

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 District of Columbia Health Occupations Revision Act of 1985 (“Act”), 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 Title 17 (Business, Occupations & Professions) (May 1990) 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 amendment is to publicize the new fee for criminal background checks for all the health professions covered under Title 3 of the District of Columbia Official Code, which was newly established pursuant to the Licensed Health Professional Criminal Background Check Amendment Act of 2006, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01, et seq.).

Proposed Amendment: **Amend Title 17 (Business, Occupations & Professions) (May 1990) Chapter 35 to read as follows:**

Add a new fee to read as follows:

CHAPTER 35 LICENSING FEES

3500.1 The examination, annual license fees and criminal background check fees for each class of license shall be as follows:

DESCRIPTION OF SERVICE	FEE	NEW FEE
Criminal Background Check		\$50.00

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty 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., 4<sup>th</sup> Floor, Washington, D.C. 20002. Copies of the proposed rule may be obtained from the Department at the same address during the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

**D.C. DEPARTMENT OF HUMAN RESOURCES  
METROPOLITAN POLICE DEPARTMENT**

**NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Department of Human Resources, and the Chief, Metropolitan Police Department, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008; in accordance with the provisions of section 801 (a) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.01 (a) (2008 Supp.), 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 proposed rules. The main purpose of these rules is to amend section 813 of the chapter, *Probationary Period*, to provide that "operations staff" in the Office of Unified Communications (OUC) first hired after the effective date of the new requirement, shall complete an eighteen-month (18-month) probationary period, and list the positions within the OUC considered *operations staff* to which the new requirement shall apply; and provide that an agency head may submit a request to the personnel authority to impose a probationary period longer than one (1) year for certain classes of positions, and include factors or conditions that would warrant the establishment of a longer probationary period requirement. Additionally, various provisions in sections 800, 801, 802, 804, 810, 819, 820, 821, 830, 849, 870, 873, and 876 of the chapter are being amended to update references to the D.C. Official Code and change references to the "Director of Personnel," "DCOP," "D.C. Office of Personnel," and "Office of Personnel;" section 870.1 is being amended to add the definition of the term "probationary;" and the definitions to the terms "Career Appointment (Probational)," "Career Service," "personnel authority," "probationary period," and "supervisor," in section 899 of the chapter are being amended, and the terms "Director of Personnel" and "Office of Personnel" deleted from that section. Upon adoption, these rules will amend Chapter 8, Career Service, of Title 6 DCMR, Chapter 8, Career Service, published at 30 DCR 2555 (May 27, 1983) and amended at 30 DCR 4608 (September 9, 1983), 31 DCR 2715 (June 1, 1984), 32 DCR 1857 (April 5, 1985), 32 DCR 2473 (May 3, 1985), 32 DCR 2953 (May 24, 1985) (Errata), 33 DCR 4299 (July 18, 1986), 35 DCR 1087 (February 19, 1988), 36 DCR 6069 (August 25, 1989), 37 DCR 3952 (June 15, 1990), 37 DCR 7117 (November 9, 1990), 42 DCR 3520 (July 7, 1995), 45 DCR 451 (January 23, 1998), 45 DCR 1641 (March 20, 1998), 47 DCR 2419 (April 7, 2000), 48 DCR 8973 (September 28, 2001), 49 DCR 1859 (March 1, 2002), 49 DCR 6842 (July 19, 2002), 49 DCR 8368 (August 30, 2002), 49 DCR 9298 (October 11, 2002) (Errata), 51 DCR 9706 (October 15, 2004), 51 DCR 10410 (November 12, 2004), 53 DCR 3248 (April 21, 2006), 54 DCR 725 (January 26, 2007); 54 DCR 9556 (October 5, 2007), and 55 DCR 7731 (July 18, 2008).

**CHAPTER 8**

**CAREER SERVICE**

*Chapter 8 of the D.C. Personnel Regulations is amended as follows:*

*Section 800 is amended as follows:*

**800 APPLICABILITY**

*Section 800.1 is amended to read as follows:*

800.1 This chapter applies to the Career Service, which consists of all positions in the District government, except the following:

- (a) The Mayor and members of the Council of the District of Columbia;
- (b) The President and members of the Board of Education;
- (c) The members of the Board of Trustees of the University of the District of Columbia;
- (d) Members of boards and commissions as specified in section 202 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 § 1-602.02 (c));
- (e) Chief Judges, Associate Judges, and non-judicial personnel of the Superior Court of the District of Columbia and the D.C. Court of Appeals;
- (f) Positions in the Educational Service pursuant to section 801a of the CMPA (D.C. Official Code § 1-608.01a);
- (g) Positions in the Legal Service pursuant to sections 851 through 861 of the CMPA (D.C. Official Code §§ 1-608.51 through 1-608.61);
- (h) Positions in the Excepted Service pursuant to sections 901 through 908 of the CMPA (D.C. Official Code §§ 1-609.01 through 1-609.08);
- (i) Positions in the Management Supervisory Service pursuant to section 951 through 958 of the CMPA (D.C. Official Code §§ 1-609.51 through 1-609.58);
- (j) Positions in the Executive Service pursuant to sections 1051 through 1063 of the CMPA (D.C. Official Code §§ 1-610.51 through 1-610.63); and
- (j) Any other employee excluded by law.

*Section 800.2 is deleted.*

*Section 800.3 is amended to read as follows:*

800.3 In the case of a conflict between this chapter and provisions of a collective bargaining agreement, subject to the limitations set forth in section 1708 of the CMPA (D.C. Official Code § 1-617.08), the provisions of the collective bargaining agreement shall take precedence.

*Section 800.4 is deleted.*

*Section 801.1 is amended to read as follows:*

- 801.1 In accordance with the requirements of section 801 (a) of the CMPA (D.C. Official Code § 1-608.01 (a)), the regulations in this chapter are indexed and cross-referenced to the incumbent classification system, as follows:
- (a) The incumbent classification system in effect on December 31, 1978 has been continued in effect without substantial change. Accordingly, these regulations apply in the same manner to all positions in the Career Service, and to all incumbents of the Career Service, except as specifically set forth herein; and
  - (b) All distinctions in applicability of these regulations, to incumbents transferred to the Career Service on January 1, 1980, and those employees hired on or after that date, are specified herein.

*Section 802.1 is amended to read as follows:*

- 802.1 As provided in section 801 (a) of the CMPA (D.C. Official Code § 1- 608.01 (a)), and except as otherwise provided by law or regulation, all initial appointments to the Career Service and all subsequent assignments and promotions of employees in the Career Service shall be made by open competition, involving positive recruitment and examining procedures designed to achieve maximum objectivity, reliability, and validity. All such initial appointments and subsequent assignments and promotions shall be made on the basis of merit by selection from the highest qualified available eligibles based on specific job requirements with appropriate regard for affirmative action goals, veterans preference, and residency preference.

*The definition of the term “relative” in section 803.6 is amended to read as follows:*

**Relative** – as defined in section 801 (c) of the CMPA (D.C. Official Code § 1-608.01 (c)(1)), an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

*Sections 804.1 through 804.7 are amended to read as follows:*

- 804.1 As applicable, the Director of the D.C. Department of Human Resources (DCHR) or independent personnel authority, shall establish standards with respect to education, training, experience, suitability, physical and mental fitness, or other requirements that will be used to evaluate applicants and employees for placement in the Career Service, consistent with all applicable laws and regulations.
- 804.2 The Director of the DCHR or independent personnel authority may adopt new qualification standards under section 804.1 of this section. Until such adoption, the federal qualification standards as set forth in the X-118 and X-118C series of handbooks and applicable supplementary publications shall remain applicable.

- 804.3 Whenever the practice of certain occupations and professions is subject to licensure requirements (as established by District, State, or federal law), the possession of a license shall constitute a qualification requirement. Positions subject to licensure requirements shall be listed in the District Personnel Manual by the DCHR.
- 804.4 As applicable, the Mayor and independent personnel authorities shall establish employee selection procedures for the Career Service. Such procedures shall be consistent with the standards established by these regulations and applicable law, including section 801 of the CMPA (D.C. Official Code § 1-608.01), and federal issuances pursuant to the Civil Rights Act of 1964, as amended, professionally developed standards for examination and selection, and the requirements of agreements with labor organizations entered into in accordance with Chapter XVII of the CMPA (D.C. Official Code § 1-617.01 *et seq.*)
- 804.5 The applicant evaluation and qualification standards, and the employee selection procedures for the Career Service developed by the Director of the DCHR or independent personnel authority as required by sections 804.1 through 804.4 of this section shall be incorporated in their entirety, or by reference, in the District Personnel Manual; and human resources manuals developed by independent personnel authorities, respectively. Each other personnel authority with Career Service employees may adopt the provisions of the District Personnel Manual applicable to the Career Service or incorporate them in a personnel manual developed by the personnel authority.
- 804.6 All personnel actions appointing employees to the Career Service, or affecting employees within the Career Service, shall comply with the standards and selection procedures established by the Director of the DCHR or independent personnel authority, and applicable rules as set forth in these regulations.
- 804.7 The authority to take personnel actions appointing employees to or affecting employees within the Career Service shall be as follows:
- (a) For employees subject to the Mayor's personnel authority, the Director of the DCHR, except as otherwise provided by the Mayor or the City Administrator; and
  - (b) Other personnel authorities specified in section 406 of the CMPA (D.C. Official Code § 1-604.06).

*Section 810.8 is amended to read as follows:*

- 810.8 The Director of the D.C. Department of Human Resources shall publish instructions and procedures in the District Personnel Manual which set forth the basic rating and ranking plan requirements, and all other requirements of the unassembled examination process to be followed by subordinate agencies.

*Section 813 is amended to read as follows:*

- 813.1 An agency shall utilize the probationary period as fully as possible to determine the

employee’s suitability and qualifications as demonstrated by the employee’s knowledge, skills, and abilities as well as his or her conduct.

813.2 A person hired to serve under a Career Service Appointment (Probational), including initial appointment with the District government in a supervisory position in the Career Service, shall be required to serve a probationary period of one (1) year, except in the case of individuals appointed on or after the effective date of this provision to the positions listed below, who shall serve a probationary period of eighteen (18) months:

- (a) Individuals hired into entry-level police officer positions in the Metropolitan Police Department;
- (b) Individuals hired into entry-level correctional officer positions in the Department of Corrections or the Department of Youth Rehabilitation Services; and
- (c) Individuals hired into emergency or non-emergency operations positions in the Office of Unified Communications.

813.3 For the purposes of subsection 813.2 (c) of this section, “operations positions” in the Office of Unified Communications shall consist of the following positions:

Position Title	Pay Plan, Series, and Grade Level
Telephone Equipment Operator	CS-390-07, 08, and 09
Telephone Equipment Operator (Bilingual)	CS-390-07, 08, and 09
Communications Report Writer	CS-392-05
Telecommunications Transcriptionist	CS-392-05
Customer Service Representative	CS-392-06, 07, and 08
Customer Service Representative (Bilingual)	CS-392-06, 07, and 08
Dispatcher	CS-2151-10, 11, and 12

813.4 In addition to the positions listed in sections 813.2 (a) through (c) and 813.3 of this section, and on a case-by-case basis, an agency head may submit a request and justification to the personnel authority to impose a probationary period requirement longer than one-year (1-year) for certain classes of positions within the agency. Among the factors or conditions that would warrant a probationary period requirement longer than one-year (1-year) for a specific class of positions are:

- (a) Whenever the agency must provide new hires with formal classroom or field training (or a combination of both) with a specific content and duration; the training is germane to the position; and the agency has designed a standardized training evaluation system applicable to all participants (new hires). Additionally, the agency must have determined, and demonstrated, that successful completion of the particular training is a pre-requisite for a new hire to be able to perform the duties of the position; or

- (b) Whenever the new hire must complete specific courses or training and receive certification upon completion of such training, and the agency has determined and can demonstrate that attainment of such certification is a pre-requisite to successfully performing the duties of the position.
- 813.5 The justification submitted by the agency head in requesting a probationary period requirement longer than one-year (1-year) shall include information to demonstrate how the factors or conditions listed in section 813.4 of this section will be met, such as types of courses and curriculum information, certification information, best practices research and data, etc.
- 813.6 (a) An employee who is transferred under this chapter, or promoted or reassigned under this chapter before he or she completes probation, shall be required to complete the remaining portion of the probationary period in the new position.
- (b) An employee who enters on military duty before he or she completes probation shall be required to complete the remaining portion of the probationary period upon the employee's return from active military duty, provided that he or she has restoration rights in accordance with section 827 of this chapter.
- 813.7 Except when the appointment is effected with a break in service of one (1) workday or more, or as specified in sections 812.2 (a) of this chapter or section 813.9 of this section, an employee who once satisfactorily completed a probationary period in the Career Service shall not be required to serve another probationary period.
- 813.8 An employee who once satisfactorily completed a probationary period in the Career Service shall be required to serve another probationary period when the employee:
- (a) Is appointed as a result of open competition to a position with a positive educational requirement from a position with no positive educational requirement or a different educational requirement;
- (b) Is appointed as a result of open competition to a position with licensure, certification, or other such requirement, in addition to a positive educational requirement, from a position without such requirements; or
- (c) Is appointed as a result of open competition to a position in a different line of work, as determined by the appropriate personnel authority based on the employee's actual duties and responsibilities.
- 813.9 The probationary period required by section 813.2 of this section shall be extended for an equal amount of workdays in each of the following circumstances:
- (a) For each workday that the employee is placed in a non-pay status for any reason;
- (b) In the case of an entry-level police officer serving an eighteen-month (18-month) probationary period, for each workday that the employee is not performing the

full range of the police duties of the position to which assigned, including, but not limited to, periods of sick leave or non-contact status; and

- (c) In the case of an entry-level Firefighter/Emergency Medical Technician (EMT), Firefighter/Paramedic, Paramedic, and EMT in the Fire and Emergency Medical Services Department, for each workday that the employee is unable to perform the full range of duties of the position to which assigned, including but not limited to periods of limited duty, sick leave, or non-contact status.
- 813.10 The extension of the probationary period under section 813.9 of this section shall be for an equitable period of time in increments of full workdays.
- 813.11 For an individual serving an eighteen-month (18-month) probationary period, the extension of the probationary period as provided for in section 813.9 (b) of this section may not exceed an additional eighteen (18) months.
- 813.12 Service credit toward completion of the probationary period shall be given for the following periods of absence:
- (a) Absence on leave with pay during which an employee is carried on the rolls, except as provided in section 813.9 (b) of this section;
  - (b) Absence in a non-pay status while on the rolls because of compensable injury or military duty; and
  - (c) Absence following separation, suspension, or furlough during the probationary period, when any of the foregoing is found upon timely appeal or administrative determination to have been unjustified or unwarranted, and the employee is restored retroactively as of the effective date of the original action.
- 813.13 When a decision has been made to terminate an employee during the probationary period and the employee has been so notified in accordance with section 814.2 of this chapter, and an action taken by the employee results in a stay, the period during which the effective date of such action is stayed shall not be credited toward completion of the probationary period.
- 813.14 Prior service in the Career Service under a term, temporary, or TAPER appointment and in the Excepted Service under a special appointment pursuant to section 904 (2) of the CMPA (D.C. Official Code § 1-609.04 (2)) (2006 Repl.), shall be creditable toward completion of the probationary period under this section if:
- (a) It was rendered immediately preceding a Career Appointment (Permanent) or a Career Appointment (Probational) or a conversion; and
  - (b) It was in the same competitive level, as provided in Chapter 24 of these regulations.

- 813.15 Satisfactory completion of the probationary period is a prerequisite to continued employment in the Career Service.
- 813.16 Upon initial appointment, a probationary employee shall be informed of the performance expectations for his or her position.
- 813.17 The performance of a probationary employee shall be evaluated as specified in Chapter 14 of these regulations.

*Section 817.2 is deleted.*

*Section 819.1 is amended to read as follows:*

- 819.1 Pursuant to section 801 (c)(4) of the CMPA (D.C. Official Code § 1-608.01(c)(4)), a personnel authority may make noncompetitive emergency appointments for not more than thirty (30) days to provide for maintenance of essential services in situations determined to be natural disasters or similar unforeseen events or circumstances.

*Section 820.1 is amended to read as follows:*

- 820.1 As provided by the Volunteer Services Act of 1977, effective June 28, 1977 (D.C. Law 2-12; D.C. Official Code § 1-319.01), and section 4000 of these regulations, it is the policy of the District government to utilize volunteer citizens in as many governmental programs as is practicable to serve the interest of the community.

*Section 821.3 is amended to read as follows:*

- 821.3 An employee serving in a position in a program established under section 821.1 of this section or section 904 (b) of the CMPA (D.C. Official Code § 1-609.04 (b)), may be converted to a Career Appointment (Probational) based upon competition limited to participants in the respective program.

*Section 830.1 (h) is amended to read as follows:*

- 830.1 (h) Consideration of a candidate not given proper consideration in a competitive promotion action; or promotion of an employee who was denied promotion as a result of other error, on order of the D.C. Department of Human Resources or independent personnel authority;

*Sections 849.2, 849.4 (b), 849.5, 849.8 through 849.15, 849.17 through 849.21, and 849.23 are amended to read as follows:*

- 849.2 Not later than December 15 of each year, or as specified in sections 849.18 and 849.19 of this section, each attorney as described in section 849.1 of this section shall file with the D.C. Department of Human Resources (DCHR) a certificate of good standing from the Committee on Admissions, D.C. Court of Appeals.
- 849.4 (b) Submitting a list of agency attorneys subject to the filing requirement to the Director of the DCHR every year, not later than the December 15 deadline.

- 849.5 Notwithstanding the procedures in section 849.2 of this section, each subordinate agency or independent personnel authority may elect to submit every year to the Committee on Admissions, D.C. Court of Appeals, a consolidated listing requesting certificates of good standing (certificates) for each agency attorney subject to the filing requirement, and file the original individual certificates with the DCHR on behalf of each attorney.
- 849.8 Nothing in this section shall prevent an attorney subject to the filing requirement from individually applying for the certificate of good standing (certificate) from the Committee on Admissions, D.C. Court of Appeals, and filing the certificate directly with the DCHR by December 15 of each year.
- 849.9 Each subordinate agency head or independent personnel authority that elects to submit a consolidated listing to the Committee on Admissions, D.C. Court of Appeals (Court) pursuant to section 849.5 of this section shall provide every year to the Director of the DCHR:
- (a) Each original individual certificate of good standing received;
  - (b) The name of each attorney who is not in good standing and any documentation from the Court to that effect; and
  - (c) A copy of the consolidated listing submitted to the Court.
- 849.10 Upon receipt of the original individual certificate of good standing (certificate) from each attorney, or subordinate agency or independent personnel authority on his or her behalf, the Director of the DCHR (or designee) shall:
- (a) File the original individual certificates in a place designated for that purpose; and
  - (b) In the case of an attorney who is not in compliance with the filing requirement, forward the name to the appropriate agency head.
- 849.11 Notwithstanding any other provision in this section, the Director of the DCHR may establish internal procedures to identify every year each attorney as described in section 849.1 of this section who is subject to the filing requirement and subsequently identify any attorney who did not comply with the filing requirement.
- 849.12 Failure of any attorney as described in section 849.1 of this section, either individually, or through his or her employing subordinate agency or independent personnel authority, to file the certificate of good standing with the DCHR by December 15 of each year, or as specified in section 849.18 or 849.19 of this section, shall result in forfeiture of employment.
- 849.13 Upon written request from an attorney subject to the filing requirement, the Director of the DCHR or independent personnel authority may grant a temporary waiver of the filing requirement to the attorney if compliance with the filing requirement by

December 15 is inordinately difficult due to circumstances beyond his or her control or other good cause.

- 849.14 Any request for a temporary waiver of the filing requirement shall be submitted by the attorney to the Director of the DCHR or independent personnel authority not later than December 1.
- 849.15 The Director of the DCHR or independent personnel authority shall grant a temporary waiver of the filing requirement to an attorney who has exercised due diligence in applying to be waived in to the D.C. Bar from another jurisdiction but does not anticipate being waived in by December 15.
- 849.17 The Director of the DCHR or independent personnel authority shall promptly determine whether to grant the request for a temporary waiver of the filing requirement and notify the attorney in writing. A notification granting the request shall inform the attorney of the deadline to file prescribed in section 849.18 of this section. A notification denying the request shall inform the attorney of the following:
- (a) The reason or reasons for the denial of the request;
  - (b) That he or she has thirty (30) days from the receipt of the notification denying the request to attempt to file the certificate of good standing (certificate) with the DCHR;
  - (c) That he or she shall be terminated at the end of the prescribed thirty-day (30-day) period if unable to file the certificate with the DCHR within the prescribed period; and
  - (d) The effective date of termination in the event that he or she is unable to file the certificate with the DCHR within the prescribed period.
- 849.18 An attorney granted a temporary waiver of the filing requirement (waiver) shall file a certificate of good standing (certificate) with the Director of the DCHR within thirty (30) days of being admitted to the D.C. Bar. A certificate filed pursuant to this subsection shall not be dated earlier than the date of the written request for the waiver submitted by the employee.
- 849.19 When a personnel action placing an employee in an attorney position subject to the filing requirement, such as in the case of a promotion to a grade DS-13 or equivalent, becomes effective on or after the December 15 deadline, the attorney shall file a certificate of good standing (certificate) with the DCHR within thirty (30) days of the effective date of such personnel action. A certificate filed pursuant to this subsection shall not be dated earlier than the effective date of the personnel action that placed the employee in the attorney position subject to the filing requirement.
- 849.20 Upon establishing the effective date of a personnel action as described in section 849.19 of this section and processing the action, the Director of the DCHR or

independent personnel authority shall promptly inform the affected employee, in writing, of the deadline to file prescribed in section 849.19 of this section.

- 849.21 Each subordinate agency or independent personnel authority shall provide a written notice of the intent to terminate employment to any covered attorney who is not in compliance with the filing requirement. The notice shall inform the attorney:
- (a) That he or she has thirty (30) days from the receipt of the notice to attempt to file the certificate of good standing (certificate) with the DCHR;
  - (b) That he or she shall be terminated at the end of the prescribed thirty-day (30-day) period if unable to file the certificate with the DCHR within the prescribed period; and
  - (c) The effective date of termination in the event that he or she is unable to file the certificate with the DCHR within the prescribed period.
- 849.23 Not later than March 1 of each year after the December 15 filing deadline for the preceding year, the Director of the DCHR shall publish in the *D.C. Register* the list of attorneys who have not met the filing requirement.

*Section 870.1 is amended to add the definition of the term “probationary:”*

**Probationary** – an entry-level Firefighter/Emergency Medical Technician (EMT) and entry-level Firefighter/ Paramedic shall be required to serve a probationary period of eighteen (18) months, during which time he or she shall be terminated whenever performance or conduct fail to demonstrate the individual’s fitness or qualifications for continued employment.

*Sections 870.2, 870.7, 870.8, 870.13 through 870.16, 870.25, 870.35, 870.39, 870.44 through 870.49, 870.51 through 870.53, and 870.57 are amended to read as follows:*

- 870.2 Appropriate staff within the personnel authority will establish a Register of eligible candidates for the positions of Firefighter/EMT and Firefighter/Paramedic. Each Register will include the numerical rank, name, and social security number of all eligible candidates.
- 870.7 The Certificate will include a sufficient number of candidates to fill available vacancies, and the numerical rank, name, and social security number of qualified candidates on the Register. In the case of a Register established by written examination, the candidates will be listed on the Register in order of their position on the written examination.
- 870.8 Appropriate staff within the personnel authority will transmit the Certificate and D.C. 2000 Employment Applications to the Agency Recruiting Officer (ARO) within the FEMSD. The ARO will review the D.C. 2000 Employment Applications and indicate the final status of each candidate in the “Disposition” column of the Certificate, using the following codification system:

- 870.13 As needed because of unusual circumstances, the personnel authority may authorize telephone contacts of candidates to arrange expedited scheduling of medical examinations or other processing steps.
- 870.14 Candidates who do not respond to the letter within ten (10) workdays of the date of the letter will be sent a second (2<sup>nd</sup>) letter and enclosures, by certified mail. Candidates who do not respond to the certified letter within ten (10) workdays of the mailing date will be coded "A" or "B," as appropriate, in the "Disposition" column on the Certificate (see also sections 870.8(a) and (b) of this section). The names of these individuals will be placed at the bottom of the Register in position order following the name of the last candidate. The personnel authority will determine whether to consider such candidates, as specified in section 870.45 of this section.
- 870.15 The names of candidates who have indicated that they wish to be considered at a later date shall be coded "C" in the "Disposition" column of the Certificate, and the specific date placed to the right of the code. These candidates may be processed on the date requested in order of their position on the register if the register has not been terminated by the personnel authority prior to this date.
- 870.16 The names of candidates who have declined consideration for the position will be coded "D" in the "Disposition" column of the Certificate. Their names shall be placed at the bottom of the Register in position order following the name of the last candidate. The personnel authority may approve their consideration at a later date (see also section 870.8 (d) of this section).
- 870.25 Decisions of the Board will be effected by majority vote. In making its determination as to the suitability of a candidate for further consideration, the Board may use as reference material the guidelines found within the District Personnel Manual (DPM) (or any other procedural manual developed) and any other procedures issued by the Director, D.C. Department of Human Resources (DCHR).
- 870.35 The names of candidates who have a suspended or revoked drivers license, or charges pending to that effect will be coded "N" on the Certificate by the ARO. (See section 870.8 (n) of this section). Depending upon the nature and seriousness of the charge, candidates who have criminal charges pending may be coded "N" on the Certificate by the ARO. The ARO will inform the candidates in writing of their temporary suspension from further processing, and will advise such candidates to notify the ARO when these impediments have been removed, as well as provide the ARO with appropriate evidence of such removal. Candidates will also be advised that they may be processed at the time of such notification if the Register has not been terminated prior to that date. These candidates would then be processed in order of their original position number on the Register.
- 870.39 Upon completion, termination, or suspension from further processing, the ARO will transmit each candidate's file to appropriate staff person.
- 870.44 The Fire Chief may require candidates to complete an updated medical examination or background investigation if more than one hundred and twenty (120) days have elapsed

between the date either the medical examination or background investigation were completed and the date of appointment.

- 870.45 Appropriate staff within the personnel authority will contact selectees in writing to tender offers of appointment. Every effort will be made to ensure that appointments are tendered in the order of original position on the Register, with the exception of variances caused by the occurrence of disposition categories "A," "B," "C," "D," "J," "K," and "N" (candidates placed within disposition categories "E," "F," "G," "H," "I," and "M" would not be tendered an offer of appointment), and subject to processing delays not within the control of the FEMSD. The selectees will be informed of all of the following:
- (a) That the selection is tentative pending completion of the background investigation, if applicable;
  - (b) The components of the background investigation that have not been completed, if applicable;
  - (c) That a report resulting in a determination of unsuitability will result in termination of employment;
  - (d) Where and when to report for appointment; and
  - (e) The procedures for declining or deferring the appointment.
- 870.46 Delays in processing caused by a candidate's action or inaction may result in the candidate being offered an appointment after other candidates who were initially placed in a lower position on the Certificate. Appropriate staff within the personnel authority will be responsible for documenting the reasons for all such offers of appointment, and for providing the Director of the DCHR, with such documentation upon request.
- 870.47 Appropriate staff within the personnel authority will prepare all candidate appointment forms for those candidates who have accepted offers of appointment and will secure the necessary signatures as specified on the forms. A code of "L" will be placed in the disposition column of the Certificate by the names of candidates who have been appointed.
- 870.48 A code of "J" will be placed in the disposition column of the Certificate by the names of candidates who have declined appointment. Their names will be placed at the bottom of the Register in position order following the name of the last candidate. The personnel authority may approve their consideration at a later date.
- 870.49 A code of "K" will be placed in the disposition column of the Certificate by the names of candidates who have requested deferral of their appointment, with the date indicated in the space to the right. These candidates may be appointed on the date requested in the order of their position on the Register if the Register has not been terminated by the personnel authority prior to this date.

- 870.51 Appropriate staff within the personnel authority will provide the ARO with the names of the candidates who have accepted appointment, declined appointment, or deferred appointment, so that the ARO may make the appropriate notations on the Certificate.
- 870.52 The ARO will return the Certificate to the human resources (HR) staff within the FEMSD before requesting another Certificate.
- 870.53 When each name has been certified and the last Certificate returned to the HR staff within the personnel authority, the following actions may be taken:
- (a) Terminate the Register; or
  - (b) If there is a need for any entry-level Firefighter/EMT or Firefighter/Basic Paramedic to be hired, prior to the time that a new Register will be available, instruct the appropriate staff to arrange for consideration of those candidates who are still eligible and have been placed at the bottom of the Register in accordance with this section, by the same procedure as was used with the candidates previously considered.
- 870.57 When each name has been certified and the last Certificate returned to the personnel authority, the appropriate staff shall do either of the following:
- (a) Terminate the register; or
  - (b) If there is a need for entry-level firefighters to be hired, prior to the time that a new register will be available, arrange for consideration of those candidates who are still eligible and have been placed at the bottom of the register in accordance with these regulations, by the same procedure as was used with the previously considered candidates, as set forth in this section.

***Section 873.1 (c) is amended to read as follows:***

- 873.1 (c) Intrafamily offense – As that term is defined in D.C. Official Code § 16-1001 (5).

***Sections 876.3, 876.7, and 876.53 are amended to read as follows:***

- 876.3 The personnel authority shall establish a register of eligible candidates who complete the written examination phase of the selection process for Fire Sergeant, Lieutenant, and Captain positions.
- 876.7 The register shall be in compliance with any applicable provisions of the Affirmative Action Plan of the Department.
- 876.53 At any time during the selection process, the Director of Personnel may request the Chief to review the findings of the Promotion Board in regard to the qualifications of a candidate. Such review and any resultant appeal by the candidate shall be conducted in accordance with §§ 876.26 through 876.29 and §§ 876.46 through 876.50.

***Section 899 is amended as follows:***

**899 DEFINITIONS**

*The definitions of the terms “Career Appointment (Probational)” and “Career Service” are amended to read as follows:*

**Career Appointment (Probational)** – an appointment of an employee to a continuing position in the Career Service subject to satisfactory completion of a probationary period of at least one-year (1-year) probationary period.

**Career Service** – all positions, including part-time positions, of the District government that are not included in the Educational Service, Excepted Service, Management Supervisory Service, or Executive Service, or otherwise excluded by section 800 of this chapter.

*The definitions of the terms “Director of Personnel” and “Office of Personnel” are deleted.*

*The definitions of the terms “personnel authority;” “probationary period;” “supervisor;” and “Temporary Appointment Pending Establishment of a Register” are amended to read as follows:*

**Personnel authority** – an individual or entity authorized by section 406 of the CMPA (D.C. Official Code § 1-604.06) to implement personnel rules and regulations for employees of an agency or group of agencies of the District of Columbia; or persons delegated such authority by such an individual or entity.

**Probationary period** – except otherwise specified in this chapter, a one-year (1-year) trial period during which an employee must demonstrate his or her qualification and ability for the position.

**Supervisor** – at grade levels CS-10 and below, a position that accomplishes work through the direction of other people and meets at least the minimum requirements for coverage in accordance with the U.S. Office of Personnel Management Supervisory Grade Evaluation Guide, or other appropriate classification standards adopted by the D.C. Department of Human Resources. Those directed may be subordinate District service employees, whether full-time, part-time, intermittent, or temporary; non-District service workers; unpaid volunteers; student trainees, or others. Supervisors exercise delegated authorities such as described in Factor 3 – Supervisory and Managerial Authority Exercised, in the Supervisory Grade Evaluation Guide. A first (1<sup>st</sup>) level supervisor personally directs subordinates without the use of other subordinate supervisors. A “full assistant” shares fully with a higher-level supervisor in all phases of work direction, contractor oversight, and delegated authority over the subordinate staff.

**Temporary Appointment Pending Establishment of a Register (TAPER)** – a temporary appointment pending establishment of a register when there are insufficient candidates on a register appropriate for filling a position that will last for more than one (1) year and the public interest requires that the vacancy be filled before eligibles can be certified.

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

## 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

1. The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to D. C. Official Code Section 2-505,<sup>1</sup> of its intent to adopt Chapter 39, “Affiliate Transactions Code of Conduct” of Title 15, District of Columbia Municipal Regulation (“DCMR”) in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking (“NOPR”) in the *D.C. Register*.

2. The proposed regulations develop a Code of Conduct for each regulated energy utility company and their non-regulated affiliates. Proposed regulations governing affiliate transactions have been published for public comment previously, the most recent having been published in the *D.C. Register* on January 18, 2008.<sup>2</sup> Comments and reply comments were filed by PEPCO Energy Services, Potomac Electric Power Company, WGL Holdings, Inc., Washington Gas Light, and the Office of the People’s Counsel.

3. Based on its review and analysis of the comments and replies, the Commission is of the opinion another NOPR should be issued requesting comments and replies on the following revised proposed regulations:

**CHAPTER 39          AFFILIATE TRANSACTIONS CODE OF CONDUCT**

## Section

3900	APPLICABILITY
3901	PROHIBITION OF FAVORABLE TREATMENT FOR AFFILIATES
3902	LIMITATIONS ON JOINT MARKETING, SPACE, AND SALES FOR SERVICE AFFILIATES
3903	DISCLOSURE OF INFORMATION
3904	COST ALLOCATION AND ACCOUNTING
3905	LOANS AND LOAN GUARANTEES
3906	TRANSFER OR SALE OF ASSETS
3907	RESTRICTIONS ON USE OF EMPLOYEES AND EQUIPMENT
3908	RING-FENCING

<sup>1</sup> D.C. Official Code § 2-505 (2006 Supp.).

<sup>2</sup> 55 *D.C. Register* 574-582 (January 18, 2008).

3909 EMERGENCY SUSPENSION  
3910 WAIVER  
3911-3998 (RESERVED)  
3999 DEFINITIONS

**3900 APPLICABILITY**

3900.1 This Chapter establishes the Public Service Commission's ("Commission") Code of Conduct between regulated energy utilities and their affiliates.

**3901 PROHIBITION OF FAVORABLE TREATMENT FOR AFFILIATES**

3901.1 Neither an energy utility nor a core service affiliate(s) shall represent that any advantage accrues to a customer or others in the use of the energy utility's services as a result of that customer or others dealing with the core service affiliate(s).

3901.2 Neither an energy utility nor a core service affiliate(s) shall represent that the affiliation allows the core service affiliate(s) to provide a service superior to that available from other licensed energy suppliers.

3901.3 No energy utility shall promote the services of a core service affiliate or disparage the services of a competitor of a core service affiliate.

3901.4 An energy utility shall not condition or tie the provision of regulated utility services to:

- (a) The purchase, lease, or use of any other goods or services offered by the energy utility or its affiliates; or
- (b) The direct or indirect commitment not to deal with any competing energy supplier.

3901.5 An energy utility shall not give preferential treatment to an affiliate(s) or customers of the affiliate(s) in providing regulated services. With respect to regulated utility services, the energy utility shall treat all similarly situated energy suppliers and their customers in the same manner without regard to whether the supplier is a core service affiliate.

3901.6 An energy utility shall process all requests for service by any similarly situated energy supplier in the same manner and within the same period of time as it processes requests for service from a core service affiliate(s). An energy utility shall keep an annual log of the length of time it takes the energy utility to process each request for service.

3901.7 An energy utility shall provide the same information about its distribution and transmission services contemporaneously to all energy suppliers in a manner that does not favor a core service affiliate(s) in either the type or manner of access to such information.

3901.8 An energy utility shall apply all the terms and conditions of its tariff related to delivery of energy services to similarly situated providers in the same manner, without regard to whether the supplier is a core service affiliate.

3901.9 An energy utility shall offer the same discounts, rebates, fee waivers, or penalty waivers to all similarly situated non-affiliated suppliers or customers that it may offer to its core service affiliate or customers of its affiliate. The energy utility shall make such contemporaneous offers, including an appropriate posting on the energy utility's electronic bulletin board, or by some other appropriate means (*e.g.* Internet website).

**3902 LIMITATIONS ON JOINT MARKETING, SPACE, AND SALES FOR SERVICE AFFILIATES**

3902.1 Joint promotions, marketing, and advertising between an energy utility and its core service affiliate(s) are prohibited. Joint marketing shall include the sharing of billing materials. The energy utility may allow a core service affiliate access to space on its billing envelope or the ability to include marketing information inside the billing envelope only under the circumstance of a general promotion of supplier choice where space is made available to all competitors of the core affiliate under the same terms and conditions.

3902.2 Joint sales calls shall not be initiated either by an energy utility or its core service affiliate(s). However, when a customer requests a joint sales call, a joint sales call may be conducted. If a customer enters into a contract with a core service affiliate, a joint call relating to that contract may be conducted.

3902.3 An energy utility shall not provide sales leads to its core service affiliate(s).

3902.4 Marketing/advertising material used by the service affiliate claiming an association with the energy utility shall include a disclaimer that:

- (a) The affiliate supplier is not the same company as the energy company, whose name or logo may be at least partially used;

- (b) The prices and services of the affiliate supplier are not set by the Commission; and
- (c) The customer is not required to buy energy or other products and services from the affiliate supplier in order to receive the same quality service from the energy utility.

3902.5 An energy utility and a core service affiliate(s) shall operate from physically separate locations to avoid the inadvertent sharing of information. The core service affiliate(s) shall not share office space owned or used by the energy utility.

3902.6 An energy utility shall not ask a customer for consent to provide the customer's name or information to its core service affiliates licensed in the District of Columbia. An energy utility shall refrain from speaking to its customers for, or on behalf of, its core service affiliates.

### **3903 DISCLOSURE OF INFORMATION**

3903.1 An energy utility shall not disclose any customer-specific information obtained in connection with the provision of regulated utility services except upon written consent of the utility customer. The consent form signed by the utility customer shall state the purpose of the disclosure.

3903.2 Notwithstanding the limitations in 3903.1, customer-specific information may be disclosed for lawful bill collection or credit reporting purposes, pursuant to a subpoena or request by a duly authorized law enforcement official, or pursuant to a lawful request authorized by local or federal law.

3903.3 Any information provided by an energy utility to a core service affiliate(s) with respect to its electric or gas system, the marketing or sale of energy to customers or potential customers, or the delivery of energy to or on its system, shall be contemporaneously disclosed to all non-affiliated energy suppliers or potential non-affiliated energy suppliers on its system. Disclosure of such information must be published on the energy utility's electronic bulletin board or equivalent mechanism used to communicate with licensed energy providers.

3903.4 Notwithstanding the limitations in 3903.3 above, an energy utility may disclose the following information without making the disclosure publicly available:

- (a) Information to an energy supplier, whether affiliated or non-affiliated, disclosed in the administration of a contract to supply Standard Offer Service;

- (b) Information to an energy supplier, whether affiliated or non-affiliated, concerning the energy supplier's customer that is necessary for the energy supplier to bill or provide services to its customers; and
- (c) Information disclosed to the energy utility's affiliate(s) required for the affiliate(s) to comply with federal and state laws and regulations, including those relating to financial reporting and corporate governance.

#### **3904 COST ALLOCATION AND ACCOUNTING**

- 3904.1 Within four (4) months of the close of the energy utility's fiscal year, an energy utility must file annually a Cost Allocation Manual ("CAM") with the Commission explaining how it will allocate and account for shared services between the energy utility and any affiliate.
- 3904.2 The CAM must include the following:
- (a) An explanation of the corporate organization;
  - (b) A description of each corporate entity, including location, list of officers and the statement of the business of each entity;
  - (c) A listing of each type of cost which is allocated or charged direct between entities and the factor(s) which is (are) used in the allocation;
  - (d) An explanation and calculation of each of the cost allocation factors used for transfers between and among corporate entities; and
  - (e) A listing of the total amount of each cost allocated or charged direct between or among corporate entities during the annual period.
- 3904.3 When changes occur to the CAM prior to the next annual filing period, the energy utility must file amendment(s) to the CAM within 30 days from the effective date of the change.
- 3904.4 An affiliate and an energy utility must maintain such separate books and records as required by the Public Utility Holding Company Act of 2005 ("PUCHA 2005") and the Commission and, upon written request by the Commission, provide timely access to the books and records.

3904.5 The energy utility and all affiliates to or from which assets included in rate base have been transferred by or to the energy utility and all affiliates that provide services to, or share costs with, the energy utility through any allocation method, must make available for inspection and review by the Commission books relating to the foregoing pursuant to PUHCA 2005 so that the Commission may determine compliance with the Code of Conduct. Books shall be maintained for inspection and review for at least five (5) calendar years.

3904.6 Biennially, the energy utility shall conduct a compliance audit of its books and the books of any affiliate that has entered into a transaction with the energy utility within the period of the audit to ensure compliance with the District's Code of Conduct. The energy utility shall select an independent auditor and shall seek approval by the Commission of the selection at least sixty (60) days prior to the beginning of the audit.

### **3905 LOANS AND LOAN GUARANTEES**

3905.1 An energy utility shall not provide loans or loan guarantees to an affiliate or to the holding company. The general prohibition includes use of utility rate base asset as collateral for any affiliate or holding company activity.

3905.2 Notwithstanding any provision to the contrary, an energy utility may participate in a cash management or money pool subject to federal regulations of the Securities and Exchange Commission or the Federal Energy Regulatory Commission.

### **3906 TRANSFER OR SALE OF ASSETS**

3906.1 Transfers of assets from an energy utility to an affiliate must be recorded on the utility's books at the greater of book cost or market value. Transfers of assets from an affiliate to the energy utility shall be at the lesser of book cost or market value. Such asymmetric pricing shall not apply to any transaction resulting from a competitive bidding process.

### **3907 RESTRICTIONS ON USE OF EMPLOYEES AND EQUIPMENT**

3907.1 An energy utility is prohibited from sharing employees with an affiliate.

3907.2 An energy utility and a core service affiliate may share the same telecommunications system or computer system, so long as adequate security and system protections are in place to prevent the accessing of information or data of the energy utility by core service affiliates that would be in violation of other provisions of this Chapter.

3907.3 An energy utility shall not temporarily assign any employee of the energy utility to an affiliate.

**3908 RING-FENCING**

3908.1 Any energy utility owned by a holding company that transfers more than 5 percent of the utility's earnings to a holding company parent, or declares a special or regular cash dividend to the holding company parent, shall notify the Commission in writing within 3 days following such action.

3908.2 An energy utility shall issue debt securities and maintain credit and bond ratings for those securities apart from the holding company or any affiliate.

**3909 EMERGENCY SUSPENSION**

3909.1 The provisions of this Code of Conduct may be suspended during an emergency. Energy utilities subject to the Code of Conduct shall, within 24 hours of the emergency suspension, and every 72 hour period thereafter, notify the Commission of the basis of the emergency that warrants the suspension of the Code of Conduct. The energy utility shall notify the Commission within 24 hours following the expiration of the emergency.

**3910 WAIVER**

3910.1 An energy utility may petition for a waiver from any section of the Affiliate Transactions Code of Conduct, which may be granted by the Commission upon a showing of good cause.

**3911-3998** (Reserved)

**3999 DEFINITIONS**

3999.1 For the purposes of this chapter:

**“Affiliate”** means a person who directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has directly or indirectly, any economic interest in another person.

**“Annual Log”** means a log maintained by an energy utility to track information regarding a request for service from an energy supplier. The annual log shall include the following: (1) name of the supplier requesting service; (2) description of the type of service being requested; (3) date of request; (4) status of request (5) date of completion of the requested service; (6) energy utility's affiliation with the energy supplier; and (7) contact information for supplier requesting service.

**“Asset”** means tangible and intangible property of an energy utility included in its rate base.

**“Asymmetric pricing”** means pricing, including, but not limited to, energy utility assets, services and things of value transferred to an affiliate recorded on the utility’s books at the greater of book value or market value, with pricing of the same items transferred from the affiliate to the energy utility recorded on the utility’s books at the lesser of book cost or market value.

**“CAM” or “Cost Allocation Manual”** means the manual that explains how the energy utility will allocate and account for shared services between the regulated utility and its affiliates.

**“Compliance audit”** means an independent accountant’s examination of books and records to determine compliance with all of the sections of this Code of Conduct.

**“Core service”** means a retail gas or electric energy service, including the sale and delivery of electricity or natural gas, provided to the public in the District of Columbia.

**“Core service affiliate”** means an affiliate that provides retail gas or electric energy service, including the sale and delivery of electricity or natural gas, to the public in the District of Columbia.

**“Customer”** means a purchaser of natural gas or electricity for end use in the District of Columbia. The term excludes an occupant of a building where the owner, lessee, or manager manages the internal distribution system serving the building and supplies natural gas solely to occupants of the building for use by the occupants.

**“Emergency”** means any of the following, or similar, situations which require any action contrary to this Code of Conduct: (a) a natural disaster, including but not limited to a hurricane, tornado, snow storm, earthquake, flood, or land slide that impacts utility service; or (b) any national or District of Columbia declared state of emergency or condition resulting in federal, or District government closing its respective offices; or (c) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, disconnection of system elements that could adversely affect utility service or the reliability of the utility’s electric system or natural gas system or the safety of persons or property; or (d) acts of others such as riots, sabotage, acts of terrorism, insurrections, nationalization or wars, which adversely affect utility service or the reliability of the utility’s electric system or natural gas system.

**“Energy supplier”** means a licensed person including an aggregator, broker, or marketer, who generates energy (natural gas or electricity); sells energy (natural gas or electricity); or purchases, brokers, arranges or markets energy (natural gas or electricity) for sale to customers in the District of Columbia. The term excludes the following: (A)

building owners, lessees, or managers who manage the internal distribution system serving such building and who supply energy (natural gas or electricity) solely to the occupants of the building for use by occupants; (B) (I) any person who purchases (natural gas or electricity) for its own use or its subsidiaries or affiliates; or (II) any apartment building or office building manager who aggregates energy (natural gas or electricity) service requirements for his or her buildings, and who does not: (a) take title to the energy (natural gas or electricity); (b) market energy (natural gas or electricity) services to the individually-metered tenants for his or her building; or (c) engage in the resale of energy (natural gas or electricity) 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.

**“Energy utility”** means a natural gas corporation or electric company under the jurisdiction of the Commission whose rates, charges, terms and conditions, and the quality of services it provides to customers are regulated by the Commission.

**“Non-core service”** means any service or activity that is not a retail gas or electric energy service, including the sale and delivery of electricity or natural gas, provided to the public in the District of Columbia.

**“Non-core service affiliate”** means an affiliate that does not provide any service or activity that is a retail gas or electric energy service, including the sale and delivery of electricity or natural gas to the public in the District of Columbia.

**“Person”** means every individual, corporation, company, association, joint-stock company, firm, partnership, or other entity.

**“Standard offer service”** means electricity supply made available to: (1) customers who contract for electricity with an electricity supplier, but who fail to receive delivery of electricity under such contracts; (2) customers who cannot arrange to purchase electricity from an electricity supplier; and (3) customers who do not choose an electricity supplier.

3. Comments on the proposed regulations must be made in writing to Dorothy Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington D.C., 20005. All comments must be received within thirty (30) days of the date of publication of this Notice in the *D.C. Register*. Persons wishing to file reply comments may do so no later than forty-five (45) days of the date of publication of this Notice in the *D.C. Register*. Once the comment period expires, the Commission will take final rulemaking action.

## OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176) and amended by the Public Education Reform Amendment Act of 2007, (D.C. Law 17-9), D.C. Official Code § 38-2602(b)(11)) (2008 Supp), hereby gives notice of the her intent to adopt proposed rules to amend Chapter 25 of Title 5 of the *District of Columbia Municipal Regulations* (DCMR) by adding a new Chapter A25, entitled “Student Discipline”, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The proposed regulations provide state level standards for consistent school disciplinary policy in District of Columbia Public Schools system and public charter schools. The proposed regulations establish clear expectations, balancing individual rights and responsibilities with the rights and responsibilities of the school community. Local education agencies have the discretion to refine and implement a disciplinary regulatory process best suited to the needs of their school community in compliance with these regulations. The regulations recognize that effective school discipline involves a broad range of strategies and interventions to maximize learning time and minimize classroom disruption or removal from classrooms due to misbehavior.

**Title 5 of the DCMR is amended to add a new Chapter A25 to a new Subtitle A to read as follows:**

**CHAPTER A25      STUDENT DISCIPLINE****A2500      GENERAL POLICY**

A2500.1      The purpose of this chapter is to promote a safe and orderly learning environment, by balancing student rights and responsibilities with the rights and responsibilities of the school community.

A2500.2      The regulations provide guidance to develop a broad spectrum of strategies to address student behavior and discipline to minimize the disruption of academic instruction.

**A2501      DISCIPLINARY POLICY AND PROCEDURES**

A2501.1      Each LEA shall adopt and implement written disciplinary policies and procedures in accordance with this chapter, and where applicable, an LEA’s charter, which shall employ to the extent practicable, intervention and remediation strategies in order to address student discipline in a fair and appropriate manner with minimal

disruption to a student's instructional program. To this end, LEAs are encouraged to utilize school-wide strategies preventing misbehavior that includes the adoption of research-based social-emotional learning curricula best suited to meet the needs of the school community.

A2501.2 Policies and procedures shall identify prohibited student conduct, the range of penalties which may be imposed for violations of the policies and procedures, utilize a progression of disciplinary interventions and strategies to prevent and address misbehavior, and specify procedures to address without limitation the following:

- (a) Maintenance of disciplinary records and information;
- (b) Distribution of the student disciplinary policy and procedures to students, their parents or guardians, within thirty (30) days after the first day of each school year, and availability on an LEA's website or through other affective means of communication;
- (c) Use of in-school and off-site suspension including without limitation clearly defined procedures to address the:
  - (1) Appropriate supervision for in-school suspension in a designated area within the school building or other appropriate facility; and
  - (2) Sparing use of off-site suspension, and only in response to serious infractions, including without limitation situations where a student may cause harm to self or others;
- (d) Use of expulsion in extreme and rare occasions as a response to only the most serious misconduct or behaviors, which are illegal, could cause severe harm to self or others, or are a major disruption to the school environment;
- (e) Requiring that each student has an education plan in place before a suspension or expulsion period begins;
- (f) Assuring that students are allowed to re-enter school upon completion of an off-site suspension or expulsion;
- (g) Disciplining students with disabilities and changes in placement for students with disabilities who violate codes of conduct, in compliance with the Individuals with Disabilities Education Act, and applicable regulations there under, including without limitation, Section 20 U.S.C. §1412(a)(5); and 34 C.F.R. §300.530

*et seq*; and include safeguards to prevent disproportional disciplinary actions against this population; and

- (h) Applicability of the disciplinary code during regularly scheduled school hours and at other appropriate times and places as specified by the LEA.

## **A2502 NOTIFICATIONS AND HEARINGS**

A2502.1 The policies and procedures shall provide for notification with regard to student misconduct and ensure proper notification to students, parents or guardians along with an opportunity for a hearing prior to a student's suspension or expulsion. These procedural safeguards shall include, but are not limited to the following:

- (a) Minimum notification time-frames;
- (b) Opportunities for student conferences; and
- (c) Procedures for:
  - (1) Student disciplinary hearings; and
  - (2) Appeals from a disciplinary hearing decision.

A2502.2 Policies and procedures shall include:

- (a) A requirement that a student under the age of fourteen (14) years of age, who has been suspended off-site or expelled, may not leave school grounds during school hours unless accompanied by a parent, guardian or their designee; and
- (b) An opportunity for a student fourteen (14) years of age or older, who has been suspended or expelled to be accompanied from school grounds by a parent, guardian or their designee.

## **A2503 REPORTS**

A2503.1 Each LEA shall submit a copy of its disciplinary policy and procedure developed in accordance with this chapter to the Office of the State Superintendent of Education no later than July 30, 2009, and within thirty days after any revision.

A2503.2. Each LEA shall report to the Office of the State Superintendent of Education as requested, on the status of disciplinary actions taken.

Information provided in the report shall include without limitation: numbers of suspensions, expulsions, appeals, and hearings conducted, and the categories of behavior subject to disciplinary action (e.g., bullying, fighting, illegal activity, vandalism, etc.).

## **A2599        DEFINITIONS**

Unless the same term or phrase is defined in this Section A2599, the definitions set forth in Title 5, Chapter 20, Section 2099 are incorporated by reference and shall apply to the terms and phrases used in this chapter.

**“Alternative setting or school program”**- an educational program other than that in which the student was placed prior to disciplinary action.

**“Expulsion”** - the denial of the right of a student to attend a school or program, including all classes and school activities, except alternative settings, for one (1) calendar year.

**“In-school suspension”** – the mandatory assignment of a student to attend an assigned alternative school program in lieu of previously assigned curricular activities for a period not to exceed fifteen (15) school days.

**“Local Education Agency or LEA”** - the District of Columbia Public School system and/or any individual or group of public charter schools operated under a single charter in the District of Columbia.

**“Off-site school suspension”** — the mandatory assignment of a student to attend another appropriate site or alternative school program in lieu of previously assigned activities for a period not to exceed ninety (90) days.

**“Suspension”** - the denial of the right of a student to attend any school or program, including all classes and school activities, except in an approved alternative setting, in no event exceeding ninety (90) school days pursuant to the provisions of this chapter.

Comments on this rule should be submitted, in writing, to Kristin Yochum, 441 4<sup>th</sup> Street, NW Suite 350 North, Washington, DC 20001 within thirty (30) days of the date of publication of this notice in the D.C. Register. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at [osse.dc.gov](http://osse.dc.gov).

## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors of the District of Columbia Water and Sewer Authority ("the Board"), 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. Code §§ 34-2202.03(3), (11) and 34-2202.16, Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Code § 2-505(a), and in accordance with 21 DCMR Chapter 40, hereby gives notice of its intention to amend Title 21 of the District of Columbia Municipal Regulations (DCMR) Chapter 41, Retail Water and Sewer Rates by revising Section 4101.1, to the existing Section 4101, Rates for Sewer Service.

The Board expressed its intention to amend the DCMR through the addition of these Sections at its regularly scheduled Board meeting held January 8, 2009 pursuant to Board Resolution # 09-23. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Comments on these proposed rules should be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to, Linda R. Manley, Secretary to the Board, District of Columbia Water and Sewer Authority, 5000 Overlook Ave., S.W., Washington, D.C. 20032.

**In addition, the Board will also receive comments on these proposed rates at a public hearing to be held at a later date.**

**I. Timing of Final Action on Proposed Rulemaking**

No final action will be taken on the Rulemaking Proposal described in this notice until after each of the following events has occurred:

1. A public hearing is held to receive comments on the proposed rulemaking. The public hearing notice is published in this edition of the District of Columbia Register.
2. The public comment period on this rulemaking expires; and
3. The Board of Directors takes final action after public comments are considered.

## II. Rulemaking Proposal

The following rulemaking action is proposed:

**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 Three Dollars and Forty–Seven Cents (\$3.47) for each One Hundred Cubic Feet (Ccf) of water used shall be:

- (a) Effective May 1, 2009, decreased to Three Dollars and Thirty-One Cents (\$3.31) for each One Hundred Cubic Feet per Ccf; and
- (b) Effective May 1, 2009, an Impervious Surface Area Charge of One Dollar and Twenty-Four Cents (\$1.24) per month per Equivalent Dwelling Unit (ERU) shall be implemented.