

OFFICE OF THE CITY ADMINISTRATOR
CONCEALED PISTOL LICENSE REVIEW BOARD

NOTICE OF FINAL RULEMAKING

The City Administrator, pursuant to the authority provided by section 908(d) of the Firearms Regulations Control Act of 1975 (Act), effective June 16, 2015 (D.C. Law 20-279; D.C. Official Code § 7-2509.08(d) (2018 Repl.)), and Mayor’s Order 2015-036, dated January 9, 2015, hereby gives notice of the adoption of the following amendments to Sections 1210 (Summary Disposition) and 1218 (Burden of Proof) of Chapter 12 (Concealed Pistol Licensing Review Board) of Title 1 (Mayor and Executive Agencies) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking amends 1 DCMR § 1218, which establishes the burdens of production and persuasion in appeals of adverse actions related to concealed pistol licenses issued by the Chief of the Metropolitan Police Department (“Chief”), by confirming: the appellant bears the burdens of production and persuasion; the Concealed Pistol License Review Board (“Board”) will apply a “preponderance of the evidence” standard to resolve disputed facts; and the Board will otherwise defer to the Chief’s exercise of discretion. The rulemaking also amends 1 DCMR § 1210 to make conforming changes to reflect these standards.

A Notice of Emergency and Proposed Rulemaking was published in the *District of Columbia Register* on August 6, 2021, at 68 DCR 7779. No comments were received. A few technical changes were made to the text of the rules as proposed:

- First, subsection 1218.2 was amended to make explicit that “[t]he Board reviews disputed facts de novo.”
- Second, in subsection 1218.3, the phrases “[o]nce it has resolved disputed facts,” and “those facts to,” were deleted as superfluous and to eliminate any suggestion that the Board does not apply a de novo standard in the process of resolving disputed facts, consistent with subsection 1218.2.
- Third, section 1210 was revised to incorporate—rather than reiterate—the burden of proof standard set forth in section 1218. This ensures that the operative language appears in only one section of the regulations, thereby avoiding inconsistencies in the event of future amendments. Section 1210 also was revised to make explicit that the provisions of section 1221 apply to summary dispositions, which are final, appealable decisions of the Board.
- Finally, the prefatory text to the amendment to subsection 1210.2 was revised to clarify that the first subsection of Section 1210 that is numbered 1210.2 is being amended.

The City Administrator adopted the rules as final on October 8, 2021. The rules will become effective on the date of publication of this notice in the *District of Columbia Register*, and will supersede the Emergency Rulemaking.

Chapter 12, CONCEALED PISTOL LICENSING REVIEW BOARD, of Title 1 DCMR, MAYOR AND EXECUTIVE AGENCIES, is amended as follows:

Section 1210, SUMMARY DISPOSITION, is amended as follows:

The first Subsection 1210.2 is amended to read as follows:

1210.2 If the Board determines that an appeal may be appropriate for summary disposition, the Board shall send a notice to the applicant that:

- (a) Contains the materials submitted to the Board by the Chief; and
- (b) Advises the appellant that he or she has ten (10) days from receipt of the notice to submit any written argument to the Board, and serve a copy on the Chief, concerning:
 - (1) The existence of any material fact in dispute that would require a contested case hearing, and why each such fact is material to the dispute; and/or
 - (2) If there are no material facts in dispute, why the Chief's action is not rationally supportable and could not have been arrived at reasonably.

New subsections 1210.5 and 1210.6 are added to read as follows:

1210.5 [Reserved]

1210.6 Any final decision issued under this section shall apply the applicable burden of proof under Section 1218 and shall comply with the provisions governing final decisions under Section 1221.

Section 1218, BURDEN OF PROOF, is amended to read as follows:

1218 BURDEN OF PROOF

1218.1 An appellant challenging an adverse action shall have the burden of production of evidence and the burden of persuasion in any appeal before the Board.

1218.2 The Board reviews disputed facts de novo. An appellant shall prove disputed material facts by a preponderance of the evidence. Preponderance of the evidence shall mean the degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a disputed fact more probably true than untrue.

1218.3 The Board shall defer to the Chief's exercise of discretion in applying the statutory and regulatory standards for licensure, provided that it is rationally supportable and could have been arrived at reasonably, and shall include an explanation in its decision as to why it has or has not upheld the Chief's determination under that standard.