

**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 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 Mayor's Order 2001-96, dated June 28, 2001, as revised by Mayor's Order 2001-102, dated July 23, 2001, hereby gives notice of proposed rulemaking action to amend Chapters 1 (Provisions of General Applicability), 2 (License and Permit Categories), 3 (Limitations on Licenses), 5 (License Applications), 7 (General Operating Requirements), 8 (Enforcement, Infractions, and Penalties), 9 (Prohibited and Restricted Activities), 10 (Endorsements), 12 (Records and Reports), 13 (Transport of Beverages), 15 (Applications: Notice of Hearings Involving Licenses), 16 (Contested Hearings, Non-contested Hearings, Protest Hearings, and Procedures), and 17 (Procedural Requirements for Board Hearings) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

The proposed amendments to Chapter 1 include clarifying the language in § 100 (Extension of Expiration Dates of Protested Licenses) and revising the definition of "Roll Call Hearings" in § 199 (Definitions). The proposed amendments to Chapter 2 include establishing the reports and records requirements for holders of a storage facility permit. Additionally, the proposed rulemaking would amend Chapter 2 by updating the renewal periods in § 207, and reorganizing the licensing fees, permit and endorsement fees, and the application fees located in §§ 208-210.

The proposed amendments to Chapter 3 include reducing the quota limit for Class B Retailer's licenses in § 300 (Limitation on the Number of Class A and Class B Retailer's Licenses) and making clear that quota limits on Class A and B Retailer's licenses do not apply to Retailer's licenses, Class IA and IB. Additionally, § 302 (Licenses Near Schools, Colleges, Universities, and Recreation Areas) is amended by exempting Retailer's licenses, Class IA and IB, and Class B licenses where the establishment is located in a hotel, from the four hundred foot (400 ft.) restriction requirement.

The proposed amendments to Chapter 5 would clarify what documentation an applicant's seeking to transfer a license to a new owner is required to submit to the Board. Chapter 7 would be amended by requiring the purchaser of an ABC license to apply for a Temporary Operating Retail Permit pending the Board's decision on an application to transfer the license to a new owner. In addition, the proposed rulemaking would amend § 705 (Hours of Sale and Delivery for Off-premises Retailer Licenses) by correcting the Sunday hours set forth in § 705.9 so that they are consistent with the other hours listed in the subsection.

The proposed rulemaking would amend Chapter 8 by limiting the look-back period for mandatory warnings to four years as well as correct the D.C. Official Code citation in Chapter 9. Chapter 10 is amended by clarifying holders of tavern and nightclub licenses, without an entertainment endorsement, are prohibited from repositioning the establishment's furniture for purposes of creating a dance floor in excess of one hundred forty square feet (140 sq. ft.).

In accordance with the Omnibus Alcoholic Beverage Regulation Amendment Act of 2016, effective April 7, 2017 (L21-260; D.C. Official Code §§ 25-101, *et al.*), the proposed rulemaking would amend Chapter 12 by repealing § 1206. Furthermore, technical revisions are proposed for § 1208 (Retention and Inspection of Books and Records). The proposed rulemaking would also amend Chapter 13 by clarifying what information is required for importation permits in § 1301 (Importation Permits for Retailers of Alcoholic Beverages).

The proposed amendments to Chapter 15 include revising the notice requirements for marine vessels and Retailer's licenses, Class IA and IB as provided for in § 1502 (Notice of an Application for a New License, Renewal of a License, or Transfer of a License to a New Location). Section 1502 is further amended by ensuring the language in the regulation is consistent with D.C. Official Code § 25-422 and repealing § 1502.4.

The proposed rulemaking would amend Chapter 16 by (1) requiring Groups of Five or More to designate a representative for the group in their protest letter; (2) allowing for the use of electronic signatures; (3) authorizing the Board to dismiss a party for the failure to appear at the Protest Status Hearing; (4) authorizing the expiration of a license in those instances where the licensee's second re-filed renewal application is dismissed due their failing to attend a hearing and the application is not reinstated; (5) prohibiting the use of recording devices or transcription during mediation proceedings; (6) authorizing the Board to deny a settlement agreement when either signatory to the agreement fails to respond to the Board's request for modifications within thirty (30) days; (7) allowing the Board to limit the duration of questioning during Protest Hearings; (8) establishing rules for consolidating cases as well as creating a rule on witnesses; (9) revising the Fact Finding Hearing requirements; and (10) allowing for the dismissal of an application due to the failure of the Applicant to pursue adjudication of an application.

Lastly, the proposed rulemaking makes changes to Chapter 17 by amending (1) the service of papers requirement so that it conforms with the ABC Board's practice; (2) the requirements for obtaining a continuance; (3) the length of time ABRA has for complying with a request for the inspection of documents; (4) the requirements for serving parties to a proceeding with documentary evidence prior to the hearing; (5) the rules for filing motions with the ABC Board; (6) the requirements for submitting Proposed Findings for Fact and Conclusions of Law to the ABC Board; and (7) the requirement that six (6) copies of a petition for reconsideration, reargument, or rehearing must be filed with the ABC Board.

On July 12, 2017, by a vote of six (6) to zero (0), the Board adopted the proposed rules. The Board also gives notice of its intent to take final rulemaking action to adopt these rules on a permanent basis in not fewer 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)(2012 Repl.), the proposed rules will be 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.

Chapter 1, PROVISIONS OF GENERAL APPLICABILITY, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 100, EXTENSION OF EXPIRATION DATES OF PROTESTED LICENSES, is amended by amending § 100.3 and 100.4 as follows:

- 100.3 In the case of protested applications for renewal of a license, the license shall continue in effect until the Board has rendered a final decision.
- 100.4 In the case of protested applications for a transfer to a new location, the license shall continue in effect only for purposes of the original location, and operations at the new location shall be prohibited until the Board has rendered a final decision.

Section 199, DEFINITIONS, is amended by revising the definition of “Roll Call Hearing” as follows:

199 DEFINITIONS

Roll call hearing – the proceeding specified in a placard posted at an applicant’s premises. It is at this hearing that the applicant and the protestant(s) are introduced to each other and where the grounds for objection to the license application are read to the public.

Chapter 2, LICENSE AND PERMIT CATEGORIES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 205, STORAGE FACILITY PERMIT AND OFF-PREMISES STORAGE PERMIT, is amended in its entirety to read as follows:

205 STORAGE FACILITY PERMIT AND OFF-PREMISES STORAGE PERMIT

- 205.1 A storage facility permit shall allow the holder to establish a bonded warehouse in the District of Columbia for the storage of alcoholic beverages by the holder of a Manufacturer's license, Wholesaler's license, Retailer's license Class A, Class C, Class D, or a Caterer's license who possesses an off-premises storage permit, or for the accounts of other persons.
- 205.2 The holder of a storage facility permit shall be authorized to handle alcoholic beverages. The handling of alcoholic beverages under this subsection shall include packaging and repackaging services; bottle labeling services; creating buckets or variety packs that may include non-alcoholic products; and picking, packing, and shipping alcoholic beverage orders directly to the consumer.
- 205.3 The holder of a Manufacturer's license, Wholesaler's license, Retailer's license Class A, Class C, Class D, or a Caterer's license shall obtain an off-premises storage permit to store alcoholic beverages at a storage facility approved by the Board.

- 205.4 The fee for the off-premises storage permit shall be in accordance with 23 DCMR § 209.
- 205.5 Alcoholic beverages stored in a bonded storage facility pursuant to this section may be removed from the storage facility only for the purpose of being (a) exported from the District; (b) shipped to a holder of a Manufacturer's license, Wholesaler's license, Retailer's license Class A, C, or D, or a Caterer's license located in the District; (c) returned to a bonded storage facility, (d) shipped or delivered to a consumer, or (e) returned to a private collector who is a tenant.
- 205.6 The Board-approved storage facility shall be physically secure, zoned for the intended use and physically separated from any other use.
- 205.7 Delivery of alcoholic beverages to a Board-approved storage facility shall create a bailment in favor of the holder of a storage facility permit.
- 205.8 Warehousing of alcoholic beverages by any person other than a holder of a Manufacturer's license, Wholesaler's license, Retailer's license Class A, C, or D, a Caterer's license, or a private collector with a tenant agreement is prohibited.
- 205.9 The sale, service, or consumption of alcoholic beverages at a Board-approved storage facility shall be prohibited without a tasting permit.
- 205.10 The holder of a storage facility permit shall post, in a conspicuous place, the following:
- (a) A warning sign, in accordance with the requirements set forth in § 719.1;
 - (b) A copy of the storage permit; and
 - (c) A copy of the Wholesaler's, Manufacturer's, Retailer's Class A, C, or D, or the Caterer's license in its licensed portion of the Board-approved storage facility.
- 205.11 The holder of the storage facility permit shall, upon request, provide an ABRA investigator or member of the Metropolitan Police Department with its permit for inspection.
- 205.12 The holder of a Manufacturer's license, Wholesaler's license, Retailer's license Class A, C, or D, or a Caterer's license, that stores alcoholic beverages at a storage facility shall maintain and report to the Board, on an annual basis, the following:
- (a) Records identifying the kind and quantity of alcoholic beverages being stored at the Board-approved storage facility; and

(b) The movement of alcoholic beverages to and from the storage facility.

205.13 The Board shall have the right to inspect the warehouse of a storage facility permit holder as it may deem necessary for the proper regulation of the storage of alcoholic beverages.

205.14 A storage facility permit shall be valid for three (3) years.

Section 207, LICENSURE PERIODS, is amended to read as follows

207 LICENSURE PERIODS

207.1 Except as provided for in § 207.2, the following licenses or permits issued by the Board shall be valid for three (3) years:

- (a) Manufacturer's license;
- (b) Wholesaler's license;
- (c) Off-premises Retailer's license;
- (d) On-premises Retailer's license;
- (e) Caterer's license;
- (f) Solicitor's license;
- (g) Farm winery retail licenses;
- (h) Alcohol certification permit;
- (i) Tasting permit; and
- (j) Storage facility permit.

207.2 Licenses issued by the Board shall be valid for less than three (3) years in the following instances:

- (a) When suspended or revoked;
- (b) In the case of Temporary festival, and farmer's market licenses;
- (c) When the license takes effect on a date in between the dates established by the Board for the regular licenses period of each license class, in which case the license shall be valid only until the end of the licensure period; and

(d) In the case of stipulated licenses.

207.3 The three (3)-year renewal period for each license listed below shall occur sequentially every three (3) years starting with the following dates:

License Class	Licensure Period	Ending Year
Manufacturer A	Apr. 1 to Mar. 31	2018
Wholesaler A	Apr. 1 to Mar. 31	2018
Retailer A	Apr. 1 to Mar. 31	2018
Manufacturer B	Oct. 1 to Sept. 30	2020
Wholesaler B	Oct. 1 to Sept. 30	2020
Retailer B	Oct. 1 to Sept. 30	2020
Retailer CR	Apr. 1 to Mar. 31	2019
Retailer CT	Oct. 1 to Sept. 30	2019
Retailer CN	Oct. 1 to Sept. 30	2019
Retailer CH	Apr. 1 to Mar. 31	2019
Multipurpose facility CX	Apr. 1 to Mar. 31	2019
Common Carrier CX	Apr. 1 to Mar 31	2019
Retailer Arena CX	Apr. 1 to Mar 31	2019
Retailer DR	Apr. 1 to Mar. 31	2019
Retailer DT	Oct. 1 to Sept. 30	2019
Retailer DN	Oct. 1 to Sept. 30	2019
Retailer DH	Apr. 1 to Mar. 31	2019
Multipurpose facility DX	Apr. 1 to Mar. 31	2019
Common carrier DX	Apr. 1 to Mar 31	2019
Caterer	Apr. 1 to Mar 31	2019
Solicitor	July 1 to June 30	2020
Club CX	Apr. 1 to Mar 31	2019
Club DX	Apr. 1 to Mar 31	2019
Farm winery retail	Oct. 1 to Sept. 30	2018
Alcohol certification provider permit	July 1 to June 30	2020

Section 208, LICENSE FEES, is amended in its entirety to read as follows:

208 LICENSE FEES

208.1 All license fees shall be paid by credit card, certified check, money order,

business check, attorney's check, or personal check payable to ABRA. Applicants and licensees shall pay the annual license fees specified by the Board in the following manner:

- (a) The fee for the first year shall be paid at the time an application is filed, but shall be returned to an applicant, minus the prescribed processing fee, if the application is denied; and
- (b) The fees for the second and third year shall be paid no later than one (1) and two (2) years, respectively, from the date of the issuance of the license; provided, that a licensee may pay the second and third year fees when the first year fee is paid. The payment of the second and third year license fees shall not require the filing of a clean-hands certificate by the applicant.

208.2 The Board may impose a late fee upon a licensee for failure to timely remit the second or third year fee, or the renewal fee, in the amount of fifty dollars (\$50) for each day after the due date of payment. The total amount of the late fee to be paid to ABRA shall not exceed the annual cost of the license. The Board may suspend a license until the licensee pays the second or third year fee and any additional fee imposed by the Board for late payment. A license not renewed timely shall be deemed expired and the licensee shall not be permitted to sell or serve alcoholic beverages.

208.3 The Board may suspend a license, permit, or endorsement where payment was made by the applicant to ABRA with a check returned unpaid. The applicant, in addition to any late fees imposed by the Board pursuant to § 208.2, shall also be charged by ABRA with a one hundred dollar (\$100) returned check fee.

208.4 The annual license fees for manufacturer's licenses shall be as follows:

Class	Fee
Manufacturer's class A (rectifying plant)	\$ 6,000
Manufacturer's class A (distillery)	\$ 6,000
Manufacturer's class A (distillery producing more than 50% non-beverage alcohol)	\$ 3,000
Manufacturer's class A (winery)	\$ 1,500
Manufacturer's class B (brewery)	\$ 5,000
Manufacturer's class C (alcohol-infused confectionary food products)	\$ 1,000

208.5 The annual license fees for wholesaler's licenses shall be as follows:

Class	Fee
Wholesaler's class A	\$ 5,200
Wholesaler's class B	\$ 2,600

208.6 The annual license fees for off-premises retailer's licenses shall be as follows:

Class	Fee
Retailer's class A	\$ 2,600
Retailer's class B	\$ 1,300
Internet retailer's class IA	\$ 2,600
Internet retailer's class IB	\$ 1,300
Farmer's market class J	\$ 300
Farmer's market class K	\$ 500

208.7 The annual license fees for all Class C licenses, except the DC Arena, shall be based on its capacity load, which shall be defined as the maximum number of patrons that may be in the establishment at any one time. The holder of a Class C license shall submit both its capacity placards identifying the maximum number of patrons and certificate of occupancy identifying the number of seats from the Department of Consumer and Regulatory Affairs with both its initial and renewal license applications.

208.8 The annual license fees are as follows:

Class	Capacity	Fee
CR restaurant	99 or fewer	\$1,000
CR restaurant	100 to 199	\$1,300
CR restaurant	200 to 499	\$1,950
CR restaurant	500 or more	\$2,600
CT tavern	99 or fewer	\$1,300
CT tavern	100 to 199	\$2,080
CT tavern	200 or more	\$3,120
CN nightclub	99 or fewer	\$1,950
CN nightclub	100 to 199	\$2,600
CN nightclub	200 to 499	\$3,250
CN nightclub	500 to 999	\$4,550
CN nightclub	1,000 or more	\$5,850
CH hotel	99 or fewer guest rooms	\$2,600
CH hotel	100 or more guest rooms	\$5,200
CB bed and breakfast		\$ 1,000
CX club		\$1,950
CX multipurpose facility		\$1,950
CX marine vessel, single vessel		\$1,950
CX marine vessel line, for 3 or fewer vessels and dockside waiting areas		\$3,250

For each additional vessel or dockside waiting area	\$1,950
CX railroad dining or club car, single car	\$650
CX railroad company, all dining or club cars	\$1,950

208.9 The annual license fees for all Class D licenses, except the DC Arena, shall be based on its capacity load, which shall be defined as the maximum number of patrons that may be in the establishment at any one time. The holder of a Class D license shall submit both its capacity placards identifying the maximum number of patrons and certificate of occupancy identifying the number of seats from the Department of Consumer and Regulatory Affairs with both its initial and renewal license applications.

208.10 The annual license fees are as follows:

Class	Capacity	Fee
DR restaurant	99 or fewer	\$600
DR restaurant	100 to 199	\$780
DR restaurant	200 to 499	\$1,170
DR restaurant	500 or more	\$1,560
DT tavern	99 or fewer	\$1,000
DT tavern	100 to 199	\$1,300
DT tavern	200 or more	\$1,950
DN nightclub	99 or fewer	\$1,300
DN nightclub	100 to 199	\$1,625
DN nightclub	200 to 499	\$1,950
DN nightclub	500 to 999	\$2,600
DN nightclub	1,000 or more	\$4,550
DH hotel	99 or fewer guest rooms	\$1,300
DH hotel	100 or more guest rooms	\$2,600
DB bed and breakfast		\$ 650
DX club		\$650
DX multipurpose facility		\$650
DX marine vessel, single vessel		\$975
DX marine vessel line, for 3 or fewer vessels and dockside waiting areas		\$1,300
For each additional vessel or dockside waiting area		\$650
DX railroad dining or club car, single car		\$325
DX railroad company, all dining or club cars		\$650

208. 11 The daily fee for a Temporary license shall be as follows:

Class	Fee
Temporary class F	\$ 130
Temporary class G	\$ 300

208. 12 The annual fee for a Solicitor's and a Manager's license shall be as follows:

Type	Fee
Solicitor's license	\$ 325
Manager's license	\$ 130

208. 13 The annual fee for Class CX multipurpose facility licenses shall be as follows:

Class	Fee
Retailer's license Class Arena CX multipurpose facility	\$ 10,000

208.14 The annual license fee for a Catering license shall be based on the caterer's annual revenue for the previous year as follows:

Class	Gross Annual Revenue	Fee
Caterer	More than \$1,000,000 per year gross annual revenue	\$5,000
Caterer	\$1,000,000 or less per year gross annual revenue	\$4,000
Caterer	\$500,000 or less per year gross annual revenue	\$3,000
Caterer	\$300,000 or less per year gross annual revenue	\$2,000
Caterer	\$200,000 or less per year gross annual revenue	\$1,500
Caterer	\$100,000 or less per year gross annual revenue	\$1,000
Caterer	\$50,000 or less per year gross annual revenue	\$750
Caterer	\$25,000 or less per year gross annual revenue	\$500

208. 15 The annual fee for a Farm Winery license, a Pub Crawl license, and a festival license shall be as follows:

Type/Class	Fee
Farm winery retailer's license	\$ 2,500
Pub crawl license	\$ 500
Festival license class H	\$ 1,000
Festival license class I	\$ 2,000

208.16 For purposes of determining the catering fee set forth in § 208.14, the applicant, as part of its submitted application, shall provide the Board with a signed affidavit on a form provided by ABRA, which shall include a statement of the applicant's

annual gross revenue from catering for the previous year, as well as any additional supporting documentation necessary to verify the statement of the applicant.

208.17 The submission of a knowingly false or misleading affidavit shall be grounds for the Board to order the licensee to show cause why the license should not be suspended or revoked, or a civil fine imposed based upon the primary tier schedule set forth in D.C. Official Code § 25-830(c).

208.18 The fee for a duplicate license or replacement of a lost license shall be ten dollars (\$10).

Section 209, PERMIT AND ENDORSEMENT FEES, is amended in its entirety to read as follows:

209 PERMIT AND ENDORSEMENT FEES

209.1 The fee for permits and endorsements shall be as follows:

Permit/Endorsement	Fee
Importation permit	\$ 5
Pool buying group agent importation permit	\$ 1,000/year
Tasting permit for off-premises retailers, wholesalers, manufacturers, and private collectors	\$ 130/year
Brew pub permit	\$ 3,900/year
Storage facility permit	\$ 300/year
Off-premises storage permit	\$ 25/year
Alcohol certification provider permit	\$ 100
Personal auction permit	\$ 30
Nonprofit corporation auction permit	\$ 30
Wine and beer purchasing permit	\$ 35
Wine pub permit	\$ 5,000/year
Distillery pub permit	\$7,500/year
On-site sales and consumption permit	\$ 1,000/year
Sidewalk café or summer garden endorsement	\$ 75/year
Entertainment endorsement (twenty percent (20%) of the base license fee)	20%
Amendment to a license which results in an inspection	\$ 50

Section 210, APPLICATION FEES, is amended in its entirety to read as follows:

210 APPLICATION FEES

210.1 Application fees shall be as follows:

Application	Fee
Filing of a new license (excluding manager and solicitor license applications)	\$ 75
Transfer of a license to a new owner	\$ 250

Transfer of a license to a new location	\$ 250
Change of officer, director, stockholder, or general or limited partner in a partnership	\$ 100
Corporate or trade name change	\$ 50
Keg registration (six dollars (\$6) per keg registration book. A registration book shall be valid for the registration of ten (10) kegs	\$ 6
Stipulated license	\$100

Chapter 3, LIMITATIONS ON LICENSES, of Title 23 DCMR is amended as follows:

Section 300, LIMITATION ON THE NUMBER OF CLASS A AND CLASS B RETAILER’S LICENSES, is amended by (a) amending § 300.2 and (b) adding new § 300.3-300.5 to read as follows:

- 300.2 The 275 quota limit set forth in D.C. Official Code § 25-331(b) shall not apply to Class B Retailer’s license renewal applications.
- 300.3 Off-premises Retailer’s license Class IA shall not be counted toward the quota limit set forth in § 300.1.
- 300.4 Off-premises Retailer’s license Class IB shall not be counted toward the quota limit set forth in § 300.2.
- 300.5 The quotas set forth in § 300.1 and 300.2 shall not prohibit the issuance of a license for an off-premises retailer’s license, Class IA or IB.

Section 300, LIMITATION ON THE NUMBER OF CLASS A AND CLASS B RETAILER’S LICENSES, is further amended by renumbering the current § 300.3-300.6 as 300.6-300.9.

Section 302, LICENSES NEAR SCHOOLS, COLLEGES, UNIVERSITIES, AND RECREATION CENTERS, is amended by adding new § 302.9 and 302.10.

- 302.9 The four hundred foot (400 ft.) restriction shall not apply to an application for a Retailer’s license, Class IA or IB.
- 302.10 The four hundred foot (400 ft.) restriction shall not apply to an applicant for a Retailer’s license Class B if the applicant’s establishment will be located inside of a hotel and will have no direct public access to the street or the outside of the hotel’s building.

Section 501, REQUIRED STATEMENTS, of Chapter 5, LICENSE APPLICATIONS, of Title 23 DCMR is amended by amending § 501.3 to read as follows:

- 501.3 An applicant requesting the transfer of a license to a new owner pursuant to D.C. Official Code § 25-405 shall submit a completed transfer application and any

documentation and other written statements evidencing the legal transfer of the license, including the financial details surrounding the transfer, and establishing to the Board's satisfaction that the new owner meets all of the qualifications of D.C. Official Code § 25-301.

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

Section 703, TEMPORARY OPERATING RETAIL PERMIT, is amended by amending § 703.1 to read as follows:

703.1 The purchaser of an ABC licensed establishment that seeks to continue business operations while awaiting Board approval on a transfer of ownership application where no substantial change will occur shall apply to the Board for a permit to temporarily operate under the license pursuant to the following conditions:

- (a) The transfer application must be filed with or before the application for temporary authority;
- (b) The subject premises must not have been closed nor the sale or service of alcoholic beverages discontinued during the thirty (30) days immediately prior to the filing of the permit application; and
- (c) That no substantial changes to the licensed premises will occur.

Section 705, HOURS OF SALE AND DELIVERY FOR OFF-PREMISES RETAIL LICENSES, is amended by amending § 705.9(c) to read as follows:

705.9(c) 3:00 a.m. and 8:00 a.m., on Sunday.

Section 805, WARNINGS, of Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of Title 23 DCMR is amended by amending § 805.3 to read as follows:

805.3 A licensee entitled to a mandatory administrative written warning for a first violation shall not be entitled to a mandatory administrative written warning for a second or subsequent violation of the same offense committed within four (4) years of issuance of the first mandatory administrative written warning.

Section 905, RESTRICTIONS ON ENTRANCE INTO LICENSED PREMISES, of Chapter 9 (PROHIBITED AND RESTRICTED ACTIVITIES) of Title 23 DCMR is amended by amending § 905.1 to read as follows:

905.1 The admittance requirement of those persons displaying a valid identification as set forth in D.C. Official Code § 25-782(d) shall not preclude establishments from enforcing a dress code or an age restriction, provided those establishments do not discriminate on any basis prohibited by Chapter 14 of Title 2 of the D.C. Official Code.

Chapter 10, ENDORSEMENTS, to Title 23 DCMR is amended as follows:

Section 1000, ENTERTAINMENT ENDORSEMENT, is amended by adding a new § 1000.3 to read as follows:

1000.3 A licensee under a license, Class C/T or D/T, which does not possess an entertainment endorsement, shall not position furniture in a manner that creates a dance floor area greater than one hundred forty square feet (140 sq. ft.).

Section 1000, ENTERTAINMENT ENDORSEMENT, is further amended by renumbering the current § 1000.3 through 1000.5 as § 1000.4 through 1000.6.

Chapter 12, RECORDS AND REPORTS, of Title 23 DCMR is amended as follows:

Section 1206, MANUFACTURER'S REPORTS, is amended in its entirety to read as follows:

1206 REPEALED

Section 1208, RETENTION AND INSPECTION OF BOOKS AND RECORDS, is amended by amending § 1208.4 and 1208.5 as follows:

1208.4 The holder of a Retailer's, Manufacturer's, or Wholesaler's license may maintain its records at a location in the District of Columbia other than the licensed premises with the approval of the Board. Any requested location must: (1) maintain the original invoices; and (2) be available for inspection by ABRA investigators at any time during business hours.

1208.5 The holder of a Retailer's license may maintain its original invoices outside of the District of Columbia upon a determination by the Board that good cause exists. However, duplicate invoices must be maintained in the District of Columbia at either the licensed premises or a location approved by the Board and the applicant is responsible for providing the original invoices to the Board within three (3) days of receiving a written request from the Board. Failure to make the original invoices available to the Board within three (3) days of its written request shall constitute a violation of § 1208.1.

Section 1301, IMPORTATION PERMITS FOR RETAILER'S OF ALCOHOLIC BEVERAGES, of Chapter 13, TRANSPORT OF BEVERAGES, of Title 23 DCMR is amended by (a) amending § 1301.1 and (b) adding a new § 1301.3 to read as follows:

1301.1 An importation permit issued under D.C. Official Code § 25-119 to the holder of a Retailer's license Class A, B, C, or D, or any other entity authorized to obtain an importation permit in accordance with 23 DCMR § 1302.3 must bear the full brand or trade name of the alcoholic beverage to be imported. If the brand of

alcoholic beverage to be imported is listed by a licensed manufacturer or wholesaler under these regulations, then upon application made to the Board, the retailer shall certify that the brand of alcoholic beverage sought to be imported is not available from a licensed manufacturer or wholesaler in sufficient kind or quantity to reasonably satisfy the immediate needs of the licensee.

- 1301.3 An importation permit issued under D.C. Official Code § 25-119 shall be obtained by:
- (a) Any unlicensed alcohol manufacturer, wholesaler, or retailer located outside of the District of Columbia that ships alcohol to the property of an official embassy, federal exempt property, or any other property exempt from Title 25 of the D.C. Official Code. Federal property exempt from Title 25 includes, but is not limited to, property under the control of the National Park Service and the Smithsonian Institute;
 - (b) A federally licensed importer that does not hold a District of Columbia alcohol license importing alcohol into the District of Columbia. The issuance of this permit shall be conditioned on the importer until an appropriate District alcohol license is obtained; and
 - (c) A state licensed manufacturer or wholesaler that does not hold a District of Columbia alcohol license donating alcoholic beverages to a non-profit organization, charity, or for a temporary event license holder.

Chapter 15, APPLICATIONS: NOTICE OF HEARINGS INVOLVING LICENSES, of Title 23 DCMR is amended as follows:

Section 1502, NOTICE OF AN APPLICATION FOR A NEW LICENSE, RENEWAL OF A LICENSE, OR TRANSFER OF A LICENSE TO A NEW LOCATION, is amended in its entirety 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

- 1502.1 The provisions of this section shall govern notice to the public of all applications for new licenses, renewals, or a transfer to a new location, including Manufacturer, Wholesaler, and Retailer licenses, but shall not apply to Solicitor's licenses, Manager's licenses, Caterer's licenses, or to Temporary licenses.
- 1502.2 Upon acceptance of an application, the Board shall establish the date for a roll call hearing on the application, which shall be at least forty-five (45) days after the application is accepted.
- 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.

1502.4 Repealed.

1502.5 Except as provided for in § 1502.6 and 1502.7, at least forty-five (45) days before the roll call hearing, the applicant shall post at least two (2) notice placards, provided by the Board, in conspicuous places on the outside of the establishment for the duration of the protest period.

1502.6 Subsection 1502.5 shall not apply to new or renewal license applications for a common carrier license for a passenger-carrying marine vessel that does not possess a physical location in the District of Columbia.

1502.7 At least forty-five (45) days before the roll call hearing, the applicant for a new or renewal license application for a Retailer's license Class IA or IB shall have a copy of the placard notice provided by the Board on its website.

1502.8 The Board shall inspect the premises at least once before the date of the roll call hearing specified on the notice in order to ensure that the placards continue to be prominently and visibly displayed to the public. If the placards have been removed or are posted in a manner not visible from the street, the establishment shall be re-advertised and replacarded for a further forty-five (45) calendar day period.

Chapter 16, CONTESTED HEARINGS, NON-CONTESTED HEARINGS, PROTEST HEARINGS AND PROCEDURES, of Title 23 DCMR is amended as follows:

Section 1602, FILING A PROTEST, is amended by (a) amending § 1602.3 and (b) add a new § 1602.4 to read as follows:

1602.3 All protests shall be signed by the protestant and contain the protestant's full name, e-mail address or mailing address. For Groups of Five or More, the protest shall identify the members of the group and the designated representative(s) who may receive correspondence from the Board on behalf of the Group.

1602.4 For purposes of § 1602.3, electronic signatures on protest letters are permitted.

Section 1602, ROLL CALL HEARING, is further amended by renumbering the current § 1602.4 as 1602.5.

Section 1604, PROTEST HEARING STATUS, is amended by adding a new § 1604.3 follows:

1604.3 Failure to appear at the Protest Status Hearing either in person or through a designated representative may result in denial of the license application or dismissal of a protest, unless, in the discretion of the Board, good cause is shown for the failure to appear. Examples of good cause for failure to appear include, but are not limited to:

- (a) Sudden, severe illness or accident;
- (b) Death or sudden illness in the immediate family, such as spouse, partner, children, parents, or siblings;
- (c) Incarceration;
- (d) Severe inclement weather; or
- (e) Arriving after the Protest Status Hearing has concluded.

Section 1604, PROTEST HEARING STATUS, is further amended by renumbering existing § 1604.3 as § 1604.4.

Section 1606, PARTY DISMISSAL, is amended by amending § 1606.5 as follows:

1606.5 In the event that an applicant's re-filed second renewal application is dismissed for failure to appear at a hearing and not reinstated by the Board for good cause, the license renewal application shall be denied and the license expired. The applicant shall be required to file a new license application, unless prohibited by a liquor license moratorium, and shall not be permitted to file a third license renewal application.

Section 1609, MEDIATION, is amended by adding a new § 1609.2 to read as follows:

1609.2 Mediation proceedings are confidential to the extent agreed to by the parties or provided by other law or rule of the District of Columbia. Mediation proceedings shall not be recorded or transcribed in any fashion. Statements made during mediation and documents and other evidence disclosed during mediation are not discoverable unless otherwise required by District or Federal law.

Section 1609, MEDIATION, is further amended by renumbering § 1609.2 and 1609.3 as § 1609.3 and 1609.4.

Section 1610, SETTLEMENT AGREEMENTS, is amended by adding new § 1610.6 and 1610.7 to read as follows:

1610.6 The Board shall issue an order denying the settlement agreement if the parties to a settlement agreement reject the modifications proposed by the Board and fail to submit a new settlement agreement in accordance with § 1610.5 or fail to respond

to the Board's modifications within thirty (30) days of receiving notice of the modifications.

- 1610.7 If the Board issues an Order denying the settlement agreement pursuant to §1610.6, the matter will be scheduled for a Protest Hearing, if a protest has been filed against the Application.

Section 1610, SETTLEMENT AGREEMENTS, is further amended by renumbering existing § 1610.6 as § 1610.8.

Section 1612, PROTEST HEARINGS, by adding new § 1612.9 to read as follows:

- 1612.9 The Board may, on a motion from either party or on its own motion, limit the number of persons who may testify on behalf of the Applicant, Licensee, or protestant if the Board determines the testimony would be redundant.

A new section 1614, CONSOLIDATED HEARINGS BEFORE THE BOARD, is added to read as follows:

1614 CONSOLIDATED HEARINGS BEFORE THE BOARD

- 1614.1 A consolidated protest hearing or show cause hearing may be held if the issues to be considered at the hearing are the same issues that are involved in another proceeding with the same Applicant pending before the Board.
- 1614.2 It is within the discretion of the Board to grant or deny a party's request for consolidation. In considering the request, the Board may consider factors such as whether the issue(s) may be more efficiently decided if the hearings are combined.
- 1614.3 In considering the party's request for consolidation, the Board must take into account the adjudication deadlines for each case and may require a party to waive the adjudication deadline associated with one (1) or more cases if consolidation otherwise prevents the Board from deciding all of the cases at issue within their respective deadlines.
- 1614.4 The Board may also propose on its own motion to consolidate two (2) or more cases in one (1) hearing for administrative efficiency.
- 1614.5 Before consolidating a hearing, the Board must notify the parties of its intention to do so, to provide the parties with an opportunity to file any objection.
- 1614.6 If the Board decides to hold a consolidated hearing, the Board may make either a consolidated decision and record or a separate decision and record on each issue. The Board shall ensure that any evidence that is common to all cases and material to the common issue to be decided is included in the consolidated record or each individual record, as applicable.

A new section 1615, RULE ON WITNESSES, is added to read as follows:

1615 RULE ON WITNESSES

- 1615.1 At the request of a party, or on its own motion, and subject to § 1615.2, the Board shall order witnesses excluded so that they will not hear the testimony of other witnesses.
- 1615.2 Notwithstanding § 1615.1, the following persons shall not be excluded from hearings before the Board:
- (a) The Applicant or the Licensee;
 - (b) The Designated Representative for a party to a proceeding; or
 - (c) Any person whose presence is shown by a party to be essential to the presentation of his or her case.

Section 1614, FACT-FINDING HEARINGS, is amended by (a) renumbering it § 1616 and (b) amending it in its entirety to read as follows:

1616 FACT-FINDING HEARINGS

- 1616.1 Prior to rendering a final decision on a licensing request or an ABRA Investigative Report, the Board may hold a non-evidentiary fact-finding hearing to obtain further information from an applicant, licensee, witness, government official, or any other member of the public with the permission of the Board.
- 1616.2 A licensee shall not be fined or have its license suspended or revoked at a fact-finding hearing. However, information provided at a fact-finding hearing may result in the issuance of a show cause notice pursuant to 23 DCMR § 1611 or other enforcement action permitted under the Act or this title. The fact-finding hearing may also result in the Board initiating an action to deny, modify, place conditions, or approve an application, as well as any other action authorized by this Title.
- 1616.3 An applicant or licensee that fails to appear at a fact-finding hearing without good cause or refuses to respond to questions asked by the Board may have their application deemed abandoned, which shall result in the denial of the application. A denial issued under this provision shall not be deemed technical or procedural under D.C. Official Code § 25-338(b).
- 1616.4 At any time, in its discretion, the Board may limit or exclude the submission of evidence, statements, and testimony at the hearing.
- 1616.5 All fact-finding hearings shall be open to the public unless closed to the public in accordance with section 405 of the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-575), as amended.

Section 1615, MORATORIUM HEARINGS, is renumbered § 1617.

A new section 1618, DISMISSAL FOR FAILURE TO PURSUE AN APPLICATION OR PROTEST, is added to read as follows:

1618 DISMISSAL FOR FAILURE TO PURSUE AN APPLICATION OR PROTEST

1618.1 Absent good cause, where the applicant to a pending liquor license application fails to appear for a fitness hearing or fact-finding hearing, fails to file requested pleadings, or comply with a Board order, the Board shall, on its own motion, dismiss the application.

1618.2 Examples of good cause include, but are not limited to:

- (a) The Applicant did not receive notice of a scheduled hearing;
- (b) The Applicant had an emergency that prevented him or her from appearing at the hearing; or
- (c) The Applicant was not aware of the Board order or the Board's pleadings request.

Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of Title 23 DCMR is amended as follows:

Section 1703, SERVICE OF PAPERS, is amended by amending § 1703.1 and § 1703.5(e) as follows:

1703.1 Any papers filed with the Board or on opposing parties in a contested case shall be served by personal delivery, first class U.S. mail, registered or certified mail, or by electronic mail. Proof of service shall be shown as required in § 1703.7.

1703.5(e) By electronic mail at the e-mail address on file with ABRA;

Section 1705, CONTINUANCES, is amended by amending § 1705.2 to read as follows:

1705.2 An attorney who knows or should know of a scheduling conflict shall immediately, but no later than two (2) days before the scheduled hearing, file a motion for continuance with the Board, with copies submitted to the opposing party or parties. A scheduling conflict with another tribunal may be considered good cause for continuing the proceeding.

Section 1708, INSPECTION OF BOARD FILES, is amended by amending § 1708.1 to read as follows:

1708.1 The records of the Board shall be available for inspection and copying during normal business hours at the request of any interested party or member of the

public. The Board shall make the records available within five (5) business days from when the request is made.

Section 1713, DOCUMENTARY EVIDENCE, is amended by amending § 1713.2 to read as follows:

1713.2 Any party who intends to offer documentary evidence at a hearing shall, seven (7) calendar days prior to the hearing, disclose the evidence to the opposing party. Absent good cause, failure to disclose documentary evidence seven (7) calendar days prior to the hearing may result in the Board excluding the evidence.

Section 1716, MOTIONS, is amended to read as follows:

1716 MOTIONS

1716.1 Any party to a protest may seek relief from the Board against an opposing party by filing a motion with the Board. Unless otherwise specified, motions shall conform to the following requirements:

- (a) Be in writing;
- (b) Served upon the other parties to the protest by electronic mail or the first-class U.S. Postal Service; and
- (c) Filed with the Board.

1716.2 Motions for a continuance shall conform with 23 DCMR § 1705.

1716.3 Any party may file a response in opposition to a motion within seven (7) calendar days after service of the motion. In the case of motions for continuances which have been filed by a party on the sixth (6th) calendar day before a scheduled hearing, pursuant to § 1705.1, responses thereto shall either be made in writing and served by personal delivery on all parties prior to the hearing or shall be made orally on the date of the hearing.

1716.4 A response to a motion shall not include a motion for other affirmative relief against the moving party.

1716.5 If a party filing an opposition desires to submit a motion for other affirmative relief, it shall be done by separate pleading.

1716.7 Repealed.

1716.7 A reply may be filed within three (3) calendar days after service of a response in opposition to a motion, but the reply shall not re-argue propositions presented in the motion, nor present matters which are not strictly in reply to the opposition.

1716.8 No further pleading shall be filed except by leave of the Board.

Section 1717, POST-HEARING SUBMISSIONS, is amended in its entirety 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).

1717.2 The Board shall afford parties an opportunity to file Proposed Findings of Fact and Conclusions of Law within thirty (30) calendar days after receipt of the transcript from the hearing. The Board may, in its discretion grant an extension to file Proposed Findings of Fact and Conclusions of Law for good cause. An extension granted by the Board shall not exceed twenty (20) calendar days after the initial deadline.

1717.3 Repealed.

1717.4 Repealed.

1717.5 A copy of the Proposed Findings of Fact and Conclusions of Law shall be served on each party.

1717.6 Proposed Findings of Fact and Conclusions of Law shall be limited to the record and refrain from including new legal issues or evidence not previously raised at the hearing.

Section 1719, RECONSIDERATION, REHEARING, AND REARGUMENT, is amended by amending § 1719.2 to read as follows:

1719.2 An original copy of the Petition shall be filed with the Board, and a copy shall be served on each party and intervenor.

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 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.