

HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Homeland Security and Emergency Management Agency (HSEMA), pursuant to the duty to develop a Homeland Security Program to identify and mitigate threats, risks, and vulnerabilities within the District of Columbia assigned to him by section 203 of An Act To authorize the District of Columbia government to establish an Office of Civil Defense, and for other purposes (Act), effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2231.03)(2007 Supp.); the duties described in paragraphs (1) and (8) of section 3 of the Act (D.C. Official Code § 7-2205(1) and (8)); and pursuant to the authority and obligations established in Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), gives notice of the adoption, on an emergency basis, of a new Chapter 38 of Title 24 of the District of Columbia Municipal Regulations (DCMR), entitled “Homeland Security and Emergency Management Agency Use of Closed Circuit Television”. The purpose of this emergency rulemaking is to enable HSEMA to utilize and coordinate closed circuit television resources of existing departments, offices, and agencies of the District to improve its ability to rapidly identify and respond to emergency circumstances that occur within the District. Emergency action is necessary to provide HSEMA with the immediate ability to utilize these resources to protect the citizens of the District from harm due to natural or man-made emergencies. The Director adopted the emergency rule on June 12, 2008, and it became effective immediately.

The Director also gives notice of intent to take final rulemaking action to adopt Chapter 38 of Title 24 in not less than thirty days following the publication date of this emergency and proposed rule amendment in the *D.C. Register*. The emergency rule will expire 120 days from the effective date, or upon publication of the Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Title 24 DCMR is amended by adding the following new Chapter 38.

CHAPTER 38 HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY USE OF CLOSED CIRCUIT TELEVISION

3800 PURPOSE

3800.1 The Homeland Security and Emergency Management Agency (HSEMA) has employed a network of closed circuit televisions (CCTV) within the Unified Communication Center (UCC) that are highly secured and protected against unauthorized access.

3800.2 HSEMA’s CCTV system is generally intended to be used: (1) to provide a common framework to enable a single and shared CCTV system among existing disparate CCTV networks; (2) to improve monitoring efficiency, to reduce response time, and enhance public safety; and (3) to provide the District with an advanced video monitoring capability.

3801 POLICY

- 3801.1 HSEMA shall comply with all federal and District law applicable to the use of CCTV cameras in public space.
- 3801.2 Under no circumstances shall the CCTV systems be used for the purpose of infringing upon First Amendment rights.
- 3801.3 Operators of the CCTV systems shall not target/observe individuals solely because of their race, gender, ethnicity, sexual orientation, disability or other classifications protected by law.
- 3801.4 CCTV systems in public space shall be used to observe locations that are in public view and where there is no reasonable expectation of privacy.
- 3801.5 HSEMA shall not use audio in conjunction with the CCTV unless appropriate court orders are obtained.
- 3801.6 HSEMA is authorized to enter into agreements with public entities to access their external video feeds for the purposes established in section 3800 of this chapter.
- 3801.7 HSEMA is authorized to enter into agreements with private entities to access their external video feeds for discrete periods and only in exigent circumstances.
- 3801.8 HSEMA shall abide by these regulations if it receives CCTV feeds from another agency, jurisdiction, or entity.
- 3801.9 Additional permanent cameras in public space will only be deployed after public notification has been provided and only in locations that will advance the purposes defined in section 3800 of this chapter.

3802 PUBLIC NOTIFICATION

- 3802.1 Except under exigent circumstances and/or when the CCTV systems are deployed pursuant to a court order, the Director shall provide public notice of HSEMA's intention to deploy an additional permanent camera in public space.
- 3802.2 Public notice shall include the general capabilities of CCTV systems, their use in operations, and the duration of the deployment. Public notice will also identify the viewing area, but not necessarily the precise location of the camera. The precise location of a camera may be disclosed if the HSEMA Director determines that disclosure will not undermine the security of the camera and the efficacy of the deployment.
- 3802.3 The public shall have thirty (30) days to submit comments regarding a proposed deployment to the HSEMA Director. The public may submit comments to the

HSEMA Director at any time regarding a particular existing camera deployment or the CCTV system in general.

3802.4 The HSEMA Director shall consider the comments submitted by the public in determining whether to go forward with deployment of the camera. The HSEMA Director will provide public notice of his/her decision and provide an explanation.

3802.5 In exigent circumstances, the HSEMA Director is authorized to deploy cameras without first consulting or soliciting comments from the public. After the conclusion of the exigent circumstance, the camera shall be turned off immediately, except where the public notice process required by subsection 3802.01 of this chapter has been initiated by the Director. As soon as feasible after the conclusion of the exigent circumstance, the HSEMA Director shall have the camera removed. The HSEMA Director will provide post-deployment public notification of any camera deployed under this provision.

3802.6 When cameras are deployed pursuant to a court order, neither pre nor post-deployment notification is required.

3802.7 The HSEMA Director will post on the HSEMA website, and supply a copy to all District Public Libraries, the areas of the District monitored by the CCTV systems.

3802.8 On a semi-annual basis, HSEMA will provide updates on the CCTV system at community meetings to be announced to the public.

3802.9 HSEMA will provide information about the CCTV system and its usage in its Annual Report to Council. The information shall include the viewing area of cameras, disposition of any recordings, and an evaluation of whether the camera achieved the purposes stated in section 3800 of this chapter. HSEMA shall not include any information pertaining to cameras deployed pursuant to a court order or deployed as part of an on-going criminal investigation.

3803 OPERATOR CERTIFICATION

3803.1 Only operators certified by the HSEMA Director shall operate the CCTV system.

3803.2 All operators of the CCTV systems shall sign a certification that they have read and understand the CCTV regulations and acknowledge the potential criminal and/or administrative sanctions for unauthorized use or misuse of the CCTV systems.

3803.3 Anyone who engages in the unauthorized use or misuse of CCTV systems shall be subject to criminal prosecution and/or administrative sanctions, including termination. The administrative sanctions will depend on the severity of the infraction and shall be taken in accordance with the adverse and corrective action procedures as provided in the District Personnel Manual.

3804 ACTIVATION AND USAGE

- 3804.1 Operators of CCTV systems shall not focus on hand bills, fliers, etc., being distributed or carried pursuant to First Amendment rights.
- 3804.2 A supervisor will conduct random spot checks during operational periods.

3805 AUTHORIZATION TO RECORD AND RETAIN RECORDINGS

- 3805.1 All recorded CCTV footage shall be maintained and secured by the official in command of the HSEMA monitoring center.
- 3805.2 Access to the video center and image storage location is restricted and any access granted is recorded in a control log.
- 3805.3 Video recordings shall be indexed, stored, and maintained for 10 business days after which time they will be recorded over or destroyed.
- 3805.4 Recordings may be retained beyond 10 business days because the recordings contain evidence of criminal activity, because the recordings capture an occurrence that may subject HSEMA to civil liability, or because the recording will be used for training purposes. Recordings that contain evidence of criminal activity or recordings that capture an occurrence that may subject HSEMA to civil liability shall be maintained until final case disposition.
- 3805.5 The HSEMA Director must prepare, in writing, a rationale for any decision to retain any recording beyond 10 business days.
- 3805.6 Decisions to retain recordings beyond 10 business days must include the purpose of the retention, the nature of the recording, and length of time for the retention. Retention of recordings for training purposes must additionally include a written description of the training purpose to be served by the recording as well as a description of the recording's unique suitability for the training purpose.
- 3805.7 Recordings retained for training purposes may only be retained as long as they are actively used for training purposes.
- 3805.8 Recordings retained for criminal or civil purposes, special event, or an emergency shall be secured as evidence, and access to the recordings shall be appropriately limited and documented.
- 3805.9 Monitoring center staff shall maintain a video catalog of all tapes held beyond 10 days.

3807 AUDITS

- 3807.1 HSEMA will have independent, periodic audits conducted annually to ensure compliance with these regulations.
- 3807.2 The audits conducted pursuant to section 3807.1 of this chapter shall be provided to the Mayor and the Council of the District of Columbia.

3899 DEFINITIONS

- 3899.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

Closed-Circuit Television -- Any live video link that is electronically received into the HSEMA monitoring center.

Demonstration -- A temporary presentation of the capacity of the Monitoring Center to visitors of the HSEMA.

Exigent Circumstances -- Unanticipated situations that threaten the immediate safety of individuals or property within the District of Columbia.

External Video Feeds -- Any video link received in the HSEMA monitoring center on a live basis from a source other than HSEMA.

Public Entities -- District of Columbia or Federal agencies.

Public notice -- Shall at a minimum include, but is not limited to, publication in the D.C. Register, posting on the HSEMA website, written notice to the relevant Councilmember, written notice to the relevant Advisory Neighborhood Commissioner, and issuance of a press release.

"Public space" -- All the publicly owned property between the property lines on a street, as such property lines are shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

Persons wishing to comment on this proposed rule should submit their comments in writing to Steven Kral, Senior Policy Analyst, Homeland Security and Emergency Management Agency, 2720 Martin Luther King Jr. Avenue, SE, Suite 200, Washington, DC 20032. All comments must be received by the Homeland Security and Emergency Management Agency not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of this rulemaking amendment and related information may be obtained by writing to the above address, or by calling (202) 727-6161.