

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

**NOTICE OF FINAL RULEMAKING**

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in D.C. Official Code §§ 25-211(b) 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 final rules that would add a definition of a full-service grocery store to § 199 of Chapter 1 (General Provisions) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR), pursuant to the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (Act), effective May 1, 2013 (D.C. Law 19-310; 60 DCR 3410). These rules define what constitutes a full-service grocery store in order to effectuate the purpose of the full-service grocery store exception to the existing moratorium on the issuance of new off-premises Retailer's Class B Licenses. This rulemaking is also necessary to address a specific provision of the Act which requires the Board to undertake a rulemaking defining the term "full service grocery store" within forty-five (45) days of the effective date of the Act.

The Board initially adopted the rules on an emergency basis so that applications for the full-service grocery store exception could be reviewed and processed by the Board in a timely manner. Specifically, it is imperative that applicants, Advisory Neighborhood Commissions, and other members of the public know the criteria the Board is using to determine whether an applicant meets the full-service grocery store definition. In addition, a definition of a full-service grocery store is necessary on an emergency basis to enable the Board to timely adjudicate protests that challenge the designation of an establishment as a full-service grocery store.

The Board held a public hearing on the initial proposed rules on February 28, 2013. In addition, the Board left the record open until March 8, 2013, in order to give the public an opportunity to submit written comments. The Board received the following comments regarding the proposed regulation:

Florence Harmon, Chair of the Foggy Bottom & West End Advisory Neighborhood Commission 2A (ANC 2A), submitted a resolution dated March 19, 2013, supporting the proposed rulemaking. ANC 2A praised the Board for its undertaking, recognizing the difficulty in crafting a specific, quantifiable, "one-size-fits-all" definition for grocery stores. ANC 2A noted that the standards set forth in the proposed rules will encourage retail establishments seeking alcoholic beverage licenses to offer a more robust line of traditional grocery products, especially in certain geographic locations that lack stores that offer a full line of groceries.

Gary Cha, the owner of Yes Organic Market, believes that the Board's proposed regulation could exclude some full-service grocery stores. According to Mr. Cha, the proposed regulation has omitted frozen foods, which could be included in any of the categories listed in the proposed regulation. In addition, Mr. Cha is concerned that the measurement requirement is vague on how to comply with the space requirement. For example, the regulation is unclear on how to count food preparation areas, such as deli or butcher areas that include sinks, cutting equipment, and scales. In addition, he believes the measurement criteria does not consider the possibility that a

store may mix product areas and that some areas of the store may switch products on a frequent basis (i.e., end caps may change from holding rock salts, Valentine's Day products, and other products on a rotating basis). Mr. Cha suggested that the Board consider a food-related stock-keeping unit (SKU) minimum to determine whether an establishment is a full-service grocery store.

Angus Armstrong, Esq., and Stephen O'Brien, Esq., on behalf of Trader Joe's Co., cautioned the Board that the proposed regulation may unnecessarily preclude full service grocery stores from obtaining a license. Trader Joe's is concerned that the proposed regulation excludes canned and frozen foods, which are products mentioned in the statute. Trader Joe's suggests that if they are not intended to be omitted, then the Board should cite canned and frozen foods in the regulation.

Denis James asked the Board to broaden the proposed regulation to include all products that a consumer would expect at a full-service grocery store. He opposes the four out of five product category criteria created by the Board, and he believes that the regulation should include frozen or canned foods.

Nina Albert, on behalf of Walmart, is concerned that the proposed rules may adversely impact Walmart's operations in the District of Columbia, and adversely impact Walmart's merchandise selection in certain parts of the city. However, Ms. Albert believes that Walmart can comply with the product category requirements, and therefore, she does not oppose the present language in this section of the proposed rules. Nevertheless, Walmart has concerns about the minimum square footage requirement, such that it would require a store containing 100,000 square feet of retail space, to have an aggregate of 20,000 to 25,000 square feet set aside for each of the food categories identified in the rule. Moreover, Ms. Albert is concerned that the minimum requirement for each category would require 5,000 square feet if the store had 100,000 square feet of retail space. Walmart suggests that the Board consider the square footage of the grocery store within a combination retail-grocery store as the total retail space for ABRA compliance purposes.

Paul Pascal, Esq., on behalf of CVS, recounted the legislative history of the full-service grocery store exception, stating that the original law was created to attract a variety of food service businesses of all varieties to the District. He also noted that the new law was intended to be flexible. Mr. Pascal is concerned that the product requirements do not align with market realities, nor do they include canned or frozen foods. Mr. Pascal is also concerned that it is unclear as to who is responsible for ensuring the accuracy of the measurements. Mr. Pascal encouraged the Board to process pending applications, because CVS dutifully applied under the full-service grocery store exception in good faith, and it applied with the understanding that ABRA's administrative processes would adjudicate its application.

Rick Conner, the District Manager of Walgreens, commented that the proposed rules impair the ability of Walgreen, Co., to expand in the District of Columbia. Mr. Conner argued that supermarkets are entering the pharmacy market and becoming one-stop shopping destinations. Likewise, Walgreens must do the same to remain competitive. Mr. Conner also commented that the Board is departing from past practice by applying the regulation to pending applications.

ANC Commissioner Karen Perry believes the proposed regulation is not sufficiently restrictive. Citing the Food Marketing Institute, Commissioner Perry believes that a full-service grocery store should carry anywhere from 15,000 to 60,000 SKU's, and generate at least \$2 million dollars in sales. In addition, she reports that the median square footage of a grocery store is 46,000 square feet. Commissioner Perry believes that a full-service grocery store should have more than half of the store dedicated to the sale of food items.

Brian Lederer believes that the proposed regulation is too broad. He finds that the legislative history shows that the Council of the District of Columbia only intended the exception to apply to "high-quality grocery stores." According to Mr. Lederer, supermarkets like Safeway, Giant, and Whole Foods dedicate far more than half of their retail space to food products. In his opinion, the grocery store exception should not apply to pharmacies and other convenience stores.

Risa Hirao, Esq., on behalf of the District of Columbia Association of Beverage Alcohol Wholesalers (DCABAW) is concerned that the proposed regulation will impede economic development. Ms. Hirao stated that the five percent (5%) requirement should not be based on the total retail space of the store. She believes the five percent requirement will harm "big box" stores, because it requires them to dedicate more space to consumables than they otherwise would. She also believes it will be difficult for small stores or specialty grocery stores to comply with the regulation. She is further concerned that the product categories listed in the proposed rules exclude gourmet frozen foods, honey, maple syrup, soups, sauces, tuna fish, non-dairy products, like hemp, hazelnut, and soy milk, canned vegetables, and other products. Lastly, Ms. Hirao argued that the proposed regulation deprives retailers of the ability to choose what items they purchase and where to display them in their stores.

Ms. Hirao is also concerned that the regulation does not clearly explain the methodology the Board will use to determine whether a store has met the minimum space requirement set forth in the proposed rules. For example, Ms. Hirao questioned how the Board will define total retail space, and how the Board will measure the retail area if products from multiple categories are comingled on the same shelf or display case.

Ms. Hirao further argues that the regulation will create a disincentive to do business in the District of Columbia. She is concerned that businesses will delay expanding their operations or product lines, because changing space in the store would affect their ability to continue qualifying as a full-service grocery store. Furthermore, the regulations create a disincentive to add retail space dedicated to other departments, like flower shops, kitchens, and bakeries, because those other areas may reduce the amount of space available for the sale of food products required by the proposed regulation.

Eric Smucker, represented by Andrew Kline, has a pending application for a Retailer's Class B License, and he seeks to qualify his establishment as a full-service grocery store. According to Mr. Kline, the Board should consider that the city has limited space to accommodate large grocery stores and that there are many types of food selling operations that could qualify as a full-service grocery store. As a result, he urged the Board to ensure that the rules take into account small business operations.

Roderic Woodson, Esq., believes that the Board should leave itself the flexibility to determine what qualifies as a full-service grocery store on a case-by-case basis. Mr. Woodson noted that the definition of a full-service grocery store should depend on the expectations of each community.

These proposed rules were originally adopted by the Board on January 16, 2013, by a five (5) to zero (0) vote. The Board gave thoughtful and measured consideration to the oral and written comments submitted by the various affected parties. In response to the testimony, the Board has amended the rulemaking in order to clarify the definition and to address concerns raised by the public. Notably, the Board includes frozen and canned foods as product categories, which are described in §§ 25-331(d) and 25-332(c). Additionally, the Board includes a definition of the term “selling area” to clarify that the space being measured under the rule includes the areas of the store open to the public, but does not include preparation areas, rest rooms, or storage facilities.

The Board retained the minimum square footage criteria it adopted in the first proposed rulemaking. The Board concludes that the square footage requirements ensure that the full-service grocery store designation will be applied consistently. In addition, providing minimum square footage requirements provides applicants with clear guidelines on how to comply with the full-service grocery store rules. Furthermore, the Board will allow applicants to qualify as a full-service grocery store by only selling six of seven qualifying products so that retailers can experiment with different business models.

The Board also finds that the legislative history of the full-service grocery store exception does not limit the exception to large grocery stores, such as Whole Foods, Safeway and Giant. Instead, the Board concludes that the Council created the rule primarily to attract all varieties of high-quality grocery stores to the District of Columbia. The Board does not find any intent on the part of the Council to exclude small businesses that operate as full-service grocery stores, or to provide large grocery stores with a competitive advantage over small full-service grocery stores.

Finally, the Board will apply this rule to all applications approved by the Board on or after January 14, 2013, the effective date of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012. The Board concludes that the intent of the Council in halting the issuance of Retailer’s Class B Licenses was to ensure that no additional licenses would be approved until the Board crafted a definition that could be applied to all applications being considered by the Board for approval.

The rules were published in the *D.C. Register* as a Notice of Emergency and Proposed Rulemaking on April 26, 2013 at 60 DCR 6230. Pursuant to D.C. Official Code § 25-211(b)(2) (2012 Supp.), the rules were transmitted to the Council of the District of Columbia (Council), for a ninety (90) day period of Council review on May 30, 2013. The rules were approved by Council Resolution, R20-206, the “Full Service Grocery Store Definition Approval Resolution of 2013”, adopted by the Council at its July 10, 2013 legislative meeting. These final rules were

adopted by the Board on July 31, 2013, on a vote of five (5) to zero (0) and they will become effective five (5) days after publication in the *D.C. Register*.

**As such, Title 23, ALCOHOLIC BEVERAGES, of the DCMR is amended as follows:**

**Chapter 1 PROVISIONS OF GENERAL APPLICABILITY is amended by adding the definition of a “full-service grocery store” after the definition of “Fact-finding hearing” in § 199, which shall read as follows:**

“Full-service grocery store” –

- (A) A self-service retail establishment independently owned or part of a corporation operating a chain of retail establishments under the same trade name that:
  - (i) Is licensed as a grocery store under § 47-2827; and
  - (ii) Offers for sale a full line of food products that includes at least six (6) of the seven (7) following food categories:
    - (a) Fresh fruits and vegetables,
    - (b) Fresh and uncooked meats, poultry and seafood;
    - (c) Dairy products;
    - (d) Canned foods;
    - (e) Frozen foods;
    - (f) Dry groceries and baked goods; and
    - (g) Non-alcoholic beverages.
- (B) A “full-service grocery store” in subparagraph (A) may include related service departments, such as a bakery, pharmacy, or flower shop, as well as departments that offer household products and sundries.
- (C) A retail establishment shall meet the primary business and purpose standard described in Title 25 of the D.C. Official Code if (1) a minimum of fifty percent (50%) of the store’s square feet of selling area is dedicated to the sale of the food categories listed in (A)(ii) above; or (2) a minimum of six thousand (6,000) square feet of the store’s selling area is dedicated to the sale of the food categories listed in (A)(ii) above.
- (D) A retail establishment that meets either standard set forth in subparagraph (C) must also dedicate a minimum of five percent (5%) of the store’s selling area set aside for the sale of food items listed in subparagraph (A) to each of six (6) of the seven (7) food categories listed in subsection (A)(ii).

- (E) The term “selling area” means the area in a retail establishment that is open to the public and does not include storage areas, preparation areas, or rest rooms.
- (F) The definition of “full-service grocery store” contained in this subsection shall apply to license applications being considered by the Board for approval on or after January 14, 2013.

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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 final rules that make technical amendments to Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR), to conform to changes contained in the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (Act), effective May 1, 2013 (D.C. Law 19-310; 60 DCR 3410), as amended, as well as other administrative changes not related to the Act.

The rulemaking clarifies that all retailer's license categories can apply to the Board for a stipulated license, and creates a stipulated license fee of \$100. The rules also clarify that the annual fee for a wine pub permit is \$5,000 and that the holder of a wine pub permit can apply for a wine and beer purchasing permit. The rulemaking amends the corking fee requirements contained in § 717 of Title 23 of the DCMR to require the disclosure of the fee charged to patrons. The rules also conform to the Act's requirement that retailers may keep and maintain records on the licensed premises electronically. The rules clarify that the Board may require a group of five or more individuals to appear in person before the Board. Finally, the rulemaking amends § 1609 and § 2000.3 of Title 23 of the DCMR to conform to the new settlement agreement and catering requirements contained in the Act.

These rules were initially adopted by the Board on January 30, 2013 by a five (5) to zero (0) vote. On February 28, 2013, the Board conducted a public hearing, pursuant to D.C. Official Code § 25-354 (2012 Supp.), to receive comment on the technical changes proposed to Title 23 of the DCMR.

Andrew Kline, Legislative Representative, testified on behalf of the Restaurant Association (RAMW). RAMW has approximately 700 members and is the principal representative of restaurants in the District of Columbia. At the hearing, Mr. Kline requested that the Board give consideration to eliminating Section 717.2, which creates a cap of \$25.00 as a corkage fee. Corkage fees are those fees charged by restaurants and other on-premises retailer licensees to uncork a bottle of wine brought by patrons who consume the wine with the purchased meal. Mr. Kline indicated that there is no public policy reasoning to support this regulatory cap, and the market should govern as to the amount of the fee set by the on-premises establishment. RAMW requested that the cap on the corkage fee be eliminated, but if the Board is inclined to impose one, the current \$25.00 cap should be increased to reflect today's market.

Mr. Kline also requested the Board amend Section 1204 to add the word "available" so that retailers who keep and maintain their records electronically will be required to have those electronic records available upon the licensed premises. The rationale is that ABRA will have access to the electronic records for regulatory inspection, so it does not matter where the hard data of electronic records is physically located.

The Board received no other testimony or written comments. The Board considered the testimony of RAMW, and the addition of other technical changes to the existing regulations. The Board is in agreement with RAMW's comments regarding the corkage fee, and the electronic recordkeeping amendment, and has added those modifications below. Additionally, the Board made further amendments to Title 23 with respect to Section 200 regarding stipulated licenses, Section 1609 regarding settlement agreements, and Section 711 regarding tasting permits.

The rules were published in the *D.C. Register* as a Notice of Proposed Rulemaking on April 12, 2013 at 60 DCR 5641. Pursuant to D.C. Official Code § 25-211(b)(2) (2012 Supp.), the proposed rules were transmitted to the Council of the District of Columbia (Council), for a ninety (90) day period of Council review on May 30, 2013. The rules were approved by Council Resolution, R20-302, the "Technical Amendment Approval Resolution of 2013", adopted by the Council at its July 10, 2013 legislative meeting. These final rules were adopted by the Board on July 31, 2013, on a vote of five (5) to zero (0) and they will become effective five (5) days after publication in the *D.C. Register*.

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

**Section 200, STIPULATED LICENSES, of Chapter 2, LICENSE AND PERMIT CATEGORIES, of title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing Subsections 200.1, and 200.1(a) through 200.1(c) to read as follows:**

**200 STIPULATED LICENSES.**

- 200.1 The ABC Board will permit an applicant who has submitted a completed license application involving a Manufacturer's license, Wholesaler's license, or Retailer's license to apply for a stipulated license under the following conditions:
- (a) The applicant must be applying for or must hold a Manufacturer's license, Wholesaler's license, or Retailer's license; and
  - (b) The applicant must submit to the ABC Board written correspondence from an ANC Officer where the applicant's premises is located stating that the ANC has voted with a quorum present to either support or not to object to the issuance of a stipulated license to the applicant pending completion of the 45-day protest period; and
  - (c) The applicant must stop serving or selling alcoholic beverages under the stipulated license if a valid protest is filed against the applicant during the 45-day protest period.

**Section 203, WINE AND BEER PURCHASING PERMIT, of Chapter 2, LICENSE AND PERMIT CATEGORIES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing Subsections 203.1, 203.2, and 203.3 to read as follows:**

**203 WINE AND BEER PURCHASING PERMIT.**

- 203.1 A wine and beer purchasing permit shall allow the holder of a Retailer's A, Class B, brew pub, or wine pub license to sell wine and/or beer to the public at the premises of a Temporary or a Retailer's Class C or Class D license holder.
- 203.2 Beer or wine that is purchased at the authorized location from the Class A, Class B, brew pub, or wine pub licensee under the wine and beer purchasing permit shall not be opened or consumed at the authorized location.
- 203.3 A District off-premises retailer, brew pub, or wine pub authorized to sell containers of beer or wine at the authorized location may remove closed containers of beer and/or wine from the authorized premises but shall not be permitted to remove opened containers of beer and/or wine from the authorized premises. This subsection also applies to customers who purchase or receive alcoholic beverages at the authorized location.

**Section 209, PERMIT AND ENDORSEMENT FEES, of Chapter 2, LICENSE AND PERMIT CATEGORIES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by adding a new Subsection 209.12 to read as follows:**

**209 PERMIT AND ENDORSEMENT FEES.**

- 209.12 The annual fee for a Wine Pub permit shall be five thousand dollars (\$ 5,000).

**Section 210, APPLICATION FEES, of Chapter 2, LICENSE AND PERMIT CATEGORIES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by adding a new Subsection 210.7 to read as follows:**

**210 APPLICATION FEES.**

- 210.7 The fee for a stipulated license shall be one hundred dollars (\$ 100).

**Section 711, PERMITS FOR SAMPLING OF ALCOHOLIC BEVERAGES, of Chapter 7, GENERAL OPERATING REQUIREMENTS, or Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing Subsection 711 to read as follows:**

**711. RETAIL PERMITS FOR SAMPLING OF ALCOHOLIC BEVERAGES.**

- 711.1 The holder of a Retailer's license Class A and B may utilize a portion of the licensed premises for the sampling of alcoholic beverages during the hours of sale authorized in D.C. Official Code § 25-722(a). Containers of alcoholic beverages used for sampling purposes shall be labeled as such and may not be sold.
- 711.2 No licensee may use any portion of the licensed premises for the sampling of

alcoholic beverages without a permit issued by the Board. A request for a permit shall be in writing and shall:

- (a) State in detail the type of beverages to be offered in the sampling;
- (b) Include drawings of the premises indicating the areas where the sampling is to take place; and
- (c) State the hours and days during which the sampling is to take place.

711.3 A permit issued under this section shall be valid for two years. The permit shall expire on the same date as the applicant's Class A and B Retailer's license.

711.4 The annual fee for a permit issued under this section shall be one-hundred and thirty dollars (\$130). Payment shall be made at the same time that the second year fee or renewal fee for Class A and B Retailer's licenses is due.

711.5 The holder of a permit issued under this section shall be authorized to provide to one customer in any one day samples that do not exceed the following quantities:

- (a) Three ounces (3 oz.) of spirits;
- (b) Six ounces (6 oz.) of wines; and
- (c) Twelve ounces (12 oz.) of beer.

711.6 The holder of a tasting permit may hold public tastings during the hours it is permitted to sell and serve alcoholic beverages under its Class A and B Retailer's license unless restricted by Board order or settlement agreement.

**Section 717, CORKING FEE, of Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by deleting Subsection 717.2 in its entirety and retaining Section 717.1 to read as follows:**

**717. CORKING FEE.**

717.1 The holder of an on-premises retailer's license may permit a patron to bring to and consume on the licensed premises an alcoholic beverage that the licensee is permitted to sell or serve under its on-premises retailer's license; provided that the alcoholic beverage is opened by an employee of the establishment. However, the holder of an on-premises retailer's license shall not permit any alcoholic beverage opened on the licensed premises to be removed from the licensed premises.

717.2 The holder of an on-premises retailer's license shall be permitted to charge a corking fee provided that the corking fee is disclosed to the patron prior to the opening of the alcoholic beverage.

**Section 1204, RETAILERS BOOKS AND RECORDS, of Chapter 12 RECORDS AND REPORTS, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing Subsection 1204.1 to read as follows:**

**1204. RETAILERS BOOKS AND RECORDS.**

1204.1 Each holder of a Retailer's license shall keep and maintain available upon the licensed premises, either physically or electronically, records which include invoices and delivery slips and which adequately and fully reflect all purchases, sales, and deliveries of all alcoholic beverages, except beer, made to it.

**Section 1502, NOTICE OF A NEW APPLICATION FOR A NEW LICENSE, RENEWAL OF A LICENSE, OR TRANSFER OF A LICENSE TO A NEW LOCATION, of Chapter 15, APPLICATIONS: NOTICE OF HEARINGS INVOLVING LICENSES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing Subsection 1502.3 to read as follows:**

**1502. NOTICE OF AN APPLICATION FOR A NEW LICENSE, RENEWAL OF A LICENSE, OR TRANSFER OF A LICENSE TO A NEW LOCATION.**

1502.3 At least forty-five (45) days prior to the roll call hearing, the Board shall give notice of an application to the entities set forth in D.C. Official Code § 25-421(a). This notice requirement shall not apply to renewal applications in those instances where the Applicant's new license or transfer to a new location application has a 45 day public comment period ending within thirty (30) days of the renewal deadline for that license class.

**Section 1605, FILING A PROTEST, of Chapter 16, CONTESTED HEARINGS, NON-CONTESTED HEARINGS, PROTEST HEARINGS, AND PROCEDURES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing Subsection 1605.4 to read as follows:**

**1605. FILING A PROTEST.**

1605.4 The Board may require protestants to appear in person before the Board for the purpose of determining that a sufficient number of individuals exist to have standing pursuant to D.C. Official Code § 25-601.

**Section 1609, COOPERATIVE OR VOLUNTARY AGREEMENTS of Chapter 16, CONTESTED HEARINGS, NON-CONTESTED HEARINGS, PROTEST HEARINGS, AND PROCEDURES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing § 1609.1 to read as follows, and adding new Subsections 1609.6, 1609.7, and 1609.8 to read as follows:**

**1609. SETTLEMENT AGREEMENTS.**

- 1609.1 The terms of a settlement agreement submitted by the parties shall be consistent with District of Columbia law and shall be in compliance with D.C. Official Code §§ 25-446.01 and 25-446.02.
- 1609.6 The phrase “settlement agreement” found in Title 25 of the D.C. Official Code shall be deemed equivalent to the term “cooperative agreement”, or “voluntary agreement” used in Title 23 of the D.C. Municipal Regulations.”
- 1609.7 If the Board determines that a settlement agreement submitted by the parties does not comply with all applicable laws and regulations, or otherwise exceeds the Board’s expertise to enforce, the Board may condition approval of the settlement agreement on the parties’ acceptance of modifications of the agreement proposed by the Board. If the parties reject the modifications proposed by the Board, they may submit a new settlement agreement for Board review that complies with D.C. Official Code §§ 25-446.01 and 25-446.02 and is within the Board’s expertise to enforce, or proceed to a protest hearing.
- 1609.8 Settlement agreements must be submitted by the parties to the Board for the Board’s consideration no later than ninety (90) days after the execution of the settlement agreement by parties who are signatories to the settlement agreement.

**Section 2000, CATERER’S LICENSE, of Chapter 20, CATERER’S LICENSE, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by replacing Subsection 2000.3 to read as follows:**

**2000. CATERER’S LICENSE.**

- 2000.3 Holders of a caterer’s license may purchase alcoholic beverages from Wholesalers and holders of an off-premises license, class A, for catered events of one hundred (100) persons or less. Holders of a caterer’s license shall purchase alcoholic beverages from an off-premises license, class A, for catered events in excess of one hundred (100) persons except that holders of a caterer’s license may also purchase alcoholic beverages from Wholesalers for catered events in excess of one hundred (100) persons when the licensed caterer also holds another type of on-premise, retailer’s license.

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**NOTICE OF FINAL RULEMAKING**

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in D.C. Official Code § 25-211(b)(2012 Supp.), hereby gives notice of the adoption of final rules that create a new Section 720 of Chapter 7 (General Operating Requirements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR), and set forth the type of information that is required to be included in any public safety plan submitted to the Agency by an on-premise licensee.

The Fiscal Year 2013 Budget Support Act of 2012 (Act), effective October 1, 2012 (D.C. Law 19-168;59 DCR 8025), amends Section 25-723(c) of Title 25 of the D.C. Official Code to allow eligible on-premise retailer's licensees to apply to the Alcoholic Beverage Regulation Administration (ABRA) to sell and serve alcoholic beverages until 4:00 a.m. and operate 24 hours a day on District or federal holidays and certain holiday weekends. The Act requires eligible on-premise licensees to provide written notification of its intent to extend its hours of operation, and submit a public safety plan to ABRA once each calendar year no fewer than 30 days before the first holiday on which a licensee seeks to extend its hours of operation. However, the Act does not indicate what information must be included or covered by a licensee in its public safety plan submission to ABRA. This rulemaking clarifies what information an on-premise licensee must include in its public safety plan.

The Board conducted a public hearing on February 28, 2013. The Board heard testimony from Andrew Kline on behalf of the Restaurant Association of Metropolitan Washington (RAMW). Mr. Kline praised the Board for developing an easy form by which to provide the information required in a Safety Plan, but argued that the Plans themselves were unnecessary. Mr. Kline further stated that the requirement for a Safety Plan adds nothing to improve public safety or enhance security measures; instead it creates a burden for those on-premises licensees who elect to stay open and operate one additional hour. Lastly, Mr. Kline invited the Board to join RAMW in its efforts to convince the Council of the District of Columbia to eliminate this requirement.

The Board appreciates RAMW's testimony, but it is not inclined to ask the Council to eliminate the requirement of Safety Plans. To this end, the Board made no modifications to its initial emergency and proposed rules, and the rules remain unchanged as they were adopted by the Board on November 7, 2012.

The rules were published in the *D.C. Register* as a Notice of Emergency Rulemaking on April 5, 2013 at 60 DCR 5202. Pursuant to D.C. Official Code § 25-211(b)(2) (2012 Supp.), the proposed rules were transmitted to the Council of the District of Columbia (Council), for a ninety (90) day period of Council review on May 2, 2013. The proposed rules were approved by Council Resolution, R20-180, the "Safety Plan Rulemaking Approval Resolution of 2013", adopted by the Council at its June 26, 2013 legislative meeting. These final rules were adopted by the Board on July 31, 2013, on a vote of five (5) to zero (0) and they will become effective five (5) days after publication in the *D.C. Register*.

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

**Section 720, PUBLIC SAFETY PLAN REQUIREMENTS, of Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR is added to read as follows:**

- 720.1 An on-premise licensee shall be required to submit a public safety plan to ABRA in order to sell and serve alcoholic beverages and operate during the extended hours set forth in D.C. Official Code § 25-723(c)(1).
- 720.2 A public safety plan shall be submitted by the on-premise licensee, on a form prescribed by the Board, which at a minimum shall include the following information:
- (a) The names and contact information for those individuals designated by the licensee to respond to any public safety issues that arise;
  - (b) Whether the establishment will have any security cameras in operation;
  - (c) The number and location of cameras used by the establishment and the length of time that video recordings will be kept;
  - (d) Whether the establishment will have any security working during the extended hours of operation;
  - (e) The number of security personnel to be present for the extended hours and the type of security training that security personnel have received;
  - (f) Whether the establishment will maintain an incident log; and
  - (g) What are the establishment's procedures for ensuring that intoxicated persons and minors are not served alcoholic beverages.
- 720.3 An on-premise licensee may utilize an existing security plan on file with ABRA to fulfill the public safety plan requirement set forth in § 720.1.

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

**NOTICE OF FINAL RULEMAKING**

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in D.C. Official Code §§ 25-211(b) 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 amendments to Chapter 7 (General Operating Requirements) of Title 23 (Alcoholic Beverages), which make clear that the sale of beer in growlers by brew pub permit holders, and the sale of wine by wine pub permit holders, for off-premises consumption, is limited to the hours between 7:00 A.M. and midnight seven days a week.

The Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (Act), effective May 1, 2013 (D.C. Law 19-310; 60 DCR 3410), as amended, created a new Section 25-124 of Title 25 of the D.C. Official Code, setting forth wine pub permit requirements and qualifications. Subsection (d) provides that the holder of a wine pub permit may also sell wine to patrons in sealed bottles or other closed containers for off-premises consumption. The Act also amends Section 25-117 of Title 25 of the D.C. Official Code to allow brew pub permit holders to sell beer in growlers for off-premises consumption. However, the Act does not indicate what the legal hours are for the sale of wine by wine pub permit holders, and beer in growlers by brew pub permit holders for off-premises consumption.

These rules were originally adopted by the Board on an emergency basis on January 16, 2013 by a five (5) to zero (0) vote. The emergency action was necessary because the new Act is silent on the permitted hours of sale by wine pub and brew pub permit holders for off-premises consumption, and these emergency rules make clear that sales may not begin before 7:00 a.m., and must end daily by midnight.

The rules were published in the *D.C. Register* as a Notice of Emergency and Proposed Rulemaking on February 8, 2013 at 60 DCR 1589. Pursuant to D.C. Official Code § 25-211(b)(2) (2012 Supp.), the proposed rules were transmitted to the Council of the District of Columbia (Council), for a ninety (90) day period of Council review on April 18, 2013. The proposed rules were approved by Council Resolution, R20-182, the "Brew Pub and Wine Pub Hours Rules Approval Resolution of 2013", adopted by the Council at its June 26, 2013 legislative meeting. These final rules were adopted by the Board on July 31, 2013, on a vote of five (5) to zero (0) and they will become effective five (5) days after publication in the *D.C. Register*.

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

**Section 705, HOURS OF SALE AND DELIVERY FOR OFF-PREMISES RETAIL LICENSEES, of Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended by adding a new Subsection 705.13 to read as follows:**

705.13

The holder of a brew pub permit shall be permitted to sell beer in growlers to patrons for off-premise consumption between the hours of 7:00 a.m. and midnight. The holder of a wine pub permit shall be permitted to sell wine to patrons in sealed bottles or other closed containers for off-premise consumption between the hours of 7:00 a.m. and midnight.