

3831 RULEMAKING

3831.1 The Commission, on its own initiative, as required by law, or based on a request by any person, agency, or association, may issue, amend, or rescind any rules under the Act by publication in accordance with § 105 of the District of Columbia Administrative Procedures Act, effective October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505), and the rules of the Office of Documents and Administrative issuances, 1 DCMR § 300, *et seq.*

3831.2 Any person, agency, or association may request that the Commission promulgate any rule(s) by filing a written petition with the Commission in accordance with § 3801, except that no specific form or content shall be required of a petition for rulemaking, and § 3812 shall not apply to any matter related to a petition for rulemaking. Petitions for rulemaking are encouraged to include, as relevant:

- (a) Citation to and quotation of any existing rule proposed to be modified;
- (b) Proposed text for any new or modified rule, which may be in markup form of any existing rule;
- (c) Citation to and quotation of any provision of approved or enacted legislation that authorizes or necessitates the proposed change(s), which may include relevant portions of the legislative history;
- (d) Citation to and quotation of any decision of the Commission or the District of Columbia Court of Appeals that is applicable to the subject matter of the proposed rule(s), or a decision of any other court, tribunal, or agency that has authoritatively or persuasively addressed a relevant issue, including whether the decision would be superseded by the proposed rule(s);
- (e) Description of any particular occurrence, pattern, or practice by housing providers, tenants, or agencies that demonstrates a need for rulemaking by the Commission; and
- (f) The interest of and anticipated effect on the person, agency, or association, or any class of persons whose interests are being represented, in the subject matter of the proposed rule(s).

3831.3 No person, agency, or association shall file a petition for rulemaking that constitutes or creates the appearance of an *ex parte* communication that is prohibited by § 3818.

3831.4 The Commission shall not be required to take any action based on a petition filed under this section, and no person, agency, or association shall have a right to a response by the Commission.

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- 3831.5 The Commission may issue a request for clarification of any petition for rulemaking or may issue a statement of reasons for denying any petition. A request or statement under this subsection shall be sent to the petitioner and made publicly available by the Commission. No request, statement, or failure to act by the Commission regarding a petition for rulemaking shall constitute a binding or advisory opinion on any matter, and no right of appeal shall be created by the denial of or failure to act on a petition. In the exercise of its discretion to issue, or not, a request or statement regarding a petition, the Commission shall use all reasonable care to avoid the appearance of prejudging any issue raised by a pending appeal before it.
- 3831.6 Proposed, final, or emergency rules to be published by the Commission shall be adopted by a majority vote of a quorum of the Commission in a public meeting on the record in accordance with § 3800.
- 3831.7 Comments on any proposed rulemaking published by the Commission shall be filed in accordance with the instructions provided in the published notice.
- 3831.8 The Commission shall maintain a publicly available record of each petition for rulemaking received, of any response issued to a petition, and of all comments received in response to a proposed rulemaking published by the Commission. If the Commission, in its discretion, proposes any rule based on a petition it has received, the relevant petition(s) shall be appended to the notice of proposed rulemaking.
- 3831.9 The Chair of the Commission may designate any member(s) of its staff or any single Commissioner to engage in informal discussions with any person, agency, or association regarding the substance of a petition for rulemaking or comments received in response to a proposed rulemaking. Disclosure of the occurrence or substance of any informal discussions shall not be required as part of the publicly available record of a rulemaking but shall not be prohibited by any confidentiality agreement.
- 3831.10 Nothing in this section shall limit the Commission's obligations of disclosure or limit or waive any applicable exemptions from disclosure under the Freedom of Information Act, effective March 29, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), including but not limited to the deliberative process privilege.

SOURCE: Final Rulemaking published at 68 DCR 012634 (December 3, 2021).