

## DISTRICT OF COLUMBIA BOARD OF EDUCATION

## NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Education ("Board"), pursuant to the authority set forth in D.C. Code, 2001 Edition, Section 38-101, hereby gives notice of final rulemaking action taken by the Board at its meeting held April 26, 2006, to amend Chapter 3 of the Educational and Operating Policies, Title 5 of the D.C. Municipal Regulations, regarding the School Calendar.

The revisions will require the Board of Education to approve a District of Columbia Public School Calendar no later than April 1<sup>st</sup> of each year. The revisions will also require the Superintendent of Schools to make school calendar recommendations no later than February 1<sup>st</sup> of each year.

The final rulemaking will take effect upon its publication in the *D.C. Register*. The proposed rulemaking on this subject was published in the *D.C. Register* on March 3, 2006.

Section 305 is amended to read as follows:

**305 SCHOOL CALENDAR**

- 305.1 The school year shall commence on July 1<sup>st</sup> of each calendar year and shall end on June 30<sup>th</sup> in the following calendar year
- 305.2 The Board of Education shall adopt a school calendar annually ~~for the forthcoming school year not later than the June regular meeting of the Board that will set the schedule for District of Columbia Public Schools~~ two years in advance. The Board must approve the proposed multiyear school calendar no later than April 1<sup>st</sup> for the school year beginning in July two years hence.
- 305.3 The Board of Education shall approve the 2007-'08 and 2008-'09 school calendars by its June 2006 regular meeting. After Board approval of the 2007-'08 and 2008-'09 school calendars, calendar approval shall proceed in accordance with the provisions of §305.2 and §305.4.
- 305.34 The Superintendent of Schools shall make recommendations to the Board of Education annually on the specific contents of the school calendar ~~for the forthcoming school year~~ two years in advance. The recommendations shall be made to the Board shall be made not later than ~~May 1<sup>st</sup>~~ February 1<sup>st</sup> of each year.

- 305.45 To provide greater planning flexibility, the Superintendent of Schools may submit for tentative Board approval recommendations for a proposed school calendar for an additional year beyond the requirements of § 305.34; provided, that final recommendations and approval of the school calendar shall proceed in accordance with the provisions of §§ 305.2 and 305.34.
- 305.56 The school calendar shall include provisions for the following, in accordance with the requirements of this section:
- (a) Dates on which regular instructional day and evening sessions will be held;
  - (b) Dates on which the summer program will be held, if resources are provided;
  - (c) Dates on which full-day staff development sessions will be conducted;
  - (d) Dates on which school will be closed to students for holidays and vacations;
  - (e) Dates on which employees of the Board of Education will receive paid leave for holidays;
  - (f) The hours of operation of schools and programs on regular instructional days; and
  - (g) School closing make-up days
- 305.67 Each school year shall include a minimum of one hundred eighty (180) regular instructional days.
- 305.78 Each regular instructional day shall be at least six (6) hours in length for students, inclusive of time allotted for lunch periods, recesses, and class breaks; provided, that the six-hour minimum instructional day requirement shall not be applicable to the evening school program, the prekindergarten program, or the kindergarten program.
- 305.89 Student lunch periods shall consist of a minimum of thirty (30) minutes and maximum of sixty (60) minutes.
- 305.910 Full-day staff development sessions may be scheduled on any dates when school is closed to students.
- 305.1011 A maximum of two (2) half-day staff development sessions may be scheduled each semester; provided, that days when students attend school

for less than a full regular instructional day shall count as a one-half (1/2) instructional day toward the minimum requirement set forth in § 305.6.

- 305.1112 Parents and guardians shall be given a minimum of thirty (30) days notice of half-day sessions that are not included in the school calendar.
- 305.1213 Holidays for students and employees of the Board of Education shall include all dates that are designated national holidays by law and holidays that are declared pursuant to the laws of the District of Columbia.
- 305.1314 The school calendar shall also include a one (1) week winter vacation for students and a one (1) week spring vacation for students.
- 305.1415 The school calendar may also include commemorative days that are scheduled for dates on which regular instructional days are held. Commemorative days may be designated to honor any person or emphasize any current or historical event. Provision shall be made to include emphasis on the subject of commemorative days in the curriculum or through other ceremonies or activities held during the regular instructional day.
- 305.1516 Schools may be closed by order of the Superintendent of Schools due to adverse weather conditions or other emergency conditions affecting the health, safety, or welfare of students and employees.

Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

## DISTRICT OF COLUMBIA BOARD OF EDUCATION

## NOTICE OF FINAL RULEMAKING

The Board of Education ("Board"), as the State Education Agency for the District of Columbia, pursuant to the authority set forth in Title 5, Chapter 38, of the D.C. Municipal Regulations ("Title 5"), hereby gives notice of final rulemaking action taken by the Board at its meeting held on April 24, 2006 to amend Title 5, Chapters 20 and 50.

This amendment will establish the definition of homeless children and youth for the purpose of enrolling such children in District of Columbia Public Schools and public charter schools to ensure that homeless children and youths are afforded the same educational opportunities as provided to other children and youths and to establish a process for enrolling homeless children and youth in the District of Columbia Public Schools.

The final rulemaking will take effect upon its publication in the *D.C. Register*. The proposed rulemaking on this subject was published in the *D.C. Register* on March 3, 2006.

**Add Section 2010:****2010 ENROLLMENT OF HOMELESS STUDENTS**

**2010.1 Homelessness alone is not a sufficient reason to deny children enrollment in a District of Columbia Public School. Homeless children, as defined in Section 5-5099, must be immediately enrolled in a District of Columbia Public School. The LEA shall make a school placement based on the "best interest" of the homeless child, youth or unaccompanied minor. In determining "best interest," unless otherwise requested by the parent, the LEA must:**

- (a) **To the extent feasible, continue the child or youth's education in the student's school of origin --**
  - (1) **for the duration of homelessness if a family becomes homeless between academic years or during an academic year; or**
  - (2) **for the remainder of the academic year if the child or youth becomes permanently housed during the academic year; or**

- (b) **Enroll the child or youth in any public school that non-homeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.**
- (c) **In determining "best interest" of the child or youth, the LEA shall consider the following:**
  - (1) **Continuity of instruction;**
  - (2) **Age of the child or youth;**
  - (3) **Safety of the child or youth;**
  - (4) **Length of stay in shelter;**
  - (5) **Likely area where family will find permanent housing;**
  - (6) **Student's need for special instructional programs;**
  - (7) **Impact of commute on education;**
  - (8) **Impact of transfer on the child's mental health;**
  - (9) **School placement of siblings;**
  - (10) **Time remaining in school year.**

**2010.2** If the LEA sends the child or youth to a school other than the school of origin or the school requested by the parent or guardian, the LEA must provide a written explanation to the parent or guardian, including the right to appeal under the enrollment dispute provision.

**2010.3** In the case of an unaccompanied youth, the LEA homeless liaison must assist the youth in placement/enrollment decisions, consider the youth's wishes, and provide notice to the youth of the right to appeal under the enrollment dispute provisions.

**2010.4** The school selected shall immediately enroll the homeless child or youth in school, even if the child or youth lacks records normally required for enrollment, such as previous academic records, medical records, birth certificate, proof of residency or other documentation.

**2010.5** Nothing in this section shall be interpreted to supersede admission criteria established for schools or programs that have specific admissions requirements and selection criteria that have been approved by the Board of Education Section 2010.4 shall apply to all schools under the control and supervision of the Board of Education.

**2010.6** **Dispute Resolution.** If a dispute arises between a school and parents or guardian or an unaccompanied youth, over school selection or enrollment, the LEA must immediately enroll the child or youth in the school in which the parent, guardian or unaccompanied youth seeks enrollment, pending the final resolution of the dispute including any appeals to the State Complaint Office.

- (a) **The child, youth, parent or guardian shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision.**
- (b) **The LEA must refer the child, youth, parent or guardian to the LEA Liaison, who must complete the dispute resolution process set forth in the State Plan as expeditiously as possible. In no case shall this process exceed 15 (fifteen) days from the receipt of a notice of appeal.**
- (c) **If the dispute is not resolved by the LEA Liaison in the required timeframe, or the child, youth, parent or guardian is dissatisfied with the resolution, the child, youth, parent, or guardian may file a complaint with the State Complaint Office. The State Complaint Office must reach a final decision as expeditiously as possible. In no case shall this process exceed 15 (fifteen) days from the complaint filing date.**

**Amend Section 2099 as follows:**

**DEFINITIONS**

**2099 School of Origin – the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.**

**Unaccompanied Youth – a youth not in the physical custody of a parent or guardian.**

**Amend Section 5099 as follows:**

**DEFINITIONS**

**5099 Homeless Children and Youth – individuals who lack a fixed, regular, and adequate nighttime residence. These individuals shall include children and youth who are between the ages of 5 and 18:**

- (a) **sharing the housing of other persons due to loss of housing, economic hardship or similar reasons; or**
- (b) **living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodation; or**
- (c) **living in emergency or transitional shelters, (including D.C. transitional housing); or**

- (d) in a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; or
- (e) living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
- (f) living in a hospital due to abandonment; or
- (g) awaiting foster care placement; or
- (h) migratory children, as defined in section 1309 of the Elementary and Secondary Education Act of 1965, who qualify as homeless because they live in circumstances described above; or
- (i) unaccompanied youth, including youths who are not in physical custody of a parent or guardian, who qualify as homeless because they live in circumstances described above.

This rulemaking is available on the District of Columbia Public Schools website at [http://www.k12.dc.us/dcps/boe/boe\\_frame.html](http://www.k12.dc.us/dcps/boe/boe_frame.html). Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

## DISTRICT OF COLUMBIA BOARD OF EDUCATION

## NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Education ("Board"), pursuant to the authority generally set forth in D.C. Code, 2001 Edition, Section 38-101, and specifically provided in D.C. Code, 2001 Edition, Section 38-102(c) (relating to establishment of guidelines and goals for academic achievement), hereby gives notice of final rulemaking action taken by the Board at its meeting held on April 24, 2006, to amend Chapters 38 of the Board Rules, Title 5 of the D.C. Municipal Regulations regarding State Education Agency Functions of the Board of Education.

This amendment will effect the following actions: establish District-wide standards for knowledge and achievement in science for all students in grades pre-kindergarten through 12 that attend public school in the District of Columbia, including public charter schools.

The final rulemaking will take effect upon its publication in the *D.C. Register*. The proposed rulemaking on this subject was published in the *D.C. Register* on February 24, 2006.

Add Section 3807:

**3807 DISTRICT OF COLUMBIA STANDARDS FOR  
ACHIEVEMENT IN SCIENCE**

**3807.1 The "District of Columbia Science Pre-K through Grade 12 Standards" are adopted for use by all public schools in the District of Columbia. The Standards shall be made available to the public:**

- (a) Upon request to the District of Columbia Public Schools Office of Academic Services;**
- (b) Through the distribution of copies to each DC public school facility;**
- and**
- (c) By posting of the Standards on the District of Columbia Public Schools web page, [www.k12.dc.us](http://www.k12.dc.us).**

**3807.2 The State Education Officer shall develop appropriate directives to execute his responsibilities under this section.**

This rulemaking is available on the District of Columbia Public Schools website at [http://www.k12.dc.us/dcps/boe/boe\\_frame.html](http://www.k12.dc.us/dcps/boe/boe_frame.html). Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.



**DEPARTMENT OF HEALTH**  
**NOTICE OF FINAL RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth under Section 7a of the Health Care Privatization Amendment Act of 2001 ("Act"), effective July 12, 2001 (D.C. Law 14-18; D.C. Official Code § 7-1405.01), as amended, and Mayor's Order 2004-127, dated August 2, 2004, hereby gives notice of the adoption of the following amendments to Chapter 33 of Title 22 of the District of Columbia Municipal Regulations (DCMR). Notice of Proposed Rulemaking was published on March 3, 2006 (53 DCR 1551). One comment submitted by several persons was received and reviewed. No changes have been incorporated into the final rules. The Council of the District of Columbia approved the proposed rules through Resolution No. 16-607 on April 4, 2006 (53 DCR 3193). The rules will be effective on June 1, 2006.

Chapter 33 (Health Care Safety Net Administration) of Title 22 of the DCMR (Public Health and Medicine) shall be amended as follows:

**Add the following provision to Section 3301:**

3301.2 The eligibility requirements stated in Section 3301.1 above shall not apply to a person seeking health care services available on or after June 1, 2006 to qualifying indigent residents through the D.C. HealthCare Alliance and paid by the Health Care Safety Net Administration ("HCSNA").

**Add the following provisions to Section 3303:**

3303.3 Section 3303.1 and 3303.2 shall not apply to a contract or contract modification effective on or after June 1, 2006 for health care services to indigent residents through the D.C. HealthCare Alliance.

**Add a new Section 3304 providing as follows:**

**3304 ELIGIBILITY CRITERIA EFFECTIVE JUNE 1, 2006**

3304.1 The Income Maintenance Administration ("IMA") shall determine eligibility for all Medicaid and Medical Assistance programs in a manner consistent with the eligibility requirements at 42 CFR Part 435 and those below.

3304.2 Eligibility for the D.C. HealthCare Alliance is limited to residents of the District of Columbia who are not eligible for Medicaid and who live in households:

(a) With a countable income of less than 200 percent of the Federal Poverty Level; and

- (b) With countable resources less than \$4,000 (or \$6,000 if the individual lives with a spouse or cares for a child who is residing in the home).
- 3304.3 In verifying an applicant's eligibility, IMA shall accept any form of proof that reasonably attests to District residency, income, and resources.
- 3304.4 Acceptable forms of verification (either copies or originals) for residency shall include but not be limited to the following:
- (a) Valid motor vehicle operator's permit (or a non-driver identification card) that is issued by the District's Department of Motor Vehicles;
  - (b) A voter registration card with an address in the District of Columbia;
  - (c) A copy of a lease or a rent receipt for real property located in the District of Columbia;
  - (d) A utility bill for real property located in the District of Columbia; and
  - (e) A letter from a verifiable source confirming that the applicant resides in the District.
- 3304.5 Acceptable forms of verification (either copies or originals) for countable income shall include but not be limited to the following:
- (a) Paystubs or earnings statements received within the previous thirty (30) days;
  - (b) For a newly employed applicant, an offer of employment that states the amount of salary to be paid;
  - (c) For self-employed persons, recent tax filings or other documents that reflect recent income;
  - (d) A declaration by a person that he or she has no income, does not rent an apartment in his or her own name, and is not listed as a mortgagee on the place where he or she resides;
  - (e) Social Security, Veterans, unemployment, or worker's compensation benefit statements;
  - (f) Documents showing child support or alimony received; and
  - (g) Documents showing any other unearned income, including income from stocks, bonds, annuities, private pension, or retirement accounts.
- 3304.6 Acceptable forms of verification (either copies or originals) for countable resources shall include but not be limited to the following:
- (1) Bank statements (if the combined account balances are greater than \$1,000);
  - (2) Documents showing the value of any stocks, bonds, annuities, private pension, retirement accounts, and other financial investments; and
  - (3) Documents showing the value of any real property other than the applicant's primary residence.
- 3304.7 IMA shall not routinely require further verification of residency for homeless applicants if the applicant attests that he or she:

- (a) Is homeless;
- (b) Lives in the District of Columbia; and
- (c) Intends to remain in the District of Columbia.

3304.8 When the applicant or enrollee indicates he or she is homeless, IMA may request verification of residency if it has substantial reason to believe that the applicant or enrollee is not homeless or is not a District resident.

3304.9 The foregoing eligibility requirements and the procedures in § 3305 below shall not apply to the medical care and health services provided through the School Health Program or to persons who are in the custody of the Department of Corrections or the Metropolitan Police Department.

**Add a new Section 3305 providing as follows:**

**3305 ELIGIBILITY PROCEDURES EFFECTIVE JUNE 1, 2006**

3305.1 Applicants shall complete, sign, and date an application form (as designated by Mayor) and submit this form to IMA. Applicants may mail, fax, or deliver their application in person to IMA. Applicants may also submit their application to an out-stationed IMA employee working in a community setting.

3305.2 IMA shall determine eligibility and send a notice to applicants within the same timeframe as required under the Medicaid program at 42 CFR § 435.911.

3305.3 IMA shall conduct expedited determinations (on the same or next business day) for any applicant if he or she has an urgent medical need (as certified by a clinician). Persons may request such expedited eligibility determinations from the IMA Office of the Administrator by phone, by fax, or in person.

3305.3 Eligibility shall begin on the first day of the month of application, which is consistent with the Medicaid requirement at 42 CFR § 435.914(b).

3305.4 Applicants who submit a signed recertification form approved by the Mayor to IMA (by mail, fax, or in person) shall continue to receive Alliance coverage until IMA sends them an adequate and timely notice of redetermination, which is consistent with the Medicaid requirement at 42 CFR § 435.916.

3305.5 IMA shall take no action to terminate, discontinue, or suspend eligibility without giving the person adequate and timely notice consistent with the Medicaid requirement at 42 CFR § 435.919.

3305.6 To determine countable income, IMA shall aggregate income and disregard the first \$100 in earnings. Further, IMA shall apply the disregards and exclusions detailed in Supplement 8b to Attachment 2.6-A of the District's Medicaid State Plan.

- 3305.7 To determine countable resources, IMA shall aggregate resources that are available to the applicant and apply the disregards and exclusions detailed in Supplement 8a to Attachment 2.6-A of the District's Medicaid State Plan.
- 3305.8 All of an applicant's resources are presumed to be available. An applicant may rebut this presumption by proving to the satisfaction of the District that a resource is not available to the applicant. An applicant rebuts the presumption by establishing a legal or other actual barrier to disposal of the asset that cannot reasonably be overcome. Resources that are not available are not included in the calculation of an applicant's countable resources.
- 3305.9 Eligibility may not begin before the first day of the month in which the applicant applied for benefits.

**Add a new Section 3306 providing as follows:**

**3306 RIGHTS AND DUTIES OF APPLICANTS EFFECTIVE JUNE 1, 2006**

- 3306.1 An applicant may voluntarily request and receive assistance in applying for benefits from IMA staff or any other person of the applicant's choice. However, an applicant may also refuse such assistance.
- 3306.2 An applicant may name an authorized representative to act on his or her behalf. An applicant also has the right to refuse to name an authorized representative.
- 3306.3 If an applicant names an authorized representative to act on his or her behalf, the authorized representative may apply for benefits, receive correspondence from IMA or the HCSNA, may report changes to IMA, may recertify for benefits, and may address other administrative matters.
- 3306.4 An applicant must attend a face-to-face eligibility interview if an IMA employee requests such an interview.
- 3306.5 An applicant (or his or her authorized representative) must report any changes in the applicant's household circumstances by contacting the IMA Change Center. Such changes would include but are not limited to changes of address, changes in income, and changes of household composition. Such changes would also include changes in health insurance status (i.e., when an applicant has any change in private health insurance coverage, Medicare, etc.). A person who fails to report a change within 10 days of the date of the change may lose their benefits; the person may also face civil and criminal penalties.
- 3306.6 An applicant (or his or her authorized representative) must recertify on an annual basis in order to maintain his or her eligibility.

- 3306.7 An applicant (or his or her authorized representative) may request a Fair Hearing from IMA or from the Office of Administrative Hearings to contest an eligibility determination, redetermination, or the lack thereof.
- 3306.8 An applicant (or his or her authorized representative) must give true, accurate, and complete documents and information. A person who gives a false, deceptive, or misleading document or information may lose his or her benefits and face civil and criminal penalties.
- 3306.9 Each applicant (or his or her authorized representative) must provide the applicant's Social Security number if he or she has one, subject to the terms of Mayor's Order 92-49 dated April 29, 1992, which governs inquiries into a person's citizenship and immigration status.
- 3306.10 An applicant (and his or her authorized representative) must cooperate with District investigators (and their duly authorized agents) who review the applicant's eligibility record. This requirement for cooperation includes being interviewed by investigators. An applicant who fails to cooperate may lose his or her benefits. An applicant (and his or her authorized representative) may face civil and criminal penalties.
- 3306.11 An applicant must surrender to the District Government any reimbursements or other payments received from an insurance company, court settlement, or other source for health care or medical services that were covered (and paid for) by the District of Columbia's Medicaid or Medical Assistance programs.

**Delete Section 3399 and replace it with the following:**

**3399 DEFINITIONS**

- 3399.1 When used in this Chapter on or after June 1, 2006, the following terms shall have the meaning ascribed:

**Available resources** – resources for which the applicant has both legal authority and actual ability to use for self-support (i.e., the resources are “available”).

**Countable income** – sources and types of income as defined by the Social Security Administration's Supplemental Security Income (SSI) program as modified by the provisions of Supplement 8b to Attachment 2.6-A of the District's Medicaid State Plan.

**Countable resources** – sources and types of resources as defined by the Social Security Administration's Supplemental Security Income (SSI) program as modified by the provisions of Supplement 8a to Attachment 2.6-A of the District's Medicaid State Plan. An applicant's primary residence and primary vehicle are excluded under this definition. The terms “resources” and “assets” are synonymous.

**D.C. HealthCare Alliance (Alliance)** – the program for comprehensive, community-centered health care and medical services established pursuant to Contract No. DCFRA#-00-C-039 (or any related or subsequent contract) and the Health Care Privatization Amendment Act of 2001, effective July 12, 2001 (D.C. Law 14-18; D.C. Official Code §§ 7-1401 *et seq.*).

**District** – the Government of the District of Columbia and the term “District government” used in the regulations enacted by the District of Columbia Financial Responsibility and Management Assistance Authority and published at 48 *D.C. Register* 9140.

**Health Care Safety Net Administration (HCSNA)** – the administration within the Department of Health that administers and monitors compliance with any contract made pursuant to the Health Care Privatization Amendment Act of 2001, effective July 12, 2001 (D.C. Law 14-18; D.C. Official Code §§ 7-1401 *et seq.*).

**Homeless person** – an individual lacking a fixed night-time address.

**Household** – an assistance unit that consists of either one person or several people who live together and whose needs, assets, and income are combined to determine eligibility. Inclusion in the assistance unit is governed by the Medicaid rules at 42 CFR Part 435 Subpart A and related provisions of Titles IV, XVI, and XXI of the Social Security Act of 1935, 42 U.S.C. §§ 601 to 698b, 1381 to 1397jj, and 1396 to 1396u-3 (2005).

**Federal Poverty Level** – the income level, which varies by household size, under which families in the continental United States are formally considered to be in poverty. The Secretary for the U.S. Department of Health and Human Services publishes a revised poverty level each year in the *Federal Register*.

**Income Maintenance Administration (IMA)** – the Administration within the Department of Human Services (DHS) that determines eligibility for Medicaid/Medical Assistance, Food Stamps, Temporary Assistance for Needy Families (TANF), Interim Disability Assistance (IDA), General Assistance for Children (GC), Refugee Assistance, and Burial Assistance.

**Medicaid** – a federally funded program that pays for medical care and health services for certain low-income persons. The program was established by and funded pursuant Title XIX and Title XXI of the Social Security Act of 1935, 42 U.S.C. §§ 1396 to 1396u-3 (2005).

**Medical Assistance program** – a locally funded program that pays for medical care and health services for certain low-income persons who are ineligible for the federally funded Medicaid program. The Medical Assistance program includes the Immigrant Children’s Program; it also includes the D.C. HealthCare Alliance program (except for the School Health Program and the medical care program for persons in custody of the Department of Correction and the Metropolitan Police Department).

**Resident** – a person who is presently living in the District of Columbia voluntarily and not for a temporary purpose and has no current intention of moving out of the District of Columbia.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET, N.W., 2<sup>nd</sup> Floor, WEST TOWER  
WASHINGTON, DC 20005

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION  
INTO THE PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND  
PROCEDURE

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Code,<sup>1</sup> of its final rulemaking action taken in the above-captioned proceeding.

2. On January 21, 2005, the Commission issued an emergency notice and proposed rulemaking ("NOEPR"), noticing its intent to adopt amendments to Chapter 13 of Title 15 District of Columbia Municipal Regulations, "Rules Implementing the Public Utilities Reimbursement Fee Act of 1980" ("Chapter 13").<sup>2</sup> Chapter 13 contains the Commission's regulations governing the reimbursable budgets of the Commission and the Office of the People's Counsel ("People's Counsel" or "OPC"). In the NOEPR, the Commission proposed rules to assess electricity suppliers and competitive local exchange carriers ("CLECs") in the same manner as public utilities, using a revenue allocation methodology. Subsequently, on February 18, 2005, the Commission published in the *D.C. Register* a Notice of Extension of Comment Period.<sup>3</sup>

3. On May 13, 2005, in light of new legislation permitting OPC and the Commission to assess competitive natural gas suppliers for their respective operating budgets,<sup>4</sup> the Commission issued an amended notice to include competitive natural gas suppliers.<sup>5</sup> The Amended NOPR superseded the NOEPR and the Notice of Extension of Comment Period; however the Commission advised interested parties that comments previously submitted in response to the NOEPR would be considered.

<sup>1</sup> D. C. Code, 2001 Ed. § 2-505.

<sup>2</sup> 52 D.C. Register 584 (January 21, 2005)(NOPR). By Order No. 13505, released February 10, 2005, the Commission extended the comment period on the NOEPR. On February 18, 2005, the Commission issued a Notice of Extension of Comment Period on the NOEPR, which reflected the extension previously ordered. 52 D.C. Register 1674 (February 18, 2005).

<sup>3</sup> 52 D.C. Register 1674 (February 18, 2005). Based on the Notice of Extension of Comment Period, initial comments were due by March 10, 2005 and replies by March 21, 2005.

<sup>4</sup> Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004, Law 15-227, effective March 16, 2005.

<sup>5</sup> 52 D.C. Register 4618 (May 13, 2005)(Amended NOPR).

4. Comments were filed by OPC, the Apartment and Office Building Association of Metropolitan Washington, Constellation NEWENERGY, Pepco Energy Services, Inc. ("PES"), Mid-Atlantic Power Supply Association, and Washington Gas Energy Services, Inc. ("WGES"). Reply comments were filed by Washington Gas Light Company, WGES, and PES. The Commission has carefully considered all of the comments, including those that suggested alternative assessment formulas. Our reasons for rejecting those alternatives are set forth in detail in a separate order. It is our view that, although the gross revenue assessment method may not be perfect, it is, all things considered, the most reasonable method for equitably assessing companies at this time.

5. The following amendments to Chapter 13 will become effective upon the date of publication of this Notice of Final Rulemaking in the *D.C. Register*:

**1301.1** Each public utility, competitive electric supplier, competitive natural gas supplier, and competitive local exchange carrier ("CLEC") shall be assessed a fraction of the reimbursable budgets of the Commission and of People's Counsel equal to the ratio of that utility's, competitive electric supplier's, competitive natural gas supplier's, or CLEC's calendar year gross revenues to the sum of the calendar year gross revenues of all public utilities, competitive electric suppliers, competitive natural gas suppliers and CLECs. Calendar year gross revenues are those revenues earned during the preceding calendar year by each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC from operations in the District that are regulated by the Commission.

**1301.2** On April 15<sup>th</sup> of each year, each utility, competitive electric supplier, competitive natural gas supplier, and CLEC shall file its gross jurisdictional revenue figures for the preceding calendar year ending December 31<sup>st</sup>.

**1302.1** Not later than thirty (30) days following the start of each fiscal year, the Commission shall publish the following information in the *District of Columbia Register*:

(a) The net reimbursable budgets for the Commission and People's Counsel for that fiscal year; and

(b) The total of the gross revenues of each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC for the preceding calendar year.

**1303.1** By August 31<sup>st</sup> of each year, the Commission shall separately send each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC separate Orders of Assessment for the Commission and the People's Counsel.



**1304.1** Each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC shall be required to reimburse a fraction of any supplemental appropriation received by People's Counsel or the Commission during the fiscal year according to the formula under § 1301.

**Section 1305 [Deleted.]**

**1306.1** If total obligations of the Commission and the People's Counsel are less than ninety-five percent (95%) of total appropriations as determined by the Office of the Deputy Mayor for Financial Management, the Deputy Mayor for Financial Management shall cause the difference to be refunded to the public utilities, competitive electric suppliers, competitive natural gas suppliers, and CLECs according to the formula under § 1301, within one hundred fifty (150) days following the end of the fiscal year.

**1399.1** When used in this chapter, the following terms and phrases shall have the meaning ascribed:

**Act** – the Public Utilities Reimbursement Fee Act of 1980, D.C. Law 3-88 (codified at D.C. Code § 34-912 (2001 Ed.)).

**Commission** – the Public Service Commission of the District of Columbia.

**Competitive Electric Supplier** – a person, including an aggregator, broker or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges, or markets electricity for sale to customers. The term excludes the following:

- (A) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants;
- (B) (i) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or  
(ii) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not:
  - (I) Take title to electricity;
  - (II) Market electric services to the individually-metered tenants of his or her building; or
  - (III) Engage in the resale of electric services to others;
- (C) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and

(D) A consolidator.

**Competitive Local Exchange Carrier (CLEC) – any provider of telecommunications service that was not an incumbent local exchange carrier on January 31, 1996.**

**Competitive Natural Gas Supplier – a person including an aggregator, broker, or marketer, who sells natural gas or purchases, brokers, arranges or markets natural gas for sale to customers. The term shall not include a person that supplies natural gas exclusively for its own consumption or the consumption of one or more of its affiliates. The term shall not include the following:**

- (A) Building owners, lessees, or managers who manage the internal distribution system serving the building and who supply natural gas solely to occupants of the building for use by the occupants;
- (B) (i) Any person who purchases natural gas for its own use or for the use of its subsidiaries or affiliates; or  
(ii) Any apartment building or office building manager who aggregates retail natural gas sales requirements for his or her building, and who does not:
  - (I) Take title to natural gas;
  - (II) Market retail natural gas sales to the individually-metered tenants of his or her building; or
  - (III) Engage in the resale of natural gas to others;
- (C) Property owners who supply small amounts of natural gas, at cost as an accommodation to lessors or licensees of the property;
- (D) A consolidator; or
- (E) The gas company.

**District – the District of Columbia.**

**People’s Counsel – the People’s Counsel of the Government of the District of Columbia.**

**Public Utility – any public utility, as defined under D.C. Code § 34-214 (2001 Ed.), other than a common carrier.**