

**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 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 its adoption of amendments to Chapters 1 (Provisions of General Applicability), 2 (License and Permit Categories), 4 (General Licensing Requirements), 5 (License Applications), 6 (License Changes), 7 (General Operating Requirements), 8 (Enforcement, Infractions, and Penalties), 10 (Endorsements), 12 (Records and Reports), 17 (Procedural Requirements for Board Hearings), and 18 (Petition Procedures) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

The final rulemaking amends the definition of back-up drinks and add a definition for bottle service in Chapter 1. The proposed amendments to Chapter 2 create exemptions from licensing requirements. In Chapter 4, the rules clarify those circumstances under which the Board may rescind its previously issued license approval. Additionally, the rulemaking no longer permits a license located in a moratorium zone to be kept in safekeeping for the length of the moratorium. Chapter 6 is amended to add a new section regarding limited liability companies.

The final rulemaking also amends Chapter 7. First, licensees who remove their licenses from safekeeping after two (2) years must provide the Board with detailed plans of its return to operations, including its anticipated re-opening date. The rules clarify that licensees are required to register with the Board to sell and serve alcoholic beverages until 4 a.m. on January 1st and other District and federal holidays. The rulemaking clarifies that the holder of a manufacturer's license can file and be approved by the Board for a one (1)-day substantial change application. The rules also establish requirements for on-premises retailers to provide bottle service and buckets of beer to seated patrons.

Regarding Chapters 8, 10, and 12, the final rulemaking expands the list of violations in the civil penalty schedule. The rules also clarify several sections regarding those circumstances where the Board will issue a cease and desist order as a result of the licensee's non-compliance with other District requirements. The rules further clarify that a licensee may provide entertainment only during the hours permitted under its entertainment endorsement. Additionally, the rules clarify that licensed restaurants and hotels are responsible for maintaining three (3) years of sufficient documentation to allow the Board to verify the accuracy of information contained on the licensee's submitted quarterly reports.

The final rulemaking also amends Chapter 17 by allowing for service to be made electronically. The computation of time has been clarified regarding the calculation of hours and days. Additionally, the rules include new language regarding the Chairperson's authority to schedule and conduct hearings. The proposed rules also create new requirements for the submission of documentary evidence, post-hearing pleadings, and the protest information form.

BACKGROUND

The Technical Amendment Rulemaking has undergone numerous iterations. The Board first adopted the Notice of Proposed Rulemaking (1st NOPR) on October 15, 2014, by a six (6) to zero (0) vote. The 1st NOPR was published in the *D.C. Register* on December 26, 2014, at 61 DCR 13149. On November 13, 2014, the Board held a hearing to receive public comment on the proposed rules. At the public hearing, the Board received valuable comments and testimony from the public and throughout the comment period. Commenters included members of the industry, Advisory Neighborhood Commission (ANC) Commissioners, District residents, and citizens and civic associations. A full summary of the testimony presented at the public hearing, as well as the written comments can be found in the Notice of Third Proposed Rulemaking. *See* 62 DCR 11906 (August 28, 2015).

Based on the comments received, the Board made additional changes to the rulemaking. As a result, it adopted the Notice of Second Proposed Rulemaking (2nd NOPR) on February 25, 2015, by a six (6) to zero (0) vote. The second NOPR was published in the *D.C. Register* on May 8, 2015, at 62 DCR 5732. On April 29, 2015, the Board held a hearing to receive public comment on the proposed rules as amended from the first round of comments. At the public hearing, the Board received additional valuable comments and testimony, much of which was repetitive of testimony received in response to the initial rulemaking and at the hearing. A full summary of the testimony presented at the public hearing, as well as the written comments can be found in the Notice of Third Proposed Rulemaking. *See id.*

In response to the comments received in response to the 2nd NOPR, the Board made further changes to the rulemaking. As such, the Board adopted the Notice of Third Proposed Rulemaking (3rd NOPR) on July 22, 2015, by a vote of five (5) to zero (0). These rules were published in the *D.C. Register* on August 28, 2015, at 62 DCR 11906. The Board received additional comments during the comment period. A full summary of the comments received can be obtained in the Notice of Third Proposed Rulemaking. *See id.*

COUNCIL REVIEW

On September 16, 2016, the 3rd NOPR was submitted to the Council for the District of Columbia in accordance with D.C. Official Code § 25-211(b)(1). *See* PR21—0879 at <http://lims.dccouncil.us/Legislation/PR21-0879?FromSearchResults=true>. The 3rd NOPR submitted to the Council included all of the previously proposed changes to the Title 23 except for amendments to the pub crawl regulations (23 DCMR § 712) which were addressed in separate rulemakings. *See* Pub Crawl Notice of Emergency and Proposed Rulemaking, 63 DCR 4098 (March 18, 2016)[EXPIRED]; Pub Crawl Notice of Second Emergency and Proposed Rulemaking, 63 DCR 9426 (July 8, 2016)[EXPIRED]; Pub Crawl Emergency Rulemaking, adopted on August 3, 2016, published at 63 DCR 11195 (September 2, 2016)[EXPIRED].

The Subcommittee on Local Business Development and Utilities (a subcommittee of the Committee of the Whole) held a public hearing on PR21-0879 on October 17, 2016 and Mark-up on November 7, 2016. At mark-up, the Subcommittee voted, five (5) to zero (0), to approve PR21-0879. The only revision the Subcommittee made to the 3rd NOPR was to remove the

language which would have expanded the definition of the term, “egregious,” in Chapter of 8 of Title 23. Based on the comments the Subcommittee received from the industry, it voted not to move forward with this amendment. *See id*

On November 15, 2016, the 3rd NOPR went before the full Council for a vote. On this date, the Council voted unanimously to approve rulemaking. *See* R21-0651 at: <http://lims.dccouncil.us/Legislation/PR21-0879?FromSearchResults=true>.

THE BOARD’S DECISION

The Board, voted five (5) to zero (0) on November 30, 2016, to adopt the Technical Amendment Notice of Final Rulemaking as approved by the Council on November 15, 2016.

In accordance with the Council’s marked up version of the proposed rules, the final rulemaking does not include the amendments to 23 DCMR § 807. Those amendments would have expanded the definition of the term, “egregious.” No other changes have been made to the final rules since they were published as proposed except to renumber new § 808 (Cease and Desist) as § 809. Prior to the Board adopting these final rules on November 30, 2016, it adopted the Computation of Civil Penalties Notice of Final Rulemaking which created a new § 808 (Violation History Computation). As a result, the cease and desist rules created by this final rulemaking has been renumbered § 809.

Pursuant to D.C. Official Code § 25-211(d)(1), the final rules shall not take effect until five (5) days after the rulemaking is published in the *D.C. Register*.

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

Section 199, DEFINITIONS, is amended by amending the definition of “back-up drinks” and adding the term, “bottle service,” in alphabetical order to read as follows:

Back-up drinks - shall include second drinks served as part of a “two-for-one” promotion, second drinks served just prior to last call, and second drinks provided complimentary by the licensee or purchased by other patrons. Except as provided in the preceding sentence, back-up drinks shall not include two (2) different drinks served together such as a beer or a shot or any other industry drink that can be considered a shot and a mixer. The prohibition against back-up drinks shall also not apply to the service of wine with a meal where the patron has not finished a previously served cocktail, nor shall it apply to containers of alcoholic beverages served in accordance with 23 DCMR § 721.

Bottle service - the service of alcoholic beverages in any container holding multiple servings of alcoholic beverages.

Section 207, LICENSURE PERIODS, of Chapter 2, LICENSE AND PERMIT CATEGORIES, is amended by replacing Subsection 207.2 to read as follows:

207 LICENSURE PERIODS

...

207.2 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	2015
Wholesaler A	Apr. 1 to Mar. 31	2015
Retailer A	Apr. 1 to Mar. 31	2015
Manufacturer B	Apr. 1 to Mar. 31	2017
Wholesaler B	Oct. 1 to Sept. 30	2017
Retailer B	Oct. 1 to Sept. 30	2017
Retailer CR	Apr. 1 to Mar. 31	2016
Retailer CT	Oct. 1 to Sept. 30	2016
Retailer CN	Oct. 1 to Sept. 30	2016
Retailer CH	Apr. 1 to Mar. 31	2016
Multipurpose facility CX	Apr. 1 to Mar. 31	2016
Common Carrier CX	Apr. 1 to Mar. 31	2016
Retailer Arena CX	Apr. 1 to Mar. 31	2016
Retailer DR	Apr. 1 to Mar. 31	2016
Retailer DT	Oct. 1 to Sept. 30	2016
Retailer DN	Oct. 1 to Sept. 30	2016
Retailer DH	Apr. 1 to Mar. 31	2016
Multipurpose facility DX	Apr. 1 to Mar. 31	2016
Common carrier DX	Apr. 1 to Mar. 31	2016
Caterer	Apr. 1 to Mar. 31	2016
Solicitor	July 1 to June 30	2017
Club CX	Apr. 1 to Mar. 31	2016
Club DX	Apr. 1 to Mar. 31	2016
Farm winery retail	Oct. 1 to Sept. 30	2015
Alcohol certification provider permit	July 1 to June 30	2017

Section 213, EXEMPTION FROM LICENSING REQUIREMENT, is amended to read as follows:

213 EXEMPTION FROM LICENSING REQUIREMENT

213.1 A license shall not be required for any event where alcoholic beverages are provided gratuitously for on-premises consumption on the host's own premises. Notwithstanding the foregoing, a license shall be required if the operator of the

premises provides professional services for the on-premises consumption of alcoholic beverages which are provided gratuitously to guests; or if the operator of the premises rents out the facility or provides entertainment, food or nonalcoholic beverages for compensation.

- 213.2 An applicant for a new license shall not permit the consumption of alcoholic beverages on the premises unless the applicant has obtained a stipulated or temporary license. The applicant for a new license may also permit a licensed caterer to host an event on the premises so long as the caterer retains the responsibility for the event, including control over the modes of ingress and egress into the establishment, bar and security staff, and the service of alcoholic beverages.

Section 405, LICENSE APPROVAL BEFORE ISSUANCE OF CERTIFICATE OF OCCUPANCY, of Chapter 4, GENERAL LICENSING REQUIREMENTS, is amended by adding a new Subsection 405.5 to read as follows:

405 LICENSE APPROVAL BEFORE ISSUANCE OF CERTIFICATE OF OCCUPANCY

...

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

Section 500, APPLICATION FORMAT AND CONTENTS, of Chapter 5, LICENSE APPLICATIONS, is amended by adding new Subsections 500.2, 500.3, and 500.4 to read as follows:

500 APPLICATION FORMAT AND CONTENTS

...

- 500.2 The Board may deem an application abandoned or withdrawn if an applicant fails to provide all of the documents required to process the application within sixty (60) days of the submission of the application.
- 500.3 The Board may require an applicant to submit additional documents and information needed to properly process an application. The Board may deem an application abandoned or withdrawn if an applicant fails to provide any additional documents within thirty (30) days of the request.

- 500.4 An applicant may seek an extension of time to submit documents needed to process the application upon a showing of good cause. An extension granted by the Board shall not exceed thirty (30) days.

A new Section 602, LIMITED LIABILITY COMPANY CHANGES, of Chapter 6, LICENSE CHANGES, is added to read as follows:

602 LIMITED LIABILITY COMPANY CHANGES

- 602.1 The Board shall only approve as a member or managing member of a limited liability company an owner owning more than zero percent (0%) for purposes of recognizing applicants or licensees.
- 602.2 Nothing in this section shall prevent an individual with an ownership of zero percent (0%) in a limited liability company from serving as a manager or an officer of the limited liability company.
- 602.3 A manager or an officer of a limited liability company with an ownership interest of zero percent (0%) shall not be considered by the Board as an owner of the license, applicant or licensee.

Section 704, SURRENDER OF LICENSE, of Chapter 7, GENERAL OPERATING REQUIREMENTS, is amended by deleting Subsections 704.3 and 704.4 in their entirety, and adding a new Subsection 704.3 to read as follows:

704 SURRENDER OF LICENSE

...

- 704.3 Whenever a license has been in safekeeping with the Board for longer than two (2) years, the licensee shall, upon requesting the removal of the license from safekeeping, submit for Board approval detailed plans of its operations upon reopening, and shall notify the Board of the anticipated reopening date.

Section 705, HOURS OF SALE AND DELIVERY FOR OFF-PREMISES RETAIL LICENSEES, is amended by replacing Subsection 705.11 to read as follows:

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

...

- 705.11 A licensee under an on-premises retailer's license that provides written notification and a public safety plan to the Board at least thirty (30) days in advance may sell and serve alcoholic beverages until 4:00 a.m. and operate twenty-four (24) hours during the dates set forth in D.C. Official Code § 25-

723(c)(1) unless the licensee has a settlement agreement that restricts the establishment's closing hours or hours of operation.

Section 716, ONE DAY SUBSTANTIAL CHANGES, is amended by replacing Subsection 716.1 to read as follows:

716 ONE DAY SUBSTANTIAL CHANGES

716.1 The holder of an on-premises retailer's license or a manufacturer's license may file a one (1)-day substantial change request with the Board to: (a) sell or serve alcoholic beverages; (b) provide entertainment; (c) extend its hours of operation; (d) require a cover charge; (e) allow for dancing; or (f) operate at a location not permitted by the applicant's license as part of a specific event. The one (1)-day substantial change request may be granted, in the Board's discretion, unless the activities sought by the applicant are otherwise prohibited by the applicant's ABC license or by the terms of a valid settlement agreement.

A new Section 721, BOTTLE SERVICE, is added to read as follows:

721 BOTTLE SERVICE

721.1 The holder of an on-premises retailer's license shall be permitted to provide bottle service of alcoholic beverages to one (1) or more seated patrons.

721.2 A licensee may serve a bucket filled with containers of beer to one (1) or more seated patrons.

721.3 The licensee's server shall not deliver an alcoholic beverage to any patron in accordance with this section until the licensee has taken reasonable steps to ensure that no alcoholic beverage is delivered to a patron below the legal drinking age or that otherwise appears intoxicated. The server shall open all closed containers at the table before they are served to the seated patrons.

721.4 The licensee shall not permit or allow any patrons to remove the bottle or pitcher from the table, bar or other seating area where served. This provision shall not apply to a single container of beer delivered in a bucket or where patrons have been served alcoholic beverages at the bar prior to receiving table service.

Section 800, ABRA CIVIL PENALTY SCHEDULE, of Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, is amended by adding the following to the Schedule:

Section	Description	Violation	Warning
25-112(b)	Knowingly Allowing Patron to Open Containers in Off-Premises Licensed Establishments	Primary	Y

25-112(c)(2A)	Purchasing Alcoholic Beverages from an Off-Premises Licensee When Wholesalers are Open	Primary	Y
25-113	Violating Terms of On-Premise Retailer's License	Primary	Y
25-113a	Offering Entertainment After the Approved Entertainment Hours	Secondary	Y
§ 25-113(b)(3)(B)	Failure of Restaurant to Comply with Food Sales Requirement	Primary	Y
§ 25-113(e)(5)(B)	Failure of Hotel to Comply with Food Sales Requirement	Primary	Y
25-113(j)(3)(A)	Failure to Maintain Records on Premises	Primary	Y - Mandatory
25-113(j)(3)(B)	Failure to Obtain Board Approval for Off-Site Storage	Secondary	Y - Mandatory
25-113(j)(3)(C)	Failure of the Licensee to Keep or Maintain its Books, Records, or Invoices	Primary	Y
25-113a(b)	Cover Charge Without Endorsement	Secondary	Y
25-113a(b)	Dancing Without Endorsement	Secondary	Y
25-119	Importing Alcohol by Licensee Without Permit	Primary	Y
25-126(a)	Sale, Serve and/or Consumption Without the On-Site Sale and Consumption Permit – Manufacturer Licensees	Primary	N
25-126(b)	Sale, Serve, and/or Consumption Outside of the On-Site Sale and Consumption Permit Approved Hours – Manufacturer Licensees	Primary	N
25-127	Violating Terms of Festival License	Primary	N
25-403(e)(3)(G)(i)	Failure to Ensure Cameras are Operational	Primary	Y
25-403(e)(3)(G)(ii)	Failure to Ensure Any Footage of a Crime of Violence is Maintained for a Minimum of 30 days	Primary	Y
25-403(e)(3)(G)(iii)	Failure to Ensure Security Footage is Available within 48 Hours Upon Request	Primary	Y
25-701	Board-Approved Manager Required	Secondary	N
25-703	Licensee or Board Approved Manager Superintending the Licensed Establishment under the Influence of Alcohol or Illegal Drugs	Primary	N
25-723(b)	Sale and Service Outside of Licensed Hours	Primary	N
25-723(c)(4)	Failure to Obtain Operating Holiday Extension Hours - Class C and D Retailers	Primary	Y
25-823(a)(7)	Failure to Follow the Terms of License Approved by the Board	Primary	Y
25-823(a)(8)	Failure to Preserve a Crime Scene	Primary	N

23 DCMR 712	Violating Terms of a Pub Crawl License	Primary	Y
23 DCMR 719.1	Sign re: Pregnancy, Legal Drinking Age/Valid ID, Drinking and Driving	Secondary	Y - Mandatory

Section 800 is amended by deleting the following:

Section	Description	Violation	Warning
25-102(a)	Selling Alcoholic Beverages Without a License	Primary	N
25-102(b)	Wholesaler/Manufacturer Sale to Non-licensed Person for Resale	Primary	N
25-102(c)	Failure to Obtain Importation Permit by a Person Located Outside of the District	Primary	Y
25-102(d)	Permitting Consumption of Alcoholic Beverage Without a License	Primary	N
25-501	Failure to Pay Annual Fee	Primary	Y
25-762(b)(8)	Failure to Obtain Approval to Provide Music or Entertainment if None Previously	Primary	N
25-762(b)(9)	Failure to Obtain Approval to Change from Recorded to Live Music or Live Entertainment or Change the Kind of Music or Entertainment Provided	Secondary	Y - Mandatory

A new Section 809, CEASE AND DESIST ORDERS, is added to read as follows:

809 CEASE AND DESIST ORDERS

- 809.1 The Board, in its discretion, may issue a cease and desist order immediately suspending a licensee's liquor license when one (1) of the following has occurred:
- (a) The licensee has been issued a notice of summary suspension by the Department of Health;
 - (b) The licensee's basic business license has expired;
 - (c) The licensee's certificate of occupancy has been revoked or expired;
 - (d) The licensee's sales tax certificate has been suspended or revoked by the Office of Tax and Revenue;
 - (e) The corporation, limited liability company, or partnership owning the liquor license is no longer in good standing to operate in the District;
 - (f) The licensee has failed to pay a Board-ordered fine or a citation by the payment deadline; or

(g) Where payment was made to ABRA with a check returned unpaid.

809.2 The Board shall give written notice to the licensee of its intent to issue a cease and desist order. The licensee shall have fourteen (14) calendar days to respond to the notice. If the Board thereafter determines that the licensee's failure to address the issues set forth in § 808.1 is not for good cause, the Board shall issue the cease and desist order.

Section 1001, ENTERTAINMENT ENDORSEMENT APPLICATION, of Chapter 10, ENDORSEMENTS, is amended by adding a new Subsection 1001.8 to read as follows:

1001 ENTERTAINMENT ENDORSEMENT APPLICATION

...

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

Section 1207, QUARTERLY STATEMENTS AND ANNUAL REPORTS OF RESTAURANTS AND HOTELS, of Chapter 12, RECORDS AND REPORTS, is amended by adding a new Subsection 1207.10 to read as follows:

1207 QUARTERLY STATEMENTS AND ANNUAL REPORTS OF RESTAURANTS AND HOTELS

...

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

Section 1702, COMPUTATION OF TIME, of Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is replaced in its entirety to read as follows:

1702 COMPUTATION OF TIME FOR FILINGS

1702.1 Whenever a party to a proceeding under this chapter has the right or is required to perform some act within a specified time period after the service of notice upon

the party, and the notice is served upon that party by mail, three (3) days shall be added to the prescribed period.

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

Section 1703, SERVICE OF PAPERS, is amended by replacing Subsections 1703.3 and 1703.4 to read as follows:

1703 SERVICE OF PAPERS

...

- 1703.3 When a party has appeared through a representative, who has filed a written notice of appearance pursuant to § 1707.1, service shall be made upon the representative of record.
- 1703.4 Service upon a party or the party's designated representative may be made in the following manner:
- (a) By personal delivery;
 - (b) By use of a process server;
 - (c) By registered or certified mail;

- (d) By electronic mail; or
- (e) As otherwise authorized by law.

Section 1710, SCHEDULING AND CONDUCT OF HEARINGS: GENERAL PROVISIONS, is amended by deleting existing Subsection 1710.4 and adding new subsections to read as follows:

1710 SCHEDULING AND CONDUCT OF HEARINGS: GENERAL PROVISIONS

...

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

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

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

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

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

Section 1711, EVIDENCE: GENERAL RULES, is amended by adding new subsections to read as follows:

1711 EVIDENCE: GENERAL RULES

...

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

Section 1713, DOCUMENTARY EVIDENCE, is amended by amending Subsection 1713.2 and adding new subsections to read as follows:

1713 DOCUMENTARY EVIDENCE

...

- 1713.5 All exhibits that a party intends to introduce at a hearing must be identified on and attached to an exhibit form. Parties shall include the exhibit form, including copies of the exhibits, with the Protest Information Form pursuant to 23 DCMR § 1722.2(d).
- 1713.6 Exhibits reasonably anticipated to be used for impeachment need not be included on or attached to the exhibit form.
- 1713.7 If a document is readily available to the general public, a party need only provide a complete citation to the source of the document and how the document may be accessed.
- 1713.8 The Board may exclude at the hearing any exhibit(s) not disclosed on the exhibit form if the Board finds that the opposing party has been prejudiced by the failure to disclose or if there has been a knowing failure to disclose.
- 1713.9 The Board shall have the discretion to receive documentary evidence from the parties not already listed or attached to the exhibit form upon a finding of good cause.
- 1713.10 The investigative report and attachments shall be part of the Board's record and it shall not be necessary for the parties to formally move for admission of the

investigative report or portions of it into the evidentiary record.

1713.11 The exhibit form and any attachments shall be served on all parties and the Board's Office of General Counsel seven (7) days prior to the hearing.

1713.12 If a PowerPoint presentation or similar presentation is used by the parties, a paper copy of the exhibit shall be filed with the Board.

Section 1716, MOTIONS, is amended by deleting Subsection 1716.5 in its entirety.

Section 1717, POST-HEARING SUBMISSIONS, is amended to read as follows:

1717 POST-HEARING SUBMISSIONS

1717.1 No document or other information shall be accepted for the record after the close of a hearing except as follow:

- (a) Unless accompanied by a Motion to Re-open the Record demonstrating good cause and the lack of prejudice to any party;
- (b) Until all parties are afforded due notice and an opportunity to rebut the information; or
- (c) Upon official notice of a material fact not appearing in the evidence in the record in accordance with D.C. Official Code § 2-509(b).

Section 1718, DECISIONS OF THE BOARD, is amended by deleting Subsection 1718.4 in its entirety.

Section 1721, TRANSCRIPTS OF HEARINGS, is amended by deleting Subsection 1721.2 in its entirety.

A new Section 1722, PROTEST INFORMATION FORMS, is added to read as follows:

1722 PROTEST INFORMATION FORMS

1722.1 All parties to a protest hearing shall file a Protest Information Form (PIF).

1722.2 The PIF shall identify the following specific items:

- (a) Agreements made by the parties as to any protest issues which limit the issues for hearing to those issues not disposed of or resolved by mediation;
- (b) Unresolved issues that remain the subject of the protest hearing;
- (c) Witnesses who are expected to testify;

- (d) Exhibits the party intends to offer into evidence, along with the attached exhibit form;
- (e) List of material facts, or the contents or authenticity of any document to which the parties have agreed to stipulate; and
- (f) The relief sought.

1722.3 The PIF must be signed by the party's representative or by the party if the party is proceeding *pro se*.

1722.4 The PIF must contain a copy of the résumé for any witness for whom a party intends to call as an expert.

1722.5 The Board may exclude at the hearing any witnesses or exhibits not disclosed on the PIF or the exhibit form if the Board finds that the opposing party has been prejudiced by the failure to disclose or if there has been a knowing failure to disclose.

1722.6 The Board shall have the discretion to receive documentary evidence from the parties not already listed or attached to the PIF or the exhibit form upon a finding of good cause.

1722.7 The PIF and exhibit form and any attachments shall be served on all parties and the Board's Office of General Counsel seven (7) days prior to the hearing.

Section 1801, PROTEST PETITIONS, of Chapter 18, PETITION PROCEDURES, is amended by deleting Subsection 1801.3 in its entirety.