

**DISTRICT OF COLUMBIA GOVERNMENT**  
**Alcoholic Beverage Regulation Administration**



**2014 Proposed Regulations to Title 23 - Highlights Edition**

The Alcoholic Beverage Control Board (Board) is proposing procedural and administrative changes to Title 23 of the DC Municipal Regulations. The two proposed rules—[the technical amendment](#) and [the administrative and procedural amendment to Chapter 16](#)—can be reviewed in their entirety. A summary of the proposals is also available for review below.

**Chapter 2 - License and Permit Categories**

Two changes were made to subsection 207.2. Renewal period years were updated for all categories of licenses. A prescribed renewal period was also added for alcohol certification provider permits, which was not previously listed. The proposed renewal period for these permits would expire on June 30, 2017.

Several changes were also made to section 213.

Subsection 213.1 now states that a license is not required for any event where alcoholic beverages are provided gratuitously for on-premises consumption on the host's own premises. Previously, the rule only applied if the event was closed to the public. The rules also states that a license is not required if the operator of the premises does not provide service for the consumption of alcoholic beverages that are provided gratuitously to guests on the premises. This section previously only applied to guests of a private function. A license is still required for an event where alcoholic beverages are provided gratuitously if the operator of the premises rents out the facility or provides entertainment, food or nonalcoholic beverages for compensation.

A second part to subsection 213.2 was also added. It provides that an applicant for a new license will not permit the consumption of alcoholic beverages on the premises unless a stipulated or temporary license has been obtained. An applicant for a new license can allow 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 service of alcoholic beverages. This section was added to clarify those circumstances that an applicant for a new license can permit the consumption of alcoholic beverages.

**Chapter 4 – General Licensing Requirements**

Circumstances for which the Board can rescind its previous approvals of licenses were added to subsection 405.5. Additional circumstances include when:

- Issuance of the license is still pending after two years or more; or
- The applicant no longer has legal authority to operate at the approved location.

## **Chapter 5 – License Application**

Two new rules are proposed that allow the Board to close out applications that are abandoned or withdrawn by applicants. This will assist the Alcoholic Beverage Regulation Administration (ABRA) with implementing procedures for maintaining timely records.

New subsection 500.2 provides the Board with the authority to 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. In addition, subsection 500.3 states that the Board can require an applicant to submit additional documents and information needed to properly process an application. If an applicant fails to provide any additional documents within 15 days, the Board can deem the application abandoned or withdrawn.

## **Chapter 7 – General Operating Requirements**

A variety of changes were proposed for Chapter 7.

The entire provision of 704.3 was removed. As a result, the rulemaking no longer permits a license located in a moratorium zone to be kept in safekeeping for the length of the moratorium. Subsection 704.4 has now been renumbered as 704.3, which was also changed.

This subsection now states that 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 reopening date. The two-year timeframe was not previously defined in this subsection.

Proposed changes for 705.11 require licensees to register with the Board to sell and serve alcoholic beverages until 4 a.m. on January 1 and other District and federal holidays. Previously, licensees were not required to obtain Board approval to stay open until 4 a.m. on January 1. The revision aligns the regulation with the existing rules prescribed for the extended holiday hours program.

A new license is proposed for pub crawls in subsection 712.1. A license of its kind was not previously required for pub crawl applicants. The fee for a pub crawl license would be \$250.

Manufacturers would be able to file a one-day substantial change request with the Board—just like their on-premises retailer counterparts—to provide entertainment, extend hours, charge a cover, provide dancing or operate at a new location as part of a specific event as a result of revisions in subsection 716.1. Manufacturers were not previously able to obtain a one-day substantial change license.

An entirely new rule is proposed by section 721 that would allow a restaurant, tavern, nightclub, hotel or multipurpose facility to provide bottle service—either for wine or liquor—to seated patrons. Bottle service was not previously addressed in the regulations.

## **Chapter 8 – Enforcements, Infractions and Penalties**

In section 800, the civil penalty schedule is proposed to be amended to make it a primary tier violation if a licensee fails to provide sufficient documentation to verify its quarterly statement submissions.

An entirely new section was added at the end of the chapter—808—that defines seven different circumstances for which the Board can issue a cease-and-desist order to a licensee. It includes when:

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.

### **Chapter 10 - Endorsements**

Rules for entertainment endorsements are stated more clearly for licensees in subsection 1001.8. The new language establishes that a licensee can only provide entertainment during the hours permitted under its entertainment endorsement. The new rule also states that it is a violation to do otherwise.

### **Chapter 12 – Records and Reports**

Verbiage was added in subsection 1207.10 to 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. The timeframe was not previously stated in the regulation.

### **Chapter 16 – Contested Hearings, Non-Contested Hearings, Protest Hearings and Procedures**

A second proposed rulemaking overhauls and reorganizes Chapter 16 to provide a comprehensive and clear process for the public on hearings held before the Board. In addition, topics were grouped together for clarity. Rules were also added to include hearings not previously mentioned in this portion of the regulations. Changes have also been proposed to align the rules with nuances in current law.

The subchapters are reorganized as follows:

- 1600. General Provisions
- 1601. Administrative Review
- 1602. Filing a Protest
- 1603. Roll Call Hearing
- 1604. Protest Status Hearing
- 1605. Party Standing
- 1606. Party Dismissal
- 1607. Establishment of Geographic Boundaries
- 1608. Settlement Conferences
- 1609. Mediation
- 1610. Settlement Agreements
- 1611. Show Cause Hearings
- 1612. Protest Hearings
- 1613. Summary Suspension and Summary Revocation Hearings
- 1614. Fact-Finding Hearings
- 1615. Moratorium Hearings

Section 1600, General Provisions, remains the same with no substantive changes to the existing section.

Section 1601 is proposed to be deleted almost in its entirety with the exception of one new item that clarifies that the phrase “administrative review” has the same meaning as the phrase “roll call hearing.” As a result, section 1601 would be covered by the roll call hearings section 1603.

Section 1602, filing a protest, has been moved from its previous section 1605. The language from section 1605 is the same with one exception. The proposed subsection 1602.3 would require a protestant to provide an email address if one exists. Otherwise, the section remains the same and provides clear instructions for filing a protest in the District, including who may file a protest, how to file a protest; and what needs to be included.

Roll call hearings have been moved to section 1603 from 1602 with several changes. Subsection 1603.1 further defines a roll call hearing as a non-adversarial hearing conducted by the Board’s agent to identify timely filed protests received during the protest period, confer standing of protestant groups and to set a date for mediation, the status hearing, and the protest hearing.

An additional example of good cause for failure to appear at the roll call hearing was added to subsection 1603.3, which is (e) arriving after the roll call hearing has concluded.

Subsection 1603.4 was also changed. It now states that the Board’s agent can recommend to dismiss a license application or to dismiss a protest for failure to attend the roll call hearing. The recommendation would need to be forwarded to the Board for approval and a written order. A request for reinstatement of the license application or the protest would need to be filed with the Board within ten days after receipt of the order. In reviewing the request for reinstatement of the license application or the protest, the Board can consider whether the party has shown good cause for his or her failure to appear at the roll call hearing. This subsection previously stated that hearings are open to the public and transcribed by a certified court reporter, which has been moved to subsection 1603.7.

Subsections 1603.5 and 1603.6 were also added. Subsection 1603.5 defines the authority of the Board’s agent. Subsection 1603.6 prohibits all parties from communicating ex parte with the Board’s agent on anything related to the merits of the proceeding.

Section 1604, on show cause hearings, was moved to section 1611 and replaced with a section on protest status hearings, which were previously located in section 1603. Protest status hearings are defined in subsection 1604.1 as proceedings held by the Board where parties address any unresolved legal issues from the roll call hearing, motions and/or pleadings previously filed with the Board. At the protest status hearing, subsection 1604.2 states that the parties are required to inform the Board of their progress in reaching a settlement agreement. The Board in its discretion may set another status hearing if the Board determines that the parties are close to reaching a settlement agreement or that mediation would be helpful.

Section 1605 is a new section that defines party standing of a group of five or more residents or property owners in three subsections. Subsection 1605.1, states that a protestant group of five or more residents or property owners of the District sharing common ground will be granted standing once five or more individuals of the group have appeared at either the roll call hearing or at the protest status hearing. Subsection 1605.2 states that members of a protestant group of five or more residents or property owners are permitted to submit written statements designating representation, which can represent the group of five or more once the group is granted standing. The last subsection 1605.3, states that the group of five or more individuals will be defined by the members stated on the protest or protest petition.

Section 1606 previously provided rules on protest hearings. It was moved to section 1612. As a result, section 1606 has been replaced with a new section that defines procedures for dismissing parties.

Establishment of Geographic Boundaries located in section 1607 remains the same and has not been changed.

Section 1608 on settlement conferences has generally been eliminated with a notation stating that the phrase “settlement conference” found in Title 25 of the D.C. Official Code is considered synonymous with the phrase “mediation” and will have the same meaning in these regulations.

An entirely new section has been added in 1609 to clarify rules on mediation, including requirements for a protestant to attend mediation on a mutually convenient date prior to the scheduled protest status hearing or the protest hearing. The date of the mediation may be arranged at the roll call hearing or any other time. Parties at mediation may enter into a settlement agreement, as provided for in § 1610, and are required to submit the settlement agreement to the Board for approval prior to the protest status hearing or protest hearing. Parties are required to inform the Board if they fail to reach a settlement agreement on one or more of the protest issues at any of the protest hearings.

The following sections were moved in their entirety to new sections:

- Rules for settlement agreements were moved from section 1609 to section 1610.
- Rules for show cause hearings were moved from section 1604 to section 1611.
- Rules for protest hearings were moved from section 1606 to section 1612.
- Rules for summary suspension and summary revocation hearings were moved from section 1610 to section 1613.
- Rules for fact-finding hearings were moved from section 1611 to section 1614.
- Rules for moratorium hearings were moved from section 1612 to section 1615.

## **Chapter 17 – Procedural Requirements for Board Hearings**

A host of new material is being proposed for Chapter 17.

Four new subsections were added to section 1702 that provide clear instructions for calculating deadlines. While these rules were already provided in Title 25, they have been added to the regulations for consistency. The purpose of both the law and the proposed regulations is to clarify for licensees and the public when to start counting days and hours leading up to a deadline.

The first additional subsection (1702.3) clarifies for the purposes of calculating time that the day of an event that triggers the need to begin calculating a deadline should not be counted in the timeframe for the period.

The next new subsection (1702.4) goes further to clarify that Saturdays, Sundays and legal holidays should be included when calculating deadlines unless the last day of the period ends on a Saturday, Sunday or legal holiday. In that case, the last day should run until the end of the next day that is not a weekend or legal holiday.

Calculating time in hours is defined in new subsection 1702.5. It states that every hour immediately after the conclusion of an event that triggers a deadline should be counted during Saturdays, Sundays and legal holidays. If the time period ends 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 weekend or legal holiday.

The last new subsection (1702.6) simplifies deadlines for submitting documents. It states that the last time an electronic filing can be submitted will be midnight on the last day of a prescribed time period. If a document is to be submitted by any other means, it must be filed by the close of business on the last day for filing. The exception to both cases is if a statute, regulation or Board order states otherwise.

Modifications in section 1703 explain who should be served papers when representatives are designated. While subsection 1703.2 is not new, it clarifies ambiguous language that was previously provided. It now states that service of papers will be made only to a representative when a party has appeared through a representative that has filed the

required written notice of appearance. The rule previously stated that the papers would either be served on the party or the representative.

An addition to subsection 1703.4 allows for papers to be served in a modern fashion—electronically—in addition to all of the former methods.

The Board chair's authority to schedule and conduct hearings was modified and is set forth in section 1710.

Revisions in subsection 1710.4, clarify that the chair of Board will preside over all Board hearing proceedings. The chair is also required to conduct all hearing proceedings in accordance with D.C. Official Code Title 25, which was added in a new subsection 1710.5. The chair's authority is further defined in subsection 1710.6, which provides the following:

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

The last new subsection, 1710.6, provides for planning if the chair is unable to attend a hearing and allows the chair to designate a member of the Board to take over his or her duties in his or her absence.

Four new subsections were added to section 1711, defining processes for the submission of evidence during protest hearings and show cause hearings. These rules are intended to assist with better informing a party to a case of their responsibilities and allow these hearings to run more smoothly.

The first new subsection— 1711.5—proposes that the applicant in a protest hearing will have the burden of proof to show through substantial evidence that the licensing action meets the appropriateness standards set in section 25-313.

The second new subsection—1711.6—is related to show cause proceedings before the Board. It states that the District will have the burden of proof to show through substantial evidence that a respondent has violated District laws.

In subsection 1711.7, an applicant is required to open and close the presentation of evidence or argument in a case during a protest hearing while 1711.8 proposes that the District of Columbia is required to open and close the presentation of evidence or argument in a case during a show cause proceeding. These two subsections were previously stated under subsection 1710.4.

Eight subsections were also added to section 1713 with the goal of providing parties with clear instructions regarding procedures for documentary evidence, which were not previously laid out in the rules.

The first part of new subsection 1713.5 requires all exhibits that a party intends to introduce at hearing be identified on an exhibit form accompanying the protest information form. Copies of the exhibits must also be attached to the form. The exception is exhibits that are anticipated to be used for impeachment. Those exhibits do not need to be included on the exhibit form nor attached, as prescribed in subsection 1713.6.

If a document is readily available to the general public, a party only needs to provide a complete citation to the source of the document and how the document may be accessed, according to subsection 1713.7.

The next subsection, 1713.8, states that the Board can exclude any exhibits not disclosed on the exhibit form if it is found that the opposing party has been prejudiced by the failure to disclose or if there has been a knowing failure to disclose.

If there is good cause, subsection 1713.9 provides the Board with discretion to receive documentary evidence from the parties not already listed or attached to the exhibit form.

Under subsection 1713.10, an investigative report and attachments will automatically be made a part of Board's record. A party will not be required to formally move the admission of the investigative report or portions of it into the evidentiary record.

As part of subsection 1713.11, an exhibit form and any attachments are required to be served on all parties and the Board's Office of General Counsel seven days prior to the hearing. If a presentation such as a power point is used by the parties, a paper copy of the exhibit is required to be filed with the Board (1713.12).

One new item was added to the rules for submitting documents and other information after a hearing. Subsection 1717.1 (a) was provided, which allows for documents and information to be accepted for the record after a hearing is closed as long as it is accompanied by a motion to reopen the record; demonstrates good cause; and lacks prejudice to any party. As a result of adding this section, the previous two items (a) and (b) were categorized as (b) and (c) respectively.

Subsection 1718.4 was eliminated because it is duplicative and no longer necessary.

An entirely new section—1722—was created to provide detailed instructions to parties for completing protest information forms. These procedures—proposed in subsections 1722.1 through 1722.7—were not previously provided in the rules.

The proposed procedures require all parties that are granted standing to a protest proceeding to file a protest information form. The form must identify a host of items: 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 forms; the list of material facts or issues that the parties have agreed to stipulate; and the relief sought. In addition, the protest information form must be signed by the party's representative or by the party itself if there is no legal representation. If an expert witness is to testify, a copy of the witness' resume must be provided.

At the hearing, the Board can exclude any witnesses or exhibits not disclosed on the protest information form if it is found that the opposing party has been prejudiced by the failure to disclose or if there has been a knowing failure to disclose. If there is good cause, the Board will also have the discretion to receive documentary evidence from the parties not already listed or attached to the protest information form. The form and any attachments need to be served on all parties and the Board's Office of General Counsel seven days prior to the hearing.

## **Chapter 18 - Petition Procedures**

In section 1800, the item that required forms for filing protest petitions was deleted since parties provide protest petitions themselves.