

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED 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, pursuant to Section 2-505 (a) of the District of Columbia Code,¹ and the “Clean and Affordable Energy Act of 2008”² of its intent to adopt Chapter 44 of Title 15 of the District of Columbia Municipal Regulations (“DCMR”), commonly referred to as Submetering and Energy Allocation (“SEA”) Rules. The proposed SEA Rules set forth the standards and requirements for the usage of submetering and energy allocation equipment in the District of Columbia. The Commission gives notice of its intent to take final rulemaking action in not less than thirty (30) days after publication of this Notice of Proposed Rulemaking (“NOPR”) in the *D.C. Register*.

CHAPTER 44 SUBMETERING AND ENERGY ALLOCATION**Sections**

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¹ D.C. Official Code § 2-505 (2006 Repl.).

² D.C. Official Code § 34-1551 et. seq. (2009 Supp.).

4400 PURPOSE AND APPLICABILITY

- 4400.1 The purpose of this chapter is to establish standards and requirements for the accuracy, testing, billing, recordkeeping, and regulation of submetering and energy allocation equipment, and appropriate safeguards for the tenant, as well as to define the responsibilities of the owner.
- 4400.2 Any owner of a building which is not individually metered for electricity or natural gas for each nonresidential rental unit may install submetering equipment or energy allocation equipment for the purpose of fairly allocating:
- a. The cost of electrical or natural gas consumption for each nonresidential rental unit; and
 - b. Electrical or natural gas demand and customer charges made by the utility and electricity and natural gas supplier.
- 4400.3 All electronic or written notices, reports, or filings submitted to the Commission shall be docketed under Formal Case No. 945 ("F.C. 945").

4401 GENERAL REQUIREMENTS

- 4401.1 Submetering or energy allocation equipment may not be used in any nonresidential rental unit unless all nonresidential rental units in the building utilize such equipment to the extent permitted by the physical facilities.
- 4401.2 Any individual nonresidential rental unit may use submetering or energy allocation equipment provided the rental agreement or lease between the owner and the tenant clearly states that the nonresidential rental unit is or will be using submetering or energy allocation equipment.
- 4401.3 All rental agreements or leases between the owner and the tenant shall clearly state: the nonresidential rental unit uses submetering or energy allocation equipment; the basis of bills for electric or natural gas consumption will be rendered based on readings of such equipment; and any disputes relating to the amount of the tenant's electric or natural gas bills and the accuracy of the equipment will be between the tenant and the owner.
- 4401.4 No owner shall utilize submetering or energy allocation equipment without first securing from a tenant, before any electricity or natural gas is delivered, an agreement, which may be part of the tenant's lease agreement, for the purchase of electricity or natural gas. Whether or not a written agreement is executed, the tenant, by accepting the electricity or

natural gas, agrees to be bound by the applicable terms and any conditions prescribed by the Commission for submetering or energy allocation equipment. The owner, upon establishing a submetering or energy allocation practice, agrees to supply any and all tenants with electricity or natural gas and shall be bound by such terms and conditions in acting upon agreements for electric service or natural gas service.

- 4401.5 Any owner installing submetering or energy allocation equipment shall notify the Commission's Office of Engineering and the utility providing electric or natural gas service to the nonresidential rental units in writing, at least ninety (90) days prior to installation, that the equipment will be installed and shall give the name of the building, number of nonresidential rental units to be metered, building location, mailing address of the owner, approximate date of the scheduled installation of the equipment, and the type(s), manufacturer(s), and model number(s) of such equipment. The notification to the Commission shall also provide information used to establish the percentage registration as set forth in Sections 4402.2 (Section 4402, Submetering) and 4405.2 (Section 4405, Periodic Tests and Checks).
- 4401.6 Upon completion of the installation of the submetering or energy allocation equipment, the owner of the building shall provide written notification to the Commission's Office of Engineering within thirty (30) days.
- 4401.7 Each owner shall be responsible for providing, installing, sealing (if necessary), and maintaining all submetering or energy allocation equipment necessary for the measurement or allocation of the costs for electric energy or natural gas consumed by tenants. The submetering equipment shall include, but not be limited to, the piping and wiring, as well as the meter and associated affiliate parts. The installation of submetering and energy allocation equipment shall comply with all building (including electric and natural gas) code requirements, as well as public and labor safety code requirements of the District of Columbia.
- 4401.8 All submetering and energy allocation equipment shall be installed in locations readily accessible for reading, testing, and inspection, and where these activities will cause minimum interference and inconvenience to the tenant.
- 4401.9 Any electric submeter installed shall be of a type and class to register properly the electric consumption of the nonresidential rental unit, and such meter shall meet the standards of the latest edition of the American National Standards Institute, Inc., Standard C12 - Code for Electricity Metering (ANSI C12).

- 4401.10 Any natural gas submeter installed shall be of a type and class to register properly the natural gas consumption of the nonresidential rental unit, and such meter shall meet the standards of the latest edition of the American National Standard Institute Standards Accredited Standards Committee ANSI/ASC B109.1 and B109.2 for Diaphragm Type Gas Displacement Meters and ANSI/ASC B109.3 for Rotary Type Gas Displacement Meters (hereafter, ANSI B 109); ANSI/American Petroleum Institute (API) 2530 (ANSI/API 2530 or American Gas Association Gas Measurement Report No. 3), entitled "Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids," for Orifice Type Meters; ANSI/American Society of Mechanical Engineers (ASME) MFC-4M (Measurement of Gas Flow by Turbine Meters) and American Gas Association Transmission Measurement Committee Report No. 7 (entitled "Measurement of Fuel Gas by Turbine Meters") for Turbine Type Meters; and American Gas Association Transmission Measurement Committee Report No. 9 (entitled "Measurement of Gas by Multipath Ultrasonic Meters") for Ultrasonic Type Meters; or other generally accepted industry practices.
- 4401.11 Any energy allocation equipment installed shall be of a type and class appropriate to the heating, cooling, ventilation, and air conditioning system of the nonresidential rental unit and shall be used in accordance with generally accepted industry practices as well as the manufacturer's installation specifications and procedures for such energy allocation equipment.
- 4401.12 An owner shall not impose on the tenant any charges over and above the cost per kilowatt hour, cubic foot or therm, plus demand and customer charges, where applicable, which are charged by the utility company, the electricity supplier, and natural gas supplier to the building owner, operator, or manager, including any sales, local utility, or other taxes, if any; with the exception, that additional service charges permitted by Sections 4405 (Periodic Tests and Checks) and 4407 (Billing) may be collected to pay administrative costs and billing.
- 4401.13 An owner shall maintain adequate records regarding submetering and energy allocation equipment and shall make such records available for inspection by the Commission during reasonable business hours.
- 4401.14 For the purpose of the enforcement of the standards set forth in this chapter, building owners shall be treated as public utilities for the purposes of initiating a complaint, in accordance with D.C. Official Code § 34-917.
- 4401.15 Except as provided for in Section 4401.14, no owner of a building shall be considered a public utility engaged in the business of distributing or reselling electricity or natural gas.

4401.16 An owner's submetering or energy allocation equipment and its installation shall not interfere, change or modify in any way the electric or natural gas utility's service connection or operation of the utility's equipment, including the utility's metering equipment.

4402 SUBMETERING

4402.1 When submeters are installed by an owner to measure the electricity or natural gas used by its tenants, all charges for electricity or natural gas used, except the allowed service charges permitted by Sections 4405 (Periodic Tests and Checks) and 4407 (Billing), shall be calculated from the readings of such submeters.

4402.2 Submeters in service shall be tested periodically by the owner pursuant to Section 4405 (Periodic Tests and Checks). If the test results reveal that the submeter is found to be no more than two (2) percent fast or slow, no adjustment will be made to the tenant's bill. If the submeter is found to be more than two (2) percent fast or slow because of incorrect calibration, the owner will rebill the tenant for the correct amount as calculated for a period equal to one-half of the time elapsed since the last previous test, but in no case for a period in excess of twelve (12) months or since occupancy by the existing tenant, whichever is less. The percentage registration of an electric submeter will be calculated by the "weighted average" of light load and full load which is calculated by giving a value of one to the light load and a value of four to the full load. The accuracy of a natural gas submeter will be measured at the check rate of flow, as provided in Section 4401.10 (Section 4401, General Requirements).

4402.3 Whenever it is found that unmetered electricity or natural gas is being used as a result of tampering, the tenant shall pay to the owner an amount estimated by the owner to be sufficient to cover the electricity or natural gas used but not recorded by the meter and not previously paid for by the tenant.

4402.4 Whenever it is found that, for any reason other than calibration or tampering, the submetering apparatus has not registered the true amount of electricity or natural gas which has been used by the tenant, the electricity or natural gas used during the entire period of incorrect registration will be estimated by the owner based upon all known pertinent facts, and the amount of electricity or natural gas so estimated will be used in calculating the corrected bill. The owner shall rebill the tenant for the adjusted amount for a period equal to one-half of the time elapsed since the last previous test for submetering apparatus, but in no case for a period in excess of twelve (12) months or since occupancy by the existing tenant, whichever is less.

4403 ENERGY ALLOCATION

4403.1 Energy allocation equipment may be used solely to allocate the cost of electric or natural gas service among tenants using the nonresidential rental units.

4403.2 Energy allocation systems shall provide a reasonable determination of energy use and resulting costs for each nonresidential rental unit. The energy allocation system shall be appropriate for the heating, cooling, ventilation, and air conditioning system application. Components shall be properly installed to assure correct measurements of allocation parameters. Proper calculation procedures shall be used in converting from measurement to allocation.

4403.3 Energy allocation equipment in service shall be tested periodically by the owner, pursuant to Section 4405 (Periodic Tests and Checks). Testable components of the energy allocation system should be accurate, consistent with the manufacturer's specifications. The Commission may require that energy allocation equipment meet other independent, authoritative technical standards or operational guidelines, such as standards developed under the auspices of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE).

4404 TESTING CAPABILITY AND METERING EQUIPMENT

4404.1 Each owner shall engage a certified lab to perform the equipment tests required by these terms and conditions; such tests being performed with instruments, portable standards, reference manuals, and other equipment and facilities all of which shall comply with standards specified in Sections 4401.09 and 4401.10 (Section 4401, General Requirements) for submetering equipment, and with manufacturer's recommended practices for energy allocation equipment. All such practices shall be available at all reasonable times for inspection by the Commission.

4405 PERIODIC TESTS AND CHECKS

4405.1 Each owner shall have a documented testing program, the primary purpose of which is to maintain an acceptable degree of accuracy during the service life of the equipment. All submetering equipment shall be tested in accordance with the provisions of the latest edition of the standards provided in Sections 4401.09 and 4401.10 (Section 4401, General Requirements). All energy allocation equipment shall be tested in accordance with the manufacturer's suggested testing procedures and practices for such equipment. Tests shall be conducted at least once every two (2) years, unless such testing is covered under an in-service performance testing program.

- 4405.2 All submeters shall be adjusted as close as possible to the condition of one hundred (100) percent registration. No submeter shall be placed in service until its percentage registration has been established. The establishment of the percentage registration may be accomplished through the engagement of a certified lab or by a certificate provided by the manufacturer that is applicable only to the initial installation of the submeter. No electric submeter that exceeds the test calibration limits for watt-hour meters as set forth by the latest edition of ANSI C12 shall be placed in service or left in service. No natural gas submeter that exceeds the test calibration limits for meters as set forth by the latest edition of standards provided in Section 4401.10 (Section 4401, General Requirements) shall be placed in service or left in service.
- 4405.3 A submeter shall be adjusted by a certified lab, if it is determined that the test calibration exceeds the limits set forth in Section 4405.2.
- 4405.4 Energy allocation equipment shall be adjusted to the manufacturer's specifications before being placed in service.
- 4405.5 Any submetering or energy allocation equipment removed from service or replaced by other equipment for any purpose whatsoever shall be properly tested and adjusted before being placed in service again.
- 4405.6 The owner shall keep and maintain the following records for a period of no less than three (3) years:
- a. A record of all submetering or energy allocation equipment, identifying the equipment number and location (the tenant's address where installed or if in reserve).
 - b. The record of each test conducted shall show the identifying number of the equipment, the standard number and other necessary devices used, the date and type of test conducted, name and contact information for the individual conducting the test, the percentage registration at each load tested for submetering equipment, the accuracy level of the parameter measured by the energy allocation equipment, and sufficient data to permit verification of the test results; and
 - c. A record of all the portable standards and reference standards used to test submetering and energy allocation equipment. Test equipment shall at all times be accompanied by a certified calibration card signed by the proper authority, with the date of the most recent certification and adjustment. Records of certifications

and calibrations of all standards shall be kept on file in the office of the owner.

4405.7 The aforementioned records, in Section 4405.6, for each nonresidential rental unit shall be made available, upon request, to the tenant of that unit during reasonable business hours at the building manager's office or, if there is no building manager available, at the nonresidential rental unit of the tenant at the convenience of the owner and tenant. The owner of the building may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

4405.8 All records referenced in Section 4405.6 shall be made available to the Commission upon request.

4406 REQUEST TESTS

4406.1 Upon request by a tenant, the owner will test the submetering or energy allocation equipment without charge to the tenant, provided that the owner shall not be required to conduct such test more than once in twenty-four (24) months for the same tenant. If testing of submetering or energy allocation equipment is requested by the tenant more frequently than once in twenty-four (24) months, the owner may require a deposit. The amount of the deposit shall not exceed the out-of-pocket expenses associated with conducting the test. Said deposit will be refundable only if the percentage registration or accuracy of the equipment exceeds the limits established in Sections 4402 (Submetering) and 4403 (Energy Allocation) above.

4406.2 The tenant, or his designated representative, may be present when the equipment is tested.

4406.3 A written report of the results of the test shall be made available to the tenant within ten (10) business days after the completion of the test.

4407 BILLING

4407.1 Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless the rental agreement or lease expressly provides otherwise. Bills shall be calculated and rendered as promptly as possible following receipt by the owner of the bill from the utility, but no later than fourteen (14) days after receipt of the utility's bill. The submetering or energy allocation equipment shall be read within five (5) business days of the scheduled reading date of the utility's master meter.

4407.2 For submetering, the unit of measurement shall be the energy unit as defined in Section 4499 (Definitions). For energy allocation equipment,

the units of measurement shall be those characteristics monitored by the allocation equipment.

4407.3 The energy billed to any tenant shall constitute only the energy consumed within that nonresidential rental unit and so measured or monitored by the equipment. The cost of energy used in owner-paid areas may be recovered by the owner only as provided in Section 4407.12, and may not be billed to any tenant as part of the billings rendered pursuant to this chapter and may not be measured through the nonresidential rental unit submetering or energy allocation equipment. Where permitted by tenant lease agreements, energy costs for usage consumed within the nonresidential rental unit, which are not allocated by energy allocation equipment, may be allocated by the owner among the various tenants in the same proportions as the leased space square footage. These costs shall be listed separately from energy billings based on energy allocation equipment, and appropriately marked on the monthly tenant bills.

4407.4 The owner shall render bills to the tenant in the same energy unit(s) as that billed to the owner by the utility.

4407.5 The tenant's bills shall be calculated in the following manner:

After the owner receives the electric or natural gas bill from the utility, the owner shall divide the "total current charges" by the total number of energy units billed by the utility to determine the average cost in cents per energy unit. The average energy unit cost shall be multiplied by each tenant's energy unit consumption to obtain the tenant's monthly charges.

4407.6 For the purposes of computing the average cost per energy unit, the "total current charges" shall include/exclude the following, as applicable:

Include:

- a. Customer, demand, commodity, energy, transmission and distribution charges;
- b. Procurement cost adjustment;
- c. Purchased gas adjustment;
- d. Local taxes;
- e. Surcharges; and
- f. Credits;

Exclude:

- a. Miscellaneous charges, e.g. charges by the utility for late payments.

4407.7 The owner may impose a monthly service charge per nonresidential rental unit to offset the administrative cost of billing.

4407.8 The tenant's bill shall show all of the following information:

- a. The date the bill was prepared;
- b. The dates and readings of the submetering or energy allocation equipment at the beginning and at the end of the period for which the bill is rendered and the billing date;
- c. The number of energy units consumed during the current billing period;
- d. The average cost in cents per energy unit used in computing the bill;
- e. The amount due for electricity or natural gas consumed within the nonresidential rental unit, the administrative service charge, if any, the balance forward, and the total amount due;
- f. The name or address, or both, of the tenant for whom the bill is applicable;
- g. The name of the firm rendering the tenant's bill and the name or title, address, and telephone number of the person(s) where payment can be made and, the name of the contact person in the case of any questions or disputes concerning the bill; and
- h. A precise statement that the bill is not from the utility providing the service to the nonresidential rental unit.

4407.9 Bills shall be mailed or delivered to the tenant's premises within five (5) business days after the billing date.

4407.10 Estimated bills shall not be rendered unless the meter or energy allocation equipment has been tampered with, or is out of order, or where access cannot be attained, or where the property owner receives an estimated bill from the utility company and, in any such case, the bill shall be distinctly marked "estimated." Such estimates shall be based upon one of the following:

- a. Consumption over a similar billing period where the information of previous consumption is available;
 - b. The preceding billing period for a tenant that has resided on the premises for less than one year and the consumption for a similar billing period is not available; or
 - c. The average of the preceding two billing periods, if available.
- 4407.11 Adjustment to a tenant's bill shall be made under any of the following conditions:
- a. Any billing errors due to incorrect readings or improper billing calculations discovered by the owner on his own initiative or discovered as a result of an investigation because of a question or a dispute by a tenant;
 - b. If it is determined that a cross-metering situation exists. The tenants involved will be rendered corrected bills to cover such period of time as the statute of limitations allows. If a tenant has been underbilled, the tenant shall be allowed to make payment of the amount underbilled in equal monthly installments for as many months as the corrected bill covers, but for not more than ten (10) months, the entire amount underbilled being due upon termination of tenancy. If a tenant has been overbilled and is due a credit, the tenant may request a cash refund, otherwise such credit shall be posted to the tenant's account;
 - c. If the utility adjusts the owner's bill; or
 - d. As detailed in Section 4402 (Submetering).
- 4407.12 Nothing contained in these rules shall prohibit the owner from recovery, in periodic lease payments, of the tenant's fair share of electricity or natural gas costs attributable to owner-paid areas and costs incurred in establishing and maintaining the submetering system or energy allocation equipment.
- 4407.13 Initial and final bills shall be rendered for the number of energy units actually consumed in the initial and final billing periods.
- 4407.14 On the date possession is taken by a tenant of a nonresidential rental unit, an initial reading will be taken from the submetering or energy allocation equipment serving such nonresidential rental unit to commence service to that tenant. The initial reading will be subtracted from the next reading of

the equipment (taken on the regularly scheduled monthly reading dates on which other submetering or energy allocation equipment in the building is read) to determine the consumption during the initial billing period. The energy units consumed as determined in the above manner will be multiplied by the average energy unit cost which is determined for the computation of bills for all other tenants for the period ending with the regularly scheduled reading date of that month.

4407.15 On the date a tenant surrenders a nonresidential rental unit, a final reading will be taken from the submeter equipment serving such unit to terminate service to that tenant. The reading of the equipment taken on the last previous regularly scheduled monthly reading dates on which other submetering or energy allocation equipment in the building was last read will be subtracted from the final reading to determine the consumption during the final billing period. The energy units consumed or determined in the above manner will be multiplied by the average energy unit cost which is determined for the computation of bills for all other tenants for the regularly scheduled monthly reading date after the final reading. If the owner and tenant so agree in writing, the owner may use the average energy unit cost from the previous month when determining the amount due for the last month of tenancy.

4407.16 A late payment charge shall not be imposed on any amounts, including deferred payment installments, paid by the due date or on amounts in dispute before the Commission. Amounts paid after the due date shall bear a late payment charge of one (1) percent, and an additional late payment charge at the rate of one and one-half (1.5) percent on the remaining unpaid balance per billing month thereafter.

4408 BILLING RECORDS

4408.1 All records associated with the computation of charges rendered to tenants for electric service or natural gas service shall be retained for a minimum period of three (3) years.

4408.2 The owner shall maintain and make available for inspection by the tenant, upon request, the following records:

- a. The billing from the utility to the owner for the current month and the thirty-six (36) preceding months.
- b. The calculation of the average cost per energy unit for the current month and the thirty-six (36) preceding months; and.
- c.

- d. The tenant's submeter or energy allocation readings and billings for the current month and the thirty-six (36) preceding months or for the term of tenancy, whichever is less.

4409 COMPLAINTS

- 4409.1 Any dispute relating to the tenant's bill and to the accuracy of the submeter or energy allocation equipment is between the owner of the building and the tenant, and excludes the public utility.
- 4409.2 When an owner cannot resolve a billing dispute with a tenant, the owner shall refer the tenant to the Commission for resolution.
- 4409.3 The owner shall maintain a record of all written complaints for a minimum period of three (3) years.

4410 RESERVATION OF RIGHTS

- 4410.1 Tenants, owners, operators or managers shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by Section 4401 (General Requirements).

4498 WAIVER

- 4498.1 The Commission may, upon request with good cause shown, or on its own, waive any provisions of this chapter.

4499 DEFINITIONS

"Building" means all of the individual units served through the same utility-owned meter within a property defined as Class 2 Property under D.C. Official Code § 47-813(c-6)(3).

"Building owner, operator, or manager" or "Owner" means any person or entity responsible for the operation and management of a building.

"Commission" means the Public Service Commission of the District of Columbia.

"Certified lab" means a testing facility that includes a utility's meter testing facility or a facility approved for use by any state regulatory utility commission.

"Electricity supplier" means a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or, markets electricity for sale to customers. The term excludes the following:

- a. Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants;
- b. Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not take title to electricity, market electric services to the individually-metered tenants of his or her building, or engage in the resale of electric services to others;
- c. Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and
- d. A consolidator.

“Energy allocation equipment” means any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any nonresidential rental unit within a building.

“Energy unit” means the billing units for the energy delivered to the nonresidential rental unit—i.e. kilowatt-hours, cubic feet, or therms.

“Master meter” means a meter used to measure for billing purposes, all electric or natural gas usage of a building, including common areas, common facilities, and nonresidential rental units therein.

“Natural gas supplier” means a person including an aggregator, broker, or marketer, who produces natural gas; sells natural gas; or purchases, brokers, arranges or, markets natural gas for sale to customers. The term shall not include a person that supplies natural gas exclusively for its own consumption or the consumption of one or more of its affiliates. The term shall not include the following:

- a. Building owners, lessees, or managers who manage the internal distribution system serving the building and who supply natural gas solely to occupants of the building for use by the occupants;
- b. Any person who purchases natural gas for its own use or for the use of its subsidiaries or affiliates; or any apartment building or office building manager who aggregates retail natural gas sales requirements for his or her building, and who does not take title to natural gas, market retail natural gas sales to the individually-metered tenants of his or her building, or engage in the resale of natural gas to others;
- c. Property owners who supply small amounts of natural gas, at cost, as an accommodation to lessors or licensees of the property;

d. A consolidator.

“Nonresidential rental unit” means property leased for commercial purposes.

“Owner-paid areas” means the portion of the real property for which the owner bears financial responsibility for energy costs, which portions include areas outside individual nonresidential units or in owner-occupied or shared areas.

“Submetering equipment” means equipment used to measure actual electricity or natural gas usage in any nonresidential rental unit when the equipment is not owned or controlled by the electric or natural gas utility serving the building in which the nonresidential rental unit is located.

“Tenant” means tenant, subtenant, lessee, sublessee, occupant or occupants entitled to the possession, occupancy or benefits of a nonresidential rental unit. The singular term tenant includes the plural.

“Utility” means every street railroad, street railroad corporation, common carrier, gas plant, gas corporation, electric company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipeline company.

2. All persons interested in commenting on the subject matter of the proposed rulemaking action may submit comments, in writing, not later than thirty (30) days after publication of this notice in the *D.C. Register*, with reply comments to be filed within forty-five (45) days from the date of publication in the *D.C. Register*. Comments and replies must be sent to Dorothy M. Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, D.C. 20005. Copies of the proposed rules may be obtained, at cost, by writing the Commission Secretary at the above address or through the Commission’s website at www.dcpssc.org. Once the comment period has expired, the Commission will take final rulemaking action.

**THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD
NOTICE OF PROPOSED RULEMAKING**

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in D.C. Official Code §3-1306, District of Columbia Financial Responsibility and Management Assistance Authority Order issued September 21, 1996, and Office of the Chief Financial Officer Financial Management Control Order No. 96-22 issued November 18, 1996, hereby gives notice of the adoption of amendments to Chapters 5, 6 9 and 99 of Title 30 DCMR, "Lottery and Charitable Games." These amendments are necessary to implement the MEGA MILLIONS® game pursuant to the Multi-State Lottery Association ("MUSL") MEGA MILLIONS Game Group Agreement. MEGA MILLIONS® is scheduled to start on January 31, 2009. The Executive Director gives notice of his intent to take final rulemaking action to adopt the amendments in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

AMEND CHAPTER 5. "LOTTERY TICKET"

Amend subsections 503 "Cancelled Tickets" by substituting the following:

503.4 A ticket for POWERBALL®, MEGA MILLIONS®, KENO, Hot Lotto, Sizzler, DC Daily 6, Rolling Cash 5, Quick Cash, and HOT FIVE tickets shall not be voided or cancelled.

AMEND CHAPTER 6. "CLAIMS AND PRIZE PAYMENTS"

Amend subsections 605 "On-Line Lottery Ticket Validation" by adding the following:

605.1(b) For the POWERBALL®, MEGA MILLIONS®, Hot Lotto, Sizzler and Rolling Cash 5 games, the player selected numbers on the ticket shall be in individual groups of prescribed numbers each associated with a single letter "A," "B," "C," "D," or "E";

605.1(g) The MEGA MILLIONS® tickets meets all the rules for validation pursuant to the MUSL MEGA MILLIONS Game Group Agreement.

Amend subsections 606. "Annuitized Prizes" by adding the following:

606.7 The MEGA MILLIONS® annuitized prize shall be paid in twenty-six (26) annual installments upon completion of all validation procedures. The initial payment shall be paid upon completion of all validation procedures. The subsequent twenty-five (25) payments shall be paid annually to coincide with the month of the Federal auction date at which the bonds were purchased to fund the annuity. All such payments shall be made be within seven (7) days of the anniversary of the annual auction date.

AMEND CHAPTER 9. "DESCRIPTION OF ON-LINE GAMES"

Amend Chapter 9 by amending sections 917 and 918 as follows:

917. DESCRIPTION OF THE MEGA MILLIONS® GAME

- 917.1 MEGA MILLIONS® is a five (5) out of fifty-six (56) plus one (1) out of forty-six (46) online lottery game which pays out the Grand Prize, at the player's election, as provided in this Chapter either on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for this prize pool on a pari-mutuel basis. Except as provided in these rules, all other prizes are paid on a fixed cash basis.
- 917.2 To play MEGA MILLIONS®, a player shall select five (5) different numbers, between one (1) and fifty-six (56) and one additional number, the Mega Ball which is between one (1) out of forty-six (46) for input into a terminal.
- 917.3 The price of each MEGA MILLIONS® play shall be \$1.00. A player may purchase up to five plays on one ticket. Multiple draws are available for up to twenty (20) consecutive draws beginning with the current draw. From time to time, the executive director may authorize the sale of MEGA MILLIONS® tickets at a discount for promotional purposes. Additionally, a multiplier feature, MEGAPLIER®, is available for an additional \$1 per play. Each bet and the respective prize payouts are listed in Section 918 of this chapter.
- 917.4 MEGA MILLIONS® tickets may be purchased in the District of Columbia only at a licensed location or a D.C. Lottery Agent. No MEGA MILLIONS® ticket purchased outside of the District of Columbia may be presented to a D.C. Lottery Agent for payment or validation.
- 917.5 MEGA MILLIONS® drawings shall be held at the time(s) and location set out in the MUSL MEGA MILLIONS Game Group Agreement.
- 917.6 In a single drawing, a player may win in only one prize category per single MEGA MILLIONS® play in connection with MEGA MILLIONS® winning numbers, and shall be entitled only to the highest prize.
- 917.7 For purpose of prize calculation with respect to any MEGA MILLIONS® pari-mutuel prize, the calculation shall be rounded down so that prizes shall be paid in multiples of one dollar.
- 917.8 With respect to the MEGA MILLIONS® grand/jackpot prize, the prize amount paid shall be the advertised grand/jackpot prize amount. However, the advertised grand/jackpot prize amount is subject to change based on sales forecasts and/or actual sales. Additionally, this prize amount may be rounded up to the next highest affordable multiple of one million dollars, at the discretion of the party lotteries.
- 917.9 The prize money allocated to the Grand Prize category shall be awarded equally to the number of game boards winning a Grand Prize.
- 917.10 If in any game drawing there are no plays which qualify for the prize, the prize money for that game drawing shall be added to the prize pool.
- 917.11 Subject to the laws and rules governing each party lottery, the number of prize categories and the allocation of the prize fund among the prize categories may be changed at the discretion of the directors, for promotional purposes. Such change shall be announced by public notice.

- 917.12 Prize liability cap. Notwithstanding any provision in the rule to the contrary, should total prize liability (exclusive of jackpot prize carry forward) exceed 300 percent of draw sales or 50 percent of draw sales plus \$50,000,000, whichever is less, (both hereinafter referred to as the "liability cap"), the second through fifth prizes shall be paid on a pari-mutuel rather than guaranteed prize basis, provided, however, that in no event shall the pari-mutuel prize be greater than the guaranteed prize. The amount to be used for the allocation of such pari-mutuel prizes (two through five) shall be the liability cap less the amount paid for the jackpot prize and prize levels six through nine.
- 917.13 A subscription sales program may be offered, at the discretion of the Executive Director.
- 917.14 MEGA MILLIONS® tickets shall show the player's selection of numbers or quick pick numbers, election of the multiplier feature, MEGAPLIER®, boards played, drawing date, jackpot payment option, and validation and reference numbers.
- 917.15 It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed. Neither a party lottery nor its sales agents shall be responsible for lost or stolen tickets.
- 917.16 In purchasing a ticket issued for MEGA MILLIONS®, the player agrees to comply with and be bound by all applicable statutes, administrative rules and regulations, and procedures of the party lottery of the Jurisdiction in which the MEGA MILLIONS® ticket is issued, and by directives and determinations of the Executive Director of that party lottery. Additionally, the player shall be bound to all applicable provisions in the MEGA MILLIONS® Finance and Operations Procedures. The player agrees, as its sole and exclusive remedy that claims arising out of a MEGA MILLIONS® ticket can only be pursued against the party lottery of ticket purchase. Litigation, if any, shall only be maintained within the state in which the MEGA MILLIONS® ticket was purchased and only against the party lottery that issued the ticket. Nothing in this rule shall be construed as a waiver of any defense or claim the D.C. Lottery may have in the event a player pursues litigation against the D.C. Lottery, its officers, or employees.
- 917.17 A ticket subject to the validations requirements of this title shall be the only proof of a wager.
- 917.18 Prior to the MEGA MILLIONS® Drawing there shall be a drawing for the MEGAPLIER®.
- 917.19 Each drawing shall determine, at random, the six winning numbers in accordance with the MEGA MILLIONS® drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the commission in accordance with the drawing procedures. The winning numbers shall be used in determining all MEGA MILLIONS® winners for that drawing.
- 917.20 For winning MEGA MILLIONS® tickets for which no claim or redemption is made within the specified claim period for each respective party lottery, the corresponding prize monies shall be returned to the other party lotteries in accordance with procedures for the reconciliation of prize liability pursuant to the MUSL MEGA MILLIONS Game Group Agreement and as may be agreed to from time to time by the directors of the party lotteries.

917.21 The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award(s).

917.22 The Prize Pool shall consist of at least fifty-one percent (51%) of each drawing period's sales.

918 MEGA MILLIONS® FIXED PRIZE STRUCTURE AND PROBABILITY

918.1 Provided the prize pools are fully funded, the fixed prize payments for MEGA MILLIONS® based on a one dollar (1) bet are as follows:

Number of Matches Per Play

(a)	All five (5) of the first set and no Mega Ball	\$ 250,000.00*
(b)	Any four (4) of the first set plus the Mega Ball	\$ 10,000.00*
(c)	Any four (4) of the first set and no Mega Ball	\$ 150.00*
(d)	Any three (3) of the first set plus the Mega Ball	\$ 150.00*
(e)	Any two (2) of the first set plus the Mega Ball	\$ 10.00
(f)	Any three (3) of the first set and no Mega ball	\$ 7.00
(g)	Any one (1) of the first set plus The Mega Ball	\$ 3.00
(h)	None of the first set plus the Mega Ball	\$ 2.00

* In certain circumstances covered by the MEGA MILLIONS Game Group Agreement these prizes may be paid on a pari-mutuel basis.

918.2 The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category, based upon the total number of possible combinations in MEGA MILLIONS®

PROBABILITY DISTRIBUTION

Number of Matches Per Ticket	Winners	Probability	Probable Set Prize Amount
All five (5) of first set plus the Mega Ball	1	1:175,711,536	JACKPOT*
All five (5) of the first set and no Mega Ball	38	1:3,904,701	\$250,000.00*
Any four (4) of the first set plus the Mega Ball	270	1:689,065	\$10,000.00*
Any four (4) of the first set and no Mega Ball	10,260	1:15,313	\$150.00*
Any three (3) of the first set plus the Mega Ball	14,310	1:13,781	\$150.00*
Any two (2) of the first set plus the Mega Ball	248,040	1:844	\$10.00
Any three (3) of the first set plus no Mega Ball	543,780	1:306	\$7.00
Any one (1) of the first set plus the Mega Ball	1,581,255	1:141	\$3.00
None of the first set plus the Mega Ball	3,162,510	1:75	\$2.00
Overall Odds	5,560,464	1:39.89	

* In certain circumstances covered by the MEGA MILLIONS Game Group Agreement these prizes may be paid on a pari-mutuel basis.

918.3 Except as provided in these rules, all prizes awarded shall be paid as lump sum set prizes.

918.4 Qualifying MEGAPLIER® plays will pay the amounts shown below when matched with the MEGAPLIER® number drawn, instead of the MEGA MILLIONS® set prize amount.

	Prize Amount	4X	3X	2X
Match 5+0	\$250,000	\$1,000,000	\$750,000	\$500,000
Match 4+1	\$10,000	\$40,000	\$30,000	\$20,000
Match 4+0	\$150	\$600	\$450	\$300
Match 3+1	\$150	\$600	\$450	\$300
Match 2+1	\$10	\$40	\$30	\$20
Match 3+0	\$7	\$28	\$21	\$14
Match 1+1	\$3	\$12	\$9	\$6
Match 0+1	\$2	\$8	\$6	\$4

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918.5 In certain rare instances, the MEGA MILLIONS® set prize amount may be less than the amount shown. In such case, the MEGAPLIER® prizes will be a multiple of the changed MEGA MILLIONS® prize amount announced at the draw. For example, if the Match 5 MEGA MILLIONS® set prize amount of \$250,000 becomes \$150,000 under the rules of the MEGA MILLIONS® game, then a MEGAPLIER® player receives the new amount multiplied by the matching MEGAPLIER® that was drawn.

918.6 The following table sets forth the probability of the various MEGAPLIER® numbers being drawn during a single MEGA MILLIONS® drawing, The MEGA MILLIONS® and or MUSL Group may elect to run limited promotions that may increase the multiplier numbers.

<u>MEGAPLIER®</u>	<u>Probability of Prize Increase</u>
4X – Prize Won Times 4	12 in 21
3X – Prize Won Times 3	7 in 21
2X – Prize Won Times 2	2 in 21

918.7 MEGAPLIER® does not apply to the MEGA MILLIONS® Grand Prize.

AMEND CHAPTER 99 “DEFINITIONS”

Amend by adding the following:

MUSL MEGA MILLIONS Game Group Agreement -The amended and restated agreement regarding the Mega Millions game and MUSL, or any subsequent amended agreement, signed by the party lotteries and including the finance and operations procedures for Mega Millions, and on-line drawing procedures for Mega Millions.

MEGAPLIER-A Mega Millions game feature by which a player, for an additional wager of \$1 per play, can increase the guaranteed prize amount or pari-mutuel prize amount, as applicable, excluding the Grand/Jackpot prize by a factor of two, three, or four times depending upon the multiplier number that is drawn prior to the Mega Millions drawing.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than twenty-nine (29) days from the date of publication of this notice in the Register. Comments should be filed with the Executive Director, District of Columbia Lottery and Charitable Games Control Board, 2101 Martin Luther King, Jr., Avenue, S.E., Washington, D.C. 20020. Copies of these proposed rules may be obtained at the address stated above.