

OFFICE OF THE CITY ADMINISTRATOR

NOTICE OF FINAL RULEMAKING

The City Administrator, on behalf of the Mayor, pursuant to the authority under Title IX of the Firearms Regulations Control Act of 1975 (Act), effective January 6, 2015 (D.C. Act 20-564; 62 DCR 866 (January 23, 2015)), and any substantially similar emergency, temporary, or permanent versions of this legislation, and Mayor’s Order 2015-036, dated January 9, 2015, hereby gives notice of the adoption of an amendment to Chapter 12 (Concealed Pistol Licensing Review Board) of Title 1 (Mayor and Executive Agencies) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking is necessary to amend procedures for the Concealed Pistol Licensing Review Board (Board) to provide for the conduct of appeals by summary disposition for any denials of an application for a concealed pistol license issued by the Chief of the Metropolitan Police Department (Chief), where those appeals do not require an oral evidentiary hearing because the appeal does not include a dispute concerning a material fact. *See Kourouma v. FERC*, 723 F.3d 274, 278 (D.C. Cir. 2013). Additionally, the rulemaking amends the procedures for calculating time when required acts are done by mailing, and establishes procedures for the Board to stay an appeal and submit any issue to the Chief or the appellant for the Chief or appellant’s consideration, documentation, or explanation.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* at 62 DCR 2095 on February 13, 2015 and a Notice of Second Emergency and Proposed Rulemaking was published in the *D.C. Register* at 62 DCR 5525 on May 1, 2015. No comments were received to the May 1, 2015 notice and no changes have been made to the rulemaking.

The rules were adopted as final on August 10, 2015 and will become effective upon publication in the *D.C. Register*.

A new Chapter 12, CONCEALED PISTOL LICENSING REVIEW BOARD, is added to Title 1 DCMR, MAYOR AND EXECUTIVE AGENCIES, to read as follows:

CHAPTER 12 CONCEALED PISTOL LICENSING REVIEW BOARD

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1200 GENERAL PROVISIONS

- 1200.1 The purpose of this chapter is to implement Section 908 of the Firearms Regulations Control Act of 1975, effective January 6, 2015 (D.C. Act 20-564; 62 DCR 866 (January 23, 2015)), to establish review and hearing procedures for the Concealed Pistol Licensing Review Board (Board) created by the Act.
- 1200.2 In any conflict within this chapter between general and specific provisions, the specific provisions shall govern.
- 1200.3 In any conflict between this chapter and any provision of the Act, the Act shall govern.
- 1200.4 Any reference to “the Board” shall mean the Concealed Pistol Licensing Review Board created by the Act, or any hearing panel authorized to issue summary dispositions, conduct hearings, and render final decisions by the Act.
- 1200.5 The Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

1201 COMPUTATION OF TIME

- 1201.1 In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

- 1201.2 The last day of the computed period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- 1201.3 When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation unless an applicable statute expressly provides otherwise.
- 1201.4 For the purposes of this chapter, “legal holiday” means the following:
- (a) New Year’s Day;
 - (b) Martin Luther King Jr.’s Birthday;
 - (c) President’s Day;
 - (d) District of Columbia Emancipation Day;
 - (e) Memorial Day;
 - (f) Independence Day (4th of July);
 - (g) Labor Day;
 - (h) Columbus Day;
 - (i) Veterans Day;
 - (j) Thanksgiving Day;
 - (k) Christmas Day; and
 - (l) Any other day designated a legal holiday by the President of the United States or the District of Columbia government.
- 1201.5 When an act is required or allowed to be done at or within a specified time, the Board may at any time in its discretion and for good cause shown, do either of the following:
- (a) With or without motion or notice, order the period enlarged, if a request for enlargement of time is made before the expiration of the period originally prescribed or as extended by a previous order; or
 - (b) Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

1201.5 When an act is required to be taken within a specified period of time after the receipt of a notice, pleading, or filing, and the notice, pleading, or filing is sent by United States Mail, commercial carrier, or District of Columbia inter-agency mail, the period of time within which the required act must be taken shall begin five (5) calendar days after the date such mailing is shown to have been sent. A party may provide proof that a document has been sent by postmark, proof of service, or other evidence.

1201.6 Notwithstanding Subsection 1201.5, an appellant's request for appeal shall be considered timely filed if it is physically received by the Board within fifteen (15) days after the date of the receipt of the notice of the Chief's final action from which the appeal is being requested.

1202 APPEALS

1202.1 Within the time periods established by the Act, a person may file an appeal with the Board if the Chief of the Metropolitan Police Department (Chief) has:

- (a) Denied the person's application or renewal application for a license to carry a concealed pistol in the District pursuant to the Act; or
- (b) Issued a limitation or revocation of a license to carry a concealed pistol pursuant to the Act.

1202.2 An appeal shall be submitted in writing to the Board at the address contained in any notice of final action of the Chief that was issued to the person. The request for appeal shall be filed within fifteen (15) days after the date of the appellant's receipt of the notice of the Chief's final action from which the appeal is being requested. The request for appeal may be filed by hand delivery, electronic mail, or by U.S. Mail or other delivery service, provided that the request for appeal is received by the Board within fifteen (15) days after the date of the appellant's receipt of the notice of the Chief's final action.

1202.3 The appeal need not follow any specific format, although blank forms may be created and made available by the Board. An appeal should contain the following information:

- (a) A short description of the Chief's final action being appealed;
- (b) A description of reasons why the Chief's final action was in error and the relief sought from the Board;
- (c) A copy of the Chief's final action being appealed;
- (e) The appellant's full name, address, email address, and telephone and fax numbers, as well as the same information for any attorney representing the appellant in the appeal; and

- (f) All written materials that the appellant wishes the Board to consider at any hearing.

1202.4 Not later than ten (10) days after receipt of the appeal, the Chairperson of the Board shall:

- (a) Assign a three (3) member panel (Panel) and appoint a presiding member (Presiding Member) to review the appeal or assign the appeal to the full Board;
- (b) Send to the Chief a copy of the appeal, a notice of the names of the three (3) member panel and Presiding Member, if applicable, and a notice to provide the Board with information concerning the final action that is the subject of the appeal; and
- (c) Send a notice to the appellant of receipt of the appeal, the names of the three (3) member panel, and the Presiding Member, if applicable.

1202.5 Not later than ten (10) days after receipt of any information provided by the Chief pursuant to § 1202.4(b), the Board or Panel shall meet to determine if based upon the information submitted by the appellant and Chief the appeal should be resolved through a summary disposition or by a contested case hearing.

1202.6 If the Board or Panel determines that, based upon the materials submitted by the appellant and the Chief, the matters in dispute appear to be appropriate for summary disposition, the Board or Panel shall follow the procedures in § 1210.

1202.7 If the Board or Panel determines that a contested case hearing is appropriate for the resolution of the appeal, then it shall issue a notice of hearing to the appellant and Chief. The hearing shall be scheduled to take place on a date not less than thirty (30) or more than forty-five (45) days from the date of the notice.

1203 NOTICE OF CONTESTED CASE HEARING

1203.1 A notice of hearing issued by the Board shall:

- (a) Provide the time, date, and location of the hearing;
- (b) Reference applicable statutes, rules, or regulations;
- (c) State the matters in dispute;
- (d) Advise the parties that they may be represented by counsel or other representative of their choosing;
- (e) Advise the parties that they may present oral testimony through themselves or witnesses and they may seek to have the attendance of a witness compelled by subpoena; provided, that the name of any witness to

be presented by a party is submitted to the opposing party not less than ten (10) days prior to the date of the hearing;

- (f) Advise the parties that they may present any relevant written or recorded statements made by the parties and any books, papers, documents, photographs, tangible objects, or other evidence which is in their possession for consideration by the Board; provided, that copies of such evidence is delivered to the opposing party not less than ten (10) days prior to the date of the hearing;
- (g) Advise the parties that any witness may be cross-examined by the opposing party or questioned by any member of the Board;
- (h) Advise the parties that, pursuant to the Act, the burden of proof, the burden of production of evidence, and the burden of persuasion is on the appellant;
- (i) Advise the parties that they may present rebuttal evidence within any limits established by the Presiding Member;
- (j) Advise the parties that they may apply for the services of a qualified interpreter if they or a witness is deaf, hearing impaired, or cannot readily understand or communicate the spoken English language;
- (k) Advise the appellant that failure to appear for the hearing will, absent good cause to permit the hearing to be rescheduled, result in the Board entering a dismissal of the appeal and sustaining the final action of the Chief; and
- (l) Advise the parties of the date, time, and location or manner of any pre-hearing conference.

1204 APPEARANCES AND REPRESENTATION

1204.1 In a proceeding before the Board, any person or party may:

- (a) Appear on his or her own behalf; or
- (b) Be represented by any other person duly authorized in writing to do so.

1204.2 An authorization provided pursuant to § 1204.1(b) shall be in a manner prescribed by the Board, and shall state either that the individual is an attorney duly licensed to practice law in the District or, if not an attorney duly licensed to practice law in the District of Columbia, that the authorization includes the power of the agent or representative to bind the person in the matter before the Board. An attorney licensed to practice law by a jurisdiction within the United States may represent a person before the Board.

1205 SERVICE OF PAPERS

- 1205.1 Any paper required to be served upon a party shall be served upon him or her or upon the representative designated by him or her, or on any person otherwise designated by law to receive service of papers.
- 1205.2 When a party has appeared through an attorney or representative, service shall be made upon the attorney or representative of record.
- 1205.3 Service may be made by personal delivery, by mail, by email, or as otherwise authorized by law.
- 1205.4 Service upon a party shall be completed as follows:
- (a) By personal delivery: On handing the paper to the person to be served, or leaving it at his or her office with his or her administrative assistant or time clerk or other person in charge, or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, by leaving it at his or her usual place of residence with some person of suitable age and discretion then residing in that place;
 - (b) By email: Upon sending the paper electronically to his or her email address or to the email address of his or her attorney or representative as listed on the written appearance submitted pursuant to § 1204.
 - (c) By mail: On depositing the paper in the United States mail, properly stamped and addressed to the address provided by a person on any application for license or that appears on any license issued by the Chief; or
 - (d) Upon being served in the specific manner prescribed by an order of the Board made in any proceeding.
- 1205.5 Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document served.
- 1205.6 Proof of service may be made by filing with the Board any of the following:
- (a) A written acknowledgment of the party served or his or her attorney of record;
 - (b) A certificate of the attorney of record if he or she has made the service; or
 - (c) A certificate of the person making the service.

1205.7 For the purposes of this chapter, the phrase “filing with the Board,” means the actual or electronic delivery to, and physical or electronic receipt by, the Board of pleadings and other papers.

1205.8 All documents filed with the Board relating to a hearing shall bear a caption which identifies the appellant, the Board’s case or reference number, and the title of the pleading or document.

1205.9 All documents filed with the Board shall be printed on letter-sized paper using a font no smaller than twelve (12) point.

1206 RECORD OF MEETINGS AND HEARINGS

1206.1 All meetings of the Board whether open or closed shall be recorded by electronic means; provided, that if a recording is not feasible, detailed minutes of the meeting shall be kept.

1206.2 Changes in the official transcript may be made only when they involve errors affecting substance and upon the filing of a motion by a party to correct a transcript with the Board.

1206.3 Copies of any motion to correct a transcript shall be served simultaneously on all opposing parties or legal representatives.

1206.4 Objections to the motion to correct a transcript shall be filed with the Board within five (5) days and served upon the parties.

1206.5 The transcript may be changed by the Board at a public meeting to reflect any corrections.

1207 MEETINGS AND HEARINGS

1207.1 Hearings of the Board shall be scheduled as needed for the purpose of receiving evidence and testimony on specific matters.

1207.2 Meetings and hearings shall be held at the time and place the Presiding Member designates.

1207.3 The Presiding Member may conduct all or part of any prehearing conference or decision meeting by telephone, television, video conference, or other electronic means.

1207.4 An evidentiary hearing may be conducted by telephone, television, video conference, or other method only if:

- (a) All parties consent; or
- (b) The Presiding Member finds that this method will not impair reliable determination of the credibility of testimony, and each party must be given an opportunity to attend, hear, and be heard at the proceeding as it occurs.

1207.5 A Board member attending a decision meeting may vote even if the member did not attend any or all of the prior meetings or hearings on a matter before the Board; provided that the Board member has read the transcript or listened to or viewed any available electronic recording of the prior meetings or hearings he or she did not attend and the Board member has reviewed the complete record.

1208 EVIDENCE

1208.1 Evidence shall be taken in conformity with Section 10(b) of the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-509(b) (2012 Repl.)).

1208.2 The Presiding Member may permit rebuttal evidence.

1208.3 Any party objecting to the admissibility of evidence shall state the grounds of the objection(s) relied upon.

1208.4 A party may place on the record a statement summarizing any evidence excluded by the Presiding Member.

1208.5 If excluded evidence consists of documentary evidence, a copy of the evidence shall be marked for identification and shall constitute the offer of proof.

1208.6 The Presiding Member, in his or her discretion, may receive into evidence certified copies of documents in place of the originals.

1208.7 If a party is offering materials contained in a book or larger document, that party shall plainly designate the relevant portions. The remaining material contained in that book or document shall be excluded.

1208.8 No document or other writing shall be accepted for the record after the close of the hearing, except with the consent of the Presiding Member after due notice to the opposing parties and only when the receipt of the document will not unfairly affect the interest of a party.

1208.9 Witnesses may be examined or cross-examined by each member of the Board, or any party or the party's representative.

1208.11 The Presiding Member may admit hearsay evidence during an evidentiary hearing if the Presiding Member determines it will be relevant and material to the resolution of any factual issue in dispute in the matter before the Board.

1209 PRE-HEARING CONFERENCES AND DISCOVERY

1209.1 Prior to any scheduled evidentiary hearing, the Presiding Member may require that the appellant and/or his or her attorney or representative appear for a pre-hearing conference with the Chief and/or the Chief's representative to consider the following:

- (a) Simplification of the issues;
- (b) The necessity or desirability of amendments to the issues in dispute;
- (c) The possibility of obtaining the admission of facts and documents which will avoid unnecessary proof;
- (d) Limitation of the number of witnesses;
- (e) Other matters which may aid in the disposition of the appeal; and
- (f) Whether or not the use of any pre-hearing discovery is necessary to a fair adjudication of the appeal, what form the discovery may take, and any schedule for such discovery.

1209.2 The Presiding Member may issue a pre-hearing statement which recites the action taken at the conference, the amendments allowed to the issues in dispute, and the agreements made by the parties as to any of the matters considered which limit the issues for hearing to those issues not disposed of by admissions or agreements of counsel or parties.

1209.3 The Presiding Member may issue a pre-hearing order concerning the timing and manner of discovery and any pretrial motions or orders.

1210 SUMMARY DISPOSITION

1210.1 The Board may resolve an appeal through a summary disposition when the Board determines that the resolution of the appeal does not include a dispute concerning a material fact.

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;

- (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 an evidentiary hearing; and
 - (2) The appellant's views on why the Chief's exercise of discretion in denying the appellant's application was arbitrary and capricious or was not supported by reliable, probative, and substantial evidence.

1210.2 Within ten (10) days after receipt of a written argument by the appellant, the Chief shall file with the Board, and serve a copy on the appellant, a written response on the issue of the presence of a dispute of material fact, and any rebuttal argument concerning the Chief's exercise of discretion.

1210.3 After receipt of the Chief's response, the Board may at its discretion conduct an informal hearing at which the parties may appear and present oral argument on issues identified by the Board.

1210.4 After receipt of the Chief's response and the conclusion of any informal hearing, the Board shall meet and determine whether or not there is a dispute of material fact and, if they so find, issue a notice of a contested case hearing. If the Board determines there is not a dispute of material fact, then the Board shall issue a decision to sustain the final action of the Chief, reverse the action of the Chief, or modify the decision of the Chief, and also include in the decision the basis for its decision to proceed by summary disposition.

1211 STAYS OF APPEALS

1211.1 At any point in an appeal, if the Board determines that it is necessary or appropriate for resolution of the appellant's appeal, the Board may stay any action on the appeal and submit any issue to the Chief or the appellant for the Chief or appellant's consideration, documentation, or explanation.

1211.2 The Chief or appellant ("responding party") shall have ten (10) days after receipt of any submission by the Board pursuant to § 1211.1 to file a response with the Board and serve a copy on the opposing party.

1211.3 Within (10) days after receipt of a response served by the responding party pursuant to § 1210.6 the opposing party shall file a response with the Board and serve a copy on the responding party.

1211.4 After review of the responses filed by the Chief and the appellant the Board shall lift its stay and proceed with consideration of the appeal.

1211 [RESERVED]

1212 STIPULATIONS

- 1212.1 Apart from stipulations reached during or as a result of the pre-hearing conference, the parties may stipulate in writing at any stage in the proceeding or orally during the hearing any relevant fact or the contents or authenticity of any document.
- 1212.2 Post-conference stipulations may be received as evidence.
- 1212.3 Parties may also stipulate the procedure to be followed in the proceeding and such stipulation may, on motion of all parties, be approved by the Presiding Member and govern the conduct of the proceeding.

1213 CONTINUANCES

- 1213.1 A hearing scheduled to be conducted before the Board shall not be delayed by a continuance unless a motion for the continuance is made not less than five (5) days before the scheduled hearing date.
- 1213.2 A continuance shall not be granted unless the motion for continuance, in the Board's opinion, sets forth good and sufficient cause for the continuance.
- 1213.3 Conflicting engagements of counsel or a party's representative, or absence of counsel or a party's representative, shall not be regarded as sufficient cause for continuance unless set forth in a motion filed promptly after notice of the hearing has been given. The employment of new counsel or a new representative shall not be regarded as sufficient cause for continuance unless a motion for continuance is filed promptly after the party becomes aware that the employment of the former counsel or representative will end.

1214 NONAPPEARANCE OF PARTIES AND DEFAULTS

- 1214.1 The Presiding Member may wait a reasonable length of time for a party to appear before beginning a proceeding. After a reasonable time, however, if a party who has received notice has not appeared, the Presiding Member may proceed as follows:
 - (a) The Presiding Member may proceed with the hearing, obtain the testimony of those persons present, and, on the basis of the testimony and the record, the Board may issue a decision in the case;
 - (b) The Presiding Member, for good cause, may postpone the hearing without taking testimony; or

- (c) In the case of the appellant failing to appear, the Presiding Member, with the concurrence of a majority of the members present, may dismiss the appeal and sustain the decision of the Chief.

1215 ASSIGNMENT OF BOARD MEMBERS TO HEARING PANELS

1215.1 Board members shall sit on hearing panels in such order and at such times as the Chairperson of the Board directs.

1215.2 In determining the composition of a hearing Panel, the Chairperson shall:

- (a) Comply with the requirements of Section 908(c) of the Act;
- (b) Assign the Board member designated by the Director of the Department of Behavioral Health, or the public member who qualifies as mental health professional, to any hearing panel at which an issue concerning the mental health of the appellant will be adjudicated; and
- (c) Make hearing assignments in a manner that equitably divides the workload among the Board members.

1215.3 In the sole discretion of the Chairperson, a hearing may be assigned to the full Board.

1215.4 Any decision of a hearing Panel shall be the final decision of the Board with no right of any party to request consideration by the full Board; provided, a party may request reconsideration, rehearing, or re-argument before the Panel pursuant to Section 1222.

1216 INTERPRETERS

1216.1 The Board shall ascertain before the hearing whether an interpreter will be required, pursuant to the notice issued pursuant to Subsection 1203.1, and shall make appropriate arrangements if an interpreter is required.

1216.2 An oath or affirmation shall be administered to the interpreter orally or in writing.

1217 SPECIFIC RULES OF HEARING PROCEDURE

1217.1 A party may cross-examine any other party or person, except that the Presiding Member may rule a question out of order when it is irrelevant, immaterial, or unduly repetitious.

1217.2 Witnesses shall be examined and cross-examined orally under oath or affirmation.

- 1217.3 The order of procedure at the hearing shall be as follows:
- (a) Call to order and opening comments by the Presiding Member;
 - (b) Consideration of pending motions and procedural matters;
 - (d) The appellant's case;
 - (e) The Chief's case; and
 - (g) Any rebuttal offered by the appellant.

1217.4 In an evidentiary hearing, no decision or order of the Board shall be made except upon the exclusive record of the proceedings before the Board.

1218 BURDEN OF PROOF

1218.1 In all cases before the Board the appellant has the burden of persuading the Board that the Chief's final action should be reversed or modified based on substantial evidence.

1218.2 The appellant has the burden of producing evidence that (1) the appellant met all the non-discretionary requirements of the Act, and (2) that having met all the non-discretionary requirements of the Act, the Chief's exercise of discretion was not supported by reliable, probative, and substantial evidence.

1219 POST-HEARING PROCEDURES

1219.1 The record shall be closed at the end of the hearing, except that the record may be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs, as directed by the Chairperson or Presiding Member.

1219.2 Prior to issuing the final decision, the Board may, on its own motion, reopen the record and require further hearing or briefing on designated issues before the Board.

1219.3 Notice of a further hearing along with a designation of issues shall be forwarded to any party who participated in the earlier proceedings, or his or her legal representative. Notice shall be given at least fourteen (14) days prior to the date set for further hearing.

1220 PROPOSED FINDINGS

1220.1 The Board may request parties to submit proposed findings of fact and conclusions of law for the consideration of the Board within the time the Presiding Member may direct.

1220.2 Copies of proposed findings and conclusions shall be served by each party upon the opposing party.

1221 FINAL DECISION

1221.1 Within ninety (90) days after the conclusion of a hearing, the Board shall render its decision in writing, setting forth findings of fact and conclusions of law and giving the reasons for its decision.

1221.2 The findings and conclusions in the decision shall be governed by and based upon the evidence adduced at the hearing along with any other evidence in the record.

1221.4 A decision shall be supported by substantial evidence on the record. Pursuant to the substantial evidence rule, courts shall uphold an administrative determination of fact if on the entire record the determination is rationally supportable and could have been arrived at reasonably.

1221.5 The decision shall sustain, reverse, or modify the final action as requested by the appellant or the Chief.

1221.6 The decision shall include an instruction that the appellant or the Chief may pursue judicial review in the manner provided by the Act.

1222 RECONSIDERATION

1222.1 Any motion for reconsideration, rehearing, or re-argument of a final decision in a contested case proceeding shall be filed by a party within ten (10) days of the order having become final. The motion shall be served upon the opposing party. The Board shall not receive or consider any motion for reconsideration, rehearing, or re-argument of a final decision in a contested case proceeding that is filed prior to the order having become final.

1222.2 A motion for reconsideration, rehearing, or re-argument shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought.

1222.3 Within seven (7) days after a motion has been filed and served, an opposing party may file a response in opposition to or in support of the motion.

1222.4 Neither the filing nor the granting of the motion shall stay a decision unless the Board orders otherwise.

1222.5 A motion for reconsideration, rehearing, or re-argument shall not be a prerequisite to judicial review.

1223 SUBPOENAS AND DEPOSITIONS

1223.1 The Board may require by subpoena the attendance and testimony of witnesses and the production of documentary evidence.

1223.2 Each subpoena issued by the Board shall include the following:

- (a) The name of the respondent;
- (b) The title of the action;
- (c) A specification of the time allowed for compliance with the subpoena; and
- (d)
 - (1) A command to the person to whom it is directed to attend and give testimony at a time and place specified in the subpoena; or
 - (2) A command to the person to whom it is directed to produce and permit inspection and copying of the books, papers, documents, or tangible things designated in the subpoena.

1223.3 Any party may, by a written motion, request the Board to subpoena particular persons or evidence.

1223.4 A request for subpoena shall state the relevancy, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, the identification of all documents desired and the facts to be proven by them in sufficient detail to indicate materiality and relevance.

1223.5 Any person to whom a subpoena is directed may, prior to the time specified in the subpoena for compliance, request the Board to quash or modify the subpoena.

1223.6 Any application to quash a subpoena shall be accompanied by a brief statement of the reasons supporting the motion to quash.

1223.7 The Board may quash or modify the subpoena upon a showing of good cause.

1223.8 Upon written notice and for extraordinary circumstances, such as the need to preserve testimony or the need to obtain testimony from a non-resident witness or party, the Board may order testimony to be taken by deposition, before any person who is designated by the Board to administer oaths. Such deposition may be conducted by video conference or other electronic means approved by the Board.

1224 SERVICE OF SUBPOENA OR NOTICE OF DEPOSITION

- 1224.1 A subpoena or notice of deposition may be served by any person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena or notice upon a person named therein shall be made by delivering a copy of the subpoena to the person and, if the person's attendance is commanded, by tendering to that person the fees for one (1) day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or the District of Columbia or an officer or agency thereof, fees and mileage need not be tendered.
- 1224.2 Witnesses are entitled to a witness fee of forty dollars (\$40) per day and the cost of public transportation to the proceeding or a mileage fee calculated at seventeen cents (17¢) per mile.
- 1224.3 Service of a subpoena or notice of deposition, and fees, to an individual may be made by any of the following means:
- (a) Handing the subpoena or notice to the person;
 - (b) Leaving the subpoena or notice at the person's District government office with the person in charge of the office;
 - (c) Leaving the subpoena or notice at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing in that dwelling place or abode; or
 - (d) Mailing the subpoena or notice by registered or certified mail to the person at the person's last known address.
- 1224.4 When the person to be served is not an individual, a copy of the subpoena or notice of the deposition and fees shall be delivered by one (1) of the following ways:
- (a) Handing the subpoena or notice to a registered agent for service;
 - (b) Handing the subpoena or notice to any officer, director, or agent in charge of any office of that person; or
 - (c) Mailing the subpoena or notice by registered or certified mail to the representative at his or her last known address.
- 1224.5 The individual serving a subpoena shall file with the Board a return of service setting forth the facts establishing proper service.

1224.6 The Board may, upon the failure by any person to obey a subpoena served upon that person, apply to the D.C. Superior Court for an order requiring the person to appear before the Board to give testimony, produce evidence, or both. If a person fails to obey the order without an adequate excuse, the Board may apply for an order that the person be held by the court for contempt.

1225 TRANSCRIPTS: CITATION AND COSTS

1225.1 All proceedings, except for settlement conferences, shall be recorded. The recording is the official record of what occurred at the proceeding.

1225.2 Any party may obtain a copy of the recording of a hearing at the party's expense.

1225.3 Transcripts of the recording of the proceedings shall be prepared by a qualified reporter or transcriber who shall personally certify that he or she is not a party or counsel to a party or otherwise related to or employed by a party or counsel in the case; that he or she has no material interest in the outcome of the case; and that the transcript represents the testimony and proceedings of the case as recorded.

1225.4 In filings, a party may only rely upon a transcript prepared according to this section.

1225.5 Unless otherwise stipulated by the parties or ordered by Board, if a party cites to a portion of a transcript, the entire transcript of the case must be filed with the Board, and a copy must be served on the opposing party.

1225.6 In any case in which a party files a petition for review in the District of Columbia Court of Appeals, the Board will arrange for the preparation and filing of a transcript without charge only if the Court of Appeals has permitted the petitioner to proceed *in forma pauperis*. In all other cases, the Board will arrange for preparation and filing of a transcript only after the Board receives payment for the cost of preparing the transcript.

1226 SUMMARY SUSPENSION HEARINGS

1226.1 Any person subject to a summary suspension or summary limitation of a license issued pursuant to the Act shall have the right to request a hearing to the Board, in the manner described in § 1202.3, within seventy-two (72) hours after service of notice of the summary suspension or limitation of the license on the Board.

1226.2 The Board shall hold a hearing within seventy-two (72) hours after receipt of a timely request for hearing.

1226.3 The Board shall notify the Chief and the appellant of the date and location of the hearing as soon as practical.

- 1226.4 The Chief shall have the burden of production and the burden of persuasion for the summary suspension.
- 1226.5 A summary evidentiary hearing shall be conducted in a manner that provides opportunity to the licensee to challenge the basis of the Chief's suspension action through the presentation of documentary evidence and testimony, as well as the ability to examine and cross-examine any witness.
- 1226.6 If the Board sustains the suspension, it shall issue a written decision setting forth its findings of facts and conclusions of law. The decision to sustain the suspension shall expire within thirty (30) days after the decision is issued unless the Chief has served the licensee a notice of intent to revoke pursuant to Section 905 of the Act. If the Chief has served the licensee a notice of intent to revoke pursuant to Section 905 of the Act, the summary suspension shall remain in effect until the Chief revokes the permit or, if a timely request for an appeal of the notice of revocation has been filed with the Board, the conclusion of the notice of revocation appeal.
- 1226.7 Any decision of the Board to sustain a suspension shall be a temporary decision and not a final action. There is no right of appeal from a decision of the Board to sustain a summary suspension action. An appeal must follow a final decision of the Board to sustain a revocation of the license that was the subject of the summary suspension and the appeal must be based on the facts and conclusions that formed the basis of the final decision.

1299 DEFINITIONS

1299.1 For the purposes of this chapter, the term:

“Act” – means Title IX of the Firearms Regulations Control Act of 1975, effective January 6, 2015 (D.C. Act 20-564; 62 DCR 866 (January 23, 2015)) and any substantially similar emergency, temporary, or permanent versions of this legislation.

“Board” – means the Concealed Pistol Licensing Review Board created by the Act, or any hearing panel authorized to conduct hearings and render final decisions by the Act.

“Chairperson” – means the Chairperson of the Board.

“Chief” – means the Chief of the Metropolitan Police Department or his or her designee.

“Panel” – means a hearing panel authorized by the Act and comprised of three (3) members of the Board designated to review an appeal, conduct any evidentiary hearing, and render any temporary or final decision on the appeal.

“Presiding Member” – means the Board member presiding over a Panel, or the Chairperson when an appeal is assigned to the full Board.