

and address of the pharmacy or practitioner who dispensed the substance and the prescription number, if any; and

(c) The importation of the controlled substance for personal medical use is authorized or permitted under other Federal laws and state law.

Dated: January 2, 1997.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 97-2352 Filed 1-30-97; 8:45 am]

BILLING CODE 4410-09-M

## COMMISSION OF FINE ARTS

### 45 CFR Parts 2101, 2102, and 2103

#### Procedures and Policies

**AGENCY:** The Commission of Fine Arts.

**ACTION:** Final rule.

**SUMMARY:** This document amends the procedures and policies governing the administration of the U.S. Commission of Fine Arts. The current wording is incomplete and has become obsolete or incorrect in several of its parts. This document serves to clarify the functions and requirements of the agency in order to address more efficiently the needs of the Federal government and the public.

**EFFECTIVE DATE:** March 3, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Charles H. Atherton, Secretary,  
(202) 504-2200.

**SUPPLEMENTARY INFORMATION:** As established by Congress in 1910, the Commission of Fine Arts is a small independent advisory body made up of seven Presidentially appointed "well qualified judges of the arts" whose primary role is architectural review of designs for buildings, parks, monuments and memorials erected by the Federal or District of Columbia governments in Washington, D.C. In addition to architectural review, the Commission considers and advises on the designs for coins, medals and U.S. memorials on foreign soil. The Commission also advises the District of Columbia government on private building projects within the Georgetown Historic District, the Rock Creek Park perimeter and the Monumental Core area. The Commission advises Congress, the President, Federal agencies, and the District of Columbia government on the general subjects of design, historic preservation and on orderly planning on matters within its jurisdiction.

The regulations revised in this rule were last published in the Federal Register on November 21, 1979 (44 FR

67050). Specific items this document amends include providing the current address and telephone number of the agency, publishing formerly omitted Public Laws for which the agency is responsible (Heraldic services provided by the Department of the Army, 10 U.S.C. 4594; Commemorative Works, 40 U.S.C. 1001), clarifying a series of procedural functions, and in general correcting ambiguous or grammatically questionable phraseology. Therefore, as these changes clarify established procedures and are minor in nature, the Commission determines that notice and comment are unnecessary and that, in accordance with 5 U.S.C. 553 (b)(B), good cause to waive notice and comment is established.

#### List of Subjects

##### 45 CFR Part 2101

Organization and Functions  
(Government agencies).

##### 45 CFR Part 2102

Administrative practice and procedure, Sunshine Act.

##### 45 CFR Part 2103

Administrative practice and procedure.

This document was prepared under the direction of Charles H. Atherton, Secretary, U.S. Commission of Fine Arts, 441 F Street, N.W., Suite 312, Washington, D.C., 20001.

Accordingly, for the reasons set forth above, Parts 2101, 2102, and 2103 are amended as set forth below.

Signed at Washington, D.C., this 24th day of January, 1997.

Charles H. Atherton,

*Secretary, U.S. Commission of Fine Arts.*

CFA hereby revises 45 CFR Parts 2101, 2102 and 2103 to read as follows:

## PART 2101—FUNCTIONS AND ORGANIZATION

### Subpart A—Functions and Responsibilities of the Commission

Sec.

2101.1 Statutory and Executive Order authority.

2101.2 Relationships of Commission's functions to responsibilities of other government units.

### Subpart B—General Organization

2101.10 The Commission.

2101.11 Secretary to the Commission.

2101.12 Georgetown Board of Architectural Consultants.

Authority: Pub. L. 81-808, 64 Stat. 903; 10 U.S.C. 4594; 36 U.S.C. 124; 40 U.S.C. 72, 104, 106, 121, 1001; E.O. 1259 of October 25, 1910; E.O. 1862 of November 28, 1913; and E.O. 3524 of July 28, 1921.

## Subpart A—Functions and Responsibilities of the Commission

### § 2101.1 Statutory and Executive Order Authority.

The Commission of Fine Arts (referred to as the "Commission") functions pursuant to statutes of the United States and Executive Orders of Presidents, as follows:

(a) *Public buildings, other structures, and parklands.* (1) For public buildings to be erected in the District of Columbia by the federal government and for other structures to be so erected which affect the appearance of the city, the Commission comments and advises on the plans and on the merits of the designs before final approval or action; (2) For statues, fountains and monuments to be erected in the District of Columbia under authority of the federal government, the Commission advises upon their location in public squares, streets, and parks, and the merits of their designs;

(3) For monuments to be erected at any location pursuant to the American Battle Monuments Act, the Commission approves the designs before they are accepted by the American Battle Monuments Commission (See also § 2101.1 (g));

(4) For parks within the District of Columbia, when plans of importance are under consideration, the Commission advises upon the merits of the designs; and

(5) For the selection by the National Capital Planning Commission of lands suitable for development of the National Capital park, parkway, and playground system in the District of Columbia, Maryland, and Virginia, the Commission provides advice.

(b) *Private buildings bordering certain public areas in Washington, D.C. (Shipstead-Luce Act).* For buildings to be erected or altered<sup>1</sup> in locations which border the Capitol, the White House, the intermediate portion of Pennsylvania Avenue, the Mall Park System, Lafayette Park, the Zoological Park, Rock Creek Park or Parkway, or Potomac Park or Parkway, or are otherwise within areas defined by the official plats prepared pursuant to Sec. 2 of the Shipstead-Luce Act, the Commission reviews the plans as they relate to height and appearance, color and materials of the exteriors, and

<sup>1</sup> Alteration does not include razing (*Commissioner of the District of Columbia v. Bennenson*, D.C. Court of App. 1974, 329 A.2d 437). Partial demolition, however, is viewed as an alteration (*The Committee to Preserve Rhodes Tavern and the Natl. Processional Route v. Oliver T. Carr Company, et. al.*, U.S. Court of App. for D.C. Cir., 1979, 79-1457, Dept. Justice Brief for Fed. Appellee).

makes recommendations to the Government of the District of Columbia which, in the judgement of the Commission, are necessary to prevent reasonably avoidable impairment of the public values represented by the areas along which the buildings border. (Shipstead-Luce Act, 46 Stat. 366 as amended (40 U.S.C. 121; D.C. Code 5-410).)

(c) *Georgetown buildings (Old Georgetown Act)*. For buildings to be constructed, altered, reconstructed, or razed within the area of the District of Columbia known as "Old Georgetown", the Commission reviews and reports to the District of Columbia Government on proposed exterior architectural features, height, appearance, color, and texture of exterior materials as would be seen from public space; and the Commission makes recommendations to such government as to the effect of the plans on the preservation and protection of places and areas that have historic interest or that manifest exemplary features and types of architecture, including recommendations for any changes in plans necessary in the judgement of the Commission to preserve the historic value of Old Georgetown, and takes any such actions as in the judgement of the Commission are right or proper in the circumstances. (Old Georgetown Act, Public Law 81-808, 64 Stat. 903 (D.C. Code 5-801).)

(d) *United States medals, insignia, and coins*. On medals, insignia, and coins to be produced by an executive department of the United States including the Mint, the Commission advises as to the merits of their designs which shall be submitted before the executive officer having charge of the same shall approve thereof.

(e) *Heraldic services provided by the Department of the Army*. The Commission upon request advises the Heraldic Branch of the Army upon the merits of proposed designs for medals, insignia, seals, etc. prepared under the authority of the Act of August 26, 1957 to furnish heraldic services to the other departments and agencies of the government.

(f) *Questions of art with which the Federal government is concerned*. When required to do so by the President or by Committees of either House of Congress, the Commission advises generally on questions of art, and whenever questions of such nature are submitted to it by an officer or department of the federal government the Commission advises and comments.

(g) *Commemorative works*. The Commemorative Works Act provides

standards for placement of commemorative works on certain federal lands in the District of Columbia and its environs, and for other purposes; and requires site and design approval of all commemorative works by the Commission of Fine Arts, National Capital Planning Commission, and (as appropriate) the Secretary of Interior or the Administrator of General Services. The sponsoring agencies therefore shall submit designs to the Commission for review and shall provide such design changes as may be required to obtain approval.

**§ 2101.2 Relationships of Commission's functions to responsibilities of other government units.**

(a) *Projects involving the Capitol building and the Library of Congress*. Plans concerning the Capitol building and the buildings of the Library of Congress are outside the purview of the Commission except as to questions on which the Committees of Congress require the Commission to advise.

(b) *Other Federal government projects*. Officers and departments of the federal government responsible for finally approving or acting upon proposed projects within the purview of the Commission's functions as described in § 2101.1 (a) are required first to submit plans or designs for such projects to the Commission for its advice and comments.

(c) *Projects within the jurisdiction of the District of Columbia government*. The District of Columbia seeks Commission advice on exterior alteration or new construction of public buildings or major public works within its boundaries. The District of Columbia government also shall seek Commission advice on certain private construction requiring building or demolition permits from the D.C. Permit Branch (D.C. Law 5-422). These include certain actions by the District of Columbia government pursuant to either D.C. Law 5-422 or D.C. Law 2-144 within areas subject to the Shipstead-Luce or Old Georgetown Acts (§ 2101.1 (b) and (c)) prior to the issuance of a permit.<sup>2</sup> Alterations of buildings, demolition, or new construction at individually designated landmarks or within historic districts are further subject to the permit requirements of the Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2-144). Upon request,

<sup>2</sup> Provisions of the Shipstead-Luce Act (§ 2101.1 (b)) do not include full demolition, though partial demolition is viewed as an alteration.

advice will be given on the subject of lot subdivisions.

**Subpart B—General Organization**

**§ 2101.10 The Commission.**

The Commission is composed of seven members, each of whom is appointed by the President and serves for a period of four years or until his or her successor is appointed and qualified. The Chairman and Vice Chairman are elected by the members. The Commission is assisted by a staff as authorized by the Commission.

**§ 2101.11 Secretary to the Commission.**

Subject to the direction of the Chairman, the Secretary to the Commission is responsible for the day-to-day operations of the agency and for supervising the staff in its support of the functions of the Commission; for preparing the agenda of Commission meetings; for organizing presentations before the Commission of plans, designs, or questions upon which it is to advise, comment, or respond; for interpreting the Commission's conclusions, advice, or recommendations on each matter submitted to it; for maintaining a liaison with other governmental entities, professionals, and the public; and for maintaining the Commission's records. The Assistant Secretary of the Commission shall carry out duties delegated to him/her by the Secretary and shall act in place of the Secretary during his/her absence or disability.

**§ 2101.12 Georgetown Board of Architectural Consultants.**

To assist the Commission in carrying out the purposes of the Old Georgetown Act (§ 2101.1 (c)), a committee of three architects appointed for a term of three years by the Commission serves as the Board of Architectural Consultants without expense to the United States. This committee advises the Commission regarding designs and plans referred to it. The Chairman is elected by its members.

**PART 2102—MEETINGS AND PROCEDURES OF THE COMMISSION**

**Subpart A—Commission Meetings**

Sec.

- 2102.1 Times and places of meetings.
- 2102.2 Actions outside of meetings.
- 2102.3 Public notice of meetings.
- 2102.4 Public attendance and participation.
- 2102.5 Records and minutes; public inspection.

### Subpart B—Procedures on Submission of Plans or Designs

2102.10 Timing, scope and content of submissions for proposed projects involving land, buildings or other structures.

2102.11 Scope and content of submission for proposed medals, insignia, coins, seals, and the like.

2102.12 Responses of Commission to submissions.

Authority: 5 U.S.C., App. 1; OMB Circular No. A-63.

### Subpart A—Commission Meetings

#### § 2102.1 Times and places of meetings.

Regular meetings of the Commission, open to the public, are held monthly on the third Thursday of the month, beginning at 10:00 o'clock a.m., at its offices in Suite 312, 441 F Street, N.W. Washington, D.C. 20001, except that by action of the Commission a regular meeting in any particular month may be omitted or it may be held on another day or at a different time or place. A special meeting, open to the public, may be held in the interval between regular meetings upon call of the Chairman and five days' written notice of the time and place mailed to each member who does not in writing waive such notice. On all matters of official business, the Commission shall conduct its deliberations and reach its conclusions at such open meetings except as stated in § 2101.12 provided, however, the Commission members may receive staff briefings or may have informal background discussions among themselves and the staff outside of such meetings.

#### § 2102.2 Actions outside of meetings.

Between meetings in situations of emergency, the Commission may act through a canvass by the Secretary of individual members, provided that any action so taken is brought up and ratified at the next meeting. In addition, the Commission members may convene away from the Commission's offices to make inspections at the site of a proposed project or at the location of a mock-up for the project and may then and there reach its conclusions respecting such project which shall be recorded in the minutes of the meeting held on the same day or, if none was then held, in the minutes of the next meeting.

#### § 2102.3 Public notice of meetings.

Notice of each meeting of the Commission shall be published in the Federal Register.

#### § 2102.4 Public attendance and participation.

Interested persons are permitted to attend meetings of the Commission, to file statements with the Commission at or before a meeting, and to appear before the Commission when it is in meeting, provided that an appearance is germane to the functions and policies of the Commission and to the matter or issues then before the Commission, and if the presentation or argument is made in a concise manner, within reasonable time limits and avoids duplicating information or views already before the Commission. A decision of the Chairman as to the order of appearances and as to compliance with these regulations by any person shall be final unless the Commission determines otherwise.

#### § 2102.5 Records and minutes; public inspection.

A detailed record of each meeting shall be made and kept which shall contain copies of all written, printed, or graphic materials presented. The Secretary shall have prepared minutes of each meeting which shall state the time and place it was held and attendance by Commission members and staff and which shall contain a complete summary of matters discussed and conclusions reached and an explanation of the extent of public participation, including names of persons who presented oral or written statements; and he shall send a copy to all members of the Commission for their approval. Subsequent to such approval, the minutes shall be certified by the Secretary. The minutes and any completed reports, studies, agenda or other documents made available to, or prepared for or by, the Commission shall be available for public inspection and, at the requesting party's expense, for copying at the offices of the Commission.

### Subpart B—Procedures on Submissions of Plans or Designs

#### § 2102.10 Timing, scope and content of submissions for proposed projects involving land, buildings, or other structures.

(a) A party proposing a project which is within the purview of the Commission's functions under § 2101.1 (a), (b), or (c) should make a submission when concept plans for the project are ready but before detailed plans and specifications or working drawings are prepared. In order to assure that a submission will be considered at the next scheduled meeting of the Commission, it should be delivered to the Commission's offices not later than

ten (10) working days before the meeting; if it is a project subject to review first by the Georgetown Board, not later than ten (10) working days before the Georgetown Board meeting. The Commission will attempt to consider a submission which is not made in conformity with this schedule, but it reserves the right to postpone consideration until its next subsequent meeting.

(b) (1) Each submission should state or disclose:

(i) The nature, location, and justification of the project, including any relevant historical information about the building or other structure to be altered or razed;

(ii) The identity of the owner or developer (or for public buildings, the governmental unit with authority to approve or act upon the plans) and of the architect;

(iii) The functions, uses, and purpose of the project; and

(iv) Other information to the extent it is relevant, such as area studies, site plans, building and landscape schematics, renderings, models, depictions or samples of exterior materials and components, and photographs of existing conditions to be affected by the project.

(2) Alternative proposals may be included within one submission. The information submitted shall be sufficiently complete, detailed, and accurate as will enable the Commission to judge the ultimate character, siting, height, bulk, and appearance of the project, in its entirety, including the grounds within the scope of the project, its setting and environs, and its effect upon existing conditions and upon historical and prevailing architectural values. Record drawings and photographs will be submitted by the applicant for a permanent Commission record of the submission.

(c) If a project consists of a first or intermediate phase of a contemplated larger program of construction, similar information about the eventual plans should accompany the submission. Even though a submission relates only to approval for razing or removal of a building or other structure, the project will be regarded as part of phased development, and the submission is subject to such requirement.

(d) If the project involves a statue, fountain or a monument within the purview of the Commission under § 2101.1 (a)(2), partial submissions should be made as appropriate to permit the Commission to advise on each aspect of the project as prescribed by the Commemorative Works Act (Pub. L. 99-652, H.R. 4378, 40 U.S.C. 1001).

(e) The Commission staff will advise owners and architects concerning the scope and content of particular submissions. Material relevant to the functions and policies of the Commission varies greatly depending upon the nature, size, and importance of the project to be reviewed by the Commission. Also, it is the policy of the Commission not to impose unnecessary burdens or delays on persons who make submissions to the Commission. However, the Commission at any meeting may decline to reach a conclusion about a proposed project if it deems the submission materials inadequate for its purposes, or it may condition its conclusions on the submission of further information to it at a later meeting or, in its discretion, may delegate final action to the staff.

(f) The Commission staff, members of the Georgetown Board, interested members of the public, or the submitting party may augment any submission by additional relevant information made available to the Commission before or at the meeting where the submission is considered. The staff should also make information available concerning prior considerations or conclusions of the Commission regarding the same project or earlier versions of it.

**§ 2102.11 Scope and content of submissions for proposed medals, insignia, coins, seals, and the like.**

Each submission of the design for a proposed item which is within the Commission's purview under § 2101.1 (d) should identify the sponsoring government unit and disclose the uses and purpose of the item, the size and forms in which it will be produced, and the materials and finishes to be used, including colors if any, along with a sketch, model, or prototype.

**§ 2102.12 Responses of Commission to submissions.**

(a) The Commission before disposing of any project presented to it may ask for the proposed plans or designs to be changed in certain particulars and resubmitted, or for the opportunity to review plans, designs, and specifications in certain particulars at a later stage in their development, and to see samples or mock-ups of materials or components; and when appropriate in the matter of a statue or other object of art, the Commission may ask for the opportunity to see a larger or full-scale model. All conclusions, advice, or comments of the Commission which lead to further development of plans, designs, and specifications or to actual carrying out of the project are made in

contemplation that such steps will conform in all substantial respects with the plans or designs submitted to the Commission, including only such changes as the Commission may have recommended; any other changes in plans or designs require further submission to the Commission.

(b) In the case of plans for a project subject to the Old Georgetown Act (§ 2101.1 (c)), if the Commission does not respond with a report on such plans within forty-five days after their receipt by the Commission, its approval shall be assumed and a permit may be issued by the government of the District of Columbia.

(c) In the case of plans for a project subject to the Shipstead-Luce Act (§ 2101.1 (b)), if the Commission does not respond with a report on such plans within thirty days after their receipt by the Commission, its approval shall be assumed and a permit may be issued by the government of the District of Columbia.

(d) In the event that any project or item within the Commission's purview under 2101.1 has not progressed to a substantial start of construction or production within four years following the Commission meeting date on which the final design was approved, the Commission's approval is suspended. The plans or designs previously approved or alternative plans or designs, may thereupon be resubmitted for Commission review. The Commission's subsequent approval, if granted, shall remain in effect for four years.

**PART 2103—STATEMENTS OF POLICY**

**§ 2103.1 General approaches to review of plans by the Commission.**

The Commission functions relate to the appearance of proposed projects within its purview as specified herein. These functions are to serve the purpose of conserving and enhancing the visual assets which contribute significantly to the character and quality of Washington as the nation's capital and which appropriately reflect the history and features of its development over two centuries. Where existing conditions detract from the overall appearance of official Washington or historic Georgetown—such as conditions caused by temporary, deteriorated, or abandoned buildings of little or no historical or architectural value, by interrupted developments, or by vacant lots not devoted to public use as parks or squares—the Commission will favor suitable corrections to these conditions. When changes or additions are proposed in other circumstances, the

Commission may consider whether the public need or value of the project or the private interests to be served thereby justify making any change or addition, and it will consider whether the project can be accomplished in reasonable harmony with the nearby area, with a minimum loss of attractive features of the existing building or site, with due deference to the historical and architectural values affected, and without creating an anomalous disturbing element in the public view of the city.

Authority: Pub. L. 81–808, 64 Stat. 903; 40 U.S.C. 72, 104, 106, and 121; E.O. 1259 of October 25, 1910; E.O. 1862 of November 28, 1913; E.O. 3524 of July 28, 1921.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 2 and 15**

[ET Docket No. 96–102; FCC 97–5]

**Unlicensed NII Devices in the 5 GHz Frequency Range**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** By this action, the Commission amends its radio frequency devices rules to make available 300 megahertz of spectrum at 5.15–5.35 GHz and 5.725–5.825 GHz for use by a new category of unlicensed equipment, called Unlicensed National Information Infrastructure (“U–NII”) devices. These devices will provide short-range, high speed wireless digital communications on an unlicensed basis. We anticipate that U–NII devices will support the creation of new wireless local area networks (“LANs”) and will facilitate wireless access to the National Information Infrastructure (“NII”). In order to permit significant flexibility in the design and operation of these devices, we are adopting the minimum technical rules necessary to prevent interference to other services and to ensure that the spectrum is used efficiently. We believe that the rules set forth herein will foster the development of a broad range of new devices and communications options that will stimulate economic development and the growth of new industries. We also expect that this action will promote the ability of U.S. manufacturers, including small businesses, to compete globally by enabling them to develop unlicensed digital communications products for the world market.