

BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The Executive Director of the D.C. Board of Education, pursuant to the authority set forth in D.C. Code, 2001 edition, Section 38-101, hereby gives notice of proposed rulemaking action taken by the Board at its April 27, 2005 Board meeting to amend Chapter 35 of the Board Rules, Title 5 of the D.C. Municipal Regulations, regarding School Buildings and Grounds. The revisions require the Superintendent of Schools to 1) hold hearings for each proposed public/private development partnership that would result in a capital improvement project at a District of Columbia public school building and/or site, 2) make recommendations to the Board consistent with these regulations and the Superintendent's public/private development partnership procedures, 3) obtain the Board's approval prior to proceeding and 4) submit a quarterly report to the Board on the status of all public/private development partnership projects and publish a list of all approved or pending public/private development partnership projects in the DC Register annually.

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

Section 3514 is amended to read as follows:

3514 PUBLIC/PRIVATE DEVELOPMENT PROJECTS PARTNERSHIPS

3514.1 For purposes of this section, a public/private development partnership ("PPDP") is one in which an individual or organization, not affiliated with DCPS, partners with DCPS to utilize a DCPS-controlled real estate asset in such a manner as to produce benefits to DCPS including, but not limited to, revenue enhancement, capital improvements, and the provision of other goods and/or services which further the mission of DCPS. PPDPs may include other public entities, private entities, and/or non-profit entities, including co-locations and/or leases involving capital investments from entities other than DCPS.

3514.2 PPDPs may be entered into when the entirety of a DCPS-controlled real estate asset is the subject of the PPDP or when a PPDP will result in comprehensive physical changes to all or a portion of a DCPS-controlled real estate asset.

3514.3 DCPS may enter PPDPs to develop DCPS-controlled real estate assets for both educational and non-educational purposes.

- 3514.4 All PPDPs shall be developed by the Superintendent in accordance with these rules, the Superintendent's PPDP procedures, and shall be presented to the Board for final approval.
- 3514.5 Prior to recommending potential PPDP sites to the Board, as provided for in Section 3514.78 below, the Superintendent after giving thirty days' written notice in the ~~D.C.~~ D.C. Register, hold a public ~~hearing~~ hearings as cited below, for the purpose of receiving suggestions from interested parties on potential ~~sites for~~ PPDPs and adaptive reuses of DCPS-controlled real estate assets, and shall ensure Board review and approval of all sites ~~through a plan to be developed by the Board~~ consistent with the Superintendent's PPDP procedures.
- 3514.6 The Superintendent is required to hold at least one public hearing for unsolicited PPDP proposals that are recommended to proceed as a sole source and at least two public hearings for any unsolicited or solicited PPDP proposal recommended to proceed as an RFP or RFQ.
- 3514.~~67~~ After reviewing any public comments on proposed PPDP sites and suggested adaptive reuses, as provided for in Section 3514.5 above, the Superintendent shall ~~(a) develop a list of potential PPDP sites and suggested adaptive reuses for each; (b) publish the list in the D.C. Register; (c) allow forty five days for public comment on the list; and (d) notify the individual school governing bodies and single member district Advisory Neighborhood Commissioners.~~ present a recommendation to the Board to proceed or not to proceed, with supporting data and information for either action.
- 3514.78 After reviewing any public comments received pursuant to Section 3514.~~67~~ above, the Superintendent shall recommend selected PPDP projects to the Board based solely on the benefit to DCPS according to the criteria set out in Section 3514.~~43.14~~ below.
- 3514.89 All PPDPs entered into by DCPS shall result from an open and competitive selection process, except as provided in Sections 3514.910 and 3514.~~12~~13 below.
- 3514.910 If the Superintendent receives only one unsolicited offer to develop all or part of a DCPS-controlled real estate asset, such an offer, if accepted, may be converted into a sole source contract consistent with the Superintendent's PPDP procedures.
- 3514.~~10~~11 If the Superintendent receives one or more than one unsolicited offer, as described in Section 3514.910 above, and determines that the offer(s) could produce benefits to DCPS including, but not limited to, revenue

enhancement, capital improvements, and the provision of other goods and/or services which further the mission of DCPS, the material contents of the offers may be converted to a Request for Proposals ("RFP") or a Request for Qualifications ("RFQ") for public solicitation of competitive offers.

- 3514.1112 If the Superintendent wishes to proceed with either a sole source contract, as described in Section 3514.910 above, or with the RFP/RFQ process described in Section 3514.1011 above, the project(s) must receive specific approval from the Board prior to development of a sole source contract or the issuance of an RFP/RFQ consistent with the Superintendent's PPDP procedures.
- 3514.1213 The provisions of Sections 3514.89 and 3514.1011 above shall not apply to offers for PPDPs from universities or colleges located immediately adjacent to DCPS-controlled real estate assets, unless the Superintendent fails to reach a satisfactory development agreement with the university or college. For the purposes of this Section, the term "immediately adjacent" shall mean that one or more of the lot lines of the DCPS-controlled real estate asset abuts, or shares a common lot line with, real property owned or controlled by the college or university. However, public meetings and comment periods must be provided consistent with the Superintendent's PPDP procedures.
- 3514.1314 Potential PPDP sites shall be studied by the Superintendent and the Board for their long-term education program use, real property asset value, underlying zoning, type of partnership and suitability, and potential benefit to DCPS from the partnership.
- 3514.1415 The Superintendent's recommendations for PPDPs shall include fiscal year of initiation, capital cost avoidance, benefits to DCPS, impact on other DCPS capital projects, and a statement that the educational adequacy of the DCPS-controlled real estate asset involved will not be compromised by the PPDP.
- 3514.1516 The implementation of a PPDP may not, by displacing capital funds, delay modernization of school facilities assessed to be of higher priority for modernization, replacement, or other major capital improvements than the PPDP project.
- 3514.1617 PPDP projects shall assure that at least 35% Local, Small and Disadvantaged Business Enterprise (LSDBE) participation based on either the total construction budget or equity interest in the private portion of the development.

3514.1718 The Superintendent of schools shall report quarterly on the status of all PPDP projects and prepare a list of all approved or pending DCPS PPDP project sites and their proposed schedules projects, which shall be updated each year for publication in the D.C. Register.

Written comments on the proposed rulemaking are invited from interested citizens. Such comments should be addressed to Mr. Russell Smith, Executive Director, D.C. Board of Education 825 North Capitol Street, N.E., Suite 9108, Washington, D.C. 20002. Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to section 409 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.09), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to adopt the following amendment to Chapter 35 (Occupational and Professional License Fee Schedule) of Title 17 (Business, Occupations & Professions) of the District of Columbia Municipal Regulations (DCMR). The purpose of the amendment is to establish a schedule of fees for Marriage and Family Therapists.

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

CHAPTER 35 OF TITLE 17, DCMR, IS AMENDED AS FOLLOWS:

Section 3500.1 is amended to add the following schedule of fees for Marriage and Family Therapists:

MARRIAGE AND FAMILY THERAPISTS:

Application Fee	\$65.00
License Fee	\$136.00
Paid Inactive Status	\$136.00
Renewal Fee	\$136.00
Late Renewal Fee	\$65.00
Document Duplication Fee	\$26.00
Verification of Records	\$26.00
Reinstatement Fee	\$201.00

All persons wishing to comment on the proposed rulemaking shall submit written comments no later than thirty (30) days after the date of publication of this notice in the D.C. Register, to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, at the address listed above.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to section 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to adopt the following amendment to Chapter 40 (Health Occupations: General Rules) of Title 17 (Business, Occupations & Professions) of the District of Columbia Municipal Regulations (DCMR). The purpose of the amendment is to add a new § 4015 to accommodate health professional licensees who have been called to active duty and are deployed to a war zone and are unable to renew their license or complete continuing education hours in the required period of time.

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

CHAPTER 40 OF TITLE 17, DCMR, IS AMENDED AS FOLLOWS:

A new § 4015 is added to read as follows:

4015 SPECIAL LICENSE AND CONTINUING EDUCATION HOURS PROVISIONS FOR LICENSEES DEPLOYED TO A WAR ZONE

- 4015.1 If the license of a health professional lapses while he or she is serving in the military wherever the United States is engaged in active military operations against any foreign power or hostile force, the license may be reinstated or renewed without payment of the reinstatement or late renewal fee under the following conditions:
- (a) The license was active at the time of deployment;
 - (b) The application for reinstatement or renewal is made while still in the armed services or no later than six (6) months after discharge from active service or return to inactive military status;
 - (c) A copy of the military activation orders or other proof of active military service accompanies the application; and
 - (d) The renewal fee is paid.
- 4015.2 If the required continuing education contact hours were not earned for renewal during the earning period, the licensee shall be required to complete the required continuing education hours needed for renewal no

later than six (6) months after discharge from active service, return to inactive military status, or return to the United States from a war zone.

4015.3 The continuing education contact hours used for renewal shall not be used for the next licensing renewal.

4015.4 The continuing education contact hours for the next license renewal shall not be prorated.

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 sent to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the Department at the same address during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the D.C. Health Occupations Revision Act of 1985, effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapter 66 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The purpose of the amendments is to clarify the requirements for officially converting course hours from quarter and trimester hours in to semester hours based on the methods used by the educational institutions and requiring applicants to submit details of course that differ from the course the Board currently accepts.

Chapter 66 (Professional Counseling) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended as follows:**Section 6602.1 is amended as follows:**

- 6602.1 Except as otherwise provided in this chapter, an applicant for licensure shall furnish proof satisfactory to the Board, in accordance with § 710 of the Act, D.C. Official Code § 3-1207.10, of the following:
- (a) That the applicant has received a master's degree or higher from an institution of higher education which was accredited, at the time the degree was conferred, by an accrediting body recognized by the Secretary of the United States Department of Education, the Council on Postsecondary Accreditation or its successor;
 - (b) That the applicant has completed a minimum of sixty (60) semester hours or the equivalent number of quarter or trimester hours converted into semester hours in counseling or related subjects after earning a bachelor's degree;
 - (c) That the applicant shall have obtained satisfactory documentation of the required number of semester hours as converted from quarter hours or trimester hours into semester hours from the educational institution based on the institutions formula for conversion of quarter hours and trimester hours into semester hours.

A new section 6602.4 is added to read as follows:

6602.4 The applicant shall provide the Board with course descriptions detailing the subject matter of courses named on the applicant's certified transcript that differ from those courses outlined in § 6602.2.

All persons wishing to comment on the proposed rulemaking shall submit written comments no later than thirty (30) days after the date of publication of this notice in the D.C. Register to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, at the address listed above.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program and for other purposes approved December 27, 1967 (81 Stat. 744; D. C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1987 hereby gives notice of the intent to adopt an amendment to sections 921 ("Standards for Determining D.C. Medicaid Reimbursement Costs for Prescribed Multiple Source Drugs and Other Drugs and Methodology for Determining Prescription Reimbursement") through 925 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR).

The proposed amendments are required to enable the Medicaid program to change the existing nursing facility pharmacy reimbursement methodology to a nursing facility pharmacy point-of sale methodology that is designed to improve the quality of pharmacy care for recipients. Currently, District nursing facilities are paid an all-inclusive per diem rate that covers the cost of care for all resident services including pharmaceuticals. Upon implementation of the Point of Sale (POS) system and case mix reimbursement methodology, prescription costs will be carved out and reimbursed directly by the Medicaid program. These proposed rules: (1) establish pharmacy dispensing fees for nursing home pharmacy providers and other reimbursement requirements; (2) establish a reimbursement methodology for nursing home pharmacy providers who are also federally approved 340-B (Public Health Service) providers; and (3) updates the rules to reflect the name change of the Centers for Medicare and Medicaid Services, formerly the Health Care financing Administration.

The Medicaid Program projects an increase in total pharmacy expenditures of \$12 million in FY 2004 to \$21 million in FY 2010.

To ensure compliance with federal law, the Medicaid Program is also amending the District of Columbia State Plan for Medical Assistance (State Plan) to reflect these changes. These rules will not be finalized until the corresponding State Plan amendment is approved by the Council of the District of Columbia and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).

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*.

Amend sections 921 through 925 of Chapter 9 of Title 29 DCMR to read as follows:

921 STANDARDS FOR DETERMINING D.C. MEDICAID REIMBURSEMENT COSTS FOR PRESCRIBED MULTIPLE SOURCE DRUGS AND OTHER DRUGS AND METHODOLOGY FOR DETERMINING PRESCRIPTION REIMURSEMENT

- 921.1 The provisions of this rule shall govern the determination of reimbursement costs to pharmacies, including nursing home pharmacy providers, by the D.C. Medicaid Program and the methodology for determining prescription reimbursement for prescribed multiple source drugs and other drugs provided to eligible Medicaid recipients.
- 922 METHODS FOR DETERMINING COSTS OF PRESCRIBED MULTIPLE SOURCE DRUGS
- 922.1 The allowable cost for multiple source drugs designated by the Centers for Medicare and Medicaid Services (CMS) of the United States Department of Health and Human Services and included in its listings issued pursuant to 42 CFR 447.322, shall be the lower of the following:
- (a) The upper limit established by CMS, which is determined by multiplying the cost of the lowest cost drug by one hundred and fifty percent (150%); or
 - (b) The estimated acquisition cost, as determined by the Medical Assistance Administration based upon information from drug manufacturers and local wholesale price data.
- 922.2 If a drug is unavailable in the local market at a cost at or below the CMS limit described in subsection 922.1 (a), the allowable cost shall be the lowest price, determined by the CMS, at which the drug is available in the local market.
- 922.3 The CMS upper limit for a drug price shall not apply if a physician certifies in his or her own handwriting that a specific brand is medically necessary for a particular patient.
- 922.4 The handwritten phrase "Medically Necessary" or "Brand Necessary" shall appear on the face of the prescription form. If the prescription is for a nursing facility resident a handwritten phrase "Medically Necessary" or "Brand Necessary" shall be documented in the resident's medical record accompanied by a copy of the physician's order and plan of care.
- 922.5 Neither a dual line prescription form, check-off box on the a prescription form or check off-box on the physician's orders and plan of care shall satisfy the certification requirement.
- 922.6 The Department shall supplement the CMS listing by adding drugs and their prices which, in the judgment of CMS, meet the following requirements:
- (a) The formulation of the drug approved by the U.S. Food and Drug Administration (FDA) has been evaluated as therapeutically equivalent in the most current edition of its publication, Approved Drug Products with

Therapeutic Equivalence Evaluations (including supplements or in successor publications); and

- (b) At least two (2) suppliers list the drug (which has been classified by the FDA as category "A" in its publication, Approved Drug Products with Therapeutic Equivalence Evaluations, including supplements or in successor publications) based on listing of drugs which are locally available.

922.7 Each pharmacy that participates in the Medicaid program shall be notified in writing by the Department of Health, Medical Assistance Administration (MAA), of the established maximum allowable cost for the selected multiple source drugs listed pursuant to this section.

923 METHODS FOR DETERMINING COSTS OF OTHER PRESCRIBED DRUGS

923.1 Costs for prescribed drugs not listed by CMS shall be the average wholesale price, minus ten percent (10%).

923.2 The average wholesale price shall be the price, at the time of service, set forth in the most recent listing supplied to MAA by the First Data Bank National Drug Data File Services.

924 METHOD ESTABLISHED FOR DETERMINING PRESCRIPTION REIMBURSEMENT

924.1 Pharmacy claims for a community or retail pharmacy provider shall be reimbursed at the lower of the following:

- (a) The allowable cost, established pursuant to section 922 or 923, as appropriate, plus a dispensing fee of four dollars and fifty cents (\$4.50) per prescription; or

- (b) The pharmacy's usual and customary charge to the general public.

924.2 Effective October 1, 2005, pharmacy claims for a nursing home pharmacy provider shall be reimbursed at the lower of the following:

- (a) The allowable cost, established pursuant to section 922, 923 or 924.3, as appropriate, plus a dispensing fee of four dollars and fifty cents (\$4.50) per non-IV (intravenous) prescription or seven dollars and twenty-five cents (\$7.25) per IV prescription including cassette, TPN (total parenteral nutrition) or container; or

- (b) The pharmacy's usual and customary charge to the general public.

- 924.3 The allowable cost for drugs purchased by a nursing home pharmacy provider who is also a Federally approved 340-B (Public Health Service) provider shall not exceed the actual acquisition cost for all 340-B purchased drugs. Pharmacy claims for 340-B providers shall be excluded from any manufacturer's rebate.
- 924.4 Drugs covered by Medicare for persons who are dually eligible for Medicare and Medicaid shall be billed to Medicare under the Medicare Prescription Drug Benefit Part D.
- 924.5 An additional supply of medications may be dispensed for use by a nursing facility resident during a short-term medically approved trip away from the facility during holidays or family trips.
- 924.6 Prescribed drugs for purposes of nursing homes pharmacy reimbursement shall not include over-the-counter medications, syringes for diabetic preparations, geriatric vitamin formulations and senna extract.

925 DEFINITIONS

- 925.1 For the purposes of this Chapter, the following terms and phrases shall have the meanings ascribed:

Brand – any registered trade name commonly used to identify a drug.

Department of Health, Medical Assistance Administration (MAA) - an administration within the District of Columbia Department of Health that is responsible for the day-to-day administration and oversight of the District's Medicaid Program.

Multiple source drug – a drug marketed or sold by three (3) or more manufacturers or labelers, or a drug marketed or sold by the same manufacturer, or labeler under two (2) or more different proprietary names or both under a proprietary name and without such a name.

Prescribed drugs – legend drugs approved as safe and effective by the U.S. Food and Drug Administration and those over-the-counter medications which fall into the following categories:

- (a) Oral analgesics with a single active ingredient (i.e. aspirin, acetaminophen, ibuprofen, etc);
- (b) Ferrous salts (sulfate, gluconate, etc.);

- (c) Antacids with up to three active ingredients, (i.e.- Aluminum, magnesium, bismuth, etc.);
- (d) Diabetic preparations (i.e.- Insulin, syringes, etc.);
- (e) Pediatric, prenatal and geriatric vitamin formulations;
- (f) Family planning drugs and supplies; and
- (g) Senna extract, single dose preparations when required for diagnostic radiological procedures performed under the supervision of a physician.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the D.C. Register. Copies of the proposed rules may be obtained from the same address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

AMENDED NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION OF
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,¹ of 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"), in not less than 30 days from the date of publication of this Amended Notice of Proposed Rulemaking ("ANOPR") in the *D.C. Register*. 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"). The amendments establish rules for the assessment of competitive electric suppliers, competitive local exchange carriers, and competitive natural gas suppliers. This Amended NOPR supersedes the Notice of Emergency and Proposed Rulemaking ("NOEPR") published in the *D.C. Register* on January 21, 2005 at 52 *D.C. Register* pp. 584-589, and the Notice of Extension of Comment Period published in the *D.C. Register* on February 18, 2005 at 52 *D.C. Register* 1674.

2. On March 16, 2005, the Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004 went into effect.² The new law contains provisions permitting OPC and the Commission to assess competitive natural gas suppliers for their respective operating budgets. Consistent with the new law, the Commission now proposes to include competitive natural gas suppliers within the provisions of this Chapter.

3. Currently, Section 1301.1 reads:

1301.1 Each public utility will be assessed a fraction of the reimbursable budgets of the Commission and of People's Counsel equal to the ratio of that utility's calendar year gross revenues to the sum of the calendar year gross revenues of all public utilities. Calendar year gross revenues are those revenues earned during the preceding calendar year by each public utility from utility operations in the District that are regulated by the Commission.

¹ D. C. Code, 2001 Ed. § 2-505.

² Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004, Law 15-227, effective March 16, 2005.

The proposed amended Section 1301.1 shall read:

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.

4. Currently, Section 1301.2 reads:

1301.2 For purposes of this chapter, the Commission shall use the most recent revenue figure submitted by the following:

- (a) An electric power company in its Annual Report (Federal Energy Regulatory Commission Form No. 1);
- (b) A gas company in its Annual Report (Federal Energy Regulatory Commission Form No. 2); and
- (c) A telephone company in its monthly report for the month of December (Form S.N. 155).

The proposed amended Section 1301.2 shall read:

1301.2 On April 15th 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 31st.

5. Currently, Section 1302.1 reads:

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;

- (b) The preceding calendar year gross revenues of each public utility; and
- (c) The estimated reimbursement to be assessed to each public utility for that fiscal year under § 1301 and the fraction used to calculate the same.

The proposed amended Section 1302.1 shall read:

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.**

6. Currently Section 1303.1 reads:

1303.1 During each fiscal quarter, the Commission shall separately send each public utility a "Statement of Reimbursement Due" which shall include a separate invoice for the Commission and the People's Counsel for approximately one fourth of that utility's reimbursement (as determined under § 1301), including applicable adjustments made to the reimbursable budgets from time to time, as set forth in § 1305.

The proposed amended Section 1303.1 shall read:

1303.1 By August 31st 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.

7. Currently, Section 1304.1 reads:

1304.1 Each public utility shall be required to reimburse a fraction of any supplemental appropriation received by People's Counsel or the Commission during the fiscal year (excluding appropriations for security regulation by the Commission) according to the formula under § 1301. The Commission shall incorporate the supplemental reimbursements in the two (2) subsequent quarterly invoices, except that if only one (1) quarter remains in that fiscal year, the entire supplemental reimbursement shall be incorporated in the fourth (4th) quarter invoice.

DISTRICT OF COLUMBIA REGISTER

The proposed amended Section 1304.1 shall read:

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.

8. Currently, Section 1305.1 reads:

1305.1 A percentage equal to four and ninety eight hundredths of a percent (4.98%) of the total fiscal year 1980 expenditures by the People's Counsel and by the Commission (except amounts spent by the Commission for security regulation) attributable to the eighteen (18) day period beginning September 13, 1980 (the effective date of the Act) and ending September 30, 1980, shall be assess to the regulated utilities according to the formula under § 1301. The assessments shall be included in the invoice for the second quarter of fiscal year 1981.

Section 1305 shall be deleted.

9. Currently, Section 1306.1 reads:

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 according to the formula under § 1301, within one hundred fifty (150) days following the end of the fiscal year.

The proposed amended Section 1306.1 shall read:

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.

10. Currently, Section 1399.1 reads:

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 § 43-612 (1981 Ed.)), effective September 13, 1980.

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

People's Counsel – the People's Counsel of the Government of the District of Columbia.

District – the District of Columbia.

Public Utility – any public utility, as defined under D.C. Code § 43-203 (1981 Ed.), other than a common carrier.

Security Regulation – the responsibilities of the Commission under the District of Columbia Securities Act, approved August 30, 1964 (78 Stat. 620, D.C. Code §§2-2401 through 2-2418 (1981)).

The proposed amended 1399.1 shall read:

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.

11. Comments on the proposed amendments to Chapter 13 must be made in writing to Christine D. Brooks, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, DC 20005. All comments must be received within 20 days of the date of publication of this ANOPR in the *D.C. Register*. Commenters who advocate a change from the current

assessment formula or collection method should provide fully detailed alternatives, and include in their proposals any statutory revisions that would be necessary to effectuate their proposals. Persons wishing to file reply comments may do so no later than 30 days of the date of publication of this ANOPR in the *D.C. Register*. Comments and replies submitted in response to the earlier NOEPR will be considered. Once the comment and reply periods have expired, the Commission will take final rulemaking action.

THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGFORMAL CASE NO. 1009, IN THE MATTER OF THE INVESTIGATION INTO AFFILIATED ACTIVITIES, PROMOTIONAL PRACTICES, AND CODE OF CONDUCT OF REGULATED GAS AND ELECTRIC COMPANIES

The Public Service Commission of the District of Columbia ("Commission") hereby gives notice that it is **reopening the comment period** on proposed rules published in the D.C. Register, 51 *D.C. Register* 6036 (June 11, 2004). The original comment period ended on July 26, 2004.

In that rule, the Commission proposed an amendment to Title 15 of the D.C. Municipal Regulations, Chapter 9 entitled "District of Columbia Affiliate Transactions Code of Conduct" for the purpose of establishing a code of conduct governing affiliate transactions between regulated utilities and their unregulated affiliates. The Commission received several comments questioning the Commission's authority to regulate gas suppliers. The Commission has not taken final action on the proposed rules. In the interim, the Council of the District of Columbia has enacted legislation concerning gas suppliers that expands the Commission's regulatory authority. See D.C. Law 15-227, "Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004." Because this new legislation broadens the Commission's authority over gas suppliers, the comment period is reopened to allow interested parties an opportunity to revise their previous comments.

The Commission will retain and consider all previous comments. Interested parties may file new comments, supplement their previously filed comments, or withdraw their previously filed comments and submit new ones. All comments must be in writing and addressed to Christine D. Brooks, Commission Secretary, at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor West Tower, Washington, D.C. 20005.

The Commission hereby gives notice, pursuant to D.C. Code Section 2-505,¹ of its intent to adopt Chapter 9, "District of Columbia Affiliate Transactions Code of Conduct" of Title 15, D.C. Municipal Regulations in not less than 30 days from the date of the publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*. All comments must be received within 30 days of the date of publication of this NOPR in the *D.C. Register*. Persons wishing to file reply comments may do so no later than 45 days of the date of publication of this NOPR. After the comments have been received, the Commission will take final action on the proposed affiliate transactions code of conduct procedures.

¹ See D.C. Code, 2001 Ed. § 2-505 (notice of proposed rulemaking to be published in *D.C. Register* before adoption).