

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

**NOTICE OF THIRD EMERGENCY RULEMAKING**

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code § 25-211(b) (2012 Repl.)), and in accordance with Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1967 (82 Stat. 1206; D.C. Official Code § 25-505 (2012 Repl.)) (D.C. APA), hereby gives notice of the adoption of emergency rules to amend Chapter 7 (General Operating Requirements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking amends, on an emergency basis, 23 DCMR §§ 718.2 and 718.3 by reducing the percentage of distribution of subsidies paid by the Alcoholic Beverage Regulation Administration (ABRA) to the Metropolitan Police Department (MPD) from seventy percent (70%) to sixty percent (60%) when covering the costs incurred by Alcoholic Beverage Control (ABC) licensees from MPD officers working reimbursable details under the Program. The emergency rules also amend 23 DCMR § 718.2 to include pub crawls among the types of events that one can utilize the Reimbursable Detail Subsidy Program (“RDO Program” or “Program”).

By way of background, the RDO Program assists licensed establishments to defray the costs of retaining off-duty MPD officers to patrol the surrounding area of an establishment or an outdoor Special Event or Pub Crawl Event for the purpose of maintaining public safety, including the remediation of traffic congestion and the safety of public patrons, during their approach and departure from the establishment or Special Event or Pub Crawl Event. Over the past several years, the Board has revised the reimbursable detail coverage percentages on an as needed basis. For example, in 2016, the Board increased the number of days covered by the RDO Program from two (2) days to seven (7) days a week and increased the reimbursement percentage from fifty percent (50%) to seventy percent (70%).

On January 25, 2017, the Board adopted emergency and proposed rules to amend 23 DCMR §§ 718.2 and 718.3. Specifically, the Board amended 23 DCMR § 718.2 to include pub crawl events among the events that can participate in the RDO Program. This amendment was needed in order to ensure that the regulations comport with the Council for the District of Columbia’s decision to expand the RDO Program to include pub crawls in the Fiscal Year 2017 Budget.

Additionally, the emergency and proposed rulemaking amended 23 DCMR § 718.3 by reducing the reimbursable percentage from seventy percent (70%) to sixty percent (60%). This change was necessary for immediate fiscal policy reasons. Although the Council expanded the RDO Program, the overall funding levels remained the same. This placed a strain on ABRA’s ability to reimburse MPD for its RDO associated costs. Recognizing the public safety benefits of the RDO Program and the need to ensure that the Program continues, the Board elected to reduce the Program’s reimbursement percentage from seventy percent (70%) to sixty percent (60%).

The Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on April 14, 2017, at 64 DCR 3546, for a thirty (30)-day comment period.

See <http://dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=23-718>.

On May 24, 2017, the Board adopted the Notice of Second Emergency Rulemaking, by a vote of six (6) to zero (0), to re-adopt the emergency rules pending Council's ninety (90)-day review pursuant to D.C. Official Code § 25-211(b)(2) (2012 Repl.). See 64 DCR 7520 (August 4, 2017). During that time, the Board recognized that the emergency rules would have expired on June 5, 2017, and thus, adopted the second emergency rules on May 24. This rulemaking superseded the rules the Board adopted on January 25, 2017. The Board, however, did not make any substantive changes to the emergency rules when it readopted them as emergency on May 24.

Since the adoption of the emergency rules on May 24, 2017, the Board has submitted the Notice of Emergency and Proposed Rulemaking to the Council for review pursuant to D.C. Official Code § 25-211(b)(2). During that time, however, the Notice of Second Emergency Rulemaking expired. In order to ensure that ABRA can continue to fund the MPD RDO Subsidy Program without exceeded its budget for Fiscal Year 2017, the Board deemed it necessary to adopt another set of emergency rules. Thus, and in accordance with Section 6(c) of the DC APA (D.C. Official Code § 2-505(c)), the Board finds that exigent circumstances still exist warranting the continuation of the emergency rules. Specifically, the Board finds that emergency action is necessary for the immediate preservation of health, safety, and welfare of District of Columbia residents as it is necessary for maintaining reduced spending levels of the Program for the remainder of Fiscal Year 2017 so that ABRA can continue to reimburse MPD for a percentage of the cost incurred by licensees for MPD officers working reimbursable details and to ensure the regulations comport with the Council's objective of expanding the Program to include pub crawls.

These emergency rules were adopted by the Board on September 27, 2017, by a vote of five (5) to zero (0), to take effect at that time. The emergency rules will remain in effect for up to one hundred twenty (120) days from adoption, expiring January 25, 2018, unless earlier superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

**Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:**

**Section 718, REIMBURSABLE DETAIL SUBSIDY PROGRAM, is amended by replacing Subsections 718.2 and 718.3 to read as follows, and renumbering the following subsections:**

718.2 ABRA will reimburse MPD sixty percent (60%) of the total cost of invoices submitted by MPD to cover the costs incurred by licensees for MPD officers working reimbursable details on Sunday through Saturday nights. The hours eligible for reimbursement for on-premises retailer licensees shall be 11:30 p.m. to 5:00 a.m. ABRA will also reimburse MPD sixty percent (60%) of the total costs of invoices submitted by MPD to cover the costs incurred for Pub Crawl Events and for outdoor Special Events where the Licensee has been approved for a One Day Substantial Change License or a Temporary License. The hours

eligible for an outdoor Special Event operating under a One Day Substantial Change License or a Temporary License or a Pub Crawl Event operating under a Pub Crawl License shall be twenty-four (24) hours a day.

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MPD shall submit to ABRA on a monthly basis invoices documenting the sixty percent (60%) amount owed by each licensee. Invoices will be paid by ABRA to MPD within thirty (30) days of receipt in the order that they are received until the subsidy program's funds are depleted.