**TITLE 4. BUSINESS REGULATIONS**
**DIVISION 1. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**
**ARTICLE 16. Department of Alcoholic Beverage Control – Conflict of Interest Code**
**Section 106 (d). Alcoholic Beverage Lists**

## INITIAL STATEMENT OF REASONS

### SPECIFIC PURPOSE OF THE REGULATION (Amendment to Section 106(d)

The Department of Alcoholic Beverage Control proposes amending section 106(d) in response to a petition received from Wine and Spirits Wholesalers of California, Inc. requesting that ABC amend Rule 106(d) to raise the monetary limit of alcoholic beverage lists from $25 to $50 to more accurately reflect modern-day business practices. In agreement, the Department finds that the current limit is outdated and unrealistic, and thus fails to allow suppliers to provide the same quality of alcoholic beverage lists that they have been able to provide to retailers in the past.

Existing law (Business and Professions Code Section 25600) prohibits the giving of free goods, rebates, premiums, services and other things of value in connection with the sale of alcoholic beverages *except as provided by rules adopted by the department as authorized by the ABC Act.* In addition, Business and Professions Code section 25500 prohibits manufacturers and distributors of alcoholic beverages from giving anything of value (except as otherwise expressly authorized) to on-sale retail licensees.

### NECESSITY

Under Rule 106(d) a supplier of alcoholic beverages other than beer who is authorized by its license to sell its product to retailers may furnish to retailers authorized by their license to sell such alcoholic beverages other than beer, lists of alcoholic beverages other than beer sold and/or produced by the licensee and/or other suppliers, provided that the material for such lists and all components thereof shall not cost more than $25 per unit original cost to the supplier.

According to the petitioner, in many cases wholesalers have not been able to meet requests from restaurants for quality wine books of the same kind furnished as recently as five years ago due to the increase in prices for the materials needed for quality menus. Also according to the petitioner, wine and spirits beverage lists are an important tool in providing educational information to consumers about the products produced, distributed and sold by the wine and spirits industry and it is important to its members that they be able to continue to provide the same quality menus that have been furnished in past years. The petitioner also says that providing lower quality lists is detrimental to the image of the brands they have worked hard to develop.

The $25 limit has been in effect for 27 years. In proposing an increase by $25 the per unit limit on wine list furnished to retailers, the department does not believe the increase to be so

elaborate as to constitute a "thing of value" within the meaning of the tied house statutes provided by Business and Professions Code sections 25500 and 25600.

## TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

Petitioner has provided examples of the types of alcoholic beverage lists that have been provided in the past as authorized by the current limit, together with costs for such products currently. When the limit was last raised in 1986, it went from $0.20 to $25, so the present request is consistent with maintaining the value of permissible lists. On balance, to be able to provide equivalent quality items in accordance with the increased costs results in a reasonable increase in the permissible limit to $50.

## REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other reasonable alternatives were presented to or considered by ABC.

## REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

No other reasonable alternatives were presented to or considered by ABC.

## EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed amendment will not have a significant impact on businesses. Raising the limit will not require suppliers to provide $50 lists or menus to retailers; it will only allow them to do so.