

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

NOTICE OF THIRD 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 publish a third proposed rulemaking that makes 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), 9 (Prohibited and Restricted Activities), 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 proposed rules amend 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 proposed rules make several amendments to Chapter 7. 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 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 rules create a pub crawl license and set forth related requirements. The rulemaking clarifies that the holder of a manufacturer's license can file and be approved by the Board for a one-day substantial change application. The rules also establish requirements for on-premises retailers to provide bottle service and buckets of beer to seated patrons.

The proposed rulemaking for Chapters 8, 9, 10, and 12 expands upon the existing definition of "egregious" for sale to minor violations, and expands the listed violations in the civil penalty schedule. The rules also amend the American Primary Source of Supply to make clear that wholesalers can transfer and invoice between those owned by the same individuals. The proposed rules 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. The rules also 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.

Lastly, the proposed rules make several amendments to Chapter 17. Service of papers may now be filed 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.

The proposed rules were initially adopted by the Board on October 15, 2014 by a six (6) to zero (0) vote, and were published in the *D.C. Register* on December 26, 2014 at 61 DCR 13149 for a thirty (30) day comment period.

On November 13, 2014, the Board held a hearing pursuant to D.C. Official Code § 25-354 (2012 Repl.) 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, ANC Commissioners, D.C. residents and citizens and civic associations.

Following is a summary of the testimony presented at the public hearing, as well as testimony submitted by written comment.

Restaurant Association Metropolitan Washington (RAMW)

Andrew Kline testified on behalf of RAMW. RAMW represents over 800 restaurants and restaurant service providers in the greater D.C. Metropolitan area to include 500 restaurants in the District of Columbia. RAMW thanked the Board for bringing the rulemaking forward for public comment and is generally supportive of the proposed amendments to current rules.

One of the more troubling concerns for RAMW in the proposed rules is the circumstances where the Board may issue a Cease and Desist Order. One circumstance in particular is where an ABC Licensee may not have current documents or licenses issued by other District agencies. RAMW's concern here is that mistakes are made by District agencies and their employees that have detrimental consequences which may lead to a temporary, but unwarranted closure of the ABC licensed establishment. Additionally, it is not always easy to get matters resolved with other agencies so additional time may be needed to rectify the problem.

RAMW recently experienced a similar concern with the D.C. Department of Health (DOH). RAMW convinced DOH that unless there is an imminent danger to the public, noncompliance with regulatory and administrative requirements should not lead to a cease and desist order. RAMW also argued that if another District agency issues its own cease and desist order, there is no point for the Board to issue a second order when the licensed establishment is already closed.

RAMW agrees that the electronic service of documents in contested proceedings is appropriate and most efficient. However, there is also a concern that safeguards and precautions be put in place. RAMW suggests that when parties first appear before the Board or the Board's Agent, that the party be required to fill out an Entry of Appearance form to include indicating that they consent to electronic service.

RAMW also suggests that ABRA establish a dedicated electronic mailbox, such as ABRAadjudications@dc.gov to which all pleadings would be submitted and from where all communications from the Legal and Adjudications Division would come. There would be less confusion by parties who may be corresponding with different Adjudications Division staff personnel if all communications to parties came from one singular email address. RAMW also suggests that initial formal pleadings such as notices to show cause continue to be served by personal service or certified mail.

RAMW is also concerned about the proposed language deeming an application abandoned or withdrawn if documentation is not submitted within forty-five (45) days of a request from ABRA. RAMW argues that if strict deadlines are going to be imposed on applicants, than similar deadlines should also be imposed on ABRA. Often an applicant may not hear back from the agency well into thirty (30) days after filing an application. It is imperative that ABRA's Licensing Division communicate more regularly and timely with applicants. Additionally, applicants would appreciate knowing from ABRA when they can expect placards for posting to their establishments and when they can expect publication in the *DC Register*. At a minimum, ABRA should provide notice to an applicant that an application has been deemed to be abandoned or withdrawn.

Rod Woodson, Holland and Knight

Mr. Woodson testified regarding the Board's practice of handling protest hearings on license renewal applications and the handling of evidentiary submissions related to those hearings. He addressed the need to harmonize Sections 311, 313 and 315 of the D.C. Official Code.

Mr. Woodson praised the Board for the improvements in the quality of the investigative reports relied upon by the Board and parties for protest hearings. These reports have allowed parties to understand in advance of a given hearing what the disputed issues are. Identifying the disputed issues in advance of the hearing has allowed the Board to reduce the length of the hearings from the days of old when hearings would take 11 or 12 hours to conclude. The Board should not have to concern itself with issues that are not raised in the investigative report. Nor should the Board concern itself with issues that are raised, but are not substantiated. For example, if the parties are concerned with noise issues, there is no need to spend time at the hearing discussing parking issues.

Notwithstanding the improved reports, Mr. Woodson testified that greater efficiencies in the protest hearings might be derived if parties were to receive the investigative report in advance of the hearings and prior to the submission of the Protest Information Form. The reports have little value if they are not issued timely because neither party knows what the other party deems to be an issue in dispute.

Greater efficiencies might also be derived by a re-ordering of the proceedings. Specifically, with regard to hearings on renewal applications, the Board may want to consider requiring the protestants to proceed first, followed by rebuttal by the Applicant. The ultimate burden of proof would remain with the applicant, but the evidentiary record would be developed on the narrow

issues raised by the protestants in their case-in-chief. Narrowing the issues saves the parties and the Board time and resources.

Mr. Woodson does not believe the Board should have a hard and fast rule regarding the order in which parties proceed to put on their case, but he does think that applicants should be permitted to argue their case in rebuttal for proceedings that concern the renewal of an already approved and issued license. The standard for substantial evidence is taken from the record as a whole, so it should not matter who presents the evidence or when.

Paul Pascal and Risa Hirao, District of Columbia Association of Beverage Alcohol Wholesalers

Mr. Pascal commented that the wholesalers are dedicated to a safe environment for the sale and consumption of alcoholic beverages, and thus appreciate when the Board updates its regulatory scheme. He agreed with the testimony presented by Mr. Kline and Mr. Woodson and added a few concerns of his own.

Specifically, with regard to section 213.1, the Wholesalers are concerned that if certain entities are exempted from licensure requirements, the Wholesalers will not know to whom they can sell their product, where the product would come from if the Wholesalers aren't providing it and how that product will be tracked. Ms. Hirao proposed that the Board require the unlicensed entity to sign an affidavit in order to protect the Wholesalers from an unintended violation of D.C. Official Code § 25-102 (a) (2012 Repl.).

Similar to RAMW, Mr. Pascal expressed concern about the proposed ability of ABRA to dismiss an application if required documents aren't submitted within forty-five (45) days from the request for documents. Mr. Pascal believes that the short deadline is very unreasonable given the significant financial costs applicants invest into their businesses. Additionally, delays in complying with the submission deadline is often attributable to other agencies over whom the applicant has no control.

A third concern of the wholesalers is the proposed regulation regarding bottle service. If an ABC licensed establishment provides bottle service to a table of patrons and brings the bottle uncapped or uncorked, there is no guarantee that the product in the bottle is not unadulterated or undiluted. Mr. Pascal also believes that bottle service should be allowed for holders of licenses for caterers and common carriers. Ms. Hirao also raised a concern about the presence of a minor at the table who may inadvertently get served by the wait staff and whether that violation would extend to the licensed retailer.

Fourthly, Mr. Pascal also has concerns regarding the proposed circumstances under which a cease and desist order might issue. He argues that the Board is not realistic in its expectations about the length of time required to obtain documents and licenses from other District agencies. It took months for one of his clients to change its legal status from a corporation to a Limited Liability Company. Often times other District agencies such as DCRA do not notify their customers that DCRA licenses have expired. Mr. Pascal believes the Board should provide notice to the ABC licensee before the Cease and Desist is issued to allow time for correction of the underlying documents and other agency issued licenses.

Denis James, President of Kalorama Citizens Association (KCA)

Mr. James concurred with the other parties' testimony that protest hearings should be streamlined and that improvements in the investigative report have helped in that regard. He does have concerns that on occasion a report might not identify specific issues if those issues are not caught during the investigator's monitoring period.

Mr. James also raised concerns regarding the proposed rule that creates a Pub crawl license. He likes the idea of a license for these events, but he believes that the application should be subject to protests similar to other license applications. Protests against Pub crawl licenses will allow neighborhoods to protect themselves against bad behavior.

Additionally, he believes that the civil penalty section in the regulations should list violations for pub crawl licenses and should assign a tier and fine penalty. Mr. James also commented on the reduction from six (6) weeks to thirty (30) days as to when the pub crawl organizer must submit its application.

Abigail Nichols, DC Noise Coalition

Ms. Nichols expressed disappointment that the Board did not address noise regulations in its proposed rules. She also has a concern about the length of protest proceedings, but encouraged the Board to not necessarily ban repetitive testimony at hearings because everyone wants to be heard. She supported Mr. Woodson's suggestion that protestants proceed first in hearings held for renewal applications, in part because it may be easier for community witnesses to participate.

She believes the Board would benefit from a forum held to discuss the conduct of hearings and how they can be improved. She also encouraged the Board to host a separate hearing to hear from the public on just noise issues.

Written Comments

In addition to the testimony received by those in attendance at the public hearing, the Board also received written comments from several parties.

Skip Coburn on behalf of the D.C. Nightlife Association objected to the forty-five (45) day deadline to submit documents and other paperwork required by the terms of the application. Mr. Coburn also objected to the language listing what conditions could trigger a cease and desist order by the Board.

Likewise, Dante Ferrando owner of Circle 1 Productions, Inc. t/a Black Cat questioned the Board's authority to issue cease and desist orders for matters that are under the jurisdiction of other District agencies. Mr. Ferrando also sought assurances that the pub crawl definition did not extend to annual events, festivals or block parties.

The DC Nightlife Noise Coalition (Coalition) submitted comprehensive suggestions encouraging

the Board to draft regulations that relate specifically to noise that would improve enforcement and compliance with the DC Noise Control Act and D.C. Official Code § 25-725 (2012 Repl. And 2013 Supp.). Specifically, the Coalition has requested that the Board increase its fees for entertainment endorsements and increase its fees for penalties for noise violations. The Coalition would also like to have the Board amend the application procedure for entertainment endorsements. Lastly, the Coalition suggests that the Board reform inspections and enforcement procedures, and create a “fast-track” process for residents experiencing noise problems.

The Dupont Circle Citizens Association also echoed the concerns raised by the Coalition regarding entertainment endorsements, fines and penalties, and noise disturbances. The Shaw Dupont Citizens Alliance (SDCA) believes that ABRA’s safekeeping regulations should be overhauled so that licenses will be cancelled when no the establishment is no longer operational, and then, when the licensee returns to operations, they can apply for a new license at that location. Additionally, the SDCA encouraged the Board to change the words “may” to “shall” because the term “may” is inappropriate in many contexts throughout the rules and the permissive language allows the Board to disregard the regulations.

Chris Young, President of the Meridian Hill Neighborhood Association, provided written testimony indicating that the proposed rules were deficient. He requested that the Board amend proposed language in Sections 716 and 1001 to make clear that privileges granted by the Board do not override restrictions contained in Settlement Agreements. Mr. Young also requested that the Board consider changing the word “may” to “shall” in several instances throughout the proposed rules. He argued that the word “shall” would enhance certainty, enforceability and the Board’s own authority.

Decision of the Board

The Board took the views of those who submitted written comment and provided oral testimony into consideration. The Board found the initial hearing to be productive even on those matters and rules that were not necessarily raised in the proposed rulemaking.

The Board is sympathetic to the concerns of the public and applicants regarding the length of protest proceedings, however it is not convinced that re-ordering the hearing process to have the protestant present its case-in-chief first is necessarily the solution to that problem given that both parties have ninety (90) minutes to argue their case. While the Board does not find that such changes to the regulations are appropriate at this time, the Board does remain open minded to suggestions that may result in a more focused and streamlined hearing process.

The Board agrees with the parties who suggested that an effort needs to be made to narrow the issues for hearing. The Board believes this objective can be achieved in two ways: 1) make full use of mediation, and 2) utilize the Protest Information Form (PIF) as the tool it was created to be.

The purpose of mediation at ABRA is to identify issues, clarify misunderstandings, explore solutions and mediate a settlement agreement. If a dispute is not resolved through mediation, then the parties will proceed to a protest hearing.

ABRA's mediator may provide information about the protest process, raise issues and help explore options, but the primary role of the mediator is to facilitate a voluntary resolution by the parties. If that can't be accomplished, then the mediation will at a minimum, help to narrow and identify the issues.

With that understanding, it is incumbent upon the parties, with the mediator's help, to narrow the issues that remain in dispute, and only bring those disputed issues to the Board for resolution at the protest hearing. Issues not in dispute or those resolved at mediation should not be the subject of the hearing. This will allow the parties to focus the more narrow issues for the Board and it affords the parties more time to address those issues that need attention.

Secondly, the Board intends to create a revised PIF that more adequately and succinctly captures only those issues that remain in dispute. The Board looks to the parties to be complete in their recitation and to not include those matters that were never in dispute or that may have been resolved at some point in the protest process.

Specifically, the PIF will now include a section that addresses stipulated facts and issues and it will also include a section that allows parties to list those disputed items that remain for the Board to resolve. Any issue not listed as a disputed issue will be barred from being raised at the protest hearing.

The Board also appreciated the comments from the public regarding the seven circumstances that may trigger a cease and desist order. The Board recognizes that ABC licensees are subject to the regulation of other DC agencies and thus may be at the mercy of those agencies regarding the issuance of other licenses. The operative word in the Board's proposed rules is "may". The Board intends to be judicious and will exercise great caution when considering the issuance of a cease and desist order. It is not the Board's intention to be capricious regarding these types of orders but rather to bring the ABC licensee into compliance with regard to regulatory requirements, even if they are deemed by the licensee to be merely administrative.

The Board also expanded bottle service to include the service of buckets of beer, and that bottle service is permitted for all on-premises licensees. The Board also amended the proposed rules to ensure that the licensee's server shall not deliver bottle service or a bucket of beer to minors or to patrons who appear intoxicated.

The Board rejected the Kalorama Citizens Association's request to allow the public to protest pub crawl license applications, but it did adopt additional rules that strengthen the application process requirements and placed safeguards for the community in the event the licensee fails to control the environment. Additionally, the rules make very clear that the issuance of a pub crawl license remains within the discretion of the Board.

Additionally, the Board rejected the suggestion by the Coalition Group, the SDCA, the DCCA, and the Meridian Hill Neighborhood Association regarding the replacement of the word "may" with the word "shall" in some instances. The Board is opposed to removing or limiting its discretion.

By their very nature, administrative decisions often include the exercise of discretion. This discretion allows the Board to make a choice about whether to act or not act, to approve or not approve, or to approve with conditions. The role of the Board is to make an independent judgment taking into account all relevant information and after all various possibilities have been considered. This authority serves to guide the Board's discretion towards the public interest.

Second Hearing on Amended Proposed Rules

The amended proposed rules were adopted by the Board on February 25, 2015 by a six (5) to zero (0) vote, and were published in the *D.C. Register* on May 8, 2015, at 62 DCR 005732 for a thirty (30) day comment period.

On April 29, 2015, the Board held a second hearing pursuant to D.C. Official Code § 25-354 (2012 Repl.) to receive public comment on the proposed rules as amended from the first round of comments. At the second 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 the hearing.

Following is a summary of the testimony presented at the second public hearing as well as testimony submitted by written comment.

Restaurant Association Metropolitan Washington (RAMW)

Andrew Kline testified again on behalf of RAMW. He narrowed his testimony to three issues raised in the initial rulemaking and to a fourth issue raised in the amended rules. Mr. Kline again objected to the proposed amendments regarding when the Board will issue a cease and desist order. He believes that the Board is offering a solution in search of a problem and that the Board already has the authority to act when a licensee has another agency's license suspended or revoked.

Mr. Kline's second concern is the provision regarding the abandonment of applications. He again raised the issue of the unfairness that there are no countervailing restrictions on the agency to ensure the reciprocity of adherence to deadlines when responding to applicants. Specifically, there are no standards in place to ensure that the agency responds to applicants in a timely manner.

Mr. Kline's third concern is the service of papers, documents and pleading by electronic mail. He requests that the agency provide a dedicated email address to ensure that all communications are sent and received from one source. This will eliminate any confusion and may likely reduce lost emails that are caught in one's spam filter.

Lastly, Mr. Kline objected to the Board's expansion of the definition of egregious as it is applied to the sale to minor offenses. He does not understand why the Board is opposed to the issuance of warnings for first-time sale to minor violations. He argued that the warning system works well and that education is the tool to ensure compliance, not excessive penalties or discipline.

Paul Pascal, District of Columbia Association of Beverage Alcohol Wholesalers

Mr. Pascal also testified at the second hearing and again raised concerns regarding the deadlines for the submission of documents to support the filing of an application. The 45 day limitation for initial submission and the 15 day limitation on supplemental submissions are unrealistic deadlines to impose upon applicants. The Board's proposed deadlines unreasonably penalize an applicant for circumstances and delays beyond their control. Mr. Pascal asked the Board to consider lengthening the submission deadlines and to set forth a process whereby applicants can request an extension of time to comply.

Secondly, with regard to the new provisions for issuing cease and desist orders, Mr. Pascal asked the Board to consider giving licensees notice that a cease and desist order may issue, so that the licensee has time to cure the underlying defect in order to prevent disruption to business operations. Adequate notice to the licensee will allow that licensee to restore its status with other agencies, while protecting itself against the loss of revenue and preserving its good standing.

Dante Ferrando, Co-Owner of Black Cat and Member of The Live Performance Coalition

Mr. Ferrando again raised his concerns with the Board's proposed rules. His first issue concerns the proposed language regarding the cease and desist orders. His business, the Black Cat, requires numerous basic business licenses issued by DCRA. Mr. Ferrando has experienced instances where DCRA clerical errors have caused the lapse or expiration of a business license, or where a renewal of a business license was not properly recorded. He does not believe that the Board should temporarily suspend his license in those instances where another District agency has erred. It is not uncommon that it may take weeks, if not months, to resolve another agency's record keeping. Equally importantly, some lapses, such as a trade name registration, should not register a cease and desist order. Mr. Ferrando suggested that the Board consider omitting the proposed rules with regard to expired licenses and bounced checks, or in the alternative require the Board to hold a hearing before the issuance of the cease and desist order.

Katherine Ferrando, Co-Owner of Black Cat and Member of The Live Performance Coalition

Ms. Ferrando testified on behalf of The Live Performance Coalition, a new D.C. organization comprised of live music clubs. She also shared her concerns regarding the Board's proposed rules for the issuance of cease and desist orders. She stated that mere administrative problems with other agencies should not serve as a mechanism for temporary suspension without notice to or a hearing for the licensee. Cease and desist orders should only be issued where there is a risk of immediate and irreparable harm to the public. Otherwise, temporary closure inflicts the harm on the live music venue which may be black-listed by promoters as a result of a cancelled performance. Not only do tickets need to be refunded, but the band needs to be paid in full and, the venue may be contractually liable for every band on that booking agent's roster. Ms. Ferrando urged the Board to reconsider the proposed rules for cease and desist orders because they suspend due process in the absence of any emergency or strong Governmental interest. At a minimum, she requested that the Board provide notice and an opportunity to be heard.

Dr. Coralie Farlee, Chair of the ABC Committee for Advisory Neighborhood Commission 6D

Dr. Farlee submitted written comments and provided oral testimony regarding pub crawls. She encouraged the Board to retain provisions in the current regulations rather than replacing them in their entirety with the new language that addresses requirements for a pub crawl license. She raised six specific points for the Board's consideration; all pub crawl applications should be submitted sixty (60) days in advance of the event, the license fee should be one hundred dollars (\$100) a day, the organizer should hire one Reimbursable Detail Officer for every two hundred fifty (250) participants, tighten eligibility requirements for participating licensed establishments, permit ANCs to prohibit pub crawls, and permit ANCs to prohibit participants from carrying pistols into licensed taverns.

The Board's Decision Regarding the Amended Rules

Two areas of the proposed rules were raised by parties at each of the hearings and in the written comments. One of those areas concerns the Board's proposed deadlines regarding the submission of required documents and the failure to submit the documents in a timely manner triggering the Board's dismissal of the incomplete application. The Board is persuaded by the testimony that there can be occasions where the failure to timely submit documents may be beyond the control of the applicant. Thus the Board has amended its proposed rules to not only lengthen the deadline to submit documents from forty-five (45) to sixty (60) days, but it also agrees with the Wholesalers to add a provision allowing for the applicant to seek an extension. The extension is not to exceed thirty (30) days.

The second area of concern was the Board's expansion of the use of its cease and desist authority under certain conditions. Here again, the parties indicated that a licensee's non-compliance with another agency's requirement, such as the renewal of a basic business license, may very well be the fault of that other agency. The Board was also persuaded by the testimony and after consideration, added language to provide notice to licensees in those instances where there is non-compliance with another agency's requirements. In almost all cases, these types of violations will involve procedural, administrative or recordkeeping omissions where the health, safety or welfare of the licensee or establishment is not endangered. This will allow the licensee the time and opportunity to remedy the underlying licensing or tax problems before the Board issues its cease and desist orders.

A third area of the proposed rules was raised by the RAMW concerning the enlargement of the definition of the term "egregious" regarding first time sale to minor convictions. It should be understood that the Board does not object to the issuance of warnings for first time sale to minors in those instances where the licensee's conduct is not egregious. However, a recent confluence of events and circumstances has led the Board to recommend changes and clarifications to strengthen the rules regarding the selling of alcoholic beverages to minors.

First, there has been a series of high-profile acts of violence involving licensed establishments in recent months where underage minors were among those who were seriously injured or arrested. These incidents were not confined to one neighborhood, but they happened across the District.

Second, ABRA regularly conducts compliance checks where underage minors are sent into licensed establishments in an effort to purchase alcoholic beverages. The percentage of establishments that have failed - that have illegally sold to underage minors - has increased over the last several years. This sample of hundreds of compliance checks cannot be ignored.

Third, the law passed by the Council several years ago to address the sale to minor pattern of prior alcoholic beverage sales or service to minors was adopted on an emergency and temporary basis, and the Council has since allowed that law to lapse. There is currently no regulation on the books to address the matter of a first-time offender with a provable pattern of behavior. No matter how serious that pattern might be, the Board would be permitted only to issue a warning for a first offense under the existing rules.

This proposed change to the rules seeks to restore and add clarity to the regulation by expanding the definition of "egregious" to cover the kind of conduct described above. The Board notes that there is no minimum age limit to trigger "egregious" under the current regulation. A licensee could sell to a twelve (12) year old and get a warning. The proposed rulemaking would trigger the egregious standard at age sixteen (16) or younger - a full five years below the legal age to purchase alcohol.

The Board has adjudicated cases where dozens of underage patrons have scattered from an establishment during an enforcement action. In such cases, the Office of the Attorney General must now have to prove that the licensee intentionally sold to all of the minors. The Board believes that the sale of alcohol to three or more underage minors during the same enforcement action is enough to establish a pattern, and is therefore egregious.

The proposed rules clarify the requirement that licensees do their part by checking IDs. The Board understands that a server or doorman might occasionally neglect to check an ID, but to repeatedly fail to do so is not excusable.

The Board has always taken very seriously its responsibility to ensure public safety. Thus the Board finds it necessary to expand the definition of "egregious" so that some penalty other than a warning can serve to ensure compliance and deter the serious type of conduct described above.

In Summary

The Board appreciates the many and varied comments submitted on the initial round of proposed rules. Because the Board adopted substantive amendments to the second proposed rulemaking, the Board intends to submit these proposed rules for public comment in the *D.C. Register*. Directions for submitting comments on this third amended rulemaking may be found at the end of this Notice.

The third amended proposed rules were adopted by the Board on July 22, 2015, by a vote of five (5) to zero (0).

The Board also gives notice of its intent to take final rulemaking action to adopt these rules on a permanent basis in not less 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.), these proposed rules are also being 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.

Section 199, DEFINITIONS, of Chapter 1, PROVISIONS OF GENERAL APPLICABILITY, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended by amending the definition of back-up drinks and adding the definition of bottle service to read as follows:

199 DEFINITIONS

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 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 - - shall include 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-year renewal period for each license listed below shall occur sequentially every three 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

License Class	Licensure Period	Ending Year
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 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 subsection 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 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 Section 25-723(c)(1) unless the licensee has a settlement agreement that restricts the establishment's closing hours or hours of operation.

Section 712, PUB CRAWLS, is amended to read as follows:

712 PUB CRAWLS

712.1 A promoter/organizer of a "pub crawl" shall be required to obtain a pub crawl license. The promoter/organizer shall submit an application for a pub crawl license at least thirty (30) days prior to the applicant's first scheduled event.

712.2 For purposes of this section a "pub crawl" shall be defined as an organized group of establishments within walking distance which participate in the promotion of the event featuring the sale or service of alcoholic beverages during a specified time period.

712.3 The application fee for a pub crawl license shall be two-hundred and fifty dollars (\$250). A pub crawl license shall expire at the end of the calendar year in which it is issued.

- 712.4 Within thirty (30) days of the scheduled date of the event, the applicant must provide the Metropolitan Police Department and the Board with a written description of the event to include but not limited to:
- (a) The names and addresses of all licensed establishments which are expected to participate;
 - (b) The geographic area where the event will take place;
 - (c) The anticipated number and maximum number of participants;
 - (d) The actual hours of the event;
 - (e) The operational plan and security plan; and
 - (f) The location of the designated registration area(s).
- 712.5 The operational and security plan shall include but not be limited to the name and number of security personnel contracted for the event; a plan for the control of underage drinking; and the method to be used for checking the identification of participants.
- 712.6 The applicant must post the operational and security plan at any designated registration area(s).
- 712.7 The list of submitted participating licensed establishments shall be subject to approval by the Board based upon the eligibility of each participating licensed establishment. No establishment with more than two primary tier violations within two years of the scheduled date of the event may participate in a pub crawl. No establishment may participate in a pub crawl if it is prohibited from participating by the terms of its Settlement Agreement.
- 712.8 Pub crawls may not promote excessive drinking and may not include unlimited amounts of drinks for one price (all you can drink).
- 712.9 Literature describing “responsible drinking practices” shall be available at all designated registration area(s).
- 712.10 All advertising and promotional materials for pub crawls shall:
- (a) Include a statement that “You must be 21 or older to participate”;
 - (b) Promote the use of public transportation; and
 - (c) Include the plan for a designated driver program for the event.

- 712.11 Establishments that are required by law to serve food shall have food available for purchase during the hours of the pub crawl.
- 712.12 The issuance of a pub crawl license shall be solely in the discretion of the Board.
- 712.13 The Board may place restrictions upon the number, nature or size of events held under a pub crawl license in order to protect public safety. The Board may also fine, suspend, or revoke the pub crawl license if the applicant fails to control the environment of a pub crawl, or has sustained community complaints or police action, or has otherwise violated the provisions of this title.
- 712.14 When determining the qualifications of an applicant for a new pub crawl license or the renewal of a pub crawl license, the Board may consider the conduct and management of previous pub crawls for which the applicant has been responsible.
- 712.15 A pub crawl license is not required for a pub crawl containing fewer than two hundred (200) participants.

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-day substantial change request with the Board to sell or serve alcoholic beverages, have entertainment, extended hours of operation, a cover charge, dancing, or operate at a location not permitted by the applicant's license as part of a specific event. The one-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 or more seated patrons.
- 721.2 A licensee may serve a bucket filled with containers of beer to one 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 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-	Failure to Ensure Any Footage of a Crime of	Primary	Y

403(e)(3)(G)(ii)	Violence is Maintained for a Minimum of 30 days		
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

Section 807, SALE TO MINOR VIOLATIONS, is amended to read as follows:

807 SALE TO MINOR VIOLATIONS

807.1 The Board shall give warnings for first-time sale to minor offenses, excluding “egregious” sale to minor violations.

807.2 “Egregious” shall be defined as a “sale to minor violation” where the licensee:

- (a) Sold or served an alcoholic beverage to a minor who was unable to produce a valid identification after a request from the licensee to do so; or
- (b) Sold or served an alcoholic beverage to a minor under the age of seventeen (17) years; or
- (c) Sold or served an alcoholic beverage to three or more minors under the age of twenty-one (21) years during an ABRA or MPD enforcement action or operation; or
- (d) Sold or served an alcoholic beverage to two or more minors without checking identification during an ABRA or MPD enforcement action or operation; or
- (e) Intentionally sold an alcoholic beverage to a minor; or
- (f) Can be established to have had a pattern of prior alcoholic beverage sales or service to minors.

A new Section 808, CEASE AND DESIST ORDERS, is added to read as follows:

808 CEASE AND DESIST ORDERS

808.1 The Board, in its discretion, may issue a cease and desist order immediately suspending a licensee’s liquor license when one 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.

808.2 The Board shall give 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 900, PRIMARY AMERICAN SOURCE OF SUPPLY, of Chapter 9, PROHIBITED AND RESTRICTED ACTIVITIES, is amended by adding a new Subsection 900.3 to read as follows:

900 PRIMARY AMERICAN SOURCE OF SUPPLY

...

900.3 Nothing in this section shall prohibit the subsequent interstate purchase, transfer, and invoicing of alcoholic beverage between licensed wholesalers who are wholly owned by the same individuals or entities, and authorized by the Primary American Source of Supply to sell such products in each state.

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. 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 correctness 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 correctness 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 Subsection 1703.2 to read as follows:

1703 SERVICE OF PAPERS

...

- 1703.2 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.

Subsection 1703.4 is replaced to read as follows:

1703.4 Service upon a party 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

...

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 counsel;
- (d) Receive relevant evidence of the hearing and the conduct of the parties and their counsel or 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 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 adding new subsections to read as follows:

1713 DOCUMENTARY EVIDENCE

...

- 1713.5 All exhibits that a party intends to introduce at hearing must be identified on an exhibit form accompanying the Protest Information Form and copies of the exhibits must be attached to the Form.
- 1713.6 Exhibits reasonably anticipated to be used for impeachment need not be included on the exhibit form or attached.
- 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 exhibits 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 the 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 power point 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 who have been granted standing to a protest proceeding shall file a protest information form.
- 1722.2 The protest information form 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, with 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 protest information form must be signed by the party's representative or by the party if the party is proceeding *pro se*.

1722.4 The protest information form must contain a copy of the resume for any witness for whom a party intends to seek expert status.

1722.5 The Board may exclude at the hearing any witnesses or exhibits not disclosed on the protest information 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 protest information form upon a finding of good cause.

1722.7 The protest information 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.

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 emergency and 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.