

**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 D.C. Official Code § 25-351(a) (2008 Supp.) and Section 303 of Title 23 of the District of Columbia Municipal Regulations (“DCMR”), 51 DCR 4309 (April 30, 2004), hereby gives notice of the adoption of the following final rules that replace existing section 304 of Title 23 DCMR and impose a five (5) year moratorium on the issuance of any new retailer’s license class CR, CN, CT, CX, DR, DN, DT, and DX in a portion of Adams Morgan which shall be known as the Adams Morgan Moratorium Zone. The final rules were adopted by the Board on January 22, 2009. The text of the final rules is substantively identical to the text of the notice published in the D.C. Register on November 28, 2008, at 55 DCR 12164.

The Board conducted a public hearing, pursuant to D.C. Official Code § 25-354 (2008 Supp.), on April 2, 2008 to consider the written request of Advisory Neighborhood Commission (“ANC”) 1C, the Kalorama Citizens Association (“KCA”), and the Reed-Cooke Neighborhood Association (“RCNA”) to extend and modify the current Adams Morgan Moratorium Zone for a five (5) year period. The written request submitted to the Board would modify the existing Adams Morgan Moratorium Zone by no longer allowing the issuance of any additional Class CR or Class DR restaurant licenses within the Adams Morgan Moratorium Zone. The Board received a significant amount of testimony and comments on the moratorium request. The majority of the testimony received by the Board was in favor of the submitted moratorium proposal, including comments from ANC 1C, KCA, RCNA, and a number of ABC licensees and businesses located in Adams Morgan, including Asylum, Perry’s Restaurant, Cashion’s Eat Place, Idle Time Books, Las Canteras Restaurant, Little Fountain Café and Angles Bar. Additionally, the Board received testimony from various residents in support of the moratorium request. The Board also received testimony from MPD Lieutenant John Kutnewski who indicated that crime would increase if the Adams Morgan Moratorium Zone was lifted. The Board did receive testimony from some individuals, licensees, and business organizations that were in opposition to some or all of the provisions of the moratorium petition. This included testimony from property owner Bill Duggan, Rob Coltun, Chuck Brazie, and Lisa Duperior. However, the Board found the testimony provided by MPD, ANC 1C, KCA, RCNA and a number of Adams Morgan residents, licensees, and businesses to warrant an extension of the moratorium on any new retailer’s licenses class CR, CN, CT, CX, DR, DN, DT, and DX based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b) (2008 Supp.)

In reaching its decision, the Board gave great weight to ANC 1C as required by section 13(d)(3) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.10(d)(3) (2006 Repl.), as amended, and D.C. Official Code § 25-609 (2001). ANC 1C voted 6 to 0 with a quorum present at its

March 5, 2008 meeting to extend the existing moratorium for a five (5) year period and to also include a moratorium on the issuance of new restaurant licenses.

In considering the appropriateness standards set forth in D.C. Official Code §§ 25-313(b) (2008 Supp.), the Board found the testimony and evidence put forward by MPD, ANC 1C, KCA, RCNA, several Adams Morgan businesses and licensees, and individual Adams Morgan residents to reveal that significant problems with peace, order, and quiet, particularly with respect to criminal activity, noise, litter, disorderly conduct, crowd control, and vehicular and pedestrian safety, as well as parking problems to continue to exist in Adams Morgan during late evening hours in the Adams Morgan Moratorium Zone. Additionally, the testimony provided by MPD and the KCA revealed a number of significant public safety issues, including a large number of calls for police service, including for disorderly conduct and assaults, and traffic congestion problems caused by taxis and patrons of ABC establishments in the Adams Morgan Moratorium Zone. The testimony of MPD Lieutenant John Kutnewski also indicated that crime would increase and that an increased police presence would be needed if the moratorium was lifted. Testimony from individual residents also reflected that late at night they have to deal with: loud noise, the disorderly departure of some patrons of ABC establishments, and a variety of parking and vehicular and pedestrian safety problems.

The Board found the testimony it received from ANC 1C, KCA, and RCNA to also warrant continuing the current limit of ten (10) on the number of Class CT or DT retailer's licenses permitted at any one time within the Adams Morgan Moratorium Zone based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b)(2), 25-313(b)(3), and 25-314(c) (2008 Supp.) Based upon comments received from ANC 1C, KCA, and RCNA, the Board decided to place a cap of zero (0) on the number of nightclub licenses permitted in the Adams Morgan Moratorium Zone. To ensure that the current number of taverns in Adams Morgan does not exceed ten (10), the Board decided to continue prohibiting the holder of a retailer's license Class CR or Class DR from changing its license class to CT, CX, DT, or DX in the Adams Morgan Moratorium Zone except when the total number of retailer's licenses in all of these categories is fewer than ten (10). Consistent with the Board's decision in its August 2, 2006 Notice of Emergency Rulemaking, the Board is not applying the class change restrictions contained in this rulemaking to the pending change of license class applications that were filed with the Board prior to August 2, 2006.

While the Board decided to grant the moratorium request of ANC 1C, KCA, and RCNA in its entirety, the Board recognizes that the requested moratorium is only a partial solution to the current issues that exist due to the significant over concentration of on-premises establishments in the Adams Morgan Moratorium Zone. As such, it is important for the petitioners, licensees, residents, and other stakeholders to work together in exploring other possible solutions to alleviate this problem. During this five (5) year moratorium period, the Board believes that there are three additional issues worth examining. First, it might be helpful to explore whether having a lower cap of on-premises establishments in the Adams Morgan Moratorium Zone, primarily restaurants, would be helpful in an effort to start reducing the current number of on-premise

establishments that exist rather than simply maintaining the status quo. For instance, the Georgetown historic district contains a cap of six (6) on the number of taverns and nightclubs. This cap was implemented to decrease rather than maintain the number of these establishments that exist over time. As such, the Board would be willing to consider in two and one-half years, the halfway point of the moratorium, a request from the Petitioners to place a cap on the number of restaurant licenses that is intended to decrease during the moratorium period the number of these establishments located in the Adams Morgan Moratorium Zone. Second, the testimony received by the Board revealed that many of the problems in Adams Morgan are caused by non-patrons of ABC establishments who come to Adams Morgan from outside of the neighborhood and cause problems with noise, criminal activity, loitering, and pedestrian safety and take away valuable parking spaces in Adams Morgan from residents. A collective effort is needed between the petitioners, MPD, the Adams Morgan Bid, and the Council to address this issue, including possibly strengthening the District's loitering laws. Third, the testimony revealed a need to address problems with vehicular and pedestrian safety. The testimony of ANC 1C Chairperson Bryan Weaver noted that attempts in utilizing traffic officers were unsuccessful due to loud whistles being used to direct traffic. However, Chairperson Weaver's testimony indicated that problems with vehicular traffic are likely to be improved with a pilot traffic plan to implement taxicab stands. The Board is interested in hearing from ANC 1C and the Petitioners regarding the success and long-term viability of this program.

The statements set forth above reflect the written reasons for the Board's decision as required by subsection 303.1 of Title 23 DCMR (2004).

Pursuant to D.C. Official Code § 25-211(b)(2) (2008 Supp.), the proposed rules were transmitted to the Council of the District of Columbia ("Council"), for a forty-five (45) day period of review on November 28, 2008. These proposed rules were approved by Council Resolution 17-912, the Adams Morgan Liquor License Moratorium Approval Resolution of 2008, adopted by the Council at its December 16, 2008 legislative meeting. These final rules will become effective five (5) days after being published in the D.C. Register.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by replacing the existing section 304 to read as follows:

304 ADAMS MORGAN MORATORIUM ZONE

304.1 No new Retailer's License Class CR, CN, CT, CX, DR, DN, DT, or DX shall be issued for a period of five (5) years from the effective date of this section in the area that extends approximately fourteen (1400) hundred feet in all directions from the intersection of 18th Street and Belmont Road, N.W., Washington D.C. This area shall be known as the Adams Morgan Moratorium Zone.

- 304.2 The Adams Morgan Moratorium Zone is more specifically described as beginning at 18th Street and Vernon Street, NW ; and proceeding on both sides of all streets, unless otherwise noted; West on Vernon Street to 19th Street; Northwest on 19th Street to Wyoming Avenue; Southwest on Wyoming Avenue to 20th Street; Northwest on 20th Street to Belmont Road; East on Belmont Road to 19th Street; Northwest on 19th Street to Biltmore Street; East on Biltmore Street to Cliffbourne Street; North on Cliffbourne Street to Calvert Street; East on Calvert Street to Lanier Place; Northeast on Lanier Place to Adams Mill Road; Southeast on Adams Mill Road to Columbia Road; Northeast on Columbia Road to Ontario Road; South on Ontario Road to Euclid Street; East on Euclid Street to 17th Street; South on 17th Street to Kalorama Road; Southwest on Kalorama Road to Ontario Road; South on Ontario Road to Florida Avenue; Southwest on Florida Avenue to U Street; West on U Street (North side only); across 18th Street to the South corner of 18th and Vernon Streets, N.W., Washington D.C.
- 304.3 The following license classes shall be exempt from the Adams Morgan Moratorium Zone:
- (a) All hotels, whether present or future; and
 - (b) Retailer's licenses Class A and B
- 304.4 The number of Retailer's licenses Class CT, CX, DT, or DX located within the Adams Morgan Moratorium Zone shall not exceed ten (10). The number of Retailer's licenses Class CN or DN shall not exceed zero (0). The holder of a Retailer's license Class CR or DR located within the Adams Morgan Moratorium Zone shall be prohibited from changing its license class except when the number of Retailer's licenses Class CT, CX, DT, or DX in the Adams Morgan Moratorium Zone is fewer than ten (10). Nothing in this subsection shall prohibit the Board from approving a change of license class application that was filed with the Board by the holder of a retailer's license Class CR or DR located within the Adams Morgan Moratorium Zone prior to August 2, 2006.
- 304.5 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license Class CN, CT, CX, DN, DT, and DX within the Adams Morgan Moratorium Zone that was in effect or for which an application was pending prior to the effective date of this section, subject to the requirements of Title 25 of the D.C. Official Code and this title.
- 304.6 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Adams Morgan Moratorium Zone to a new location within the Adams Morgan Moratorium Zone.

- 304.7 A license holder outside the Adams Morgan Moratorium Zone shall not be permitted to transfer its license to a location within the Adams Morgan Moratorium Zone, unless exempt by section 304.3.
- 304.8 Nothing in this section shall prohibit a valid protest of any transfer or change of a license class.
- 304.9 The moratorium shall have a prospective effect and shall not apply to any license granted prior to the effective date of this section or to any application for licensure pending on the effective date of this section.
- 304.10 This section shall expire five (5) years after the date of publication of the notice of final rulemaking.

**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 D.C. Official Code § 25-351(a) (2008 Supp.) and Section 303 of Title 23 of the District of Columbia Municipal Regulations (“DCMR”), 51 DCR 4309 (April 30, 2004), hereby gives notice of the adoption of the following final rules that amend existing subsection 307.1 of Title 23 DCMR by raising the current limit on Class CR and Class DR retailer’s licenses in the West Dupont Circle Moratorium Zone from seventeen (17) to twenty-one (21). The final rules were adopted by the Board on April 8, 2009. The text of the final rules is substantively identical to the text of the notice published in the D.C. Register on November 28, 2008, at 55 DCR 12169.

The Board received a written letter from Advisory Neighborhood Commission (“ANC”) 2B, dated May 15, 2008 requesting that the Board amend the existing West Dupont Circle Moratorium, as permitted by D.C. Official Code § 25-351(f), to allow for two additional Class “DR” licenses. ANC 2B’s letter indicates that permitting these additional licenses to restaurants will contribute to the revitalization of a neighborhood that suffered adverse effects from construction during the recent streetscape improvements. ANC 2B indicated that these two additional licenses would not adversely impact the peace, order, and quiet given that these licenses are only for restaurants in an area known as “Restaurant Row”. ANC 2B also asked that alcoholic beverage sales be limited to midnight to prevent further late night noise and other peace, order, and quiet problems in the neighborhood. The Board also received a May 8, 2008 written request from the Dupont Circle Merchants and Professionals Association (“DC MAP”) seeking to modify the West Dupont Circle Moratorium Zone to allow for the issuance of additional Class “CR” and “DR” licenses. The Board held a public hearing on the written requests of ANC 2B and DC MAP on September 17, 2008, pursuant to the notice requirements of D.C. Official Code § 25-354.

The Board received timely detailed testimony and comments on these two requests from ANC 2B, the Dupont Circle Citizens Association, DC MAP, and nearby Dupont Circle business owners. The Board found the testimony and comments provided in response to these two requests to warrant raising the current limit on Class “CR” and Class “DR” retailer’s licenses in the West Dupont Circle Moratorium Zone from seventeen (17) to twenty-one (21). While the request of DC MAP was to remove the current limit on additional restaurant licenses, the Board found the testimony at the September 17, 2008 public hearing to reflect that keeping a specific cap on the number of existing restaurant licenses in this area remains necessary. For example, the testimony of DCCA President Joel Lawson stressed the importance of keeping a limit on the number of restaurant licenses in the West Dupont Circle Moratorium Zone to preserve a proper balance in the neighborhood.

In reaching its decision, the Board gave great weight to the written recommendations of ANC 2B as required by section 13(d)(3) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.10(d)(3) (2001), as amended, and D.C. Official Code § 25-609 (2001). ANC 2B’s initial May 15, 2008 letter requested two

additional licenses. Testimony received from ANC 2B Commissioner Mike Silverstein reflected that while ANC 2B believed that a limit on restaurant licenses was needed, it was not strictly wedded to just two additional licenses. The Board found that four additional licenses are appropriate for several reasons. First, testimony received from the Board, including from ANC 2B and several businesses referenced the need to promote the area as "Restaurant Row". The Board found that adding four (4) additional restaurant licenses was consistent with this effort. Second, at the September 17, 2008 public hearing, three businesses testified that they intended to apply for a new restaurant license, if eligible. Additional written correspondence provided to the Board from businesses not present at the hearing, as well as from DC MAP, revealed that more than the three businesses present at the September 17, 2008 public hearing intend to apply for a new restaurant license, if eligible. Given that the Board accepts applications on a first-come first-serve basis, the Board did not believe it was appropriate to potentially exclude businesses with neighborhood support, including from ANC 2B, which would likely occur if ANC 2B's recommendation for only two additional licenses were adopted by the Board.

ANC 2B also recommended to the Board that these new restaurants: (1) have alcoholic beverage sales limited to midnight to prevent further late night noise and other peace, order, and quiet problems in the neighborhood and (2) be limited to beer and wine only. The majority of business owners who either testified at the September 17, 2008 public hearing or submitted written correspondence indicated that their alcoholic beverage sale hours would end by midnight. The Board is generally supportive of ANC 2B's request to ensure that these new establishments do not have an adverse impact on peace order and quiet late at night. Along these lines, the Board intends to take into account ANC 2B's request when considering these new restaurant license applications. The Board believes, however, that some flexibility may be needed and that it makes more sense to put in place a restriction on alcoholic beverage sale hours through either a voluntary agreement or the protest process. The Board did not agree with ANC 2B's recommendation that these additional restaurant licenses be limited to wine and beer only. Specifically, the Board does not believe that allowing the sale of spirits will adversely impact the peace, order, and quiet of the West Dupont Circle Moratorium Zone if alcoholic beverage sale hours at these new restaurants will either end by midnight or be restricted in some manner. The Board is willing to consider such a restriction on a case-by-case basis as part of a voluntary agreement or the protest process.

The statements set forth above reflect the written reasons for the Board's decision as required by subsection 303.1 of Title 23 DCMR (2004).

Pursuant to D.C. Official Code § 25-211(b)(2) (2001), these proposed rules were transmitted to the Council of the District of Columbia ("Council"), for a ninety (90) day period of Council review on November 28, 2008. These proposed rules were approved by Council Resolution 17-911, the West Dupont Circle Liquor License Moratorium Approval Resolution of 2008, adopted by the Council at its December 16, 2008 legislative meeting. These final rules will become effective five (5) days after being published in the D.C. Register.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by replacing the existing subsection 307.1 to read as follows:

307.1 A limit shall exist on the number of retailer's licenses issued in the area that extends approximately six hundred (600) feet in all directions from the intersection of 21st and P Streets, N.W., Washington, D.C., as follows: Class A – Two (2); Class B – Three (3); Class CR or Class DR – Twenty-One (21); Class CT or Class DT – Six (6); Class CN or DN – Zero (0); and Class CX or Class DX – Two (2). This area shall be known as the West Dupont Circle Moratorium Zone.

**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 D.C. Official Code § 25-351(a) (2008 Supp.) and Section 303 of Title 23 of the District of Columbia Municipal Regulations ("DCMR"), 51 DCR 4309 (April 30, 2004), hereby gives notice of the following final rules that replace existing section 308 of Title 23 DCMR to impose a three (3) year moratorium on the issuance of any new retailer's license class A, B, CT, CN, CX, DT, DN, and DX in a portion of Glover Park which shall be known as the Glover Park Moratorium Zone. These rules also impose a cap of twelve (12) on the number of class CR retailer's licenses in the Glover Park Moratorium Zone. The rules also allow for the issuance of three (3) additional class CR retailer's licenses. The final rules were adopted by the Board on April 8, 2009. The text of the final rules is substantively identical to the text of the notice published in the D.C. Register on November 28, 2008, at 55 DCR 12172.

The Board conducted a public hearing, pursuant to D.C. Official Code § 25-354 (2008 Supp.), on April 2, 2008 to consider the written request of Advisory Neighborhood Commission ("ANC") 3B and the Glover Park Citizens Association ("GPCA") to renew the current Glover Park Moratorium Zone for a five (5) year period. The written request of ANC 3B and GPCA also seeks to allow the issuance of three (3) additional class CR retailer's licenses. The Board gave great weight to ANC 3B and found the testimony provided by both ANC 3B and the GPCA to: (1) warrant an extension of the existing moratorium, and (2) allow for the issuance of three (3) additional class CR licenses, based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314 (2008 Supp.) Specifically, under D.C. Official Code § 25-313(b) (2008 Supp.), the testimony put forward by ANC 3B and the GPCA revealed that problems still exist in the Glover Park Moratorium Zone with peace, order, and quiet. The Board heard testimony from Judith Blumenthal, President of the Glover Park Citizens' Association that there are continued problems with vandalism, beer bottle and cigarette butt litter, rowdy intoxicated individuals, public urination, and late night disturbances by patrons of ABC establishments located in the Glover Park Moratorium Zone.

The testimony of ANC 3B and GPCA revealed that the issuance of up to three (3) additional class CR retailer's licenses would not adversely affect the public peace, order, and quiet of the moratorium zone. Specifically, ANC 3B and GPCA indicated that establishments committed to serving food present much less of a problem with regard to peace, order, and quiet. Currently, there are nine (9) class CR licenses in the Glover Park Moratorium Zone. In allowing for three additional class CR retailer's licenses, the Board is creating a cap of twelve (12) on the number of class CR retailer's licenses in the Glover Park Moratorium Zone.

The Board also heard testimony from Glover Park residents Sherry Kaskey, Elizabeth Webber, and Karine Faden who shared concerns as to peace, order, and quiet; noise, litter, traffic congestion, public intoxication, public urination, vandalism, street brawls, street disturbances as people are returning to their cars at late hours, pedestrian traffic in front of ABC establishments, violence, and public vomiting. Glover Park residents also expressed concerns regarding vehicular safety, parking, the impact on families with children, and the potential difficulty in selling a home located in close proximity to ABC establishments. The Board heard some testimony from GPCA that the moratorium had contributed to rising housing values.

ANC 3B and the GPCA have requested three (3) additional class CR licenses because there are empty storefronts that they would like to fill and believe that it may be challenging to fill these spaces with non-restaurant businesses. The Glover Park residents who testified supported the ANC 3B and GPCA request for a renewal of the moratorium. Some Glover Park residents did not support the issuance of three (3) additional class CR licenses as they felt their present concerns would be exacerbated by the addition of more ABC licenses whose operations and impact on the neighborhood they could not anticipate. The Board took the views of these Glover Park residents into consideration but found the proposal of both ANC 3B and GPCA to constitute a reasonable compromise.

Testimony provided by the petitioners and other individuals at the April 2, 2008 public hearing revealed that continued problems with peace, order, and quiet, and parking in the Glover Park Moratorium Zone justify an extension of the moratorium. However, while ANC 3B and GPCA requested a five (5) year extension, their testimony indicated that the three (3) additional class CR retailer's licenses would be helpful in attracting restaurants to some of the currently vacant commercial properties located in the Glover Park Moratorium Zone. The Board felt it appropriate to revisit the moratorium after three (3) years rather than five (5) years, because it is likely, based upon received testimony, that applications for the three (3) additional licenses will be made by Glover Park businesses with existing locations within the moratorium zone. As such, the issuance of three (3) additional licenses is not likely to assist the petitioners in attracting additional class CR restaurants to these vacant properties. The Board believes that it is appropriate to reexamine this issue with the petitioners after a three (3) year period.

The statements set forth above reflect the written reasons for the Board's decision as required by subsection 303.1 of Title 23 DCMR (2004).

Pursuant to D.C. Official Code § 25-211(b)(2) (2008 Supp.), the proposed rules were transmitted to the Council of the District of Columbia ("Council"), for a ninety (90) day period of Council review on November 28, 2008. These proposed rules were approved by Council Resolution 17-910, the Glover Park Liquor License Moratorium Approval Resolution of 2008, adopted by the Council at its December 16, 2008 legislative meeting. These final rules will become effective five (5) days after being published in the D.C. Register.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by replacing the existing section 308 to read as follows:

308 GLOVER PARK MORATORIUM ZONE

- 308.1 No new retailer's license class A, B, CN, CT, CX, DN, DT, or DX shall be issued for a period of three (3) years from the effective date of this section in the area that extends approximately one thousand two hundred feet (1,200 ft.) in all directions from 2436 Wisconsin Avenue, N.W., Washington D.C. The number of class CR retailer's licenses permitted in this area shall not exceed twelve (12). This area shall be known as the Glover Park Moratorium Zone.
- 308.2 The Glover Park Moratorium Zone is more specifically described as beginning at Tunlaw Road and Fulton Street; East on Fulton Street to Wisconsin Avenue; South on Wisconsin Avenue to Edmunds Street; East on Edmunds Street to Massachusetts Avenue; Southeast on Massachusetts Avenue to Observatory Circle; Southeast around Observatory Circle to Calvert Street; West on Calvert Street to Wisconsin Avenue; Southeast on both sides of Wisconsin Avenue to 35th Street; South on 35th Street to Whitehaven Parkway; West on Whitehaven Parkway to 37th Street; North on 37th Street to U Street; West on U Street to a point of intersection of Huidekoper Place and W Street; West on W Street to 39th Street; North on 39th Street to Davis Place; East on Davis Place to Tunlaw Road; North and Northwest on Tunlaw Road to Fulton Street.
- 308.3 All hotels, whether present or future, shall be exempt from the Glover Park Moratorium Zone.
- 308.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license class A, B, CN, CR, CT, CX, DN, DT, and DX within the Glover Park Moratorium Zone that was in effect or for which an application was pending prior to the effective date of this section, subject to the requirements of Title 25 of the D.C. Official Code and this title.
- 308.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Glover Park Moratorium Zone to a new location within the Glover Park Moratorium Zone.
- 308.6 A license holder outside the Glover Park Moratorium Zone shall not be permitted to transfer its license to a location within the Glover Park Moratorium Zone.
- 308.7 Nothing in this section shall prohibit a valid protest of any transfer or change of a license class.
- 308.8 The moratorium shall have a prospective effect and shall not apply to any license

granted prior to the effective date of this section or to any application for licensure pending on the effective date of this section.

308.9 This section shall expire three (3) years after the date of publication of the notice of final rulemaking.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the Title 17 (Business, Occupations & Professions) (May 1990) of the District of Columbia Municipal Regulations (DCMR). The purpose of the amendment is to publicize the new fee for criminal background checks for all the health professions covered under Title 3 of the District of Columbia Official Code, which was newly established pursuant to the Licensed Health Professional Criminal Background Check Amendment Act of 2006, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01, et seq.). Notice of Proposed Rulemaking was published in the D.C. Register on February 6, at 56 DCR 001275. No comments were received and no changes have been made to the text of the rules as they were proposed. These rules shall become effective on publication in the D.C. Register.

Add a new fee to Title 17 read as follows:

CHAPTER 35 LICENSING FEES

3500.1 The examination, annual license fees and criminal background check fees for each class of license shall be as follows:

DESCRIPTION OF SERVICE	FEE	NEW FEE
Criminal Background Check		\$50.00

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health (“Department”), pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), Mayor's Order 98-140, dated August 20, 1998, the SafeRx Amendment Act of 2008, effective March 26, 2008 (D.C. Law 17-0131; 55 DCR 4462, published on April 25, 2008) (the Act), and Mayor’s Order 2008-94, dated July 3, 2008, hereby gives notice of the adoption of the following amendments to chapter 83 of Title 17 (Business, Occupations and Professions) of the District of Columbia Municipal Regulations (DCMR),(Pharmaceutical Detailers).

The purpose of these amendments is to further clarify the requirements and scope of this chapter. These amendments will further clarify which individuals are subject to the licensure requirement, provide a time line for the Board of Pharmacy (“Board”) to make decisions on licensure applications, clarify that practices that are in compliance with the FDA’s policy and regulations will not be deemed a violation of this chapter, set forth the types of documents and information that should be maintained by pharmaceutical detailers, provide further clarification regarding health professionals’ requests not to receive any further sales calls, and create a supervised practice authorization that will allow applicants with licensure applications pending before the Board of Pharmacy to practice under supervision for a period of sixty (60) days.

These rules were previously published as proposed rulemaking on February 13, 2009 at 56 DCR 1488. Written comments were received from the Pharmaceutical Research and Manufacturers of America. No changes have been made to the regulations from the previous publication. These regulations will become effective upon publication of this notice in the D.C. Register.

Chapter 83 (Pharmaceutical Detailers) of Title 17 (Business Occupations and Professions) is amended as follows:

New sections 8300.5 to 8300.9 are added to read as follows:

- 8300.5 For purposes of this chapter, an individual shall be deemed as engaging in the practice of pharmaceutical detailing if:
- (a) He or she is acting as a representative of a pharmaceutical manufacturer or labeler; and
 - (b) Communicating in person with a licensed health professional or an employee or representative of a licensed health professional located in the District of Columbia;
 - (c) In a non-conference setting, as defined in this chapter;

(d) For the purpose of selling, marketing, or promoting a prescription or over-the-counter pharmaceutical product for use in humans, or providing information about a pharmaceutical product for the purpose of selling, marketing, or promoting such product.

8300.6 The scope of this chapter shall not apply to representatives who only sell, market, or promote veterinary drugs.

8300.7 The scope of this chapter shall not apply to the act of providing information about a pharmaceutical product solely for the purpose of conducting or pertaining to clinical trials, investigational drugs, or a Risk Evaluation and Mitigation Strategy pursuant to the Federal Food, Drug and Cosmetic Act.

8300.8 The scope of this chapter shall not apply to activities taking place at a conference, as defined in this chapter.

8300.9 The scope of this chapter shall not apply to health professionals participating in a conference, as defined in this chapter, including conferences targeting a local audience, solely as a speaker or presenter with respect to his or her area of expertise.

Section 8304.1(c) is amended to read as follows:

8304.1(c) Submit an official certificate of graduation or transcript in a sealed envelope from the educational institution(s) to the Board, which shall verify that the applicant meets the educational requirements set forth under § 8302 of this chapter;

New sections 8304.2 and 8304.3 are added to read as follows:

8304.2 The Board shall make a decision whether to approve or to initiate the process to deny an application for licensure within sixty (60) days after receipt of a completed application package containing all required materials, information, and supporting documents.

8304.3 If the Board initiates the process to deny an application, the Board shall send a written notice to the Applicant of the Board's decision to initiate the process within sixty (60) days. However, the formal denial process under the Administrative Procedures Act shall not be included within the sixty (60) day requirement.

Section 8305.1 is amended to read as follows:

8305.1 A pharmaceutical detailer shall not engage in any deceptive or misleading marketing of a pharmaceutical product, including the knowing concealment, suppression, omission, misleading representation, or misstatement of any material

fact. Practices and conduct in compliance with the Food and Drug Administration's laws, regulations, policies and guidelines shall not be deemed a violation of this subsection.

Sections 8305.7 to 8305.10 are amended to read as follows:

- 8305.7 For purposes of § 8305.6, unless the person continuing to make the sales calls has actual knowledge of the request, a pharmaceutical manufacturer or labeler's employees and representatives will not be deemed to have knowledge of a health care provider's request until thirty (30) days after the health care provider submits the written request to the pharmaceutical detailer or his or her employer.
- 8305.8 A pharmaceutical detailer shall not offer a gift or remuneration of any kind to a member of a medication advisory committee; except that a pharmaceutical detailer may give medication samples to a member of a medication advisory committee that is also a licensed physician engaged in the practice of medicine.
- 8305.9 A pharmaceutical detailer shall not employ any inducement or misleading statements to gain access to a healthcare professional.
- 8305.10 A pharmaceutical detailer shall provide information to healthcare professionals That is accurate and fairly balanced in compliance with FDA policy and practices on the provision of information to health care professionals. However, nothing in this section shall be construed to require a pharmaceutical detailer to promote a competitor's product.

A new section 8305.11 is added to read as follows:

- 8305.11 In addition to the regulations set forth under this section, any holder of a license under this chapter or any person authorized to practice pharmaceutical detailing functions under this chapter shall comply with the standards of ethical and professional conduct established by the Pharmaceutical Research and Manufacturers of America (PhRMA) in its publication entitled "PhRMA Code on Interactions With Healthcare Professionals" as it may be amended or republished from time to time. Where there is a conflict between this publication and the regulations set forth in this Chapter or the provisions of the Act, the regulations and/or Act shall control.

Sections 8308.1 to 8308.2 are amended to read as follows:

- 8308.1 A minimum of fifty (50) minutes shall constitute one (1) contact hour.
- 8308.2 For approved undergraduate courses, each semester hour of credit shall constitute fifteen (15) contact hours of continuing education credit.

A new section 8309.6 is added to read as follows:

- 8309.6 For purposes of complying with this section, a pharmaceutical detailer shall maintain documents and information relating to his or her communications with licensed health professionals or with employees or representatives of licensed health professionals that include but are not limited to:
- (a) The name, business address, and telephone number of the healthcare professional the detailer visited;
 - (b) The date, time and location of the visit;
 - (c) The products discussed;
 - (d) Whether samples were provided; and
 - (e) The type of materials provided to the health care professional, if applicable.

A new section 8311 is added to read as follows:

8311 SUPERVISED PRACTICE

- 8311.1 An applicant for a pharmaceutical detailer license may engage in the supervised practice of pharmaceutical detailing under the supervision of a licensed pharmaceutical detailer for a period not to exceed sixty (60) days under the following conditions:
- (a) The applicant has an initial application for licensure pending before the Board;
 - (b) Has received a supervised practice letter from the Board; and
 - (c) Has not previously received a supervised practice letter from the Board.
- 8311.2 The supervising pharmaceutical detailer shall be fully responsible for the supervised practice of the supervisee during the period of supervision, and is subject to disciplinary action for any violation of the Act or this chapter by the person being supervised.
- 8311.3 A supervisee shall be subject to all applicable provisions of the Act and this chapter.
- 8311.4 If the Board finds that a person practicing under supervision has violated the Act or this title, the Board may, in addition to any other disciplinary actions permitted by the Act, deny, revoke, suspend, or restrict the privilege of the supervisee to practice.

Section 8399.1 is amended as follows:

a) **The following terms are repealed:**

Marketing Representative- an individual who is employed by or is under contract to represent a manufacturer or labeler and engages in the marketing of pharmaceutical products in the District to any person or entity licensed to provide health care in the District.

Prescriber- a person who is licensed, registered, or otherwise authorized by the District to prescribe and administer prescription drugs in the course of a professional practice.

b) **The following terms with the ascribed meanings are added as follows:**

Conference- A meeting, symposium, expo, exhibit, convention, assembly, or like gathering for the discussion of health-related issues consisting of multi-pharmaceutical company or labeler representation and targeting a regional, national or international audience.

Multi-pharmaceutical or labeler representation- at least three or more pharmaceutical companies or labelers which shall not be subsidiaries, or affiliations of the same company or parent company.

Pharmaceutical Detailer: a person licensed under the Act to engage in the practice of pharmaceutical detailing.

Sales Call- any in person communication with a health care professional or his or her employees or representatives for the direct purpose of selling marketing, or promoting a pharmaceutical product, or providing information about a pharmaceutical product for the purpose of selling, marketing, or promoting such pharmaceutical product on behalf of a pharmaceutical manufacturer or labeler.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

The following Notice of Final Rulemaking was published in the District of Columbia Register on April 10, 2009 (56 DCR 2727) and became effective on that date. The six (6) attachments that are referenced in the amendment were not published. This Final Rulemaking is being republished for the purpose of providing the six attachments for reference. This republication **does not** change the effective date of the amendment.

NOTICE OF FINAL RULEMAKING**FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO ELECTRIC SERVICES MARKET COMPETITION AND REGULATORY PRACTICES**

1. The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to Section 2-505(a) of the District of Columbia Official Code, of final rulemaking action, amending Chapter 29 of Title 15 of the District of Columbia Municipal Regulations and adopting the Affidavit of Environmental Compliance and the Electricity Supplier Annual Compliance Report Form. The Notice of Proposed Rulemaking (“NOPR”) to amend these rules and act upon the Affidavit and the Annual Compliance Report Form was published in the *D.C. Register* on January 2, 2009 at 56 *D.C. Reg.* 120-130. The Office of the People’s Counsel filed comments in response to the NOPR. The final version of the attached Annual Report Form contains editorial modifications to the version that appeared in the NOPR. The final versions of the amendment and Affidavit contain no modification from the NOPR.

2. Final action adopting the amendment, the Affidavit, and the Annual Report Form was taken on April 7, 2009, by Commission Order No. 15233. The amendment, the Affidavit, and the Annual Report Form will become effective upon publication of this Notice in the *D.C. Register*. Copies of the amendment, the Affidavit, and the Annual Report Form may be obtained by contacting Dorothy Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., 2nd Floor, West Tower, Washington, D.C. 20005. Copies may also be obtained from the Commission’s website at www.dcpssc.org.

Electricity Supplier Annual Compliance Report - DC RPS Program

Enter the appropriate figures into the following tables:

	Block 1	Block 2	Block 3	Block 4	Block 5	Block 6	MWh	Percent Required
Total Retail Electricity Sales								
Total Exempt Electricity Sales								-
Compliance Total								-
Solar REC Obligation								-
Tier I REC Obligation								
Tier II REC Obligation								
Enter Compliance Year:								

- Block 1 Enter total retail electricity sales for the compliance year.
- Block 2 Enter quantity of any exempt retail electricity sales to a customer with a renewable on-site generator.
- Block 3 Compliance total, Block 3 = Block 1 - Block 2.
- Block 4 Tier I Solar REC obligation, Block 4 = Block 3 * Compliance Year Percentage for Solar Energy.
- Block 5 Tier I REC obligation, Block 5 = Block 3 * Compliance Year Percentage for Tier I.
- Block 6 Tier II REC obligation, Block 6 = Block 3 * Compliance Year Percentage for Tier II.

Complete Block 1 and Block 2 and enter the Compliance Year. Blocks 3, 4, 5, and 6 will be calculated based on your entries.

**Electricity Supplier Annual Compliance Report - DC RPS Program
Compliance Year**

Total number of Tier I Solar RECs retired for solar energy compliance; (attach additional duplicate pages if necessary and list Page number here Page ___ of ___)

Solar RECs Used for Compliance					
Number of RECs	DC Certification Number (DC-____-____-____)	Gen. Date (Mon/Yr)	% Credit¹	REC Credit²	Tier I/Solar REC Price
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
			110%		
Solar RECs Used for Compliance			Block 7		

1 % Credit applies to fuel sources where additional credit is applicable to a renewable resource pursuant to D.C. Official Code § 34-1433.

2 REC Credit is the number of RECs multiplied by the % Credit.

Fill in the appropriate information in the highlighted yellow blocks. Other blocks will be calculated from the input data. Enter the number of RECs, DC Certification Number associated with the RECs, the date of generation, and the price per REC.

Block 7 Total amount of Solar RECs will be calculated based on the entries.

An electricity supplier shall meet the solar requirement by obtaining the equivalent amount of renewable energy credits from solar energy systems interconnected to the distribution grid serving the District of Columbia. Only after an electricity supplier exhausts all opportunity to meet this requirement that the solar energy systems be connected to the grid within the District of Columbia can that supplier obtain renewable energy credits from jurisdictions outside the District of Columbia.

**Electricity Supplier Annual Compliance Report - DC RPS Program
Compliance Year**

Electricity Supplier:

Point of Contact:

Title:

Address:

Phone:

E-mail:

Fax:

Compliance Fee Report:

Solar		
Solar RECs Used for Compliance		Block 10
Solar Energy Compliance Amount		from Block 4
Shortfall of Solar RECs		Block 11
Solar REC Compliance Fee Rate	(\$300 in 2008, \$500 in 2009 to 2018)	\$/MWH
Solar Energy Compliance Fee		Block 12

Tier I		
Tier I RECs Used for Compliance		Block 13
Tier I Compliance Amount		from Block 5
Shortfall of Tier I RECs		Block 14
Tier I Compliance Fee Rate	\$50	\$/MWH
Tier I Compliance Fee		Block 15

Tier II		
Tier 1 or Tier II RECs Used for Compliance		Block 16
Tier II Compliance Amount		from Block 6
Shortfall of Tier II RECs		Block 17
Tier II Compliance Fee Rate	\$10	\$/MWH
Tier II Compliance Fee		Block 18

Total Compliance Fee Due		Block 19
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Enter the supplier contact information in the yellow highlighted area above. In addition, this worksheet only requires entries for Blocks 10, 13, and 16. The other sections will be calculated based on the entries.

- Block 10** Enter the sum of all Solar RECs reported previously for Block 7.
- Block 11** Shortfall amount for Solar REC compliance, Block 11 = Block 4 - Block 10
- Block 12** Compliance Fee Due for the Solar Energy Obligation.
Block 12 = Block 11 * (\$300 in 2008 and \$500 in 2009 until 2018)
- Block 13** Enter the sum of all Tier I RECs reported previously for Block 8 plus Block 10,
Block 13 = Block 8 + Block 10.
Block 13 combines the solar RECs with all other reported Tier I RECs.
- Block 14** Shortfall amount for Tier I REC compliance, Block 14 = Block 5 - Block 13
- Block 15** Compliance Fee Due for the Tier I Obligation.
Block 15 = Block 14 * \$50
- Block 16** Enter the sum of all Tier II RECs reported previously for Block 9.
- Block 17** Shortfall amount for Tier II REC compliance, Block 17 = Block 6 - Block 16
- Block 18** Compliance Fee Due for the Tier II Obligation
Block 18 = Block 17 * \$10
- Block 19** Total Compliance Fee Due.
Block 19 = Block 12 + Block 15 + Block 18

REPS Requirements

Year	Tier I	Tier II	Solar
2007	1.5%	2.5%	0.005%
2008	2.0%	2.5%	0.011%
2009	2.5%	2.5%	0.019%
2010	3.0%	2.5%	0.028%
2011	4.0%	2.5%	0.040%
2012	5.0%	2.5%	0.070%
2013	6.5%	2.5%	0.100%
2014	8.0%	2.5%	0.130%
2015	9.5%	2.5%	0.170%
2016	11.5%	2.0%	0.210%
2017	13.5%	1.5%	0.250%
2018	15.5%	1.0%	0.300%
2019	17.5%	0.5%	0.350%
2020	20.0%	0.0%	0.400%

Pursuant to D.C. Official Code § 34-1433:

- (a) Energy from a tier one renewable source:
 - (1) Shall be eligible for inclusion in meeting the standard regardless of when the generating system or facility was placed in service; and
 - (2) May be applied to the percentage requirements of the standard for either tier one renewable sources or tier two renewable sources.
- (b) Energy from a tier two renewable source shall be eligible for inclusion in meeting the renewable energy portfolio standard through 2017 if it is generated at a system or facility that existed and was operational as of January 1, 2004.
- (c) On or after January 1, 2006, an electricity supplier may:
 - (1) Receive renewable energy credits; and
 - (2) Accumulate renewable energy credits under this chapter.
- (d) On or before December 31, 2006, an electricity supplier shall receive 120% credit toward meeting the renewable energy portfolio standard for energy derived from wind or solar sources.
- (e) After December 31, 2006, and on or before December 31, 2009, an electricity supplier shall receive 110% credit toward meeting the renewable energy portfolio standard for energy derived from wind or solar sources.
- (f) On or before December 31, 2009, an electricity supplier shall receive 110% credit toward meeting the renewable energy portfolio standard for energy derived from methane.
- (g)(1) An electricity supplier may not use the incineration of solid waste to meet more than 20% of the standard for tier two renewable sources for a given year.
- (2) After December 31, 2012, the incineration of solid waste shall not be eligible to generate renewable energy credits.