

**D.C. REGISTER  
AND  
D.C. MUNICIPAL REGULATIONS**

**RULEMAKING  
HANDBOOK  
AND  
PUBLICATIONS  
STYLE MANUAL**

PREPARED BY  
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ATTORNEY AT LAW



**D.C. OFFICE OF DOCUMENTS**

**1983**

D.C. MUNICIPAL REGULATIONS and D.C. REGISTER

**RULEMAKING HANDBOOK  
AND  
PUBLICATIONS STYLE MANUAL**

PREPARED BY

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Director of Documents  
(1979 - 1983)

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Certified and Published

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RULEMAKING HANDBOOK AND PUBLICATIONS STYLE MANUAL**

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## CHAPTER 1 INTRODUCTION TO RULEMAKING

### 1.1 THE HISTORICAL BACKGROUND - A SKETCH

During most of the years that the District of Columbia was governed by appointed Commissioners, there were no statutory procedures for the adoption of administrative regulations or ordinances. The Congress, while retaining overall legislative control over the District, had delegated certain "police powers" to the Commissioners.

Regulations and ordinances adopted by the Commissioners under that authority were promulgated in the form of Commissioners' Orders. There was no provision for public notice or comment, except in certain instances where a specific law required public hearings or newspaper publication.

On July 19, 1954, the first step toward expanded public notice of the activities of the District government was taken with the publication of the first issue of the District of Columbia Register. Although the Register did not become the official vehicle for public notice of proposed administrative rulemaking until 15 years later, it was (and still is) the most accessible source for researching the ordinances and regulations of the District of Columbia. In order to determine what the non-statutory law in the District was before 1954, it is most often necessary to engage in a difficult and very tedious search of the minutes of the meetings of the Commissioners, which are stored at the National Archives.

Many of the old Commissioners' Orders form the basis for regulations which are now a part of the D.C. Municipal Regulations. The authority to amend the old Commissioner's Orders and enact new regulations has been divided between the Mayor and the Council (See §§1.8 - 1.10). In addition, a procedure for the adoption of administrative rules by the Mayor and District agencies was added by the Congress in 1968. Under the present law, the administrative rules of the District cannot be changed, repealed, or enlarged without public notice and an opportunity for public comment.

### 1.2 THE D.C. ADMINISTRATIVE PROCEDURE ACT

In 1968, the Congress enacted Public Law 90-614, the "District of Columbia Administrative Procedure Act" (D.C. Code, §1-1501, et seq.). The law, which was signed by the President on October 21, 1968, actually took effect one year later on October 21, 1969. The act provided a statutory framework for District government administrative practice and procedure. In addition to requiring public notice of agency rulemaking activities and publication of rules, the act provides for adversary hearings and procedures in "contested cases," and judicial review of administrative actions.

## 1.2 THE D.C. ADMINISTRATIVE PROCEDURE ACT (Continued)

The D.C. "APA" continued the District of Columbia Register and made it the official vehicle for publication of government actions, including rules and regulations, hearing notices, Mayor's Orders, and other documents of general public interest.

It should be noted that the Congress enacted the D.C. Administrative Procedure Act over the rather strong objections of the local government, as represented in Congressional hearings by the Corporation Counsel. The APA legislation was viewed as unnecessary and a potential source of confusion.

The implementation of the APA by the reluctant District government was unenthusiastic. The task of compliance was viewed as a largely non-legal, administrative matter of publishing notices in the Register. There was no uniform format for the notices, and the difference between notice of proposed action and publication of final rules was often ignored.

### THE D.C. APA AND THE FEDERAL APA ARE DIFFERENT!

A number of the problems that have arisen with the implementation of the D.C. APA are caused by the fact that it is different from the federal APA which is part of the U.S. Code. In a city dominated by the presence of the federal government and federal government attorneys (keeping in mind also that the District was generally treated as just another "agency" of the federal government), the distinctions between the federal and District APA's were often overlooked or ignored.

It is important for attorneys and District government officials dealing with the D.C. APA to be aware of the areas in which the two laws are dissimilar. Persons dealing with legal issues under the D.C. APA should not assume that interpretations of the federal APA are applicable.

Both the D.C. Administrative Procedure Act and the 1975 "District of Columbia Codification Act" (D.C. Law 1-19) required the preparation and publication of all District rules and regulations in a "code of municipal regulations."

The APA requirement for a compilation of all District regulations was partially fulfilled by the publication of a series of "special editions" of the D.C. Register, which later were known as the D.C. Rules and Regulations (DCRR). The compilation was uncoordinated and published at the last minute.

Even though a number of rules were not published, and thus "died" under the provisions of the APA "sunset" clause, many of those invalid rules were followed by agencies for years without regard to their legal effectiveness. The DCRR was never supplemented and updated on a regular basis, and many rules and regulations were never published in the DCRR, as required by law. The "D.C. Municipal Code" required by D.C. Law 1-19 was never published.

A copy of the Administrative Procedure Act, as amended by the D.C. Document Act, is included in this manual (chapter 7).

### 1.3 THE D.C. DOCUMENTS ACT

In December, 1978, the Council enacted the "District of Columbia Documents Act" (D.C. Law 2-153, effective 3-6-79), which re-established the requirement for a comprehensive compilation of District rules and regulations to be called the District of Columbia Municipal Regulations (DCMR).

The responsibility for preparing and publishing this official compilation was vested in a new agency called the D.C. Office of Documents. The function of publishing the D.C. Register (DCR) was transferred to the Office of Documents, giving that office responsibility for and control of the administrative process for the publication and codification of all District administrative rules and regulations.

The authority and functions of the Office of Documents are set forth in the "D.C. Documents Act." A copy of this statute, as codified in the D.C. Code, is included in this manual (chapter 7).

### 1.4 WHAT IS A RULE?

The D.C. Administrative Procedure Act [D.C. Code, §1-1502(6)] defines a rule as follows:

**The whole or any part of any Mayor's or agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor or any agency.**

Breaking the definition down into its components may assist in understanding what "Mayor's or agency statements" are included in the definition of a rule:

**The whole or any part of. . .**

Sometimes a document is part policy and part instructions to staff or other internal guidelines. In such a case, the "rules" part of the document is subject to the notice and publication requirements of the APA, but other parts may not be subject to the APA requirements.

EXAMPLE: A document issued by the Department of Transportation may require that motor vehicles be inspected annually for proper adjustment of brakes, set standards for brake construction and adjustment, and instruct government inspectors on how to inspect brakes and what equipment to use. The basic inspection requirement and the applicable standards are "rules," but that portion of the document which gives District employees instructions on how to carry out an inspection does not constitute "rules."

## 1.4 WHAT IS A RULE? (Continued)

. . .statement of general or particular applicability. . .

While many rules apply to the "general public," a large number of rules apply only to particular classes or groups of persons.

EXAMPLE: A rule which establishes requirements for persons to be licensed as accountants applies only to those persons who wish to apply for such a license.

Other rules may apply to any person but become applicable only at a particular time or under particular circumstances.

EXAMPLE: The Building Code applies to the "general public," but only applies to particular persons who are seeking a permit to erect a structure, or who may want to take some other action governed by that set of regulations, or who may have control over a structure or activity governed by those regulations.

. . .and future effect. . .

In order to be a rule, a document must apply to circumstances or situations which occur after the adoption of the rule. In other words, rules are prospective.

EXAMPLE: A rule adopted and published in May, 1981, requiring electricians to use No. 12 wire to connect dishwashers does not apply to the installation of a dishwasher that was accomplished in April, 1981, or before.

BUT: A rule adopted and published in May, 1981, prohibiting the operation of a dishwasher which is not connected with No. 12 wire would apply to all dishwashers being operated after that date, regardless when the wiring was accomplished. If the prohibition contained a fine for unlawful operation, the fine could only apply to a person operating an improperly wired dishwasher after May, 1981.

In other words, while the **future effect** requirement for rules means that a rule cannot be retroactive, it does not prevent a rule from affecting a past action, situation, or circumstance which continues after the adoption of the rule.

## 1.4 WHAT IS A RULE? (Continued)

**. . . designed to implement, interpret, or prescribe law or policy, or to describe the organization, procedure, or practice requirements of the Mayor or any agency.**

The substance of a "rule" usually does one of the following:

- Establishes a requirement
- Sets a standard
- Establishes a fee or rate
- Provides a set procedure
- Tells how a law will be implemented
- Gives guidelines for compliance with a law
- Describes the structure of an organization
- Instructs members of the public (or a particular group) how they must deal with or practice before an agency

It is important to remember that laws, policies, procedures, and other "Mayor's or agency statements" which are rules **must be in writing**.

If an agency is operating under a "verbal" or "informal" policy, standard, requirement, or procedure, it is very likely that it is operating unlawfully. All "rules" must be in writing in order to comply with the requirements of the APA, one of which is publication in the D.C. Register. Obviously, an "unwritten," "informal," or "verbal" policy cannot be printed in the Register. Further, if there is any doubt whether a "statement" is a rule, it is virtually impossible to analyze it legally to determine whether it is a "rule" until it is reduced to writing.

## 1.5 DECIDING WHETHER A STATEMENT IS A RULE

If, after applying the various definitions of a rule (See §1.4), there is still some doubt whether a particular "statement" (or any part or parts of a statement) is a rule, ask these questions:

- Does it affect the general public?
- Does it affect a particular group or segment of the public?
- Does it affect employees of the District government outside your own agency?
- Does the public or a part of the public have to follow it in order to receive a right, benefit, service, payment, or license?
- Will a person be subject to a penalty, fine, loss of service or benefit, or some other sanction or disadvantage if it is not followed or if it is violated?

## 1.5 DECIDING WHETHER A STATEMENT IS A RULE (Continued)

REMEMBER: Even if all of the persons, businesses, or other entities affected by a "statement" can be specifically identified, this does not necessarily mean that the "statement" is not a rule. It may mean that notice of proposed rulemaking can be served on the affected parties (rather than published in the D.C. Register), but **particular applicability** does not exclude a "statement" from the definition of a "rule" or the requirements of the APA.

OFFICE OF DOCUMENTS ASSISTANCE: One of the services provided by the Office of Documents as part of its **pre-publication review** process is analysis of particular documents to determine whether the contents of the documents are, in whole or in part, "rules" under the APA. The legal staff of the Office of Documents will discuss the nature of rules and the definition of a "rule" as it might apply to particular subjects or actions, but an official judgment or recommendation on the applicability of the APA will only be given with respect to written "statements" or drafts.

## 1.6 RULEMAKING AUTHORITY

Rulemaking authority is the **legal power to adopt, amend, or repeal a rule**. There are two aspects of rulemaking authority, both of which must be in effect in order for an official or agency to promulgate a rule, as follows:

### SUBJECT-MATTER AUTHORITY

In order to adopt, amend, or repeal a rule, there must be statutory authority for the Mayor or a government agency or official to act in the particular subject matter area covered by the rule.

EXAMPLE: In order to adopt a rule establishing a bicycle lane restriction on Virginia Avenue, the Mayor or some agency of the government must have authority to adopt rules with respect to the operation of bicycles on public thoroughfares and the authority to establish restrictions on the movement of vehicles on streets and highways.

### AUTHORITY TO PROMULGATE

In order to effect the adoption, amendment, or repeal of a rule, the particular official or entity must have authority to make, issue, or adopt rules.

EXAMPLE: In order for the Director of the D.C. Department of Transportation to establish bicycle lane restrictions, the subject matter authority must be specifically vested in the Director of DOT by law or by delegation of mayoral authority.

## 1.7 WHERE DOES RULEMAKING AUTHORITY COME FROM?

In the District of Columbia, authority to promulgate rules and regulations that affect a particular subject, activity, or matter comes from four sources:

- (1) The District Charter (D.C. Self-Government and Governmental Reorganization Act of 1973; Public Law 93-198; the so-called "Home Rule Charter");
- (2) Statutes enacted by the U.S. Congress (Public Laws);
- (3) Statutes enacted by the Council of the District of Columbia (D.C. Laws); and
- (4) Regulations enacted by the appointed District of Columbia Council prior to home rule (Council Regulations).

## 1.8 LEGISLATIVE AUTHORITY OF THE COUNCIL

The Council of the District of Columbia has **general legislative authority** to enact laws for the District of Columbia (with some exceptions reserved by the Charter to Congress). Under this general authority, the Council can adopt, amend, or repeal any rule or regulation.

EXCEPTION: If the Home Rule Charter specifically vests rulemaking authority for specific matters in an independent agency (such as the Board of Education or the Zoning Commission), the Council is pre-empted from divesting the agency of that authority. In all other cases, including instances where the Congress had previously delegated rulemaking authority to an agency under a statute, the Council has authority to amend, repeal, or enact rules, as well as repeal the rulemaking authority of the agency.

NOTE: All legislative actions by the Council are in the form of acts which become D.C. Laws. If a Council act is codified in the D.C. Code, it is a statute. If a Council act or any part of a Council act is codified in the D.C. Municipal Regulations (DCMR), it is a rule. There is no practical legal distinction between a regulation and a rule, although technically a regulation is a rule which was adopted by the pre-Home Rule appointed City Council.

When it enacts a statute in a particular area, the Council can include provisions in the nature of regulations or it can delegate the authority to make rules under the statutory law to the Mayor or an agency. A statute can also be silent with respect to rulemaking authority (See §1.10).

**A DELEGATION OF RULEMAKING AUTHORITY MUST BE SPECIFIC. IT CANNOT BE PRESUMED THAT AN AGENCY HAS RULEMAKING POWERS WHEN A STATUTE IS SILENT ON THE SUBJECT.**

## 1.9 ADMINISTRATIVE RULEMAKING AUTHORITY OF THE COUNCIL

The District of Columbia is unique in one rulemaking area. Under the pre-Home Rule form of government, the Congress held all legislative power over the District. The quasi-legislative power to adopt, amend, and repeal municipal regulations and rules (sometimes also referred to as "ordinances") was vested in a three-member Board of Commissioners.

Under Reorganization Plan No. 3 of 1967, the Congress retained full legislative power, but divided up the quasi-legislative power between the appointed D.C. Council and a single Commissioner (Mayor-Commissioner). The "rules" enacted by the old City Council under Reorganization Plan No. 3 are called Council Regulations and form a significant part of the existing municipal regulations of the District (including the Building Code, Electrical Code, Health Code, Police Regulations, and many others).

The Home Rule Charter [§404(a)] provides that, "in addition to its general legislative powers, the elected Council will continue to exercise the quasi-legislative regulation-making (rulemaking) powers of the appointed Council." The Council must do its "rulemaking" by act (D.C. Law), but the power being exercised by the Council under the continued provisions of Reorganization Plan No. 3 is more analogous to a local municipal board or city council than to the general legislative powers of a state legislature.

## 1.10 ADMINISTRATIVE RULEMAKING AUTHORITY OF THE MAYOR

The Mayor has three basic areas of rulemaking authority:

- (1) Authority specifically vested in the Mayor by statute or delegated by Council Regulation;
- (2) Authority reserved to the Commissioner under Reorganization Plan No. 3 (which was transferred to the Mayor under §422 of the Charter); and
- (3) General authority to issue administrative orders or rules that are necessary to carry out the functions and duties of the office of Mayor (under §422(11) of the Home Rule Charter).

Under the legal **doctrine of preemption**, the Mayor's quasi-legislative authority to promulgate rules (or an agency's power) does not include those areas where the Council, under the §404(a) extension of reorganization Plan No. 3, has exclusive rulemaking power, unless the Council delegates that authority to the Mayor (or an agency) by act (statute or regulation).

EXAMPLE: Under §402(226), the Council is vested with authority to make "rules for the proper maintenance and operation of a public crematorium under D.C. Code, §27-130." Thus, the Mayor may not make rules on that subject, and the Mayor may not delegate rulemaking authority in that area to an agency head.

## 1.11 ADMINISTRATIVE RULEMAKING AUTHORITY OF AGENCIES

Independent and subordinate agencies of the District Government are vested with rulemaking authority in three ways:

- (1) Specific delegations made by statute or Council Regulation;
- (2) Specific delegations of rulemaking authority that is vested in the Mayor by law. These written delegations are normally made by Mayor's Order (under §422(6) of the Charter); and
- (3) Certain limited, specific authority set forth in federal law for "state agencies" (where the "state agency" designation is made by law or delegated by Mayor's Order).

The **doctrine of preemption** also applies to those agencies that have rulemaking authority. If the Council (or Congress) by statute or regulation has enacted law in a specific area, and as part of the statute has vested rulemaking authority in an agency to implement the law, that rulemaking authority does not include any power to change statutory provisions.

In some cases, where a statutory provision is vague or subject to interpretation, an agency may be able to promulgate rules that interpret the statute, as long as those rules do not conflict with the statute or alter the meaning of the statute from the meaning which was intended by the Council (or the Congress).

## 1.12 DELEGATION OF RULEMAKING AUTHORITY

Rulemaking power vested in the Council by the Charter [§404(a)] may be delegated to the Mayor or an agency by act of the Council.

The Council can vest rulemaking authority in the Mayor or an agency by act. Generally, a specific section of an act will authorize rulemaking to implement the act and indicate where that authority is vested.

Generally, when rulemaking power is vested by statute, it is vested in the Mayor, the head of an agency, or some officer or entity by title. When the "head of an agency" is a board or other multi-person entity (such as the Board of Education or Public Service Commission), the rulemaking power is vested in the entity as a whole. Rulemaking by a multi-person entity (such as a board or commission) requires a vote or other official action by the group under its own procedural rules or otherwise, in accordance with the law that established the agency.

Rulemaking power vested specifically in the head of an agency **cannot be delegated by the agency head to a subordinate unless** authority to delegate or re-delegate is included in the language of the statute vesting rulemaking authority or the Mayor's Order delegating the authority.

EXAMPLE: "The Director of XXXXX, or the Director's designee, shall have authority to adopt rules. . ."

EXAMPLE: "The Director of YYYYYY shall adopt rules to implement the provisions of this act, or delegate that authority to a subordinate officer of YYYYYY."

## 1.13 PUBLIC NOTICE OF PROPOSED RULEMAKING

The purpose of the rulemaking provisions of the D.C. Administrative Procedure Act is to inform the public of all existing rules and regulations; and to give the public advance notice and an opportunity to comment on all new rules, changes to existing rules, and repeal of existing rules before those rules are adopted, amended, or repealed.

THE BASIC REQUIREMENT FOR NOTICE is stated in D.C. Code, §1-1506(a):

**The Mayor and each independent agency shall, prior to the adoption of any rule or the amendment or repeal thereof, publish in the District of Columbia Register . . . notice of the intended action so as to afford interested persons opportunity to submit data and views either orally or in writing, as may be specified in such notice.**

(NOTE: The term "Mayor" in this provision includes the subordinates of the Mayor who are vested with rulemaking authority. For the purposes of §1-1506, the term "Mayor" includes subordinate agencies.)

**IS THERE AN EXCEPTION TO THIS REQUIREMENT??** YES! But the exception is a very narrow one, and rarely occurs in actual practice. According to D.C. Code, §1-1506(a), prior notice does not have to be published for a new rule, an amendment, or the repeal of a rule IF -

**. . . all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law**

Obviously, there are very few rules that apply only to named persons who can be given personal notice. Thus, this exception is almost never used in actual practice. Even in most instances where only a small group of persons is affected by a rulemaking action, it usually is advisable to give public notice in the D.C. Register.

### HOW MUCH NOTICE MUST BE GIVEN?????

The standard requirement for prior notice of an intended rulemaking action (PROPOSED RULEMAKING) is thirty (30) days, as provided in the pertinent part of §1-1506:

**The publication or service required by this subsection of any notice shall be made not less than thirty days prior to the effective date of the proposed adoption, amendment, or repeal, as the case may be. . .**

In most cases, this means that a notice of intent to adopt, amend, or repeal a rule (NOTICE OF PROPOSED RULEMAKING) must actually be published in the D.C. Register at least thirty (30) days **before action is taken** to actually adopt, amend, or repeal the rule.

## 1.13 PUBLIC NOTICE OF PROPOSED RULEMAKING (Continued)

### CAN AN AGENCY GIVE LESS THAN 30 DAYS NOTICE UNDER ANY CIRCUMSTANCES?????

YES! The language of §1-1506 also provides that the 30-day notice is mandatory. . .

**. . . except as otherwise provided by the Mayor or the agency upon good cause found and published with the notice.**

This means that an agency can publish a proposed rulemaking notice that indicates that final rulemaking action to adopt the rules will be taken in fifteen (15) days, ten (10) days, or some other period, as long as there is a valid justification of the shorter time period. The justification must be written and included in the Notice of Proposed Rulemaking.

Under this section, the only difference is the shorter notice period. **Final rulemaking action must still be taken after the end of the short notice period, and the final rules must be published in the Register before they become effective.**

The standard for giving less than 30 days notice is "**good cause.**" This is a far less stringent standard than the standard for emergency rulemaking. The difference between "short notice" proposed rules and emergency rules will be discussed further in the section on EMERGENCY RULEMAKING.

It is important to remember that the law generally requires 30 days notice, and that "good cause" for a shorter notice period does not mean any cause. For example, if an agency has had six months to prepare and issue rules, and that agency has waited until the last minute to submit proposed rules for publication, the deadline set by law is not in and of itself a "good cause" for ignoring the 30-day notice requirement.

Any notice of proposed rulemaking that gives less than 30 days notice should clearly indicate why the notice is reasonable and necessary. The notice should state why the action is needed, how it will benefit the public, what additional steps have been taken to give actual notice and copies of the proposed rules to interested or affected parties, or some other evidence that the lack of a full 30-day notice period will not adversely affect the public's right to prepare and submit comments on the proposed rules.

The following are examples of some "good cause" reasons which can be used to justify a short notice period:

- (1) The action will make technical or corrective amendments to a set of rules that was recently adopted after a full 30-day notice period;
- (2) The action will affect a particular group of persons that has been notified and given opportunity to comment in writing or at a public hearing on the proposed rules; or
- (3) The action will allow the public to receive a benefit or be relieved of a burden, and the action must be taken without delay in order to achieve the positive result.

## 1.14 EMERGENCY RULEMAKING - ACTION WITHOUT PUBLIC NOTICE

Under certain circumstances, an agency can adopt rules without prior public notice and publication of the rules in the D.C. Register. Rules adopted without prior notice must be clearly justified under a very rigid standard of "emergency," and only remain in effect temporarily.

The basic provision is stated in D.C. Code, §1-1506(c):

**Notwithstanding any other provision of this section, if, in an emergency, as determined by the Mayor or an independent agency, the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals, the Mayor or such independent agency may adopt such rules as may be necessary in the circumstances, and such rule may become effective immediately. Any such emergency rule shall forthwith be published and filed in the manner prescribed in subchapter III of this chapter. No such rule shall remain in effect longer than one hundred and twenty days after the date of its adoption.**

It is important to remember that emergency rulemaking is not a good substitute for regular rulemaking with prior notice and public comment. It cannot be used as an easy method of adopting "temporary" rules in ordinary circumstances. There must be a real emergency!

### WHAT IS A REAL EMERGENCY?????

The Administrative Procedure Act defines an emergency as a set of circumstances or events that require a rule or group of rules that -

**. . .is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals. . .**

This is a very strict standard and one that only applies in limited circumstances. For example, it does not allow emergency rules that are needed to avoid embarrassment to government officials, or adoption of rules that have been delayed due to poor management or inaction by an agency.

If the public will actually suffer harm by the lack of rules, emergency rulemaking may be justified. The standard is somewhat analogous to the legal standard under which a court can issue a Temporary Restraining Order (TRO). One indication of a valid emergency is that the rule is needed to maintain the status quo. In other words, the rule would protect the public from an abrupt change in their rights, benefits, or status that, if left uncorrected, would cause undue harm or disadvantage.

Only under very rare circumstances is an emergency rule justified when it will create a change in the status quo, even if that change could result in some new benefit to the public. The key word here is "**preservation.**" Since it is difficult to "preserve" something by changing it, there are only limited occasions when a change in circumstance under a rule would also have the effect of preserving existing conditions.

## 1.14 EMERGENCY RULEMAKING - ACTION WITHOUT PUBLIC NOTICE (Continued)

### MAY EMERGENCY RULES BE ISSUED TO MEET STATUTORY LEGAL DEADLINES?????

Generally, the answer is "NO."

For example, the rules to implement the D.C. Merit Personnel Act took several years to be promulgated, even though they were mandated by statute and needed much sooner. The deadline for implementation of the new personnel system passed before most personnel rules could be promulgated. The new system had to be implemented without most of the required rules in place.

There is no question that rules adopted without waiting for the statutory notice period would have benefited the public and the government. Nevertheless, emergency rulemaking could not be used, since the rules were not needed to "preserve" or maintain the status quo.

The key to determining if an emergency (as defined in the APA) actually exists is most often the **surrounding circumstances**. Ask these kinds of questions about the need for the rules:

- Is there a public health menace that the rules could abate?
- Is there likely to be violence or a disturbance in the absence of the rule?
- Would the rule put an immediate stop to an unsafe condition that puts members of the public in danger?

Sometimes key factors are **TIME** and the **SEVERITY OF THE CONDITION** that causes the "emergency." A condition that has existed for months or even years does not usually become a real "emergency" overnight unless something new happens to make the situation worse. Ask these kinds of questions:

- Has the situation that creates the "emergency" need for immediate rulemaking recently arisen, or is it a condition that has existed for a significant period of time when regular rules could have been adopted?
- Have long-standing conditions suddenly worsened, making the situation an immediate threat to the public?

It is always important to look carefully at rules that establish a new procedure for members of the public to follow, place requirements or limits on persons' activities, deny to the public a right which now exists, or puts a new penalty or cost on certain activities. Persons who feel that they have been adversely affected by an emergency rule are far more likely to challenge the rule in court on the grounds that no emergency existed. In situations where an emergency rule creates a new benefit or service, or where a procedure is made easier, it is far less likely that the emergency nature of the action will be challenged.

**REMEMBER - Under the law, the public has a right to prior notice of each new or amended rule or regulation. Taking away that right to notice is a serious matter and legally can never be done merely for the convenience of an agency.**

## 1.14 EMERGENCY RULEMAKING - ACTION WITHOUT PUBLIC NOTICE (Continued)

### WHEN DO EMERGENCY RULES TAKE EFFECT?????

Most emergency rules take effect immediately upon adoption. The law states simply that:

**. . .the Mayor or such independent agency may adopt such rules as may be necessary in the circumstances, and such rule may become effective immediately. . .**

In some cases, the agency or official adopting the emergency rule sets a specific date after the date of adoption when the emergency rule will take effect. This is done infrequently; usually when some brief time is needed to prepare for implementation of the rule, or to provide some actual notice to the public or some particular group.

### DOES AN EMERGENCY RULE HAVE TO BE PUBLISHED IN THE REGISTER?????

The APA requires publication of emergency rules:

**. . .Any such emergency rule shall forthwith be published and filed in the manner prescribed in subchapter III of this chapter. . .**

This means that an emergency rule must be submitted as soon as possible **after its adoption** for publication in the D.C. Register.

Unlike final rules adopted after notice, an emergency rule can (and usually does) take effect before it is actually published. However, since the Rules of the Office of Documents require that emergency rules be prepared in accordance with certain strict requirements (such as a clear statement of the emergency which meets the APA definition of an "emergency"), it has become a common practice for agencies to seek review of emergency rules by the Office of Documents before adoption to ensure that the notice will meet publication standards under the D.C. APA.

### HOW LONG DOES AN EMERGENCY RULE REMAIN IN EFFECT?????

The APA is very specific about the temporary nature of emergency rules:

**. . .No such rule shall remain in effect longer than one hundred and twenty days after the date of its adoption.**

This means that the maximum length of time that an emergency rule can remain in effect is one hundred twenty (120) calendar days after adoption. **If a rule is adopted with a delayed effective date, the time is not counted from the effective date. As the statute clearly states, the time is counted from the date of adoption.**

MAY AN EMERGENCY RULE BE EXTENDED BEYOND 120 DAYS?????

Generally, the answer is "NO."

The intent of the APA is to allow the adoption of rules without notice only as a drastic measure. Since there is ample time to give 30 days notice, receive public comments, adopt final rules, and publish final rules in the D.C. Register during the 120-day effective period for the emergency rules, there is usually no justification for extending the emergency rules. (Note: Failure to take the steps needed to adopt a "permanent" rule does not justify an extension.)

The promulgation of new emergency rules which are the same or similar to previous emergency rules might be justified only in extreme circumstances, such as the the following:

- (1) The unexpected emergence of a "new" (and different) emergency; or
- (2) The need for rules that are substantially different from the original emergency rules, based on new emergency circumstances.

**BUT REMEMBER** - Even a "new" and different emergency may not be sufficient to justify additional emergency rulemaking on the same matter if the need for permanent rules has existed during the previous emergency, and no action was taken to publish a Notice of Proposed Rulemaking and to adopt final rules. If a notice of proposed rules had been published, but circumstances have changed so radically that different rules are needed on an emergency basis, the fact that the adoption of final rules would not solve the problem might justify the adoption of a new and different set of emergency rules on the same subject.

MAY A NOTICE OF PROPOSED RULEMAKING BE PUBLISHED AT THE SAME TIME AS THE PUBLICATION OF EMERGENCY RULES?????

YES. This is often a good idea, since it protects the agency from having the emergency rules expire with nothing to take their place. Unless the emergency rule is strictly being adopted to take care of a definitely temporary situation (which will last no longer than 120 days), it is a good idea to publish a combined NOTICE OF EMERGENCY AND PROPOSED RULEMAKING.

In many instances, the total process for publishing notice, receiving comments, taking final action, and publishing final rules will take much less than 120 days. In such cases, the "permanent" rules (which comply with the APA notice and comment requirements) can be published before the emergency rules expire. Most agencies which publish a combined Notice of Emergency and Proposed Rulemaking indicate in the notice that the emergency rules will expire after 120 days from the date of adoption or upon publication of final rules which supersede the emergency rules, whichever occurs first.

## 1.15 ADOPTION AND PUBLICATION OF FINAL RULES

The D.C. APA, as amended by the Documents Act, requires that final rules be published in the D.C. Register. The provision is D.C. Code, §1-1538(b):

**Except in the case of emergency rules or acts, no rule or document of general applicability and legal effect adopted or enacted on or after March 6, 1979, shall become effective until after its publication in the District of Columbia Register. . .**

This statutory language is more precise than the language of the original D.C. APA (which had been in effect since 1968), but the intent is the same. Once an agency or official takes final action to adopt a rule, the final rule must be published in the D.C. Register before it can take effect.

### WHY ISN'T THE PUBLICATION OF PROPOSED RULES SUFFICIENT?????

The adoption of rules under the APA is a two-stage process. The APA requires that 30 days notice be given "prior to the adoption" of rules. In other words, the actual adoption of rules cannot take place until the proposed rules have been published in the D.C. Register and the required comment period has passed. Proposed rules have no legal force and effect.

Since D.C. Code, §1-1538(b) requires that "adopted or enacted" rules also be published before they become effective, the process is only complete upon the publication of a NOTICE OF FINAL RULEMAKING in the D.C. Register.

### WHAT IF THE FINAL RULES ARE IDENTICAL TO THE PROPOSED RULES?????

Even though no changes are made to the proposed rules when the final adoption occurs (after the end of the notice and comment period), those final rules still must be published in the Register.

In some instances, especially when the rules are lengthy and the cost of publication is considerable, the Office of Documents will publish a Notice of Final Rulemaking without the full text of the rules. The abbreviated notice includes a reference and citation to the earlier publication of the full text and incorporates the full text in the Notice of Final Rulemaking by reference.

**REMEMBER** - The text of final rules must be published with the Notice of Final Rulemaking unless the final rules are IDENTICAL (every word and comma) to the proposed rules originally published in the D.C. Register. Also, the decision whether to publish identical final rules (or incorporate the text of the final rules by reference) is made by the Office of Documents. Two copies of the complete text of the final rules, as adopted, always must be filed with the Office of Documents.

## 1.16 PUBLIC PARTICIPATION IN RULEMAKING

The most important aspects of public participation in rulemaking are the right to receive NOTICE of proposed rules, and the right to submit COMMENTS on proposed rules.

The APA requires the following:

**. . .an opportunity to submit data and views either orally or in writing, as may be specified in [the] notice [of proposed rulemaking].**

While this language indicates that an agency could limit public input to either oral presentations or written comments, in practice it is difficult to refuse written submissions. Most agencies accept only written comments on proposed rules, since this complies with the law and avoids the necessity for a hearing. Written comments are also a lot easier to deal with, since they require more concise communication, can be copied and reviewed by many members of an agency (including those who might not be able to attend a public hearing), and provide a permanent record of the public input.

If a law other than the APA requires a public hearing, the opportunity for written comment on published proposed rules is not usually foreclosed.

### MAY CONSIDERATION OF RULEMAKING BE INITIATED BY THE PUBLIC?????

Most definitely! The APA requires [D.C. Code, §1-1506(b)] that each agency provide a procedure for members of the public to initiate agency consideration of rulemaking:

**Any interested person may petition the Mayor or an independent agency, requesting the promulgation, amendment, or repeal of any rule. The Mayor and each independent agency shall prescribe by rule the form for such petitions, and the procedure for their submission, consideration, and disposition. Nothing in this subchapter shall make it mandatory that the Mayor or any agency promulgate, amend, or repeal any rule pursuant to a petition therefor submitted in accordance with this section.**

While no member of the public is entitled to demand that an agency adopt, amend, or repeal any rule, the law requires that government officials receive suggestions for rulemaking and give those suggestions actual and reasonable consideration. Even if no action is taken on a rulemaking proposal received from a member of the public (including a group of citizens, a business, or the representative of a group or individual, such as a lawyer), there should be some response from the agency.

An agency can comply with the provisions of D.C. Code, §1-1506(b) by deciding that rulemaking is unnecessary; by taking proposed rulemaking action to adopt, amend, or repeal a rule; or by deciding that further review of the matter is warranted. In all cases, the decision of the agency should be communicated in writing to the person or group who petitioned for rulemaking action.

## CHAPTER 2 THE ROLE OF THE OFFICE OF DOCUMENTS

### 2.1 ESTABLISHMENT AND DUTIES

The Office of Documents has been a part of the Executive Office of the Mayor since 1979. It was established by the provisions of D.C. Law 2-153, the "District of Columbia Documents Act" (effective March 6, 1979). Prior to the effective date of D.C. Law 2-153, the Mayor, by Executive Order, gave the office a head start by transferring certain existing functions from the Secretariat on January 2, 1979.

The Office of Documents is responsible for the general administration and enforcement of the rulemaking provisions of the D.C. Administrative Procedure Act (APA), as well as the official certification and publication of the District's municipal regulations and administrative rules.

The publishing functions of the Office of Documents include the weekly D.C. Register, the annual publication of the D.C. Statutes-at-Large, and the compilation of D.C. rules and regulations in the titles of the D.C. Municipal Regulations (DCMR).

### 2.2 OTHER OFFICE OF DOCUMENTS ACTIVITIES

In addition to the publishing activities, the Office of Documents also regularly provides the following services:

- (1) RULEMAKING SEMINARS AND CONSULTATION - The staff of the Office of Documents conducts seminars with groups of employees from various agencies of the District government. Individual training sessions and daily consultations on rulemaking are held with representatives of many agencies, as well as the City Council and Corporation Counsel.
- (2) INFORMATION AND REFERRALS - The D.C. Office of Documents receives hundreds of inquiries and referrals from governmental and private sources. ANC's, citizens groups, and individual members of the public submit many requests each day to the Office by telephone and in person. In response to referrals and direct inquiries, the Office of Documents provides a number of services, including advice on documents research techniques, rulemaking drafting advice, legal advice on rulemaking matters, and the answers to many questions about the structure and operation of the District government. The Office of Documents has a well-deserved reputation as a "source of last resort" for many government employees and citizens seeking accurate information about the laws, regulations, and other activities of the District government.
- (3) RULES DRAFTING - The Office of Documents provides direct assistance to several offices and agencies, as well as the Council, in the drafting of rules and regulations.

## 2.3 THE OFFICE OF DOCUMENTS AND RULEMAKING

The authority and responsibility of the Office of Documents with respect to the D.C. Administrative Procedure Act (APA) is very broad. It must define standards and uniform format requirements for all rulemaking documents which are required to be published in the DCMR, and must establish procedures for review, certification, and publication of rulemaking notices to ensure full compliance with the provisions of the D.C. Administrative Procedure Act and the standards and requirements of the Office of Documents.

### ESTABLISHMENT AND ENFORCEMENT OF RULEMAKING PROCEDURES

The Office has its own rulemaking authority to establish policies and standards that apply to rulemaking actions by all D.C. agencies, including independent agencies. The policies of the Office of Documents are set forth in the Rules of the Office of Documents (chapter 6 of this manual).

Since all rules must be published in the D.C. Register before becoming legally effective, most of the procedures for rulemaking are related to the publication of rulemaking notices in the Register. These procedures and requirements are explained in detail in chapter 3 of this manual.

If an agency does not comply with the Rules of the Office of Documents in preparing its rulemaking documents for Register publication, the Director of Documents is authorized by law to reject the document. Therefore, it is important that agencies recognize the importance of adhering to the uniform format, style, and other publication requirements.

### REVIEW AND CERTIFICATION OF RULEMAKING

Prior to the publication of a rulemaking document in the D.C. Register, the document is reviewed by the Director or a staff attorney in the Office of Documents. The major items of review by the Office include the following:

- (1) CONTENT OF THE RULEMAKING NOTICE - Each notice must contain the required heading, rulemaking language, and information about the agency action adopting the proposed or final rule;
- (2) CONTENT OF THE TRANSMITTAL FORM - Each rulemaking notice must be accompanied by a transmittal form which contains the proper legal citations, signatures of approving officials, and other information. The Office of Documents checks the legal citations (to rulemaking authority) to ensure that there is legal authority for the rules to be issued, and to ensure that the promulgator of the rules has the legal authority to adopt the rules; and
- (3) CONTENT OF THE TEXT OF THE RULES - Each document is checked to see that it is in substantial compliance with all format and style requirements. The Office of the Corporation Counsel assists in the review process by certifying the legal sufficiency of the substance of each rulemaking document before it is published.

## 2.4 REVIEW OF NON-RULEMAKING DOCUMENTS

The Office of Documents also reviews non-rulemaking documents submitted for publication in the D.C. Register. The bulk of this review focuses on whether the document meets the format and style requirements of the Register.

In addition to checking each document for proper format and style (such as single-spacing, correct spelling, proper heading, and required margins), the Office of Documents reads each document for content. If a document is not written in clear, concise English, it may be rejected.

Notices of public hearings and other governmental actions are checked to be sure that they are timely. For example, if the law requires that notice of a hearing or other governmental action be published in the Register at least 30 days prior to the hearing (or other action), the Office of Documents staff will check to be sure that the notice indicates that the hearing (or other action) will take place on a date that is at least 30 days after the date of publication of the D.C. Register.

Documents that give insufficient notice will be rejected. It is very important for agencies to consider the actual publication date of the issue of the Register in which a notice will be published. The Office of Documents occasionally receives a notice of a hearing (or other action) that has already occurred, or that will occur before the notice will actually be published. These "late" notices are not published in the Register.

## 2.5 PRE-PUBLICATION REVIEW OF DOCUMENTS

An agency which is unsure (or wants to be sure) that a draft document is in compliance with the requirements of the Office of Documents can submit the final draft to the Office for pre-publication review.

The Office of Documents will review the following items as part of the pre-publication review process:

- (1) Content of proposed or final rulemaking notice;
- (2) Format, style, numbering, and other technical aspects of the rule, notice, or other document;
- (3) Authority of the agency to adopt the rules; and
- (4) Intended changes in proposed rules to determine whether the changes are substantive (and will, therefore, require re-publication of the document as proposed rules).

Agencies should be aware that the purpose of pre-publication review is to check **FINAL DRAFTS** of documents, not to edit rough drafts. Rough drafts, or documents which do not appear to have been drafted with any attention to the format and style requirements of the Office of Documents, will not be reviewed. The Office of Documents will respond to inquiries about the legal authority of an agency to adopt rules on certain matters prior to the actual drafting of those rules.

**CHAPTER 3      HOW TO GET DOCUMENTS PUBLISHED IN  
THE DISTRICT OF COLUMBIA REGISTER**

**3.1      WHAT DOCUMENTS MUST BE PUBLISHED IN THE REGISTER?**

The following documents must be submitted to the Office of Documents for publication in the District of Columbia Register:

- (1) Each resolution adopted by the Council and each act adopted by the Council and approved by the Mayor, enacted without mayoral approval, or enacted by the override of a mayoral veto;
- (2) Each final or emergency rule, regulation, or other document required by law to be codified in the D.C. Municipal Regulations. The D.C. Register serves as the ongoing supplement to the District of Columbia Municipal Regulations;
- (3) Each notice of proposed rulemaking or intent to adopt the contents of any other document required to be codified in the D.C. Municipal Regulations;
- (4) Each notice of public hearing issued by the Council or an agency;
- (5) Each document having general applicability and legal effect; and
- (6) Other documents required by law to be published in the D.C. Register. Some statutes specifically require that a particular document (which is not a rulemaking document) must be published in the Register.

**3.2      WHAT DOCUMENTS WILL BE PUBLISHED IN THE REGISTER ON REQUEST?**

The Director of Documents is authorized by the Documents Act to publish the following documents in the Register when requested by the appropriate official:

- (1) Documents requested to be published by the Chairman of the Council or the Chairman's designee;
- (2) Documents requested to be published by the Mayor of the District of Columbia;
- (3) Documents requested to be published by the Joint Committee on Judicial Administration in the District of Columbia;
- (4) Information on changes in the organization of the government of the District of Columbia; and
- (5) Other notices of public hearings.

### 3.3 DOCUMENTS OF GENERAL PUBLIC INTEREST MAY BE PUBLISHED

The Director of Documents has discretion to publish other documents in the Register. The guidelines generally followed by the Office of Documents when considering the publication of a document which is not listed in §3.1 or §3.2 of this chapter are the following:

- (1) The document must be an official government document; and
- (2) The document must be of general public interest.

Most of the documents published in the "general public interest" category are notices of agency action, such as the change of address of an agency office or public facility; the proposed closing of a public facility; or a change in procedures applicable to the general public (but which are not required to be published as rulemaking).

### 3.4 DOCUMENTS WHICH ARE GENERALLY NOT PUBLISHED IN THE REGISTER

The D.C. Register is not a newsletter or general house bulletin for the District government. Administrative issuances and other administrative memoranda (with the exception of Mayor's Orders) are not published in the Register. The following documents are generally not authorized to be published in the Register, except under the discretionary authority of the Director, as explained in §3.3:

- (1) Proclamations or other ceremonial documents;
- (2) Notices of meetings or other activities;
- (3) Correspondence, memoranda, or internal agency documents;
- (4) Press releases, news items, commentary, or editorials;
- (5) Adjudicatory notices, opinions, or orders;
- (6) Declaratory orders;
- (7) Resolutions, petitions, or recommendations submitted for consideration by the Council, Mayor, or an agency; or
- (8) Employment information, job announcements, or position descriptions.

Of course, if a particular statute requires the publication of a document of the type listed above, it will be published in the Register. For example, while the adjudicatory opinions of the Public Employee Relations Board are required by law to be published, the rulings of the Washington Metropolitan Area Transit Commission (WMATC) are published under the discretionary authority of the Director.

### 3.5 THE STRUCTURE OF THE D.C. REGISTER

Documents published in the D.C. Register are placed under one of the following Table of Contents categories:

- (1) **COUNCIL OF THE DISTRICT OF COLUMBIA** - contains all resolutions and approved acts of the Council, mayoral vetoes of Council acts; notices of D.C. Law numbers assigned, notices of filing and intent to consider legislation, notices of Council public hearings and roundtables, and other documents requested to be published by the Chairman or the Chairman's designee;
- (2) **PUBLIC HEARINGS** - contains all notices of public hearings, except public hearing notices issued by the Council;
- (3) **FINAL RULEMAKING** - contains all notices of final rulemaking action, along with the text of final rules (except when the text is incorporated by reference);
- (4) **PROPOSED RULEMAKING** - contains all notices of intent to adopt rules, along with the text of the proposed rules;
- (5) **EMERGENCY RULEMAKING** - contains all notices of emergency rulemaking and combined notices of emergency and proposed rulemaking; and
- (6) **NOTICES AND INFORMATION** - contains all other documents required to be published by law, authorized for publication under the Documents Act, or published at the discretion of the Director of Documents.

The purpose of this structure is to allow users of the Register to find documents easily in each issue. The regular placement of each type of document also assists users in finding rules or laws in back issues that have not yet been indexed. For example, since all amendments to titles of the DCMR must be published in the Register, a user who wants to be sure that he or she has an absolutely up-to-date title of the DCMR can research the FINAL RULEMAKING section of the Registers published since that title of the DCMR was published. If there are no amendments in the Register, a user can be absolutely sure that the DCMR title is up-to-date.

### 3.6 THE D.C. REGISTER INDEX

An index to each volume of the D.C. Register is published annually. It is sent to all regular Register subscribers, and is placed in each branch of the D.C. Public Library. Each ANC also receives a subscription to the D.C. Register, as well as a copy of the annual index.

The format of the index is similar to the Table of Contents format set forth in §3.5. Each document is listed in the index by title with a citation to the Register page on which the document begins.

Quarterly cumulative supplements to the index are published in one of the regular editions of the Register during the months of April, July, and October of each year.

### 3.7 D.C. REGISTER PUBLICATION SCHEDULE

The regular publication day for the D.C. Register (and the official publication date of each issue) is Friday of each week.

If a government holiday falls on Friday, the official publication date remains the same (Friday); however, the actual distribution of the issue begins on the day before the holiday (Thursday).

The Office of Documents strictly adheres to the regular (every Friday) publication schedule for the D.C. Register, as required by the Documents Act. The use of multiple supplements to the Register (published on a random basis, as needed) was discontinued in 1979. Thus, users can be sure that if they receive the regular Friday edition each week, they have not missed any part of the Register.

The D.C. Register is mailed to subscribers by 2nd Class mail. Local subscribers usually receive the Register on the Saturday or Monday following the publication date.

### 3.8 PROCEDURES FOR SUBMISSION OF DOCUMENTS FOR PUBLICATION

Documents submitted for publication in the D.C. Register may be filed with the Office of Documents between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday. Arrangements for delivery of documents at other times must be made in advance with the Office.

Documents delivered by messenger to the Office of Documents will be time-stamped and logged immediately upon receipt. Documents received through the U.S. Mail or departmental mail will be time-stamped and logged in the normal course of mail processing (usually twice per day).

Obviously, if an agency is trying to meet a deadline for the submission of a particular document, it should not rely on the mail service to deliver the material to the Office of Documents. Copy delivered by messenger should be clearly marked "D.C. REGISTER MATERIAL" and should be personally delivered to a member of the staff of the Office of Documents (not left on a desk or in someone's in-box).

The Office of Documents maintains a double logging system for material received for publication in the Register. All documents received by the Office are time-stamped and logged in both the regular mail log and the D.C. Register document log. These logs are the official record, and questions with regard to whether a document was actually submitted for publication are resolved by referring to these logs.

Some agencies want to have their own record of when their documents were actually received by the Office of Documents. The best method to accomplish this is to send an extra copy of the cover page of the document with the messenger. The Office of Documents will time stamp the extra copy and give it to the messenger for return to the submitting agency. This service is not available to agencies that submit documents by mail.

### 3.9 DEADLINES FOR SUBMISSION OF DOCUMENTS FOR PUBLICATION

In order to maintain the strict publication schedule of the Register, and to achieve the rapid turn-around time between the submission of copy to the printer and Friday publication, the Office of Documents must enforce a strict system of deadlines for submission of documents for publication.

The deadlines are generally one week in advance of the publication date of the issue of the Register in which a document will actually appear. For example, a document submitted to the Office of Documents during the week of April 4-8, 1983, would have been published in the April 15, 1983, edition of the D.C. Register.

#### DEADLINE ADJUSTMENT FOR GOVERNMENT HOLIDAYS

Documents filed for publication in an issue of the Register that is scheduled to be published on the Friday of a week that contains an official District government holiday **must be submitted one day earlier than the regular deadline.**

Whenever an official government holiday falls on a Friday, all documents for publication in the D.C. Register of the following week are due **one day earlier**. In other words, documents that would have been due on the day of the holiday (Friday) are due at 12:00 Noon on Thursday (the day before the holiday).

The deadline for submission of documents for publication in each edition of the Register is **12:00 Noon on the indicated day of the previous week :**

<u>TYPE OF DOCUMENT</u>	<u>NORMAL DEADLINE</u>	<u>(HOLIDAY)</u>
(1) Public hearing notices .....	Previous Friday	(Thursday)
(2) Acts and resolutions of the Council .....	Previous Friday	(Thursday)
(3) Summaries of Council legislative sessions and other Council notices .....	Previous Friday	(Thursday)
(4) Final rulemaking notices if no changes have been made in the text as published with the notice of proposed rulemaking ..	Previous Friday	(Thursday)
(5) Other final rulemaking notices .....	Previous Thursday	(Wednesday)
(6) Emergency rulemaking notices .....	Previous Thursday	(Wednesday)
(7) Proposed rulemaking notices .....	Previous Thursday	(Wednesday)
(8) Council notices of intent to adopt new legislation .....	Previous Thursday	(Wednesday)
(9) Other notices and documents .....	Previous Thursday	(Wednesday)

### 3.10 REVIEW OF DOCUMENTS SUBMITTED FOR PUBLICATION

All rulemaking documents must be reviewed and certified by the Office of Documents prior to publication in the D.C. Register. In addition, rulemaking documents must be reviewed by the Office of the Corporation Counsel or agency staff counsel prior to submission of the documents for publication.

#### OFFICE OF DOCUMENTS REVIEW

Proposed rulemaking and other documents subject to codification in the D.C. Municipal Regulations which have not been through the pre-publication review process should be submitted several days in advance of the deadlines set forth in §3.9 in order to allow sufficient time for review by the staff of the Office of Documents. Documents that have been tentatively certified by the Office of Documents following pre-publication review will not normally require additional review prior to publication.

Documents that are not submitted far enough in advance of the deadline to allow sufficient time for review (especially lengthy proposed rulemaking documents) will probably not be published the following Friday. If an agency wants to ensure that documents will not be held an extra week for review, the documents should be submitted in advance of the deadline. The longer or more complex a document, the longer the period that should be allowed for review.

#### OFFICE OF THE CORPORATION COUNSEL OR AGENCY STAFF COUNSEL REVIEW

Certification of legal sufficiency must be included on all rulemaking actions. In most instances, the review of the text of rulemaking documents for legal sufficiency is conducted by the Office of the Corporation Counsel.

In most cases where independent agencies have house counsel (such as the Board of Education, the Public Service Commission, and the Board of Elections and Ethics), legal certification may be made by the agency attorney.

Subordinate agencies that have staff counsel may be permitted to have the staff attorney certify the legal sufficiency of the substance of rules; however, authorization must be obtained from the Director of Documents. A subordinate agency may be required to obtain Corporation Counsel review of any rulemaking document, at the discretion of the Director of Documents.

The Director of Documents (or a staff attorney of the Office of Documents) may certify the legal sufficiency of any rulemaking document.

Certification of proposed rules may be conditioned upon review of final rules. If proposed rules have received only conditional certification, they must be reviewed and certified prior to submission of final rules.

If final legal certification has been given to proposed rules, and if the text of the proposed rules has not been modified prior to final rulemaking action, the final rules do not require duplicate certification. This exception to the requirement for certification of final rules only applies when no changes have been made to the text of the proposed rules.

### 3.11 INCORPORATION BY REFERENCE

There are only two instances in which the text of a document may be incorporated by reference in the D.C. Register rather than being published in its entirety, as follows:

- (1) If a document is extremely long and arrangements are made to make the document available to the public at the agency and through the D.C. Public Library; or
- (2) If the document is the text of final rules that is identical to the text published with the Notice of Proposed Rulemaking.

#### LENGTHY DOCUMENTS

The only reason for omitting a lengthy document from publication in the Register is the extraordinary expense of printing the document. In most cases, the Office of Documents will attempt to publish even long documents, usually by publishing them in segments. However, there are a few instances in which lengthy documents are almost always incorporated by reference:

- (1) Federal Rules which have been adopted by the District and which have been published in the Federal Register and Code of Federal Regulations;
- (2) State plans, reports, and other lengthy non-rulemaking documents which must be published in accordance with a statutory requirement, and which are required to be available at the agency for public inspection; and
- (3) Technical manuals which are incorporated as part of a title of the D.C. Municipal Regulations (such as the "Motor Vehicle Inspection Manual").

**The decision whether to incorporate a document by reference is made by the Director of Documents.** An agency must submit the entire text of each document to the Office of Documents for a determination whether to incorporate the document by reference. In addition, the Office of Documents must maintain a copy of the full text in its files.

#### FINAL RULES WHICH ARE IDENTICAL TO PROPOSED RULES

If the text of rules adopted by an agency is exactly the same as the text published with the notice of intent to adopt those rules (Notice of Proposed Rulemaking), there is no reason to publish the same material twice in the Register. In most cases, if the rulemaking material is short (one to ten pages), the Office of Documents will publish the final rules again for the convenience of DCR users. However, longer final rules will generally be published with a reference to the publication of the text of the proposed rules by D.C. Register volume, page, and publication date.

The complete text of final rules must be submitted to the Office of Documents even if it will not be published with the Notice of Final Rulemaking. Final rulemaking notices that are not accompanied by the complete text of the final rules as adopted will be rejected for publication.

### 3.12 TECHNICAL REQUIREMENTS FOR D.C. REGISTER DOCUMENTS

There are a number of technical requirements that each document submitted for publication in the D.C. Register must meet. In all cases, these requirements are based on the following basic criteria:

- (1) The Register must be produced at the **lowest possible cost** to maintain the fifty dollar (\$50) annual subscription fee;
- (2) The Register is the **official legal source** of many documents, including laws, regulations, and notices. Therefore, the contents of documents submitted for publication must be reproduced exactly; and
- (3) The contents of the Register must be **clearly written and legibly printed** so that they can be easily read and understood, and so that clean, readable photocopies of pages can be made.

#### QUALITY OF DOCUMENTS

The printing plates used to print the weekly Register are made from the original documents submitted to the Office of Documents for publication. By photographing the original documents, the District avoids the additional cost of typesetting the text of the Register, and also ensures that each document is reproduced faithfully and accurately (without extensive proofreading of the typeset copy).

The elimination of typesetting, in addition to reducing the cost of the Register, also allows an extremely short "turnaround" time for printing each weekly edition of the Register. Each 100-page edition of the Register is sent to the printer on Monday morning of each week (except those weeks that contain a holiday, when the Register is sent to the printer on the previous Friday). **The entire process of making photographic plates, printing and binding, affixing mailing address labels, and delivering the finished D.C. Register to the Post Office (or D.C. mail room) takes less than four days.**

To accomplish this efficient and timely publication schedule, the Office of Documents requires that documents submitted for publication in the Register be in "camera-ready" form. The original (or original quality) documents submitted to the Office of Documents, reviewed, certified, stamped with the publication date and "District of Columbia Register," and each page is sequentially numbered. In addition, the Office of Documents prepares a Table of Contents for each issue.

**Documents submitted to the Office that are not of sufficient quality to allow direct reproduction onto photographic plates cannot be published in the Register.** Therefore, any document which lacks suitable contrast between the black printing and the white paper (appears too "gray"), or which contains smudges or other extraneous marks, will be rejected for publication. The high quality of the Register is attributable to strict enforcement by the Office of Documents of the "original quality" requirement.

### 3.12 TECHNICAL REQUIREMENTS FOR D.C. REGISTER DOCUMENTS (Continued)

#### SINGLE-SPACING

Many of the documents reproduced in the Register before 1979 were double-spaced. At that time, the annual size of the Register was about 10,000 pages. However, much of those 10,000 pages was blank space. The cost of the paper and extra printing plates used to allow double-spaced text was considerable (about \$50,000 per year). The elimination of double-spacing has resulted in considerable savings, and the annual size of the Register has been reduced to less than 6,000 pages.

ALL DOCUMENTS SUBMITTED  
FOR PUBLICATION IN  
THE D.C. REGISTER  
MUST BE SINGLE-SPACED

Of course, extra spaces are permitted (even encouraged!) between sections and paragraphs of documents. The intention of the single-space requirement is to save space and costs, not to make documents unreadable.

#### PAPER SIZE AND MARGINS

The Register is printed on standard 8 1/2" x 11" stock. Therefore, all documents submitted for publication must be on that size paper. Documents on smaller letter-size paper or legal paper will not be accepted.

The photo-offset printing, perfect binding, and three-hole punching of the Register requires that the left and right margins of the actual text of each document not exceed certain limits. There must also be space at the top of each document to allow for the date and "District of Columbia Register" to be stamped, and space at the bottom for the page number.

**Documents that have text closer to the left margin than one inch (1"), or text closer to the right side, top, or bottom than 3/4", will be rejected.**

Margins that are too large waste space. Wasted space costs money. The Office of Documents requirement for MAXIMUM margins is 1 3/4" on the left side, and 1 1/4" on the right side, top, and bottom. Obviously, these are guidelines which need to be approached with common sense. For example, the maximum margin requirements do not prohibit further indentation when the particular document requires it (such as indentation for paragraphs, parts of notices to be highlighted, and lists or sub-paragraphs).

In most cases, the heading at the top of the page can be placed closer to the top than text (about 1/2" is usually sufficient). However, sufficient space must be left blank on the sides of the top of the page to allow for the date and "District of Columbia Register" stamps.

### 3.12 TECHNICAL REQUIREMENTS FOR D.C. REGISTER DOCUMENTS (Continued)

#### STYLE AND GRAMMAR

The requirement that documents be written in clear, concise English is very important. There is often a tendency to think that a legal document is only important if it "sounds" lofty and legalistic. However, overly complex and legalistic language is actually a barrier to good communication. The Office of Documents will not accept documents for publication (especially rulemaking documents) that are poorly written, contain grammatical errors, include misspelled words or typographical mistakes, or that include unnecessary "legalese."

An entire chapter of this manual (chapter 5) is devoted to the elements of good writing and the proper style for use in preparing documents for submission to the D.C. Register.

#### MISCELLANEOUS REQUIREMENTS

- (1) In most cases, **TWO (2) COPIES** of each document must be submitted to the Office of Documents. The original copy is sent to the printer to be photographed for the Register. The copy is retained in the files. The copy must be a duplicate original or a very good quality photocopy.
- (2) The use of beige, buff, grey, or any color of paper other than plain white opaque paper is prohibited.
- (3) Documents must be typed or printed on plain paper. The use of printed letterhead is prohibited.
- (4) Notices and other documents cannot be in the form of letters or memos. For example, occasionally the Office of Documents receives a memorandum addressed to the Director requesting that certain information be printed in the Register. The information is set forth in the memo, rather than being attached in a separate "camera-ready" notice. These requests for publication are rejected. Letters (or memos) should be used only for cover memos to identify the source of separate notices.
- (5) Notices and other documents should not be signed. The signature of the authorized official should be placed on the transmittal form. In some cases where a copy of a signature appears on a notice, the Office of Documents will delete the signature prior to publication.
- (6) Documents should be prepared to be read vertically. If a wide document must be submitted, it should be prepared using the proper margins, with the top of the document on the left margin.
- (7) Blank forms, and the instructions for filling out the forms, are usually not accepted for publication. A document referring to a form should indicate where copies of the form can be obtained.

### 3.13 SAMPLE FORMS OF NON-RULEMAKING NOTICES

The purpose of notices is simple - provide an official statement that informs the public of a government action or impending government action. The key to any notice is the provision of clear, accurate information. For this reason, it is important that all notices be written in concise English that can be easily read and understood by all D.C. Register users.

Each notice published in the Register should answer the following questions:

- (1) **WHO?** Which government agency or which government official is taking the action or conducting a hearing?
- (2) **WHAT?** What is the substance of the notice? A public hearing? An agency request for public review and comment on a state plan? The announcement of the proposed closing of a public facility? The results of a government study? Election results? A vacancy on an ANC? A government decision on a public issue?
- (3) **WHEN?** On what date was the action taken or decision made? When were the results made official? On what date and at what time will the hearing be held? What is the deadline for comment?
- (4) **WHERE?** At what location will the hearing be held? What room? What is the street address? What is the address of the public facility being closed? What is the location of the proposed site for the project? What ANC's or neighborhoods will the action affect?
- (5) **HOW?** What telephone number can a reader call for further information? What is the procedure for submitting comments? What statute or regulation is the action or proposed action based on or authorized by? Was the decision made by vote?

Persons drafting notices for the Register should put themselves in the place of a reader who has no knowledge of the action or proposed action. Ask yourself the kinds of questions that might arise. What questions did the public ask the last time this type of notice was published? Often, an agency can save considerable time and effort by including information in a notice that it knows the public will seek by phone after the notice is published.

#### HEADINGS

The simplest part of the notice is the heading. At the top of each notice, the NAME OF THE AGENCY, public official, or public body issuing the notice should be typed in all capital letters. The name should be centered on the page. Examples:

THE MAYOR OF THE DISTRICT OF COLUMBIA

D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D.C. BOARD OF EDUCATION

### 3.13 SAMPLE FORMS OF NON-RULEMAKING NOTICES (Continued)

#### HEADINGS (Continued)

In addition to the name of the agency, a notice should also have a short headline indicating the type of notice. This line should be placed directly below the name of the agency and directly above the text of the notice. The type of notice heading may be offset by underlining it or enclosing it in lines. If there is no simple, informative heading for the notice, simply use the heading "PUBLIC NOTICE." Examples:

NOTICE OF PUBLIC HEARING

NOTICE OF INTENT TO CLOSE PUBLIC SCHOOL BUILDINGS

REQUEST FOR COMMENTS ON STATE PLAN

PUBLIC NOTICE

The combined agency/notice type heading should then look something like one of the following:

D.C. PUBLIC SERVICE COMMISSION

NOTICE OF PUBLIC HEARING

D.C. BOARD OF EDUCATION

NOTICE OF INTENT TO CLOSE PUBLIC SCHOOL BUILDINGS

Sometimes an extra line can be helpful to make the announcement clearer or avoid a long heading that stretches to the margins:

NOTICE OF PUBLIC HEARING  
ON DEMOLITION OF RHODES TAVERN

Remember, you must leave room on the sides of the heading for the Office of Documents to place the words "District of Columbia Register" (left side) and stamp the date (right side). Example:

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(top of Page)

D.C. DEPARTMENT OF HUMAN SERVICES

REQUEST FOR PUBLIC COMMENT ON FEDERAL  
GRANTS RELATED TO CHILD CARE PROGRAMS

3.13 SAMPLE FORMS OF NON-RULEMAKING NOTICES (Continued)

PUBLIC HEARING NOTICES

Most public hearing notices give a detailed explanation of the purpose of the hearing and other information. All of the information should be clearly set out in the notice. Example:

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PUBLIC HEARING

Wednesday, April 6, 1983

7:30 p.m.

U.S. Department of Commerce  
First Floor Auditorium  
14th St. between E St. and Constitution Ave.  
(Entrance on 14th Street)

The D.C. Department of Housing and Community Development will conduct a public hearing to receive comments on the Proposed Statement of Community Development Objectives and Projected Use of Funds and Program Description for the District's Ninth (9th) year COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CD-9) which is funded under Title I of the "Housing and Community Development Act of 1974," as amended. This grant will cover the period from October 1, 1983, to September 30, 1984.

Community views on community development and housing needs in the District will also be received at this hearing. The Proposed Statement will be made public prior to the hearing, and will be available for public review on March 25, 1983 at the following locations:

D.C. Department of Housing and Community Development  
Room 217 1133 North Capitol Street, N.E.

[List of other locations omitted in this example]

Each individual or representative of an organization who wishes to present testimony at the public hearing is requested to furnish his or her name, address, telephone number, and name of organization represented (if any) by calling 535-1506 no later than 4:45 p.m., Tuesday, April 5, 1983.

All oral presentations will be limited to five (5) minutes. Written statements may be submitted for the record until 4:45 p.m., April 12, 1983. Written statements should be addressed to: James E. Clay, Acting Director, DHCD, Room 217, 1133 N. Capitol St. N.W., Washington, DC 20002.

3.13 SAMPLE FORMS OF NON-RULEMAKING NOTICES (Continued)

OTHER PUBLIC NOTICES

The goal of putting a lot of information in a concise, readable official notice is reachable. Example:

DEPARTMENT OF HUMAN SERVICES

ADOPTION OF AMENDMENT TO STATE HEALTH PLAN

The Director of the Department of Human Services, the D.C. State Health Planning and Development Agency (SHPDA), and the D.C. Statewide Health Coordinating Council (SHCC), pursuant to the authority set forth in Mayor's Order No. 76-59 (2-4-76), Mayor's Order No. 77-43 (3-15-77), Reorganization Plan No. 2 of 1979, and D.C. Code, §32-304 and §32-316 (1981 Ed.) give notice of the final adoption of amendments to the Chronic Renal Dialysis Services Section of the 1981-86 D.C. State Health Plan (see 30 DCR 244), effective upon publication of this notice. Copies of the amendments may be obtained from the Plan Development and Implementation Branch, D.C. SHPDA, 1420 New York Avenue, N.W., 5th Floor, Washington, DC 20005.

Even though it takes up very little space, the Register users who are interested in DHS activities will be able to glean a wealth of information from this notice. An important feature of the DHS notice is an address to which readers can write for additional information or copies of the action.

The following is an example of another public information notice:

BOARD OF ELECTIONS AND ETHICS

CERTIFICATION OF ANC/SMD VACANCY

The D.C. Board of Elections and Ethics hereby gives notice that, as of April 4, 1983, it has certified the following vacancy, pursuant to D.C. Code, §1-257(d)(5) (1981 Ed.):

THE VACANCY IS:                   ANC: 7B           SMD: 7B/04

The Advisory Neighborhood Commission must fill this vacancy within sixty (60) days from the date of publication of this notice.

Nominating petitions will be available in Room 7 of the District Building on and after 9:00 a.m., April 7, 1983, and must be filed no later than 4:45 p.m. on May 6, 1983. Petitions will be posted on May 11, 1983, (the 3rd working day after the filing deadline) for ten (10) working days.

### 3.14 RULEMAKING NOTICES: HEADINGS

Although the requirements for public hearing notices and other notices are rather flexible, the requirements for rulemaking notices are very strict, and must be followed exactly.

The **top line** of the heading of each rulemaking notice is the same as other notices. The name of the agency should be centered at the top of the notice. Example:

DEPARTMENT OF TRANSPORTATION  
OFFICE OF HUMAN RIGHTS  
COMMISSION ON LICENSURE TO PRACTICE THE HEALING ARTS

The **second line** of the heading of a rulemaking notice identifies the type of notice. The second line must be one of the following:

NOTICE OF PROPOSED RULEMAKING  
NOTICE OF FINAL RULEMAKING  
NOTICE OF EMERGENCY RULEMAKING  
NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

Although it is not required, if an agency uses a formal title for its rulemaking actions (such as the Public Service Commission), it may include the formal title as part of the heading of the rulemaking notice. This form should only be used when the rulemaking action also has a formal case number or docket number. Example:

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
NOTICE OF PROPOSED RULEMAKING  
Formal Case No. 797, In the Matter of Revisions to the Rules  
Governing the Operation of Taxicabs in the District of Columbia

In all cases, the lines of the heading should be centered on the page, as shown in these examples. The name of the AGENCY and the TYPE OF ACTION should be in ALL UPPER CASE LETTERS. Formal case titles, when used, should be in upper and lower case letters, as shown in the example.

### 3.15 PROPOSED RULEMAKING NOTICES

Each proposed rulemaking notice contains two (2) parts. The first part is placed directly below the heading before the text of the proposed rule(s). This part of the notice must contain the following:

- (1) THE NAME OF THE PROMULGATING OFFICIAL OR GOVERNMENT AGENCY WHICH IS AUTHORIZED TO ISSUE THE RULES. Examples:

**The Public Service Commission of the District of Columbia hereby gives notice. . .**

**The Director of the D.C. Office of Personnel gives notice. . .**

- (2) LANGUAGE STATING THE INTENT TO ADOPT, AMEND, OR REPEAL THE RULE(S) IN NOT LESS THAN THIRTY (30) DAYS from the date of publication of the notice in the D.C. Register. (A longer period may be stated if required by law or adopted by the agency.) Examples:

**The Public Service Commission of the District of Columbia hereby gives notice of its intent to adopt the following amendment . . .in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. . .**

**The Director of the D.C. Office of Personnel gives notice of his intent to adopt the following [new personnel rules] in not less than sixty (60) days from the date of publication of this notice. . .**

- (3) A CITATION TO THE RULE(S) AMENDED OR REPEALED, OR THE PROPOSED CITATION OF THE NEW RULES(s); and
- (4) A BRIEF DESCRIPTION OR TITLE OF THE PROPOSED RULE(S). Examples:

**The Public Service Commission of the District of Columbia hereby gives notice of its intent to adopt the following amendment to §310 of chapter 3 of Title 15 DCMR in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed amendment will permit shared riding in taxicabs only if the driver obtains the consent of the passenger(s) already riding in the cab. . .**

**The Director of the D.C. Office of Personnel gives notice of his intent to adopt the following new chapter 6 of Title 5 DCMR, entitled "ANNUAL LEAVE POLICY," in not less than sixty (60) days from the date of publication of this notice. . .**

### 3.15 PROPOSED RULEMAKING NOTICES (Continued)

- (5) IF THE PROPOSED RULES ARE BEING RE-PUBLISHED, pursuant to §510.5 of the Rules of the Office of Documents, A CITATION TO THE PREVIOUS NOTICE(S) OF PROPOSED RULEMAKING published in the D.C. Register. Examples:

The Director of the D.C. Office of Personnel gives notice of his intent to adopt the following new chapter 6 of Title 5 DCMR, entitled "ANNUAL LEAVE POLICY," in not less than sixty (60) days from the date of publication of this notice. **This notice supersedes the Notice of Proposed Rulemaking published at 24 DCR 1678 (July 12, 1982). . .**

or:

The Director of the D.C. Office of Personnel gives notice of his intent to adopt the following new chapter 6 of Title 5 DCMR, entitled "ANNUAL LEAVE POLICY," in not less than sixty (60) days from the date of publication of this notice. **Notice of Proposed Rulemaking is being republished pursuant to §510 of the Rules of the Office of Documents. The prior notice was published at 24 DCR 1678 (July 12, 1982). . .**

### 3.16 PROPOSED RULEMAKING NOTICES: PUBLIC INFORMATION AND COMMENT

The second part of a proposed rulemaking notice is placed at the end of the text of the proposed rule(s). This final part of the notice must contain the following information:

- (1) THE MANNER IN WHICH PUBLIC COMMENT WILL BE RECEIVED, including a mailing address or other pertinent information. Example:

**All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the Register. Comments should be filed with the Secretary to the Public Service Commission, 451 Indiana Avenue, N.W., Room 220, Washington, DC 20001. . .**

and

- (2) THE MANNER IN WHICH COPIES OF THE PROPOSED RULE(S) MAY BE OBTAINED, upon request, including a requirement for payment of a reasonable fee, if applicable. Examples:

**. . .Copies of the proposed rules may be obtained from the Commission at the address stated above.**

**Comments on the proposed rules should be sent in writing to (and copies of the proposed rules may be obtained from) the D.C. Office of Personnel, Room 606, 614 H Street, N.W., Washington, DC 20001. A copying fee of one dollar (\$1) will be charged for each copy of the proposed chapter requested.**

### 3.17 PROPOSED RULEMAKING NOTICES: SAMPLE NOTICE

When all of the elements of the proposed rulemaking notice are present, the full notice requirements of the D.C. Administrative Procedure Act are met. The public is fully informed of the proposed action and the manner in which interested persons can provide comments, criticism, and other input into the rulemaking process.

The following is an example of a complete proposed rulemaking notice:

[top of page]

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#### PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

##### NOTICE OF PROPOSED RULEMAKING

##### Formal Case No. 797, In the Matter of Revisions to the Rules Governing the Operation of Taxicabs in the District of Columbia

The Public Service Commission of the District of Columbia hereby gives notice of its intent to adopt the following amendment to §310 of chapter 3 of Title 15 DCMR in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed amendment will permit shared riding in taxicabs only if the driver obtains the consent of the passenger(s) already riding in the cab.

**Proposed Amendment:** Delete the present language of §310.2(b) and substitute the following amended paragraph:

310.2(b) Shared riding, subject to the provisions of §305.7 (dogs and small animals) and §310.3 (general limitations on shared riding), shall be permitted only with the permission of the first passenger or group of passengers to board the taxicab.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the Register. Comments should be filed with the Secretary to the Public Service Commission, 451 Indiana Avenue, N.W., Room 220, Washington, DC 20001. Copies of these proposed rules may be obtained from the Commission at the same address.

### 3.18 FINAL RULEMAKING NOTICES

Each document submitted to the Office of Documents for publication as a final rule, including any document giving notice of the final adoption of a new rule, or the amendment or repeal of an existing rule, must include all of the following elements in a notice placed between the heading and above the text of the final rules:

- (1) THE NAME OF THE PROMULGATING OFFICIAL OR GOVERNMENT AGENCY THAT IS AUTHORIZED TO ISSUE THE RULES. Examples:

**The Board of Education of the District of Columbia hereby gives notice. . .**

or

**The Director of the D.C. Department of Transportation gives notice. . .**

- (2) THE DATE ON WHICH THE FINAL ACTION WAS TAKEN. This is the date on which the government official who has authority to issue the rules signed off on the rules, or the date on which a public vote to adopt the final rules was taken by a board, commission, or other government agency. Examples:

**The Board of Education of the District of Columbia, at its regular meeting held April 13, 1983, took final action to adopt. . .**

or

**The Director of the D.C. Department of Transportation hereby gives notice of the adoption of [description of the rules]. Final action to adopt these rules was taken on April 5, 1983.**

- (3) A BRIEF DESCRIPTION OR TITLE OF THE RULE(S). Examples:

**The Board of Education of the District of Columbia, at its regular meeting held April 13, 1983, took final action to adopt the following amendments to §410 and §411 of chapter 4 of the Rules of the Board of Education. . .**

or

**The Director of the D.C. Department of Transportation hereby gives notice of the adoption of amendments to Title 18 DCMR, chapter 6, which permit the registration of motor vehicles by non-resident corporations. Final action to adopt these rules was taken on April 5, 1983. . .**

### 3.18 FINAL RULEMAKING NOTICES (Continued)

- (4) A CITATION TO THE NOTICE(S) OF PROPOSED RULEMAKING PREVIOUSLY PUBLISHED IN THE D.C. REGISTER. Example:

The Board of Education of the District of Columbia, at its regular meeting held April 13, 1983, took final action to adopt the following amendments to §410 and §411 of chapter 4 of the Rules of the Board of Education. **Notice of Proposed Rulemaking was published in the Register on March 11, 1983, at 30 DCR 563.**

- (5) THE EFFECTIVE DATE OF THE FINAL RULE(S). If no effective date is stated, it will be presumed that the rule(s) will become effective upon publication of the notice of final rulemaking in the D.C. Register. Under the Documents Act, a final rule cannot be effective before it is published in the D.C. Register. Therefore, the earliest effective date for a rule is the publication date of the Register in which the Notice of Final Rulemaking is published. Example:

The Director of the D.C. Department of Transportation hereby gives notice of the adoption of amendments to Title 18 DCMR, chapter 6, which permit the registration of motor vehicles by non-resident corporations. Final action to adopt these rules was taken on April 5, 1983. Notice of Proposed Rulemaking was published on March 4, 1983 (30 DCR 920). **These final rules will be effective ten (10) days after publication of this notice in the D.C. Register.**

### 3.19 TEXT OF FINAL RULES: INCORPORATION BY REFERENCE

The Director of Documents may omit publication of the text of a final rulemaking document if the final text is IDENTICAL to the text published with the notice of proposed rulemaking. **NOTE: An agency must file two (2) copies of the final text with the final rulemaking transmittal form, even if the text is the same as the proposed rules!** The notice is the same, except that language referring to the incorporation by reference is included. The following example is a complete Notice of Final Rulemaking which omits the text of the rules:

#### D.C. BOARD OF EDUCATION

#### NOTICE OF FINAL RULEMAKING

The Board of Education of the District of Columbia, at its regular meeting held April 13, 1983, took final action to adopt the following amendments to §410 and §411 of chapter 4 of the Rules of the Board of Education. **No changes have been made to the text of the proposed rules, as published with the Notice of Proposed Rulemaking in the D.C. Register on March 11, 1983, at 30 DCR 563. These final rules will be effective upon publication of this notice in the Register.**

### 3.20 EMERGENCY RULEMAKING NOTICES

Notice of the adoption of a new rule on an emergency basis (or the amendment or repeal of an existing rule on an emergency basis) is similar to the type of notice required for final rules. The first five elements of a Notice of Emergency Rulemaking are almost the same as the final rulemaking notice elements, as follows:

- (1) THE NAME OF THE PROMULGATING OFFICIAL OR GOVERNMENT AGENCY AUTHORIZED TO ISSUE THE RULE(S).
- (2) A BRIEF DESCRIPTION OR TITLE OF THE RULE(S).
- (3) A CITATION TO THE EXISTING RULE BEING TEMPORARILY AMENDED OR SUSPENDED, OR A TEMPORARY CITATION FOR A NEW RULE BEING ADOPTED ON AN EMERGENCY BASIS. Care should be taken that a "temporary" citation to a new rule does not duplicate an existing DCMR section citation.
- (4) THE DATE ON WHICH THE EMERGENCY RULEMAKING ACTION WAS TAKEN.
- (5) THE EFFECTIVE DATE OF THE EMERGENCY RULE(S). Usually, the effective date is the date of adoption, since the one hundred twenty (120) day maximum effective period for emergency rules begins on the date of adoption of the emergency rule(s), regardless of the actual effective date stated in the notice. Sometimes a brief delay in the effective date is included to allow time for actual notice to be given to affected persons. In other words, emergency rules may take effect on the date of adoption, or on the date of publication in the D.C. Register, or on another date after adoption; BUT the 120-day effective period begins to run on the date of adoption.

The following is a PARTIAL sample Emergency rulemaking notice containing the first five elements:

#### DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

##### NOTICE OF EMERGENCY RULEMAKING

The Director of the D.C. Department of Consumer and Regulatory Affairs gives notice of the adoption on an emergency basis of an amendment to Chapter 8 of Title 14 DCMR, "Housing Code," by adding a new §608. The new section will require the treatment of standing and recirculated water in apartment and hotel building air conditioning units with chlorine. . . This emergency rule was adopted on March 10, 1983, and became effective immediately on that date. . .

### 3.20 EMERGENCY RULEMAKING NOTICES (Continued)

In addition to the first five elements (which are similar to other rulemaking notices), an emergency rulemaking notice must include the following two additional elements:

- (6) A STATEMENT GIVING THE JUSTIFICATION FOR EMERGENCY RULEMAKING ACTION WHICH CLEARLY EXPLAINS WHY THE ACTION IS NECESSARY FOR THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH, SAFETY, WELFARE, OR MORALS.

This is the most important element of an emergency rulemaking notice, since an agency cannot adopt a rule on an emergency basis unless it has found justification serious enough to meet this standard. A Notice of Emergency Rulemaking that lacks this statement, or a notice in which the statement is incomplete or does not state an emergency that meets the criteria of the D.C. Administrative Procedure Act will not be published in the D.C. Register.

and

- (7) THE DATE OF EXPIRATION OF THE EMERGENCY RULE(S).

The following is a sample Notice of Emergency Rulemaking that contains all of the required elements:

#### DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

##### NOTICE OF EMERGENCY RULEMAKING

The Director of the D.C. Department of Consumer and Regulatory Affairs gives notice of the adoption on an emergency basis of an amendment to Chapter 8 of Title 14 DCMR, "Housing Code," by adding a new §608. The new section will require the treatment of standing and recirculated water in apartment and hotel building air conditioning units with chlorine.

This emergency action is based on the receipt of notice from the Center for Disease Control in Atlanta, Georgia, that the so-called "Legionaire's Disease" is caused by an organism that grows in cooling tank water and other standing water. The treatment of this water with chlorine to kill the disease-causing agent is necessary for the immediate protection of the public health and justifies emergency action. This emergency rule was adopted on March 10, 1983, and became effective immediately on that date. This emergency rule will expire on July 9, 1983.

§608 All multiple dwellings covered by this title which utilize air conditioning systems with cooling tanks or other recirculated water units shall add a sufficient amount of an approved chlorine preparation to the water to maintain a one percent (1%) concentration of the chlorine at all times.

### 3.21 COMBINED EMERGENCY AND PROPOSED RULEMAKING NOTICES

A notice of emergency rulemaking may be combined with a notice of proposed rulemaking. Combined notices are used in cases where the agency intends to adopt a permanent rule and has justification under the APA for the immediate adoption of an emergency rule. **Combined Emergency and Proposed Rulemaking notices must meet all of the requirements for both Notices of Proposed Rulemaking and Notices of Emergency Rulemaking.**

The wording of a combined notice must clearly indicate the dual nature of the action. It is especially important to recognize that a final rule could be adopted after a 30-day notice period, and that the publication of a final rule in the Register should also have the effect of superseding the emergency rule (if the 120-day period has not expired).

The following is a sample Notice of Emergency and Proposed Rulemaking that contains all of the required elements:

#### DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

##### NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the D.C. Department of Consumer and Regulatory Affairs gives notice of the adoption on an emergency basis of an amendment to Chapter 8 of Title 14 DCMR, "Housing Code," by adding a new §608. The new section will require the treatment of standing and recirculated water in apartment and hotel building air conditioning units with chlorine.

This emergency action is based on the receipt of notice from the Center for Disease Control in Atlanta, Georgia, that the so-called "Legionaire's Disease" is caused by an organism that grows in cooling tank water and other standing water. The treatment of this water with chlorine to kill the disease-causing agent is necessary for the immediate protection of the public health and justifies emergency action. This emergency rule was adopted on March 10, 1983, and became effective immediately on that date.

The Director also gives notice of intent to take final rulemaking action to adopt this amendment in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The emergency rule will expire on July 9, 1983, or upon publication of a Notice of Final Rulemaking in the Register, whichever occurs first.

§608 All multiple dwellings covered by this title which utilize air conditioning systems with cooling tanks or other recirculated water units shall add a sufficient amount of an approved chlorine preparation to the water to maintain a one percent (1%) concentration of the chlorine at all times.

### 3.22 RULEMAKING TRANSMITTAL FORM

Each rulemaking document submitted for publication in the Register must be accompanied by a RULEMAKING TRANSMITTAL FORM. The form must be filled out completely with all the required information, and must contain both required signatures.

The Rules of the Office of Documents also include the following specific requirements for filling out transmittal forms:

- (1) **The transmittal form must include the signature of the PROMULGATOR of the rules.** That person is either of the following:
  - (a) The D.C. government official who is authorized by statute, regulation, or Mayor's Order to issue the rules; or
  - (b) The official legally designated to attest to the adoption of rules by a quasi-legislative or administrative body composed of more than one person (For example, the Executive Secretary to the D.C. Board of Education signs the form attesting to the adoption of rules by vote of the Board at an official public meeting.)
- (2) **The signature must be personally executed by the authorized official.** Signatures of persons not legally vested with authority to adopt rules or attest to the adoption of rules by a rulemaking body will not be accepted. In other words, an authorized official's signature cannot be placed on a transmittal form by his or her deputy or secretary (even if that other person initials the signature).
- (3) **The transmittal form must contain legal certification.** The signature of the Corporation Counsel, designated Assistant Corporation Counsel, or approved agency counsel certifies that the substance of the text of the rule(s) has been reviewed and is, in the opinion of legal counsel, legally sufficient. Certification of proposed rules may be conditioned upon review of final rules. If proposed rules have been given final certification, and the text of the rules is not modified prior to final rulemaking action, the final rules do not require legal certification.
- (4) **The transmittal form must include a complete citation to the statute or other legal authority for the promulgation of the rules** (including the applicable section, subsection, and paragraph) for each of the following:
  - (a) The legal authority for the official or entity named in the transmittal form as the promulgator to adopt the rules; and
  - (b) The legal authority for the adoption of the substance of the rules.

The information on transmittal forms should be typewritten or printed in clear, bold letters. These are official file documents, and are available to the public for review.

THE FOLLOWING TWO PAGES ARE SAMPLE RULEMAKING TRANSMITTAL FORMS. The first form is blank, and the second form is filled out as a sample.

RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: \_\_\_\_\_ EMERGENCY RULES  
\_\_\_\_\_ FINAL RULES \_\_\_\_\_ PROPOSED RULES \_\_\_\_\_ COMBINED

AGENCY: \_\_\_\_\_

DATE AND TIME RECEIVED  
Office of Documents use only

AGENCY REPRESENTATIVE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

TITLE AND DESCRIPTION OF RULES:

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed:

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: \_\_\_\_\_ DCR \_\_\_\_\_ DATE: \_\_\_\_\_

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules:

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.

SIGNED: \_\_\_\_\_ PHONE: \_\_\_\_\_  
NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

FINAL		CONDITIONAL
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PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote):  
\_\_\_\_\_  
TITLE: \_\_\_\_\_

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules:

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OR VOTE: \_\_\_\_\_ APPROVAL OR ATTEST: \_\_\_\_\_  
TITLE: \_\_\_\_\_ PHONE: \_\_\_\_\_

Office of Documents use only:  
THIS NOTICE PUBLISHED AT: VOL \_\_\_\_\_ DCR \_\_\_\_\_ DATE: \_\_\_\_\_

RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: \_\_\_\_\_ EMERGENCY RULES  
XX FINAL RULES \_\_\_\_\_ PROPOSED RULES \_\_\_\_\_ COMBINED

AGENCY: DEPARTMENT OF FINANCE AND REVENUE

AGENCY REPRESENTATIVE: JOHN A. SMITH

DATE AND TIME RECEIVED  
Office of Documents use only

ADDRESS: Room 9800, Municipal Center, 400 E St. TELEPHONE: 727-0000

TITLE AND DESCRIPTION OF RULES: Amendment to Title 9, DCMR, Chapter 38.  
Rules for the implementation of user charges for Potomac River bridges

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed:  
Amends 9 DCMR, chap. 38, §3803 and §3804

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 30 DCR 673 DATE: Feb. 18, 1983

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules:  
D.C. Law 3-980, §4(b); D.C. Code, §47-8956

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.

SIGNED: \_\_\_\_\_ PHONE: 727-9999  
NAME: Roberta T. Laws TITLE: Asst. Corp. Coun.

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote):  
JEFFREY P. HUMBLE TITLE: DIRECTOR

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules:  
D.C. Law 3-980, §5(a); D.C. Code, §47-8957; Mayor's Order No. 82-769

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OR VOTE: 3/30/83

APPROVAL OR ATTEST: \_\_\_\_\_  
TITLE: DIRECTOR PHONE: 727-1111

Office of Documents use only:  
THIS NOTICE PUBLISHED AT: VOL \_\_\_\_\_ DCR \_\_\_\_\_ DATE: \_\_\_\_\_

### 3.23 REJECTION OF DOCUMENTS SUBMITTED FOR PUBLICATION

One of the most important aspects of the broad authority vested in the Director of Documents under the provisions of the Documents Act is the power to reject documents submitted for publication in the D.C. Register that do not meet the publication standards of the Office of Documents.

The establishment and enforcement of high standards for documents to be published in the Register has resulted in a publication that is very readable and reliable. This is important, since **all documents published in the D.C. Register are CERTIFIED by the Director of Documents and are PRESUMED TO BE LEGALLY VALID.** For example, the publication of a rule in the Register creates a legal presumption that the agency issuing the rule is vested with the necessary legal authority to promulgate the rule.

The requirements that each document must meet in order to be published in the D.C. Register are set forth in the Rules of the Office of Documents. Those requirements are also explained in this manual. The D.C. Office of Documents conducts seminars in document preparation, offers a pre-publication review service, and will respond to inquiries from agencies on specific standards and requirements.

Even though the standards and requirements for Register publication are clearly stated in writing, a number of documents are rejected. In most cases, the rejected documents are submitted by agencies that have previously submitted acceptable documents. The major reason for the rejection of these documents is careless preparation.

The following are some of the most often repeated mistakes made in the preparation of documents:

- (1) **INCORRECT FORMAT** - The "#1" cause for the rejection of rulemaking documents is failure to adhere to the correct format and style requirements, especially the following:
  - (a) Incorrect margins - This includes text that is too close to the edge(s) of the page, and text that uses too little of the page (and thus wastes a lot of space);
  - (b) Sections and subsections with too many components - One of the key requirements of the DCMR format is simplicity. To make the DCMR more readable, the amount of information in each section and subsection is minimized. In other words, the DCMR is made easier to read by having each section limited to a single subject, and each subsection limited to a single provision (or related list of provisions); and
  - (c) Incorrect numbering - The DCMR numbering scheme is simple, but is sometimes ignored. Numbering errors include the incorrect number designation of chapters, sections, paragraphs, and subsections.

**SUGGESTION:** The DCMR format requirements are explained in detail in chapter 4 of this manual. Review that chapter before drafting each set of rules. Keep your rules simple and they will be easier to read and understand.

### 3.23 REJECTION OF DOCUMENTS SUBMITTED FOR PUBLICATION (Continued)

- (2) **REQUIRED PARTS OF NOTICE ARE MISSING** - There is a specific list of the required components of each type of rulemaking notice. Yet, one or more of these items of information is occasionally left out of a notice. The components most often overlooked are the following:
- (a) The date on which final rulemaking action was taken;
  - (b) A brief description or specific title of the rules;
  - (c) Information on how additional copies of proposed rules may be obtained; and
  - (d) An address for the submission of written comments on proposed rules.

**SUGGESTION:** Refer to this manual or a checklist to be sure that all of the required components are present in each notice. Don't rely on your memory...USE A CHECKLIST! (See §3.24)

- (3) **INADEQUATE JUSTIFICATION OF EMERGENCY RULEMAKING** - Before an agency can adopt emergency rules, it must find the existence of a legally valid emergency. In order to be valid, the adoption of emergency rules must be necessary for the immediate preservation of the public peace, health, safety, welfare, or morals. Simply noting that the agency "believes" an emergency exists is not sufficient. The notice must explain how the emergency circumstances threaten the public peace, health, safety, welfare, or morals; and state how the emergency rules will remedy those circumstances.

**SUGGESTION:** Make sure that there is a valid emergency before the rules are adopted. Write the emergency rulemaking justification before the rulemaking action is taken, and have the written justification for the emergency included in the rulemaking action. If you are not sure that the circumstances justify emergency rulemaking, check with one of the attorneys in the Office of Documents before the action is taken.

- (4) **INCORRECT CITATIONS TO LEGAL AUTHORITIES** - Each rulemaking transmittal sheet requires that the specific legal authorities for the rules must be cited. Each citation must be complete. It must include the section, subsection, and paragraph (if applicable), not just the law or act number. The purpose of these citations is to allow the Office of Documents to check and certify the authority. If the Office of Documents is unsure of the actual authority on which you rely (or cannot easily find the authority in a lengthy statute), it will reject the document and require a more specific citation.

**SUGGESTION:** Check the legal citations before you draft the rules. If you have any doubt about the legal authority for either the substance of the rules or the authority of your agency to adopt the rules, check with one of the attorneys in the Office of Documents before you submit the rules for publication. Use the pre-publication review process.

### 3.23 REJECTION OF DOCUMENTS SUBMITTED FOR PUBLICATION (Continued)

- (5) **IMPROPER SIGNATURES ON TRANSMITTAL FORM** - It is important to remember that the Rulemaking Transmittal Form is an official document that is part of each rulemaking submission to the Office of Documents. The signature on the form must be an original. The head of the agency or other person who is legally authorized to sign the form must actually sign it. For example, the Deputy Director of an agency is not usually vested with authority to approve rules and, therefore, cannot sign a Rulemaking Transmittal Form when the agency head is on vacation unless the Mayor has designated him or her the "Acting" Director.

**SUGGESTION:** Plan for rulemaking actions. If the head of the agency is going to be temporarily out of the District, make sure that any needed Rulemaking Transmittal Forms are signed before he or she leaves (or wait until the agency head returns rather than submitting a document with a signature of an unauthorized person).

- (6) **FAILURE TO MEET PUBLICATION DEADLINES** - Some notices must be published by a certain date in order to be valid. Waiting until the last minute can create a situation where the notice would be published too late to give the required amount of "prior notice." This usually happens when an agency ignores Office of Documents' deadlines for the submission of documents for publication in the Register. In some instances, a rulemaking document will be submitted past the deadline (or a lengthy document will be submitted too close to the deadline) and, although the document is not actually rejected, it will be held for an additional week to allow time for proper review.

**SUGGESTION:** Send notices to the Register as early as possible. Do not forget holidays, especially holidays that occur during the following week. Submit lengthy rulemaking documents several days in advance or submit them for pre-publication review before you have them adopted. If you call the Office of Documents and request a brief extension of the deadline, make sure you can meet the extended deadline. For example, if you request (and receive approval of) an extension until 3:00 p.m. on Friday, do not expect the document to be published if it is delivered to the Office of Documents at 5:00 p.m.

#### IF A DOCUMENT IS REJECTED. . .

The Office of Documents will send a written Notice of Rejection to the agency representative that explains the reasons for rejection.

An agency may appeal a rejection by submitting a written request for reconsideration by the Director of Documents. The request should state the reasons why the rejection was improper.

If a rulemaking document is rejected and re-submitted, it must be accompanied by a **NEW TRANSMITTAL SHEET**. A copy of the old transmittal sheet that accompanied the rejected document will not be accepted.

### 3.24 CHECKLIST FOR SUBMISSION OF DOCUMENTS

This checklist is to assist persons preparing documents for submission to the Office of Documents for publication in the D.C. Register.

#### ALL DOCUMENTS

- \_\_\_\_\_ The Document is required to be published in the Register, OR is authorized to be published in the Register, OR is of general public interest and is accompanied by a request for publication stating the reasons that it should be published.
- \_\_\_\_\_ The document is being submitted in time to give sufficient notice after the actual date of publication.
- \_\_\_\_\_ Two (2) copies of the document are being submitted.
- \_\_\_\_\_ One copy of the document is an ORIGINAL or is the same quality as an original.
- \_\_\_\_\_ The extra copy (if not also an original) is clear, dark, and legible.
- \_\_\_\_\_ The document is typewritten.
- \_\_\_\_\_ The document is on clean, plain, white paper.
- \_\_\_\_\_ The document has sufficient margin space.
- \_\_\_\_\_ The document is single-spaced.
- \_\_\_\_\_ The document does not contain large blank areas or wasted space.
- \_\_\_\_\_ The document reads vertically (from the top or the left side).
- \_\_\_\_\_ The document has been edited for proper spelling, punctuation, grammar, and other matters of style.
- \_\_\_\_\_ The contents of the notice are arranged in logical order, and the document is clearly written in plain English.
- \_\_\_\_\_ The name of the agency submitting the document is centered at the top of the document, and is in all upper case letters.
- \_\_\_\_\_ The heading (under the name of the agency) contains a caption for the notice that identifies the type of notice or simply states "PUBLIC NOTICE."
- \_\_\_\_\_ The (non-rulemaking) document is accompanied by a brief memorandum or note identifying the source of the document, giving a return address and telephone number, and clearly requests publication of the document in the D.C. Register.

### 3.24 CHECKLIST FOR SUBMISSION OF DOCUMENTS (Continued)

#### ADDITIONAL CHECKLIST FOR RULEMAKING DOCUMENTS

##### TEXT OF THE RULES:

- The sections, subsections, and paragraphs are codified in the proper DCMR numbering system (or other temporary numbering system approved in advance by the Office of Documents).
- Each subsection contains only a single provision.
- The document has the proper indentations and margins for sections, subsections, and paragraphs.
- The document is free from "legalese" and sex-based terminology.
- Each section has a concise, accurate, specific heading that is typed in all upper case letters.
- Section headings are not underlined.
- Subsections do not have headings.
- Provisions are written in plain English, with an emphasis on simple, understandable sentences.
- If the document is final rules, the text has not been substantially altered from the proposed rules.

##### TRANSMITTAL FORM:

- The document is accompanied by a properly signed transmittal form.
- The legal sufficiency of the substance of the rules has been certified.
- The legal citation to the authority for the issuance of the substance of the rules is a complete citation by section and subsection.
- The legal citation to the authority for the official or governmental body to adopt the rules is a complete citation by section/subsection.
- The title and description of the rules clearly identifies the rules.
- The actual signature of the authorized official is attached and dated.
- All of the required components are included in the notice.
- The proper heading is at the top of the notice.

## CHAPTER 4 D.C. MUNICIPAL REGULATIONS FORMAT

### 4.1 THE PROBLEM: LACK OF UNIFORMITY

When the D.C. Administrative Procedure Act was enacted in 1968, it required the publication of all District rules and regulations, but it made no provision for uniformity in the format and numbering of the regulations. Since no uniform numbering and format standards or guidelines had existed prior to the APA, the compilation known as the D.C. Rules & Regulations simply reproduced existing formats and numbering schemes. In essence, this meant that there were almost as many different numbering and format styles as there were different regulations.

The lack of a uniform format and numbering system for District rules and regulations was identified by the Advisory Commission on Codification as one of the problems that made the compilation of the D.C. Municipal Code (the unpublished predecessor of the DCMR) an almost impossible task. The Advisory Commission recommended that the creation of a uniform format, numbering system, and style for the new D.C. Municipal Regulations (DCMR) be one of the initial priorities of the Office of Documents.

### 4.2 A STANDARD FORMAT

The Documents Act requires the implementation of a uniform format for the DCMR, and provides authority for the Director of Documents to do the following:

**. . . establish editorial standards for the removal of unnecessary sex-based terminology in documents and for the numbering, grammar, and style of all documents to be published pursuant to this subchapter. . .**

D.C. Law 2-153, §3 [D.C. Code, §1-1612(e)]

The Rules of the Office of Documents, §513, establish the structure of the DCMR, and provide for a uniform numbering system for all District rules and regulations.

The DCMR format was developed by the Office of Documents to meet the need for a municipal regulations codification system that was easy to use and relatively simple to implement. The Office conducted considerable research and review of the Code of Federal Regulations (CFR) and numerous other codifications of municipal ordinances and state regulations in other jurisdictions. Two of the most prevalent problems encountered (especially with the CFR, which is almost unreadable) were the difficulty in finding and citing specific regulations, and the problem of lack of flexibility in numbering systems (which made it difficult to amend existing numbered regulations without resorting to lengthy decimal systems or sub-parts).

## 4.2 A STANDARD FORMAT (Continued)

Most of these problems seemed to be caused by codification systems that were "bottom heavy." In other words, the system for identifying subsections and divisions of subsections required the addition of more numbers (behind the decimal point) or the division of large sections into many subsections, paragraphs, sub-paragraphs, and so on.

The federal CFR provides many horrible examples. One example is the following single provision of the regulations in Title 21 CFR (Food & Drug Administration):

Title 21 CFR	Food and Drugs
Chapter 1	Food and Drug Administration, Department of Health and Human Services
Part 558	New Animal Drugs for Use in Animal Feeds
Subpart B	Specific New Animal Drugs for Use in Animal Feeds
Section 558.415	Novobiocin
Subsection (f)	Conditions of Use
Paragraph (2)	Turkeys
Subparagraph (iii)	Amount
Sub-subparagraph (b)	Limitations

**Title 21 CFR, Chapter 1, Part 558, Subpart B, §558.415(f)(2)(iii)(b)** is approximately 30 words in length. It takes longer to read the citation than to read the substance of the provision. It takes even longer to figure out what the actual citation is, since the section begins on the previous page.

To avoid the problem of lengthy citations and complex numbering schemes, the Office of Documents decided that a "top-heavy" numbering scheme should be used. In other words, a more simple codification system could be applied to the District's regulations by eliminating "Parts" and "Subparts," as well as the need for a proliferation of paragraphs and subparagraphs. The new numbering system would also eliminate the need for multiple "headings" on each subdivision, most of which could never be indexed or included in a table of contents anyway.

The DCMR format is based on the use of a numbering system that allows for an infinite number of chapters (each of which can contain 100 sections) and an infinite number of subsections within each section.

Further, only chapters and sections are given "headings," and those headings must actually be descriptive of the specific contents.

The actual codification system developed by the Office of Documents for the DCMR is an adaptation (with minor modifications and improvements) of the numbering system developed and used by the D.C. Board of Education for the re-writing and recodification of the Rules of the Board of Education (a project which was accomplished between 1974 and 1979).

## 4.2 A STANDARD FORMAT (Continued)

The following is a comparison of the codification structures of the D.C. Municipal Regulations (DCMR) and the Code of Federal Regulations (CFR):

<u>CODE OF FEDERAL REGULATIONS</u>	<u>D.C. MUNICIPAL REGULATIONS</u>
Title 21	Title 21
Chapter 1	Chapter 1
Part 500	Section 100
Subpart B	Subsection 100.12
Section 500.312	Paragraph 100.12(a)
Subsection 500.312(a)	Subparagraph* 100.12(a)(2)
Paragraph 500.312(a)(2)	(* rarely used)
Subparagraph 500.312(a)(2)(iii)	
Sub-subparagraph 500.312(a)(2)(iii)(b)	

Although the federal influence over the District was already in evidence in many of the D.C. Rules & Regulations numbering schemes, the codification structure adopted by the Office of Documents for the new DCMR will gradually eliminate all non-conforming numbering schemes and require that new rules or amendments to DCMR rules be submitted to the Register in the new format.

## 4.3 THE DCMR CODIFICATION STRUCTURE

The major divisions of the D.C. Municipal Regulations (DCMR) are TITLES, each of which brings together broadly related rules and regulations by subject matter categories. Unlike the CFR and several state codes, that use a separate title for each government agency, the DCMR includes all related regulations in the same TITLE, regardless of the agency which enforces each particular provision. Titles of the DCMR are designated by the Office of Documents.

SUBTITLES may be assigned by the Office of Documents to group chapters within a title by specific subject matter or agency. Chapters grouped within a subtitle may be made available to the public separately by subtitle.

The divisions of each title are CHAPTERS. Chapters are assigned or approved by the Office of Documents on the basis of subject matter. Each chapter has a descriptive heading.

The divisions of each chapter are SECTIONS. Each section consists of a unified body of rules that covers a specific, closely related segment of the subject matter covered in the chapter. Each section has a descriptive heading.

### 4.3 THE DCMR CODIFICATION STRUCTURE (Continued)

The major divisions of each section are SUBSECTIONS. Subsections are the basic units of the D.C. Municipal Regulations. Each subsection contains a single, specific requirement, provision, or declarative statement of policy.

Generally, subsections consist of one sentence or, occasionally, two (2) or three (3) sentences. Subsections do not have descriptive headings.

Subsections may include PARAGRAPHS and SUBPARAGRAPHS that set forth lists, examples, or subdivisions of the specific provision set forth in the subsection. However, paragraphs and subparagraphs are not used to include separate, distinct provisions which should be put into separate subsections.

### 4.4 THE DCMR NUMBERING SYSTEM

The various divisions of the D.C. Municipal Regulations are numbered in the following manner:

**TITLES** Consecutively numbered in Arabic numerals. Each title is named according to the general subject matter of the title.

Example: Title 1, Title 2, Title 3 . . . .

Example: **Title 23, "Alcoholic Beverages and Food"**

**SUBTITLES** Do not have numbers. Subtitles have descriptive headings (names) that indicate the subject matter of the chapters contained in the subtitle.

Example: Title 23, "Alcoholic Beverages and Food"

**Subtitle - "Food and Food Operations"**

NOTE: Subtitles are used for convenience only, to help identify a part of a title published in a separate booklet, or to identify groups of chapters within a single title that are closely related. The subtitle is not part of the DCMR numbering scheme and generally should not be included in a citation to a provision of the DCMR.

**CHAPTERS** Consecutively numbered in Arabic numerals throughout each title. Each chapter is named according to the subject matter of the rules in the chapter.

Example: Chapter 1, Chapter 2, Chapter 3 . . . .

Example: Title 23, "Alcoholic Beverages and Food"

**Chapter 35, "Private Dining Facilities"**

#### 4.4 THE DCMR NUMBERING SYSTEM (Continued)

**SECTIONS** Are numbered consecutively in Arabic numerals throughout each chapter. Each section is named for the specific subject matter of the rules contained in the section.

Example: In chapter 35 - §3500, §3501, §3502 . . . .

**NOTE:** Section numbers are at least 3 digits long. The first one or two digits in the section number are the same as the chapter number. The last two digits identify the specific section of the chapter. Therefore, **all sections in a single chapter begin with the same number** (the chapter number).

Example: Title 21, "Water and Sanitation"  
Chapter 35, "Private Dining Facilities"  
Section 3500, "Licensing Requirements"  
Section 3501, "Application for License"  
Section 3502, "Compliance with Laws and Regulations"

**SUBSECTIONS** Are numbered consecutively in Arabic numerals throughout each section. The subsection numbers are placed to the right of the section number, separated by a decimal point. Subsections do not have headings.

Example: In section 3501 - subsections 3501.1, 3501.2, 3501.3 . .

Example: In (title) 23 DCMR, section 3501 - the first subsection is designated 3501.1, as follows:

**3501.1 Applications for licenses shall be made to the Director on a form provided by the Director.**

**PARAGRAPHS** Are lettered consecutively in lower case Arabic letters set within parentheses. Paragraphs do not have headings.

Example: In §3500.7, the paragraphs are (a), (b), and (c) . . .

Example: The following is a complete example of a subsection with paragraphs from Title 23 DCMR, Chapter 35, section 3500:

3500.7 The requirements of this chapter do not apply to any person operating a food establishment in the following places:

- (a) A private home;
- (b) A club, church, school, or similar non-public facility that serves occasional meals not more than twenty-four (24) times during a twelve (12) month period; or
- (c) A club, church, school, or similar non-public facility that solely provides "pot luck dinners" for charity.

#### 4.4 THE DCMR NUMBERING SYSTEM (Continued)

**SUBPARAGRAPHS** Are alternatively numbered and lettered in outline style, as follows:

- (1), (2), (3),
- (1)(A), (1)(B), (1)(C),
- (1)(A)(i), (1)(A)(ii), (1)(A)(iii)

**NOTE:** Subparagraphs are very rarely used in the DCMR. There is only one example of a subsection containing subparagraphs in the entire Title 23, as follows:

Example: 23 DCMR, Chapter 10, "ABC Board Hearings"

1000.1 This chapter shall govern the following proceedings initiated before the Alcoholic Beverage Control Board (also referred to in this chapter as the "ABC Board" or the "Board"):

- (a) Proceedings for the issuance, transfer, suspension, or revocation of a license under the authority of the District of Columbia Alcoholic Beverage Control Act (Title 25 D.C. Code, 1967 Ed., as amended) (the "Act");
- (b) Proceedings for appeal to the Mayor of a decision of the ABC Board ordering one of the following actions with respect to a license issued under the Act:
  - (1) **Revocation; or**
  - (2) **Suspension for more than thirty (30) days.**

#### RULES DRAFTING HINTS

Paragraphs and subparagraphs are almost always used for LISTS. In most cases, a paragraph or subparagraph will follow a phrase like "one of the following:"

If you discover that a draft set of rules contains a lot of paragraphs and subparagraphs, try re-drafting the rules to use more sections and subsections. In other words, make the rules more "top-heavy."

Paragraphs and subparagraphs should not be used to explain the contents of a subsection or paragraphs of a subsection. Put the explanatory material or qualifying material in a new subsection, and refer to the qualified or explained subsection by number.

#### 4.5 CITATIONS USING THE DCMR NUMBERING SYSTEM

The numbering system of the D.C. Municipal Regulations can be used to identify the types of divisions contained in a citation.

Example: 23 DCMR 1235.6(a)(4) is  
Subparagraph (4) of  
Paragraph (a) of  
Subsection 6 of  
Section 35 of  
Chapter 12 (of title 23 DCMR)

In practice, the DCMR and the Register use a simplified form of citation to refer to all subdivisions of the DCMR at the section level and below. The "section" sign (§) is used before any subdivision. Examples:

§1235 is read "section twelve thirty-five"  
§1235.6 is read "subsection twelve thirty-five point six"  
§1335.6(a) is read "paragraph 'a' of subsection twelve thirty-five point six"

NOTE: The abbreviations "sec.", "Sec.", "para.", and other symbols, such as "¶", are not used in the DCMR or the Register.

#### COMPLETE CITATIONS

The following are examples of the proper form of a complete citation to a provision of the DCMR:

Example: A citation to subsection 27 of section 507 (the seventh section) of chapter 5 of title 18 of the D.C. Municipal Regulations is written -

18 DCMR 507.27

Example: A citation to paragraph 'b' of subsection 2 of section 4517 of chapter 45 of title 9 of the D.C. Municipal Regulations is written -

9 DCMR 4517.2(b)

## 4.6 DRAFTING RULES IN THE DCMR FORMAT

Too often, the drafting and preparation of rules and regulations is looked upon too narrowly. Government lawyers and managers see the need for written policies and procedures largely as a means to make sure that the laws can be enforced and programs implemented. But one of the major reasons for the publication of rules and regulations in the D.C. Municipal Regulations (DCMR) is to provide a means for **giving the public access to government policies, requirements, and procedures.**

Therefore, one of the goals of the DCMR format is to provide a structure for the District's rules and regulations which is easy for members of the public to use and understand. For citizens to know the regulations that affect their lives and businesses, they have to be able to find them. For citizens to comply with the rules (after they have found them), they must be able to understand what is written.

The DCMR format is designed to provide a simple structure that is easy to read and understand. Finding particular provisions of law in the DCMR is also relatively painless because the materials are compiled by subject matter and the chapter and section headings in the Table of Contents of each title are specific references to the contents.

**Remember that you are drafting rules for the public**

The people who will be reading and using the rules that you write often will not know as much about the subject as you do. This does not mean that they are stupid. Don't assume that the public couldn't understand the rules even if you wrote them well! In most instances, regulations that constantly have to be explained to members of the public are not written very well.

### WHAT TO DO BEFORE YOU BEGIN WRITING RULES

- (1) **DO AN OUTLINE** - Trying to write regulations without an outline is like trying to build a house without an architect's plan. Most of the time, the parts just don't match up. A good outline will also save a lot of time and effort in drafting (and re-drafting) the rules.
- (2) **EXPLAIN THE SUBJECT MATTER TO YOURSELF** - Before you attempt to put the policies and procedures in rulemaking form, write a simple, logical explanation of the policies and procedures in letter or memo form. Put the memo in a desk drawer for a few days, then take it out and read it. If you still understand what you wrote, you are ready to proceed.
- (3) **TEACH SOMEONE ELSE** - To teach someone else about a subject, you have to understand the subject yourself. You have to be able to reduce complicated information into simple, understandable sentences. Going over your outline and memo with one or more colleagues will test your own understanding of the material. It will also tell you which parts need to be refined and some of the questions that may arise about the rules.

## 4.7 KEEPING SECTIONS SIMPLE

In many cases, rules can be made easier to read (and find) if long sections are broken up into more than one section. This generally makes it easier to follow the DCMR format requirement for simple, single-provision subsections. The following is an example of how to break up a long section into more than one section:

NOTE: These examples are taken from the Housing Regulations. The first example is the original regulation. The second example is the same material which has been re-structured into the proper DCMR format and style.

### THE WRONG WAY

#### 2908 Security Deposits

2908.1 (a) Any deposit or other payment required by an owner, on or after the effective date of this subsection, as security for performance of the tenant's obligations in a lease or rental of a dwelling unit shall not exceed an amount equivalent to the first full month's rent charged said tenant for such dwelling unit and shall be charged only once by the owner to such tenant.

(b) All monies paid owner by tenants for such deposits or other payment made, either before or after the effective date of this subsection, as security for performance of the tenant's obligations shall be deposited by such owner in an interest bearing escrow account established and held in trust in a financial institution in the District of Columbia for the sole purposes of holding such deposits or payments. The owner of more than one residential building may establish one such escrow account for holding such deposits or other payments by the tenants of such buildings. All monies held by an owner on the effective date of this subsection for such deposits or other such payments shall be paid into such an account within 30 days after such effective date.

(c) For all monies paid to the owner by the tenant as a deposit or other payment made as security for performance of the tenant's obligations in a lease or rental of the property, the owner shall clearly state in the lease or agreement or on the receipt for the deposit or other payment the terms and conditions under which such payment was made.

(d) The provisions of this section shall not be applicable to Federal or District of Columbia agencies' dwelling units leased in the District of Columbia or to units for which rents are Federally subsidized.

2908.2 (a) The owner shall tender payment to the tenant without demand within forty-five (45) days after the termination of the tenancy of (1) any security deposit and any similar payment paid by the tenant as a condition of tenancy in addition to the stipulated rent and (2) any interest due the tenant on such deposit or payment as provided in §2908.4, or

4.7 KEEPING SECTIONS SIMPLE (Continued)

THE WRONG WAY

2908.2 (b) Within such forty-five (45) day period after termination of the tenancy, the owner shall notify the tenant in writing, to be delivered to the tenant personally or by certified mail at the tenant's last known address, of the owner's intention to withhold and apply such moneys toward defraying the cost of expenses properly incurred under the terms and conditions of the security deposit agreement. The owner, within thirty (30) days after notification to the tenant pursuant to the requirement of this section, shall tender a refund of the balance of the deposit or payment, including interest, not used to defray such expenses and at the same time give the tenant an itemized statement of the repairs and other uses to which such monies were applied and the cost of each repair or other use.

(c) Failure by the owner to comply with subsections (a) and (b) of this section shall constitute prima facie evidence that the tenant is entitled to full return, including interest as provided in §2908.4, of any deposit or other payment made by such tenant as security for performance of his obligations or as a condition of tenancy, in addition to the stipulated rent. Failure by the owner to serve the tenant personally or by certified mail, after good faith effort to do so, shall not constitute a failure by the owner to comply with subsections (a) and (b) of this section.

2908.3 In order to determine the amount of the security deposit or other payment to be returned to the tenant, the owner may inspect the dwelling unit within three (3) days, excluding Saturdays, Sundays, and holidays, before or after the termination of the tenancy. The owner shall conduct the inspection, if the inspection is to be conducted, at the time and place of which notice is given to the tenant. The owner shall notify the tenant in writing of the time and date of such inspection. Such notice shall be delivered to the tenant, or at the dwelling unit in question, at least ten (10) days before the date of the such intended inspection.

2908.4 (a) The interest in the escrow account described in §2908.1(b), on all money paid by the tenant prior to or during the tenancy as a security deposit, decorating fee, or similar deposit or fee, shall commence on the date such money is actually paid by the tenant, or within thirty (30) days after the effective date of this section, whichever is later, and shall accrue at a rate of not less than five percent (5%) per annum simple interest. Such interest shall be due and payable by the owner to the tenant upon termination of any tenancy of a duration of twelve (12) months or more, unless an amount is deducted under procedures set forth in §2908.2.

(b) Except in cases where no interest is paid to the tenant as provided in subsection (a), no interest or other consideration shall inure to the benefit of the owner by reason of the owner's control over the escrow account nor shall said account be assigned or used as security for loans. It is the intent of this section that the account referred to herein be used solely for the purpose of securing the lessees' performance under the lease.

**4.7 KEEPING SECTIONS SIMPLE (Continued)**

**THE CORRECT WAY**

**308 SECURITY DEPOSITS**

- 308.1 For purposes of this chapter, the term "security deposit" shall mean all monies paid to the owner by the tenant as a deposit or other payment made as security for performance of the tenant's obligations in a lease or rental of the property.
- 308.2 On or after February 20, 1976, any security deposit or other payment required by an owner as security for performance of the tenant's obligations in a lease or rental of a dwelling unit shall not exceed an amount equivalent to the first full month's rent charged that tenant for the dwelling unit, and shall be charged only once by the owner to the tenant.
- 308.3 All monies paid to an owner by tenants for security deposits or other payment made as security for performance of the tenant's obligations shall be deposited by the owner in an interest bearing escrow account established and held in trust in a financial institution in the District for the sole purposes of holding such deposits or payments.
- 308.4 All monies held by an owner on February 20, 1976, for security deposits or other payments covered by this section shall be paid into an escrow account within thirty (30) days.
- 308.5 The owner of more than one residential building may establish one (1) escrow account for holding security deposits or other payments by the tenants of those buildings.
- 308.6 For each security deposit or other payment covered by this section, the owner shall clearly state in the lease or agreement or on the receipt for the deposit or other payment the terms and conditions under which the payment was made.
- 308.7 The provisions of this section shall not be applicable to Federal or District of Columbia agencies' dwelling units leased in the District of Columbia or to units for which rents are Federally subsidized.

**309 REPAYMENT OF SECURITY DEPOSITS TO TENANTS**

- 309.1 Within forty-five (45) days after the termination of the tenancy, the owner shall do one of the following:
- (a) Tender payment to the tenant, without demand, any security deposit and any similar payment paid by the tenant as a condition of tenancy in addition to the stipulated rent, and any interest due the tenant on that deposit or payment as provided in §311; or
  - (b) Notify the tenant in writing, to be delivered to the tenant personally or by certified mail at the tenant's last known address, of the owner's intention to withhold and apply the monies toward defraying the cost of expenses properly incurred under the terms and conditions of the security deposit agreement.

#### 4.7 KEEPING SECTIONS SIMPLE (Continued)

##### THE CORRECT WAY

#### 309 REPAYMENT OF SECURITY DEPOSITS TO TENANTS (Continued)

309.2 The owner, within thirty (30) days after notification to the tenant pursuant to the requirement of §309.1(b), shall tender a refund of the balance of the deposit or payment, including interest, not used to defray such expenses, and at the same time give the tenant an itemized statement of the repairs and other uses to which the monies were applied and the cost of each repair or other use.

309.3 Failure by the owner to comply with §309.1 and §309.2 of this section shall constitute prima facie evidence that the tenant is entitled to full return, including interest as provided in §311, of any deposit or other payment made by the tenant as security for performance of his or her obligations or as a condition of tenancy, in addition to the stipulated rent.

309.4 Failure by the owner to serve the tenant personally or by certified mail, after good faith effort to do so, shall not constitute failure by the owner to comply with §309.1 and §309.2 of this section.

#### 310 RETURN OF SECURITY DEPOSIT: INSPECTION OF PREMISES

310.1 In order to determine the amount of the security deposit or other payment to be returned to the tenant, the owner may inspect the dwelling unit within three (3) days, excluding Saturdays, Sundays, and holidays, before or after the termination of the tenancy.

310.2 The owner shall conduct the inspection, if the inspection is to be conducted, at the time and place of which notice is given to the tenant.

310.3 The owner shall notify the tenant in writing of the time and date of the inspection.

310.4 The notice of inspection shall be delivered to the tenant, or at the dwelling unit in question, at least ten (10) days before the date of the intended inspection.

#### 311 INTEREST ON SECURITY DEPOSIT ESCROW ACCOUNTS

311.1 The interest in the escrow account described in §309 on all money paid by the tenant prior to or during the tenancy as a security deposit, decorating fee, or similar deposit or fee, shall commence on the date the money is actually paid by the tenant, or within thirty (30) days after February 20, 1976, whichever is later, and shall accrue at a rate of not less than five percent (5%) per annum simple interest.

4.7 KEEPING SECTIONS SIMPLE (Continued)

THE CORRECT WAY

311 INTEREST ON SECURITY DEPOSIT ESCROW ACCOUNTS (Continued)

- 311.2 Interest on an escrow account shall be due and payable by the owner to the tenant upon termination of any tenancy of a duration of twelve (12) months or more, unless an amount is deducted under procedures set forth in §309.
- 311.3 Except in cases where no interest is paid to the tenant as provided in §311.2, no interest or other consideration shall inure to the benefit of the owner by reason of the owner's control over the escrow account nor shall said account be assigned or used as security for loans.
- 311.4 It is the intent of this section that the account referred to in this section and §309 shall be used solely for the purpose of securing the lessees' performance under the lease.
- 311.5 This section and §309 and §310 shall not be subject to the notice requirements of any other section of this subtitle.

\*\*\*\*\*

There are a lot of other examples. The serious student of improved regulation drafting can learn more about the difference between DCMR format writing and other formats by comparing the following DCMR titles to their predecessors:

<u>OLD FORMAT REGULATIONS</u>	<u>NEW DCMR FORMAT</u>
Title 3 D.C. Rules and Regulations "Alcoholic Beverage Control Board"	Title 23 DCMR "Alcoholic Beverages and Food"
Title 16 D.C. Rules and Regulations "Department of Finance and Revenue"	Title 9 DCMR "Taxation and Assessments"
"The Housing Regulations of the District of Columbia"	Title 14 DCMR "Housing"
Council Regs. 71-5, 71-30 74-3, 74-3, 74-21; Commissioners Orders 56-1678, 58-1070, 59-1927, 61-863; and Police Regs. Arts. 1, 24, and 41.	Title 16 DCMR "Consumer Protection"

**NOTE:** A cross-reference table is included in each DCMR title that indicates both the old regulation section number and the corresponding number of the new DCMR section.

## 4.8 PROPER USE OF PARAGRAPHS

The proper use of paragraphs in the DCMR format can be explained in one word - **LISTS**. The following are several examples of the "WRONG WAY" to incorporate lists in the DCMR format, along with "CORRECT WAY" examples:

### THE WRONG WAY

#### ARTICLE 130

#### NOTICE, AND APPEAL AND HEARING

- 1301 Notice  
Whenever any duly designated agent of the District of Columbia determines that there are reasonable grounds to believe that there exists a violation of any provision of these regulations, he shall make a report to the Director of the Department of Licenses and Inspections of the District of Columbia, who shall, in his discretion, give notice of such alleged violation to the person or persons responsible therefor, as hereinafter provided. Such notice shall:
- 1301.1 Be in writing and be signed by the head of the Housing Division of the Department of Licenses and Inspections or his authorized agent.
- 1301.2 State the nature of the violation.
- 1301.3 Indicate the section or sections of these regulations which are being violated.
- 1301.4 Allow a reasonable time for the performance of any act such notice requires, and,
- 1301.5 Be served upon the person or persons responsible for correcting the violation described in the notice. Such notice shall be deemed to be properly served upon such person if a copy thereof is served upon him personally; or if left at his usual place of business or at his usual residence with a person over the age of 16 years then employed or resident therein; or if no such residence or place of business can be found in the District of Columbia by reasonable search, if left with any agent of the person to be notified, which agent has any authority or duty with reference to the premises to which such notice relates, or if left at the office of such agent, with any person employed therein; or if mailed postage prepaid to the last known address of the person to be notified and not returned by the Post Office authorities; or if no address be known, or can by reasonable diligence be ascertained, or if any notice mailed as authorized by the preceding clause of this section be returned undelivered by the Post Office authorities, or if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained by a reasonable search, if published on three consecutive days in a daily newspaper published in the District of Columbia.

4.8 PROPER USE OF PARAGRAPHS (Continued)

THE CORRECT WAY

105 NOTICE OF VIOLATION

- 105.1 Whenever any duly designated agent of the District determines that there are reasonable grounds to believe that a violation of any provision of this subtitle exists, he or she shall make a report to the Director, who shall, in his or her discretion, give notice of the alleged violation to the person or persons responsible for that violation, in accordance with the provisions of this section.
- 105.2 Each notice of violation shall be in writing and shall meet the following requirements:
- (a) State the nature of the violation;
  - (b) Indicate the section or sections of this subtitle being violated;
  - (c) Allow a reasonable time for the performance of any act required by the notice; and
  - (d) Be signed by the Director or the Director's authorized agent.
- 105.3 Each notice shall be served upon the person or persons responsible for correcting the violation described in the notice.
- 105.4 The notice shall be deemed to be properly served upon the person to be notified by any of the following means:
- (a) By serving a copy of the notice upon him or her personally; or
  - (b) By leaving a copy of the notice at his or her usual place of business or at his or her usual residence with a person over the age of sixteen (16) years then employed or residing at that place; or
  - (c) If no residence or place of business can be found in the District by reasonable search, by leaving a copy of the notice with any agent of the person to be notified who has any authority or duty with reference to the premises to which the notice relates, or by leaving a copy of the notice at the office of that agent with any person employed in that office; or
  - (d) By mailing a copy of the notice postage prepaid to the last known address of the person to be notified, if the mailed notice is not returned by the Post Office authorities; or
  - (e) If no address is known or can be ascertained by reasonable diligence, or if any notice mailed as authorized by paragraph (d) of this subsection is returned undelivered by the Post Office authorities, or if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained by a reasonable search, by publishing a copy of the notice on three (3) consecutive days in a daily newspaper published in the District.

## 5.1 A WORD ABOUT LEGAL WRITING

Writing regulations is often looked upon as a "lower echelon" task which is most often performed by lawyers who prefer dark, windowless rooms where the world will not have to clash with their dull drudgery. It is assumed that the drafting of rules is rather simple, and that just about anyone on the bureaucratic totem pole who has nothing better to do can write rules. Of course, none of this is true. If it were, there wouldn't be so many people who have tried to write rules and failed, and there wouldn't be such a great mass of regulations that are almost unreadable.

One of the best kept secrets of the legal profession is the fact that most lawyers are not very good writers. The profession has covered up this fact by arming its members with a vast body of arcane and polysyllabic words such as "whereas," "herein," "thenceforth," and "hereinabove;" as well as tautologies such as "over and above," "unless and until," and "each and every." These are just a few examples of the body of abominations against the English language called "legalese."

### LEGALESE IS NOT GOOD WRITING

Using "legalese" does not prove that you are smarter than other people, nor does it indicate that you are a good writer. In fact, it tends to demonstrate just the opposite. Good writers, especially good regulations drafters, do not use "legalese." The use of "legalese" in the DCMR is not permitted.

Good legal writing really isn't any different from any other form of good writing, and the same rules and guidelines apply. **Good legal writing is simply good writing applied to a legal topic, such as regulations.**

### PRECISION IS THE KEY

The major difference between legal writing and other types of writing is that the former requires more precision. Since rules and regulations affect rights and privileges, or establish obligations or limits, the writer must be very sure that each word, phrase, and sentence says exactly what it means.

It is important to realize that small differences between different words that might be "synonyms" in regular usage can change the entire meaning of a legal phrase. For example:

A rule that applies to automobiles is different from a rule that applies to motor vehicles.

This is true even though an automobile is a type of motor vehicle.

A rule that applies to motor vehicles would apply to automobiles, but it would also apply to trucks, buses, and motorcycles.

## 5.1 A WORD ABOUT LEGAL WRITING (Continued)

There are a number of sections in this chapter that deal with the use of specific words and the avoidance of others. For example, the use of "shall" to state a requirement rather than "will." The purpose for these style requirements is precision. In many cases, it may seem like some of these style requirements amount to little more than "nitpicking," but in each case there is a reason.

### THE CASE FOR UNIFORMITY

In addition to the need for precision in legal writing, there is a need to set style requirements and standards in order to achieve uniformity. The rules and regulations of the District of Columbia are promulgated by dozens of agencies, boards, commissions, and officials. But they are all written for the purpose of communicating the law to a single group of users-- the general public.

Rules and regulations are also subject to challenge in the courts. The legal position of the District is much stronger (in supporting its official interpretation of a rule) if the language used to convey similar ideas and provisions is the same. The requirement for uniformity is especially important within each separate title of the DCMR.

Grammatical structure and punctuation should also be uniform. There has been more than one court case where the outcome rested on the judge's legal interpretation of the placement of a single adjective or comma. The DCMR format and style requirements for grammar and punctuation are based on generally accepted authorities, such as A Manual of Style, published by the University of Chicago Press, and The Elements of Style by Strunk & White. The latter is available in paperback, and should be on the desk of each person who drafts or edits rules and regulations.

### THE PURPOSE OF THIS CHAPTER

This chapter is not intended to be an exhaustive treatise on grammar and punctuation. It does highlight some of the most common errors of grammar and style made by persons drafting rules and regulations, and explains the proper use of words, punctuation, or grammar in each case.

The Office of Documents is aware that there are many ways of doing the same thing. Some aspects of grammar, usage, and punctuation have been argued about for years by experts on the English language. For example, the use (or non-use) of the serial comma (the comma before the conjunction in a series) has been debated for years, and different schools have taught different rules for its use. The DCMR style requirement (the serial comma must be used) follows Strunk & White's A Manual of Style.

If you learned a particular rule of grammar (or remember learning it) a different way, don't despair. Just change to the style explained in this manual when you are writing rules for the DCMR or Register. The Office of Documents style requirements are the result of looking at both (or many) ways of doing things and making a decision. To be accepted for publication, all rules and regulations must follow the DCMR style requirements.

## 5.2 PARAGRAPHS: INDENTATION, CAPITALIZATION, AND PUNCTUATION

The indentation, capitalization, and punctuation style of the DCMR is quite simple. The examples of correct format given at the end of chapter 4 are additional examples of the correct DCMR style. In each paragraph, the following rules apply:

- (1) The FIRST LETTER of the text of each part (including single words) is capitalized.
- (2) The text of each paragraph (except the last paragraph) should be followed by a SEMI-COLON (;). The text of the last paragraph in a series should be followed by a period.
- (3) The CONJUNCTION between the next-to-last and last paragraphs should be placed after the semi-colon in the next-to-last paragraph. Be sure that you use the correct conjunction ("and" or "or"). Do not use "and/or."
- (4) The INDENTATION of each set of paragraphs or subparagraphs is shown in the example. The parenthesis for a subordinate paragraph goes directly below the first letter of the text of the major subdivision.

EXAMPLE:

**203.4 A District of Columbia veterinarian shall inoculate an animal owned by a resident of the District of Columbia against infection by rabies, distemper, and enuritis; Provided, that the following criteria shall be met before the inoculation:**

- (a) The animal must be at least seven (7) months old; and
- (c) The animal must be free from infestation by any of the following parasites:
  - (1) Tapeworms;
  - (2) Roundworms;
  - (3) Hookworms; or
  - (4) Heartworms.

## 5.3 VERBS: USE THE ACTIVE VOICE

The use of the active voice is especially effective when you impose a duty or confer a power or privilege. The active voice eliminates confusion by forcing you to name an "actor" in the regulation. This makes clear to the reader who is to perform the duty or action. If possible, arrange the sentence to name the actor first; then the object of the action.

**WRONG:** Each library book shall be covered with a red, white, and blue book jacket. (Passive Voice)

**CORRECT:** The chief librarian shall cover each library book with a red, white, and blue book jacket. (Active Voice)

#### 5.4 VERBS: USE THE PRESENT TENSE

Don't write about continuing actions as if they exist in the future. A continuing requirement should be expressed in the present tense or in the imperative. The use of "shall" and "will" as part of future tense verbs should be avoided when drafting rules. (See §5.5 for the proper use of "shall" to state a mandatory requirement.)

WRONG: The fine for driving without a license shall be ten dollars (\$10).

WRONG: The fine for driving without a license will be ten dollars (\$10).

CORRECT: The fine for driving without a license is ten dollars (\$10).

#### 5.5 VERBS: "SHALL" AND "MAY"

If you are stating a requirement, use "shall" to indicate a mandatory action or obligation.

WRONG: The Director will require each applicant to take a practical test.

WRONG: The Director must administer a test of practical skills to each applicant.

CORRECT: The Director shall give a test of practical skills to each applicant.

If a discretionary right, privilege, or power is conferred, use "may."

WRONG: If the applicant has sufficient experience, the Director can waive the practical exam.

CORRECT: If the applicant has sufficient experience, the Director may waive the practical exam.

#### 5.6 VERBS: BE POSITIVE

If you can accurately express an idea either positively or negatively, express it positively. This will help avoid other problems, such as double negatives. Avoid the use of "shall not" to express a negative exercise of authority or discretion.

WRONG: The Director may not appoint any person who is not qualified for the position.

WRONG: The Director shall not appoint any person who does not meet the qualifications for the position.

CORRECT: The Director shall appoint only qualified persons.

## 5.7 VERBS: KEEP IT SIMPLE AND DIRECT

If possible, draft sentences to use action verbs instead of participles, infinitives, gerunds, or other complex noun or adjective verb forms. Action verbs are shorter and more direct.

<u>DON'T USE</u>	<u>IF YOU CAN USE</u>
give consideration to	consider
give recognition to	recognize
have knowledge of	know
has need of	needs
in the determination of	to determine
is applicable	applies
is dependent on	depends on
was in attendance at	attended
make an appointment of	appoint
make application	apply
shall make payment	shall pay

## 5.8 AMPERSANDS

If an ampersand (&) is used in the formal title of a government agency, private business, or other title, it may be used in the DCMR. An ampersand should not be used as an abbreviation for "and," except when properly used in an acronym.

WRONG: Businesses are required to pay sales & use taxes quarterly.

CORRECT: Agencies may purchase communications equipment from the Chesapeake & Potomac Telephone Company (C&P).

## 5.9 ABBREVIATIONS

Avoid the use of abbreviations except in rare instances, such as formulas in which the words are repeated from the text. Months, days of the week, and other commonly abbreviated words should be spelled out.

WRONG: Sales tax payments are due on the last Fri. in Sept. of each year.

CORRECT: Sales tax payments are due on the last Friday in September of each year.

CORRECT: Fuel tanks shall be capable of withstanding a pressure of forty-five pounds per square inch (45 lb./in<sup>2</sup>).

## 5.10 ABBREVIATIONS FOR "DISTRICT OF COLUMBIA"

In most instances it is unnecessary to refer to the District of Columbia by the full title, as long as the meaning is clear.

If there are numerous or repeated references to the District of Columbia throughout a chapter or section, the abbreviation "District" should be used instead of repeating the full designation.

EXAMPLE: Each resident of the District of Columbia is required to pay income tax to the District, and shall file a tax return with the District annually.

If the words "District of Columbia" are part of the official title of an agency, a government official, or any law or regulation, the words "District of Columbia" should be abbreviated "D.C." (NOTE: There is no "space" in the abbreviation.)

EXAMPLE: Tax payments shall be made to the D.C. Treasurer.

EXAMPLE: Laws that are not codified in the D.C. Code are codified in the D.C. Municipal Regulations.

EXAMPLE: All regulations must be published in the D.C. Register, in accordance with D.C. Code, §1-1538(b).

## 5.11 ACRONYMS AND SHORT TITLES

Acronyms for agency names and other titles may be used to conserve space if the formal name is lengthy and is repeated throughout a chapter or section.

The formal name must be used the first time it appears in the chapter or section. The acronym substitute must be properly introduced by placing it in parenthesis directly after the first appearance of the formal name.

EXAMPLE: The D.C. Board of Elections and Ethics (BOEE) shall conduct an election on the first Tuesday of November each year.

It is also permissible to abbreviate the name of an agency by referring to it by a short title, such as the "Board." The head of an agency may be referred to as the "Director," or other appropriate short title.

The formal name must be used the first time it appears in the chapter or section. The short title substitute must be properly introduced by placing it in parenthesis directly after the first appearance of the formal name.

EXAMPLE: The Director of the Department of Transportation (Director) shall approve each license application form before it is printed. Sample forms shall be submitted to the Director for review at least thirty (30) days before a new form is required.

## 5.12 SIGNS AND SYMBOLS

Most signs and symbols should be used only in connection with formulas or repetitions of numerical material that is fully spelled out in the text.

WRONG: The cost of photocopies of the report is 5¢ per page or \$5.00 for the full report.

CORRECT: The cost of photocopies of the report is five cents (5¢) per page or five dollars (\$5) for the full report.

EXAMPLE: Each parking space shall have an area of at least three hundred fifty square feet (350 ft.<sup>2</sup>).

The section symbol (§) should always be used when possible to conserve space. More than one section can be cited by using a double sign (§§). The abbreviations "sec." and "secs." should not be used.

EXAMPLE: The authority for this chapter, as set forth in D.C. Code, §1-1601, is vested in the Director of Documents.

EXAMPLE: Except as provided in §406.7, the applicant shall be required to submit evidence of prior experience.

## 5.13 NUMBERS

Because of the need for clarity and accuracy, all numbers in the DCMR (except for legal citations) are written out in words and repeated by numerals in parenthesis.

EXAMPLE: All outdoor plumbing must be insulated to withstand a temperature of minus ten degrees Fahrenheit (-10°F) without freezing.

EXAMPLE: Each permit shall be effective for a period of ninety (90) days.

EXAMPLE: The reimbursement for repairs made by the District shall not exceed the actual cost of the repairs or five thousand dollars (\$5,000), whichever is less.

NOTE: Amounts of money are expressed in whole dollars only, unless the total includes an amount less than one dollar.

WRONG: The application fee is ten dollars (\$10.00).

CORRECT: The application fee is ten dollars (\$10).

CORRECT: The application fee is four dollars and seventy-five cents (\$4.75).

**EXCEPTION: Numbers that appear in a TABLE or CHART do not have to be written out.**

## 5.14 FRACTIONS

Fractions that can be expressed as simple decimals may be expressed either as numerical fractions or decimal fractions. Complex fractions should not be expressed as long, imperfect decimals.

WRONG: At least one third (0.333333) of the allotment shall be spent on new equipment.

CORRECT: At least one third ( $1/3$ ) of the allotment shall be spent on new equipment.

CORRECT: At least half ( $1/2$ ) of the applicants must be interviewed.

CORRECT: No more than two tenths (0.2) of the sample may contain impurities.

## 5.15 PERCENTAGES

Percentages should be expressed in both written and numerical form in order to minimize errors.

Numerical percentages in parentheses should be written numerically as whole numbers with a percent sign (%), unless the percentage contains a decimal fraction.

If the percentage is less than one percent (1%), the decimal should be preceded by a zero (0.5%). The use of a decimal and zero after a whole number percentage figure (7.0%) is unnecessary.

EXAMPLE: Each prospective candidate must obtain the signatures of at least five percent (5%) of the eligible registered voters in order to be placed on the ballot.

EXAMPLE: Two and one half percent (2.5%) of the allotment must be spent for personnel training programs.

EXAMPLE: Drinking water shall not contain more than sixty-five hundredths of a percent (0.65%) dissolved solids.

## 5.16 TIME

The hours of the day are expressed in numbers. Hours do not have to be written out. The hour "12:00" must be clarified by adding either "Midnight" or "Noon." All other hours should be designated "a.m." or "p.m." in lower case letters with periods.

EXAMPLE: The deadline for payment of taxes is 12:00 Midnight.

EXAMPLE: The office will be open from 8:00 a.m. until 4:45 p.m.

## 5.17 TAUTOLOGIES AND REDUNDANCIES

Avoid using pairs of words that have the same effect. Using two words to say what could be said with one word is redundant. It is like saying to the reader, "This is the rule, and we really mean it." Tautologies are just one type of "legalese" that should not be used in good legal writing.

### DO NOT USE REPETITIOUS WORD PAIRS LIKE THESE

any and all	authorized and empowered
by and with	final and conclusive
each and all	full and complete
each and every	full force and effect
from and after	necessary and desirable
over and above	order and direct
type and kind	sole and exclusive
unless and until	authorize and direct
desire and require	means and includes
null and void	

## 5.18 IN THE EVENT THAT YOU MEAN "IF"

Another form of "legalese" is the use of lengthy expressions that have the same meaning as a single word, or the use of a "legalistic" word that has the same meaning as a more common word. Perhaps the worst offender in this category is the use of the phrase "in the event that." The entire meaning of this wordy phrase can be expressed in one word: "if."

### DON'T USE

in the event that  
being as how, being that  
at the rear of  
due to the fact that  
at present  
during the time that  
in the course of  
in view of the fact that  
by means of  
in order that  
in respect to  
comprises

### WHEN YOU CAN USE

if  
since, because  
behind  
because  
now  
while  
during, in, at  
because  
by, in, with  
so, so that  
about, concerning  
consists of

## 5.19 EXCEPTIONS AND QUALIFICATIONS

If possible, state a rule or category directly rather than describing that rule or category by stating its exceptions.

WRONG: All persons, except those persons who are eighteen (18) years of age or older, shall be required to obtain a work permit.

CORRECT: Each person less than eighteen (18) years old shall be required to obtain a work permit.

However, you may use an exception to avoid a long and cumbersome list or elaborate description. In other words, if stating a requirement positively results in a more complex and lengthy rule, it is proper to state the rule in the form of an exception or qualification. When you use an exception, state the rule or category first, then state its exception.

WRONG: It is unlawful to keep cattle, horses, sheep, swine, snakes, goats, fowl, camels, game fish, llamas, gorillas, lions, tigers, deer, moose, elk, . . .[and the list goes on] in the District without a special permit.

CORRECT: It is unlawful to keep any domestic or wild animal in the District, except a dog, domestic cat, or caged rodent (such as a mouse, gerbil, or guinea pig) without a special permit.

In some instances, it is permissible to use the phrase "Provided, that" as a means of qualifying the application of a particular SUBSECTION or PARAGRAPH. The proper form of this qualifier is shown in the example.

EXAMPLE: All work shall be performed in accordance with all applicable laws and regulations; Provided, that in cases where there is a difference between this title and another applicable regulation, the provisions of this title shall apply.

If there is a general exception to the provisions of an entire CHAPTER, that exception should be stated in a separate subsection in the first section of the chapter. If there is a general exception to the provisions of a SECTION, that exception should be stated in a separate subsection of that section.

EXAMPLE: The provisions of this chapter do not apply to motor vehicles being towed or carried by another motor vehicle.

EXAMPLE: The provisions of this section do not apply to any rental housing accommodation that is occupied by less than two (2) persons.

If there is more than one exception to the general rule stated in the first part of a section, state the general rule as follows:

EXAMPLE: Except as specifically provided otherwise in this section, each tax return must be filed on or before 12:00 Midnight on April 15th.

## 5.20 AVOIDING AMBIGUOUS WORD ORDER

An ambiguous sentence is a sentence that a reader can interpret in two or more ways. One of the major sources of ambiguity and confusion in the meaning of rules is improper word order.

The position of words in a sentence is the principal means of showing the relationship of the words. Group together words that are related in thought and separate words that are not related.

### MISPLACED MODIFIERS

The careless placement of a modifier may result in the same sentence having several meanings.

WRONG: A vehicle shall yield the right-of-way to another vehicle in an intersection when entering the intersection.

(This wording does not clearly identify which vehicle is entering the intersection at the time the first vehicle must yield.)

CORRECT: A vehicle entering an intersection shall yield the right-of-way to another vehicle that is already in the intersection.

### INDEFINITE PRONOUNS USED AS REFERENCES

Each pronoun should be related clearly to its proper antecedent. If a pronoun could refer to more than one person or object in a sentence, repeat the name of the individual or object.

WRONG: Before a tenant's apartment is fumigated by the landlord, he or she shall give notice to all other tenants on the same floor.

(This wording does not definitely identify who gives the notice.)

CORRECT: Before a tenant's apartment is fumigated by the landlord, the landlord shall give notice to all other tenants on the same floor.

### GROUPS OF PREPOSITIONAL PHRASES

A common example of a problem of word order occurs when two or more prepositional phrases are grouped together in a sentence.

WRONG: Each owner of an automobile in the District shall have the vehicle inspected annually.

(It is unclear whether the rule applies to a District owner or a vehicle located in the District, regardless of the owner.)

CORRECT: Each person who owns an automobile which is kept in the District shall have the vehicle inspected annually.

## 5.21 AVOIDING AMBIGUOUS WORD MEANING

In addition to improper word order, another major source of ambiguity and confusion in legal writing is improper word meaning.

Problems of word meaning occur when one word or phrase is open to several possible interpretations. The following guidelines address the most common problems of word meaning:

### USE A SINGULAR NOUN RATHER THAN A PLURAL NOUN

One of the most common faults in rules drafting is the regular use of plural nouns (usually accompanied by "all" or "every") rather than the singular noun. Since most rules refer to individual members of a class of persons, it is better English to make each provision of the rules apply to each individual, rather than to the whole group.

To the extent the meaning of a rule allows, use a singular noun instead of a plural noun. The key word to remember is "Each," which should be used at the beginning of most sentences instead of "Every" or "All." (Sometimes, the word "any" is appropriate.) This construction avoids the problem of whether the rule applies separately to each member of a class or jointly to the class as a whole.

WRONG: The Director shall issue licenses to all drivers who pass the test.

WRONG: Every driver shall take a test before receiving a license.

CORRECT: The Director shall issue a license to each driver who passes the test.

CORRECT: Each driver shall take a test before receiving a license.

### TIME SHOULD BE EXPRESSED AS ACCURATELY AS POSSIBLE

You can eliminate uncertainty about when a time period begins or ends by clearly stating the first and last days of that period.

WRONG: From July 1, 1976, until June 30, 1977.

CORRECT: After June 30, 1976, and before July 1, 1977.

If a time period is measured in whole days, use the word "day" instead of "time." A reader may interpret the word "time" to mean an exact time during the day or night an event occurs.

WRONG: The Director shall issue the license within thirty (30) days after the time when the application is received.

CORRECT: The Director shall issue the license within thirty (30) days after the date on which the application is received.

## 5.22 SEX-BASED TERMINOLOGY

The Documents Act requires the elimination of sex-based terminology in the DCMR. In other words, **masculine nouns and pronouns should be avoided in favor of neutral terms.**

WRONG: A bullet-proof vest shall be issued to each policeman.

WRONG: The chairman of the Board shall call each meeting.

CORRECT: A bullet-proof vest shall be issued to each police officer.

CORRECT: The chairperson of the Board shall call each meeting.

**Sometimes a pronoun can be avoided by repeating the noun.**

WRONG: If the Director is satisfied that the applicant has met all of the requirements, he shall issue a license to him.

CORRECT: If the Director is satisfied that the applicant has met all of the requirements, the Director shall issue a license to the applicant.

**If you must use a pronoun, use both masculine and feminine pronouns.**

WRONG: The Director, in his discretion, may deny a license to any applicant who fails to demonstrate sufficient practical skills.

CORRECT: The Director, in his or her discretion, may deny a license to any applicant who fails to demonstrate sufficient practical skills.

## 5.23 ALWAYS USE A COMMA BEFORE THE CONJUNCTION IN A SERIES

Your high school English teacher may have taught something different, but the DCMR style REQUIRES the serial comma. There are many occasions when it makes no difference, but there are times when the presence or absence of a serial comma can change the meaning of a sentence. Therefore, for purposes of uniformity, a comma should be placed before the conjunction in a series.

WRONG: The test shall be administered on the first day of March, July, September and December.

WRONG: The signs shall be printed in black and white, blue and white and red and white.

CORRECT: The test shall be administered on the first day of March, July, September, and December.

CORRECT: The signs shall be printed in black and white, blue and white, and red and white.

## 5.24 EXAMPLES AND LISTS

The DCMR style is designed to be as clear as possible to as many people as possible. For this reason, the use of Latin abbreviations ("i.e." for id est and "e.g." for exempli gratia) is prohibited. If the rules you are drafting need to include examples, use "such as" or "For example."

WRONG: Vehicles that cannot travel at a speed of at least fifty-five miles per hour (55 mph) on hills (i.e., antique automobiles or vehicles towing trailers) shall remain in the right-hand lane.

WRONG: The requirements of this section shall not apply to persons who qualify under §230 (e.g., persons who have served as apprentices or who have taken a test of practical skills).

CORRECT: Vehicles that cannot travel at a speed of at least fifty-five miles per hour (55 mph) on hills (such as antique automobiles or vehicles towing trailers) shall remain in the right-hand lane.

CORRECT: The requirements of this section shall not apply to persons who qualify under §230. [Examples are not necessary.]

**NEVER use "etc." in any rulemaking document.** It is imprecise and does not convey a legal meaning. If you do not want to include an exhaustive list of all possible applications of a provision, use a few examples and a general inclusive term which identifies the general group.

WRONG: The provisions of this section shall apply to all electricians, plumbers, construction engineers, etc.

CORRECT: The provisions of this section shall apply to each electrician, plumber, construction engineer, or other person licensed under this title who installs machinery or fixtures in any dwelling in the District.

## 5.25 "ALSO" IS NOT A CONJUNCTION

The word "also" is a modifier, and cannot be properly used to join two separate parts of a sentence. For this reason, "also" is rarely (if ever) correct when used as the first word in a sentence.

WRONG: The Director shall enforce the provisions of this chapter, also the applicable provisions of the Act.

WRONG: Also, the provisions of this chapter shall apply to plumbers, as well as electricians.

CORRECT: The Director shall enforce the provisions of this chapter and the applicable provisions of the Act.

CORRECT: The provisions of this chapter shall apply to both plumbers and electricians.

## 5.26 "SUCH" AND "SAID" - MONUMENTS TO LEGALESE

Perhaps the easiest way to identify a writer who really doesn't care too much about the English language (and who wants to use every possible bit and shred of "legalese" available) is to count the number of times that writer uses the words "such" and "said" instead of "a," "the," "this," "that," "them," "these," and "those."

The word "such" has several legitimate uses in the English language. However, using "such" as a "catch-all" pronoun is not correct. The use of the word "said" as an adjective is pure "legalese." (The use of "said" in this way disappeared from common use in the English language some time during the 16th century.)

Some writers become addicted to using "such" or "said" to refer to the subject matter of a previous sentence. A good example of the improper use of these words (not "such words), as well as the proper way to write rules, is included in §4.8 of this manual.

**The rule is simple. DON'T USE "said" or "such" as substitutes for the more common pronouns.**

WRONG: Each driver involved in a traffic accident shall file a report of such accident within twenty-four (24) hours. Such report shall include all information about said accident.

CORRECT: Each driver involved in a traffic accident shall file a report of the accident within twenty-four (24) hours. The report shall include all information about the accident.

## 5.27 CROSS-REFERENCES

Too many cross-references can make a regulation almost unreadable. The only proper uses of cross-references are the following:

- (1) If the cross-reference is essential to understanding the provision; or
- (2) If the cross-reference limits, qualifies, or makes an exception to the provision.

If you do include a cross-reference, cite the specific title, chapter, section, and subsection. If the cross-reference is to another section or subsection of the same title, simply use a specific citation.

EXAMPLE: Except as provided in §502.4, the Director shall determine. . .

If the cross-reference is to a provision in a different DCMR title or to another codification, use a more complete citation.

EXAMPLES: D.C. Code, §8-403; Title 13 DCMR, §403.2; 43 CFR 562.123(b)(8)

DO NOT USE the words "above," "supra," "herein," "below," "hereinabove," or other similar "directions" in cross-references.

## 5.28 CAPITALIZATION OF NOUNS

The rule for capitalization of nouns is simple. The first letter of a proper noun should be capitalized. All other nouns should be written in all lower case letters.

There is a tendency to use capitalization for emphasis in some rules. For example, referring to an ambulance as an "Emergency vehicle." This use of capitalization is incorrect.

WRONG: The budget for the Public School System shall be adopted by the Board of Education.

WRONG: The Director shall assign Government vehicles to drivers for Official Business Purposes only.

CORRECT: The budget for the public school system shall be adopted by the Board of Education.

CORRECT: The Director shall assign government vehicles to drivers for official business purposes only.

## 5.29 CONSISTENCY

**Do not use different words to mean the same thing.** Use the precise term that fits the particular rule as many times as needed.

WRONG: The Director shall issue a motor vehicle registration card to the owner of each automobile and other vehicle.

CORRECT: The Director shall issue a motor vehicle registration card to the owner of each motor vehicle.

**Do not use the same word to identify more than one thing.** Make sure that the reader can tell what term is applicable in each provision of a rule.

WRONG: 202.1 The manufacturer shall equip each M-16 battle tank with the following:

(a) An eight hundred horsepower (800 hp) motor; and

(b) A two hundred fifty (250) gallon fuel tank.

202.2 The manufacturer shall galvanize the tank to prevent corrosion.

CORRECT: 202.1 The manufacturer shall equip each M-16 battle tank with the following:

(a) An eight hundred horsepower (800 hp) motor; and

(b) A two hundred fifty (250) gallon fuel container.

202.2 The manufacturer shall galvanize the fuel container to prevent corrosion.

### 5.30 USE THE WORD OR PHRASE THAT IS SIMPLEST AND MOST CORRECT

There are a number of words and phrases used in legal writing for which there are simpler or more precise alternatives. Good legal writers avoid the more complex or "legalistic" terms in favor of the simpler or more accurate words.

One word that is often abused in rulemaking is the verb "insure." It is often used to mean "make sure that." The proper word is "ensure." The word "assure" is also mixed in with the other two. Some writers use all three words interchangeably. IN MOST CASES, THE PROPER WORD IS "ensure." The word "insure" should only be used in the sense of "guarantee" or "indemnify." The word "assure" should be used to mean "comfort" or "reassure."

WRONG: The landlord shall insure that the heat is turned on by October 15.

WRONG: The landlord shall assure that the heat is turned on by October 15.

CORRECT: The landlord shall ensure that the heat is turned on by October 15.

CORRECT: The landlord shall turn on the heat no later than October 15.

Your rules will be more readable if you use the preferred words and phrases in the following examples:

#### DON'T USE

accorded  
adequate number of  
afforded  
attains the age of \_\_\_\_  
at the time  
by means of  
attempt (verb)  
cease  
commence  
complete (verb)  
consequence  
contiguous to  
deem  
does not operate to  
during such time as  
during the course of  
effectuate

#### USE

given  
enough  
given  
becomes \_\_\_\_ years old  
when  
by  
try  
stop  
begin, start  
finish  
result  
next to  
consider  
does not  
while  
during  
carry out

5.30 USE THE WORD OR PHRASE THAT IS SIMPLEST AND MOST CORRECT (Continued)

Your rules will be more readable if you use the preferred words and phrases in the following examples:

<u>DON'T USE</u>	<u>USE</u>
endeavor (verb)	try
evince	show
excessive number of	too many
expedite	hasten, speed up
expend	spend
feasible	possible
for the duration of	during
for the reason that	because
in case	if
in cases in which	when, where
indicate	show
in lieu of	instead of
is authorized to	may
is empowered to	may
it shall be lawful to	may
necessitate	require
on the part of	by
or, in the alternative	or
per centum	percent
prior to	before
procure	obtain, get
remainder	rest
subsequent to	after
sufficient number of	enough
summon	call, send for
the manner in which	how
to the effect that	that
under the provisions of	under
until such time as	until
utilize, employ	use
within or without the	inside or outside of
with reference to	for

### 5.31 NEVER USE "LEGALESE"

There are a number of words and expressions that should never appear in any rulemaking document submitted to the Office of Documents for publication in the D.C. Register or DCMR. Collectively, these words and phrases are often called "legalese," although they form just a part of the pompous and old fashioned writing style which has become known as "legalese."

#### DO NOT USE THESE WORDS AND EXPRESSIONS

above (as an adjective)	aforementioned
above-mentioned	afore-granted
aforsaid	before-mentioned
forthwith	henceforward
herein	hereinafter
hereinbefore	heretofore
hereunto	thenceforth
thereunto	therewith
to wit	under-mentioned
unto	whatsoever
whensoever	wheresoever
whereof	whosoever
within-named	witnesseth
premises (in the sense of matters already referred to)	
said, such (as a substitute for "the," "that," or "those")	
same (as a substitute for "it," "he," "she," "him," or "her")	

Some of the District regulations written in the first half of this century contain quaint forms of the verb "to be." It is unlikely that these phrases would be used by a modern legal draftsman, but (just in case) persons revising old rules should be aware that this type of usage is no longer acceptable:

**WRONG:** If it be determined that any person be in violation of any of the provisions of this regulation, a penalty of \$50 shall be assessed.

**CORRECT:** The penalty for violation of this section is fifty dollars (\$50).

## 5.32 DEFINITIONS

The DCMR has a uniform and rather simple system for handling definitions of terms and phrases used in rules and regulations that have meanings that are specific to the particular rulemaking application. There are also a few general rules that apply to all definitions.

### PLACEMENT OF DEFINITIONS

The placement of a definition depends on how much of a DCMR title is affected by each particular defined term or phrase. The following is a guide to the proper codification of definitions in the DCMR:

- (1) Definitions that apply to **AN ENTIRE TITLE OR SUBTITLE** are compiled in a separate chapter at the end of the title. Chapter 99 of each title is reserved for definitions that apply to the whole title.

The first section of chapter 99 (§9900) is used for general provisions applying to the definitions contained in the title.

If the title contains no informal subtitles, all definitions are placed in a single section (§9901) in the final chapter.

EXAMPLES: Title 3 DCMR, "Elections and Ethics"  
Title 18 DCMR, "Vehicles and Traffic"

- (2) If there are **INFORMAL SUBTITLES** in a DCMR title, the definitions applicable to each subtitle (as a whole) are compiled in separate sections of Chapter 99. In other words, the definitions applicable to the first subtitle are in §9901, those applicable to the second subtitle are in §9902, and so forth.

EXAMPLE: Title 23 DCMR, "Alcoholic Beverages and Food"

- (3) If the title contains a lot of different regulations, and **IF THERE ARE NO DEFINITIONS THAT APPLY TO THE ENTIRE TITLE**, chapter 99 is not used. Instead, the definitions that apply to each chapter are compiled in the last section of each chapter. For example, the definitions for chapter 3 are placed in §399.

EXAMPLE: Title 21 DCMR, "Water and Sanitation"

- (4) A specific definition that **APPLIES ONLY TO A PARTICULAR SECTION** of a single chapter should be placed in a separate subsection in the section to which it applies.

EXAMPLE: 201.6 For purposes of this section, the phrase "substantial resistance to changes in temperature" means that the product must be capable of operating normally from minus forty degrees Fahrenheit (-40°F.) to plus one hundred fifty degrees (+150°F.).

## 5.32 DEFINITIONS (Continued)

There are a number of general rules applicable to the DCMR.

### AVOID UNNECESSARY DEFINITIONS

The main purpose of a definition is to achieve clarity without needless repetition. It is unnecessary to define a word or phrase unless it is used in a special way that is specific to the particular regulation, or if it is used to mean something different from the usual dictionary meaning.

EXAMPLE: Do not define "trash can" if it is used in the generic sense to mean "a receptacle for solid waste material."

EXAMPLE: If the word "container" is used throughout the chapter to mean "any receptacle for solid waste material, regardless of size," it should be included in the definitions section.

### DO NOT USE DEFINITIONS THAT CONFLICT WITH ORDINARY AND ACCEPTED USAGE

If possible, use a word in a way that is consistent with its everyday meaning, and do not define the word. Otherwise, you confuse the reader and risk using the word elsewhere in the rules in its ordinary sense.

WRONG: "Airplane" - an airplane, helicopter, or hot air balloon.

CORRECT: "Aircraft" - any device that is used or intended to be used for flight.

### AVOID CERTAIN TIME-RELATED WORDS

Avoid the use of time-related words (such as "now," "presently," and "currently"). Use of these words to relate a provision in a regulation to the time the regulation takes effect creates an ambiguity. It is unclear whether the definition would change if the "current" situation changes after the regulation takes effect.

WRONG: A physician employed at D.C. General Hospital is entitled to a salary equal to a DS-18, step 6, as now prescribed by law.

CORRECT: A physician employed at D.C. General Hospital is entitled to a salary of sixty-five thousand dollars (\$65,000). [If you mean for the salary to remain at a fixed amount until changed.]

CORRECT: A physician employed at D.C. General Hospital is entitled to a salary equal to a DS-18, step 6, as that amount is established by the Council. [If you want the salary to increase in the future when the law is changed by the legislature.]

## 5.32 DEFINITIONS (Continued)

### DO NOT INCLUDE ALL OR PART OF THE TERM BEING DEFINED IN A DEFINITION

A true definition should not include the term being defined as part of the definition. This forces the reader to consult a dictionary or to look elsewhere in the regulations for the complete meaning.

WRONG: "Excepted position" - a position in the excepted service.

WRONG: "Motor vehicle" - a vehicle propelled by an engine or motor.

### DO NOT INCLUDE A SUBSTANTIVE RULE WITHIN A DEFINITION

All substantive rules must be placed in the main body of the rules. A definition may only define a term or phrase, and must not include additional requirements, or material that properly belongs in another section. A reader can easily miss a rule placed within a definitions section.

WRONG: "Alcoholic beverage" - beer, wine, and liquor. Each owner of a business establishment serving alcoholic beverages shall obtain a license.

### DRAFT THE RULES FIRST -- THEN DRAFT THE DEFINITIONS

It is difficult to determine how many times a particular word or concept will be used in a set of regulations before you start drafting. If you draft definitions before you draft regulations, you may define a word that is not used, or forget to define a word or phrase that is developed in the drafting stage. Often a concept that is used in a set of regulations is complex and you must develop a phrase to use as shorthand for that concept. If you develop the phrase before you draft the regulations, the phrase may not be as appropriate as one developed during the process of drafting.

### DO NOT USE "SHALL MEAN" OR "MEANS" IN A SEPARATE DEFINITIONS SECTION

A definition should not obligate anyone to do anything. For this reason, "shall" is inappropriate in a definition. In a separate definitions section, the word "means" is unnecessary.

WRONG: "Soil" shall mean all earth material of whatever origin that overlies bedrock.

WRONG: "Soil" means all earth material of whatever origin that overlies bedrock.

CORRECT: "Soil" - all earth material of whatever origin that overlies bedrock.

## CHAPTER 6 RULES OF THE OFFICE OF DOCUMENTS

### 500 OFFICE OF DOCUMENTS: GENERAL PROVISIONS

- 500.1 The District of Columbia Office of Documents was established as part of the Executive Office of the Mayor on March 6, 1979, by §2 of the "District of Columbia Documents Act," D.C. Law 2-153 (D.C. Code, 1-1611), as amended.
- 500.2 The purpose of this chapter is to set forth the policies and procedures for the implementation of the "District of Columbia Documents Act" and applicable provisions of the "District of Columbia Administrative Procedure Act," as amended.
- 500.3 The provisions of this chapter are promulgated pursuant to authority set forth in §3(b) of the "District of Columbia Documents Act."
- 500.4 The Administrator of the Office of Documents is the Director of Documents (also referred to in this chapter as the "Director"). The Director is appointed by the Mayor and is vested with the authority to administer the provisions of the Documents Act in accordance with §2 of the Documents Act.
- 500.5 The Office of Documents is responsible for the preparation and publication of the legal publications of the District of Columbia government, including the following:
- (a) The District of Columbia Register (also referred to as the "D.C. Register" or "Register" and abbreviated "DCR").
  - (b) The District of Columbia Municipal Regulations (also referred to as the "D.C. Municipal Regulations" and abbreviated "DCMR").
  - (c) The District of Columbia Statutes-at-Large (also referred to as the "D.C. Statutes-at-Large" and abbreviated "D.C.Stat.").
- 500.6 The Office of Documents is located in Room 523 of the District Building, 14th St. and Pennsylvania Ave., N.W., Washington, DC 20004. This is also the mailing address for the Office of Documents.
- 500.7 The regular office hours of the Office of Documents are from 8:30 a.m. to 5:30 p.m., Monday through Friday, exclusive of District of Columbia government holidays.

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[NOTE: The Rules of the Office of Documents are codified in title 1, chapter 5, of the D.C. Municipal Regulations. Therefore, the sections are numbered 500, 501, 502, and so forth.]

**501 GENERAL AUTHORITY OF THE DIRECTOR OF DOCUMENTS**

- 501.1 The Director of Documents is vested with authority to administer generally the provisions of this chapter, the provisions of the "District of Columbia Documents Act," and the applicable provisions of the "District of Columbia Administrative Procedure Act" (D.C. Code, 1-1501 et seq.), as amended, in accordance with the provisions of D.C. Code, section 1612.
- 501.2 The Director is authorized to promulgate rules and procedures for the implementation of the Documents Act and applicable provisions of the D.C. Administrative Procedure Act, as amended.
- 501.3 The Director is responsible for the supervision, management, and direction of the District of Columbia Office of Documents.
- 501.4 The Director is authorized to adopt editorial standards for the submission of documents for publication in the District of Columbia Register and the District of Columbia Municipal Regulations (DCMR), including requirements for standardized organization, numbering, format, grammar, removal of unnecessary sex-based terminology, and other matters of style.
- 501.5 The Director is authorized to reject for publication any document which fails to comply substantially with the publication requirements and standards set forth in this chapter. This provision does not apply to acts and resolutions adopted by the Council of the District of Columbia.
- 501.6 The Director is authorized to incorporate by reference the text of documents in the D.C. Register or D.C. Municipal Regulations, in accordance with the provisions of the D.C. Documents Act and this chapter.
- 501.7 The Director is required to certify the promulgation, adoption, or enactment of all documents published by the Office of Documents. The Director is authorized to obtain the assistance of the Office of the Corporation Counsel, the officer designated by the Chairman of the Council, or agency legal counsel in determining whether a document should be certified for publication.
- 501.8 The Director is required to provide instruction for promulgators of documents in the matters set forth in this chapter, including preparation and submission of documents, publication standards, and other areas that will assist the promulgators in complying with the requirements of this chapter.

## 502 SERVICES TO THE PUBLIC

- 502.1 Except in cases where the time required would be excessive, the staff of the Office of Documents will provide information to the public, upon request, concerning the publications described in §500.5 and the documents filed with the Office of Documents in accordance with the D.C. Documents Act.
- 502.2 Documents filed with the Office of Documents for publication and current issues of the D.C. Register are available for public inspection on or after the date of publication. Published documents may be inspected in Room 523 of the District Building during the regular office hours of the Office of Documents. There are no formal inspection procedures or requirements. Facilities for making photocopies of documents or portions of the D.C. Register are not available in the Office of Documents.
- 502.3 Current issues of the D.C. Register are available to the public for review at each branch of the District of Columbia Public Library. Several branches, including the Martin Luther King branch, maintain files of back issues. Copying facilities are available at most D.C. Public Libraries.
- 502.4 After publication in the D.C. Register, copies of original documents are filed with the Washingtoniana section of the Martin Luther King branch of the D.C. Public Library and in the permanent District of Columbia archive.
- 502.5 The D.C. Register is available to the public by mail for fifty dollars (\$50) per year, payable in advance by check or money order payable to the "D.C. Treasurer." Subscriptions may be purchased in person or by writing to the Office of Documents.
- 502.6 One subscription to the D.C. Register is provided to each Advisory Neighborhood Commission by the Office of Documents free of charge. ANC copies are intended for use by ANC Commissioners, ANC staff, and members of the public during ANC office hours, subject to the requirements of each Advisory Neighborhood Commission.
- 502.7 Copies of the D.C. Statutes-at-Large, titles of the D.C. Municipal Regulations (DCMR), and existing titles of the D.C. Rules and Regulations (DCRR) are available for purchase at the Office of Documents sales office located on the ground floor of the District Building (Room 19).

**The sales office will be open for over-the-counter sales of publications between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except official District government holidays.**

- 502.8 Most titles of the old D.C. Rules and Regulations (DCRR) have been updated by the Office of Documents; however, the contents are not certified by the Director of Documents. DCRR titles are sold subject to this reservation.

## 503 SERVICES TO DISTRICT GOVERNMENT AGENCIES

- 503.1 In order to ensure the efficient and timely promulgation of notices of proposed rulemaking, final rules, notices of public hearings, and other legal notices and documents, the Director of Documents shall assist the agencies of the District government in complying with the provisions of this chapter, the requirements of the D.C. Documents Act, and the applicable provisions of the D.C. Administrative Procedure Act, as amended.
- 503.2 The Director shall provide for appropriate response to each inquiry presented in person, by telephone, or in writing. Each written inquiry or request for assistance should be addressed to the Director of Documents, Room 523, District Building.
- 503.3 The staff of the Office of Documents shall provide informal assistance and advice to officials of District agencies with regard to general or specific rulemaking and notice practices, including drafting of proposed rules, notice requirements, promulgation procedures, and other matters arising under the provisions of this chapter.
- 503.4 The staff of the Office of Documents will conduct seminars in the various aspects of rulemaking practice and preparation of official documents for officials of the District government. Seminars will be arranged for small groups or individuals. The emphasis of these seminars will be on addressing the particular needs of agencies and promulgators of legal documents for publication in the D.C. Register and D.C. Municipal Regulations.
- 503.5 Requests for scheduling of seminars, including a list of topics to be covered, should be in writing to the Director of Documents, Room 523, District Building. Requests should be submitted reasonably in advance and should suggest several alternative dates and times to facilitate scheduling.
- 503.6 Copies of the D.C. Register shall be made available to District government agencies on a subscription basis without charge by the Office of Documents.
- 503.7 Copies of the D.C. Statutes-at-Large, D.C. Municipal Regulations, and D.C. Rules and Regulations shall be available to District government agencies, upon request, from the Office of Documents.
- 503.8 Agencies that require large quantities of copies of regulations may be required to order the copies directly from the printer. In such cases, the agency will be required to pay printing costs.
- 503.9 Requests for subscriptions to the Register or copies of documents shall be made on a form provided by the Director of Documents.
- 503.10 Requests for D.C. Register subscriptions or copies of other documents shall include a description of the official use for which the Register or document is required.

## 504 AGENCY REPRESENTATIVES

- 504.1 Each agency, department, office, or other governmental entity that submits documents for publication in the D.C. Register shall designate, from its officers or employees, a representative and alternate to serve as a liaison to the Office of Documents. All such representatives shall be called "agency representatives."
- 504.2 Agency representatives and alternates shall be the main contact persons in matters relating to the publication of documents in the D.C. Register. All documents submitted by an agency for publication, including notices and rulemaking documents, must be submitted through the agency representative or alternate.
- 504.3 If an agency has staff or retained legal counsel assigned to provide assistance to the agency rulemaking process, the agency should designate the counsel as the "agency legal representative" and inform the Office of Documents. Agency legal counsel may also be designated as the "agency representative" or alternate, pursuant to §504.1.
- 504.4 Designation of an "agency legal representative" does not automatically exempt an agency from the requirement for review of the substance of rulemaking documents and legal certification by the Office of the Corporation Counsel, as set forth in §507. Legal certification by agency counsel must be approved by the Director of Documents.
- 504.5 Each agency representative shall be responsible for the following:
- (a) Representation of the agency in all matters relating to compliance with the provisions of this chapter;
  - (b) Responding to inquiries from the Office of Documents concerning documents or notices submitted by the agency for publication;
  - (c) Ensuring that the agency head or other official authorized by law to promulgate rules or attest to the promulgation of rules has reviewed all rulemaking documents, has approved the publication of rulemaking notices and the rulemaking text, and has signed the required transmittal form in accordance with the provisions of §507;
  - (d) Ensuring that the required legal certification is set forth on the transmittal form in accordance with the provisions of §507; and
  - (e) Ensuring that all other documents are in compliance with the Rules of the Office of Documents prior to submission for publication.

505 D.C. REGISTER: PUBLICATION POLICY

- 505.1 The Office of Documents shall publish a weekly serial publication called the District of Columbia Register, which shall contain the following:
- (a) Each resolution adopted by the Council and each act adopted by the Council and approved by the Mayor, enacted without mayoral approval, or enacted by the override of a mayoral veto;
  - (b) Each final or emergency rule, regulation, or other document required by law to be codified in the D.C. Municipal Regulations;
  - (c) Each notice of proposed rulemaking or intent to adopt the contents of any other document required to be codified in the D.C. Municipal Regulations;
  - (d) Each notice of public hearing issued by the Council or an agency;
  - (e) Other documents accepted for publication pursuant to §§505.6, 505.7, or 505.8.
- 505.2 Documents required or authorized to be published in the D.C. Register shall be published as promptly after submission as possible within limitations imposed by considerations of accuracy, usability of copy submitted, reasonable cost, printing schedules, and substantial compliance with the publication standards set forth in this chapter.
- 505.3 In prescribing rules governing headings, notice format, effective dates, authority citations, and other matters of form, the Office of Documents does not intend to affect the validity of any document that is filed and published under the law.
- 505.4 The D.C. Register serves as the ongoing supplement to the District of Columbia Municipal Regulations. Each document that is subject to codification in the DCMR and published in the D.C. Register shall be keyed to the D.C. Municipal Regulations.
- 505.5 Each rulemaking document submitted to the Office of Documents for publication in the D.C. Register must comply fully with the format, style, and other requirements established for the D.C. Municipal Regulations. All requirements of §513 must be met before the publication of proposed rules; Provided, that the Office of Documents may permit amendments to existing DCRR titles which have not been superseded to be proposed and adopted in the same format as the existing rules or regulations.
- 505.6 The following documents are required to be submitted to the Office of Documents for publication in the D.C. Register:
- (a) Each act and resolution of the District of Columbia Council;
  - (b) Each notice of public hearing;
  - (c) Each notice of proposed, final, or emergency rulemaking;
  - (d) Each document having general applicability and legal effect; and
  - (e) Other documents required by law to be published in the Register.

505 D.C. REGISTER: PUBLICATION POLICY (Continued)

- 505.7 The Director of Documents is authorized to publish the following documents in the D.C. Register:
- (a) Documents requested to be published by the Chairman of the Council or the Chairman's designee;
  - (b) Documents requested to be published by the Joint Committee on Judicial Administration in the District of Columbia;
  - (c) Information on changes in the organization of the government of the District of Columbia;
  - (d) Notices of public hearings not required by law or regulation to be published in the D.C. Register; and
  - (e) Documents requested to be published by the Mayor of the District of Columbia.
- 505.8 Whenever the Director of Documents determines that the publication of a document not required by subsection 505.6 or authorized by §505.7 would be of general public interest, the Director may permit the document to be published in the D.C. Register.
- 505.9 The following documents are generally not authorized to be published in the Register, except as provided by §505.8:
- (a) Proclamations or other ceremonial documents;
  - (b) Notices of meetings or other activities;
  - (c) Correspondence, memoranda, or internal agency documents;
  - (d) Press releases, news items, commentary, or editorials;
  - (e) Adjudicatory notices, opinions, or orders;
  - (f) Declaratory orders;
  - (g) Resolutions, petitions, or recommendations submitted for consideration by the Council, Mayor, or an agency; and
  - (h) Employment information, job announcements, or position descriptions.
- 505.10 Without prejudice to any other form of citation, the D.C. Register shall be cited by volume and page number, and the short form "DCR" shall be used in the citation. The date of publication of the weekly edition should also generally be included in the citation. For example, material which begins on page 9181 of volume 25 of the D.C. Register (which was published on April 11, 1979) should be cited "25 DCR 9181 (April 11, 1979)."

505 D.C. REGISTER: PUBLICATION POLICY (Continued)

- 505.11 Each document published in the D.C. Register shall be placed under one of the following Table of Contents categories, as indicated:
- (a) **COUNCIL OF THE DISTRICT OF COLUMBIA**-- Which shall contain all resolutions and approved acts of the Council, mayoral vetoes of Council acts, notices of D.C. Law numbers assigned, notices of filing and intent to consider legislation, notices of public hearings, and other documents requested to be published by the Chairman;
  - (b) **PUBLIC HEARINGS**-- Which shall contain all notices of public hearings issued by an agency or authorized for publication under §505.7(c);
  - (c) **FINAL RULEMAKING**-- Which shall contain all final rules, notices of final rulemaking action, and documents having general applicability and legal effect;
  - (d) **PROPOSED RULEMAKING**-- Which shall contain all notices of intent to adopt rules or documents of general applicability and legal effect, except combined notices pursuant to §505.11(e);
  - (e) **EMERGENCY RULEMAKING**-- Which shall contain all notices of emergency rulemaking and combined notices of emergency and proposed rulemaking; and
  - (f) **NOTICES AND INFORMATION**-- Which shall contain all other documents authorized for publication under §§505.7 or 505.8.
- 505.12 The Office of Documents will publish quarterly a cumulative index of all matters published in the D.C. Register during the year. The complete index for each volume will also be published on a calendar year basis.
- 505.13 Volume 26 of the D.C. Register is a short volume; beginning July 1, 1979, and ending December 31, 1979. Beginning with Volume 27, in January, 1980, complete volumes of the D.C. Register shall be published on a calendar year basis.
- 505.14 The certification and publication of a document in the D.C. Register or D.C. Municipal Regulations (DCMR) creates a rebuttable legal presumption that the document was duly issued, adopted, prescribed, or enacted, and that all requirements of the D.C. Documents Act and the D.C. Administrative Procedure Act have been met.

506 PUBLICATION SCHEDULES AND DEADLINES

- 506.1 Documents may be filed with the Office of Documents between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday. Arrangements for delivery of documents at other times must be made in advance with the Director of Documents.
- 506.2 Documents delivered by messenger to the Office of Documents will be time-stamped and logged immediately upon receipt. Documents received through the U.S. Mail or departmental mail will be time-stamped and logged in the normal course of mail processing.
- 506.3 The D.C. Register is published on Friday each week. If a government holiday falls on Friday, the official publication date will remain the same; however, the actual distribution of the issue will begin on Thursday.
- 506.4 The deadline for submission of documents for publication in each Friday edition of the D.C. Register is 12:00 NOON on each of the following days of **the previous week** :
- (a) Public hearing notices.....Previous Friday
  - (b) Acts and resolutions of the Council.....Previous Friday
  - (c) Summaries of Council legislative sessions and other Council notices.....Previous Friday
  - (d) Final rulemaking notices if no changes have been made in the text as published with the notice of proposed rulemaking....Previous Friday
  - (e) Other final rulemaking notices.....Previous Thursday
  - (f) Emergency rulemaking notices.....Previous Thursday
  - (g) Proposed rulemaking notices.....Previous Thursday
  - (h) Council notices of intent to adopt new legislation.....Previous Thursday
  - (i) Other notices and documents.....Previous Thursday
- 506.5 Documents filed for publication in an issue of the D.C. Register which is scheduled to be published on the Friday of a week containing an official District government holiday must be submitted one day earlier than the deadline set forth in §506.4.
- 506.6 Whenever an official government holiday falls on a Friday, all documents for publication in the D.C. Register of the following week which would have been due on the day of the holiday under §506.4 shall be due at 12:00 NOON on Thursday (the day before the holiday).

**506 PUBLICATION SCHEDULES AND DEADLINES (Continued)**

- 506.7 All documents subject to codification in the D.C. Municipal Regulations must be reviewed by the Office of Documents and certified by the Director prior to publication in the D.C. Register.
- 506.8 A pre-publication review service will be provided by the Office of Documents, as set forth in §508, in order to expedite the publication of proposed rulemaking and other documents requiring detailed review.
- 506.9 Proposed rulemaking and other documents subject to codification in the D.C. Municipal Regulations which have not been through the pre-publication review process should be submitted several days in advance of the deadlines set forth in §506.4.
- 506.10 Documents which have been tentatively certified by the Office of Documents following pre-publication review will not normally require additional review prior to publication.
- 506.11 The publication of a document on an emergency basis may be requested when the document involves the prevention, alleviation, control, or relief of an emergency situation.
- 506.12 An agency requesting emergency publication shall briefly describe the nature of the emergency situation and the benefits which would result from immediate publication.
- 506.13 Requests for emergency publication shall be made in writing and delivered to the Office of Documents with the required number of documents for publication.
- 506.14 If the Director of Documents concurs with the request for emergency publication, the document will be published as soon as possible in a special supplemental edition of the D.C. Register.

**507 PREPARATION AND FILING OF DOCUMENTS**

- 507.1 Except as provided in §507.2, two (2) copies of each document submitted for publication in the D.C. Register shall be filed with the Office of Documents. The first copy shall be an original. The second copy shall be a duplicate original or a certified copy of the original.
- 507.2 The following documents may be submitted in duplicate original or certified copy form:
- (a) Mayor's Orders;
  - (b) Acts and resolutions of the District of Columbia Council; and
  - (c) Documents prepared and printed by computer.

507 PREPARATION AND FILING OF DOCUMENTS (Continued)

507.3 To be eligible for publication in the D.C. Register, a document must be typewritten or printed on eight and one-half inch by eleven inch (8 1/2" x 11") white, opaque paper. The text must be set within the following margins:

- |                                 |   |
|---------------------------------|---|
| (a) LEFT MARGIN.....            | Not less than 1 inch;   |
| (b) RIGHT MARGIN.....           | Not less than 3/4 inch  |
| (c) TOP and BOTTOM MARGINS..... | Not less than 3/4 inch; and   |
| (d) Actual text.....            | not more than 1/2 inch inside<br>of the outside margin limit,<br>if the text permits. |

507.4 A printed or process document may be accepted for publication if it is suitable as an archival original. Photocopies of originals will only be accepted for publication when they are of **extremely high quality** - black print, white background, uniform print density, and absence of photocopying imperfections which obscure the print or cause grey marks on the background.

507.5 Documents on letterhead and documents in the form of letters or memoranda are generally not acceptable for publication in the D.C. Register.

507.6 All documents submitted for publication in the D.C. Register must be **single-spaced**. Extra single spaces between paragraphs or sections, as well as additional spaces between major divisions of documents, are generally acceptable. Documents should be prepared with attention to the cost of printing. Pages containing less than half a page of text should be avoided. Documents having excess margins, large amounts of blank space, or unnecessarily wasted space may be rejected for publication pending correction.

507.7 Documents should be prepared to be read vertically. Charts or other materials which cannot be reproduced in vertical form may be accepted for publication. In such cases, the text should be prepared for publication so that the top of the text will appear on the left margin of the D.C. Register.

507.8 Documents generally should not be signed on the originals, except Council acts and Mayor's Orders. If an original is submitted containing a signature, the Office of Documents may delete the signature for D.C. Register publication. Signed originals or copies are not acceptable as substitutes for the signature required on the transmittal form.

507 PREPARATION AND FILING OF DOCUMENTS (Continued)

507.9 Punctuation, capitalization, spelling, and other matters of style must conform, in general, to the current edition of A Manual of Style published by the University of Chicago Press. Where cost is a factor and complex matters of style are not at issue, some users of the D.C. Register can generally be assured of compliance with these standards by following the style set forth in The Elements of Style by Strunk and White, which is available in paperback (3rd Edition, 1979, MacMillan Publishers Company).

**[NOTE: In practice, this provision has been modified by publication of the D.C. Register and D.C. Municipal Regulations Rulemaking Handbook and Publications Style Manual. Persons preparing rulemaking and other documents for the Register should use the manual.]**

- 507.10 Except when considered necessary by the Director of Documents, tabulated blank forms for applications, registrations, reports, contracts, and similar items, and the instructions for preparing the forms, may not be published in full. A brief description or list of forms describing the purpose and use of each form, as well as where copies of the form(s) may be obtained, may be submitted for publication.
- 507.11 After a document has been submitted for publication, a substantive error in the text may be corrected only by the filing of another document making the correction. Pending the receipt of the corrected document, the Office of Documents should be informed by telephone of the need to withhold publication pending the submission of the corrected document.
- 507.12 If a document has been adopted by a legislative or quasi-legislative body in session, substantive or technical errors in the documents as adopted will not be corrected by the Office of Documents unless the correction is approved by the body in public session or the correction is made pursuant to the lawful adopted procedural rules of the body.
- 507.13 All rulemaking documents submitted for publication in the Register must be accompanied by a completed, signed transmittal form. Copies of the transmittal form shall be available from the Office of Documents. Non-rulemaking documents shall not be submitted with an official transmittal form, but must be accompanied by an informal memorandum or letter which indicates the agency or other source of the notice, the name of the official authorizing publication, and the address and telephone number of a contact person.
- 507.14 The transmittal form shall include the signature of the official authorized to issue the rules or the official legally designated to attest to the adoption of rules by a quasi-legislative or administrative body composed of more than one person. Signatures not personally executed by the authorized official and signatures of persons not legally vested with authority to adopt rules or attest to the adoption of rules by a rulemaking body will not be accepted.

507 PREPARATION AND FILING OF DOCUMENTS (Continued)

- 507.15 The transmittal form must contain the signature of the Corporation Counsel, designated Assistant Corporation Counsel, or approved agency counsel certifying that the substance of the text of the rule(s) has been reviewed and is, in the opinion of legal counsel, legally sufficient.
- 507.16 Certification of legal sufficiency, pursuant to §507.15, must be included on all rulemaking actions. Certification of proposed rules may be conditioned upon review of final rules. If the substance of proposed rules for which final certification has been given is not modified prior to final rulemaking action, the final rules do not require duplicate certification.
- 507.17 Certification of the form and contents of notices of proposed, final, and emergency rulemaking shall be made by the Office of Documents, pursuant to the provisions of §§509 through 511 of this chapter.
- 507.18 The Director will not certify and publish rulemaking notices in the D.C. Register unless it is clear that the promulgator of the rule or proposed rule named on the transmittal form has legal authority to issue the rules.
- 507.19 The transmittal form shall include a **complete citation** to the statute or other legal authority for the promulgation of the rules (**including the applicable section, subsection, and paragraph**), for each of the following:
- (a) The legal authority for the official or entity named in the transmittal form as the promulgator to adopt the rules; and
  - (b) The legal authority for the adoption of the substance of the rules.
- 507.20 In each instance where a document submitted for publication is rejected, pursuant to §501.5, the Office of Documents shall issue a notice of rejection which shall indicate the reason(s) for rejection. The notice of rejection shall be issued as soon as possible after review of the document.
- 507.21 An agency may request reconsideration of the rejection of any document for publication in the D.C. Register by submitting a written request for reconsideration to the Director of Documents stating the reasons why the document should be published as submitted. The Office of Documents will respond to each request for reconsideration in writing within five (5) days of the receipt of the request.
- 507.22 If a rulemaking notice is rejected and subsequently submitted in corrected form, it must be accompanied by a new transmittal form executed in accordance with this section.

## 508 PRE-PUBLICATION REVIEW OF DOCUMENTS

- 508.1 Agencies may submit final drafts of rulemaking documents and other documents subject to codification in the District of Columbia Municipal Regulations or publication in the D.C. Register to the Office of Documents for pre-publication review in accordance with the provisions of this section.
- 508.2 The purpose of pre-publication review is to provide agencies with assistance and guidance in the application of the provisions of this chapter to specific documents while the documents are in the "final draft" stage. The review process is not intended to be a substitute for agency preparation of the substance of documents in compliance with the provisions of this chapter; therefore, "rough" drafts and drafts that contain gross errors of grammar, format, and style will not be accepted for review.
- 508.3 Documents that have been reviewed prior to adoption or approval as proposed rulemaking will generally not require additional review by the Office of Documents prior to certification and publication in the D.C. Register. Pre-publication review should also greatly reduce the possibility that a document will be rejected for publication due to lack of compliance with the publication standards set forth in this chapter.
- 508.4 Documents submitted for pre-publication review should be in the same form as required for submission for publication; however, originals should not be submitted for review. Text which is double or triple-spaced will not be accepted for pre-publication review.
- 508.5 The pre-publication review process will include examination and recommendations on the following elements:
- (a) Numbering of chapters, sections, and paragraphs;
  - (b) Grammar, usage, and other matters of style;
  - (c) Format of notices and text;
  - (d) Contents of draft notices;
  - (e) General readability and organization text; and
  - (f) Compliance with the provisions of this chapter.
- 508.6 Every attempt will be made to complete the review process expeditiously; however, agencies should allow at least two weeks for review of final drafts or longer in cases where the drafts are lengthy and complex.
- 508.7 The Director may treat a document submitted for publication in the D.C. Register that has been rejected under §501.5 as a document submitted for pre-publication review under this section.

**509 PROPOSED RULEMAKING NOTICES**

- 509.1 A document that is submitted for publication as a proposed rule, including any document that purports to give notice of intent to adopt a new rule, or amend or repeal an existing rule, shall be filed in accordance with the provisions of this section in addition to other applicable provisions of this chapter.
- 509.2 The heading of each proposed rulemaking document shall state, in bold type or upper case print, the name of the agency promulgating the proposed rule and the phrase **"NOTICE OF PROPOSED RULEMAKING."**
- 509.3 The text of the proposed rule(s) shall be **PRECEDED** by a notice that shall contain the following:
- (a) The name of the promulgating official or body authorized to issue rules;
  - (b) A citation to the rule(s) amended or repealed OR the proposed citation of the new rule(s);
  - (c) If the proposed rulemaking is being re-published, pursuant to §510.5, a citation to the previous notice(s) of proposed rulemaking published in the D.C. Register;
  - (d) A brief description or title of the proposed rule(s); and
  - (e) Language stating the intent to adopt, amend, or repeal the rule(s) in not less than thirty (30) days from the date of publication of the notice in the D.C. Register. A longer period may be stated if required by law or adopted by the agency.
- 509.4 The text of the proposed rule(s) shall be **FOLLOWED** by a notice that indicates the following:
- (a) The manner in which public comments will be received, including a mailing address or other pertinent information;
  - (b) The manner in which a copy of the proposed rule(s) may be obtained, upon request, including a requirement for payment of a reasonable fee, if applicable.
- 509.5 The date of publication of a proposed rule is the date from which the thirty (30) day (or longer) notice period begins.
- 509.6 Proposed rules that are re-submitted for publication, pursuant to §510.5, shall indicate those portions of the text that have been substantially altered by setting forth the previously published text in brackets-[...] and underlining the new text that has been altered; Provided, that this requirement shall not apply to a Notice of Proposed Rulemaking which completely supersedes a previously published notice, so long as the rules were never adopted. The new notice shall cite the earlier notice and indicate that it has been superseded.

510 FINAL RULEMAKING NOTICES

- 510.1 A document that is submitted for publication as a final rule, including any document that purports to give notice of the final adoption of a new rule, or the amendment or repeal of an existing rule, shall be filed in accordance with the provisions of this section and other applicable provisions of this chapter.
- 510.2 The heading of each final rulemaking document shall state, in bold type or upper case print, the name of the agency promulgating the rule and the phrase "NOTICE OF FINAL RULEMAKING."
- 510.3 The text of the final rule(s) shall be PRECEDED by a notice that shall contain the following:
- (a) The name of the promulgating official or body authorized to issue rules;
  - (b) The date on which the final action was taken;
  - (c) A brief description or title of the rule(s);
  - (d) A citation to the notice(s) of proposed rulemaking previously published in the D.C. Register; and
  - (e) The effective date of the final rule(s). If no effective date is stated, it will be presumed that the rule(s) will become effective upon publication of the notice of final rulemaking in the D.C. Register.
- 510.4 The Director of Documents may omit publication of the entire text of a final rulemaking document if the final text is identical to the text published with the notice of proposed rulemaking; Provided, that this shall not relieve an agency of the requirement to file two (2) copies of the final text with the final rulemaking transmittal form.
- 510.5 If the text of a rulemaking document is substantially altered from the text published with the notice of proposed rulemaking, the promulgating agency must re-submit the text as a proposed rule, pursuant to §509. An agency does not have to wait the full notice period before re-filing an altered proposed rule. A new notice period begins upon re-publication.
- 510.6 For the purposes of this chapter, "substantial alteration" of the text shall not include the following:
- (a) Re-arrangement or renumbering of portions of the text;
  - (b) Re-wording to correct errors in format or style;
  - (c) Re-wording of the document, including the addition or deletion of material, that serves to clarify the intent, meaning, or application of the rule(s) and that does not substantially change the intent, meaning, or application of the proposed rule(s) or exceed the scope of the rule(s) as published with the notice of proposed rulemaking, as determined by the Office of Documents.

## 511 EMERGENCY RULEMAKING NOTICES

- 511.1 A document that is submitted for publication as emergency rulemaking, including any document that purports to adopt a new rule on an emergency basis or amend or repeal an existing rule on an emergency basis, shall be filed in accordance with the provisions of this section, in addition to other applicable provisions of this chapter.
- 511.2 A notice of emergency rulemaking may be combined with a notice of proposed rulemaking. Combined notices must meet the requirements of this section AND the requirements of §509.
- 511.3 The heading on each emergency rulemaking document shall state, in bold type or upper case print, the name of the agency promulgating the rule and the phrase "**NOTICE OF EMERGENCY RULEMAKING.**" A combined notice of emergency and proposed rulemaking shall use the phrase "**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING.**"
- 511.4 The text of the emergency rule(s) shall be **PRECEDED** by a notice that shall contain the following:
- (a) The name of the promulgating official or body authorized to issue rules;
  - (b) The date of adoption of the emergency rule(s) and the effective date of the rule(s);
  - (c) A citation to an existing rule that is being amended or repealed OR a temporary citation for a new rule;
  - (d) A brief description or title of the rule(s);
  - (e) A statement giving the justification for emergency rulemaking action which clearly explains why the action is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals;
  - (f) The DATE of expiration of the emergency rule(s); and
  - (g) If the notice is for combined emergency and proposed rulemaking, it shall include the language required by §509.3, and the requirements of §509.4 must be met by the addition of the proper notice to the end of the text of the emergency and proposed rule(s).
- 511.5 The one hundred twenty (120) day maximum effective period for emergency rules begins on the date of adoption of the rules. A shorter period of effectiveness may be stated in the notice. Emergency rules may take effect on the date of adoption, on the date of publication in the D.C. Register, or on another date after adoption.
- 511.6 A combined Notice of Emergency and Proposed Rulemaking shall state that the rule(s) will expire one hundred twenty (120) days after adoption (or a shorter stated period) or upon publication of final rules, whichever occurs first.

512 DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS: PUBLICATION POLICY

- 512.1 The incorporation of existing and future documents in the official compilation of the District of Columbia rules and regulations, the District of Columbia Municipal Regulations ("DCMR"), shall be governed by the publication policy set forth in this section.
- 512.2 The D.C. Municipal Regulations shall include every regulation enacted by the appointed District of Columbia Council. These documents are generally known as "Council Regulations."
- 512.3 The D.C. Municipal Regulations shall include every act of the elected Council of the District of Columbia which specifically amends or modifies an existing "Council Regulation;" which is designated by its provisions as a regulation or amendment to the D.C. Municipal Regulations; which is designated by its provisions as an amendment to the District of Columbia Rules & Regulations (DCRR); or which has not been codified or scheduled to be codified in the District of Columbia Code. The provisions of this subsection shall not apply to emergency or budget acts of the Council of the District of Columbia.
- 512.4 The D.C. Municipal Regulations shall include every document of general applicability and legal effect that is designated for publication in the D.C. Municipal Regulations by resolution of the Council of the District of Columbia.
- 512.5 The D.C. Municipal Regulations shall include every rule, regulation, or document having general applicability and legal effect which was lawfully adopted by the Board of Commissioners of the District of Columbia; the Commissioner of the District of Columbia; or any authorized agency, board, commission, or official of the District of Columbia prior to the effective date of the "District of Columbia Administrative Procedure Act" (Pub. L. 90-614; 82 Stat. 1210; D.C. Code, §1-1501 et seq.; enacted October 21, 1968; effective one year thereafter on October 21, 1969), as amended, which was compiled and published in the D.C. Register (including special editions of the Register or DCRR) as required by §8 of the act (D.C. Code, §1-1507).
- 512.6 The D.C. Municipal Regulations shall include every rule, regulation, or document having general applicability and legal effect promulgated by the Mayor, Commissioner, or any authorized agency, board, commission, or official of the District of Columbia since October 21, 1969, which has been properly adopted and published in accordance with the provisions of §§6 and 7 of the D.C. Administrative Procedure Act.
- 512.7 All rules, regulations, and documents of general applicability and legal effect incorporated in the D.C. Municipal Regulations shall reflect all amendments, deletions, and other modifications that have been duly enacted or adopted by the District of Columbia Council; the Council of the District of Columbia; or the Commissioner, Mayor, or any authorized agency, board, commission, or official of the District of Columbia.

**513 D.C. MUNICIPAL REGULATIONS: STRUCTURE AND FORMAT**

- 513.1 The major divisions of the D.C. Municipal Regulations (DCMR) are titles, each of which brings together broadly related rules and regulations by subject matter categories.
- 513.2 Titles of the D.C. Municipal Regulations are designated by the Office of Documents. Assignment of rules and regulations to the various titles of the D.C. Municipal Regulations by the Office of Documents will be based on the structure set forth in §513.3.
- 513.3 The structure of the D.C. Municipal Regulations is the following:

- 1 MAYOR AND EXECUTIVE AGENCIES
- 2 COUNCIL
- 3 ELECTIONS AND ETHICS
- 4 HUMAN RIGHTS AND RELATIONS
- 5 EDUCATION
- 6 GOVERNMENT PERSONNEL
- 7 EMPLOYMENT BENEFITS
- 8 LABOR RELATIONS
- 9 TAXATION AND ASSESSMENTS
- 10 PLANNING AND DEVELOPMENT
- 11 ZONING
- 12 BUILDING CODE
- 13 CONSTRUCTION AND MECHANICAL CODES
- 14 HOUSING CODE
- 15 PUBLIC UTILITIES AND TRANSPORTATION
- 16 CONSUMER PROTECTION
- 17 BUSINESS, INDUSTRY, AND PROFESSIONS
- 18 VEHICLES AND TRAFFIC
- 19 AMUSEMENTS AND RECREATION
- 20 ENVIRONMENT AND ENERGY
- 21 WATER AND SANITATION
- 22 PUBLIC HEALTH AND MEDICINE
- 23 ALCOHOLIC BEVERAGES AND FOOD
- 24 PUBLIC SPACE AND SAFETY
- 25 INSURANCE
- 26 CONTRACTS AND PROCUREMENT
- 27 PUBLIC WELFARE

513 D.C. MUNICIPAL REGULATIONS: STRUCTURE AND FORMAT (Continued)

- 513.4 Subtitles may be assigned by the Office of Documents to group chapters within a title by specific subject matter or agency. Chapters grouped within a subtitle may be made available to the public separately by subtitle.
- 513.5 The divisions of each title are **CHAPTERS**. Chapters are assigned or approved by the Office of Documents on the basis of subject matter. Each chapter has a descriptive heading.
- 513.6 The divisions of each chapter are **SECTIONS**. Each section shall consist of a unified body of rules that covers a specific, closely related segment of the subject matter covered in the chapter. Each section shall have a descriptive heading.
- 513.7 The major divisions of each section are **SUBSECTIONS**. Subsections are the basic units of the D.C. Municipal Regulations. Each subsection shall contain a single, specific requirement, provision, or a declarative statement of policy. Generally, subsections consist of one sentence or, occasionally, two (2) or three (3) sentences. **Subsections do not have descriptive headings.**
- 513.8 Subsections may include **PARAGRAPHS AND SUBPARAGRAPHS** that set forth lists, examples, or subdivisions of the specific provision set forth in the subsection. **Paragraphs and subparagraphs shall not be used to include separate, distinct provisions that can be set forth in separate subsections.**
- 513.9 The various divisions of the D.C. Municipal Regulations shall be designated in the following manner:
- (a) **TITLES** - Consecutively in Arabic numerals in accordance with the structure set forth in this section. (1, 2, 3, ...)
  - (b) **SUBTITLES** - Undesignated. Subtitles shall have descriptive headings and indicate the chapters contained in the subtitle.
  - (c) **CHAPTERS** - Consecutively in Arabic numerals throughout each title. (100.0, 200.0, 300.0, ...3400.0, 3500.0, ...)
  - (d) **SECTIONS** - Consecutively in Arabic numerals throughout each chapter. (100, 101, 102, ...3420, 3421, 3422, ...)
  - (e) **SUBSECTIONS** - Consecutively in Arabic numerals throughout each section. (106.1, 106.2, 106.3, ...106.15, 106.16, ...)
  - (f) **PARAGRAPHS** - Consecutively in lower case Arabic letters set within parenthesis. (106.1(a), 106.1(b), 106.1(c), ...)
  - (g) **SUBPARAGRAPHS** - In outline style, as follows: (1), (2), (3), ...(1)(A), (1)(B), (1)(C), ...(1)(A)(i), (1)(A)(ii), (1)(A)(iii). Subparagraphs are rarely used in the DCMR.
- 513.10 The numbering system of the D.C. Municipal Regulations can be used to identify the types of divisions contained in a citation. For example: **18 DCMR 235.6(a)(4)** is subparagraph (4) of paragraph (a) of subsection 6 of section 35 of chapter 2 of title 18 DCMR.

CHAPTER 7 THE D.C. ADMINISTRATIVE PROCEDURE ACT  
AS AMENDED BY THE D.C. DOCUMENTS ACT

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D.C. Code, Chapter 15, Subchapter I - ADMINISTRATIVE PROCEDURE

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1-1501 **EFFECT OF SUBCHAPTER** - This subchapter shall supplement all other provisions of law establishing procedures to be observed by the Mayor and agencies of the District government in the application of laws administered by them, except that this subchapter shall supersede any such law and procedure to the extent of any conflict therewith.

1-1502 **DEFINITIONS** - As used in this subchapter--

- (1)(A) The term "**Mayor**" means the Mayor of the District of Columbia or his or her designated agent.
- (1)(B) The term "**Council**" means the Council of the District of Columbia established by section 1-141(a) unless the term "**District of Columbia Council**" is used in which event it shall mean the District of Columbia Council established by subsection (a) of Reorganization Plan No. 3 of 1967 (81 Stat. 948).
- (2) The term "**District**" means the District of Columbia.
- (3) The term "**agency**" includes both subordinate agency and independent agency.
- (4) The term "**subordinate agency**" means any officer, employee, office, department, division, board, commission, or other agency of the District, other than an independent agency or the Mayor or the Council, required by law or by the Mayor or Council to administer any law or any rule adopted under the authority of a law.
- (5) The term "**independent agency**" means any agency of the government of the District with respect to which the Mayor and the Council are not authorized by law, other than this subchapter, to establish administrative procedures, but does not include the several courts of the District and the District of Columbia Tax Court.
- (6) The term "**rule**" means the whole or any part of any Mayor's or agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor or any agency.
- (7) The term "**rulemaking**" means Mayor's or agency process for the formulation, amendment, or repeal of a rule.

- (8) The term "**contested case**" means a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law (other than this subchapter), or by constitutional right, to be determined after a hearing before the Mayor or before an agency, but shall not include:
- (A) Any matter subject to a subsequent trial of the law and the facts de novo in any court;
  - (B) The selection or tenure of an officer or employee of the District;
  - (C) Proceedings in which decisions rest solely on inspections, tests, or elections; and
  - (D) Cases in which the Mayor or an agency act as an agent for a court of the District.
- (9) The term "**person**" includes individuals, partnerships, corporations, associations, and public or private organizations of any character other than the Mayor, the Council, or an agency.
- (10) The term "**party**" includes the Mayor and any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any proceeding before the Mayor or an agency, but nothing herein shall be construed to prevent the Mayor or an agency from admitting the Mayor or any person or agency as a party for limited purposes.
- (11) The term "**order**" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of the Mayor or of any agency in any matter other than rulemaking, but including licensing.
- (12) The term "**license**" includes the whole or any part of any permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission granted by the Mayor or any agency.
- (13) The term "**licensing**" includes process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license by the Mayor or any agency.
- (14) The term "**relief**" includes the whole or any part of any Mayor's or agency's:
- (A) Grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;
  - (B) Recognition of any claim, right, immunity, privilege, exemption, or exception; and
  - (C) Taking of any other action upon the application or petition of, and beneficial to, any person;

1-1502 DEFINITIONS (Continued)

- (15) The term "**proceeding**" means any process of the Mayor or an agency as defined in paragraphs (6)[rule], (11)[order], and (12)[license] of this section.
- (16) The term "**sanction**" includes the whole or any part of any Mayor's or agency's:
- (A) Prohibition, requirement, limitation, or other condition affecting the freedom of any person;
  - (B) Withholding of relief;
  - (C) Imposition of any form of penalty or fine;
  - (D) Destruction, taking, seizure, or withholding of property;
  - (E) Assessment of damages, reimbursement, restitution, compensation; costs, charges, or fees;
  - (F) Requirement, revocation, or suspension of a license; and
  - (G) Taking of other compulsory or restrictive action.
- (17) The term "**regulation**" means the whole or any part of any District of Columbia Council statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor, District of Columbia Council, or any agency.
- (18) The term "**public record**" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies.
- (19) The term "**adjudication**" means the agency process, other than rulemaking, for the formulation, issuance, and enforcement of an order.

1-1503 ESTABLISHMENT OF PROCEDURES

- (a) The Mayor and the Council shall, for the Mayor and for each subordinate agency, establish or require each subordinate agency to establish procedures in accordance with this subchapter.
- (b) Each independent agency shall establish procedures in accordance with this subchapter.
- (c) The procedures required to be established by subsections (a) and (b) of this section shall include requirements of practice before the Mayor and each agency.

#### 1-1504 OPEN MEETINGS; TRANSCRIPTS

- (a) All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the District of Columbia Council, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting.
- (b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government. Copies of such written transcripts or copies of such transcriptions shall be available upon request to the public at reasonable cost.

#### 1-1505 OFFICIAL PUBLICATIONS

- (a) The Mayor shall cause to be published the official publications known as the District of Columbia Register and the District of Columbia Municipal Regulations pursuant to subchapter III of this chapter.
- (b) All courts within the District shall take judicial notice of rules, regulations, and Council acts and resolutions published or of which notice is given in the District of Columbia Register or the District of Columbia Municipal Regulations pursuant to subchapter III of this chapter.
- (c) Publication in the District of Columbia Register of Council acts and resolutions; regulations adopted, amended, or repealed by the District of Columbia Council; and rules adopted, amended, or repealed by the Mayor or by any agency shall not be considered as a substitute for publication in one or more newspapers of general circulation when such publication is required by statute.

#### 1-1506 PUBLIC NOTICE AND PARTICIPATION IN RULEMAKING; EMERGENCY RULES

- (a) The Mayor and each independent agency shall, prior to the adoption of any rule or the amendment or repeal thereof, publish in the District of Columbia Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) notice of the intended action so as to afford interested persons opportunity to submit data and views either orally or in writing, as may be specified in such notice. The publication or service required by this subsection of any notice shall be made not less than thirty days prior to the effective date of the proposed adoption, amendment, or repeal, as the case may be, except as otherwise provided by the Mayor or the agency upon good cause found and published with the notice.

**1-1506 PUBLIC NOTICE AND PARTICIPATION IN RULEMAKING; EMERGENCY RULES**

(Continued)

- (b) Any interested person may petition the Mayor or an independent agency, requesting the promulgation, amendment, or repeal of any rule. The Mayor and each independent agency shall prescribe by rule the form for such petitions, and the procedure for their submission, consideration, and disposition. Nothing in this subchapter shall make it mandatory that the Mayor or any agency promulgate, amend, or repeal any rule pursuant to a petition therefor submitted in accordance with this section.
- (c) Notwithstanding any other provision of this section, if, in an emergency, as determined by the Mayor or an independent agency, the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals, the Mayor or such independent agency may adopt such rules as may be necessary in the circumstances, and such rule may become effective immediately. Any such emergency rule shall forthwith be published and filed in the manner prescribed in subchapter III of this chapter. No such rule shall remain in effect longer than 120 days after the date of its adoption.

**NOTE: The former §1-1506, "FILING AND PUBLISHING OF RULES" was repealed by the D.C. Documents Act. See subchapter III.**

**1-1507 COMPILATION OF RULES AND REGULATIONS**

- (a) As soon as practicable after the effective date of this subchapter, the Mayor shall have compiled, indexed, and published in the District of Columbia Register all regulations adopted by the District of Columbia Council and each agency and in effect at the time of such compilation. Such compilations shall be revised as may be necessary to reflect new regulations and rules and changes in regulation[s] and rules.
- (b) Compilations shall be made available to the public at a price fixed by the Mayor.
- (c) The Mayor must publish the 1st compilation required by subsection (a) of this section within 1 year after the effective date of this subchapter and no regulations adopted by the District of Columbia Council nor rule adopted by the Mayor or by an agency before the date of such publication which has not been filed and published in accordance with this subchapter and which is not set forth in such compilation shall be in effect after 1 year after the effective date of this subchapter.

## 1-1508 DECLARATORY ORDERS

On petition of any interested person, the Mayor or an agency, within their discretion, may issue a declaratory order with respect to the applicability of any rule, regulation, Council act or resolution, or statute enforceable by them or by it, to terminate a controversy (other than a contested case) or to remove uncertainty.

A declaratory order, as provided in this section, shall be binding between the Mayor or the agency, as the case may be, and the petitioner on the state of facts alleged and established, unless such order is set aside by a court.

A declaratory order is subject to review in the manner provided in this subchapter for the review of orders and decisions in contested cases, except that the refusal of the Mayor or of an agency to issue a declaratory order shall not be subject to review.

The Mayor and each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition.

## 1-1509 CONTESTED CASES

- (a) In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the Mayor or the agency determine that the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded to all parties to present evidence and argument with respect thereto. The notice shall also state that if a party or witness is deaf, or because of a hearing impediment cannot readily understand or communicate the spoken English language the party or witness may apply to the agency for the appointment of a qualified interpreter under §1-1511. Unless otherwise required by law, other than this subchapter, any contested case may be disposed of by stipulation, agreed settlement, consent order, or default.
- (b) In contested cases, except as may otherwise be provided by law, other than this subchapter, the proponent of a rule or order shall have the burden of proof. Any oral and any documentary evidence may be received, but the Mayor and every agency shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary.

1-1509 CONTESTED CASES

(Continued)

- (c) The Mayor or the agency shall maintain an official record in each contested case, to include testimony and exhibits, but it shall not be necessary to make any transcription unless a copy of such record is timely requested by any party to such case, or transcription is required by law, other than this subchapter.

The testimony and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for order or decision.

No sanction shall be imposed or rule or order or decision be issued except upon consideration of such exclusive record, or such lesser portions thereof as may be agreed upon by all the parties to such case. The cost incidental to the preparation of a copy or copies of a record or portion thereof shall be borne equally by all parties requesting the copy or copies.

- (d) Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision adverse to a party in the case (other than the Mayor or an agency) shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision, who, in such case, shall personally consider such portions of the exclusive record, as provided in subsection (c) of this section, as may be designated by any party.

- (e) Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law.

The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence.

A copy of the decision and order and accompanying findings and conclusions shall be given by the Mayor or the agency, as the case may be, to each party or to his attorney of record.

**1-1510 JUDICIAL REVIEW**

- (a) Any person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Mayor or an agency in a contested case, is entitled to a judicial review thereof, in accordance with this subchapter upon filing in the District of Columbia Court of Appeals a written petition for review.

If the jurisdiction of the Mayor or an agency is challenged at any time in any proceeding and the Mayor or the agency, as the case may be, takes jurisdiction, the person challenging jurisdiction shall be entitled to an immediate judicial review of that action, unless the Court shall otherwise hold.

The reviewing Court may by rule prescribe the forms and contents of the petition and, subject to this subchapter, regulate generally all matters relating to proceedings on such appeals.

A petition for review shall be filed in such Court within such time as the Court may by rule prescribe and a copy of such petition shall forthwith be served by mail by the clerk of the Court upon the Mayor or upon the agency, as the case may be.

Within such time as may be fixed by rule of the Court, the Mayor or such agency shall certify and file in the Court the exclusive record for the decision and any supplementary proceedings, and the clerk of the Court shall immediately notify the petitioner of the filing thereof.

Upon the filing of a petition for review, the Court shall have jurisdiction of the proceeding, and shall have power to affirm, modify, or set aside the order or decision complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require.

Filing of a petition for review shall not in itself stay enforcement of the order or decision of the Mayor or the agency, as the case may be. The Mayor or the agency may grant, or the reviewing Court may order, a stay upon appropriate terms.

The Court shall hear and determine all appeals upon the exclusive record for decision before the Mayor or the agency.

The review of all administrative orders and decisions by the Court shall be limited to such issues of law or fact as are subject to review on appeal under applicable statutory law, other than this subchapter.

**1-1510 JUDICIAL REVIEW (Continued)**

In all other cases the review of the Court of administrative orders and decisions shall be in accordance with the rules of law which define the scope and limitations of review of administrative proceedings. Such rules shall include, but not be limited to, the power of the Court:

- (1) So far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action;
  - (2) To compel agency action unlawfully withheld or unreasonably delayed; and
  - (3) To hold unlawful and set aside any action for findings and conclusions found to be:
    - (A) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
    - (B) Contrary to constitutional right, power, privilege, or immunity;
    - (C) In excess of statutory jurisdiction, authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights;
    - (D) Without observance of procedure required by law, including any applicable procedure provided by this subchapter; or
    - (E) Unsupported by substantial evidence in the record of the proceedings before the Court.
- (b) In reviewing administrative orders and decisions, the Court shall review such portions of the exclusive record as may be designated by any party. The Court may invoke the rule of prejudicial error.

**1-1511 INTERPRETERS FOR THE DEAF**

- (a) In any contested case before an agency, if a party or witness is deaf, or because of a hearing impediment cannot readily understand or communicate the spoken English language, the party or witness may apply to the agency for the appointment of a qualified interpreter to assist that person.
- (b) Upon the application of the party or witness, the agency shall appoint a qualified interpreter from a list maintained by the Mayor to assist that person.

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**D.C. Code: Chapter 15, Subchapter III - LEGAL PUBLICATION**

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**1-1531 DEFINITIONS - For purposes of this subchapter:**

- (1) The terms **"Mayor," "Council," "District," "agency," "rule," "rulemaking," "person," "licensing," and "regulation"** (except when used in the term "District of Columbia Municipal Regulations") shall have the meanings provided in §1-1502.
- (2) The terms **"Commissioner," "District of Columbia Council," "Chairman," "act," and "District of Columbia courts"** shall have the meaning provided in §1-202.
- (3) The term **"Administrator"** means the person appointed by the Mayor to supervise and control the District of Columbia Office of Documents in accordance with §1-1611.
- (4) The phrase **"D.C. Code"** means the code of the District of Columbia laws as provided for in chapter 3 of the Act of July 30, 1947 (61 Stat. 636) and any continuations, supplements, or revisions thereof authorized by act, Congressional resolution or act.
- (5) The phrase **"document having general applicability and legal effect"** means any document issued under lawful authority prescribing a sanction or course of conduct, conferring a right, privilege, authority or immunity or imposing an obligation, and applicable to the general public, members of a class or persons in a locality, as distinguished from named individuals or organizations.

The phrase **"document having general applicability and legal effect"** does not include any act to be codified in the D.C. Code or a personnel manual or internal staff directive solely applicable to employees or agents of the District of Columbia.

**1-1532 COMPREHENSIVE COMPILATION OF DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS**

- (a) The District of Columbia Office of Documents, established pursuant to section 1-1611, shall supervise, manage, and direct the preparation, editing, publishing and supplementation of an official legal compilation entitled the **District of Columbia Municipal Regulations (DCMR)**. The **District of Columbia Municipal Regulations** shall be published in a manner to promote efficient public access to all current District of Columbia rules and regulations.

1-1532 **COMPREHENSIVE COMPILATION OF DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS**

(Continued)

- (b) Except as otherwise provided by law, the following documents shall be accurately compiled in the District of Columbia Municipal Regulations:
- (1) Every rule, regulation, and document having general applicability and legal effect adopted by the Commissioner, the Mayor, the District of Columbia Council, and each agency;
  - (2) Every act of the Council which is not codified or to be codified in the D.C. Code and which is not enacted in emergency circumstances as provided in §1-229;
  - (3) Every rule, regulation, and document having general applicability and legal effect which is adopted under authority of law by a board, commission, or instrumentality of the District of Columbia; Provided, that nothing in this paragraph shall be construed to apply to the District of Columbia courts;
  - (4) Any document which the Council by resolution finds to be a document having general applicability and legal effect and which the Council by resolution orders to be printed.
- (c) The District of Columbia Municipal Regulations shall contain the entire text of each document to be compiled under this section without any incorporation by reference unless:
- (1) The publication of the document would be impractical due to its unusual lengthiness;
  - (2) The document itself is not a rule, regulation, or document having general applicability and legal effect, but is incorporated by reference in a rule, regulation, or document having general applicability and legal effect;
  - (3) A copy of the document incorporated by reference is available to the public at every public library branch in the District of Columbia and at the relevant agency headquarters; and
  - (4) The incorporation by reference includes a specific indication of how and where a copy of such document can be inspected and obtained.

1-1532 **COMPREHENSIVE COMPILATION OF DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS**

(Continued)

- (d) The Administrator shall ensure that the District of Columbia Municipal Regulations shall contain the following research aids:
- (1) A citation or historical note to the original rule or act from which each section in the District of Columbia Municipal Regulations was derived;
  - (2) A reference to where the original form of each rule, act, or document contained in the District of Columbia Municipal Regulations can be inspected or copied;
  - (3) Parallel reference tables indexing the sections of the District of Columbia Municipal Regulations to enabling legislation and other provisions of law which the District of Columbia Municipal Regulations implements;
  - (4) Major parts organized according to subject matter headings with subdivisions thereof organized according to government agency titles; and
  - (5) A comprehensive index relating to sections of the District of Columbia Municipal Regulations, to subject matter topics, and to the organizational units of government.
- (e) The Administrator may prepare (or procure by contract in accordance with applicable law) and include in the District of Columbia Municipal Regulations annotations of judicial decisions, and other explanatory material relating to any document published in the District of Columbia Municipal Regulations.
- (f) Each complete edition of the entire District of Columbia Municipal Regulations may be published in segments if it is deemed to be expeditious in the judgment of the Administrator.

1-1533 **DISTRICT OF COLUMBIA REGISTER**

- (a) The District of Columbia Office of Documents shall also supervise, manage, and direct the preparation, editing and publishing of the District of Columbia Register which shall serve as the only official legal bulletin of the District of Columbia government and the temporary supplement of the District of Columbia Municipal Regulations.

1-1533 DISTRICT OF COLUMBIA REGISTER

(Continued)

- (b) The District of Columbia Register shall contain the entire text of the following:
- (1) Every rule, regulation and document having general applicability and legal effect required to be but not yet published and integrated in the District of Columbia Municipal Regulations as provided in this subchapter;
  - (2) Every notice of public hearing issued by an agency;
  - (3) Every notice of proposed agency rulemaking or repeal and every other document required to be published under the District of Columbia Administrative Procedure Act (D.C. Code, §1-1501 et seq.); and
  - (4) Every act, resolution, and notice of the Council and any other document requested to be published by the Chairman of the Council or his or her designee.
- (c) The Administrator is authorized to publish in the District of Columbia Register:
- (1) Any document requested to be published by the Joint Committee on Judicial Administration of the District of Columbia;
  - (2) Information on changes in the organization of the District of Columbia government;
  - (3) Notices of public hearings not published under authority of subsection (b) of this section; and
  - (4) Such other matters as the Mayor may from time to time determine to be of general public interest.
- (d) The administrator may exercise the discretion of omitting from the District of Columbia Register the publication of the entire text of a document if:
- (1) Such publication would be unduly cumbersome or expensive; and
  - (2) If, in lieu of such publication, there is included in the District of Columbia Register a notice stating the general subject matter of any document so omitted and the specific manner in which a copy of such document may be obtained.

**1-1533 DISTRICT OF COLUMBIA REGISTER**

(Continued)

- (e) If the text of an adopted act or rule is the same as the text of the previously published proposed act or rule, the Administrator may insert in the District of Columbia Register a notation to this effect, giving the publication date of and citation to the District of Columbia Register issue containing the proposed act or rule.
- (f) If, after a proposed rule has been published initially in the District of Columbia Register, an agency decides to alter the initial text, the agency shall submit the altered text as though for initial publication. The alterations shall be indicated by the use of symbols determined by the Administrator.
- (g) The District of Columbia Register shall be published on each Friday, or, if Friday is a legal holiday, on the next working day.

Each year the Administrator shall publish quarterly a cumulative index of all matters published in the District of Columbia Register during the year.

- (h) On each document published in the District of Columbia Register, there shall appear the date upon which such document was filed with the Administrator pursuant to §1-1534.

On each issue of the District of Columbia Register, there shall appear on its cover the actual date such issue was generally circulated to the public for review and comment; Provided, that should the District of Columbia Register be generally circulated after the cover date shown, a notice stating the correct date shall be attached thereto.

All time computations based upon publication in the District of Columbia Register shall commence from the cover date, or, if corrected, the date of notice thereof.

The provisions of this subsection shall apply to any and all supplemental editions to the District of Columbia Register.

**1-1534 DOCUMENTS TO BE FILED IN THE DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS**

Any document required or authorized to be published in the District of Columbia Municipal Regulations or the District of Columbia Register shall be filed with the District of Columbia Office of Documents. If a document has been published pursuant to subchapter I of this chapter and forwarded to the Office of the Secretariat prior to March 6, 1979, such document need not be filed with the Office of Documents, unless the Administrator otherwise notifies the person responsible for filing the document.

**1-1535 PERMANENT SUPPLEMENTS TO THE D.C. MUNICIPAL REGULATIONS**

At least once each year, every document required to be compiled pursuant to §1-1532 shall be permanently integrated into the District of Columbia Municipal Regulations by publication of loose-leaf pages or other appropriate permanent supplements of the District of Columbia Municipal Regulations. The index of the DCMR shall be similarly supplemented or reissued.

**1-1536 DOCUMENTS TO BE FILED WITH ADMINISTRATOR**

Except as provided in §1-1534, 2 copies of any document to be published pursuant to this subchapter shall be filed with the Administrator.

The Administrator shall immediately review filed documents to determine their conformity to the provisions of this subchapter and to editorial standards promulgated by the Administrator.

Upon the Administrator's determination of a document's conformity with the Documents Act, one copy of such document shall be prepared for publication and one copy kept for permanent historic preservation.

**1-1537 PUBLICATION, SPECIFICATIONS AND DISTRIBUTION OF THE DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS**

- (a) The District of Columbia Municipal Regulations and its permanent supplements shall be published pursuant to typographical and contractual arrangements which ensure that the District of Columbia Municipal Regulations can be purchased at a reasonable cost in its entirety or in portions of related rules, regulations, or documents having general applicability and legal effect.
- (b) Copies of the District of Columbia Municipal Regulations shall be available to the public at each regular branch of the District of Columbia Library System and to each Advisory Neighborhood Commission established by the Council.

**1-1538 LEGAL EFFECTIVENESS OF DOCUMENTS**

- (a) Notwithstanding any other provision of this subchapter, any rule, regulation, or document having general applicability and legal effect which has been adopted or enacted by the Commissioner, the Mayor, the District of Columbia Council, and agency, or other instrumentality of the District before March 6, 1979, and which is not published in the District of Columbia Municipal Regulations on or before June 30, 1984, shall not be in effect thereafter.

1-1538    **LEGAL EFFECTIVENESS OF DOCUMENTS**    (Continued)

- (b) Except in the case of emergency rules or acts, no rule or document of general applicability and legal effect adopted or enacted on or after March 6, 1979, shall become effective until after its publication in the District of Columbia Register, nor shall such rule or document having general applicability and legal effect become effective if it is required by law, other than subchapter I of this chapter or this subchapter, to be otherwise published, until such rule or document having general applicability and legal effect is also published as required by such law.

1-1539    **CORRECTION OF ERRORS IN DOCUMENTS**

The Administrator of the District of Columbia Office of Documents shall correct grammatical or typographical errors in the printing of the text of a document in the District of Columbia Statutes-at-Large, the District of Columbia Register, or the District of Columbia Municipal Regulations by the publication of an errata list or by publication of the entire document or the affected part of the document in its corrected form so as to indicate the actual corrections which were made.

1-1540    **CERTIFICATION**

Each part of the District of Columbia Statutes-at-Large, the District of Columbia Municipal Regulations, each permanent supplement of the District of Columbia Municipal Regulations, and the District of Columbia Register shall contain a certificate by the Administrator stating that such part contains all documents required to be published pursuant to this subchapter as of the date of such certificate.

1-1541    **PRESUMPTION CREATED BY PUBLICATION**

The publication of any document in the District of Columbia Statutes-at-Large, the District of Columbia Municipal Regulations, or the District of Columbia Register creates a rebuttable presumption:

- (1) That it was duly issued, prescribed, adopted, or enacted;  
and
- (2) That all requirements of this subchapter have been complied with.

1-1542 PENALTIES

Any person who knowingly and willfully causes any document not to be published in the District of Columbia Statutes-at-Large, the District of Columbia Register, or the District of Columbia Municipal Regulations which is required to be so published pursuant to this subchapter shall be guilty of a misdemeanor and shall be fined not more than \$100 or imprisoned for not more than 30 days, or both.

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D.C. Code, Chapter 16, Subchapter I - GENERAL PROVISIONS

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1-1601 DEFINITIONS For the purposes of this chapter:

- (1) The term "**act**" shall have the same meaning ascribed to it in §1-202.
- (2) The term "**agency**" means any officer, employee, office, department, division, board, commission, or other agency of the Government of the District of Columbia including both those which are independent of and those which are subordinate to the Mayor and Council but not including the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.
- (3) The term "**Board of Commissioners**" means the Board of Commissioners of the District of Columbia as established by the Act of June 11, 1878 (20 Stat. 102).
- (4) The term "**Commissioner**" means the Commissioner of the District of Columbia established by subsection (a) of §301 of Reorganization Plan No. 3 of 1967 (81 Stat. 949).
- (5) The term "**Council**" means the Council of the District of Columbia created by §1-221(a) unless the phrase "**District of Columbia Council**" is used in which event the term shall mean the District of Columbia Council created by subsection (a) of §201 of Reorganization Plan No. 3 of 1967.
- (6) The term "**Council year**" means the legislative period of the Council beginning on January 2nd of each year and ending on January 1st of the following year.

1-1601 DEFINITIONS (Continued)

- (7) The term "**District of Columbia Code**" means the Code of the District of Columbia as provided for in the Act of July 30, 1947 (61 Stat. 638) and any continuations, supplements, or revisions thereof authorized by Act, Congressional resolution, or act.
- (8) The term "**District of Columbia Register**" means the District of Columbia Register mandated by §1-1505.
- (9) The term "**Mayor**" means the Mayor of the District of Columbia created by §1-241(a) or his or her designated agent;
- (10) The term "**rule**" means the whole or any part of any Board of Commissioners', Commissioner's, District of Columbia Council's, Mayor's, or agency's statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or designed to describe organization, procedure, or practice requirements.
- (11) The term "**regulation**" shall have the same meaning as the term "rule."
- (12) The term "**resolution**" means a resolution of the Council unless the term "Congressional resolution" is used in which case it shall mean a resolution of the Congress of the United States or either house thereof.

1-1602 PUBLICATION PREREQUISITE FOR EFFECTIVENESS OF COUNCIL ACTS AND RESOLUTIONS

Unless adopted pursuant to the emergency circumstances provision of §1-229(a), no Council act or resolution shall be effective unless it has been published in the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.

1-1603 STATUTES-AT-LARGE

- (a) Within 45 days of the end of each Council year, the Mayor shall compile and publish the District of Columbia Statutes-at-Large which shall include in separate chronological order:
  - (1) Council acts which become law during that Council year; and
  - (2) Council resolutions adopted during that Council year.

**1-1603 STATUTES-AT-LARGE**

(Continued)

- (b) The 1st publication of the District of Columbia Statutes-at-Large shall also contain in a separate part each regulation and resolution of the District of Columbia Council in chronological order.
- (c) The Mayor shall make copies of the District of Columbia Statutes-at-Large available to the public at a reasonable cost calculated to cover the costs of its compilation, publication, and distribution.

**1-1604 ENROLLMENT OF COUNCIL ACTS AND RESOLUTIONS -- FILING WITH ARCHIVES**

After enactment by the Council, but before any presentation to the Mayor, each act and resolution of the Council shall be set forth on parchment or other such suitable paper. Each parchment or other suitable paper which is an adopted resolution or is an act which becomes law shall be filed with the Archives of the United States not more than 5 years after its adoption.

**1-1605 JUDICIAL NOTICE**

All courts within the District of Columbia shall take judicial notice of the acts and resolutions published in the District of Columbia Statutes-at-Large.

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**D.C. Code, Chapter 16, Subchapter II - D.C. OFFICE OF DOCUMENTS**

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**1-1611 CREATION OF THE DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS**

- (a) Part IV D of Organization Order No. 2, Commissioner's Order No. 67-23, December 13, 1967, creating the Secretariat within the Executive Office of the Mayor is amended:
  - (1) By striking subsection 1.k; and
  - (2) By transferring, as provided in this subchapter, to the District of Columbia Office of Documents all of the powers, duties, and functions assigned to the Secretariat under any provision of law relating to the preparation, certification, and publication of the District of Columbia Register and all District of Columbia rules, regulations, codes, ordinances, and any amendments thereto.

1-1611 CREATION OF THE D.C. OFFICE OF DOCUMENTS

(Continued)

- (b) There is hereby established within the Executive Office of the Mayor (created by Organization Order No. 2, dated December 23, 1967) a District of Columbia Office of Documents which shall be under the supervision and control of an Administrator appointed by the Mayor without regard to political affiliation and solely on the basis of fitness to perform the duties of the position.
- (c) The District of Columbia Office of Documents shall provide for the prompt preparation, editing, printing, and public distribution of the District of Columbia Statutes-at-Large, the District of Columbia Register, and the District of Columbia Municipal Regulations in accordance with this subchapter.
- (d) The Administrator of the District of Columbia Office of Documents (hereinafter referred to as the "Administrator") shall be a member of the District of Columbia Bar.

The Administrator shall appoint such employees within the District of Columbia Office of Documents as may be necessary for the prompt and efficient performance of the functions of the Office and for which sufficient appropriation is authorized and provided.

- (e) The Administrator shall be paid at a per annum gross rate not to exceed the highest step level of GS-15 of the General Schedule.
- (f) No fewer than 7 funded and authorized positions and the attendant funding totaling at least one hundred fifty thousand dollars (\$150,000) for salaries and personnel benefits for such positions shall be transferred by the Mayor to the District of Columbia Office of Documents.
- (g) All property, records, and unexpended balances of appropriated funds in the Office of the Secretariat which are currently allotted for legal publications, codification, and the District of Columbia Register functions shall be transferred to the Office of Documents.

All rules, regulations, documents, and other materials assembled or developed by the Mayor's Municipal Code Compilation Project shall be transferred to the Office of Documents.

**1-1612 DUTIES OF ADMINISTRATOR**

The Administrator of the District of Columbia Office of Documents shall:

- (1) Supervise, manage, and direct the preparation, editing, printing, and public distribution of all legal publications of the District of Columbia government including the District of Columbia Statutes-at-Large, the District of Columbia Register, and the District of Columbia Municipal Regulations in accordance with this subchapter;
- (2) Promulgate appropriate rules of procedure to implement the provisions of this subchapter;
- (3) With the assistance of the Office of the Corporation Counsel, the officer designated by the Chairman of the Council, or legal counsels to agencies and other governmental entities, certify the promulgation, adoption, or enactment of documents to be published in accordance with the Documents Act;
- (4) Coordinate with the officer designated by the Chairman of the Council the drafting and preparation of legislation to be published in the District of Columbia Register and District of Columbia Municipal Regulations;
- (5) Establish editorial standards for the removal of unnecessary sex-based terminology in documents and for the numbering, grammar, and style of all documents to be published pursuant to this subchapter;
- (6) Except with respect to acts or resolutions of the Council, reject for publication proposed rules, regulations, orders, administrative issuances, or ordinances which fail to comply substantially with the publication requirements authorized by this subchapter;
- (7) In accordance with applicable law, procure contracts for the preparation and publication of documents pursuant to this subchapter; and
- (8) Instruct promulgators of documents to be published under this subchapter concerning the requirements established by the Administrator under this subchapter and the means to comply with those requirements.

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D.C. Code, Chapter 16, Subchapter III - GOVERNMENT NOTICES IN NEWSPAPERS

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**1-1621 REQUIREMENT**

Notwithstanding any other provisions of law, any other requirement that the District of Columbia publish notices in 2 daily newspapers shall be satisfied by publication in at least 2 general circulation newspapers, published in the District of Columbia, once every 2 weeks or more frequently.



