

DISTRICT OF COLUMBIA OFFICE OF CABLE TELEVISION AND  
TELECOMMUNICATIONSNOTICE OF PROPOSED RULEMAKING

The Executive Director of the Office of Cable Television and Telecommunications, pursuant to section 803 of the Cable Television Reform Amendment Act of 2002, effective October 9, 2002 (D.C. Law 14-193; to be codified at D.C. Official Code § 34-1258.03 *et seq.*), hereby gives notice of its intent to adopt, in no less than thirty (30) days from the day of publication of this notice in the *D.C. Register*, the following new chapter of Title 15 of the District of Columbia Municipal Regulations, entitled "Allocation of Public, Educational, and Government (PEG) Cable Television Channels." This chapter would establish the rules for the allocation of public, educational, and government (PEG) cable television channels, whether analog, digital, or other type, provided by a cable television system operator or an open video system operator in the fulfillment of its obligations under a franchise agreement or any other agreement.

Title 15 of the District of Columbia Municipal Regulations is amended by adding the following Chapter 33:

**CHAPTER 33****ALLOCATION OF PUBLIC, EDUCATIONAL, AND GOVERNMENT (PEG)  
CABLE TELEVISION CHANNELS****3300 INTENT AND POLICY**

- 3300.1 Pursuant to section 803 of the Cable Television Reform Amendment Act of 2002, effective October 9, 2002 (D.C. Law 14-193; to be codified at D.C. Official Code § 34-1258.03 *et seq.*), this chapter establishes the rules for the allocation of public, educational, and government (PEG) cable television channels, whether analog, digital, or other type, provided by a cable television system operator or an open video system operator in the fulfillment of its obligations under a franchise agreement or any other agreement.
- 3300.2 It is the intent of the Office of Cable Television and Telecommunications (OCTT) to insure that all PEG channels be effectively used by the District, through qualified entities, to serve the residents of the District and provide them with valuable information as well as provide a forum for public expression and debate of public issues through the medium of cable television.
- 3300.3 The failure of OCTT or any entity to comply with these rules shall in no circumstances release, or be construed as releasing, a cable television

system operator or an open video system operator from its obligations, including its obligation to transmit PEG channels, under its franchise agreement or any other agreement with the District.

### 3301 ALLOCATION OF CHANNELS

- 3301.1 Subject to the restriction provided in subsection 3301.5, OCTT may allocate channels to any entity, which may include the following:
- (a) The Mayor;
  - (b) The Council;
  - (c) Public Access Corporation;
  - (d) The University of the District of Columbia;
  - (e) District of Columbia Public Schools; and
  - (f) Other governmental agencies or institutions, nonprofit organizations, and educational institutions.
- 3301.2 In carrying out these objectives, OCTT shall ensure that at all times:
- (a) At least one (1) channel on the analog tier of cable television channels provided by the District's cable television system operators or open video system operators is allocated to the Mayor for use as a government channel;
  - (b) At least one (1) channel on the analog tier of cable television channels provided by the District's cable television system operators or open video system operators is allocated to the Council for use as a government channel;
  - (c) At least one (1) channel on the analog tier of cable television channels provided by the District's cable television system operators or open video system operators is allocated to the University of the District of Columbia (UDC) for use as an educational channel;
  - (d) At least one (1) channel on the analog tier of cable television channels provided by the District's cable television system operators or open video system operators is allocated to the District of Columbia Public Schools (DCPS) for use as an educational channel; and
  - (e) At least two (2) channels on the analog tier and two (2) channels on the digital tier of cable television channels provided by the District's cable television system operators or open video system operators are allocated to the Public Access Corporation (PAC) for use as public channels.
- 3301.3 The remaining channels after the minimum allocations as provided in subsection 3301.2 shall be allocated by OCTT pursuant to these rules.
- 3301.4 The discretionary allocation provision in subsection 3301.3 and the application procedure in section 3302 shall not apply to additional

channels requested by the Mayor or the Council for their use. Such additional channels shall be allocated by OCTT upon request of the Mayor or the Council, subject to availability.

- 3301.5 Allocation of channels on the analog tier shall be subject to the approval of the Council, except that Council's approval shall not be required for allocations made to the Mayor or the Council for their use. Allocation of channels on the digital tiers shall not be subject to the approval of the Council.

### 3302 APPLICATION PROCEDURE

- 3302.1 Whenever a channel becomes available on the system of any District cable or open video system operator, OCTT shall publish a notice in the District of Columbia Register. The notice shall state the closing date for the submission of an application. Such closing date shall not be sooner than 30 days after the publication of the notice. The notice may state any other applicable application criteria and required information.
- 3302.2 Applications for channels must be submitted in writing to the Executive Director of OCTT by the due date specified in the published notice.
- 3302.3 Applications for a channel shall contain the following minimum information:
- (a) Name and address of the applicant;
  - (b) Contact person(s) and title(s);
  - (c) Names and biographies of the organization's management, Board (if applicable), and proposed channel management;
  - (d) Summary of the applicant's organizational history, current and/or planned organizational chart and mission statement as well as the applicant's current programs, activities, and accomplishments;
  - (e) A detailed statement demonstrating the need for the channel;
  - (f) Detailed proposal of the applicant's projected use of the channel, including programming proposals, show formats, and core issues and subjects to be featured;
  - (g) Description of how the channel will serve the applicant's overall goals;
  - (h) Detailed demonstration of the applicant's financial ability to operate a cable channel, including a proposed budget for operation of the channel and source of funding and how the applicant plans to support the channel continuously;
  - (i) Description of the applicant's technical ability to operate a cable television channel, including a description of the current and proposed operating equipment and resources and a description of the qualifications and responsibilities of the staff and volunteers who will be working with the channel; and

- (j) Description of the current or proposed facility for the operation of the channel.

- 3302.4 OCTT shall review each application, confirm the need stated by each applicant, and determine whether each applicant has the ability to operate a channel and satisfy such stated need. In making this determination, OCTT may conduct technical inspections and tests of the applicant's facility and equipment and may request additional information.
- 3302.5 OCTT may elect to hold a public hearing and receive testimony on any application. OCTT may hold a combined hearing to review several applications. OCTT shall publish a notice of such public hearing in the District of Columbia Register and shall hold the hearing no less than 15 days after the notice.
- 3302.6 OCTT may deny an application if it determines that the need for the channel does not exist or that the applicant lacks the technical, financial, managerial or other capabilities to operate a channel.
- 3302.7 After reviewing the applications, OCTT may (i) determine that no applicant has submitted an application sufficient to justify designation of the available channel and issue a final determination of such or (ii) approve one application as the most qualified to operate the available channel.
- 3302.8 If an application is approved for a channel on the analog tier, then within 90 days of such approval or, if applicable, within 90 days of executing a PEG Operating Agreement with the applicant as provided in section 3303, OCTT shall propose a resolution to the Council for approval of the allocation pursuant to subsection 3301.5. The resolution shall provide that the operation of the allocated channel shall be subject to these rules.
- 3302.9 Within 90 days of (i) OCTT's allocation of any channel pursuant to these rules or the Council's approval of such allocation and (ii) if applicable, the execution of a PEG Operating Agreement by the applicant, OCTT shall notify cable and open video system operators in the District to include such channel as one of the District's PEG channels. The notice shall provide details of the allocation and available information on the applicant.

### **3303 OPERATING AGREEMENT (PEGOA)**

- 3303.1 Except for the Mayor, the Council and the Public Access Corporation, all entities to which a channel is allocated shall enter into a PEG Operating Agreement (PEGOA) with the District.

- 3303.2 The PEGOA shall include, but not be limited to, the following provisions:
- (a) Responsibility for programming and management of the allocated channel;
  - (b) Prohibition of censorship or control over programming, except as necessary to comply with prohibition of illegal material;
  - (c) Prohibition of commercial use;
  - (d) Prohibition of obscene material;
  - (e) Use of allocated channel time, cablecasting facilities, and technical support as are provided for in the franchise agreement between the District and a cable or open video system operator;
  - (f) Public inspection of programming records;
  - (g) Grounds for the rescission of channel allocation; and
  - (h) Regular review of operational, technical, and financial abilities to operate the allocated channel;
  - (i) Probationary period of two (2) years; and
  - (j) Administrative fees which may be payable to the District.

#### 3304 REVOCATION OF CHANNELS

- 3304.1 Subject to a notice and an opportunity to cure, OCTT may revoke a channel allocation at any time and pursuant to these rules and the applicable PEGOA if OCTT finds that such channel has been operated in violation of these rules, the District's cable law, or the applicable PEGOA.
- 3304.2 If OCTT decides to revoke a channel allocation, it shall provide a notice in writing to the channel operator stating in detail the violations and how they can be cured. The notice shall provide a period of not less than 30 days for the entity to cure such violations.
- 3304.3 OCTT may hold a hearing and receive testimony regarding the proposed revocation of a channel. OCTT shall publish a notice of such public hearing in the District of Columbia Register.
- 3304.4 If a channel operator has fully cured the violations to OCTT's satisfaction within the requisite period, OCTT shall cease the revocation process; otherwise, OCTT shall issue an order revoking the channel designation.
- 3304.5 The revocation of a channel shall not serve as a permanent bar against the allocation of a channel to such operator, except that the circumstances of the revocation may be considered by OCTT if the operator reapplies for a channel.
- 3304.6 Within seven (7) days of revoking any channel, OCTT shall notify cable and open video system operators in the District to cease including such channel as one of the District's PEG channels.

Copies of the proposed rulemaking may be obtained by contacting Mark Muiyiwa Sobo, Assistant General Counsel, District of Columbia Office of Cable Television and Telecommunications, 2217 14<sup>th</sup> Street, NW, Washington, DC 20009, Monday through Friday, 8:00 a.m. to 4:30 p.m. All persons desiring to comment on the proposed rulemaking must submit their written comments no later than thirty (30) days after the date of publication of this notice in the D.C. Register, to Donald A. Fishman, General Counsel, District of Columbia Office of Cable Television and Telecommunications, at the above address.

DISTRICT OF COLUMBIA  
BOARD OF EDUCATION

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NOTICE OF PROPOSED RULEMAKING

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The District of Columbia Board of Education ("Board"), pursuant to the authority set forth in D.C. Code, 2001 Edition, Section 38-101, et seq., hereby gives notice of proposed rulemaking action taken by the Board at its meeting held on June 18, 2003, to amend Chapter 30 of the Board Rules, Title 5 of the D.C. Municipal Regulations regarding special education. The United States Department of Education, Office of Special Education and Rehabilitative Services has specifically required that Section 3003.6 and 3006.6 of Chapter 30 be amended as indicated below. The amendments to the other listed sections of Chapter 30 that are listed below represent changes reflected in the Final Rulemaking passed by the Board on February 19, 2003; they are republished below in order to satisfy the federal public participation requirements.

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 3001.1 (definition of "Developmental Delay") is amended as follows:**

Developmental Delay – a condition in which a child, three through seven years of age:

- (a) experiences severe developmental delays of at least two years below his or her chronological age and/or at least two standard deviations below the mean, as measured by appropriate standardized diagnostic instruments and procedures, in one or more of the following areas:
1. Physical development;
  2. Language and communication development;
  3. Social or emotional development;
  4. ~~Sensory motor-integration development~~ cognitive development; or
  5. Adaptive development; and
- (b) due to the delay(s) described above, requires special education and related services.

No child shall be classified as having "Developmental Delay" based solely on deficits in the area of social and/or emotional development.

“Developmental Delay” does not apply to children with the following disabilities:

- (a) autism;
- (b) traumatic brain injury;
- (c) mental retardation;
- (d) emotional disturbance;
- (e) other health impairment;
- (f) orthopedic impairment;
- (g) visual impairment, including blindness;
- (h) hearing impairment, including deafness; or
- (i) speech/language impairment.

**Section 3001.1 (definition of “Parent Surrogate”) is amended as follows:**

~~Parent-surrogate~~ Surrogate Parent— an individual who is appointed by the LEA to advocate for the child with a disability, or a child suspected of having a disability, during evaluation through possible placement, when no parent can be identified or the whereabouts of parents cannot be determined or if the child is a ward of the District, as needed. ~~For a child with a disability, or a child suspected of having a disability, who is a ward of the District, an individual appointed by the LEA to advocate for the child during evaluation through possible placement, when no parent can be identified, the whereabouts of parents cannot be determined, or the parents decline to exercise their parental role.~~

**Section 3002.2 is amended as follows:**

3002.2 Provision of FAPE Not Required

- (a) The LEA shall not be obligated to provide FAPE to a child with a disability aged eighteen to twenty-two who, in the last educational placement prior to incarceration in an adult correctional facility:
  - (1) Was not actually identified as being a child with a disability under § 3004 of this Chapter; and
  - (1) Did not have an IEP under § 3007 of this Chapter.
- (b) The exception in subsection (a) above does not apply to a child with disability, aged eighteen to twenty-two, who:

- (1) Had been identified as a child with a disability and had received services in accordance with an IEP, but who left school prior to his or her incarceration; or
  - (2) Did not have an IEP in his or her last educational setting, but who had actually been identified as a "child with a disability" under section 3001 of this Chapter.
- (c) The LEA shall not be obligated to provide FAPE to children with disabilities who have graduated from high school with a regular high school diploma. This provision does not apply to children with disabilities who have graduated, but who have not been awarded a regular high school diploma. In the District, the achievement of the GED is the equivalent of graduating with a regular high school diploma.

**Section 3003.1 is amended as follows:**

3003.1 The IEP team for each child with a disability shall include:

- (a) The parents of the child;
- (b) At least one regular education teacher of the child, if the child is or may be participating in the regular education environment, or if the child is being evaluated for SLD;
- (c) At least one special education teacher, or, if appropriate, at least one special education provider of the child;
- (d) A representative of the LEA who is:
  - (1) Qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, and
  - (2) Knowledgeable about the general curriculum and about the availability of resources of the LEA;
- (e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in §§ (a) through (d) of this section, or for a child being evaluated for SLD, a person qualified to conduct individual diagnostic evaluations;
- (f) Other individuals, at the discretion of the parent or the LEA, who have knowledge or special expertise regarding the child, including related services personnel, if appropriate; and

- (g) The child, if appropriate.

Nothing in this section shall preclude the LEA from designating an advocate to assist the parent as a member of the team, with the consent of the parent.

**Section 3003.6 is amended as follows:**

**3003.6 Parental Participation**

- (a) The LEA shall take the steps set out in subsections (b) through (h) of this section to ensure that one or both of the parents of the child with a disability are present or are afforded an opportunity to attend and participate at all meetings of the IEP team.
- (b) The parent of a child with a disability shall be provided with notice early enough to ensure that he or she will have an opportunity to attend the meeting.
- (c) Efforts to obtain the participation of the parent include:
- (1) Scheduling the IEP meeting at a mutually agreed upon time and place; and
  - (2) Indicating, as part of the written notice:
    - (i) The purpose, time, date, and location of the meeting;
    - (ii) Who will be in attendance; and
    - (iii) That parents may bring other individuals to participate on the IEP team who have knowledge or special expertise regarding the child.
- (d) For a child with a disability who is fourteen years old, or younger if appropriate, the written notice shall indicate that:
- (1) ~~the written notice shall indicate that~~ a purpose of the meeting will be the development of a statement of the transition services needs of the child; and
  - (2) the LEA will invite the child.
- (e) For a child with a disability who is sixteen years old, or younger if appropriate, the written notice shall:
- (1) include the information in paragraph (d) above;
  - (2) indicate that a purpose of the meeting will be the development of a statement of the transition services needed by the child; and

- ~~(3) include the information in § (d) of this section and shall identify any other agencies that will be invited to send a representative.~~
- (f) If neither parent can attend, the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls.
- (g) A meeting may be conducted without a parent in attendance if the LEA:
- (1) Is unable to convince the parent to attend and the LEA has a record of its attempts to arrange a mutually agreed on time and place, such as:
    - (i) Detailed records of telephone calls made or attempted and the results of those attempts;
    - (ii) Copies of correspondence sent to the parent and any responses received; or
    - (iii) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
  - (h) The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for a parent with deafness or whose native language is other than English and providing material and/or handouts in the parent's native language where available.
  - (i) The LEA shall provide a copy of the IEP to the parent at no cost to the parent.

**Section 3006.6 is amended as follows:**

- 3006.6 The IEP team may not determine that a child is a child with a disability if it determines that the determinant factor for the child's ~~lack of educational performance~~ eligibility determination is the result of:
- (a) lack of instruction in reading or mathematics; or limited English proficiency; ~~or~~ and
  - (b) the child does not otherwise meet the eligibility criteria.

**Section 3022.1 is amended as follows:**

- 3022.1 The LEA shall ensure that the rights of a child with a suspected or identified disability are protected by the appointment of a surrogate parent when:
- (a) A parent cannot be identified, or

- (b) The LEA, after reasonable efforts cannot discover the whereabouts of a parent.
- (c) ~~In the case of a~~ The child with a suspected or identified disability who is a ward of the District, where needed, the LEA shall ensure that the rights of the child are protected by the appointment of a parent surrogate in the case of (a) or (b) above, or when the child's parents decline to exercise their parental role.

**Section 3027.5 is amended as follows:**

- 3027.5 Maximum hourly rates and total amounts to be paid ~~by SEA~~ for independent evaluations and services shall be determined periodically ~~by the SEA~~. The schedule for such rates and amounts shall be commensurate with customary and prevailing rates for the evaluation or service involved and consistent with the criteria used by the ~~SEA~~ LEA when it initiates such evaluations and services. The schedule for such rates and amounts shall be set by the Superintendent or his or her designee and those rates shall be sent to the Board of Education for ratification at its next scheduled meeting. Exceptions to the rates and amounts established by the Superintendent or his or her designee may be made where the requesting party can demonstrate unique circumstances justifying the payment of costs exceeding the established maximum rates or amounts.

**Section 3029.5 is amended as follows:**

- 3029.5 As a part of the five-day disclosure submitted before a due process hearing, the submitting ~~party or~~ attorney must disclose any financial interest, of which he or she is aware, of any participant in the proceeding in a non-public provider or service that may be at issue in that due process hearing.

**Section 3030.3 is added as follows:**

- 3030.3 The LEA ~~D.C. Public Schools~~ shall bear the burden of proof, based solely upon the evidence and testimony presented and testimony presented at the hearing, that the action or proposed placement is adequate to meet the educational needs of the student.

Written comments on the proposed rulemaking are invited from interested citizens. Such comments should be addressed to Mr. Russell Smith, Executive Secretary, 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.

## D.C. OFFICE OF PERSONNEL

## NOTICE OF PROPOSED RULEMAKING

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with §§ 1051 through 1063 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, as amended (D.C. Official Code § 1-610.51 *et seq.* (2001)), hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following rules. While a notice of final rulemaking effecting the changes described below was published at 50 DCR 4254 (May 30, 2003), the publication was pursuant to an incorrect notice of proposed rulemaking published at 50 DCR 2872 (April 11, 2003). These rules will amend Chapter 10, *D.C. Personnel Regulations*, Executive Service, to include language referencing the new domicile requirement applicable to appointees to the Executive Service and provide that a person serving in an acting or interim capacity shall become subject to the domicile requirement upon confirmation by the Council and promulgation of the Mayor's Order or personnel action appointing him or her to the Executive Service position; implement the provisions of the Executive Service Pay Plan; delete the dollar amount specified in the chapter for the payment of temporary housing allowances and relocation expenses, or both; add a new § 1004, Performance Contract; clarify the provisions regarding payment of performance incentives and specify that Executive Service employees shall not be eligible to receive monetary awards pursuant to Chapter 19, *D.C. Personnel Regulations*, Incentive Awards; renumber §§ 1004 through 1009 as §§ 1005 through 1010, respectively; and update the citations to the D.C. Official Code throughout the chapter. Upon adoption, these rules will amend Chapter 10, Executive Service, published at 28 DCR 1325 (March 27, 1981) and amended at 47 DCR 6224 (August 4, 2000) and 50 DCR 4254 (May 30, 2003).

## CHAPTER 10

## EXECUTIVE SERVICE

*Section 1000.4 is amended to read as follows; a new § 1000.5 is added to read as follows; § 1000.5 is renumbered as § 1000.6 and amended to read as follows; and new §§ 1000.7 and 1000.8 are added to read as follows:*

- 1000.4 Except in the case of an individual who meets the following criteria, any person who accepts appointment or is hired to fill a position in the Executive Service on or after October 1, 2002 shall become a domiciliary of the District of Columbia within one hundred eighty (180) days of the effective date of appointment and shall maintain District of Columbia domicile for the duration of appointment:

- (a) Any person who was an employee of the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or
- (b) Pursuant to the provisions of § 7 of the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (P.L. 98-621; 98 Stat. 3376; 24 U.S.C. § 225e(b)), any former employee of the U.S. Department of Health and Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.
- 1000.5 Except as provided in § 1000.4(a) and (b), any employee in the Executive Service who was hired prior to October 1, 2002, and who was required to be or become a bona fide resident of the District of Columbia within one hundred eighty (180) days of appointment and maintain such residency for the duration of appointment or forfeit employment shall continue to be bound by the residency requirement that was in effect before October 1, 2002.
- 1000.6 Failure to become a domiciliary of the District of Columbia within the required period of time and to maintain District of Columbia domicile pursuant to this section shall result in forfeiture of employment.
- 1000.7 Notwithstanding the provisions of §§ 1000.4 through 1000.6, a person nominated to serve in an acting or interim capacity in the Executive Service shall not become subject to the domicile requirement until after confirmation by the Council and promulgation of a Mayor's Order or a personnel action appointing him or her to the Executive Service position. Specifically, the person shall become a domiciliary of the District of Columbia within one hundred eighty (180) days from the date specified in the Mayor's Order as the date of appointment, or from the effective date of the personnel action processed after Council confirmation to appoint him or her to the position, whichever action occurs first.
- 1000.8 The Director of Personnel shall inform each employee subject to the provisions of § 1000.7, in writing, of the exact date by which he or she shall meet the domicile requirement.

*Previously "Reserved" § 1001 is added to read as follows:*

**1001 EXECUTIVE SERVICE PAY PLAN**

- 1001.1 The Executive Service Pay Schedule ("DX Schedule") is divided into five (5) pay levels and is the basic pay schedule for positions in the Executive Service.
- 1001.2 The Director of Personnel shall provide relevant criteria for consideration by the Mayor in designating the appropriate pay level within the DX Schedule for each

position in the Executive Service. Criteria shall include, but not be limited to, the following:

- (a) Agency budget characteristics;
- (b) Agency workforce characteristics;
- (c) Complexity of agency mission and functions; and
- (d) Desired qualifications for, or the impact of the person on, the position.

1001.3 A person appointed to a position in the Executive Service shall be appointed at the pay level on the DX Schedule designated for that position, and shall receive a salary set at any amount within the salary range that the Mayor determines to be appropriate.

1001.4 The Mayor, at his or her sole discretion, may change the salary of any person holding an appointment in the Executive Service at any time to any other salary within the salary range for the level occupied.

1001.5 The salary of an Executive Service employee who is temporarily assigned to a position at a higher or lower level in the DX Schedule shall be set, at the discretion of the Mayor, at any salary within the salary range of the level to which the employee is temporarily assigned or at a salary within the salary range of the level of the employee's regular Executive Service position.

1001.6 A person paid from the DX Schedule shall not be entitled to premium pay.

1001.7 A person holding an appointment in the Executive Service on the effective date of this section shall continue to be paid his or her existing salary until the Mayor effects a personnel action establishing a salary within the salary range for the designated level of the position on the DX Schedule.

1001.8 The Director of Personnel shall publish procedures to implement this section, including the level designated by the Mayor for each Executive Service position.

*Subsection 1003.4 is amended to read as follows:*

1003.4 Payment of expenses under §§ 1003.2 and 1003.3 may only be made after the selectee or appointee signs a notarized agreement to remain in the District government service for twelve (12) months after his or her appointment, unless separated for reasons beyond his or her control that are acceptable to the Mayor.

*A new § 1004 is added to read as follows:*

**1004 PERFORMANCE CONTRACT**

- 1004.1 The Mayor shall set performance expectations and goals for each subordinate agency head in a written annual performance contract. The performance contract shall outline agency-specific and operational goals, with a corresponding timeline for accomplishment of each goal. Both the Mayor and the subordinate agency head shall sign the annual performance contract.
- 1004.2 Each subordinate agency head shall be evaluated on an annual basis on the achievement of the performance expectations and goals in the performance contract for that year.
- 1004.3 The performance rating period for each subordinate agency head shall be from the beginning of each fiscal year to the end of the fiscal year.

*Section 1004 is renumbered as § 1005 and amended to read as follows:*

**1005 PERFORMANCE INCENTIVES**

- 1005.1 The Mayor may authorize performance incentives for exceptional service by a subordinate agency head.
- 1005.2 A performance incentive may be paid once in any fifty-two-week (52-week) period and only when the agency head is subject to an annual performance contract that clearly identifies measurable goals and outcomes and the agency head has exceeded contractual expectations in the year for which the incentive is to be paid.
- 1005.3 A performance incentive shall not be paid unless the agency head has served in the position for a continuous fifty-two-week (52-week) period prior to the granting of the performance incentive.
- 1005.4 The amount of a performance incentive shall be determined by the Mayor and shall not exceed ten percent (10%) of the employee's rate of basic pay in any year.
- 1005.5 A performance incentive pursuant to this section shall be approved in accordance with Chapter 19 of these regulations.
- 1005.6 An agency head shall not be eligible to receive monetary awards pursuant to Chapter 19 of these regulations.

*Section 1005 is renumbered as § 1006; renumbered § 1006.3 is amended to update the citation to the chapter therein; and renumbered § 1006.4(b) is amended to update the citation to the D.C. Official Code:*

- 1006.3 Separation pay, if authorized pursuant to § 1006.1, shall be provided at the time of separation from the District government as a lump-sum, one-time payment, subject only to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable.
- 1006.4 (b) Is eligible to receive an annuity under any retirement program for employees of the District government, excluding the District retirement benefit program under § 2605 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-626.05) (2001).

*Section 1006 is renumbered as § 1007; renumbered §§ 1007.4, 1007.11, 1007.12, 1007.13, and 1007.15 are amended to update the citations to the chapter therein; and renumbered §§ 1007.17 and 1007.18 are amended to update the citations to the D.C. Official Code:*

- 1007.4 Except as provided in § 1007.5, each full biweekly pay period represents one (1) workday of accrued universal leave.
- 1007.11 Payment for leave upon separation from the Executive Service as provided in § 1007.10 shall be at the employee's rate of pay at the time of separation.
- 1007.12 Except as provided in § 1007.14, each employee in the Executive Service on January 2, 1999 shall have his or her accrued annual leave balance, up to a maximum of two hundred forty (240) hours, transferred to an annual leave escrow account for use at the discretion of the employee until exhausted.
- 1007.13 The employee shall be given a lump-sum payment for any annual leave in excess of the leave transferred pursuant to § 1007.12, payable at the rate of pay in effect on the last day of the last pay period of the 1998 leave year.
- 1007.15 The employee shall be given a lump-sum payment for any annual leave in excess of the leave transferred pursuant to § 1007.14, payable at the rate of pay in effect immediately before his or her appointment to the Executive Service.
- 1007.17 Sick leave credit of an Executive Service employee that was accrued under § 1203(j) of the CMPA (D.C. Official Code § 1-612.03(j)) ((2001) shall be held in a sick leave escrow account and may be used at the discretion of the employee until exhausted.
- 1007.18 Any balance remaining in a sick leave escrow account at the time of retirement of an Executive Service employee under the U.S. Civil Service Retirement System (Chapter 83 of Title 5 of the U.S. Code) or the Police and Fire Retirement System

(D.C. Official Code § 5-701 *et seq.*) (2001) shall be available for use as additional service credit under the provisions of the applicable retirement system.

*Reserved §§ 1007 through 1009 are renumbered as §§ 1008 through 1010, respectively.*

*Section 1099 is amended to update the citation to the D.C. Official Code in the definition of the terms "Executive Service" and "subordinate agency;" and to correct the citations to the chapter in the definition of the terms "Pre-employment travel expenses," "Relocation expenses," and "Temporary housing allowance:"*

**Executive Service** – except as modified by § 1007.1 for purposes of § 1007, any subordinate agency head position under the administrative control of the Mayor, to which the Mayor is authorized to appoint executives in accordance with §§ 1051 through 1063 of the CMPA (D.C. Official Code § 1-610.51 *et seq.*) (2001).

**Pre-employment travel expenses** – expenses allowed for an individual pursuant to § 1003.1, which may include such items as hotel accommodations, travel (commercial carrier, privately owned vehicle, *etc.*), and a per diem allowance.

**Relocation expenses** – expenses allowed for an individual and his or her immediate family pursuant to § 1003.2, which may include such items as transportation of family, transportation of household goods and expenses related thereto, temporary storage expenses, relocation services company, property management services, and a per diem allowance.

**Subordinate agency** – the meaning provided in § 301(m) of the CMPA (D.C. Official Code § 1-603.01(17)) (2001).

**Temporary housing allowance** – subsistence expenses incurred by an individual and his or her immediate family while occupying lodging obtained for the purpose of temporary occupancy when authorized pursuant to § 1003.3.

Comments on these proposed regulations should be submitted, in writing, to Ms. Judy D. Banks, Interim Director of Personnel, 441 4<sup>th</sup> Street, N.W., Room 300S, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice in the *D.C. Register*. Additional copies of these proposed rules are available from the above address.