

OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF FINAL RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings (OAH), pursuant to the authority set forth in Sections 8(a)(7) and 8(b)(7) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76, D.C. Official Code §§ 2-1831.05(a)(7) and (b)(7) (2007 Repl. & 2011 Supp.)), hereby gives notice of the adoption of the following amendments to chapters 28, Office of Administrative Hearings Rules of Practice and Procedure, and 29, Office of Administrative Hearings: Rules for Rental Housing, Public Benefits, and Unemployment Insurance Cases, of title 1 of the District of Columbia Municipal Regulations (DCMR).

These rules allow parties in all cases before OAH to file papers by e-mail. The rules also allow OAH to serve orders and notices by e-mail in certain circumstances and allow agencies seeking civil fines to file electronic data from the Notices of Violation and Notices of Infraction.

The proposed rules were published in the *D.C. Register* on October 21, 2011, at 58 DCR 9048. One comment was received. Following publication of the Notice of Proposed Rulemaking on October 21, 2011, and considering the comment received, OAH made two (2) non-substantial alterations to the rulemaking to clarify the intent, meaning, and application of the rules. The first change was to add additional language to the end of new subsection 2841.10 to clarify the deadline for service of certain filings. The second change was to repeal subsection 2809.4, which prohibits e-mail filing. Repealing subsection 2809.4 is consistent with OAH's initial intent to allow for electronic submissions as indicated by the Notice of Proposed Rulemaking. Additionally, this change will not impose an additional burden on the public.

Chapter 28, Office of Administrative Hearings Rules of Practice and Procedure, of title 1 of the District of Columbia Municipal Regulations is amended as follows:

Section 2803, Beginning a Civil Fine Case, is amended by adding a new subsection 2803.11 is added to read as follows:

2803.11 In civil fine cases, the Government may transfer data by electronic means as authorized by Subsection 2841.14.

Section 2809, Filing of Papers, subsection 2809.4 is repealed.

Section 2809, Filing of Papers, is amended by adding a new subsection 2809.6 to read as follows:

2809.6 A party also may file any paper by e-mail, as authorized by Section 2841.

A new section 2841 is added to read as follows:

2841 FILING AND SERVICE BY E-MAIL; OTHER ELECTRONIC SUBMISSIONS

- 2841.1 This Section permits any party to file papers by e-mail with OAH and the Government to file data electronically. It also permits OAH to serve orders and notices by e-mail.
- 2841.2 The filing of any paper by e-mail following the procedures set forth in this Section constitutes filing for all purposes under these Rules.
- 2841.3 All papers to be filed by e-mail should be in portable document format (PDF). The papers should be attached to an e-mail, and not contained in the body of the e-mail itself.
- 2841.4 A party filing any paper by e-mail is responsible for any delay, disruption, interruption of electronic signals, legibility and completeness of the paper, and accepts the risk that the paper may not be filed.
- 2841.5 Pursuant to Section 2810, every paper filed by e-mail must contain:
- (a) The name, mailing address, telephone number, and e-mail address of the person filing it;
 - (b) The case number assigned by OAH, or a statement that a case number has not yet been assigned;
 - (c) A brief description of the paper (for example, “request for hearing in a Medicaid matter,” “motion for new hearing date for an unemployment hearing,” “exhibits/documents for hearing in rental housing case”); and
 - (d) A filing that does not contain this information is subject to rejection. A cover page that can be used to satisfy this requirement is available from the Clerk’s Office. The brief description of the paper also should be placed in the “subject” line of the e-mail.
- 2841.6 Filings must be e-mailed to oah.filing@dc.gov.
- 2841.7 The filing date for an e-mail filing received between 9:00 a.m. and 5:00 p.m. on any OAH business day will be the date it is received in the correct OAH electronic mailbox. The filing date for an e-mail filing received at other times will be the next day that the Clerk’s Office is open for business. The date and time recorded in the correct OAH electronic mailbox shall be conclusive proof of when it was received.
- 2841.8 The certification requirement of Section 2814 applies to all papers filed by e-mail.

- 2841.9 A party must send a copy of anything filed by e-mail (except a request for a hearing that begins a case) to all other parties, and must include a certificate of service as required by Subsection 2811.9. A party may not send the copy by e-mail unless the other party consents, pursuant to Section 2811.
- 2841.10 The five (5) additional days added to the response times by Subsection 2812.5 does not apply to orders, notices, or papers served by e-mail, even if they are also served by other means.
- 2841.11 Unless otherwise ordered, a party who files or serves any paper by e-mail shall keep the original until after the case is concluded and the time for any appeals has expired. The party shall make the originals available for inspection upon request of another party after prior reasonable notice filed with OAH. This Section does not limit the authority of an Administrative Law Judge to order production of the original.
- 2841.12 Parties agreeing to service by e-mail are responsible for monitoring their e-mail accounts and for opening the e-mails.
- 2841.13 The Clerk may serve orders and notices by e-mail to any party who provides an email address and consents, in writing or on the record, to receiving papers by e-mail. The party is responsible for ensuring that the Clerk has an accurate, up-to-date e-mail address. In an emergency, without a party's advance consent, the Clerk may serve orders and notices by e-mail in addition to any other authorized method of service.
- 2841.14 If the Government seeks to begin a case at OAH by filing a Notice of Infraction or a Notice of Violation pursuant to Section 2803, the Government may transfer to OAH data from the Notice of Infraction or the Notice of Violation by electronic means, pursuant to prior technical arrangements with OAH. Such electronic transfer by itself neither begins a case nor satisfies the Government's obligations under Section 2803. The Government shall file the Notice of Infraction or Notice of Violation and its attachments, substantially in the form provided to the Respondent, as well as the proof of service.

Chapter 29, Office of Administrative Hearings: Rules for Rental Housing, Public Benefits, and Unemployment Insurance Cases, of title 1 of the District of Columbia Municipal Regulations is amended as follows:

Section 2983, Unemployment Insurance Cases – Filing of Papers, subsection 2983.2 is repealed.