

## DISTRICT OF COLUMBIA PUBLIC SCHOOLS

NOTICE OF FINAL RULEMAKING

The Chancellor of the District of Columbia Public Schools, pursuant to section 103 of the District of Columbia Public Education Reform Amendment Act of 2007 (Act), effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-172) (2007 Supp.), and Mayor's Order 2007-186 (August 10, 2007), hereby gives notice of the adoption of the following final rulemaking. This final rulemaking amends Title 5, Chapter 13 of the *District of Columbia Municipal Regulations* to add a new section 1309 to establish qualifications and general requirements for all paraprofessionals.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on August 1, 2008 (55 DCR 8356). On October 6, 2008, the Qualifications of Paraprofessionals Regulations Approval Resolution Of 2008 (PR17-1066) was submitted to the Council on October 6, 2008. The Council has neither approved nor disapproved the proposed rules during the required 45 day period of Council review and they are therefore deemed approved pursuant to section 103 of the Act. No changes have been made to the rules as proposed. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

**Chapter 13 of Title 5 of the District of Columbia Municipal Regulations (Conditions of Employment) is amended to add a new section 1309 to read as follows:**

**1309 QUALIFICATIONS OF PARAPROFESSIONALS**

- 1309.1 All paraprofessionals employed by D.C. Public Schools shall have earned a high school diploma or its recognized equivalent, regardless of the paraprofessionals' hiring date.
- 1309.2 An instructional paraprofessional who provides direct academic support to students or teachers shall:
- (a) Complete at least two (2) years of study at an institution of higher education;
  - (b) Obtain an associate's (or higher) degree; or
  - (c) Meet a rigorous standard of quality and be able to demonstrate through a formal academic assessment:
    - (1) Knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

- (2) Knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.
- 1309.3 The receipt of a high school diploma (or its equivalent) shall be necessary but not sufficient to satisfy the requirements of § 1309.2(c).
- 1309.4 The mandatory deadline for all instructional paraprofessionals employed by the D.C. Public Schools to meet the requirements stated in § 1309.2 shall be June 30, 2008.
- 1309.4 Instructional paraprofessionals who fail to meet the mandatory June 30, 2008 deadline may be subject to disciplinary action, up to and including termination.
- 1309.5 The requirements of § 1309.2 shall not apply to a paraprofessional if:
  - (a) The paraprofessional is proficient in English and a language other than English and provides services primarily to enhance the participation of children by acting as a translator, with proficiency in English and a language other than English determined by standards established by D.C. Public Schools;
  - (b) The paraprofessional's duties consist solely of conducting parental involvement activities; or
  - (c) The paraprofessional's duties are limited to cafeteria or playground supervision, personal care services, and/or non-instructional computer assistance.

**D.C. DEPARTMENT OF HUMAN RESOURCES****NOTICE OF FINAL RULEMAKING****(ERRATA NOTICE)**

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with sections 951 through 958 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 § 1-609.51 *et seq.*) (2006 Repl.), hereby gives notice that final rulemaking action was taken to adopt the following rules. These rules amend Chapter 38, Management Supervisory Service, of Title 6 of the District of Columbia Municipal Regulations (DCMR), in its entirety. While a Notice of Final Rulemaking was published in the *D.C. Register* (DCR) on July 25, 2008 (55 DCR 007974), there were two (2) non-substantive errors in that rulemaking notice. Specifically, in section 3809.7 there is an incorrect reference to section 3814 (the correct reference is to section 3813); and section 3807.5 was incorrectly numbered "3707.5." Accordingly, a revised version of the Notice of Final Rulemaking is being re-published. Final rulemaking action was taken on July 10, 2008.

**CHAPTER 38****MANAGEMENT SUPERVISORY SERVICE**

*Chapter 38 of the D.C. Personnel Regulations is amended to read as follows:*

**3800 POLICY**

- 3800.1 Pursuant to section 951 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 § 1-609.51) (2006 Repl.), the Management Supervisory Service is established within the District government to ensure that each agency has the highest quality of managers and supervisors who are responsive to the needs of the government.
- 3800.2 This chapter applies to all appointments to the Management Supervisory Service under the authority of sections 951 through 958 of the CMPA (D.C. Official Code § 1-609.51 *et seq.*) (2006 Repl.).
- 3800.3 In accordance with section 954 of the CMPA (D.C. Official Code § 1-609.54) (2006 Repl.), an appointment to the Management Supervisory Service is an at-will appointment.
- 3800.4 For the purposes of this chapter, the term "appointment" means all initial appointments to the Management Supervisory Service, and all subsequent position changes, including reassignments and promotions, within the Management Supervisory Service.

**3801 APPLICABILITY**

- 3801.1 The Management Supervisory Service consists of all employees who meet the definition of “management employee” in section 1411 (5) of the CMPA (D.C. Official Code § 1-614.11 (5)) (2006 Repl.), that is, employees whose functions include responsibility for project management and supervision of staff and the achievement of the project’s overall goals and objectives.
- 3801.2 The following employees are excluded from the Management Supervisory Service:
- (a) Employees occupying positions included in recognized collective bargaining units; and
  - (b) Employees with acting supervisory or managerial responsibilities only in the absence of the regular supervisor or manager.
- 3801.3 Positions that have some supervisory duties and responsibilities but less than those described in the appropriate classification standards guide shall be excluded from the Management Supervisory Service.
- 3801.4 Persons appointed to the Management Supervisory Service are not in the Career, Educational, Legal, Excepted, or Executive Services.
- 3801.5 An employee holding a position in the Career or Educational Services may be detailed, temporarily promoted, temporarily transferred, or temporarily reassigned, without a break in service, to a position that would otherwise be in the Management Supervisory Service, without losing his or her existing status in the Career or Educational Services.

**3802 COMPENSATION SYSTEM, SALARY AND RATE SCHEDULES, AND PAY-FOR-PERFORMANCE SYSTEM FOR MANAGEMENT SUPERVISORY SERVICE EMPLOYEES**

- 3802.1 The compensation provisions of Chapter 11 of these regulations are applicable to all positions in the Management Supervisory Service.
- 3801.2 As applicable, individuals appointed to the Management Supervisory Service shall be paid from either:
- (a) The Management Supervisory Rate Schedule, the symbol for which is MW, which is the hourly rate schedule applicable to Management Supervisory Service employees who are paid under the Wage Service Rate System established in Chapter 11 of these regulations; or
  - (b) The Management Supervisory Service Pay Schedule (“MS Schedule”), the symbol for which is MS, which is the annual rate schedule applicable to Management Supervisory Service employees who are paid under the District Service Salary System established in Chapter 11 of these regulations.

- 3802.3 The MS Schedule is divided into grade levels 11 through 16 and consists of an open range with no steps, only a “minimum”, “midpoint,” and “maximum” as reference points of the range for each grade level.
- 3802.4 The MS Schedule provides a varying, pay-for-performance system for Management Supervisory Service employees paid from it. Some of the features of a merit-based pay plan such as the new MS Schedule are:
- (a) Merit pay or pay-for-performance systems provide the flexibility to:
    - (1) Combine merit or performance-based increases with what is commonly known as a “cost-of-living adjustments” or “market adjustments;” or
    - (2) Base the total salary increase the employee receives solely on merit (performance).
  - (b) Base-pay increases vary in direct relationship to each employee’s performance level;
  - (c) The system differentiates between the various levels of performance and rewards employees accordingly through additional compensation;
  - (d) The success of the system depends on accurate and realistic performance evaluations by supervisors; and
  - (e) The system provides flexibility for varying budget constraints and revenues.
- 3802.5 Each personnel authority, in consultation with the Office of the Chief Financial Officer, shall:
- (a) Determine the percentage of the performance-based or merit pay increase, if any, for agency Management Supervisory Service employees who are paid under the MS Schedule and have received a Performance Plan for the year, and whose level of competence and job performance is determined to be acceptable or better as evidenced by a performance rating of “*Meets Expectations*” or higher;
  - (b) Determine the total percentage of the annual salary increases for these employees, if any; and
  - (c) Communicate the plan to agency heads every year.
- 3802.6 Any performance base or merit pay increase for Management Supervisory Service employees shall be approved by the Mayor (or designee) or independent personnel authority.

- 3802.7 An eligible Management Supervisory Service employee whose salary is at the top of the range for the grade level of the position he or she occupies and who meets the requirements in section 3802.5 (a) of this section, shall receive a one-time (1-time) lump sum payment for the calendar year in question, the amount of which shall not exceed the percentage afforded to other eligible agency employees with the same performance rating.
- 3802.8 The rates of pay on the Management Supervisory Service Pay Schedules shall not be used to set pay upon subsequent appointment to a position in the Career Service.

**3803 INCUMBENT CLASSIFICATION SYSTEM**

- 3803.1 Until such time as the Mayor adopts a new classification system, the classification system that was in effect on December 31, 1979 is the system applicable to the classification of positions in the Management Supervisory Service.

**3804 METHOD OF MAKING MANAGEMENT SUPERVISORY SERVICE APPOINTMENTS**

- 3804.1 In accordance with section 953 of the CMPA (D.C. Official Code § 1-609.53) (2006 Repl.), all appointments to the Management Supervisory Service, except as specifically limited in this chapter, shall be by open competition on the basis of merit by selection from the highest qualified applicants, based on specific job requirements with appropriate regard for affirmative action goals as provided by law and as determined under this chapter.
- 3804.2 An appointment to the Management Supervisory Service may be made for an indefinite period, or as a time-limited appointment.
- 3804.3 Because an appointment to the Management Supervisory Service is an at-will appointment, a date specifying the duration of a time-limited appointment shall not prevent the termination of the employee occupying such a position prior to the date specified; provided that the termination is effected pursuant to section 3813 of this chapter.

**3805 PROHIBITED PERSONNEL PRACTICES**

- 3805.1 No person shall interfere in the competitive process by influencing another person to withdraw from competition for any position in the Management Supervisory Service for the purpose of either improving or injuring the prospects of any applicant for appointment or selection.
- 3805.2 In accordance with the D.C. Human Rights Act of 1977, as amended, the District government does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation,

political affiliation, genetic information, disability, source of income, status as a victim of an intra-family offense, and place of residence or business.

**3806 QUALIFICATION STANDARDS AND GENERAL REQUIREMENTS FOR SELECTION**

- 3806.1 A person selected to a position in the Management Supervisory Service shall meet the qualification standards for the position for which selected.
- 3806.2 Suitability requirements applicable to the Management Supervisory Service are specified in Chapter 4 of these regulations.
- 3806.3 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 for the position.
- 3806.4 Selection procedures for the Management Supervisory Service shall be based on a job analysis designed to identify and evaluate the factors that are important in evaluating candidates, as well as the following:
- (a) The basic duties and responsibilities of the position; or
  - (b) The tasks or the knowledge, skills, and abilities required to perform the duties and carry out the responsibilities of the position.
- 3806.5 The personnel authority may require an applicant to provide documentary evidence of his or her qualifications for an appointment in the Management Supervisory Service.

**3807 COMPETITIVE AND NON-COMPETITIVE PLACEMENT**

- 3807.1 Except as otherwise provided in this chapter, competitive procedures shall apply to all initial appointments to the Management Supervisory Service, and subsequent assignments and placements to positions within the Management Supervisory Service, including the following:
- (a) Promotions;
  - (b) Temporary promotions exceeding one hundred twenty (120) days;
  - (c) Selection for details for more than two hundred forty (240) days to a position at a higher grade or to a position at the same grade level with known promotion potential; and
  - (d) Selection for a position, including by reassignment or demotion, with more promotion potential than the last grade held under a Management Supervisory Service competitive appointment.

- 3807.2 Competitive procedures shall not apply to the following actions within the Management Supervisory Service:
- (a) The following types of Management Supervisory Service promotions:
    - (1) A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error;
    - (2) A promotion resulting from an employee's position being reclassified at a higher grade because of accretion of additional duties and responsibilities without planned management action;
    - (3) A career ladder promotion if the original competition for the position clearly established the career ladder; or
    - (4) A temporary promotion under this chapter for a period of one hundred twenty (120) days or less.
  - (b) Indefinite reassignment or transfer to a position of the same grade with no known promotion potential;
  - (c) A temporary reassignment for a period of one hundred twenty (120) days or less;
  - (d) A reassignment or demotion pursuant to section 3809 of this chapter;
  - (e) 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;
  - (f) A detail of two hundred forty (240) days or less to a position at a higher grade or to a position with known promotion potential; and
  - (g) Temporary Appointments Pending the Establishment of Registers (TAPER).
- 3807.3
- (a) While this chapter does not include time-in-grade requirements or restrictions for promotion to or within the Management Supervisory Service that would prevent an employee from advancing to a higher grade position before serving at the lower grade for at least one (1) year, agencies must exercise discretion concerning any such promotions; and consider establishing internal controls and procedures to handle such promotions, with regard to equity and reasonableness.
  - (b) The following criteria shall be followed when considering promoting an employee to or within the Management Supervisory Service when the employee meets the qualifications requirements for the higher grade position but has served at the lower grade level for less than one (1) year. Under such circumstances, consideration shall be given to the following:



- (1) The employee's total work history;
- (2) The employee's education, superior academic credentials, or superior academic achievements;
- (3) Any work performed by the employee that is related to the higher grade position and at a level at least commensurate (equivalent) to the higher grade position;
- (4) Any negative impact that an action to advance an employee who has not served at the lower grade level for at least one (1) year may have on other agency Management Supervisory Service employees;
- (5) The impact that an action to advance an employee who has not served at the lower grade level for at least one (1) year may have on the agency's salary structure; or
- (6) Hardship, inequity, or especially meritorious cases.

- 3807.4 An employee's salary history (i.e., previous higher salary) shall not automatically be considered as the determining factor in the employee's promotion under the circumstances and criteria described in section 3807.3 of this section; however, it may be considered along with the criteria listed in that section.
- 3807.5 An employee promoted under the circumstances described in section 3807.3 of this section may be advanced more than two (2) grade levels at a time.

### **3808 COMPETITIVE SELECTION**

- 3808.1 Competitive selection procedures shall consist of assembled examinations, which may include written, oral, or performance examinations, or a combination thereof; or unassembled examinations, which may include but shall not be limited to the establishment of crediting plans (for ranking), selection panels, or interview panels, or a combination of more than one (1) of these recruitment and selection methods.
- 3808.2 Each competitive selection shall result from appropriate recruitment activities and a vacancy announcement made available to applicants.
- 3808.3 (a) The following employees shall be referred to selecting officials in subordinate agencies along with other qualified candidates, for interview by management and special consideration for placement and advancement for Management Supervisory Service positions they apply for; provided that no person referred for such special consideration shall be selected ahead of a candidate claiming the residency preference pursuant to section 957 of the CMPA (D.C. Official Code § 1-609.57) (2006 Repl.), if any:

- (1) Graduates of the District government's Certified Public Manager Program; and
  - (2) Persons appointed as Capital City Fellows (CCF), upon completion of the two-year (2-year) CCF Program.
- (b) The Director, D.C. Department of Human Resources (DCHR), shall issue procedures providing guidance for the implementation of section 3808.3 (a) above, to include:
- (1) Language notifying employees and agency management of the special consideration for placement and advancement provisions of this section;
  - (2) The manner in which these employees will be tracked for referral and consideration; and identified on selection certificates or registers; and
  - (3) A requirement that selecting officials submit a written explanation to the DCHR on the non-selection of one of these employees for reasons other than selection of a residency-preference candidate.
- (c) An employee as described in section 3808.3 (a) above shall be referred and receive special consideration for placement and advancement under this section only until he or she accepts and is placed in a position as a result of the referral. Referrals under this section shall cease if the employee declines a position.
- (d) An employee who separates from District government service shall not be eligible for referrals under this section upon re-employment with the District government.

### **3809 PLACEMENT BY REASSIGNMENT OR DEMOTION**

- 3809.1 A personnel authority may fill a vacancy within the Management Supervisory Service by reassignment of a Management Supervisory Service employee to another position of the same grade, either competitively or non-competitively, as provided in this section.
- 3809.2 When, as a result of attrition, reductions in force, reorganizations, or approved realignments within an agency, a Management Supervisory Service employee ceases to perform managerial or supervisory functions or duties, the employing agency may reassign or demote the employee to a vacant Management Supervisory Service position for which he or she qualifies; provided that there is no reduction in the benefits of the employee, and the position has no greater promotion potential than the position previously held.

- 3809.3 An agency may determine that it is necessary to reassign a Management Supervisory Service employee to a vacant Management Supervisory Service position for which he or she qualifies, for reasons other than those listed in section 3809.2 of this section; provided that the position has no greater promotion potential than the position previously held.
- 3809.4 A time-limited reassignment may be made for a period not to exceed one (1) year.
- 3809.5 A time-limited reassignment exceeding one hundred twenty (120) days to a position with established promotion potential higher than the currently held position will be effected competitively.
- 3809.6 Any reassignment or demotion under the circumstances described in sections 3809.2 and 3809.3 of this section shall be effected non-competitively.
- 3809.7 An employee may voluntarily accept a reassignment or demotion pursuant to sections 3809.2 or 3809.3 of this section, or be terminated as specified in section 3813 of this chapter.
- 3810 MANAGEMENT SUPERVISORY SERVICE SKILLS MAINTENANCE AND ENHANCEMENT**
- 3810.1 In accordance with section 955 of the CMPA (D.C. Official Code § 1-609.55) (2006 Repl.), each employee appointed to the Management Supervisory Service will be required to maintain and enhance his or her management and supervisory skills through mandatory training courses every year, as prescribed by the personnel authority.
- 3810.2 Failure of a Management Supervisory Service employee to complete the prescribed training within time frames specified by the personnel authority may result in administrative action against the employee.
- 3811 PERFORMANCE EVALUATION SYSTEM FOR MANAGEMENT SUPERVISORY SERVICE EMPLOYEES**
- 3811.1 Except as provided in Chapter 14 of these regulations, the performance of employees in the Management Supervisory Service shall be evaluated utilizing the performance management system in that chapter.
- 3812 RESIDENCY PREFERENCE FOR MANAGEMENT SUPERVISORY SERVICE**
- 3812.1 The residency preference provisions of section 801(e) (1), (2), (3), (5), (6), and (7) of the CMPA (D.C. Official Code § 1-608.01(e) (1), (2), (3), (5), (6), and (7)) (2006 Repl.), as amended, and Chapter 3 of these regulations, shall apply to employment in the Management Supervisory Service.

**3813 EMPLOYEE RIGHTS UPON TERMINATION**

- 3813.1 An appointment to the Management Supervisory Service is an at-will appointment. A person appointed to a position in the Management Supervisory Service serves at the pleasure of the appointing authority, and may be terminated at any time. An employee in the Management Supervisory Service shall be provided a fifteen-day (15-day) notice prior to termination.
- 3813.2 No termination action shall be initiated under this chapter unless first authorized by the agency head (or designee) and the Director, D.C. Department of Human Resources (DCHR), or independent personnel authority, as applicable; except that a termination of a Management Supervisory Service employee in the DCHR shall be first authorized by the Director, DCHR (or designee), and the Chief of Staff for the Mayor.
- 3813.3 In accordance with section 954 of the CMPA (D.C. Official Code § 1-609.54 (b)) (2006 Repl.), an employee in the Management Supervisory Service shall be entitled to severance pay upon termination for non-disciplinary reasons.
- 3813.4 Severance pay shall not be paid to any individual who has accepted an appointment to another position in the District government without a break in service.
- 3813.5 Upon termination for non-disciplinary reasons, and at the discretion of the personnel authority, a person with Career Service status or Excepted Service status due to appointment as an attorney in the Excepted Service may retreat, within three (3) months of the effective date of the termination, to a vacant position within the agency to which he or she was promoted and for which he or she qualifies.
- 3813.6 A retreat in accordance with section 3813.5 of this section shall be to a position in the service in which the person acquired status.
- 3813.7 Terminations from the Management Supervisory Service are not subject to administrative appeals.

**3899 DEFINITIONS**

For the purposes of this chapter, the following terms have the meaning ascribed:

**Agency** – any unit of the District of Columbia government, excluding the courts, required by law, by the Mayor of the District of Columbia, or by the Council of the District of Columbia to administer any law, rule, or any regulation adopted under authority of law. The term “agency” also includes any unit of the District of Columbia government created by the reorganization of one (1) or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency.

**Assembled examination** – a computerized or multiple-choice written examination or test which may include a typing or data-entry skills test.

**Break in service** – a period of one (1) workday or more between separation and reemployment that may cause a loss of rights or privileges.

**Disciplinary reasons** – includes but is not limited to behavior that negatively impacts the integrity of government operations or that is contrary to established standards, policies, or procedures; failure to meet specific requirements for the position the employee occupies, such as professional licensing or certification requirements; and failure to meet established performance goals, unsatisfactory or poor performance, incompetence, or any other performance-related deficiencies.

**Manager** – an employee vested with the authority to direct the work of an organization, held accountable for the success of specific line or staff functions; responsible for supervision of staff, monitoring and evaluating the progress of an organization toward meeting goals, and making adjustments in objectives, work plans, schedules and commitment of resources. A manager serves as head or assistant head of a major organization, or specialized project of marked difficulty, responsibility or community significance.

**Personnel authority** – an individual or entity with the authority to administer all or part of a personnel management program as provided in section 401 of the CMPA (D.C. Official Code § 1-604.01 *et seq.*) (2006 Repl., and 2007 Supp.).

**Promotion** – the change of an employee while continuously employed, from one grade to a higher grade under the Management Supervisory Service Schedule, or between pay systems.

**Reassignment** – a change of an employee from a Management Supervisory Service position to another Management Supervisory Service position of the same grade.

**Supervisor** – incumbent of a position that accomplishes work through the direction of other employees and meets at least the minimum requirements for coverage under the appropriate supervisory grade evaluation guide.

**Temporary Appointment Pending the Establishment of Register (TAPER)** – a time-limited initial appointment to a position in the Management Supervisory Service, pending the establishment of a register when there are insufficient candidates on a register appropriate for filling the position. Authority for the use of this type of appointment shall be granted by the personnel authority only when the public interest requires that a vacancy be filled before eligibles can be certified.

**Unassembled examination** – an examination that does not require a written test.

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKINGFORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO  
ELECTRIC SERVICE MARKET COMPETITION AND REGULATORY  
PRACTICES

1. The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice of its final rulemaking action, taken in Order No. 15201, to approve, pursuant to Section 2-505 of the District of Columbia Official Code, the tariff of the Potomac Electric Power Company (“PEPCO”).

2. Specifically, PEPCO proposes to revise the following six (6) tariff pages:

**ELECTRICITY TARIFF, P.S.C.-D.C. No. 1**

**Thirty-Ninth Revised Page No. R-1**

**Thirty-Ninth Revised Page No. R-2**

**Thirty-Second Revised Page No. R-2.1**

**Eighth Revised Page No. R-2.2**

**Eighth Revised Page No. R-34**

**Eighth Revised Page No. R-34.1.**

3. The Commission issued a Notice of Proposed Rulemaking (“NOPR”) which was published in the *D.C. Register* on November 21, 2008.<sup>1</sup> No comments were filed in response to the NOPR. By Order No. 15201, the Commission approved PEPCO’s proposed tariff. This tariff will become effective upon the date of publication of this Notice of Final Rulemaking in the *D.C. Register*.

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<sup>1</sup> 55 *D.C. Reg.* 12051-12052 (Nov. 21, 2008).

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING**

**and**

**Z.C. ORDER NO. 08-20**

**Z.C. Case No. 08-20**

**(Text Amendments – 11 DCMR)**

**Text Amendment to Regulate Firearms Retail Sales Establishments**

**March 9, 2009**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission (“NCPC”) for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of adoption of the following amendments to §§ 199.1, 502.7, 602.1, 702.4, 721.3, and 901.2 of the Zoning Regulations (11 DCMR) to add a definition of firearms and firearms retail sales establishment; permit firearm retail sales establishments as a permitted use in the C-2, C-3, C-4, C-5, C-M, and M Zone Districts, to establish specific requirements regulating their location within those zones; to provide that the firearms retail sales establishments use is not permitted as a principal or accessory use in other Commercial zones or in Special Purpose, Commercial-Residential, or Waterfront zones; and prohibit firearms retail sales establishments as a home occupation.

A Notice of Proposed Rulemaking was published in the *D.C. Register* (“*DCR*”) on December 26, 2008 (54 *DCR* 9445). The Commission took final action to adopt the amendments at a public meeting held on March 9, 2009, making no changes to the proposed text.

This final rulemaking is effective upon publication in the *D.C. Register*.

**Setdown Proceedings**

On July 28, 2008, the Office of Zoning received a report that served as a petition from the District of Columbia Office of Planning (“OP”) asking the Commission to adopt on an emergency basis, and set down for public hearing, amendments to the Zoning Regulations that would add a definition of firearms and firearms retail sales establishment to § 199; permit firearm retail sales establishments as a special exception use in the C-3-C, C-4, and C-5 Zone Districts; establish specific requirements regulating the location of firearm retail sales establishments within those zones, including a 600-foot distance requirement from residential areas and related uses, particularly places where children congregate, such as schools and playgrounds; and clarify that firearm retail sales use is not permitted as a principal or accessory use in other Commercial zones or in Special Purpose, Mixed-Use Commercial-Residential, Industrial, or Waterfront zones. The regulations also prohibited firearms retail sales establishments as a home occupation.

**Z.C. NOTICE OF FINAL RULEMAKING & Z.C. ORDER NO. 08-20****Z.C. CASE NO. 08-20****PAGE 2**

OP made these requests in response to a recent Supreme Court decision that invalidated some District of Columbia laws regulating handgun ownership. The District was in the process of amending its laws to comply with the principles stated in that ruling. The Zoning Regulations were silent with regard to the sale of firearms and could be interpreted as permitting the retail sale of firearms as a matter-of-right principal or accessory use within any commercial, mixed-use, industrial, or waterfront zone district that permits retail establishments.

At a properly noticed special public meeting on July 28, 2008, the Commission set down this case for a public hearing. The Commission also took action to adopt the amendments on an emergency basis and issued a notice of proposed rulemaking. The Notice of Emergency and Proposed Rulemaking and notice of the public hearing were published in the *D.C. Register* on August 8, 2008 (55 *DCR* 8547 and 8516, respectively).

**Public Hearing and Comment**

The Commission held its first public hearing on the proposed text amendments on September 29, 2008. At the public hearing, OP testified that the proposal would not be inconsistent with the Comprehensive Plan and would provide needed zoning regulations for this particular use of land. The Commission also heard testimony from Councilmember Phil Mendelson, the chair of the Council of the District of Columbia's Committee on Public Safety and the Judiciary. Councilmember Mendelson expressed concerns about what he considered to be the restrictive nature of the proposed regulations and the lack of a connection between the location restrictions proposed and the anticipated impact of gun stores. As an alternative, he presented a revised amendment that would allow the use as-of-right in several districts and lessen the location restriction radius. Other testimony, in person and in writing, included statements generally in favor of the OP proposal but recommending a wider location restriction, and ones in opposition, noting that the proposed regulations were too restrictive and potentially prone to legal challenge. Concerns were also raised about the need to better coordinate the work of various District agencies working on revised District laws pertaining to firearms. It was suggested the Commission suspend its final decision on the text amendment until the Council completed its review and revisions of the District's current gun laws. At the conclusion of the hearing, the Commission asked OP to consult further with the Metropolitan Police Department, the Office of the Attorney General, and Councilmember Mendelson's office and to recommend any revisions to the proposed rule it considered appropriate.

By letter dated October 27, 2008, the National Rifle Association ("NRA") offered its comments on the proposed rule. NRA requested that the proposed text amendment be revised to permit firearms retail sales establishment as a matter-of-right within all commercial and industrial zones. NRA also requested elimination of any location requirements.

After undertaking the consultation requested, OP, by supplemental report dated November 14, 2008, submitted a revised proposal and requested that the Commission take proposed action to



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approve, and emergency action to adopt, the revised amendments. OP did not specifically request that another public hearing be held.

The revisions differed in several respects from the published rules. Specifically the revised proposal would (i) prohibit a firearms retail sales establishment use as a home occupation; (ii) allow firearm retail sales establishments as a permitted use in the C-2-A through C-5 Commercial Districts and in both of the Industrial Zones; (iii) eliminate the performance conditions; and (iv) reduce the buffer area from 600 to 300 feet. The use would continue to be disallowed in all other zone districts, whether as a principal or an accessory use.

The Commission adopted the revised proposal on an emergency basis at its November 20, 2008 public meeting and elected to readvertise the revised proposal for a new public hearing to allow additional public comment.

As noted, the second Notice of Proposed Rulemaking was published in the *D.C. Register* on December 26, 2008 (54 DCR 9445). No comments were received.

The second public hearing was held on February 26, 2009. OP testified that the revised proposal was in response to the issues and comments raised at the earlier public hearing. Staff from the Metropolitan Police Department ("MPD") testified about current procedures for obtaining a dealer's license, as well as purchasing and registering a firearm, the operating parameters for licensed firearms dealers, requirements prohibiting the display of firearms, and the existing multilayered review of such establishments both by the Bureau of Alcohol, Tobacco, Firearms and Explosives and MPD. The Citizens Association of Georgetown testified in opposition to the proposal, requesting reinstatement of the 600-foot standard, in light of the proximity of commercial and residential uses, and asserting that parking requirements should not be waived for handgun sales stores in historic districts. The Commission received a letter from Advisory Neighborhood Commission ("ANC") 2E that urged adoption of the 600-foot standard originally proposed, as well as a letter from ANC 6B noting no objection to OP's revised proposal.

At the conclusion of the February 26, 2009 public hearing, the Commission voted to refer the proposed text to the National Capital Planning Commission ("NCPC"), which by report dated March 6, 2009, found that the proposed text amendment would not adversely affect the federal interests or be inconsistent with the Federal Elements of the Comprehensive Plan.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

#### Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on March 9, 2009. No changes were made to the advertised prepared text. With regard

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to the position of ANC 2E and Citizens Association of Georgetown that the initially proposed 600-foot buffer should be reinstated and the NRA's position that no buffer should exist at all, the Commission finds that the separation of firearms retail sales establishments from uses typically associated with residential uses or those characterized by the presence of children and large groups has value in terms of protecting the safety and security of these groups. However, the Commission also finds that the security measures and operational controls imposed by the federal and local gun laws in the District of Columbia will mitigate the impact of such uses on nearby residential areas. As a result, the Commission finds lessening the location restriction from 600 feet to 300 feet to be an acceptable change that will continue to protect residential areas and related uses from the potential for an adverse impact on safety and security without being overly prohibitive for those wishing to establish retail stores that sell firearms.

As to the remaining contentions of the NRA, the Commission finds that the current regulations provide ample opportunities for District residents to purchase and own firearms, in that they allow for their sale as a permitted, as-of-right use in 11 zones and within every ward of the District. The current regulations, which also take into account the varied character and intensity of the District's commercial zones, permit the retail sale of firearms in all of the commercial zones except the C-1. The C-1 zone is a neighborhood shopping zone aimed at providing for the daily retail and personal service needs of a small geographic area. The Commission felt that a firearms retail sales establishment would likely draw from a larger service area and, therefore, would be more appropriate beginning in the C-2 zones. These zones, called Community Business Center Districts, allow for the shopping and business needs for larger areas within the District, outside of the central core.

Lastly, the Commission finds it unnecessary to waive the parking requirements for firearms retail sales establishments because the existing Zoning Regulations require retail uses to provide parking in relationship to the total floor area of the use. This ratio ranges from one space per 300 square feet to one space per 3,000 square feet, depending on the district. In addition, in most districts, uses less than 3,000 square feet in size are exempt from a parking requirement. Such parking requirements would apply to a retail store for firearms. Finally, the current firearms license and registration policy does not require licensed gun owners to transport firearms in a vehicle.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

Title 11 (DCMR) is amended as follows with addition to existing provisions shown in bold and underlined text:

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1. *Amend Chapter 1, the Zoning Regulations, by adding the following definitions to § 199.1:*

**Firearm** - a gun, pistol, or any weapon capable of firing a projectile and using an explosive charge as a propellant.

**Firearms retail sales establishment** - an establishment engaged in the sale, lease, or purchase of firearms or ammunition. If an establishment is a firearms retail sales establishment as defined here, it shall not be deemed to constitute any other use permitted under the authority of this title.

2. *Amend Chapter 5, Special Purpose Districts, § 502.7, as follows:*

502.7 Any other accessory use and accessory building customarily incidental to the uses otherwise authorized by this chapter, shall be permitted in an SP District, **except that a firearms retail sales establishment shall not be permitted as a principal or an accessory use.**

3. *Amend Chapter 6, Mixed Use (Commercial Residential) Districts, § 602.1, to add firearms retail sales establishment to the list of prohibited uses, by adding a new paragraph (r) to read as follows:*

602.1 (r) Firearms retail sales establishments as a principal or an accessory use.

4. *Amend Chapter 7, Commercial Districts, as follows:*

(a) *Amend § 702.4 to read as follows:*

702.4 Other accessory uses customarily incidental and subordinate to the uses permitted in C-1 Districts shall be permitted in a C-1 District, **except that a firearms retail sales establishment shall not be permitted as a principal or an accessory use.**

(b) *Amend, § 721.3 by adding a new paragraph (u) to read as follows:*

721.3 (u) Firearms retail sales establishments, provided that no portion of the establishment shall be located within three hundred feet (300 ft.) of:

- (i) A residence (R) or Special Purpose (SP) District; or
- (ii) A church or other place of worship, public or private school, public library, or playground.

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5. *Amend Chapter 9, Waterfront Districts, as follows:*

(a) *Amend § 901.2 to read as follows:*

901.2            Accessory use (including parking), building, or structure customarily incidental and subordinate to the principal uses permitted in § 901.1 shall be permitted in the W-1, W-2, and W-3 Districts as a matter of right, **except that a firearms retail sales establishment shall not be permitted as a principal or an accessory use.**

(b) *Amend § 902.1 by adding a new paragraph (r) to read as follows:*

**902.1 (r)            Firearms Retail Sales Establishment.**

Vote of the Zoning Commission taken at the conclusion of its public hearing on February 26, 2009, to **APPROVE** the proposed rulemaking (for NCPC referral purposes): **3-0-2** (Anthony J. Hood, Peter G. May and Michael G. Turnbull to approve; Gregory N. Jefferies and William W. Keating, III, not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on March 9, 2009, by a vote of **3-0-2** (Anthony J. Hood and Peter G. May to adopt; Michael G. Turnbull to adopt by absentee ballot; and Gregory N. Jeffries and William W. Keating, III, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*.