

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

NOTICE OF FINAL RULEMAKING

The Alcoholic Beverage Control Board (Board) adopted new rules that clarify the Alcoholic Beverage Regulation Administration's (ABRA) process for issuing citations for first-time primary and secondary tier offenses as part of the alcoholic beverage civil penalty schedule set forth in Section 800 of D.C. Municipal Regulations Title 23. The new policy clarifies first-time offenses that warrant a one-time written warning. The rules are effective September 25, 2013.

Title 23 of the D.C. Municipal Regulations is amended as follows:

Section 800, ABRA CIVIL PENALTY SCHEDULE, of Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR is amended by replacing Section 800 in its entirety to read as follows:

800. ABRA CIVIL PENALTY SCHEDULE.

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	Primary	Y
25-102(d)	Permitting Consumption of Alcoholic Beverage Without a License	Primary	N
25-110	Violating Terms of Manufacturer's License	Primary	N
25-111	Violating Terms of Wholesaler's License	Primary	N
25-112(a)-(c)	Violating Terms of Off-Premise Retailer's License	Primary	N
25-112(e)(1)	Failure to File a Statement of Expenditures	Secondary	Y
25-113(a)(2)(A)(ii)	Knowingly Allowing Patron to Exit the Premises with an Open Container	Secondary	N
25-113(a)(3)	Selling or Serving Alcohol in a Closed Container	Secondary	Y - Mandatory
25-113(b)(1)	Failure to Keep Kitchen Open Two Hours Before Closing	Secondary	Y - Mandatory
25-113(b)(2)(A)	Failure of Restaurant to File a Quarterly Statement	Secondary	Y - Mandatory
25-113(d)(1)	Failure to Submit a Security Plan	Primary	Y
25-113(e)(4)(A)	Failure of Hotel to File a Quarterly Statement	Secondary	Y - Mandatory
25-113(i)(l)(4)	Failure by Caterer to File and Maintain Records for Inspection	Secondary	Y
25-113(j)(3)	Failure to Obtain Board Approval for Off-Site Storage	Secondary	Y - Mandatory
25-113(j)(3)	Failure to Maintain Records on Premises	Primary	Y - Mandatory
Section	Description	Violation	Warning

25-113(a)(b)	Failure to Obtain Entertainment Endorsement	Primary	Y
25-113(a)(c)	Failure to Obtain a Summer Garden or a Sidewalk Café Endorsement	Primary	Y
25-114(a)	Violating Terms of Arena C/X License	Primary	N
25-115(a)	Violating Terms of Temporary License	Primary	N
25-116	Violating Terms of Solicitor's License	Primary	N
25-117	Violating Terms of Brew Pub Permit	Primary	N
25-118	Failure to Obtain Tasting Permit, or Exceeding Scope of Tasting Permit	Primary	N
25-119	Importing Alcohol Without Permit	Primary	Y
25-121	Providing Alcohol Awareness Training Without Board Approval	Secondary	Y
25-123	Violating Terms of Farm Winery License	Primary	N
25-341	Violating Ward 4 Moratorium	Primary	Y
25-342	Violating Ward 7 Special Restrictions	Primary	Y
25-343	Violating Ward 8 Special Restrictions	Primary	Y
25-344	Violating Mt. Pleasant Special Restrictions	Primary	Y
25-345	Violating Ward 2 Restrictions	Primary	Y
25-346	Violating Ward 6 Restrictions	Primary	Y
25-371	Allowing Nude Dancing Without a License	Primary	N
25-372	Violating Restrictions on Nude Dancing Performances	Primary	N
25-405	Transfer of Ownership Without Board Approval	Primary	N
25-423(d)	Failure to Maintain Posted Notices (Placards)	Secondary	Y
25-501	Failure to Pay Annual Fee	Primary	Y
25-701	Board-Approved Manager Required	Secondary	Y
25-701(b)	Failure to Notify Board of ABC Manager's Conviction	Secondary	Y - Mandatory
25-702	Failure to Notify Board of Employee's Conviction	Secondary	Y - Mandatory
25-711(a)	Failure to Post and Carry Licenses	Secondary	Y - Mandatory
25-711(b)	Failure to Post Lettering on Front Windows or Door	Secondary	Y - Mandatory
25-711(c)	Failure of Temporary License Holder to Have License Available	Secondary	Y
25-711(d)	Failure of Solicitor to Carry License	Secondary	Y - Mandatory
25-711(e)	Failure of Manager to Carry License	Secondary	Y - Mandatory
25-712	Failure to Post Signs: Warning Re: Pregnancy	Secondary	Y - Mandatory
25-713	Failure to Post Signs: Legal Drinking Age/Valid ID	Secondary	Y - Mandatory
25-721	Sale and Delivery Outside of Allowed Hours for Manufacturer & Wholesaler	Primary	N
Section	Description	Violation	Warning

25-722	Sale and Delivery Outside of Allowed Hours - Off Premises Licensees	Primary	N
25-723(b)	Sale and Delivery Outside of Allowed Hours - On-Premises Licensees	Primary	N
25-723(d)	Daylight Savings Time Operation Without Notice	Secondary	Y
25-724	Operating After Board Restricted Hours	Primary	N
25-725	Noise from Licensed Establishment	Secondary	N
25-726	Control of Litter, Trash, Garbage, and Proper Disposal of Refuse, Including Cooking Oils	Secondary	Y
25-731	Credit and Delinquency	Secondary	Y
25-733	Delivery and Payment Records and Reports	Secondary	Y
25-734	Sale by Retailer on Credit	Secondary	Y - Mandatory
25-735	Gifts and Loans from Manufacturer	Primary	Y
25-736	Gifts and Loans from Wholesaler	Primary	Y
25-741(a)	Providing Go-Cups at A & B Licensed Establishments	Secondary	Y
25-741(b)	Serving Back-up Drinks to Customers	Secondary	Y
25-742	Solicitation of Drinks by Employee	Secondary	Y
25-743	Tie-in Purchases Prohibited	Primary	Y
25-751	Limitations on Container Size	Secondary	Y
25-752	Containers to be Labeled	Secondary	Y
25-753	Keg Registration Required	Primary	N
25-754	Violating Beverage Storage Restrictions	Primary	Y
25-761	Structural Requirements	Secondary	Y
25-762(b)(1)	Failure to Obtain Approval to Increase Occupancy or the Use of Interior Space	Primary	Y
25-762(b)(2)	Failure to Obtain Approval to Expand Exterior Public or Private Space Including Summer Gardens or Sidewalk Cafes	Primary	Y
25-762(b)(3)	Failure to Obtain Approval to Expand to Another Floor, Roof, or Deck	Primary	Y
25-762(b)(4)	Failure to Obtain Approval to Provide For or Expand Entertainment Area	Secondary	Y
25-762(b)(5)	Failure to Obtain Approval to Diminish or Expand Dining or Food Prep Area	Secondary	Y
25-762(b)(6)	Failure to Obtain Approval to Provide Permanent Space for Dancing	Primary	Y
25-762(b)(7)	Failure to Obtain Approval to Change Exterior Design	Secondary	Y
25-762(b)(8)	Failure to Obtain Approval to Provide Music or Entertainment if None Previously.	Primary	N
Section	Description	Violation	Warning

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
25-762 (b)(10)	Failure to Obtain Approval to Change Entertainment to Include Nude Performances	Primary	N
25-762(b)(11)	Failure to Obtain Approval to Change From Full Menu to Snack Menu	Secondary	Y - Mandatory
25-762(b)(12)	Failure to Obtain Approval to Change On-Premises to Carry-out	Primary	Y
25-762(b)(12)	Failure to Obtain Approval to Change On-Premises to Add Carry Out	Secondary	Y
25-762(b)(13)	Failure to Obtain Approval to Extend Hours of Operation	Primary	N
25-762(b)(14)	Failure to Obtain Approval to Provide New Mechanical or Electronic Entertainment	Secondary	Y
25-762(b)(15)	Failure to Obtain Approval to Change Trade Name or Corp Name With Ownership Change	Secondary	Y - Mandatory
25-762(b)(16)	Failure to Obtain Approval to Change Booth Size	Secondary	Y - Mandatory
25-762(b)(17)	Failure to Obtain Approval to Reduce Number of Toilet Facilities	Secondary	Y - Mandatory
25-762(b)(18)	Failure to Obtain Approval to Increase Number of Vessels Under On-Premises	Primary	N
25-763	Restrictions on Use of Signs	Secondary	Y - Mandatory
25-764	Advertisements Related to Alcohol	Secondary	Y - Mandatory
25-765	Advertisements on Windows and Doors	Secondary	Y - Mandatory
25-766	Prohibited Statements	Secondary	Y
25-771	Reporting by Manufacturers	Secondary	Y
25-772	Unlawful Importation of Beverages	Primary	Y
25-781	Sale to Minors or Intoxicated Persons - Egregious	Primary	Y
25-781	Sale to Minors or Intoxicated Persons - Non-egregious	Primary	Y - Mandatory
25-782(a)	Restrictions on Minors Entrance into Class A	Primary	Y
25-782(d)	Denying Admittance to Someone of Legal Drinking Age	Secondary	Y
25-783(a)	Sale to Someone Who Fails to Produce a Valid ID	Primary	Y
25-783(b)	Failure to Take Reasonable Steps to Ascertain Legal Age	Primary	Y
25-784(a)	Prohibit Persons Under 21 From Sell, Give, Furnish or Distribute, Except as Provided in 25-784(b)	Secondary	Y
Section	Description	Violation	Warning

25-784(b)	18-20 Person May Sell, Serve or Deliver, But May Not Bartend	Secondary	Y
25-791(a)	Failure to Surrender License Into Safekeeping	Secondary	Y – Mandatory
25-797(a)	Failure to Control Licensed Establishment	Primary	N
25-797(b)	Allowing Third Party or Promoter to Provide Security	Primary	N
25-802	Failure to Allow Examination of Premises, Books and Records	Primary	N
25-823(1)	Violation of Any Law Outside of Title 25 of the District of Columbia Code or Title 23 of the District of Columbia Municipal Regulations	Primary	Y
25-823(2)	Allowing Establishment to be Used for an Unlawful or Disorderly Purpose	Primary	N
25-823(3)	Failure by Owner or ABC Manager to Superintend Licensed Business	Secondary	N
25-823(4)	Allowing Employees or Agents to Engage in Prostitution, Sexual Acts, or Sexual Contact	Primary	N
25-823(5)	Failure to Allow/Delays ABRA or MPD to Inspect Premises or Books and Records, or Otherwise Interferes With an Investigation	Primary	N
25-823(6)	Failure to Follow Settlement Agreement	Secondary	Y
25-823(6)	Failure to Follow Security Plan	Primary	Y
25-823(6)	Failure to Follow a Board Order	Primary	N
25-828(c)	Licensee Defaces Notice of Suspension Placard	Secondary	N
25-830(i)	Selling or Serving Alcohol on a Suspended or Expired License or License Held in Safekeeping	Primary	N
25-830(j)	Failure to Comply with Either of the Food Requirements	Primary	Y
23 DCMR 205.2	Failure to Obtain Storage Permit	Secondary	Y
23 DCMR 206.2	Retailer's Class DR or DT With Common Dining Area Fails to Sell Alcoholic Beverages in Containers Identifiable With Business	Secondary	Y
23 DCMR 206.4	Off-premise Retailer Class A or Class B failed to Inform Board in Application of Table Use	Secondary	Y - Mandatory
23 DCMR 208.19	Submission of Knowingly False or Misleading Affidavit	Primary	N
23 DCMR 600.1	Change Trade Name without Board Approval	Secondary	Y - Mandatory
23 DCMR 600.1	Change Corporate Name Without Board Approval	Secondary	Y - Mandatory
Section	Description	Violation	Warning
23 DCMR	Area Identified by Trade Name Inaccessible to	Secondary	Y

600.3	Patrons		
23 DCMR 601	Failure to Notify Board of Change in Ownership, Corporate Officers, or Partners	Secondary	Y
23 DCMR 702.3	Private Club Open to Public	Primary	Y
23 DCMR 705.9	Retailer's Class C, D, F, G, or Caterer Permits the Consumption of Alcoholic Beverages After Hours	Primary	N
23 DCMR 706	Remaining Open Without Securing Beverages or Having an ABC Manager or Owner Present	Secondary	N
23-707.1	Licensee or Board Approved Manager on Licensed Premises During Hours of Sale, Service or Consumption	Secondary	N
23 DCMR 710.2	Minimum Charge Greater Than Value of Food or Beverage	Secondary	Y - Mandatory
23 DCMR 710.4	Failure to Post Sign Indicating Minimum Charge	Secondary	Y - Mandatory
23 DCMR 712	Hosting a Pub Crawl Without Board Approval or in a Manner Other Than as Approved by the Board	Primary	Y
23 DCMR 717.1	Permitting Alcoholic Beverages Brought by Consumer to be Removed From Premises	Secondary	Y
23 DCMR 717.2	Corking Fee	Secondary	Y
23 DCMR 719.1	Sign re: Drinking and Driving	Secondary	Y - Mandatory
23 DCMR 900	Primary American Source of Supply	Primary	Y
23 DCMR 901	Beer Labeling	Secondary	Y
23 DCMR 902	Open Container or Package in Vehicle	Primary	N
23 DCMR 905	Discriminatory Admittance Requirements	Secondary	Y
23 DCMR 1002	Cover Charge Without Entertainment Endorsement	Secondary	Y
23 DCMR 1204	Failure to Keep and Maintain Delivery Slips	Primary	Y
23 DCMR 1206	Failure of Manufacturer Class A to Submit Monthly Report	Secondary	Y - Mandatory
23 DCMR 1207.1	Failure to File Quarterly Statements	Secondary	Y - Mandatory
23 DCMR 1207.5	Failure to File Annual Reports	Secondary	Y
23 DCMR 1208	Failure of the Licensee to Keep or Maintain its Books, Records, or Invoices.	Primary	Y
23 DCMR 1303	Failure to Properly Transport Alcoholic Beverages in a Vehicle	Secondary	Y
Section	Description	Violation	Warning

23 DCMR 2000.1	The Selling, Delivering, or Serving of Alcoholic Beverages at a Catered Event Where Snack Items Are the Only Food Products Served by the Caterer	Primary	N
23 DCMR 2000.2	Caterer or Designated Manager on Premises of Event	Secondary	Y
23 DCMR 2000.3	Submission of False or Misleading Affidavit	Primary	N
23 DCMR 2002.1	Purchase of Alcoholic Beverages by Caterers	Secondary	Y
23 DCMR 2002.2	Failure to Maintain Caterer Records	Primary	N
23 DCMR 2003.1	Improper Storage of Alcoholic Beverages by Caterer	Primary	Y
23 DCMR 2004.1	Importation and Transportation of Alcoholic Beverages by Caterer	Primary	Y
23 DCMR 2004.2	Removal of Unsealed Container by Caterer	Secondary	Y
23 DCMR 2004.3	Storage of Unopened Alcoholic Beverage by Caterer	Primary	Y
23 DCMR 2005.1	Caterer: No ABC Manager Present	Secondary	N
23 DCMR 2005.2	Caterer: No License Available for Public Inspection	Secondary	Y
23 DCMR 2006.1	Failure to File Caterer Report	Secondary	Y - Mandatory
23 DCMR 2006.2	Caterer: False or Misleading Information in Report	Primary	N
23 DCMR 2006.5	Caterer: Failure to Timely File Report	Secondary	Y - Mandatory

800.1 The penalties contained under this section shall become effective 5 days after publication in the *District of Columbia Register*.

800.2 None of the descriptions contained in Subsection 800.2 shall be construed to expand, limit, or define any specific violation.

800.3 Whether violations are classified as primary tier or secondary tier shall be determined with reference to the ABRA civil penalty schedule in effect when the violation was committed.

Section 801, PRIMARY TIER VIOLATIONS, of Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR is amended to read as follows:

801. PRIMARY TIER VIOLATIONS.

801.1 The Board may fine a licensee for a primary tier violation at a show cause hearing scheduled pursuant to the notice requirements set forth in § 1604 as follows:

- (a) For the first primary tier violation, the fine shall be \$ 1000-\$ 2000.
- (b) For the second primary tier violation within two years, the fine shall be \$ 2,000-\$ 4,000.
- (c) For the third primary tier violation in three years, the fine shall be \$ 4,000-\$ 6,000.
- (d) For the fourth primary tier violation in four years, the ABC license shall be revoked or fined no less than \$30,000 and suspended for 30 consecutive days.
- (e) For the fifth primary tier violation in four years, the ABC license shall be revoked.

Section 803, CITATIONS FOR PRIMARY TIER VIOLATIONS, of Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR is amended to read as follows:

803. CITATIONS FOR PRIMARY TIER VIOLATIONS.

803.1 ABRA investigators or Metropolitan Police Department Officers (“MPD Officer”) shall issue citations, pursuant to D. C. Official Code § 25-801(b), for primary tier violations as follows:

- (a) For the first primary tier violation, the fine shall be \$ 1000.
- (b) For the second primary tier violation within two years, the fine shall be \$ 2,000.
- (c) For the third primary tier violation in three years, the fine shall be \$ 4,000.
- (d) For the fourth or fifth primary tier violation in four years, the violation shall be referred to the Board for a show cause hearing pursuant to § 1604.

Section 805, WARNINGS, of Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR is amended to read as follows:

805. WARNINGS.

- 805.1 An ABRA investigator or MPD Officer is not precluded from issuing an administrative written warning before the issuance of a citation for a violation as permitted by § 800 of this title.
- 805.2 In not less than ten (10) business days following the issuance of an administrative written warning, an ABRA investigator shall conduct a subsequent inspection of the licensed premises to ensure that the licensee has taken corrective action for the violation found for which the administrative written warning was issued. If corrections to violations that resulted in the issuance of the administrative written warning are not completed at the time of the subsequent inspection, the ABRA investigator shall issue the licensee a citation or refer the matter to the ABC Board if (1) the licensee observes other violations that are not entitled to a warning or (2) the licensee already has three or more secondary tier violations.
- 805.3 A licensee entitled to a mandatory administrative written warning for a first violation shall not be entitled to a mandatory administrative written warning for a second or subsequent violation of the same offense. There shall be no expiration period on this subsection's prohibition against issuing a mandatory administrative written warning for a subsequent violation of the same offense.