

## DEPARTMENT OF INSURANCE AND SECURITIES REGULATION

NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Insurance and Securities Regulation, pursuant to the authority set forth in Section 125 of the Insurance Trade and Economic Development Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-265, D.C. Official Code § 31-2231.); Section 18 of the Captive Insurance Company Act of 2001, effective October 21, 2000 (D.C. Law 13-192, D.C. Official Code § 31-3917 (2001 Ed.)); Section 1229(a) of the Omnibus Reform Amendment Act of 1998, effective April 29, 1998 (D.C. Law 12-86; D.C. Official Code § 31-5328 (2001 Ed.)); Section 23 of the Health Maintenance Organization Act of 1996, effective April 9, 1997 (D.C. Law 11-235, D.C. Official Code § 31-3423 (2001 Ed.)); Section 25 of the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245, D.C. Official Code § 31-3524 (2001 Ed.)); Section 10 of the Risk-Based Capital Act of 1996, effective April 9, 1997 (D.C. Law 11-233; D.C. Official Code § 31-2009 (2001 Ed.)); Section 15 of the Insurance Agents and Brokers Licensing Revision Act of 1996, effective April 9, 1997 (D.C. Law 11-227, D.C. Official Code § 31-814 (2001 Ed.)); Section 9 of the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44, D.C. Official Code § 31-738 (2001 Ed.)); Section 3(h) of the Life Insurance Amendments Reform Act of 1984, effective March 14, 1985 (D.C. Law 5-160, D.C. Official Code § 31-4728 (2001 Ed.)); and Section 1 of Chapter II of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1066; D.C. Official Code § 31-2502.01 (2001 Ed.)). The rules govern the rules of practice and procedure for certain public hearings held by the Commissioner of the Department of Insurance and Securities Regulation.

A notice of proposed rules was published in the D.C. Register on May 2, 2003 (50 DCR 3482). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the D.C. Register.

A new Chapter 38 of Title 26 of the DCMR Rules of Practice and Procedure for Hearings, is promulgated to read as follows:

**CHAPTER 38**  
**RULES OF PRACTICE AND PROCEDURE FOR HEARINGS**

**3800            APPLICABILITY**

3800.1            This chapter contains procedures for administrative hearings involving a "contested case" as defined by the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1203, Pub. L. 90-614) before the Commissioner of the Department of Insurance and Securities Regulation ("Commissioner"), in matters other than those brought pursuant to the Securities Act of 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601.01 *et seq.*).

3800.2            In any proceeding governed by this chapter the Commissioner or any hearing officer designated by the Commissioner may, on his or her own motion or on application of any person, waive, modify, or extend any provision of the chapter for good cause shown, to promote the interests of justice, or to prevent undue hardship; provided however that no provision may be waived, modified, or extended if its terms are required by any applicable statute. Whenever the Commissioner or any hearing officer waives, modifies, or extends any provision under the authority of this rule, he or she shall duly advise the parties of that fact.

**3801            DELEGATION OF HEARING AUTHORITY**

3801.1            The Commissioner may, in his or her discretion, delegate authority to conduct a hearing to a hearing officer. The Commissioner shall serve a notice of delegation on all parties and on the hearing officer.

3801.2            The designated hearing officer shall issue a proposed decision and order that includes proposed findings of fact and conclusions of law.

3801.3            The Commissioner may, at his or her discretion, rescind all or part of the authority delegated to the hearing officer. If only part of the delegation is rescinded, the Commissioner shall specify in the order of rescission the portions of the matter for which the delegation has been rescinded. The rescission order shall be effective on the date it is signed by the Commissioner, unless a different effective date is specified in the order.

3801.4            The final decision issued by the Commissioner or proposed decision issued by the designated hearing officer shall reflect the rescission of delegation, and a copy of the rescission order shall be included as part of the record.

**3802 TIME, PLACE OF FILING, AND COMPUTATION OF TIMING**

- 3802.1 Papers required or permitted to be filed under this chapter shall be filed by delivery of an original and two copies to the Department of Insurance and Securities Regulation, 810 First Street, NE, Suite 701, Washington, D.C. 20002, or such other places as the Commissioner may designate. Unless specifically authorized by the Commissioner or a designated hearing officer, no filings may be made by telefax or electronic mail.
- 3802.2 Unless otherwise specifically provided by law or these rules, computation of any time period prescribed by these rules or by an order of the Commissioner begins with the first day following the act or event that initiates the time period. If the last day of the time period so computed is a Saturday, Sunday, District of Columbia holiday, or any other day on which the Department is closed, in which event the period runs until the end of the next business day.
- 3802.3 If a notice or other filing is served by mail and the party served is entitled or required to take some action within a prescribed time period after service:
- (a) The date of mailing is date of service; and
  - (b) Three (3) days are added to the prescribed time period.
- 3802.4 Except in the case of jurisdictional time periods prescribed by statute, when an act is required or allowed to be done at or within a specific time, the Commissioner on his or her own motion, for good shown, may order the period enlarged.
- 3802.5 Except in the case of jurisdictional time periods prescribed by statute, the Commissioner, at his or her discretion, may order an enlargement of time made pursuant to a motion before or after the expiration of the period proscribed, for good cause shown.

**3803 SUBPOENAS**

- 3803.1 The Commissioner may issue subpoenas for the attendance of witnesses, or the production of books, papers, records, or other documents at any hearing.<sup>[a1]</sup>
- 3803.2 Subpoenas issued pursuant to this section shall be under seal of the Commissioner, and shall describe the document or name the person ordered to be produced, or required to attend the hearing.<sup>[a2]</sup>

- 3803.3 A subpoena may be served in the same manner and by any person authorized by the Rules of Civil Procedure of the Superior Court of the District of Columbia. A person serving a subpoena shall note the manner, place, and time of service in an affidavit, the original of which shall be made part of the official record.
- 3804 SHOW CAUSE AND SUMMARY SUSPENSION HEARINGS**
- 3804.1 All of the provisions of these rules, except those in § 3806, shall apply to show cause and summary suspension hearings.
- 3804.2 The Commissioner shall serve the summary suspension order or notice to show cause upon each respondent named in the order. Service may be made by personal service or by registered or certified mail by serving the respondent directly, or by serving the respondent's agent for service of process in the District.
- 3804.3 If the Commissioner is unable to serve an insurer with a summary suspension order or notice to show cause by the means specified in § 3804.2, proper service may be made by serving the Commissioner as the insurer's attorney for service of process in accordance with D.C. Official Code §§ 31-202 (2001 Ed.).
- 3804.4 If the Commissioner is unable to serve an insurance agent or broker with a summary suspension order or notice to show cause by the means specified in § 3804.2, proper service may be made by sending the notice to show cause or summary suspension order by registered or certified mail to the agent's or broker's principal place of business as indicated in the Department's records. [a3]
- 3804.5 In addition to any contents required by statute, a summary suspension order or notice to show cause shall advise the respondent of the:
- (a) Respondent's right to a hearing;
  - (b) Time period within which the respondent must request a hearing;
  - (c) Respondent's obligation to file an answer; and
  - (d) Effect of a failure to file an answer and to request a hearing.
- 3804.6 The applicant shall have the burden of proof in a show cause hearing when the Commissioner has proposed to deny an application for licensure.[a4]
- 3804.7 The Department shall have the burden of proof in a show cause hearing or summary suspension order when the Commissioner has proposed to take disciplinary action against a licensee.

- 3804.8 A respondent shall file with the Commissioner a written answer to a notice to show cause or summary suspension order within ten (10) business days of service of the order and within five (5) business days of service of any amended order. The parties and the staff of the Department may by agreement extend the time for filing the answer up to 30 calendar days. Any additional extension of time may only be granted by order of the Commissioner.
- 3804.9 The answer shall admit or deny each factual allegation in the notice to show cause or summary suspension order and shall set forth affirmative defenses, if any. A respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state, and such a statement shall be treated as a denial of the allegation in question.
- 3804.10 The answer shall indicate whether the respondent requests a hearing concerning the notice to show cause or summary suspension order.
- 3804.11 If a respondent fails to file a timely answer, the Commissioner may issue a proposed or final decision adverse to that respondent.
- 3805 RESERVED**
- 3806 PUBLIC HEARINGS—PURSUANT TO THE HOLDING COMPANY SYSTEM ACT**
- 3806.1 The provisions of this section shall only apply to hearings held pursuant to D.C. Official Code §§ 31-703(g)(1), (2) and 31-704(e) (2001 Ed.), unless otherwise indicated. Other provisions of these rules, shall apply to hearings held pursuant to the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44, D.C. Official Code § 31-701 *et seq.*).<sup>[a5]</sup>
- 3806.2 The Commissioner shall publish an official Notice of Public Hearing in the District of Columbia Register, not less than thirty (30) days prior to the commencement of the public hearing.
- 3806.3 A Notice of Public Hearing shall contain the following information:
- (a) A statement summarizing the subject matter of the proceedings, including the issues involved and applicable statutes and rules; and
  - (b) That the Commissioner has scheduled a public hearing on the matter, setting forth the date, place and time of the public hearing.
- 3806.4 The Commissioner, in his or her discretion, may order the petitioner making a filing pursuant to D.C. Official Code §§ 31-703 or 31-704 (2001 Ed.) to place the

Notice of Public Hearing in a newspaper of general circulation, not less than thirty (30) days prior to the commencement of the public hearing, at the petitioner's expense.

- 3806.5 If more than one day of hearings is held and there are less than thirty (30) days between the first and second hearing dates, the Commissioner shall not be required to publish more than one Notice of Public Hearing. The Commissioner shall either publish the date of any subsequent hearing to be held within thirty (30) days of the first hearing in the Notice of Public Hearing or notify the parties of the subsequent hearing date on the record during the first public hearing.
- 3806.6 A person filing the statement pursuant to D.C. Official Code §§ 31-703 or 31-704 shall be a "party" as defined in D.C. Official Code § 502(10), and shall have all of the rights afforded to such persons by the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1203, Pub. L. 90-614).
- 3806.7 A person desiring to participate in a hearing as permitted by D.C. Official Code § 31-703(g)(2) (2001 Ed.) shall file a motion to intervene with the Commissioner. The motion to intervene shall include: (1) the name and address of the person or organization; (2) an explanation of how the person or organization is or may be affected by the pending matter, and any relief sought; (3) a statement summarizing the issues, laws, and any other matters that will be pursued during discovery or covered at the hearing; and (4) a statement explaining why the person's or organization's interests would not be adequately represented by the parties that are already participating, including the Department. A copy of the motion to intervene shall be served on all parties.
- 3806.8 A party opposing a person's motion to intervene pursuant to § 3806.3 shall file a written objection, setting forth the grounds for its objection, no later than three (3) business days after service of the letter requesting the right to participate. [a6]
- 3806.9 The Commissioner or the designated hearing officer may issue a case management order prior to the hearing. The order may include deadlines for completing discovery, the consolidation of parties and issues, limitations or conditions on the scope of discovery, and any other reasonable provisions reasonably calculated to promote an orderly and efficient hearing process.
- 3806.10 The Commissioner or the designated hearing officer may permit any person that does not want to intervene as a party to offer an oral or written statement at the hearing, which shall be made part of the official record. The Commissioner or the designated hearing officer may reasonably restrict the length of any oral statement made at the hearing. If the Commissioner or designated hearing officer

determines that an oral statement is irrelevant, immaterial or unduly repetitious, he or she may further restrict the time allowed to a speaker.

**3807            RESERVED**

**3808            CONDUCT OF HEARINGS**

- 3808.1        The Commissioner shall preside at all hearings unless the Commissioner has delegated his or her authority to conduct the hearing to a hearing officer in accordance with these rules.
- 3808.2        All hearings shall be open to the public. The Commissioner or designated hearing officer, for good cause shown, may grant a request by a party to keep confidential any proprietary or personal information introduced as evidence in a hearing.
- 3808.3        The proceedings shall be handled in the following manner:
- (a)        The Commissioner or designated hearing officer shall call the hearing to order;
  - (b)        The Commissioner or designated hearing officer shall explain briefly the purpose and nature of the hearing and the issues involved;
  - (c)        The Commissioner or designated hearing officer may allow the parties to present preliminary matters;
  - (d)        The parties may make opening statements;
  - (e)        The Commissioner or designated hearing officer shall state the order of the presentation of evidence;
  - (f)        Witnesses shall be sworn or put under affirmation to tell the truth, and their direct testimony may be admitted in person or in writing, but cross examination shall be in person;
  - (g)        The parties may present closing summations and arguments; and
  - (h)        Shall exclude any irrelevant, immaterial, and unduly repetitious evidence.
- 3808.4        During the hearing, the Commissioner or designated hearing officer:
- (a)        Shall administer the oath or affirmation to each witness;
  - (b)        Shall rule on the admissibility of evidence;

- (c) Shall maintain order and take such action as necessary to avoid delay in the conduct of the hearing; and
- (d) May question any witness at any time as to any matter that the Commissioner considers relevant and material to the proceeding.

3808.5 On a genuine issue of material fact necessary to the determination of a contested case, each party may:

- (a) Call witnesses;
- (b) Offer direct evidence;
- (c) Cross-examine witnesses; and
- (d) Make opening and closing statements.

3808.6 The Commissioner or designated hearing officer may take official notice of a fact which may be judicially noticed by the District of Columbia courts and may take official notice of general, technical or scientific facts within his or her specialized knowledge or experience. The Commissioner or designated hearing officer shall notify all parties person of the material so noticed and shall permit a party, upon timely request, to contest the facts noticed. The Commissioner or designated hearing officer may use his or her technical experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

3808.7 The Commissioner may impose sanctions on a party that does not comply with his or her orders, including entering orders for decision on one or more issues, limiting the introduction of evidence or a party's participation in the proceeding, and addressing other matters he or she deems appropriate. When a hearing is conducted by a designated hearing officer, the designated hearing officer may propose to the Commissioner that sanctions be imposed at any time during the proceeding, provided however that any such proposal must be in writing and must be served upon the party against whom the sanctions are proposed.

**3809 APPEARANCE AT PUBLIC HEARING**

3809.1 All persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the District of Columbia courts. The Commissioner or designated hearing officer may issue orders appropriate to maintain order, including the exclusion of a disorderly person from the hearing. If the person excluded is a party or its representative, the

Commissioner may decide against the party with prejudice.

- 3809.2 In a proceeding before the Commissioner or designated hearing officer, an individual may appear in his or her own behalf; a receiver or trustee may appear in such capacity; a general partner of a partnership may represent the partnership; an officer or director of a corporation may represent the corporation; an officer or director of an association may be represent the association; and a duly authorized official of any District, Federal, or State governmental agency may represent such agency.
- 3809.3 A party has the right to waive the right to be present at the hearing, and may be represented by counsel who shall be licensed by the highest court of the District or any state.

**3810 FAILURE TO APPEAR**

- 3810.1 If a party fails to appear at the hearing, either personally or through counsel, the Commissioner or designated hearing officer may proceed to hold the hearing in that party's or absence.
- 3810.2 The Commissioner or designated hearing officer may also hold the absent party in default and may issue a proposed or final decision and order against the defaulted party.
- 3810.3 A party defaulted as a result of a failure to appear at a hearing may file a written motion, within five calendar days of the entry of the order of default, requesting reconsideration by the Commissioner or designated hearing officer. The motion shall state the grounds for the request, and include a proposed order.

**3811 PREHEARING CONFERENCES**

- 3811.1 The Commissioner or designated hearing officer may require parties to appear at a specified date, time, and place for a pre-hearing conference for the purpose of addressing the following matters:
- (a) Simplification of issues;
  - (b) Admissions or stipulations of fact;
  - (c) Requests for official notice;
  - (d) Discovery disputes, where discovery is expressly allowed by statute;

- (e) Preliminary motions;
- (f) Admissibility of evidence;
- (g) Order of presentation;
- (h) Limitation of the number of witnesses;
- (i) Exchange of prepared testimony and exhibits between the parties;
- (j) Scheduling; and
- (k) Other matters that will promote the orderly and prompt conduct of the hearing.

3811.2 The Commissioner or designated hearing officer shall make any action taken at a pre-hearing conference part of the record.

**3812 RECORD OF PROCEEDINGS**

3812.1 The Department shall cause all oral proceedings, including testimony, to be recorded by a stenographer or by tape recorder or other device. The recording of the proceedings, which need not be transcribed, shall be maintained in the custody of the Department. If the Commissioner or designated hearing officer orders that the proceeding be transcribed by an official court reporter, the respondent shall bear the costs of such recording of the proceeding. If the proceeding is recorded by audio tape, any subsequent preparation of a transcript of the proceeding from the audio tape, for any reason, including an appeal by the respondent, shall be paid for by the respondent, and two complete copies of the transcribed proceedings shall be provided to the Commissioner at the respondent's expense.

3812.2 The record of a hearing shall include:

- (a) All pleadings, motions, orders, and related papers filed with the Commissioner or designated hearing officer;
- (b) All documentary and tangible evidence;
- (c) A statement of matters officially noticed;
- (d) Recordings and any transcripts of oral proceedings;
- (e) The findings of fact and conclusions of law proposed by each party;

- (f) Any exceptions filed by the parties and the rulings of the Commissioner or designated hearing officer on those exceptions;
- (h) If a case has been delegated to a hearing officer for a proposed decision:
  - (1) The notice of delegation,
  - (2) Any order rescinding the delegation, whether in part or in whole,
  - (3) The proposed decision, including proposed findings of fact and proposed conclusions of law, of the hearing officer,
  - (4) Any exceptions filed by the parties with respect to the designated hearing officer's proposed decision,
  - (5) The Commissioner's rulings on any exceptions and the designated hearing officer's proposed findings of fact or conclusions of law, and
  - (6) Any additional information or documentation submitted to the Commissioner by the parties;
- (g) The final findings of fact, conclusions of law, and final decision and order of the Commissioner; and
- (j) Other documents or material placed in the record as required by law or at the discretion of the Commissioner or designated hearing officer.

3812.3 Upon compilation, the record shall be available for public inspection at the Department during normal business hours unless the contents are otherwise protected by law.

3812.4 The Department, upon request of any person, shall arrange for a copy of the record to be made, if the requesting person pays in advance to the Department the estimate of the reasonable cost of making the copy. The copy may be certified by the Commissioner upon request by any person.

- 3813**            **MOTIONS AND OTHER PLEADINGS: COMMUNICATIONS WITH THE COMMISSIONER**
- 3813.1            Except by leave of the Commissioner or designated hearing officer during a hearing, a party seeking an order or other relief or action regarding a pending matter that is the subject of public hearing, shall file a written motion, which shall become part of the public record.
- 3813.2            Responses to written motions shall be filed and served no later than ten (10) calendar days after the motion has been served.
- 3813.3            All motions and responses shall be accompanied by a memorandum setting forth:
- (a)      a statement of the facts;
  - (b)      legal points and authorities in support thereof; and
  - (c)      a proposed order.
- 3813.4            No rejoinders or replies to responses will be accepted without leave of the Commissioner or designated hearing officer.
- 3813.5            The Commissioner or designated hearing officer may, when deemed necessary, act upon a motion at any time without awaiting responses.
- 3813.6            Unless otherwise ordered by the Commissioner or designated hearing officer, no hearing shall be convened on motions.
- 3813.7            Any person seeking to inform the Commissioner of relevant information regarding a pending hearing without seeking any relief in the form of an order, shall so inform the Commissioner by filing such information in the form of a typewritten letter, which shall become part of the public record. The person filing such letter shall serve it on all parties to the proceeding.
- 3813.8            Any person filing a motion, pleading, letter, or other document shall sign and date the filing and include the address and telephone number of the filing party. The document shall contain a certification of service indicating that the filing has been served on all parties to the proceeding.

**3814 SERVICE OF PLEADINGS**

- 3814.1 Written motions and all other pleadings shall be served on all parties.
- 3814.2 When filed, all pleadings shall be accompanied by proof of service upon all parties. Proof of service of any pleading shall be by certificate of service, affidavit or affirmation regarding delivery, or acknowledgement of receipt.
- 3814.3 Service of pleadings shall be made by one of the following methods:
- (a) United States mail, with first-class postage prepaid;
  - (b) By personal delivery ; or
  - (c) By leaving it at the party's place of business with a person in charge or an employee or, if the place of business is closed or the party has no place of business, by leaving it at the party's usual place of residence with a person of suitable age and discretion who is at least sixteen (16) years of age or older residing there.
- 3814.4 Service by mail is complete upon mailing.
- 3814.5 Service on a general partner shall be valid service on the partnership.
- 3814.6 Service on an officer or director or registered agent of a corporation or association shall be valid service on that corporation or association.
- 3814.7 When any party is represented in a specific proceeding by an attorney, service of all pleadings in that proceeding shall be made upon the attorney and that service shall be considered service upon that party or those parties.

**3815 EX PARTE COMMUNICATIONS**

- 3815.1 From the start of the proceeding until the rendering of a final decision, no person may communicate *ex parte* with the Commissioner or designated hearing officer regarding the merits of the proceeding.
- 3815.2 The Commissioner shall not be prohibited from communicating with officials of the District government and members of the Department on policy and procedural matters during the course of a proceeding before the Commissioner.
- 3815.3 The Commissioner shall not be prohibited from communicating with any party that is a regulated entity or person of the Department on matters not related to the merits of a matter before the Commissioner.<sup>[a7]</sup>

3815.4 If the Commissioner determines that a person has violated the prohibition on *ex parte* communications, he or she may impose appropriate sanctions against that person, which may include excluding the person from the proceeding or deciding against it with prejudice.<sup>[a8]</sup>

3815.5 As used in this section, the term "*ex parte*" shall mean any oral or written communication related to the merits of a pending matter made to the Commissioner, not in the public hearing record, with respect to which reasonable prior notice to all parties to the proceeding is not given. An inquiry about the status of a proceeding is not considered an *ex parte* communication.<sup>[a9]</sup>

### **3816 POST-HEARING PROCEDURES**

3816.1 If the matter is heard before a hearing officer, the hearing officer shall serve proposed findings of fact, proposed conclusions of law, and a proposed order on all parties and the Commissioner within twenty (20) calendar days of the close of the hearing to the Commissioner for adoption, amendment, or rejection.

3816.2 A party served with proposed findings of fact, proposed conclusions of law, and a proposed order shall have the right to file exceptions to the proposed findings of fact, proposed conclusions of law, and proposed order. Such exceptions shall be filed and served within ten (10) calendar days of the date the proposed findings of fact, proposed conclusions of law, or proposed order in question were served. In addition, the party shall have the right to present argument to the Commissioner, who shall consider the exceptions and argument when rendering his or her final findings of fact, conclusions of law and order.<sup>[a10]</sup>

3816.3 If the matter is heard before the Commissioner, the Commissioner shall make a written final order within 60 days of the close of the hearing record. A final order will be in writing. A final order will include findings of fact, conclusions of law, and an order. A copy of a final order shall be served upon each party of record.

### **3817 APPEAL RIGHTS**

3817.1 Judicial review of an adverse decision of the Commissioner shall be by petition to the District of Columbia Court of Appeals.<sup>[a11]</sup>

### **3818 SEVERABILITY**

3818.1 If any section or portion of a section of these rules, or the applicability thereof to any person or circumstance is held invalid by any court of competent jurisdiction, the remainder of these rules, or the applicability thereof to other persons or circumstances, will not be affected thereby.

**3819        DEFINITIONS**

"Commissioner" means the Commissioner of the Department of Insurance and Securities Regulation or designated hearing officer.[a12]

"District" means the District of Columbia.

"Party" means any person or agency named or admitted as a party, in any proceeding before the Commissioner, but nothing herein shall be construed to prevent the Commissioner from admitting any person or agency as a party for limited purposes.[a13]

"Person" means any natural or artificial person, including but not limited to, individuals, partnerships, associations, trusts, or corporations.

"Respondent" means a person against whom an adverse action is contemplated, proposed, or taken.[a14]

"Show Cause Order" means an order issued by the Commissioner that alleges facts that constitute a violation of, or a failure to comply with, the law by the respondent and that directs the respondent to explain why the Commissioner should not issue a final order against the respondent based upon the alleged facts, and shall include orders to show cause concerning:

- (a) A cease and desist order, stop order; and
- (b) A denial, suspension, or revocation order.

"Summary Suspension Order" means an order issued by the Commissioner that alleges facts that constitute a violation of, or failure to comply with, the law by the respondent and that directs the respondent immediately to take actions or refrain from certain actions. Summary suspension orders include:

- (a) A summary cease and desist order;
- (b) A stop order issued by the Commissioner;
- (c) A summary postponement or suspension; and
- (d) A summary denial or revocation.

## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF FINAL RULEMAKING

The District members of the Board of Directors ("the Board") of the District of Columbia Water and Sewer Authority ("the Authority"), pursuant to the authority set forth in section 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Official Code §§ 34-2202.03(3), (11) and 34-2202.16, at its regular meeting held on July 3, 2003 took final action to adopt the following amendments to the Water and Sanitation Regulations (21 DCMR), as proposed in the Notice of Proposed Rulemaking. The rules amend Chapter 1 of the Water and Sanitation Regulations (21 DCMR), subsections 106.4, 112.1, and 112.2 to increase the fees for certain services provided by the Authority and add new subsections: 112.4, Retail and Commercial Customer Fees and Charges; 112.5, Engineering Reviews, Sale of Documents, Maps and Manuals; and 112.6, Pre-Treatment.

The Authority's proposed rulemaking was originally published in the January 31, 2003 edition of the D.C. Register, (50 DCR 1023). Although not required, the Board also received comments on the proposed fees at a public hearing held on May 12, 2003. After consideration of all comments received, the Board voted to implement all fees as proposed, except the Annual fee for "Testing of Significant Industrial Users".

This final rulemaking will be effective when published in the D.C. Register.

**Title 21 DCMR, Chapter 1, "WATER SUPPLY", Section 106 "PERMITS FOR USE OF WATER FROM FIRE HYDRANTS", Subsection 106.4 is amended to read as follows:**

106.4 The following fees shall be charged for use of fire hydrant water:

- (a) For construction, demolition, dust control, or other similar purposes, the fee shall be based on usage for each fire hydrant.
- (b) For swimming pools without meters, baptismal pools, tank trucks, storage tanks, and similar uses where the amount of water used can be determined, the fee shall be determined using the prevailing water rate.

**Fire Hydrant Charges**

Fire Hydrant Use

Based on usage

**Title 21 DCMR, Chapter 1, "WATER SUPPLY", Section 112 "FEES", subsection 112.1 is amended to read as follows:**

112.1 Fees for installation, removal of water and sewer connection, water meter repair, removal, and resettings shall be as follows:

**SCHEDULE I**

**Material or Service**

Water Tap Removal	\$310.00
Water Connection Removal	\$610.00
Sewer Tap Removal	\$235.00
Pointing up sewer taps	\$660.00
Insertion of Y-branch	\$235.00

**SCHEDULE II**

**Water Tap Insertions**

1 inch	\$325.00
1 1/2 inch	\$380.00
2 inch	\$415.00
Water Connection	Reimbursable

**Title 21 DCMR, Chapter 1, "WATER SUPPLY", Section 112 "FEES", subsection 112.2 is amended to read as follows:**

112.2 Fees for a fire hydrant flow test and for the installation and removal of water bubblers shall be as follows:

**Description of service**

**Fire Hydrant Charges**

Fire Hydrant Flow test (no recent record available)	\$225.00
Fire Hydrant Flow test (recent record available)	\$25.00
Fire Hydrant use per day	Usage-Based

**Installation and Removal of Water Bubblers:**

1 Water bubbler	\$262.00
Each additional Water bubbler after the first	\$54.00

**Title 21 DCMR, Chapter 1, "WATER SUPPLY", Section 112 "FEES", is amended by adding a new Subsection 112.4 to read as follows:**

112.4 Retail and commercial customer fees and charges shall be as follows:

**Retail and Commercial Customer Fees and Charges**

Customer Bad Check Fee	\$25.00
Declined Credit Card Fee	\$35.00
Customer Penalty Late Fee	\$10.00%
Additional Late Fee	1% /month
Turn-On Fee	\$50.00
Turn-Off Charges for Non Payment	\$50.00
Unauthorized Turn-On	\$245.00
Broken Bypass Seal	\$700.00
Second Water Audit within 24 months	\$125.00

**Title 21 DCMR, Chapter 1, "WATER SUPPLY", Section 112 "FEES", is amended by adding a new Subsection 112.5 to read as follows:**

112.5 Fees for engineering reviews, sale of documents, maps and manuals shall be as follows:

**Engineering Reviews, Sale of Documents, Maps and Manuals****Engineering Review**

Utility Design Review	
Development is more than 10 residential units or commercial	\$2,500.00
Development is 10 residential units or less (2 to 10 houses)	\$250.00
Feasibility Review Fee (Water & Sewer Availability letter)	
Existing or Proposed House	\$300.00
Fee for Sheeting & Shoring Review and Inspection of Site Work Potentially Impacting WASA Pipelines (2 reviews)	
Simple Review	\$500.00
Complex Review	\$1,000.00

**Sale of Manuals**

Design Manuals	\$60.00
Revisions/Updates	\$25.00
Construction Standard Details	\$35.00
Revisions/Updates	\$10.00

Construction General Conditions & Standard Specifications	\$25.00
Revisions/Updates	\$5.00
Fee for WASA Pipeline Design Manual	\$75.00
Revisions/Updates	\$30.00
Preparing As-Built Drawings	\$215.00
Reproduction of Maps and Technical Documents (Charge per Sheet)	
Xerographic	\$2.50
Vellum	\$4.00
Mylar	\$5.50
Standard Photocopying (Charge Per Page) – For Legal and Letter Size Paper	\$0.25
Electronic Version of Water/Sewer Counter and As-Built Maps— per project	\$100.00
Updates of Electronic Version of Water/Sewer Counter and As Built Maps per project	\$25.00

**Title 21 DCMR, Chapter 1, "WATER SUPPLY", Section 112 "FEES", is amended by adding a new Subsection 112.6 to read as follows:**

112.6 Pre-Treatment fees shall be as follows:

**Pre-Treatment**

Waste Hauling – Annual Fee per Vehicle	
Vehicles 0 – 100 gallons	\$100.00
Vehicles 101 – 500 gallons	\$255.00
Vehicles 501 – 1,500 gallons	\$590.00
Vehicles greater than 1,500 gallons	\$1,650.00

## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF FINAL RULEMAKING

The District members of the Board of Directors ("the Board") of the District of Columbia Water and Sewer Authority ("the Authority"), pursuant to the authority set forth in section 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Official Code §§ 34-2202.03(3), (11) and 34-2202.16, at its regular meeting held on July 3, 2003 took final action to adopt the following amendments to the Water and Sanitation Regulations (21 DCMR), as proposed in the "Rulemaking Proposal" of the Notice of Proposed Rulemaking. The rules adopt new retail water and sewer rates.

The Authority's proposed rulemaking was originally published in the January 31, 2003 edition of the D.C. Register, (50 DCR 1027). A public hearing was held on May 12, 2003. The Board of Directors voted after consideration of all comments received and the report of the ratemaking committee to revise retail water and sewer rates to increase the rate for water service from \$1.69 per One Hundred Cubic Feet to \$1.74 per One Hundred Cubic Feet and to increase the sewer service rate from \$2.57 per One Hundred Cubic Feet to \$2.63 per One Hundred Cubic Feet, effective October 1, 2003.

This final rulemaking will be effective when published in the D.C. Register and the new rates will be effective on the stated dates.

**Title 21 DCMR, Chapter 41 RETAIL WATER AND SEWER RATES, Section 4100 RATES FOR WATER SERVICE, is amended to read as follows:**

**CHAPTER 41 RETAIL WATER AND SEWER RATES****4100 RATES FOR WATER SERVICE**

4100.1 The retail rate for unmetered water service for building construction shall be Eight Dollars and Fifty-Two Cents (8.52 cents) for each one thousand (1,000) bricks and Four Dollars and Twenty-Six Cents (\$4.26) for each cubic yard of concrete, with a minimum charge of One Dollar and Forty-Two Cents (\$1.42) for each separate building project.

4100.2 The retail rate for unmetered water service for domestic purposes shall be:

- (a) A base charge of Thirteen Dollars and Ninety-Five Cents (\$13.95) per year for all tenements two (2) stories high or less with a front width of sixteen (16) feet or less;

- (b) Eighty-Eight Cents (.88 cents) per year for each additional front foot or fraction of a foot greater than one half (1/2); and
- (c) One third (1/3) of the charges under subparagraphs (a) and (b) of this subsection per year for each additional story or part of a story.

4100.3 The retail rate for metered water service of One Dollar and Sixty-Nine Cents (\$1.69) for each One Hundred Cubic Feet (100ft<sup>3</sup>) of water used shall be:

Effective October 1, 2003, increased from One Dollar and Sixty-Nine Cents (\$1.69) for each One Hundred Cubic Feet (100ft<sup>3</sup>) of water used to One Dollar and Seventy-Four Cents (\$1.74) for each One Hundred Cubic Feet (100ft<sup>3</sup>) of water used.

4100.4 The minimum rate for water furnished any premises through a metered service shall be Fourteen Dollars and Twenty-Four Cents (\$14.24) semiannually for up to (1,000) cubic feet of water.

**Title 21 DCMR, Chapter 41 RETAIL WATER AND SEWER RATES, Section 4101 RATES FOR SEWER SERVICE, subsection 4101.1 is amended to read as follows:**

**4101 RATES FOR SEWER SERVICE**

4101.1 The retail rate for sanitary sewer service of Two Dollars and Fifty-Seven Cents (\$2.57) for each One Hundred Cubic Feet (100ft<sup>3</sup>) of water used, shall be:

Effective October 1, 2003, increased from Two Dollars and Fifty-Seven Cents (\$2.57) for each One Hundred Cubic Feet (100ft<sup>3</sup>) of water used, to Two Dollars and Sixty-Three Cents (\$2.63) for each One Hundred Cubic Feet (100ft<sup>3</sup>) of water used.