

NOTICE OF PROPOSED RULEMAKING

“Advertising and Merchandising of Alcoholic Beverages”

The California Department of Alcoholic Beverage Control (“Department”) proposes to amend the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department proposes to amend Section 106 of Title 4, Article 16 of the California Code of Regulations, concerning the advertising and merchandising of alcoholic beverages.

PUBLIC HEARING AND COMMENT PERIOD

The Department has scheduled a public hearing as follows:

Date and Time: Tuesday, February 17, 2009; 9:00 A.M. – 3:00 P.M.
Location: Board of Equalization, 450 N Street, Room 121, Sacramento CA 95814
Purpose: To receive written and/or oral comments about this action

The written comment period will close Tuesday, February 17, 2009 at 5:00 p.m. Any person may submit written comments about the proposed amendments. To be considered by the Department, written comments should be directed to:

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AUTHORITY AND REFERENCE

Authority for the proposed amendments is provided by Business and Professions Code Sections 23001 and 25750, and California Constitution, Article XX, Section 22.

The proposed amendments implement, interpret, or make specific the following reference citations: Business and Professions Code Sections 25600 and 25611.3.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

(1) Business and Professions Code Section 25600 prohibits any licensee from giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as authorized by the ABC Act (Business and Professions Code Sections 23000, *et seq.*) or

by regulations of the Department. With respect to brand identified items given to consumers in connection with the sale or distribution of beer, existing regulation authorizes licensees to only give items that are of inconsequential value, which is defined as costing the licensee giving them away no more than \$0.25 (Section 25600 and Rule 106).

Business and Professions Code Section 25600 has been amended to require that as to beer manufacturers, no rule of the Department shall impose a limit other than \$3.00. The proposed amendment to the regulation will establish this new limit.

(2) Business and Professions Code Section 25611.1 presently authorizes exterior signs advertising alcoholic beverages only as permitted by the ABC Act (Business and Professions Code Sections 23000, *et seq.*) or regulations of the Department. Department regulation permits any wholesaler to sell or rent exterior signs to a licensed retailer at a price not less than current market price and no such sign is permitted to refer to the retailer's name or business.

Business and Professions Code Section 25611.3 has been added to authorize beer wholesalers to sell or rent exterior signs at no less than cost, as defined in Business and Professions Code Section 17026. The proposed amendment to the regulation will comport with the lower statutory limit.

LOCAL MANDATE

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

IMPACT ON PRIVATE PERSONS/BUSINESSES

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

IMPACT ON BUSINESS

It is anticipated that the proposed amendments will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Adoption of the proposed amendments will not create or eliminate jobs within California, will not create new businesses or eliminate existing businesses within California, and will not affect the expansion of businesses currently doing business within California.

IMPACT ON SMALL BUSINESSES

It is anticipated that the proposed amendments will not have a significant impact on small businesses. The proposed amendments simply insure that the regulation conforms to the statutory authority and affords licensed businesses to take advantage of the expanded limits provided by amendments to the ABC Act.

SIGNIFICANT EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed regulatory action would not affect housing costs.

COSTS OR SAVINGS TO ANY STATE AGENCY

None.

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

None.

OTHER NON-DISCRETIONARY COST OR SAVINGS
IMPOSED UPON LOCAL AGENCIES.

None.

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

None.

CONSIDERATION OF ALTERNATIVES

The Department has determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND
TEXT OF PROPOSED REGULATIONS

The Department's contact person identified above will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained from the Department's contact person identified above at the address stated, or by accessing the Department's website at www.abc.ca.gov. 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.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following receipt of public comment, the Department may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days prior to the date upon which the Department adopts the regulation. Requests for copies of any modified regulation should be sent to the Department's contact person identified above at the address indicated, or may be viewed on the Department's website. The Department will accept written comments on the modified regulation for 15 days after the date on which it is made available.