TITLE 4. BUSINESS REGULATIONS
DIVISION 1. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
ARTICLE 16. ALCOHOLIC BEVERAGE LISTS

NOTICE OF PROPOSED RULEMAKING

The California Department of Alcoholic Beverage Control (ABC) proposes to amend the regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

ABC has not scheduled a public hearing on this proposed action. However, ABC will hold a hearing if it receives a written request for a public hearing from any interested person or his or her authorized representative no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to ABC. The written comment period closes at **5:00 p.m. on December 30, 2013.** ABC will consider only comments received at the ABC Headquarters Office by that time. Please submit comments to:

Adriana Ruelas, Legislative Officer
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, California 95834
E-mail: adriana.ruelas@asm.ca.gov
Phone: (916) 928-6821
FAX: (916) 419-2599

AUTHORITY AND REFERENCE

Authority for the proposed amendments is provided by Business and Professions Code Section 25600 (a) (1).

The proposed amendments implement, interpret, or make specific the following reference: Business and Professions Code Sections 25500, 25750, 25600, 25600(a)(1).

DOCUMENTS INCORPORATED BY REFERENCE

No documents are being incorporated by reference.

IMFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

ABC proposes to amend Section 106 (d) of Title 4, Article 16 of the California Code of Regulations (CCR). This section concerns alcoholic beverage lists.

The Department of Alcoholic Beverage Control proposes amending section 106(d) in response to a petition received from licensees requesting an increase in the monetary limit of alcoholic beverage lists from $25 to $50 to more accurately reflect modern-day business practices. This limit has not been increased in over 27 years. The $50 limit will be consistent with market trends and practices, and will allow manufacturers and wholesalers to continue to provide retailers with permissible items of a quality consistent with the original intent of this limited exception.

Existing law, known as the "tied-house" law, separates the alcoholic beverage industry into three component parts, or tiers, of manufacturer (including breweries, wineries and distilleries), wholesaler, and retailer (both on-sale and off-sale).

Tied-house refers to a practice in this country prior to Prohibition where a bar or public house, is tied to the products of a particular manufacturer, either because the manufacturer owns the house/bar, or the house is contractually obligated to carry only a particular manufacturer's products.

The original policy rationale for this body of law was to: (a) promote the state's interest in an orderly market; (b) prohibit the vertical integration and dominance by a single producer in the marketplace; (c) prohibit commercial bribery and protect the public from predatory marketing practices; and, (d) discourage and/or prevent the intemperate use of alcoholic beverages. For these reasons, other than exceptions granted by the Legislature, the holder of one type of license is not permitted to give free goods, rebates, premiums, services or anything of value to another licensee in connection with the sale of alcoholic beverages. Rule 106(d) relates to one of these exceptions (Business and Professions Section 25600).

ANTICIPATED BENEFITS OF THE PROPOSED ACTION

The specific benefits anticipated by this proposed change could be an increase in compliance with this prohibition therefore diminishing trade practice violations.

EVALUATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING STATE REGULATIONS:

The Department has evaluated whether the proposed regulations are inconsistent or incompatible with existing state regulations, and these are the only regulations concerning monetary limits of alcoholic beverage lists. Therefore, proposed amendment to this regulation is consistent and compatible with existing state regulations seeking to update outdated regulations with today's business practices.

IMPACT ON BUSINESS

It is not anticipated that the proposed amendments will have a significant statewide adverse impact affecting business, including the ability of California businesses to compete with businesses in other states.

IMPACT ON SMALL BUSINESS

The proposed amendments will not affect small businesses. The statute requires licensees to submit information to the Department and authorizes the Department to adopt regulations for implementation and enforcement. These proposed amendments just specify that copies of the labels must be "filed" with the Department and if a label for beer has not been filed and accepted by the Department, it may not be sold or shipped into California.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS
The Department concludes that it is (1) unlikely that the proposal will create or eliminate jobs within California, (2) will not create new businesses or eliminate existing businesses within California, and (3) will not affect the expansion of businesses currently doing business within California. As stated above, the specific benefits anticipated by this proposed change could be an increase in compliance with this prohibition therefore diminishing trade practice violations.

DISCLOSURES REGARDING THE PROPOSED ACTION

LOCAL MANDATE

These amendments do not impose a mandate on local agencies or school districts.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT THAT MUST BE REIMBURSED IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 17500-17630.

These amendments do not create costs to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 – 17630.

COST OR SAVINGS TO ANY STATE AGENCY
None

IMPACT ON PRIVATE PERSONS/BUSINESSES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

The proposed amendments will have no effect on housing costs.

COST OR SAVINGS TO ANY STATE AGENCY

The proposed amendments will not result in costs or savings to any State agency.

OTHER NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES

These proposed amendments will not result in other non-discretionary costs or savings to local agencies.

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

These proposed amendments will not result in costs or savings in federal funding to the state.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private

persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

ABC invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

ABC will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its Headquarters office located at 3927 Lennane Drive, Suite 100, Sacramento, California 95834. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons, and the Economic and Fiscal Impact Statement, Form STD. 399. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Department's contact person or viewed on the website.

CONTACT PERSONS

Copies may be obtained by accessing ABC's website at www.abc.ca.gov or by contacting:
Adriana Ruelas, Legislative Officer
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, California 95834
E-mail: adriana.ruelas@abc.ca.gov
Phone: (916) 928-6821
FAX: (916) 419-2599

In the event the contact person is unavailable, inquiries regarding the proposed regulatory action should be directed to the following back-up contact person:

Matthew D. Botting, General Counsel
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Sacramento, California 95834
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AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, ABC may adopt the proposed regulations substantially as described in this notice. If ABC makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 calendar days before ABC adopts the regulations as revised. Requests for copies of any modified regulation should be sent to the ABC's contact person identified above at the address indicated, or may be viewed on ABC's website. ABC will accept written comments on the modified regulations for 15 calendar days after the date on which they are made available.