other housing inspection forms, such as those required for subsidy programs, may be substituted at the sole discretion of DMH.

Section 2205 of Chapter 22 of Title 22A DCMR is deleted in its entirety and amended to read as follows:

2205 TRAINING

2205.1 DMH shall provide training to persons who are responsible for completing the DMH Housing Safety/Quality Checklist and Home Visit Report.

2205.2 Each person who completes the checklist and report shall attend mandatory DMH Housing Safety/Quality Training prior to monitoring housing and shall attend annual refresher training.

Section 2207 of Chapter 22 of Title 22A DCMR is deleted in its entirety and amended to read as follows:

2207 HOME INSPECTIONS BY CORE SERVICES AGENCIES

2207.1 The CSA with which the consumer is enrolled for individual recovery planning shall evaluate all DMH supported housing by using the DMH Housing Safety/Quality Checklist before the consumer enters into the lease. If the consumer enters a lease prior to the CSA's knowledge, the CSA shall evaluate the housing as soon as it becomes aware that the consumer has entered a lease. The consumer, or parent or guardian for children and youth as appropriate, shall hold the lease for housing that receives DMH subsidized rents for any type of housing arrangement covered by these rules.

2207.2 Conversion to consumer held leases as new consumers are housed and as leases come up for renewal shall commence within six (6) months of adoption of these rules.

2207.3 Each CSA with which the consumer is enrolled shall complete the Housing Safety/Quality Checklist and Home Visit Report at least monthly beginning from

the date that the lease is secured, or the date that mental health housing supports are initiated for a consumer already in housing, and on an as needed basis.

2207.4 Each CSA, in order to assist with developing and improving activities of daily living, shall monitor the housing of its enrolled consumers who live in housing directly provided by the CSA, receive a rental subsidy, receive assistance from the CSA in locating or arranging for the residence, receive community supports from or through the CSA in the consumer's home (other than a private family home or licensed community residence facility) or live in housing developed or provided by DMH funding.

2207.6 The completed Housing Safety/Quality Checklists and Home Visit Report shall be filed in the consumer's clinical record at the CSA.

2207.7 Each CSA shall submit copies of all completed Housing Safety/Quality Checklists with a brief summary cover sheet to the DMH Office of Accountability no later than fifteen (15) business days following the end of each quarter. Each quarter is based on the fiscal year which begins on October 1.

2207.8 Each CSA shall submit original Home Visit reports to the DMH Housing Office no later than ten (10) business days following the last day of the calendar month.

Section 2299 of Chapter 22 of Title 22A DCMR is amended by deleting the definition of "Quarterly Reporting".

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Suzanne Fenzel, Assistant Attorney General, Office of General Counsel for the Department of Mental Health at 64 New York Avenue, N.E., 4th Floor, Washington, D.C. 20002, or e-mail Suzanne.Fenzel@dc.gov. Copies of the proposed rules may be obtained from www.dmh.dc.gov or from the Department of Mental Health at the address above.

DEPARTMENT OF MOTOR VEHICLES

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in section 1825 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 50-904), sections 6, 7, and 13 of the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1121,1125; D.C. Official Code §§ 50-2201.03**,** 50-1401.01, and 50-1403.01), section 5 of the Uniform Anatomical Gift Revision Act of 2008, effective April 15, 2008 (D.C. Law 17-145; D.C. Official Code § 7-1531.04), sections 5(a) and 79 of the Motor Vehicle Safety Responsibility Act of the District of Columbia, approved May 25, 1954 (68 Stat. 122, 139; D.C. Official Code §§ 50-1301.03(a) and 50-1301.79), section 107 of the Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.07), sections 2(d)(2A) and 3(a) of Title IV of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 680; D.C. Official Code §§ 50-1501.02(d)(2A) and 50-1501.03(a)) and Mayor's Order 2007-168, dated July 23, 2007, hereby gives notice of the intent to adopt the following rulemaking that will amend Chapters 1 (Issuance of Driver's Licenses), 3 (Cancellation, Suspension, or Revocation of Licenses), 4 (Motor Vehicle Title and Registration), 7 (Motor Vehicle Equipment), 8 (Safety Responsibility), 30 (Adjudication and Enforcement), and 99 (Definitions) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR).

The proposed rules would: limit the number of times an applicant may take the knowledge and road tests; increase the fee for failure to appear at a scheduled road test; make conforming changes to be consistent with the requirements of the Uniform Anatomical Gift Act; conform the District's motor vehicle regulations with recent statutory and regulatory amendments made by the Department of Motor Vehicles Driver License, Special Identification Card and Vehicle Inspection Amendment Act of 2008, effective September 15, 2008 (D.C. Law 17-219; 55 DCR 7662) by extending the terms of driver's licenses and non-driver special identification cards from five (5) to eight (8) years; mandate driver license revocation for conviction for operating a vehicle while impaired by the consumption of intoxicating liquor; authorize the Director to suspend a driver's license of a District resident whose driving privileges have been suspended by another jurisdiction; add a new section governing the approval of vintage tags on historic vehicles; set the safety requirements for low speed vehicles; clarify that an individual requesting a DMV record pursuant to a court-issued subpoena will be subject to the fees applicable to DMV record requests; allow the Director to revoke a certificate of self-insurance for failing to follow District laws applicable to self-insurers; add the District Department of Transportation as an agency authorized to issue moving and non-moving violations; and add the definition for the term "low-speed vehicle".

Final rulemaking action shall be taken in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Title 18 (Vehicles and Traffic) of the DCMR is amended as follows:

Chapter 1 (Issuance of Driver's Licenses) is amended as follows:

1. Section 103 (Applications for a Driver's License or Learner's Permit) is amended as follows:

   Section 103.9 is amended by striking "ten dollars ($ 10)" and inserting "thirty dollars ($30)".

2. Section 104 (Examinations of Applicants for Driver's Licenses), is amended as follows:

   a. Section 104.10 is amended by striking the phrase "three (3) examinations within a twelve (12) month period" and inserting the phrase "three (3) written examinations and three (3) road tests within a twelve (12) month period" in its place.

3. Section 108 (Notations on Licenses: Anatomical Gift Act), is amended as follows:

   a. Section 108.1 is amended by striking the phrase "on or after the effective date of the Uniform Anatomical Gift Revision Act of 2008, passed on 2nd reading on February 5, 2008 (Enrolled version of Bill 17- 58)" and inserting the phrase "on or after April 15, 2008" in its place.

   b. Section 108.2 is amended by striking the phrase "the Uniform Anatomical Gift Revision Act of 2008, passed on 2nd reading on February 5, 2008 (Enrolled version of Bill 17-58)" and inserting the phrase "the Uniform Anatomical Gift Revision Act of 2008, effective April 15, 2008 (D.C. Law 17-145; D.C. Official Code § 7-1531.01 *et seq.*) ("Uniform Anatomical Gift Revision Act")" in its place.

   c. Section 108.3 is amended by adding the phrase "or otherwise authorized a statement or symbol indicating that the donor has made an anatomical gift" after the phrase "signed an anatomical gift card".

   d. Section 108.4 is amended by striking the phrase "the Uniform Anatomical Gift Revision Act of 2008, passed on 2nd reading on February 5, 2008 (Enrolled version of Bill 17-58)" and inserting the phrase "the Uniform Anatomical Gift Revision Act" in its place.

4. Section 110 (Renewal of Driver's Licenses) is amended as follows:

   a. Section 110.1 is amended to read as follows:

      110.1 Unless the Director provides otherwise, the initial term of a driver's license issued after August 16, 2008 and the next renewal term of any driver's license issued before that date, shall expire on the licensee's birth date occurring in the eighth

(8th) year of the license term, and may thereafter be renewed for up to an eight (8)-year period ending on the licensee's birth date.

b. Section 110.3 is amended to read as follows:

110.3 The Director may extend the validity of a driver's license without an additional fee for such additional period or periods as the Director, in his or her discretion, may; provided, that such additional period or periods shall not exceed eight (8) years in the aggregate.

4. Section 112 (Special Identification Cards) is amended as follows:

a. Section 112.14 is amended by striking the phrase "shall not exceed five (5) years" and inserting the phrase "shall not exceed eight (8) years" in its place.

Chapter 3 (Cancellation, Suspension, or Revocation of Licenses) is amended as follows:

1. Section 301 (Mandatory Revocations) is amended as follows:

a. Section 301.1(a) is amended as follows:

i. Insert the phrase "or while the ability to operate a vehicle is impaired by the consumption of intoxicating liquor;" at the end.

2. Section 304 (Suspension for Failure to Comply Answer with Traffic Citations) is amended by adding new sections 304.4 and 304.5 to read as follows:

304.4 Pursuant to § 300.7, or under applicable law, the Director may suspend, without a hearing, the license of a resident of the District whose driving privileges have been suspended in another jurisdiction. The Director shall provide at least ten (10) days notice of the effective date of the suspension in the District and shall provide such notice by mail or email to the resident's address as indicated on the Department of Motor Vehicle records.

304.5 The suspension authorized in subsection § 304.4 shall terminate upon proof satisfactory to the Director that the licensee has been reinstated to operate a motor vehicle in the other jurisdiction.

Chapter 4 (Motor Vehicle Title and Registration) is amended as follows:

A new section 435, entitled "Vintage Tags", is added to read as follows:

435 VINTAGE TAGS

435.1 Vintage license tags shall be permitted on historic motor vehicles in place of historic motor vehicle license tags if approved by the Director pursuant to this section.

435.2 A person who seeks to display vintage license tags shall submit an application to the Director by letter, or at the discretion of the Director, by email or through the Department's website.

435.3 The application shall include the applicant's name, address, vehicle information number ("VIN"), make, model, year of manufacture, and a color photograph of the vintage tag. The Director may request the applicant to appear in person with the vintage tag for the purposes of inspection.

435.4 The Director may deny the application if:

(a) The tag does not meet reflective or safety standards as set forth in §§ 422.5 and 422.8;

(b) The tag is illegible;

(c) The letters, numbers, or combination of letters and numbers of the tag is the same as the configuration of letters, numbers, or combination of letters and numbers of any tag either issued or for which application has been made pursuant to § 423;

(d) The Director is unable to verify the tag is from the same year as the model year of the historic vehicle; or

(e) The Director concludes that the use of the vintage tags would adversely impact public safety.

435.5 The Director may rescind or revoke the use of a vintage tag for violation of any District of Columbia law or regulation relating to motor vehicles, or for any reason described in § 435.4.

Chapter 7 (Motor Vehicle Equipment) is amended as follows:

A new section 757, entitled "Low-Speed Vehicles", is added to read as follows:

757 LOW-SPEED VEHICLES

757.1 Low-speed vehicles shall comply with the safety standards set forth in Federal Motor Safety Standard No. 500 at 49 C.F.R. § 571.500.

757.2 The manufacturer's certificate of origin shall clearly identify the vehicle as a low-speed vehicle.

757.3 Aftermarket conversion of manufactured non-compliant vehicles to low-speed vehicles not in compliance with Federal Motor Vehicle Safety Standards is prohibited.

Chapter 8 (Safety Responsibility) is amended as follows:

1. New subsections 801.11 and 801.12 are added to read as follows:

801.11 A request for a certified or uncertified abstract pursuant to a subpoena shall be subject to the fee specified in this section, except if the subpoena is submitted by a governmental entity.

801.12 A fee shall not be imposed for a certified or uncertified abstract if the abstract is requested by a person filing an in forma pauperis petition.

2. Section 807.6 is amended as follows:

a. Paragraph (c) is amended by striking the word "and".

b. Paragraph (d) is amended by striking the period at the end and inserting the phrase "; and" in its place.

c. A new paragraph (e) is added to read as follows:

(e) Failure to comply with all District laws applicable to self-insurers.

Chapter 30 (Adjudication and Enforcement) is amended as follows:

1. Section 3003 (Issuance of Moving and Non-Moving Violations)

a. Subsection 3003.1 is amended as follows:

i. Paragraph (l) is amended by striking the word "and".

ii. Paragraph (m) is amended by striking the period at the end and inserting the phrase "; and" in its place.

iii. A new paragraph (n) is added to read as follows:

(n) District Department of Transportation.

Chapter 99 (Definitions) is amended as follows:

Section 9901 (Definitions) is amended by inserting the following new definition:

> Low-speed vehicle – a four (4)-wheeled motor vehicle whose speed attainable in one (1) mile is more than twenty (20) miles per hour and not more than twenty-five (25) miles per hour on a paved level surface and which has a gross vehicle weight rating of less than three thousand (3,000) pounds.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to David Glasser, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024. 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.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 1056, IN THE MATTER OF THE APPLICATION OF POTOMAC ELECTRIC POWER COMPANY FOR AUTHORIZATION TO ESTABLISH A DEMAND SIDE MANAGEMENT SURCHARGE AND AN ADVANCE METERING INFRASTRUCTURE SURCHARGE AND TO ESTABLISH A DSM COLLABORATIVE AND AN AMI ADVISORY GROUP

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Official Code,[1] of its intent to act upon the Application of the Potomac Electric Power Company ("Pepco" or "Company")[2] in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register.*

2. On April 1, 2010, Pepco filed its proposed Dynamic Pricing Rate Design and Dynamic Pricing Plan with new tariff pages, including a new Dynamic Pricing Rider DP.[3] In its proposal, the Company is seeking Commission approval of the following items: (1) Pepco's proposed dynamic pricing tariff designs; (2) the Company's applicability of its proposed dynamic pricing tariffs; (3) Pepco's currently proposed phase-in timeline for implementing dynamic pricing; and (4) the establishment of a District of Columbia dynamic pricing customer education working group to assist in the development of necessary customer communications.[4]

3. The Company states that its proposed plan is to introduce dynamic pricing to its Standard Offer Service ("SOS") District of Columbia customers on a phased-in basis with an initial group of 5,000 residential customers placed on the rate beginning in 2012 after Advanced Metering Infrastructure ("AMI") metering installation in the District of Columbia has been substantially completed, which is expected to be completed by year-end 2011.[5] According to the Company, all eligible SOS residential customers will have the opportunity to be billed under dynamic pricing beginning in 2013, and dynamic pricing for non-residential SOS customers will

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1 D. C. Code, § 2-505 (2001).

2 *Formal Case No. 10*56, *In the Matter of the Application of the Potomac Electric Power Company for Authorization to Establish a Demand Side Management Surcharge and an Advance Metering Infrastructure Surcharge and to Establish a DSM Collaborative and an AMI Advisory Group* ("*F.C. 1056*"), the Potomac Electric Power Company Dynamic Pricing Rate Design and Dynamic Pricing Plan for AMI in the District Of Columbia, filed April 1, 2010 ("Pepco's Dynamic Pricing Plan and Tariffs").

3 *F.C. 1056*, Pepco's Dynamic Pricing Plan and Tariffs.

4 *Id*. at 3.

5 *Id*. at 5.

be phased-in with an initial group of 2,000 customers beginning in 2013.[6] The Company states that all non-residential SOS customers will have the opportunity to be billed under dynamic pricing rates in 2014.[7] Pepco mentions that its gradual phase-in of dynamic rates is intended to ensure that the necessary billing systems revisions operate smoothly and that required customer communications are carefully tested and refined.[8] The Company proposes that a critical peak rebate version of dynamic pricing be initially offered on a default basis to eligible SOS customers to ensure the rapid penetration of the rate structure.[9] Pepco proposes that, when dynamic pricing becomes available for a customer, it will permit each SOS customer to select an alternative rate either a critical peak pricing rate or reversion back to the pre-existing non-dynamic SOS rate.[10] Pepco states that its dynamic pricing rate design and dynamic pricing plan proposals were formulated from the experience gained from the District of Columbia's award-winning PowerCentsDC smart meter pilot program.[11]

4. The Company states the proposed Dynamic Pricing program is comprised of two separate dynamic price offerings, the Critical Peak Pricing option ("CPP") and the Critical Peak Rebate option ("CPR").[12] Pepco submits that both options are designed to give customers strong incentives to reduce consumption during the times when the cost of producing electricity is the highest.[13] The Company states that its proposed Dynamic Pricing Rider "DP" will apply to all District of Columbia customers served under those schedules that receive SOS and have AMI meters and that it modifies the SOS Generation portion of the customer's bill.[14] According to Pepco, customers placed on Rider "DP" will be offered three billing options: CPP, CPR, or if the customer is unwilling to participate in Dynamic Pricing, flat SOS pricing.[15] The Company asserts that under CPP, the SOS Generation Service portion of the customer's bill is modified by pricing all kilowatt-hours consumed during the Critical Peak Period designated by the Company at the prices stated in the option CPP Critical Peak Price table, instead of the normally applicable SOS rate.[16] Pepco submits that for all other hours, the generation component is priced at the applicable Rider SOS rate reduced by the dollar value per kWh amount shown in the Adjustment

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6 *Id*. at 5.

7 *Id*.

8 *Id*.

9 *Id*.

10 *Id*.

11 *Id*.

12 *Id*. at 12.

13 *Id*.

14 *Id*.

15 *Id*.

16 *Id*. at 13.

column of the price table.[17] The Company states that under CPR, the SOS Generation Service portion of the customer's bill is modified by a credit calculated by applying the price shown in the CPR table to the difference between actual kWh consumption and a Customer Base Line ("CBL") level of consumption during the Critical Peak Period designated by the Company.[18] Pepco submits that there will be no penalty if the customer's usage is above the CBL.[19] Finally, the Company states that the CBL will be calculated as the hourly average of each individual customer's use during similar high cost hours for the three days with the highest use during the prior 30-day period.[20]

5. Accordingly, Pepco seeks authority to revise and put into service the following tariff pages contained in its April 1, 2010 tariff filing:

POTOMAC ELECTRIC POWER COMPANY, P.S.C. of D.C. No. 1

Original Page No. XX.1

Original Page No. XX.2

Original Page No. XX.3

6. The Application is on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday or may be viewed on the Commission's website at www.dcpsc.org. Copies of the tariff pages are also available upon request, at a per-page reproduction cost.

7. All persons interested in commenting on Pepco's proposed Dynamic Pricing Rate Design and Dynamic Pricing Plan may submit written comments and reply comments no later than thirty (30) and forty-five (45) days, respectively, after publication of this NOPR in the *D.C. Register*, to Dorothy Wideman, Commission Secretary, at the above address. After the comment period has expired, the Commission will take final action on Pepco's Application.

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17 *Id*.

18 *Id*.

19 *Id*.

20 *Id*.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 10-07
Text Amendment - Additional Flexibility for Eating and Drinking Establishments within the ARTS Overlay District.

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in §§ 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798, as amended; D.C. Official Code §§ 6-641.01 and 6-641.03) hereby gives notice of its intent to take final rulemaking action to adopt the following amendments to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* or thirty days following referral of this amendment to the National Capital Planning Commission, whichever occurs last.

If adopted, the proposed rules would amend § 1901.6 to change the overlay-wide method of measurement to a square by square method (excluding any area of right-of-way), establish at 50% the maximum amount of linear foot frontage within each square fronting on 14th Street or U Street, N.W that can be occupied by eating and drinking establishments, and clarify that this limit applies only to ground floor frontage. A chart is also added to the subsection that specifies the total street frontage occupied by each affected lot. The Office of Planning will verify these measurements prior to the public hearing on these proposed rules. Notice of that hearing is given elsewhere in this volume.

The Commission also proposes to amend §1906.1. That provision would authorize the BZA to grant relief from any of the other provisions of the overlay. The amendment would disallow such relief from the 50% limit, leaving only the grant of a variance available. In addition, the subsection would be amended to specify that the BZA, when considering whether to grant a special exception from the remaining overlay provisions, should apply the criteria stated in paragraphs (c) or (d), concerning architectural concept and vehicular access, only if the criteria are relevant to the relief sought.

The proposed amendments to the Zoning Regulations, Title 11 DCMR, are as follows:

Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, is amended as follows

1. Section 1901, USE PROVISIONS, subsection 1901.6 is amended to read as follows:

1901.6 Eating and drinking establishments shall be subject to the following limitations:

(a) No portion of an eating and drinking establishments located on the ground floor is permitted to occupy more than fifty percent (50%) of the linear frontage of each individual block-face, not including public streets or alleys, along either 14th Street NW or U Street NW.

(b) An eating and drinking establishments not located on the ground (street) level of a building shall not count towards the 50% limit.

(c) An entrance to an eating and drinking establishment that is not located on the ground (street) level shall not count towards the 50% limit.

(d) The linear frontage of each block-face subject to this provision is as follows:

14th Street, N.W.		U Street, N.W.	
Square	Frontage (feet)	Square	Frontage (feet)
202	222.5	204	305.3
203	310.0	205	618.0
204	320.0	236	523.4
205	430.6	237	538.5
206	399.8	273	225.3
207	450.1	274	340.9
208	400.0	304	192.2
209	380.0	305	186.0
210	203.5	332	189.7
211	304.2	333	187.7
234	253.1	359	96.8
235	310.0	360	230.4
236	320.0	361	251.7
237	380.0		
238	450.0		
239	200.0		
240	391.0		
241	450.0		
242	363.1		
242N	154.5		

2. Section 1906, SPECIAL EXCEPTIONS, subsection 1906.1, is amended by striking the phrase "based upon the following criteria" and inserting in its place the phrase "based upon the following criteria; except that the Board shall apply criteria (c) and (d) only if relevant to the relief sought", so that the provision will read as follows:

1906.1 The Board of Zoning Adjustment may grant exceptions under § 3104 from

any of the requirements or limits of the ARTS District other than § 1901.6 based upon the following criteria; except that the Board shall apply criteria (c) and (d) only if relevant to the relief sought:

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.