

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in D.C. Official Code § 25-211(b)(2012 Supp.) and Mayor's Order 2001-96 (June 28, 2001) as revised by Mayor's Order 2001-102 (July 23, 2001), hereby gives notice of its intent to adopt the following proposed rules that make amendments to Title 23 of the District of Columbia Municipal Regulations (DCMR).

The proposed amendments to Chapter 2 establish a licensure renewal period for alcohol certification provider permits and updates other license renewal periods. In Chapter 4, the rules clarify those circumstances that the Board may rescind its previously issued license approval. Additionally, the rulemaking no longer permits a license located in a moratorium zone to be kept in safekeeping for the length of the moratorium.

The proposed rules make several amendments to Chapter 7. Licensees who remove their licenses from safekeeping after two years must provide the Board with detailed plans of its return to operations, including its anticipated re-opening date. The rules clarify that licensees are required to register with the Board to sell and serve alcoholic beverages until 4 a.m. on January 1st and other District and federal holidays. The rules create a pub crawl license. The rulemaking clarifies that the holder of a manufacturer's license can file and be approved by the Board for a one-day substantial change application. The rules also establish requirements for on-premises retailers to provide bottle service to seated patrons.

The proposed rulemaking for Chapters 8, 10, and 12 clarifies several sections regarding those circumstances where the Board will issue a cease and desist order as a result of the licensee's non-compliance with other District requirements. The rules further clarify that a licensee may provide entertainment only during the hours permitted under its entertainment endorsement. The rules also clarify that licensed restaurants and hotels are responsible for maintaining three years of sufficient documentation to allow the Board to verify the correctness of information contained on the licensee's submitted quarterly reports.

Lastly, the proposed rules make several amendments to Chapter 17. Service of papers may now be done electronically. The computation of time has been clarified regarding the calculation of hours and days. Additionally, the rules include new language regarding the Chair's authority to schedule and conduct hearings. The proposed rules also create new requirements for the submission of documentary evidence, post-hearing pleadings, and the protest information form.

These proposed rules were adopted by the Board on October 15, 2014 by a six (6) to zero (0) vote. Directions for submitting comments may be found at the end of this Notice. A public hearing on the proposed rules will be held following publication.

The Board also gives notice of its intent to take final rulemaking action to adopt these rules on a permanent basis in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Pursuant to D.C. Official Code § 25-211(b)(2), these proposed rules are also being transmitted to the Council of the District of Columbia (Council) for a ninety (90) day period of review. The final rules shall not become effective absent approval by the Council.

Title 23 of the D.C. Municipal Regulations is amended as follows:

Section 207, LICENSURE PERIODS, of Chapter 2, LICENSE AND PERMIT CATEGORIES, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing subsection 207.2 to read as follows:

207 LICENSURE PERIODS

207.2 The three year renewal period for each license listed below shall occur sequentially every three years starting with the following dates:

License Class	Licensure Period	Ending Year
Manufacturer A	Apr. 1 to Mar. 31	2015
Wholesaler A	Apr. 1 to Mar. 31	2015
Retailer A	Apr. 1 to Mar. 31	2015
Manufacturer B	Apr. 1 to Mar 31	2017
Wholesaler B	Oct. 1 to Sept. 30	2014
Retailer B	Oct. 1 to Sept. 30	2014
Retailer CR	Apr. 1 to Mar. 31	2016
Retailer CT	Oct. 1 to Sept. 30	2016
Retailer CN	Oct. 1 to Sept. 30	2016
Retailer CH	Apr. 1 to Mar. 31	2016
Multipurpose facility CX	Apr. 1 to Mar. 31	2016
Common Carrier CX	Apr. 1 to Mar 31	2016
Retailer Arena CX	Apr. 1 to Mar 31	2016
Retailer DR	Apr. 1 to Mar. 31	2016
Retailer DT	Oct. 1 to Sept. 30	2016
Retailer DN	Oct. 1 to Sept. 30	2016
Retailer DH	Apr. 1 to Mar. 31	2016
Multipurpose facility DX	Apr. 1 to Mar. 31	2016
Common carrier DX	Apr. 1 to Mar 31	2016
Caterer	Apr. 1 to Mar 31	2016
Solicitor	July 1 to June 30	2017
Club CX	Apr. 1 to Mar 31	2016
Club DX	Apr. 1 to Mar 31	2016
Farm winery retail	Oct. 1 to Sept. 30	2015
Alcohol certification provider permit	July 1 to June 30	2017

Section 213, EXEMPTION FROM LICENSING REQUIREMENT, of Chapter 2, ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended to read as follows:

213 EXEMPTION FROM LICENSING REQUIREMENT

- 213.1 A license shall not be required for any event where alcoholic beverages are provided gratuitously for on-premises consumption on the host's own premises. A license shall not be required if the operator of the premises does not provide service for the consumption of alcoholic beverages which are provided gratuitously to guests on the premises. Notwithstanding the foregoing, if the operator of the premises rents out the facility or provides entertainment, food or nonalcoholic beverages for compensation, a license shall be required.
- 213.2 An applicant for a new license shall not permit the consumption of alcoholic beverages on the premises unless the applicant has obtained a stipulated or temporary license. The applicant for a new license may also permit a licensed caterer to host an event on the premises so long as the caterer retains the responsibility for the event, including control over the modes of ingress and egress into the establishment, bar and security staff, and the service of alcoholic beverages.

Section 405, LICENSE APPROVAL BEFORE ISSUANCE OF CERTIFICATE OF OCCUPANCY, of Chapter 4, GENERAL LICENSING REQUIREMENTS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by adding a new subsection 405.5 to read as follows:

405 LICENSE APPROVAL BEFORE ISSUANCE OF CERTIFICATE OF OCCUPANCY

- 405.5 Notwithstanding § 405.4, the Board may, after holding a hearing, rescind its previously issued approval to an applicant under this section when: (1) the license is still pending issuance after two or more years, and (2) the applicant no longer has legal authority to operate at the approved location.

Section 500, APPLICATION FORMAT AND CONTENTS, of Chapter 5, LICENSE APPLICATIONS, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by adding new subsections 500.2 and 500.3 to read as follows:

500 APPLICATION FORMAT AND CONTENTS

- 500.2 The Board may deem an application abandoned or withdrawn if an applicant fails to provide all of the documents required to process the application within 45 days of the submission of the application.

500.3 The Board may require an applicant to submit additional documents and information needed to properly process an application. The Board may deem an application abandoned or withdrawn if an applicant fails to provide any additional documents within 15 days of the request.

Section 704, SURRENDER OF LICENSE, of Chapter 7, GENERAL OPERATING REQUIREMENTS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by deleting subsection 704.3 in its entirety and renumbering existing subsection 704.4 as 704.3 to read as follows:

704 SURRENDER OF LICENSE

704.3 Whenever a license has been in safekeeping with the Board for longer than two years, the licensee shall upon requesting the removal of the license from safekeeping, submit for Board approval detailed plans of its operations upon reopening and shall notify the Board of the anticipated reopening date.

Section 705, HOURS OF SALES AND DELIVERY FOR OFF-PREMISES RETAIL LICENSEES, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing subsection 705.11 to read as follows:

705 HOURS OF SALES AND DELIVERY FOR OFF-PREMISES RETAIL LICENSEES

705.11 A licensee under an on-premises retailer's license that provides written notification and a public safety plan to the Board at least 30 days in advance may sell and serve alcoholic beverages until 4:00 a.m. and operate 24 hours during the dates set forth in D.C. Code Section 25-723(c)(1) unless the licensee has a settlement agreement that restricts the establishment's closing hours.

Section 712, PUB CRAWLS, of Chapter 7, GENERAL OPERATING REQUIREMENTS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing subsection 712.1 to read as follows:

712 PUB CRAWLS

712.1 A promoter/organizer of a "Pub Crawl" shall be required to obtain a Pub Crawl license. The promoter/organizer shall submit an application for a Pub Crawl license at least thirty (30) days prior to the applicant's first scheduled event. For purposes of this section a "Pub Crawl" shall be defined as an organized group of establishments within walking distance which participate in the promotion of the event featuring the sale or service of alcoholic beverages during a specified time period. The fee for

the Pub Crawl license shall be two-hundred and fifty dollars (\$250) per application.

Section 716, ONE DAY SUBSTANTIAL CHANGES, of Chapter 7, GENERAL OPERATING REQUIREMENTS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing subsection 716.1 to read as follows:

716 ONE DAY SUBSTANTIAL CHANGES

716.1 The holder of an on-premises retailer's license or a manufacturer's license may file a one-day substantial change request with the Board to sell or serve alcoholic beverages, have entertainment, extended hours of operation, a cover charge, dancing, or operate at a location not permitted by the applicant's license as part of a specific event. The one-day substantial change request may be granted, in the Board's discretion, unless the activities sought by the applicant are otherwise prohibited by the applicant's ABC license.

A new Section 721, BOTTLE SERVICE, of Chapter 7, GENERAL OPERATING REQUIREMENTS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is added to read as follows:

721 BOTTLE SERVICE

- 721.1 The holder of a retailer's license shall be permitted to provide bottle service of alcoholic beverage to one or more seated patrons.
- 721.2 Notwithstanding this provision, the bottle of wine or spirits provided to seated patrons shall not be unsealed or initially opened by the licensee until it has been delivered to and can be visually observed by one or more of the seated patrons.
- 721.3 Open bottles of wine or spirits may not be removed from the presence of the seated patrons to whom the bottle service was provided, by one of more members of the seated patrons or by any other patron.

Section 800, ABRA CIVIL PENALTY SCHEDULE, of Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended to add the following penalty:

800 ABRA CIVIL PENALTY SCHEDULE

Section	Description	Violation	Warning
23 DCMR 1207.10	Failure to provide sufficient documentation	Primary	Y

A new Section 808, CEASE AND DESIST ORDERS, of Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is added to read as follows:

808 CEASE AND DESIST ORDERS

808.1 The Board, in its discretion, may issue a cease and desist order immediately suspending a licensee’s liquor license when one of the following has occurred: (1) the licensee has been issued a notice of summary suspension by the Department of Health, (2) the licensee’s basic business license has expired, (3) the licensee’s certificate of occupancy has been revoked or expired, (4) the licensee’s sales tax certificate has been suspended or revoked by the Office of Tax and Revenue, (5) the corporation, limited liability company, or partnership owning the liquor license is no longer in good standing to operate in the District, (6) the licensee has failed to pay a Board ordered fine or a citation by the payment deadline, or (7) where payment was made to ABRA with a check returned unpaid.

Section 1001, ENTERTAINMENT ENDORSEMENT APPLICATION, of Chapter 10 ENDORSEMENTS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by adding a new subsection 1001.8 to read as follows:

1001 ENTERTAINMENT ENDORSEMENT APPLICATION

1001.8 A licensee shall provide entertainment only during the hours permitted under its Board approved entertainment endorsement. It shall be a violation of this subsection for an applicant to provide entertainment during hours not permitted by its entertainment endorsement.

Section 1207, QUARTERLY STATEMENTS AND ANNUAL REPORTS OF RESTAURANTS AND HOTELS, of Chapter 12 RECORDS AND REPORTS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by adding a new subsection 1207.10 to read as follows:

1207 QUARTERLY STATEMENTS AND ANNUAL REPORTS OF RESTAURANTS AND HOTELS

1207.10 A Retailer’s license Class CR, CH, DR, or DH shall be responsible for ensuring that it maintains for three (3) years sufficient documentation to allow the Board to verify the correctness of the information contained on the licensee’s submitted quarterly reports. Failure of the licensee to maintain sufficient documentation to allow the Board to verify the correctness of the information contained on the licensee’s submitted quarterly reports shall be a violation of this subsection.

Section 1702, COMPUTATION OF TIME FOR FILINGS, of Chapter 17 PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is replaced in its entirety to read as follows:

1702. COMPUTATION OF TIME FOR FILINGS

- 1702.1 Whenever a party to a proceeding under this chapter has the right or is required to perform some act within a specified time period after the service of notice upon the party, and the notice is served upon that party by mail, three (3) days shall be added to the prescribed period.
- 1702.2 Except as otherwise provided by law, any time period prescribed by this chapter may, for good cause shown, be extended by the Board with notice to all parties.
- 1702.3 For purposes of computing time that is stated in days or a longer unit of time, exclude the day of the event that triggers the computation of time.
- 1702.4 For purposes of computing time that is stated in days or a longer unit of time, every day, including intermediate Saturdays, Sundays and legal holidays is counted. Count the last day of the period, but if the last day is a Saturday, Sunday or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.
- 1702.5 For purposes of computing time that is stated in hours, begin counting every hour immediately at the conclusion of the event that triggers the period, including hours during intermediate Saturdays, Sundays and legal holidays. If the time period would end on a Saturday, Sunday, or legal holiday, the time period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.
- 1702.6 Unless a different time is set by a statute, regulation or Board Order, the last day of a specified time period is at midnight for electronic filing, and at the close of business on the last day for filing by any other means.

Section 1703, SERVICE OF PAPERS, of Chapter 17 PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing 1703.2 to read as follows:

1703. SERVICE OF PAPERS

- 1703.2 When a party has appeared through a representative, who has filed a written notice of appearance pursuant to 1707.1, service shall be made upon the representative of record.

Section 1703, SERVICE OF PAPERS, of Chapter 17 PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing 1703.4 to read as follows:

1703. SERVICE OF PAPERS

1703.4 Service upon a party may be made in the following manner:

- (a) By personal delivery;
- (b) By use of a process server;
- (c) By registered or certified mail;
- (d) By electronic mail; or
- (e) As otherwise authorized by law.

Section 1710, SCHEDULING AND CONDUCT OF HEARINGS: GENERAL PROVISIONS, of Chapter 17 PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by deleting existing subsection 1710.4 and adding new subsections to read as follows:

1710 SCHEDULING AND CONDUCT OF HEARINGS

1710.4 The Chairperson of the Board shall preside over all proceedings conducted by the Board under the authority of Title 25 of the D.C. Official Code.

1710.5 The Chairperson of the Board shall conduct all proceedings in accordance with the provisions of this chapter, Title 25 of the D.C. Official Code, and the District of Columbia Administrative Procedures Act.

1710.6 The Chairperson of the Board shall have the authority to:

- (a) Open and close a meeting or hearing;
- (b) Administer oaths and affirmations;
- (c) Regulate the course of the hearing and the conduct of the parties and their counsel;
- (d) Receive relevant evidence of the hearing and the conduct of the parties and their counsel or representative;
- (e) Take any other action in accordance with the above provisions in furtherance of a fair and orderly hearing.

1710.7 In the event the Chairperson is unable or unavailable to preside over a hearing or meeting, the Chairperson shall designate a Member of the Board to act as the Presiding Officer in the Chairperson's absence.

Section 1711, EVIDENCE: GENERAL RULES, of Chapter 17 PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by adding new subsections to read as follows:

1711 EVIDENCE: GENERAL RULES

- 1711.5 In all protest hearings before the Board, the Applicant shall have the burden of proof to show by substantial evidence in the record that the licensing action meets the appropriate standards in accordance with D.C. Official Code § 25-313.
- 1711.6 In all show cause proceedings before the Board, the District of Columbia shall have the burden of proof to show by substantial evidence in the record that the respondent has committed a violation of Title 25 or these regulations.
- 1711.7 In all protest hearings before the Board, the applicant shall open and close the case insofar as presentation of evidence and argument are concerned.
- 1711.8 In all show cause proceedings before the Board, the District of Columbia shall open and close the case insofar as presentation of evidence and argument are concerned.

Section 1713, DOCUMENTARY EVIDENCE, of Chapter 17 PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by adding new subsections to read as follows:

1713 DOCUMENTARY EVIDENCE

- 1713.5 All exhibits that a party intends to introduce at hearing must be identified on an Exhibit Form accompanying the Protest Information Form and copies of the exhibits must be attached to the Form.
- 1713.6 Exhibits reasonably anticipated to be used for impeachment need not be included on the Exhibit Form or attached.
- 1713.7 If a document is readily available to the general public, a party need only provide a complete citation to the source of the document and how the document may be accessed.
- 1713.8 The Board may exclude at the hearing any exhibits not disclosed on the Exhibit Form if the Board finds that the opposing party has been prejudiced by the failure to disclose or if there has been a knowing failure

to disclose.

- 1713.9 The Board shall have the discretion to receive documentary evidence from the parties not already listed or attached to the Exhibit Form upon a finding of good cause.
- 1713.10 The Investigative Report and attachments shall be part of the Board's record and it shall not be necessary for the parties to formally move the admission of the Investigative Report or portions of it into the evidentiary record.
- 1713.11 The Exhibit Form and any attachments shall be served on all parties and the Board's Office of General Counsel seven (7) days prior to the hearing.
- 1713.12 If a power point presentation or similar presentation is used by the parties, a paper copy of the exhibit shall be filed with the Board.

Section 1716, MOTIONS, of Chapter 17 PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by deleting 1716.5 in its entirety.

Section 1717, POST-HEARING SUBMISSIONS, of Chapter 17 PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing 1717.1 and 1717.2 to read as follows:

1717 POST-HEARING SUBMISSIONS

- 1717.1 No document or other information shall be accepted for the record after the close of a hearing except as follow:
- (a) Unless accompanied by a Motion to re-open the record demonstrating good cause and the lack of prejudice to any party;
 - (b) Until all parties are afforded due notice and an opportunity to rebut the information; or
 - (c) Upon official notice of a material fact not appearing in the evidence in the record, in accordance with D.C. Official Code § 2-509(b).

Section 1718, DECISIONS OF THE BOARD, of Chapter 17 PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by deleting 1718.4 in its entirety:

Section 1721, TRANSCRIPTS OF HEARINGS, of Chapter 17 PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by deleting 1721.2 in its entirety:

A new Section 1722, PROTEST INFORMATION FORMS, of Chapter 17 PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is added to read as follows:

1722 PROTEST INFORMATION FORMS

- 1722.1 All parties who have been granted standing to a protest proceeding shall file a Protest Information Form.
- 1722.2 The Protest Information Form shall identify the specific issues that will be the subject of the protest hearing, the witnesses who are expected to testify, the exhibits the party intends to offer into evidence, with attached exhibit form, the list of material facts or issues to which the parties have agreed to stipulate, and the relief sought.
- 1722.3 The Protest Information Form must be signed by the party's representative or by the party if the party is proceeding *pro se*.
- 1722.4 The Protest Information Form must contain a copy of the resume for any witness for whom a party intends to seek expert status.
- 1722.5 The Board may exclude at the hearing any witnesses or exhibits not disclosed on the Protest Information Form if the Board finds that the opposing party has been prejudiced by the failure to disclose or if there has been a knowing failure to disclose.
- 1722.6 The Board shall have the discretion to receive documentary evidence from the parties not already listed or attached to the Protest Information Form upon a finding of good cause.
- 1722.7 The Protest Information Form and any attachments shall be served on all parties and the Board's Office of General Counsel seven (7) days prior to the hearing.

Section 1801, PROTEST PETITIONS, of Chapter 18 PETITION PROCEDURES, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by deleting subsection 1801.3 in its entirety.

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., 4th Floor, Washington, D.C. 20009. All persons desiring to comment on the emergency and proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*, to the above address or via email to martha.jenkins@dc.gov.