

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

NOTICE OF FINAL RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings, pursuant to the authority set forth in Section 8 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76, D.C. Official Code § 2-1831.05(b)(7)), gives notice of the adoption of the following amendments to Chapter 28 of Title 1 of the District of Columbia Municipal Regulations (DCMR). These rules prescribe the rules of trial practice and procedure in matters before OAH.

These rules were first published in the *D.C. Register* on June 25, 2004, at 51 DCR 6464. Based upon the comments received, there are no changes to the published rules. These rules will be effective upon the publication of this notice of final rulemaking in the *D.C. Register*.

Section 2800.5 of 1 DCMR Chapter 28 is added as follows:

2800.5 Many authorities may be applicable to administrative matters heard by this administrative court. Among these are the Constitution of the United States, statutes and regulations of the United States, and statutes and regulations of the District of Columbia. It is not practical to delineate in these Rules each of the many authorities that may possibly apply in some matters but not others. That these authorities are not specified in these Rules, however, does not change the fact of their applicability where the law so requires.

Section 2800.6 of 1 DCMR Chapter 28 is added as follows:

2800.6 These Rules may be cited individually in the form as "OAH Rule ____". When citing in this format, reference to the District of Columbia Municipal Regulations (DCMR) may be omitted.

Section 2807.4 of 1 DCMR Chapter 28 is amended to read as follows:

2807.4 It is solely the obligation of a party, an authorized representative, or an attorney whose address, telephone number(s), or fax number(s), if any, have changed, to promptly notify the Clerk and all other parties. Any change of address shall be filed with this administrative court and served upon all parties within three (3) business days of its occurrence. The information provided to this administrative court pursuant to this Rule shall be conclusively deemed to be correct and current.

Section 2809.7 of 1 DCMR Chapter 28 is amended to read as follows:

2809.7 If consented to in writing by a party, its counsel, or its authorized representative, and after that consent has been filed with the Clerk, service of a paper may be made upon the consenting party by electronic or other means. The consenting party may withdraw its consent to such service. Such withdrawal must be in writing and shall only be effective after it is served on all parties and filed with the Clerk.

Section 2814.5 of 1 DCMR Chapter 28 is amended to read as follows:

2814.5 If, after notice and an opportunity to respond, this administrative court determines that the provisions of Section 2814.4 have been violated, this administrative court may, pursuant to Section 12 of the Act and all other applicable authorities, impose an appropriate sanction upon any attorney, law firm or representative that is determined to be in violation.

1 DCMR 2818 is amended to read as follows:

- 2818.1 For failure of the Petitioner to prosecute or to comply with these Rules or any order of this administrative court, a Respondent may move for dismissal of an action or of any claim against the Respondent, or the presiding Administrative Law Judge may order such dismissal on his or her own motion. Subject to the limitations of Section 2818.2, and unless otherwise specified, a dismissal under this Section, other than a dismissal for lack of jurisdiction, constitutes an adjudication on the merits.
- 2818.2 Any order of involuntary dismissal entered pursuant to Section 2818.1 or on the presiding Administrative Law Judge's own motion shall not take effect until fourteen (14) days after the date on which it is served, and shall be vacated upon the granting of a motion filed by Petitioner within such fourteen (14) day period showing good cause why the case should not be dismissed.
- 2818.3 Unless otherwise required by statute, these Rules or an order of this administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause, to appear at a hearing, or a pretrial, settlement or status conference, the presiding Administrative Law Judge may dismiss the case or enter an order of default in accordance with D.C. Superior Court Civil Rule 39-I. Any order of dismissal or default entered pursuant to this Section shall not take effect until fourteen (14) days after the date on which it is served, and shall be vacated upon the granting of a motion filed by the party within such fourteen (14) day period showing good cause why the case should not be dismissed or defaulted.

Section 2820.2 of 1 DCMR Chapter 28 is amended to read as follows:

- 2820.2 Subject to the limitations stated in Section 2820.1, in determining the admissibility of evidence, the Federal Rules of Evidence shall be deemed persuasive authority. In determining the weight to be given hearsay evidence, the presiding Administrative Law Judge may consider whether a recognized hearsay exception is applicable. To the extent it promotes fairness, equity and substantial justice for all parties, this Rule shall be construed to favor admissibility of relevant, non-cumulative evidence.

Section 2820.3 of 1 DCMR Chapter 28 is amended to read as follows:

- 2820.3 A party asserting an avoidance or other affirmative defense as identified in D.C. Superior Court Civil Rule 8(c) shall bear the burden of production and persuasion with regard to that defense. A party asserting an exception to the requirements or prohibitions of a statute or administrative rule shall bear the burden of production with regard to that exception.

Section 2820.4 of 1 DCMR Chapter 28 is added as follows:

2820.4 Subject to the requirements of Section 2820.3, the administrative court shall allocate burdens of production in a manner designed to promote fairness, equity, substantial justice, and sound judicial administration.

Section 2821.6 of 1 DCMR Chapter 28 is amended to read as follows:

2821.6 An interpreter appearing in a matter before this administrative court shall solemnly swear or affirm under penalty of perjury to interpret accurately, completely, and impartially. Language interpretation services during a proceeding will be provided upon the request of a party or where deemed necessary by the presiding Administrative Law Judge.

1 DCMR 2823 is amended to read as follows:

2823.1 In addition to the right to seek a subpoena under Rule 2822, in every case in which an evidentiary hearing has been ordered, each party shall disclose, by filing with this administrative court and serving upon each other party, the documentary exhibits it wishes to offer at the hearing or otherwise seeks to have considered by the presiding Administrative Law Judge. Unless otherwise ordered, such disclosure shall be made at least ten (10) calendar days before the date on which the evidentiary hearing is scheduled. This Section does not limit the right of any party to obtain information as permitted by other applicable law. This disclosure obligation contained in this Section shall not be deemed to be discovery for purposes of these Rules.

2823.2 No discovery shall be permitted unless authorized by order of the presiding Administrative Law Judge. Discovery shall be limited to Complex Track cases, and all requests for discovery shall be made upon motion.

2823.3 Unless otherwise provided for by applicable law or these Rules, the presiding Administrative Law Judge may permit any method of discovery available pursuant to the D.C. Superior Court Rules of Civil Procedure.

2823.4 If a motion to permit discovery pursuant to Section 2823.2 is granted, based on the discovery requested, the presiding Administrative Law Judge may order the submission of a joint discovery plan, the use of a specific method of discovery, or the service of a specific discovery request. The responding party shall have fourteen (14) days to respond to a specific discovery request, in a manner otherwise consistent with the provisions of the D.C. Superior Court Rules of Civil Procedure.

2823.5 The use of interrogatories is disfavored, and shall not be permitted unless otherwise ordered by this administrative court upon a showing by the proposing party that the information sought cannot reasonably and

efficiently be obtained by an alternative method. When authorized, the number of interrogatories ordinarily should not exceed ten (10) including subparts.

- 2823.6 Notwithstanding any other provision of these Rules, each deposition must be specifically authorized in advance by order of this administrative court.
- 2823.7 Unless otherwise ordered by this administrative court, all discovery shall be completed no later than thirty (30) days prior to the trial date. All discovery requests must be timely served sufficiently in advance so as to permit responses consistent with this Rule to be served on or before this deadline.
- 2823.8 Sanctions for failure of a party to comply with an order of this administrative court made pursuant to this Rule shall be as permitted by applicable law.

Section 2829.1 of 1 DCMR Chapter 28 is amended to read as follows:

- 2829.1 For cases arising under the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18), upon application of a Respondent adjudged liable for monetary sanctions, this administrative court may, in its discretion, permit installment payments, not to extend six (6) months beyond the date the order imposing the sanction becomes final, and imposing a statutory fee of one percent (1%) per month of the outstanding amount owed by a Respondent for the installment service.

Section 2830.3 of 1 DCMR Chapter 28 is amended to read as follows:

- 2830.3 If a Respondent files a timely request for a hearing to contest a claim for abatement costs made pursuant to Section 2830.1, the presiding Administrative Law Judge shall hold a hearing limited to the issue of the amount of the abatement costs. Such a hearing, and any *ex parte* proof hearing held pursuant to Sections 2830.4 and 2830.5, shall not litigate the liability of a Respondent previously held liable for the violation for which the Government is claiming abatement costs.

Section 2831.4 of 1 DCMR Chapter 28 is amended to read as follows:

- 2831.4 Unless otherwise required by applicable law, any motion for a new trial shall be filed within ten (10) days of service of the final order.

Section 2831.6 of 1 DCMR Chapter 28 is amended to read as follows:

- 2831.6 Unless otherwise required by applicable law, no later than ten (10) days after service of the final order, this administrative court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard,

this administrative court may grant a timely motion for a new trial for a reason not stated in the motion.

Section 2832.4 of 1 DCMR Chapter 28 is amended to read as follows:

2832.4 Unless otherwise required by applicable law, any motion for reconsideration of a final order shall be filed within ten (10) days of service of that order. Any motion for reconsideration of an interlocutory order shall be filed within ten (10) days of service of that order, or within such other time period as the presiding Administrative Law Judge permits.

Section 2833.2 of 1 DCMR Chapter 28 is amended to read as follows:

2833.2 On motion and upon such terms as are just, this administrative court may relieve a party or a party's legal representative from a final order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 2831; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the final order is void; (5) a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the final order. Relief under this Section may be granted only to the extent it could be granted under the standards of D.C. Superior Court Civil Rule 60.

Section 2835.2 of 1 DCMR Chapter 28 is amended to read as follows:

2835.2 In determining whether to grant a stay, this administrative court shall assess whether the movant is likely to succeed on the merits, whether denial of the stay will cause irreparable injury, whether and to what degree granting the stay will harm other parties, and whether the public interest favors granting a stay.

Section 2837.2 of 1 DCMR Chapter 28 is amended to read as follows:

2837.2 Administrative Law Judges shall at all times be in compliance with the requirements of the OAH Code of Judicial Ethics, a copy of which shall be maintained and be available for inspection and copying at the Clerk's office during business hours.

Section 2838.4 of 1 DCMR Chapter 28 is amended to read as follows:

2838.4 Current law students active in *pro bono* legal clinics may appear before this administrative court with the consent and oversight of the supervising attorney assigned to them and in a manner consistent with District of Columbia Court of Appeals Rule 48, and under any limitations ordered by the presiding Administrative Law Judge. A law student authorized to

appear under this Section may only appear before this administrative court in the presence of a supervising lawyer as defined in D.C. Court of Appeals Rule 48(e). A law student practicing under this Section shall not file any paper with this administrative court unless it is signed by the law student and the supervising lawyer.

Section 2839.2 of 1 DCMR Chapter 28 is amended to read as follows:

2839.2 The administrative court shall endeavor in all its proceedings to safeguard the public from the unauthorized practice of law in violation of D.C. Court of Appeals Rule 49. An Administrative Law Judge may permit a party to be represented by another person who is not an attorney, without charge or fee, where required by law. An Administrative Law Judge may permit a party to be represented by an individual, or by a representative of any entity listed in Section 2839.4, if the party had a contractual relationship substantially related to the subject matter of the case that existed prior to the case arising (such as a landlord/tenant or owner/property manager relationship).

Section 2839.5 of 1 DCMR Chapter 28 is amended to read as follows:

2839.5 Pursuant to applicable law, including Sections 12 and 17 of the Act, and in the exercise of this administrative court's inherent authority to protect the integrity of its proceedings and regulate the practice of individuals who appear before it, *see, e.g., Brown v. District of Columbia Board of Zoning Adjustment*, 413 A.2d 1276, 1282-83 (D.C. 1980), the Chief Administrative Law Judge or an Administrative Law Judge may regulate and restrict the right of any individual to appear before this administrative court.

Section 2839.6 of 1 DCMR Chapter 28 is amended to read as follows:

2839.6 The Chief Administrative Law Judge or a presiding Administrative Law Judge may enter an order restricting the right of an individual to appear before this administrative court in the event of a violation of these Rules or for other good cause. If imposing a disqualification or suspension, the individual shall be given notice and an opportunity to be heard either before the imposition of the suspension or disqualification, or as soon thereafter as is practicable.

1 DCMR 2840 is amended to read as follows:

2840.1 Unless a federal law or regulation or District of Columbia statute requires that a particular federal or District of Columbia procedure be observed, these Rules and any final or interlocutory order of this administrative court shall take precedence and supersede in the event of a conflict with other authority on any issue involving or relating to procedures of this administrative court. In determining whether an issue involves or relates

to procedures of this administrative court, the presiding Administrative Law Judge shall follow the doctrine set forth in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), and related case law.

- 2840.2 Where a decision of an Administrative Law Judge is in conflict with a decision of a least one other Administrative Law Judge on the same issue, or where litigants before this administrative court would likely benefit from a clear precedent on a particular legal issue, the Chief Administrative Law Judge may, upon motion by a party in a pending adjudicative case, or upon his or her own motion, assign three Administrative Law Judges who have not participated in either the pending adjudicative case or the conflicting decisions, to sit on a panel and decide all or part of the pending case. In determining whether to convene a panel under this Section, the Chief Administrative Law Judge may consider, among other things, whether the panel is likely to provide clarity and guidance in an important legal issue before this administrative court. Except as otherwise ordered, a motion brought under this Section shall be deemed denied unless granted within ten (10) days of its filing. The denial of a request for a panel under this Section shall be deemed an interlocutory order. A motion under this Section may not be filed within thirty (30) days prior to a trial date, except by leave of the presiding Administrative Law Judge. Unless granted by the Chief Administrative Law Judge, the mere filing of a motion under this Section shall have no effect on a pending case.
- 2840.3 This administrative court may, on its own motion, obtain information relevant to a pending matter from a disinterested person by inviting and receiving an *amicus curiae* submission. All parties to the matter shall be given a reasonable opportunity to respond to any *amicus* submission. A presiding Administrative Law Judge may also grant a motion to file a submission *amicus curiae*; however, no such submission shall be filed without advance leave of the presiding Administrative Law Judge. A motion for leave to file a submission *amicus curiae* shall not exceed five pages and shall state which parties to the litigation, if any, consent to its filing. Such a motion shall also state why the filing of the contemplated *amicus curiae* submission is likely to contain relevant matter not already brought to the attention of the administrative court by the parties. Any *amicus curiae* submission filed without advance leave shall be rejected for filing by the Clerk, or be stricken by order of the presiding Administrative Law Judge.
- 2840.4 All papers to be filed in proceedings before this administrative court shall be filed in the Clerk's office. Unless otherwise provided by these Rules or ordered by the Chief Administrative Law Judge, no papers may be filed in the Clerk's office when this administrative court is closed, or before 9:00 AM or after 5:00 P.M. on days when this administrative court is open.

- 2840.5 Papers to be filed in an appellate proceeding or other proceeding before this administrative court may be subject to a filing fee in accordance with a fee schedule issued in accordance with Section 2840.6.
- 2840.6 By authority of the Chief Administrative Law Judge, the Clerk may create and, as necessary modify, a schedule of filing, copying and related fees consistent with applicable law, except that in non-appellate cases in which the only remedy sought involves a sum certain, fees shall only apply in cases in which the sum certain can exceed \$500. Fees shall be limited or waived in accordance with an order of this administrative court pursuant to Section 8 of the Act or other applicable law. Where a fee applies, any submission filed without tender of the required fee may be rejected for filing by the Clerk or stricken by order of the presiding Administrative Law Judge. The schedule of filing, copying and related fees may be published in the *D.C. Register* when created and if modified.
- 2840.7 This administrative court shall be a weapons and illegal drug free area. Weapons, including, but not limited to, guns, knives, box cutters, chemical spray and pepper spray, are strictly prohibited and subject to confiscation. With regard to authorized service weapons, this Section does not apply to law enforcement officers employed by the District of Columbia or an agency of the United States either in uniform or with a prominently displayed badge and identification.
- 2840.8 No items that are potentially toxic, dangerous or otherwise present a threat to health or safety, such as sharp objects or refuse, shall be brought into the courtrooms of OAH, its common areas or offices, or offered as evidence in any proceeding before this administrative court unless identified to the Clerk's office at least ten (10) or more days prior to the proceeding so that sufficient safeguards may be put in place. A partial list of prohibited items shall be made available in the Clerk's office.
- 2840.9 An Administrative Law Judge, security personnel or administrative court staff may require the temporary removal of any individual who presents a threat to safety or is causing or contributing to a disruption of the administrative court's operations or proceedings.
- 2840.10 A monetary sanction pursuant to Section 12 of the Act or other authority shall not be imposed by an Administrative Law Judge unless it is in writing, is based on the observations of the Administrative Law Judge in a proceeding and is in the record, and the party subject to the sanction has had an opportunity to be heard on the matter. A fine or statutory penalty imposed in an enforcement case, including without limitation a Notice of Infraction or Notice of Violation, shall not be deemed a monetary sanction for purposes of this Section. A non-monetary sanction may only be ordered by an Administrative Law Judge against a party for a default; a violation of these Rules, an order, or interlocutory order; or upon a finding

of bad faith conduct within the context of a litigation. Such an order shall be consistent with the Due Process Clause, these Rules, and all other applicable law. Every order or interlocutory order issued by a presiding Administrative Law Judge shall be deemed to have incorporated this Section by reference.

- 2840.11 The use of cellular phones, pagers or other devices that emit noise and/or are capable of wireless transmission or reception shall not be permitted in courtrooms during a proceeding, except that such devices are permitted if they are set in a non-audible mode and are not used for transmission during a proceeding.
- 2840.12 Any organization, group, or individual may possess or use drawing or sketching equipment in a hearing room so long as the possession or use of such equipment does not interfere with the rights of the parties to a fair hearing, does not interfere with the fairness or conduct of a proceeding, and where such use is not precluded by statute, regulation, or order.
- 2840.13 Broadcasting, videotaping, photographing, or audio recording by any organization, group, or individual is not permitted in hearing rooms, witness rooms, waiting rooms, reception areas, or any other rooms or areas regularly utilized by OAH for administrative court operations.
- 2840.14 For purposes of this Rule, a hearing or proceeding is any matter in which an Administrative Law Judge or the Chief Administrative Law Judge presides.
- 2840.15 Nothing in this Rule shall be construed to limit the authority of the Chief Administrative Law Judge to authorize the recordation of a proceeding for training or evaluative purposes, to the extent that the Chief Administrative Law judge has determined that the use of such equipment does not interfere with the fairness or conduct of a proceeding, and where such use is not precluded by statute, regulation, or order.
- 2840.16 Except as otherwise required by the Chief Administrative Law Judge, any Administrative Law Judge may attend and observe any proceeding before the OAH to facilitate training, and for any other purposes consistent with the Act. Any Administrative Law Judge attending any proceeding pursuant to this Section shall manage any privileged or otherwise legally confidential information as required by applicable law and in the same manner that would be required if he or she was presiding at that proceeding.
- 2840.17 Non-judicial staff of the OAH may attend may attend and observe any proceeding before the OAH for training, and for any other purposes consistent with the Act, except as otherwise ordered by the presiding Administrative Law Judge. Any non-judicial staff member attending any

proceeding pursuant to this Section shall manage any privileged or otherwise legally confidential information as required by applicable law and in the same manner required if he or she was serving as a member of the Clerk's office at that proceeding.

2840.18 Unless otherwise prohibited by applicable law or by order of this administrative court, proceedings before this administrative court shall be open to the public.

2840.19 Unless otherwise provided in these Rules or prohibited by applicable law, the Chief Administrative Law Judge may, in his or her discretion, delegate the authority of his or her office to an Administrative Law Judge, and an Administrative Law Judge may delegate any ministerial or administrative authority of his or her office to the Clerk or his or her designees.

Section 2842.1 of 1 DCMR Chapter 28 is amended to read as follows:

2842.1 The Chief Administrative Law Judge shall review these Rules within thirty-six (36) months of their final promulgation, and, in his or her discretion, may issue revised rules for public comment and promulgation after the review.

The definition of "Order" in 1 DCMR 2899 is amended to read as follows:

"Order" shall have the meaning provided that term in D.C. Official Code § 2-502(11) unless otherwise provided.

The definition of "Rule" or "Rules" in 1 DCMR 2899 is amended to read as follows:

"Rule" or "Rules" means the rules of practice and procedure set forth in Chapters 28 and 29 of this Title, and shall refer to an entire section of a Chapter, as opposed to a subsection.

**DISTRICT OF COLUMBIA
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NOTICE OF FINAL RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings, pursuant to the authority set forth in Section 8 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76, D.C. Official Code § 2-1831.05(b)(7)), gives notice of the adoption of the following amendments to Chapter 28 of Title 1 of the District of Columbia Municipal Regulations (DCMR). These rules prescribe the rules of trial practice and procedure in matters before OAH.

These rules were first published in the *D.C. Register* on July 23, 2004, at 51 DCR 7304. Based upon the comments received, there are no changes to the published rules. These rules will be effective upon the publication of this notice of final rulemaking in the *D.C. Register*.

1 DCMR Chapter 28 is amended by adding the following new Sections:

- 2802.2 Any case commenced before this administrative court that arose exclusively from material facts underlying a contested case pending before an agency or tribunal prior to October 1, 2004, shall be commenced before this administrative court not later than 120 days after this administrative court acquires jurisdiction to hear such case.
- 2804.4 In any case in which the Government represents that a Notice of Violation was served by certified mail, it shall file, and serve upon the Respondent, a copy of the certified mail return receipt (U.S.P.S. Form 3811, or its successor) signed by the recipient, or an affidavit or declaration sufficient to demonstrate that the Notice of Violation was received by the Respondent, or if not received, the reason, to the best of the Government's knowledge, why it was not received. Any submission made under this Section shall also include a photocopy of any envelope returned to the Government by the United States Postal Service as undelivered or undeliverable, and any paper or document appended to such envelope by the United States Postal Service.
- 2804.5 Unless the Respondent has answered the Notice of Violation or otherwise appeared, any case in which the Government has failed to comply with Section 2804.4 within twenty (20) calendar days of the filing of the Notice of Violation shall be dismissed without prejudice for lack of sufficient proof of proper service. If a case is pending at the time Section 2804.4 is adopted, such compliance shall occur within twenty (20) calendar days of the filing of the Notice of Violation, or seven (7) calendar days of the adoption of Section 2804.4, whichever is later.

- 2838.9 Any attorney appearing before this administrative court in a representative capacity under this Rule shall provide, immediately under his or her signature, his or her valid District of Columbia bar number. Persons appearing (or applying to appear) in a representative capacity under Sections 2838.2 or 2838.4 shall provide, immediately under his or her signature, the Rule under which he or she is appearing (or applying to appear). Persons appearing under Section 2838.2 shall also provide the bar number, if any, of at least one jurisdiction in which that person is admitted to practice law. This Section applies to every paper filed with this administrative court by an attorney or law student practicing under Rule 2838.
- 2839.8 An Administrative Law Judge may permit a party to be represented by a non-attorney Family Member, only where that Family Member does not request or accept compensation, in any form, for providing representation to a party in the limited circumstances in which such representation is permitted by this Rule.
- 2839.9 Unless otherwise required by law, no person who is not a member in good standing of the District of Columbia Bar or an attorney admitted to limited practice pursuant to Section 2838.2, may request or accept compensation, in any form, for providing representation to a party. A presiding Administrative Law Judge may require such disclosures as may be reasonably necessary to ensure compliance with this Section, and in the furtherance of this administrative court's responsibility to safeguard the public from the unauthorized practice of law in violation of D.C. Court of Appeals Rule 49.
- 2839.10 Under the limited circumstances permitted under this Rule, any person representing a litigant shall make clear, on each document it files with this administrative court on the litigant's behalf, what its relationship is to the litigant, and that such representative is not a member of the District of Columbia bar, or a person otherwise practicing under Rule 2838. Each such person shall also indicate to the satisfaction of the presiding Administrative Law Judge, that he or she has obtained the informed consent of the litigant to act as the litigant's representative for all purposes before this administrative court.
- 2840.4 Papers filed in an appellate proceeding or other proceeding before this administrative court may be subject to a filing fee in accordance with a fee schedule published in the *D.C. Register*.

Section 2840.5 of 1 DCMR Chapter 28 is repealed.

1 DCMR Chapter 28 is amended to add the following new Sections:

2898 PUBLICATION OF SCHEDULE OF FILING AND RELATED FEES

- 2898.1 Notwithstanding any other provision of this Rule, no fee under this Rule shall apply in any case arising from a challenge by an individual to a decision of the Department of Human Services or the District of Columbia Energy Office, a case arising from a challenge by an individual to a decision by the Department of

Health denying that individual access to a governmental benefit, or matters arising under D.C. Law 6-108 (D.C. Official Code §§ 44-1001.01, *et seq.*).

- 2898.2 Pursuant to Section 8(b) of the Act, no fee under this Rule shall be applicable to the District of Columbia Government or the United States.
- 2898.3 Except as otherwise provided by law, the fee schedule in this Rule shall apply in any case commenced in this administrative court, on or after October 1, 2004.
- 2898.4 Case commencement submissions in the following types of cases shall have a filing fee of \$40.00:
- (a) Cases arising from an appeal of a decision of the Office of Tax and Revenue;
 - (b) Cases arising under the former jurisdiction of the Board of Appeals and Review;
 - (c) Cases arising from the appeal of a denial of any professional or occupational license where the applicant has been determined to be unqualified or otherwise ineligible for licensure; and
 - (d) Appeals governed procedurally by 1 DCMR Chapter 29.
- 2898.5 Cases commenced by a Notice of Violation in which the Respondent has admitted his or her liability for the charged offense upon entry of an initial plea, shall be subject to an administrative fee of \$5.00 upon disposition.
- 2898.6 Cases commenced by a Notice of Infraction in which the Respondent has admitted his or her liability for the charged offense upon entry of an initial plea, shall be subject to an administrative fee of \$10.00 upon disposition.
- 2898.7 Fees required under this Rule shall be tendered at the time of filing except for fees applicable under Sections 2898.5 and 2898.6, which shall be tendered at the time of payment of the applicable monetary sanction. Failure to comply with this Section shall render any commencement submission to which it is applicable subject to summary rejection by the clerk, or to being stricken by the administrative court.

1 DCMR 2899 is amended to add the following definition:

“Family Member” means a person’s spouse, parent, grandparent, son, daughter, sibling, grandson, granddaughter, or any domestic partner recognized by District of Columbia law, or a substantially similar law of another jurisdiction.

Child and Family Services Agency

Notice of Final Rulemaking

The Acting Director of the Child and Family Services Agency ("CFSA"), acting pursuant to § 2(o) of the Child and Family Services Agency Establishment Amendment Act of 2000, effective April 4, 2001, D.C. Law 13-277, D.C. Official Code § 4-1303.03(a-1), (10), (12) and § 4 of the Youth Residential Facilities Licensure Act of 1986, effective August 13, 1986, D.C. Law 6-139, D.C. Official Code § 7-2103, hereby gives notice of the adoption of amendments to 29 DCMR Ch. 60, "Foster Homes". The amendments will permit the renewal of a license to operate a foster home under certain conditions after one year and require a re-evaluation of each foster home and foster parent every two years.

The proposed rulemaking was published in the D.C. Register on March 26, 2004. No comments were received.

Also on March 26, 2004, CFSA published a Notice of Emergency and Proposed Rulemaking that amended 29 DCMR Ch. 60 by adding a new § 6027, by renumbering §§ 6027 through 6031 as §§ 6028 through 6032, respectively, by striking and inserting in its place a defined term in § 6099, and by adding two new defined terms to § 6099. In order to reconcile the numbering of 29 DCMR Ch. 60, the numbering of this final rulemaking is changed from that of the proposed rulemaking as follows:

3/26/04 Numbering	Title	Renumbered As
6027	Licensing Process	6028
6029	Annual re-evaluation and license renewal	6030
6030	Suspension or revocation of license	6031

29 DCMR Ch. 60 is amended as follows.

§ 6003.1(m) is amended to read:

6003.1 The agency shall:

....

(m) (1) Re-evaluate the foster parent and foster home every two years in accordance with §6029 of this chapter, and whenever there are changes that may affect:

(i) The health, safety or well-being of the child; or

(ii) The foster home; and

(2) Recommend either renewal, suspension, or revocation of the license as appropriate;

§ 6008.6 is amended to read:

6008.6 A criminal records check shall be performed once every two (2) years as part of the re-evaluation and license renewal.

§ 6009.5 is amended to read:

6009.5 A child protection register check shall be performed on any household member eighteen (18) years of age or older once every year.

§ 6028.7 is amended to read:

6028.7 A license shall renew for one (year) from the date of the license, unless sooner revoked, suspended or renewed, if there is:

- (a) Documentation of completed in-service training in accordance with § 6026.5;
- (b) A satisfactory criminal records check for each resident of the foster home who is eighteen (18) years of age or older in accordance with § 6008;
- (c) A satisfactory child protection register check for each resident of the foster home who is eighteen (18) years of age or older in accordance with § 6009;
- (d) A clean hands certification signed by the foster parent within ninety (90) days preceding the expiration date of the current license;
- (e) Documentation from a physician that the foster parent and any other household member eighteen (18) years of age or older has had a complete medical examination within twenty-four (24) months (including a tuberculosis screening) and has no medical conditions that would contraindicate the foster parent's appropriateness to serve as a foster parent;
- (f) Documentation from a physician, for every household member under eighteen (18) years of age who is not a foster child, that the household member has had a complete medical examination consistent with the standards for the Early Periodic Screening and Diagnostic Testing (EPSDT) schedule (including up-

to-date immunizations, a tuberculosis screening, and, if the household member is under six (6) years of age, a blood lead screening); and

- (g) A current vaccination record for every pet in the foster home.

§ 6030 is amended to read:

6030 RE-EVALUATION AND LICENSE RENEWAL

6030.1 The agency shall re-evaluate every two (2) years the ability of each foster parent and foster home to meet the requirements of this chapter of the DCMR.

6030.2 Re-evaluation shall include:

- (a) A thorough inspection of the foster home to assure continued compliance with this chapter of the DCMR;
- (b) At least one (1) interview with the foster parent;
- (c) Collection and review of all documentation required pursuant to § 6029.3;
- (d) Interviews with all social workers assigned to children placed in the foster home during the licensing period. The interviews shall include, but are not limited to:
- (1) The appropriateness of the individual as a foster parent;
 - (2) The safety and well-being of each foster child in the home;
 - (3) Attachment and bonding among household members;
 - (4) The willingness and ability of the foster parent to comply with CFSA and agency directives;
 - (5) The foster parent's compliance with this chapter of the DCMR;
 - (6) The willingness and ability of the foster parent to meet the foster child's needs; and
 - (7) Engagement of the foster child with the community as measured by school, church, clubs, or civic group activity.

- (e) Review of:
 - (1) The results of any investigation conducted pursuant to this chapter;
 - (2) Any complaints concerning the provision of care; and
 - (3) Cooperation with assigned social workers, teachers, therapists, police, and others involved in the foster child's case; and
- (f) Identification of any additional supports that may be needed by the foster parent.

6030.3 The documentation that shall be reviewed during the re-evaluation shall include:

- (a) Documentation of completed in-service training in accordance with § 6026.5;
- (b) A criminal records check for each resident of the foster home who is eighteen (18) years of age or older in accordance with § 6008;
- (c) A child protection register check for each resident of the foster home who is eighteen (18) years of age or older in accordance with § 6009;
- (d) A clean hands certification signed by the foster parent within ninety (90) days preceding the expiration date of the current license;
- (e) Documentation from a physician that the foster parent and any other household member eighteen (18) years of age or older has had a complete medical examination within twenty-four (24) months (including a tuberculosis screening) and has no medical conditions that would contraindicate the foster parent's appropriateness to serve as a foster parent;
- (f) Documentation from a physician, for every household member under eighteen (18) years of age who is not a foster child, that the household member has had a complete medical examination consistent with the standards for the Early Periodic Screening and Diagnostic Testing (EPSDT) schedule (including up-to-date immunizations, a tuberculosis screening, and, if the household member is under six (6) years of age, a blood lead screening); and
- (g) A current vaccination records for every pet in the foster home.

There are no changes to the remainder of § 6030.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Interim Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupation Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02 (14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 54 of Title 17 of the District of Columbia Municipal Regulations (DCMR). The purpose of the amendments is to clarify the requirements for licensure in the District of Columbia; require proof of competency in English for applicants educated in foreign countries; add regulations for licensure by endorsement; add a continuing education requirement to applications for licensure renewal; clarify the scope, duration, and requirements for the supervised practice of students, graduates, and applicants for licensure by endorsement; clarify the scope of practice for registered nurses in the District; add a delegation of nursing interventions section; add a standards of conduct section, and to further ensure the protection and safety of the District's citizens by bringing the regulations in line with the current practices and trends in registered nursing.

Notice of Proposed Rulemaking was published in the D.C. Register on March 26, 2004, at 51 DCR 3280. Three written comments were received in connection with this notice, two of which recommended changes to § 5414 regarding delegation of nursing interventions. This section was amended in response to the written and verbal comments received. Additional changes were made to the definitions section with the inclusion of added definitions. Additionally, a licensure by re-entry program section for health professionals whose licenses have been expired more than five (5) years and who are not currently licensed in another jurisdiction was included. Therefore the rules were republished in the D.C. Register for additional comment on July 9, 2004, at 51 DCR 6880. No additional comments were received.

These final rules will be effective upon publication of this notice in the D.C. Register.

17 DCMR Chapter 54, REGISTERED NURSING, is amended in its entirety to read as follows:

CHAPTER 54 REGISTERED NURSING**5400 GENERAL**

- 5400.1 This chapter shall apply to applicants for and holders of a license to practice registered nursing.
- 5400.2 Chapters 40 (General Rules) and 41 (Administrative Procedures) of this title shall supplement this chapter.

5401 TERM OF LICENSE

- 5401.1 Subject to § 5401.2, a license issued pursuant to this chapter shall expire at 12:00 midnight of June 30 of each even-numbered year.
- 5401.2 If the Director changes the renewal system pursuant to § 4006.3 of chapter 40 of this title, a license issued pursuant to this chapter shall expire at 12:00 midnight of the last day of the month of the birth date of the holder of the license, or other date established by the Director.

5402 EDUCATIONAL REQUIREMENTS

- 5402.1 Except as otherwise provided in this chapter, an applicant for a license shall furnish proof satisfactory to the Board in accordance with § 504(n) of the Act, D.C. Official Code § 3-1205.04(n) of the following:

- (a) That the applicant has successfully completed a nursing education program leading to licensure as a registered nurse which was approved by the Board or by a nursing board in the United States or U.S. territory with standards determined by the Board to be substantially equivalent to the standards in the District; or
- (b) That the applicant has successfully completed a basic nursing education program in Canada leading to licensure as a registered nurse which was approved by a Canadian Provincial nursing board with standards determined by the Board to be substantially equivalent to the standards in the District. The applicant shall:
 - (1) Furnish proof satisfactory to the Board in accordance with § 504(n) of the Act, D.C. Official Code § 3-1205.04(n), that the applicant's education and training are substantially equivalent to the requirements of this chapter and the Act; and
 - (2) If a document required by this chapter is in a language other than English, an applicant shall arrange for its translation into English by a translation service acceptable to the Board and shall submit the translation signed by the translator attesting to its accuracy.

5403 EDUCATIONAL REQUIREMENTS FOR APPLICANTS EDUCATED IN FOREIGN COUNTRIES

- 5403.1 An applicant for a license who completed an educational program in a foreign country, which program was not approved in accordance with § 5402.1, shall furnish proof satisfactory to the Board in accordance with § 504(n) of the Act, D.C.

Official Code § 3-1205.04(n) of the following:

- (a) That the applicant's education and training are substantially equivalent to the requirements of this chapter and the Act;
- (b) That the applicant successfully completed the Commission on Graduates of Foreign Nursing Schools (CGFNS) examination by submitting a certificate from CGFNS; and
- (c) That the applicant has spoken and written competency in English by documenting one of the following:
 - (1) Graduation from a nursing program where English was the only language of instruction through the applicant's inclusive dates of attendance;
 - (2) Successful completion of the Test of Spoken English (TSE) examination with a passing score of fifty (50);
 - (3) Successful completion of the International English Language Testing System (IELTS) examination with a passing score of six and one half (6.5) overall with a spoken band score of seven (7.0); or
 - (4) Provide proof that the applicant has completed a total of twelve (12) months of full-time employment in the United States during the two (2) years immediately preceding the date of application.

5403.2 If a document required by this chapter is in a language other than English, an applicant shall arrange for its translation into English by a translation service acceptable to the Board and shall submit the translation signed by the translator attesting to its accuracy.

5404 LICENSURE BY EXAMINATION

5404.1 To qualify for a license by examination, an applicant shall:

- (a) Receive a passing score on the National Council Licensure Examination for Registered Nurses (NCLEX-RN) developed by the National Council of State Boards of Nursing, Inc. (NCSBN). The passing score on the NCLEX-RN shall be the passing score established by the NCSBN;
- (b) Meet the educational requirements of this chapter; and
- (c) Meet any other requirements as set forth by the Board.

5404.2 To apply for a license by examination, an applicant shall:

- (a) Submit a completed application to the Board on the required forms and include:
 - (1) The applicant's social security number on the application. If the applicant does not have a social security number, the applicant shall submit with the application a sworn affidavit, under penalty of perjury, stating that he or she does not have a social security number; and
 - (2) Two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2") which clearly exposes the area from the top of the forehead to the bottom of the chin.
- (b) Arrange for a certified transcript of the applicant's academic record and a letter of recommendation from the nurse administrator of the school or college to be sent directly from the educational institution to the Board;
- (c) Sit for the NCLEX-RN examination not later than ninety (90) days following submission of the application. The Board may, in its discretion, grant an extension of the time requirement if the applicant's failure to sit for the examination was for good cause. As used in this section "good cause" includes the following:
 - (1) Serious and protracted illness of the applicant; or
 - (2) The death or serious and protracted illness of a member of the applicant's immediate family.
- (d) Submit any other required documents; and
- (e) Pay all required fees.

5404.3 An application that remains incomplete for ninety (90) days or more from the date of submission shall be considered abandoned, and closed by the Board. The applicant shall thereafter be required to reapply, comply with the current requirements for licensure, and pay the required fees.

5404.4 If an applicant has not yet taken or passed the NCLEX-RN examination six (6) months after the date the applicant became eligible to sit for the exam, the applicant shall complete a review course approved by the Board and provide proof of having completed the course in order to be eligible to sit for the next available NCLEX-RN examination. For purposes of this section:

- (a) Graduates of an educational program in registered nursing approved in accordance with § 5402.1 are eligible to sit for the exam upon graduation.
- (b) Graduates of an educational program in registered nursing in a foreign country

not approved in accordance with § 5402.1 are eligible to sit for the exam upon completion of the requirements set forth in § 5403.1.

5404.5 If an applicant has not yet taken or passed the NCLEX-RN examination two (2) years after the date the applicant became eligible to sit for the exam, the applicant shall complete a remedial course approved by the Board and provide proof of having completed the course in order to be eligible to sit for the next available NCLEX-RN examination.

5404.6 If an applicant has not yet taken or passed the NCLEX-RN examination three (3) years after the date the applicant became eligible to sit for the exam, the applicant shall complete an additional educational program leading to a degree in registered nursing approved by the Board and provide proof of having completed the program in order to be eligible to sit for the next available NCLEX-RN examination.

5405 LICENSURE BY ENDORSEMENT

5405.1 An applicant is eligible for licensure by endorsement if the applicant is currently licensed as a registered nurse under the laws of a state or territory of the United States; and if the applicant's original licensure in a state or territory was based upon:

- (a) A passing score on a state constructed examination taken prior to 1949;
- (b) A passing score on the State Board Test Pool Examination for nurses taken between January 1949 and February 1982; or
- (c) A passing score on the NCLEX-RN.

5405.2 To apply for a license by endorsement, an applicant shall:

- (a) Submit a completed application to the Board on the required forms and include:
 - (1) The applicant's social security number on the application. If the applicant does not have a social security number, the applicant shall submit a sworn affidavit, under penalty of perjury, with the application stating that he or she does not have a social security number; and
 - (2) Two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2") which clearly exposes the area from the top of the forehead to the bottom of the chin.
- (b) Submit a copy of his or her current license with the application;
- (c) Obtain licensure verification from the original state or territory of licensure that the license is current and in good standing:

- (1) If the license from the original state or territory is not current, an applicant shall obtain verification from a state or territory that the applicant holds a current license in good standing; and
- (2) The licensure verification form must be sent directly to the Board, by the verifying Board;

(d) Meet any other requirements as set forth by the Board; and

(e) Pay all required fees.

5405.3 If the applicant completed an educational program for registered nursing in a foreign country, which program was not approved in accordance with the requirements set forth in § 5402.1, the applicant shall also demonstrate spoken and written competency in English by providing documentation of one of the following:

- (a) Graduation from a nursing program where English was the only language of instruction throughout the applicant's inclusive dates of attendance;
- (b) Successful completion of the Test of Spoken English (TSE) examination;
- (c) Successful completion of the International English Language Testing System (IELTS) examination with a passing score of six and one half (6.5) overall with a spoken band score of seven (7.0); or
- (d) Provide proof that the applicant has completed a total of twelve (12) months of full-time employment at a health care facility in a state or territory of the United States during the two (2) years immediately preceding the date of application.

5405.4 An application that remains incomplete for ninety (90) days or more from the date of submission shall be considered abandoned, and closed by the Board. The applicant shall thereafter be required to reapply, submit the required documents and completed forms, and pay the required fees.

5405.5 Nothing in this section shall be construed to prohibit the Board from utilizing other authorized databases to verify an applicant's current licensure standing in other jurisdictions of the U.S. or to review disciplinary records.

5406 LICENSURE BY RE-ENTRY PROGRAM

5406.1 A health professional who fails to apply for reinstatement of a District of Columbia registered nursing license within five (5) years after the license expires, and who is not currently licensed to practice registered nursing under the laws of a state or territory of the United States, may apply for licensure to practice registered nursing in the District of Columbia under licensure by re-entry program.

- 5406.2 To apply for licensure by re-entry program, an applicant shall:
- (a) Submit a completed application to the Board on the required forms and include:
 - (1) The applicant's social security number on the application; and
 - (2) Two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2") which clearly exposes the area from the top of the forehead to the bottom of the chin.
 - (b) Submit proof of completion of a re-entry program approved by the Board;
 - (c) Submit any other required documents; and
 - (d) Pay all required fees.
- 5406.3 An application that remains incomplete for ninety (90) days or more from the date of submission shall be considered abandoned, and closed by the Board. The applicant shall thereafter be required to reapply, comply with the current requirements for licensure, and pay the required fees.

5407 REACTIVATION OF AN INACTIVE LICENSE

- 5407.1 A licensee in an inactive status, pursuant to § 511 of the Act, D.C. Official Code § 3-1205.11, shall apply for reactivation of the license by submitting a completed application on the forms required by the Board and paying the required fees.
- 5407.2 A licensee in an inactive status, pursuant to § 511 of the Act, D.C. Official Code § 3-1205.11, for twelve (12) months or more, who submits an application to reactivate a license shall:
- (a) Submit proof as set forth in § 5409 of having completed twelve (12) hours of continuing education in the licensee's current area of practice for each year, or any portion thereof, the license was in inactive status up to a maximum of twenty-four (24) hours of continuing education. Only continuing education taken in the two (2) years immediately preceding the application date will be accepted; or
 - (b) Submit proof of a current license in good standing to practice registered nursing in a state or territory of the United States. Verification of good standing must be sent directly to the Board by the verifying Board.
- 5407.3 A licensee in an inactive status, pursuant to § 511 of the Act, D.C. Official Code § 3-1205.11, for two (2) years or more, who submits an application to reactivate a license shall:

- (a) Submit proof as set forth in § 5409 of having completed twelve (12) hours of continuing education in the licensee's current area of practice for each year, or any portion thereof, the license was in inactive status up to a maximum of twenty-four (24) hours of continuing education. Only continuing education taken in the two (2) years immediately preceding the application date will be accepted;
- (b) Submit proof of completing a re-entry program approved by the Board; or
- (c) Submit proof of a current license in good standing to practice registered nursing in a state or territory of the United States. Verification of good standing must be sent directly to the Board by the verifying Board.

5408 REINSTATEMENT OF AN EXPIRED LICENSE

5408.1 An applicant for reinstatement of a license shall:

- (a) Submit proof as set forth in § 5410 of having completed twenty-four (24) hours of continuing education in the applicant's current area of practice in the two (2) years immediately preceding the application date; and
- (b) Meet any other requirements that the Board may set forth to determine whether the license should be reinstated

5408.2 An applicant for reinstatement of a license shall submit the completed application and documents required by the Board and pay the required fees.

5408.3 The Board shall not reinstate the license of an applicant who fails to apply for reinstatement of the license within five (5) years after the license expires. The applicant shall apply, and meet the requirements in existence at that time, for licensure by examination or endorsement.

5409 RENEWAL OF A LICENSE

5409.1 A licensee shall renew his or her license by submitting a completed application on the forms required by the Board and paying the required fees prior to the expiration of the license.

5409.2 The Board's staff shall mail out applications for renewal at least sixty (60) days prior to the date the license expires.

5409.3 A licensee shall have the burden of notifying the Board if a renewal notice is not received.

5409.4 A licensee shall notify the Board in writing of a change of home or business address

within thirty (30) days after the change.

- 5409.5 A licensee applying for renewal shall submit proof as set forth in § 5410 of completion of twenty-four (24) contact hours of continuing education in the licensee's current area of practice commencing with the renewal period of 2006. Only continuing education hours obtained in the two (2) years immediately preceding the application date will be accepted.
- 5409.6 A licensee applying for renewal of a license who fails to submit proof of having completed the continuing education requirements by the date the license expires may renew the license within sixty (60) days after the expiration by submitting proof pursuant to § 5410 and by paying the required late fees.
- 5409.7 Upon submitting proof and paying the required late fees, the licensee shall be deemed to have possessed a valid license during the period between the expiration of the license and the submission of the required documents and fees.
- 5409.8 If a licensee applying for renewal of a license fails to submit proof of completion of the continuing education requirements, or pay the late fee within sixty (60) days after the expiration of the applicant's license, the license shall be considered to have lapsed on the date of expiration and the health care professional shall thereafter be required to apply for reinstatement of an expired license and meet all requirements and fees for reinstatement.
- 5409.9 The Board may, in its discretion, grant an extension of the sixty (60) day period to renew the license after expiration, if the licensee's failure to submit proof of completion of the continuing education requirements or pay the late fee was for good cause. As used in this section "good cause" includes the following:
- (a) Serious and protracted illness of the licensee; and
 - (b) The death or serious and protracted illness of a member of the licensee's immediate family.
- 5409.10 The Board may, in its discretion, waive continuing education requirements for a licensee who submits proof of:
- (a) Serving as a speaker at an approved continuing education program. The presentation shall have been completed during the period for which credit is claimed; or
 - (b) Being the author or editor of a published periodical, if the periodical has been published or accepted for publication during the period for which credit is claimed.
- 5409.11 If a licensee has previously received credit in connection with a particular

presentation, the Board shall not grant credit for a subsequent presentation unless the presentation involved either a different subject or substantial additional research concerning the same subject.

5410 CONTINUING EDUCATION

- 5410.1 The Board, in its discretion, may approve continuing education programs and activities that contribute to the growth of an applicant in professional and competence in the practice of registered nursing and which meet the other requirements of this section.
- 5410.2 Continuing education credit may be granted only for programs or activities approved by the Board.
- 5410.3 The Board shall maintain a list of approved continuing education programs which shall be available to the public during regular business hours and posted on the Department's internet website.
- 5410.4 A licensee shall have the burden of verifying whether a program is approved by the Board pursuant to this section prior to enrolling in a program.
- 5410.5 At the request of a licensee, or the sponsor of a continuing education program, the Board may approve the following types of continuing education programs if the program meets the requirements of this section:
- (a) An undergraduate course or graduate course given at an accredited college or university;
 - (b) A conference, course, seminar, or workshop;
 - (c) An educational course offered through the internet; or
 - (d) Other programs approved by the Board which meet the requirements of this section.
- 5410.6 To qualify for approval by the Board, a continuing education program shall meet the following requirements:
- (a) Be current in its subject matter;
 - (b) Be developed and taught by qualified individuals; and
 - (c) Meet one of the following requirements:
 - (1) Be administered and approved by a registered nurse, nursing organization, or health services organization that is recognized by the Board; or

- (2) Be administered and approved by a health care facility, institution, organization, college, school, or university that is accredited by the Secretary of the United States Department of Education, the Council on Post Secondary Accreditation, or the American Nurses Credentialing Center (ANCC).

5410.7 A licensee shall submit the following information with respect to each program for which continuing education is claimed, on a form required by the Board:

- (a) The name and address of the sponsor of the program;
- (b) The name of the program, its location, a description of the subject matter covered, and the name(s) of the instructor(s);
- (c) The date(s) on which the licensee attended the program;
- (d) The hours of credit claimed; and
- (e) Attach a verification form signed and stamped by the program sponsor.

5410.8 The Board shall grant continuing education credit for whole hours only, with a minimum of fifty (50) minutes constituting one (1) credit hour.

5410.9 For approved undergraduate or graduate courses, each semester hour of credit shall constitute fifteen (15) hours of continuing education credit, and each quarter hour of credit shall constitute ten (10) hours of continuing education credit.

5411 SUPERVISED PRACTICE OF STUDENTS

5411.1 A student may practice registered nursing only in accordance with the Act and this chapter.

5411.2 A student who is fulfilling educational requirements under § 103(c) of the Act, D.C. Official Code § 3-1201.03(c), may be authorized to engage in the supervised practice of registered nursing without a District of Columbia license.

5411.3 Only a registered nurse licensed under the Act, who is an appointed faculty member of the accredited school, college, or university, or a preceptor meeting the qualifications set forth in chapter 56 of this title, shall be authorized to supervise the practice of registered nursing by a student.

5411.4 A student who practices pursuant to this section shall only practice at a hospital, long-term care facility, a health facility operated by the District or federal government, a health education center, or other health care facility considered appropriate by the school, college, or university.

- 5411.5 All supervised practice of a student shall take place under general or immediate supervision of a registered nurse.
- 5411.6 A person who has been denied a license, disciplined, convicted of an offense that bears directly upon his or her fitness to be licensed, or who has such an action pending in the District of Columbia or another jurisdiction shall not practice pursuant to this section unless first authorized by the Board in writing.
- 5411.7 A student practicing under this section shall not assume administrative or technical responsibility for the operation of a nursing program, unit, service, or institution.
- 5411.8 A student shall identify himself or herself as such before engaging in the supervised practice of registered nursing. A student shall wear a picture identification badge with lettering clearly visible to the client bearing the name of the student and the position title.
- 5411.9 A student shall not receive compensation of any nature, directly or indirectly, from a client or client's family member.
- 5411.10 The appointed supervising faculty member shall be fully responsible for the practice by a student during the period of supervision and may be subject to disciplinary action for violations of the Act or this chapter by the student.
- 5411.11 The Board may deny an application for licensure by, or take other disciplinary action against, a student who is found to have violated the Act or this chapter. The Board may, in addition to any other disciplinary actions permitted by the Act, revoke, suspend, or restrict the privilege of the student to practice.
- 5412 SUPERVISED PRACTICE OF GRADUATE NURSES**
- 5412.1 A graduate nurse may practice registered nursing only in accordance with the Act and this chapter.
- 5412.2 An individual may be authorized to engage in the supervised practice of registered nursing, as a graduate nurse, without a District of Columbia license if the individual:
- (a) Graduated from a nursing program pursuant to § 5402.1, or has met the requirements set forth in § 5403;
 - (b) Has never taken the NCLEX-RN exam; and
 - (b) Has an initial application pending for licensure by examination in the District of Columbia.
- 5412.3 A person who has been denied a license, disciplined, convicted of an offense

that bears directly upon his or her fitness to be licensed, or who has such an action pending in the District of Columbia or another jurisdiction shall not practice pursuant to this section unless first authorized by the Board in writing.

- 5412.4 Within five (5) business days after the application for licensure by exam has been received by the Board's staff, the Board's staff shall, at the request of the applicant, issue a supervised practice letter to the applicant to document that his or her application is pending and that he or she is authorized to practice under the Act and this chapter. The practice letter is not renewable and shall expire:
- (a) Ninety (90) days from the date of issuance; or
 - (b) Upon receipt of written notice from the Board that the application for licensure has been denied, whichever date is the earliest.
- 5412.5 Upon receipt of the practice letter, the graduate nurse shall inform employers of the date of expiration of the letter and shall immediately cease professional nursing practice on that date or upon receipt of written notice from the Board that the application for licensure has been denied, whichever date is the earliest. The graduate nurse thereafter may practice in a non-professional healthcare occupation, until receipt of a license or issuance of a license number.
- 5412.6 Only a registered nurse licensed under the Act, who is a supervisor, shall be authorized to supervise the practice of registered nursing by a graduate nurse.
- 5412.7 All supervised practice of a graduate nurse shall take place under general or immediate supervision.
- 5412.8 A graduate nurse who practices pursuant to this section shall only practice at a hospital, long-term care facility, a health facility operated by the District or federal government, academic institution, or other health care facility considered appropriate and approved by the Board.
- 5412.9 A graduate nurse shall not be eligible to practice registered nursing in any of the following settings:
- (a) Correctional Facility;
 - (b) Dialysis Center;
 - (c) Home Health Agency;
 - (d) Community Residential Facility;
 - (e) Nursing Staffing Agency;

- (f) Medical Group Practice;
- (g) School, (as a school nurse); and
- (h) Any other setting that does not meet the requirements of § 5412.8.

- 5412.10 A graduate nurse practicing under this section shall not assume administrative or technical responsibility for the operation of a nursing program, unit, service, or institution.
- 5412.11 A graduate nurse shall identify himself or herself as such before engaging in the supervised practice of registered nursing. A graduate nurse shall wear a picture identification badge with lettering clearly visible to the client bearing the name of the graduate nurse student and the position title.
- 5412.12 A graduate nurse shall not receive compensation of any nature, directly or indirectly, from a client or client's family member, except for a salary based on hours worked under supervision.
- 5412.13 The supervisor shall be fully responsible for the practice by a graduate nurse during the period of supervision and may be subject to disciplinary action for violations of the Act or this chapter by the graduate nurse.
- 5412.14 The Board may deny an application for licensure by, or take other disciplinary action against, a graduate nurse who is found to have violated the Act or this chapter. The Board may, in addition to any other disciplinary actions permitted by the Act, revoke, suspend, or restrict the privilege of the graduate nurse to practice.

5413 SUPERVISED PRACTICE OF APPLICANTS FOR LICENSURE BY ENDORSEMENT

- 5413.1 An applicant may practice registered nursing only in accordance with the Act and this chapter.
- 5413.2 An applicant for licensure by endorsement may be authorized to engage in the supervised practice of registered nursing in the District of Columbia without a District of Columbia license if the applicant:
- (a) Is currently licensed as a registered nurse under the laws of a state or territory of the United States;
 - (b) Is a graduate of a program approved in accordance with § 5402.1, or can demonstrate competency in English pursuant to § 5405.3; and
 - (c) Has an initial application pending for licensure by endorsement in the District of Columbia.

- 5413.3 A person who has been denied a license, disciplined, convicted of an offense that bears directly upon his or her fitness to be licensed, or who has such an action pending in the District of Columbia or another jurisdiction shall not practice pursuant to this section unless first authorized by the Board in writing.
- 5413.4 Within five (5) business days after the application for licensure by endorsement has been received by the Board's staff, the Board's staff shall issue a practice letter to the applicant to document that his or her application is pending and that he or she is eligible to practice under the Act and this chapter. The practice letter is not renewable and shall expire:
- (a) Ninety (90) days from the date of issuance; or
 - (b) Upon receipt of written notice from the Board that the application for licensure has been denied, whichever date is the earliest.
- 5413.5 Upon receipt of the practice letter, the applicant shall inform employers of the date of expiration of the letter and shall immediately cease professional nursing practice in the District on that date or upon receipt of written notice from the Board that the application for licensure has been denied, whichever date is the earliest. The applicant thereafter may practice in a non-professional healthcare occupation, until receipt of a District of Columbia license to practice registered nursing.
- 5413.6 Only a registered nurse licensed under the Act, who is a supervisor, may be authorized to supervise the practice of registered nursing by an applicant.
- 5413.7 All supervised practice of an applicant shall take place under general or immediate supervision.
- 5413.8 An applicant who practices pursuant to this section shall only practice at a hospital, long-term care facility, a health facility operated by the District or federal government, academic institutions; or other health care facility considered appropriate and approved by the Board.
- 5413.9 An applicant shall not be eligible to practice registered nursing in any of the following settings:
- (a) Correctional Facility;
 - (b) Dialysis Center;
 - (c) Home Health Agency;
 - (d) Community Residential Facility;

- (e) Nursing Staffing Agency;
- (f) Medical Group Practice;
- (g) School, (as a school nurse); and
- (h) Any other setting that does not meet the requirements of § 5413.8.

- 5413.10 An applicant practicing under this section shall not assume administrative or technical responsibility for the operation of a nursing program, unit, service, or institution.
- 5413.11 An applicant shall not receive compensation of any nature, directly or indirectly, from a client or client's family member, except for a salary based on hours worked under supervision.
- 5413.12 The supervisor shall be fully responsible for the practice by an applicant during the period of supervision and may be subject to disciplinary action for violations of the Act or this chapter by the applicant.
- 5413.13 The Board may deny an application for licensure by, or take other disciplinary action against, an applicant who is found to have violated the Act or this chapter. The Board may, in addition to any other disciplinary actions permitted by the Act, revoke, suspend, or restrict the privilege of the applicant to practice.

5414 SCOPE OF PRACTICE

- 5414.1 The practice of registered nursing means the performance of acts requiring substantial specialized knowledge, judgment, and skill based upon the principles of the biological, physical, behavioral, and social sciences in the following:
- (a) The observation, comprehensive assessment, evaluation and recording of physiological and behavioral signs and symptoms of health, disease, and injury, including the performance of examinations and testing and their evaluation for the purpose of identifying the needs of the client and family;
 - (b) The development of a comprehensive nursing plan that establishes nursing diagnoses, sets goals to meet identified health care needs, and prescribes and implements nursing interventions of a therapeutic, preventive, and restorative nature in response to an assessment of the client's requirements;
 - (c) The performance of services, counseling, advocating, and education for the safety, comfort, personal hygiene, and protection of clients, the prevention of disease and injury, and the promotion of health in individuals, families, and communities, which may include psychotherapeutic intervention, referral, and consultation;

- (d) The administration of medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia;
- (e) The administration of nursing services including:
 - (1) Delegating and assigning nursing interventions to implement the plan of care;
 - (2) Managing, supervising, and evaluating the practice of nursing;
 - (3) Developing organization-wide client care programs, policies, and procedures that identify the processes to be utilized by nursing personnel to assess, identify, evaluate, and meet the needs of the clients or population served;
 - (4) Developing and implementing an organizational plan for providing nursing services;
 - (5) Implementing an ongoing program to assess, measure, evaluate and improve the quality of nursing care being offered or provided; and
 - (6) Providing an environment for the maintenance of safe and effective nursing care.
- (f) Evaluating responses and outcomes to interventions and the effectiveness of the plan of care;
- (g) Promoting a safe and therapeutic environment;
- (h) The education and training of person(s) in the direct and indirect nursing care of the client;
- (i) Communicating and collaborating with other health care team members and professionals in the development of the plan of care, management of the client's health care, and the implementation of the total health care regimen;
- (j) Teaching the theory and practice of nursing;
- (k) Acquiring and applying critical new knowledge and technologies to the practice setting; and
- (l) The pursuit of nursing research to advance and enhance the practice of nursing.

5414.2

A registered nurse may provide nursing services, which are beyond the basic nursing preparation for a registered nurse, if the registered nurse has the appropriate

education, knowledge, competency, and training to safely perform the services.

5414.3 A registered nurse shall wear a pictured identification badge with lettering clearly visible to a client bearing the name of the registered nurse and the title "Registered Nurse" or "R.N."

5415 DELEGATION OF NURSING INTERVENTIONS

5415.1 Nothing in this section shall be applicable to, restrict, or limit the gratuitous provision of care by self, family, or friends.

5415.2 Only a registered nurse as set forth in the Act and this chapter shall delegate nursing interventions to be performed by trained unlicensed personnel on behalf of the delegating registered nurse. Such delegation shall be in a manner that does not conflict with the Act, this chapter, or with other District and federal laws and regulations which affect the practice of nursing in the District of Columbia. Nothing in this chapter shall be construed as permitting or authorizing an unlicensed person to perform duties beyond the scope permitted, or which are prohibited, by any other District or federal laws or regulations.

5415.3 A supervisor may delegate to a registered nurse the responsibility of directing and assigning nursing interventions to trained unlicensed personnel, once the registered nurse has developed the plan of care and identified those services that can be safely performed by the unlicensed personnel.

5415.4 The delegating registered nurse shall be responsible for the adequacy of care provided and shall retain accountability for the nursing task.

5415.5 The Administrator for Nursing Services, or supervisor, shall be responsible for establishing policies and procedures for nursing practice. The policies and procedures shall include a mechanism for:

- (a) Identifying those individuals, by position title and job description, to whom nursing interventions may be delegated based on education, training, and competency measurements; and
- (b) Assisting the delegating registered nurse in verifying the competency of the trained unlicensed personnel prior to assigning nursing interventions.

5415.6 If the delegating registered nurse determines that the trained unlicensed personnel cannot safely perform the nursing intervention, the delegating registered nurse shall not delegate the nursing intervention.

5415.7 The delegating registered nurse shall assign and delegate in a manner that protects the health, safety, and welfare of the client and others. The nursing tasks delegated shall:

- (a) Be within the area of responsibility of the nurse delegating the act;
- (b) Be such that, in the judgment of the nurse, it can be properly and safely performed by the unlicensed personnel without jeopardizing the client welfare; and
- (c) Be a task that a reasonable and prudent nurse would find is within the scope of sound nursing judgment.

5415.8 When delegating a nursing intervention the nurse shall:

- (a) Assess and evaluate the client's condition, identify the client's specific goals, nursing care needs, and required nursing interventions;
- (b) Select and identify nursing interventions which do not require unlicensed trained personnel to exercise critical thinking and independent nursing judgment and which do not require either complex or multi-dimensional application of the nursing process; and
- (c) Select nursing interventions, which frequently recur in the daily care of the client or group of clients, whose results are predictable, whose potential for risk is minimal, and which utilize a standard and unchanging procedure.

5415.9 Trained unlicensed personnel shall practice under general or immediate supervision of a registered nurse.

5415.10 The delegating registered nurse shall be fully responsible for providing supervision to the trained unlicensed personnel. The supervision shall include:

- (a) Instructing the unlicensed personnel in the delegated nursing intervention(s);
- (b) Monitoring the performance of the delegated nursing intervention(s);
- (c) Verifying that the delegated nursing intervention(s) has been implemented; and
- (d) Evaluating the client's response and the outcome of the delegated nursing intervention(s).

5415.11 The delegating registered nurse shall determine the required degree of supervision after an evaluation of appropriate factors including:

- (a) The stability of the client's condition;

- (b) The willingness and ability of the client to be involved in the management of his or her care;
- (c) The training, experience, and competency of the trained unlicensed personnel implementing the nursing intervention; and
- (d) The nature of the nursing intervention.

5415.12 Except as provided in § 5415.13, the delegating nurse responsible for nursing care in the client's residence shall make a supervisory visit to the residence at least every two (2) weeks to:

- (a) Evaluate the client's health status;
- (b) Evaluate the performance of the delegated nursing acts;
- (c) Determine whether goals are being met; and
- (d) Evaluate the continued competence of the trained unlicensed individual to perform the delegated nursing task.

5415.13 If the trained unlicensed person is providing care limited to activities of daily living in the client's residence, then the delegating nurse shall make supervisory visits to the client's home as the nurse determines necessary for safe, effective nursing care of the client.

5415.14 The following nursing interventions shall not be delegated to trained unlicensed personnel:

- (a) The initial nursing assessment;
- (b) The ongoing comprehensive nursing assessment of the client in any setting;
- (c) Development of the nursing diagnosis;
- (d) Establishment of the nursing care goal;
- (e) Evaluation of the client's progress, or lack of progress toward goal achievement;
- (f) Client counseling and family education, except as it relates to promoting independence in personal care and activities of daily living (ADL's);
- (g) Coordination and management of care including triage, collaborating, consulting, and referring;
- (h) Providing advice to a client or family member; or

- (i) Any nursing task which requires nursing knowledge, judgment, and skill.
- 5415.15 The delegating registered nurse shall retain full responsibility for medication administration as set forth by the Act.
- 5415.16 A delegating registered nurse may delegate the intervention of administering medication to trained unlicensed personnel in programs for individuals with mental retardation or other developmental disabilities; public schools; and assisted living residential facilities as authorized under D.C. Official Code § 21-1203; D.C. Official Code § 38-632; and D.C. Official Code § 44-109.05.
- 5415.17 Unless otherwise authorized under this title, a delegating registered nurse shall not delegate to trained unlicensed personnel any nursing acts or interventions relating to medication administration, including:
- (a) Calculation of a medication dose;
 - (b) Administration of the initial dose of a medication;
 - (c) Administration of a medication by injection route, except for epipen or ejection system as set forth in 17 DCMR § 6111;
 - (d) Administration of medication by intravenous route;
 - (e) Administration of medication used for intermittent positive pressure breathing or other methods involving a mechanical device or equipment for medication inhalation treatment;
 - (f) Administration of medication by way of tube insertion in a cavity of the body; and
 - (g) Administration of investigational drug treatment and blood or blood products.
- 5415.18 Trained unlicensed personnel shall identify himself or herself as such at all times when participating in client care. The individual shall wear a pictured identification badge with lettering clearly visible to the client, bearing the name of the individual and his or her position title. The position title shall not in anyway imply that the individual is licensed or a nurse.
- 5415.19 The delegating registered nurse shall be responsible at all times for all nursing interventions provided by the trained unlicensed personnel to whom it was delegated, and is subject to disciplinary action for any violation of the Act or this chapter in connection with the nursing intervention by the trained unlicensed personnel.

5416 STANDARDS OF CONDUCT

- 5416.1 A registered nurse shall adhere to the standards set forth in the "Code of Ethics for Nurses" as published by the American Nurses Association, as they may be amended or republished from time to time.
- 5416.2 A registered nurse shall respect the client's right to privacy by protecting confidential information unless obligated or allowed by law to disclose the information.
- 5416.3 A registered nurse shall not accept or perform professional responsibilities which the nurse is not competent to perform.
- 5416.4 A registered nurse shall not, after accepting an assignment or responsibility for a client's care, and without giving adequate notice to the supervisor so that arrangements can be made for continuation of nursing care by others:
- (a) Unilaterally sever the established nurse-client relationship;
 - (b) Leave a client for a length of time, or in a manner, that exposes the client unnecessarily to risk of harm; or
 - (c) Leave a nursing assignment.
- 5416.5 A registered nurse shall know, recognize, and maintain professional boundaries of the nurse-client relationship.
- 5416.6 A registered nurse shall report unsafe nursing practice by a nurse that he or she has reasonable cause to suspect has exposed or is likely to expose a client unnecessarily to risk of harm as a result of failing to provide client care that conforms to the minimum standards of acceptable and prevailing professional practice. The registered nurse shall report such conduct to the appropriate authority within the facility, or to the Board.
- 5416.7 A registered nurse shall provide nursing services, without discrimination, regardless of the age, disability, economic status, gender, national origin, race, religion, or health problems of the client served.

5499 DEFINITIONS

- 5499.1 As used in this chapter, the following terms have the meanings ascribed:

Act -- Health Occupation Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 et seq.).

Administrator for Nursing Services -- the licensed registered nurse responsible for

planning, directing and controlling the operation of nursing service within an agency, health care facility, or setting in which nursing care is being offered or provided.

Activities of Daily Living (ADL) – the basic tasks of everyday life, such as getting in and out of bed, bathing, dressing, eating, walking, toileting, transferring to and from one's wheelchair, and taking medications prescribed for self-administration.

Agency – any person, firm, corporation, partnership, or other business entity engaged in the business of referring nursing personnel, as employees or independent contractors, to a health care facility for the purpose of rendering temporary nursing services.

Applicant – person applying for a license to practice registered nursing under this chapter.

Board – the Board of Nursing, established by §204 of the Act, D.C. Official Code § 3-1202.04.

Complex Interventions – those interventions that require nursing judgment to safely alter standard procedures in accordance with the needs of the client; require nursing judgment to determine how to proceed from one step to the next, or require implementation of the nursing process.

Delegation – the transference from the registered nurse to another individual within the scope of his or her practice, the authority to act on behalf of the registered nurse in the performance of a nursing intervention, while the registered nurse retains the accountability and responsibility for the delegated act.

Educational Program – a program accredited by a recognized nursing body approved by the Board that leads to a diploma, associate degree, or baccalaureate degree in nursing.

General Supervision – supervision in which the supervisor is available on the premises or within vocal communication either directly or by a communication device at the time the unlicensed personnel, student, graduate nurse, or other licensed nurse is practicing.

Graduate Nurse – an individual who has graduated from a nursing program for registered nursing, who has never taken the NCLEX-RN exam, and whose application for a license by examination in the District of Columbia is pending.

Health Professional – a person who holds a license, certificate, or registration issued under the authority of this title or the Act.

Immediate Supervision-- supervision in which the supervisor is with the unlicensed personnel, student, graduate nurse, or other licensed nurse and either discussing or observing the person's practice.

NCLEX-RN-- National Council Licensure Examination for Registered Nurses.

Nursing Intervention - the initiation and completion of a client focused action necessary to accomplish the goal(s) defined in the client-centered plan of care.

Practical Nurse -- a person licensed to practice practical nursing under the Act and chapter 55 of this title.

Re-entry program-- a formal program of study with both didactic and clinical components, designed to prepare a nurse who has been out of practice to re-enter into nursing practice at the registered nurse level.

Registered Nurse -- a person licensed to practice registered nursing under the Act and this chapter.

Remedial Course -- an organized and planned program of study which provides a review of basic preparation and current developments in the practice of registered nursing.

Review Course -- a course of study providing review of basic preparation for the NCLEX-RN examination.

Supervisor-- a registered nurse licensed under the Act who is responsible and accountable for assigning, directing, evaluating and managing a unit, service, or program that offers or provides nursing care or who is responsible for the supervision of trained unlicensed personnel, students, graduate nurses, or other licensed nurses.

Trained Unlicensed Personnel --an individual, other than a licensed nurse, who has received appropriate training or instruction to function in a complementary or assistant role to a licensed nurse in providing direct patient care or in carrying out common nursing tasks. The term includes, but is not limited to, nurses' aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, trained medication employees, geriatric aides, or other health aides.

5499.2

The definitions in § 4099 of Chapter 40 of this title are incorporated by reference into and are applicable to this chapter.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., 2nd Floor, West Tower
WASHINGTON, D.C. 20005

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO
ELECTRIC SERVICE MARKET COMPETITION AND REGULATORY
PRACTICES AND FORMAL CASE NO. 712, IN THE MATTER OF THE
INVESTIGATION INTO THE PUBLIC SERVICE COMMISSION'S RULES OF
PRACTICE AND PROCEDURE

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Sections 2-505 (a), 34-302, and 34-1516 of the District of Columbia Code,¹ of its final rulemaking action taken on July 30, 2004, in Order No.13259, adopting the attached new Chapter 21 of Title 15 DCMR governing the construction of generating and transmission facilities in the District of Columbia. These rules replace the existing rules in their entirety.

2. The Commission published a Notice of Proposed Rulemaking ("NOPR") on December 27, 2002, at 48 *D.C. Reg.* 11826-11848 (2002). Comments were filed by the Office of People's Counsel ("OPC") and the Potomac Electric Power Company ("PEPCO") in response to the NOPR.² Based on the comments and the Commission's independent review, the Commission has made a number of editorial changes to various sections. See Sections 2100.1, 2100.2, 2103.1, 2104.2(a)(b)(7), 2106.1, 2107.3(c), 2111.5(g)(7), 2111.6, and 2199.1. Additionally, the subpart in one rule has been deleted while another provision has been revised. See Rules 2103.1 and 2106.1. All changes to the proposed rules are identified either by strikeouts for deleted language or underline for added language. Additional copies of the final rules may be obtained by writing Sanford M. Speight, Acting Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., 2nd Floor, West Tower, Washington, D.C. 20005.

¹ D.C. Code, 2001 Ed. §§ 2-505, 34-320, and 34-1516.

² *F.C. No. 945*, Initial Comments of the Office of People's Counsel on the Commission's Proposed Regulations Governing Construction of Electric Generating Facilities and Transmission Lines ("OPC Comments"), filed January 23, 2003; Comments of Potomac Electric Power Company ("Pepco's comments"), filed January 27, 2003.

CHAPTER 21 PROVISIONS FOR CONSTRUCTION OF
ELECTRIC GENERATING FACILITIES AND
TRANSMISSION LINES

15-2100 APPLICABILITY

2100.1 This Chapter shall govern the construction of electric generating facilities, overhead transmission lines designed to carry sixty-nine thousand (69,000) volts or more, underground transmission lines in excess of sixty-nine thousand (69,000) volts as well as any substations connected to such lines.

Authority: D.C. Code, 2001 Ed. §§ 34 - 301, 34 -302, and 34 - 1516.

2100.2 No person shall construct an electric generating facility in the District of Columbia for the purpose of selling electricity unless the Commission first determines, after notice and a hearing that the construction of the facility is in the public interest. Nor shall any person construct a an overhead transmission line designed to carry ~~more than~~ sixty-nine thousand (69,000) volts or greater, or substation connected to such line, unless the project has been approved in accordance with this Chapter. Unless specifically required by law or other provision of this Chapter, Commission approval shall not be required for the routine repair and replacement activities necessary to maintain an electric generating facility or transmission line.

2100.3 Any person doing business in the District of Columbia who plans to construct a generating station or an overhead transmission line designed to carry sixty-nine thousand (69,000) volts or greater in a state contiguous to the District of Columbia for which a Certificate of Public Convenience and Necessity is required by the state shall file with the Commission formal notice of this construction. This formal notice shall include the following information:

- (a) A general description of the generating facility or transmission lines;
- (b) A statement indicating the capacity or voltage involved;
- (c) A statement describing the site selected to construct the generating station or the area in which the transmission line would be located;
- (d) A statement indicating any alternative sites which have been considered;
- (e) An estimation of the cost involved;

- (f) An estimated in-service date; and
- (g) A statement indicating with which state or federal agency, commission, or department, if any, an application for approval of construction has been or is intended to be filed.

2100.4 The formal notice required under § 2100.3, shall be filed with the Commission on or before the date that the electric corporation files any application for approval of construction with a state or federal agency, commission or department.

15-2101 APPLICATION FILING REQUIREMENTS

2101.1 An application for approval of the construction of a generating facility, transmission line or substation covered under this Chapter shall include the following information:

- (a) The name and address of the principal place of business of the applicant;
- (b) The name, title, and address of the person authorized to receive notices and communications with respect to the application;
- (c) The location or locations where the public may inspect or obtain a copy of the application;
- (d) A list of each District of Columbia, state, or federal government agency having authority to approve or disapprove the construction or operation of the project and containing the following:
 - (1) A statement indicating whether the necessary approval from each agency has been obtained, with a copy of each approval or disapproval attached;
 - (2) A statement indicating the circumstances under which any necessary approval has not been obtained; and
 - (3) A statement indicating whether any waiver or variance has been requested, with a copy of each approval or disapproval attached.
- (e) A general description of the generating station under § 2102, or the transmission line under § 2104, and the alternatives considered under §§ 2103 and 2104, respectively;
- (f) The environmental information required under § 2108;
- (g) A statement of the engineering justifications for the project;
- (h) A statement of the safety considerations incorporated into the design, construction, and maintenance of the project;

- (i) A statement of the socioeconomic impact of the project;
- (j) A statement of contacts with community groups and the affected community;
- (k) A statement that the applicant has complied with all applicable environmental and zoning laws; and
- (l) A statement that the applicant has complied or will comply with the applicable PJM Interconnection, L.L.C. (PJM) tariff and requirements for the interconnection of new and expanded electric generating facilities within the PJM transmission system.

2101.2 The original application shall be:

- (a) Signed by a person having authority with respect to the application and having knowledge of the application; and
- (b) Verified under oath.

2101.3 All filings shall conform to the requirements of 15 DCMR Chapter 1. The Commission may, in its discretion, prescribe the form of the application.

2101.4 In addition to filing the application with the Commission, the applicant shall simultaneously serve one copy on the following agencies:

- (a) The District of Columbia Office of the People's Counsel;
- (b) The District of Columbia Department of ~~Public Works~~ Transportation;
- (c) The District of Columbia Corporation Counsel;
- (d) The Board of Zoning Adjustment;
- (e) The Office of Intergovernmental Relations;
- (f) The District of Columbia Energy Office;
- (g) The Metropolitan Washington Council of Governments, if affected;
- (h) The District of Columbia Zoning Commission;
- (i) The District of Columbia Office of Property Management;
- (j) The General Services Administration of the United States;
- (k) The Department of Consumer and Regulatory Affairs;
- (l) The Mayor's Office of Policy and Education;
- (m) The U.S. Environmental Protection Agency-D.C. Field Office;

- (n) The National Capital Planning Commission
- (o) The District of Columbia Department of Health; and
- (o) PEPCO, if PEPCO is not the applicant.
- (p) The Advisory Neighborhood Commission(s) in which the generating facility or transmission line will be located.

2101.5 The applicant shall also serve a copy of the application on any other District of Columbia or federal agency that may be affected.

2101.6 The Commission shall publish notice of the application on its website.

2101.7 Failure to comply with the provisions of this section may result in the summary rejection of the application.

15-2102 DESCRIPTION OF GENERATING FACILITY

2102.1 The description of the generating facility shall include the following:

- (a) Location;
- (b) All important design and engineering features, including fuel requirements, heat rates, emission rates, space requirements, transportation facilities, water requirements and transmission requirements;
- (c) Operational features, including operation and maintenance personnel and equipment;
- (d) The schedule for engineering, construction, and operation of the generating stations;
- (e) The impact of the proposed generating station on system operations, reliability, reserve margins, and capacity factors;
- (f) A statement of the reasons for the selection of the design and the site of the generating facility, including the location and identification of the following sites from which the project would be clearly visible:
 - (1) Residential structures;
 - (2) Historical structure and land sites;
 - (3) Institutional land, including school hospitals, and pre-school facilities;
 - (4) Recreational area;

- (5) Aesthetic;
- (6) Archaeological;
- (7) Wildlife management area; and
- (8) Park or forest.

15-2103 ALTERNATIVE GENERATING FACILITY

2103.1 The description of each alternative design or site considered for a generating facility shall include the following:

- (a) ~~An estimate of the capital and annual operating cost of each alternative design or site for the generating facility; and~~
- (b) The reasons for rejecting each alternative design or site.

15-2104 DESCRIPTION OF OVERHEAD TRANSMISSION LINE

2104.1 The description of a proposed overhead transmission line shall include the following:

- (a) A statement of the effect the project will have on system stability and reliability;
- (b) A statement of the consequences that will or may occur if the project is delayed or not approved;
- (c) A statement regarding the probability that the consequences of § 2104.1(b) will occur;
- (d) A description of the applicant's transmission planning criteria; and
- (e) A description of one-line diagrams regarding the power flows relied upon which determined the need for the proposed line.

2104.2 The description of the proposed transmission line shall also include, to the extent feasible at the time of application:

- (a) Engineering and construction features including the following:
 - (1) Width, length, and total acreage of the right-of-way,
 - (2) Line voltage;
 - (3) Number of circuits;
 - (4) Number of circuits per structure;
 - (5) Structure type and dimensions;

- (6) Conductor configuration and size;
 - (7) Nominal capacity (MA MVA);
 - (8) Nominal length of span between structures; and
 - (9) Description and dimensions of any related conduit.
- (b) Property or property right acquired or to be acquired;
 - (c) Access roads for construction or maintenance either existing or to be built;
 - (d) Location and identification of the following sites, from which the project would be clearly visible:
 - (1) Historical;
 - (2) Institutional land, including schools, hospitals, and pre-school facilities;
 - (3) Recreational area;
 - (4) Aesthetic;
 - (5) Archaeological;
 - (6) Wildlife management area;
 - (7) Park or forest; and
 - (8) Residential.
 - (e) Location and identification of all portions or the right-of-way requiring construction within the one hundred (100) year floodplain of any stream;
 - (f) Location and identification of any public airport one mile (1) or less from the transmission line; and
 - (g) Depiction on a suitable topographic map (minimum one inch (1)-two thousand feet (2,000 ft.)) of the information required under § 2104.2(b)-(f).

15-2105**ALTERNATIVE OVERHEAD TRANSMISSION LINE ROUTES****2105.1**

The description of each alternative route considered for the transmission line shall include the following:

- (a) An estimate of the capital and annual operating cost of each alternative route; and
- (b) A statement of the reason why each alternative route was rejected.

15-2106 PROJECT COORDINATING COMMITTEE

2106.1 Once an application has been properly filed, the applicant may request the formation of a project coordinating committee. If the request is approved, the Commission shall appoint a project coordinating committee. ~~the Commission shall appoint a project coordinating committee.~~ the Committee shall consist of the following members:

- (a) A chairperson, who shall be designated by the Commission;
- (b) A representative of the applicant;
- (c) A representative from the Office of the People's Counsel, if a notice of intent to participate on the committee is filed within ten (10) days of the date of the filing of a request to form a project coordinating committee;
- (d) A representative from each District of Columbia agency that has as follows:
 - (1) Authority to issue a license, permit, or authorization before the construction or operation of the project; or
 - (2) A direct interest in the project.
- (e) Pepco, if Pepco is not the applicant.
- (f) A representative designated by the Executive Office of the Mayor; and
- (g) A representative of any federal agency or independent system operator that, in the Commission's view, has an interest in the project.

2106.2 The committee shall develop a coordinated time schedule for the review of the application by each committee member's agency or company and oversee the preparation of any environmental impact statement required by D.C. Code, 2001 Ed. §§ 8-109.01 to 8-109.11. Additionally, the committee shall provide the Commission with the following:

- (a) A list of proposed issues to be addressed in an application;
- (b) A list of any proposed analyses or studies regarding the proposed construction;
- (c) Recommendations concerning the timing, preparation, and submission of required materials;
- (d) Recommendations concerning compliance with the requirements of each committee member's agency; and
- (e) Any other information that the committee believes would be relevant.

2106.3 The committee is advisory in nature and shall not have authority to do the following:

- (a) Approve or disapprove an application;
- (b) Approve or disapprove proposed studies of the applicant;
- (c) Require or prohibit any action by a committee member; or
- (d) Require or prohibit any expenditure by a committee member.

15-2107 COMMUNITY ADVISORY GROUP

2107.1 In order to inform and educate the community regarding the construction and operation of any proposed project, the applicant shall convene a community advisory group.

2107.2 The applicant shall notify the public of the opportunity to participate in the community advisory group by providing written notice to the Advisory Neighborhood Commission(s) in which the facility or transmission line is to be located. In addition, the Commission shall post the applicant's notice on the Commission's website.

2107.3 The membership of the community advisory group shall include the following representatives:

- (a) The applicant;
- (b) Commission staff, which shall chair all meetings of the group;
- (c) The Advisory Neighborhood Commission of the community where the power plant or power line is to be located;
- (d) Interested members of the public; and
- (e) Any other persons the Commission deems appropriate.

2107.4 The advisory group shall convene public meetings and disseminate information to the community regarding the construction and operation of the proposed project.

2107.5 The advisory group shall not be authorized to take any specific action with respect to the construction or operation of the proposed project.

15-2108 ENVIRONMENTAL IMPACT STATEMENT

2108.1 The applicant shall submit an Environmental Impact Statement ("EIS"). At a minimum, the EIS shall evaluate the following potential environmental impacts:

- (a) Air quality, National Ambient Air Quality Standards ("NAAQS"). The analysis of air quality shall include an analysis of the following six (6) criteria pollutants in the context of NAAQS:
- (1) Sulfur dioxide;
 - (2) Nitrogen oxides;
 - (3) Carbon monoxide;
 - (4) Particulate matter (PM 2.5 and PM10);
 - (5) Ozone; and
 - (6) Lead.
- (b) Air Quality, other emissions: The analysis of air quality shall include all other emissions regulated for the utility industry under the Federal Clean Air Act;
- (c) Surface and ground water resources. The analysis of surface and ground water resources shall include the following:
- (1) Water availability; and
 - (2) Water quality, including discharge, storm water runoff, and potential spill events.
- (d) Land use, socioeconomic, and aesthetic conditions: The analysis of these items shall evaluate, at a minimum, the following:
- (1) Appropriate zoning and compatibility with adjacent land use;
 - (2) Impact on traffic;
 - (3) Impact on cultural and historical resources; and
 - (4) Visibility impacts in terms of air pollution effects and aesthetics.
- (e) Noise conditions: The analysis of noise shall include the following:
- (1) A complete review of standards that will be met;
 - (2) The points of measurement for noise impacts;
 - (3) A comparison of the impact of the action to common outdoor sounds at that location; and
 - (4) A complete explanation of the methodology used for the noise impact measurements.
- (f) Aquatic and terrestrial ecology resources: The analysis of aquatic and terrestrial ecology shall evaluate the impact upon the following:
- (1) Fish;

- (2) Wildlife;
 - (3) Vegetation; and
 - (4) Direct discharges into surface waters and impact on wetland habitats; and
- (g) Electric and magnetic fields (EMF): Until applicable laws governing EMF are enacted, the applicant shall submit the following information:
- (1) An update of the general research on the health effects of EMF;
 - (2) The relationship of the proposed action to the increase or decrease of EMF, including any mitigating measures that could be employed to decrease EMF;
 - (3) The applicant's efforts to measure and better understand background EMF in the communities affected by the proposed action; and
 - (4) If and when laws are enacted, then the EIS shall demonstrate compliance with all applicable laws.

2108.2

Applicants seeking to construct a generating facility shall demonstrate the manner in which it will achieve compliance with the acid rain provisions of the Federal Clean Air Act as well as regional emissions cap and trade programs. Until specific law is enacted regarding the emission of greenhouse gases, the applicant shall also report the greenhouse gas emissions for the proposed action, address the cost of possible mitigation of such gases through control or compensation, and state whether and to what extent the expected emissions are within the limits established by any applicable laws or regulations.

2108.3

Impacts of the items set forth in § 2108.1 shall be analyzed for all components at all stages of project life including the following:

- (a) Construction;
- (b) Operation; and
- (c) Retirement.

2108.4

The analysis of each of the items set forth in § 2108.1 shall include the following information:

- (a) A list of applicable regulations. The list shall identify the component of the proposed facility affected, the official

designation of the regulation, and the agency responsible for enforcing the regulation;

- (b) An analysis of the environmental impacts resulting from current site use (or base line conditions if there is no existing facility at the site);
- (c) The potential environmental impacts resulting from the proposed action; and
- (d) A demonstration that the parties proposing the action, and those that will implement the action, have the qualifications to design, build, operate, and retire any planned facility.

2108.5 The applicant shall provide an analysis of the mitigation and externalities for the potential environmental impacts set forth in § 2108.1. For each impact the explanation shall include the following information:

- (a) A statement demonstrating that the proposed action will comply with all regulations applicable to the design, construction, operation and retirement of the proposed electric generating or transmission facility;
- (b) An analysis of the requirements that must be met to comply with the applicable regulations; and
- (c) A statement of whether the required permit, license, or other such authority has been secured and, if not, why not.

2108.6 The applicant shall indicate any steps taken, or to be taken, to mitigate the environmental impacts of the proposed action. These include steps taken either to comply with applicable regulations or to mitigate beyond the level required by regulations. Mitigation may include avoiding an impact altogether, minimizing an impact by limiting the scale of the action, rectifying an impact, reducing an impact through the addition of equipment or limitations on operations, or compensating for the impact. Any and all studies on mitigation must be made available as part of the EIS submission.

2108.7 In the context of all applicable regulations, the EIS shall discuss whether there are any adverse effects from externalities on the public health, welfare, and safety of the citizens of the District of Columbia.

2108.8 The EIS shall include evaluations of the full range of alternatives to the proposed action. The evaluation shall include, but is not limited to, a comparison of the environmental consequences of the alternative to that

for the proposed action. The evaluation shall state the reasons the alternative was rejected in favor of the proposed action. At a minimum, the evaluation shall include the following alternatives:

- (a) Alternative sites for the proposed action, including the alternative of building a stand-alone power plant inside or outside the District. For transmission lines, alternative routes are the alternative sites that must be evaluated;
- (b) Alternative technologies for the proposed action, including supply-side and demand-side alternatives; and
- (c) Alternative environmental control strategies for the proposed action. The strategies shall include the following:
 - (1) Alternative designs;
 - (2) Equipment configurations; and
 - (3) Operating plans.

2108.9

The EIS shall include a statement as to whether the proposed action involves any irreversible and irretrievable commitment of resources.

Examples include the following:

- (a) A commitment to use fossil fuels; and
- (b) The use of previously undeveloped land for a power plant site or a transmission line right of way.

2108.10

The EIS shall include an analysis indicating whether the proposed action results in a net environmental benefit. Both direct and indirect environmental impacts may be used in the demonstration. For direct environmental impacts, the most acceptable demonstration is that the proposed action, as compared to the current situation, actually leads to a reduction in environmental impacts. For indirect impacts, the EIS may demonstrate that environmental impacts are reduced for some other activity beyond the scope of the proposed action.

Examples of an analysis of net indirect environmental benefits include the following:

- (a) The purchase of air pollution offsets at another existing facility in the District of Columbia so that the proposed action results in a net reduction in the District of Columbia of some air pollutants; and
- (b) The proposed facility providing fuel for electric or gas vehicles which, as compared to conventional vehicles, emit less air pollution; the net environmental impact would then be in the form of the reduction of air pollution emissions by displacing conventional vehicles with low-pollution vehicles.

- 2108.11** The applicant shall submit an analysis of the cumulative risk of adverse health effects which includes the following:
- (a) Hazard Assessment: The hazard assessment identifies the pollutants that cause health risk concerns. The types of health risks that must be analyzed include the following:
 - (1) Cancer risks;
 - (2) Chronic non-cancer risks; and
 - (3) Acute non-cancer risks.
 - (b) Exposure Assessment: The exposure assessment identifies the population at risk and the extent of exposure. Conservative assumptions shall be used in the exposure assessment. Exposure via multiple pathways shall include the following:
 - (1) Inhalation;
 - (2) Ingestion; and
 - (3) Dermal contact.
 - (c) Risk Computation: The risk computation shall set the criteria by which risks will be judged. When technology-based or health-based standards are available from the District of Columbia or the federal government, then those standards set the criteria to be used in the risk computation. For cancer health risks, the applicant shall analyze the computed risk for cancer related health risks, against both a one in one hundred thousand and a one in one million standard;
 - (d) Cumulative Risk Computation: The applicant shall explain and justify the extent to which risks reflect any possible interaction of one pollutant with another or the possible accumulation of pollutants from the proposed action with existing sources of pollutants. At a minimum, the applicant shall accumulate the lifetime health risk by pathway for the most exposed individual for pollutants attributable to all facilities affected by the proposed action when operated to the maximum extent possible. The applicant shall inform the Commission with respect to any interaction with existing environmental impacts (or baseline conditions) which would aggravate or diminish the incremental environmental impact of the proposed action; and
 - (e) Uncertainty Assessment: The conservatism of the assumptions used in paragraphs (a) through (d) of this subsection shall be fully explained and justified.

2108.12 In addition to the EIS submitted by the applicant, the Commission may employ, and other interested persons may retain, an independent technical agent to conduct an EIS. The independent technical agent shall perform the same analysis required of the applicant.

2108.13 The applicant shall submit the following information, at a minimum, to describe the current situation:

- (a) A technical description of the current use of the proposed site;
- (b) Annual and monthly hours of operation over the five (5) year period preceding the date of application;
- (c) An explanation of any atypical or poor operating experience over the five (5) year period preceding the date of application. Included in any submission shall be an assessment of the possible consequences of atypical or poor operating experience in the future;
- (d) An analysis of the environmental impacts listed in § 2108.1, including all environmental test results used to measure those impacts over the five (5) year period preceding the date of application;
- (e) The applicant shall document that the environmental impacts resulting from the current situation comply with all applicable environmental regulations; and if not, what efforts will be made to ensure compliance; and
- (f) Any other information relevant to the characteristics of the current situation.

2108.14 The applicant shall submit the following information regarding the proposed action:

- (a) A technically complete and detailed description of the proposed action that shall include, at a minimum, the following:
 - (1) A description of the core facility; and
 - (2) All ancillary facilities, including on-site fuel and other material storage and cooling towers, as well as changes in off-site substations, transmission lines, and waste storage and disposal facilities.
- (b) A breakdown of the core and ancillary facilities by each component having a potential for environmental impact;
- (c) A technical description characterizing the equipment design and operation of the proposed action, which includes, at a minimum, the following information:

- (1) Equipment specifications by component;
 - (2) Fuel use, by type over project life including a statement as to whether the facility will operate on renewable resources of power;
 - (3) Maximum and expected kw and kwh generation or transmission each year over project life;
 - (4) Maximum and expected production of outputs and products other than electricity each year over project life; and
 - (5) Any relevant maps, plats or layouts.
- (d) An executive summary that describes the proposed action using non-technical terminology.
- 2108.15** The EIS shall include information in the form of a list and description of the experience with the type of action proposed in either the District of Columbia or other, similar urban areas.
- 2108.16** The applicant shall demonstrate the need for a proposed action in the context of the other outputs and products the proposed action will produce other than electricity.
- 2108.17** The applicant shall demonstrate the impact of the proposed action in the context of applicable environmental plans, including the following:
- (a) The District of Columbia Comprehensive Plan; and
 - (b) Any plans developed to assure the area attains federal ambient air quality standards for ozone and carbon monoxide, as well as any emissions for which the District may be in a state of non-compliance.
- 2108.18** The applicant shall analyze whether, and if so, how, the proposed action will impact, in any substantial way, the attainment of the goals of the environmental plans addressed in § 2108.17.
- 2108.19** The Commission may require additional assessments depending on the particular characteristics of the proposed action.
- 2108.20** All models and assumptions used by the applicant shall be fully documented and justified.

2108.21 If the applicant or project is covered by D.C. Code, 2001 Ed. §§ 8-109.03 *et seq.* or 34-2601 *et seq.*, the EIS shall conform to the requirements of those statutory provisions.

2108.22 The project coordinating committee established under § 2106 of this chapter shall coordinate the activities of the agencies in preparing any EIS or supplemental EIS which may be required pursuant to D.C. Code, 2001 Ed. §§ 8-109.01 to 8-109.11, or any other applicable statute.

15-2109 PHASED PROCEEDINGS ON THE APPLICATION

2109.1 The applicant may request, or the Commission may on its own initiative direct, that the project be reviewed in two (2) or more phases.

2109.2 If the Commission approves a phased proceeding, the matter shall proceed as follows:

- (a) An applicant may file a partial application;
- (b) The Commission may render separate findings of fact on any phase or issue within a phase; and
- (b) Findings of fact shall be final pursuant to D.C. Code, 2001 Ed. § 34-605(a), and may not be subject to further litigation unless warranted by new substantive issues or changed circumstances.

2109.3 In examining whether an applicant has complied or will comply with all applicable zoning and environmental laws, the Commission will rely, to the extent possible, on the expertise of the agencies charged with enforcement of those laws.

2109.4 In order to assure timely completion of the proceedings, the Commission may impose a schedule of procedural dates that are subject to change only for good cause shown.

15-2110 ANNUAL REPORT ON SMALLER SCALE CONSTRUCTION

2110.1 Electric corporations operating in the District of Columbia shall submit an annual report, on or before February 15th of each calendar year, which summarizes smaller-scale construction and the costs associated with each project undertaken by the corporation during the preceding year.

15-2111 UNDERGROUND TRANSMISSION LINES IN EXCESS OF SIXTY-NINE THOUSAND VOLTS AND SUBSTATIONS CONNECTED TO SUCH LINES

2111.1 An electric corporation which plans to construct inside the District of Columbia an underground transmission line in excess of sixty-nine thousand (69,000) volts, or substation connected to such line, shall file formal notice with the Commission six (6) months prior to the construction. This formal notice shall include a discussion of the following:

- (a) The name and address of the principal place of business of the electric corporation;
- (b) The name, title, and address of the person authorized to receive notices and communications with respect to the application;
- (c) The location or locations where the public may inspect or obtain a copy of the application;
- (d) A list of each District of Columbia, state, or federal government agency having authority to approve or disapprove the construction or operation of the project and containing the following:
 - (1) A statement indicating whether the necessary approval from each agency has been obtained, with a copy of each approval or disapproval attached;
 - (2) A statement indicating the circumstances under which any necessary approval has not been obtained; and
 - (3) A statement indicating whether any waiver or variance has been requested, with a copy of each approval or disapproval attached.
- (e) The proposed date construction is to be initiated;
- (f) The need for the underground transmission line or substation;
- (g) The type and voltage level(s) of the underground transmission line or substation;
- (h) Property or property right acquired or to be acquired;
- (i) Location of the proposed construction, including affected streets by name;
- (j) Duration of the proposed construction;
- (k) Impact of the proposed project on affected neighborhood and community; and

- (l) Possible mitigating measures which could be employed to minimize impact upon the affected neighborhood or community.

2111.2 Other provisions of this chapter shall not apply to underground substations and underground transmission lines.

2111.3 All information required in § 2111.1 shall be served on the affected Advisory Neighborhood Commission(s) and the Office of the People's Counsel on the same date it is filed with the Commission.

2111.4 The Commission shall entertain petitions filed by any interested person within ninety (90) days of the date of a formal notice provided under § 2111.1 for the Commission to investigate the reasonableness, safety and need for the underground transmission line or substation.

2111.5 If the Commission initiates an investigation, the electric corporation shall submit a detailed analysis of the information required in § 2111.1. The electric corporation shall also submit the following information:

- (a) An explanation of the need for and the cost-effectiveness of the project in meeting demand for service;
- (b) A description of the effect of the project on system stability and reliability;
- (c) A description of the consequences if the project is delayed or not approved;
- (d) A statement regarding the probability that the consequences of § 2111.5(c) will occur;
- (e) A description of the applicant's transmission planning criteria;
- (f) A description of one-line diagrams regarding the power flows relied upon which determined the need for the proposed line;
- (g) Engineering and construction features including the following:
 - (1) Width, length, and total acreage of the right-of-way;
 - (2) Line voltage;
 - (3) Number of circuits;
 - (4) Number of circuits per structure;
 - (5) Structure type and dimensions;
 - (6) Conductor configuration and size;
 - (7) Nominal capacity (~~MA~~ MVA);

- (8) Nominal length of span between structures; and
- (9) Description and dimensions of any related conduit.
- (h) Location and identification of all portions or the right-of-way requiring construction within the one hundred (100) year floodplain of any stream;
- (i) The description of each alternative route considered for the transmission line and alternative placement of a substation shall include the following:
 - (1) An estimate of the capital and annual operating cost of each alternative route or placement; and
 - (2) A statement of the reason why each alternative route or placement was rejected.
- (j) An analysis of potential impact upon the environment; and
- (k) Engineering and construction features of the alternative underground transmission line including the following:
 - (1) Width, length, and total acreage of the right-of-way,
 - (2) Line voltage;
 - (3) Number of circuits;
 - (4) Number of circuits per structure;
 - (5) Structure type and dimensions;
 - (6) Conductor configuration and size;
 - (7) Nominal capacity (MA);
 - (8) Nominal length of span between structures; and
 - (9) Description and dimensions of any related conduit.

2111.6 If no petition is submitted prior to the proposed date of construction, the electric corporation may begin construction pursuant to permits its receives from other District of Columbia agencies such as the Department of ~~Public Works~~ Transportation.

15-2112 WAIVERS AND MODIFICATIONS

2112.1 The Commission may, in its discretion, waive or modify any provision of this Chapter and may also impose additional requirements, as circumstances warrant.

2112.2 The applicant may, at the time of application, request that the Commission waive any provision in this Chapter for good cause shown.

15-2199 **DEFINITIONS**

2199.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Aesthetic Site - a site whose aesthetic nature is of general public interest or is officially recognized by a District of Columbia or federal agency charged with responsibility to oversee the protection of the environment.

Applicant - any person seeking approval to construct facilities covered by this Chapter.

Application - a request for approval to construct facilities covered by this Chapter.

Archaeological Site - a site within the District of Columbia yielding artifacts, structural remains, or evidence of occupation or use before the year 1900 as designated by the agency or governmental unit with responsibility for archaeological sites.

Certificate of Public Convenience and Necessity - an order issued by the Commission on application of a person granting such person the right to construct an electric generating station or transmission line covered by this Chapter. ~~authorization to construct an electric or transmission facility.~~

Cogenerator - a power producer that qualifies as a cogenerator under the Public Utility Regulatory Policies Act of 1978.

Commission - Public Service Commission of the District of Columbia.

Committee - the project coordinating committee.

Construction - any clearing of land, excavation, or other action that would affect the natural environment of the site or route of a bulk power supply facility. Construction is not a change needed for temporary use of a site or route for a non-utility purpose or for use in securing geological data, including borings necessary to ascertain foundation conditions.

Current Situation - another electric plant, overhead transmission line, other structure, facility or use which the proposed action will replace or otherwise affect.

Electric Corporation - pursuant to D.C. Code, 2001 Ed. § 34-207, an electric corporation includes an electric utility, cogenerator, small power producer, or independent power producer doing business in the District of Columbia.

Electric Plant - generating facilities or transmission lines to be used in connection with or to facilitate the generation, transmission, and distribution, sale or furnishing of electricity of sixty-nine thousand