

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

October 17, 2022

NOTICE OF PROPOSED RULEMAKING

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

PUBLIC HEARING

ABC has scheduled a public hearing on this proposed action. This public hearing will take place in person and via Zoom.

PUBLIC HEARING SCHEDULED**December 13, 2022****10:00 am to 2:00 pm**

IN PERSON: Dept of Alcoholic Beverage Control Headquarters
3927 Lennane Dr.
Sacramento, CA 95834 or
VIA ZOOM: link TBD

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 pm on Tuesday, December 13, 2022. ABC will consider only written comments received at ABC Headquarters by that time. Submit comments to:

Law and Policy Unit- Beer Price Posting
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Comments may also be submitted by email to RPU@abc.ca.gov, please include “Beer Price Posting” in the subject line of your email.

AUTHORITY AND REFERENCE

Authority: Sections 25000, 25006 and 25750, Business and Professions Code; Section 22, Article XX of the California Constitution.

Reference: Section 24208, 25000, 25001, 25002, 25003, 25004, 25753, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

Business and Professions code section 25000 requires beer manufacturers, importers, and wholesalers to file a schedule of beer prices with ABC for each county in which their customers have a premises.

Business and Professions code section 25006 allows for ABC to adopt rules to foster and encourage the orderly wholesale marketing and wholesale distribution of beer.

Summary of Effect

The proposed regulations seek to formally implement standards for promotional allowances, define beer price posting terminology, and modernize the method in which beer price schedules are posted. The regulatory package was created in response to a petition from the beer industry for guidance regarding promotional allowances. These proposed regulations will clarify the boundaries within which promotional price posting allowances can exist and create standard terminology for beer price schedules.

Comparable Federal Statute or Regulations

ABC has determined that this proposed regulation does not have a comparable federal statute or regulation.

Policy Statement Overview

The mission of ABC is to provide the highest level of service and public safety to the people of the State through licensing, education, and enforcement. This proposed regulation supports the commitment that ABC has to its licensees and communities by establishing policies that foster fair and equitable business practices while standardizing and modernizing the beer price posting process.

Benefits Anticipated

By establishing the policies and procedures for beer price posting and promotional pricing allowances, the anticipated benefit of this action will not only clarify commonly used terms but also ensure a fair and uniform process throughout California for beer price promotion programs.

Determination of Inconsistency/Incompatibility with Existing State Regulations

ABC has examined the relevant statutes and regulations that apply to beer price posting and beer price promotion practices in California. Through this examination, ABC has determined that this proposed regulatory action is not inconsistent or incompatible with existing state regulations.

Effect Upon Small Businesses in California

Promotional prices offered by manufacturers could benefit small businesses in California by making the market more competitive. Small businesses will have the option to pursue the same promotional allowances offered to larger wholesalers by manufacturers because promotional pricing must be offered statewide instead of targeting specific markets or specific favored customers. All wholesalers, large and small, as well as retailers would be able to enlarge their product base by utilizing manufacturers' promotional allowances and possibly passing those savings on to retail customers. Consumers would also benefit from this newly competitive market as more local retailers would be offering similar products at different price points. This would promote a level playing field with a diverse marketplace that has more product availability for consumers at the retail level.

Modernization of the beer price posting system is also beneficial to beer manufacturers, importers, and wholesalers that must post their pricing. The process will be more streamlined and reduce the need for beer price posting on paper via fax or email. This will be more efficient and provide some form of cost savings to ABC, the beer industry, and the public through the use of an easily searched and updated online system.

Although licensees are often small business owners, this proposed regulation will have negligible regulatory effect on them when acting within the law for price promotions. It only seeks to make clear and concise ABC's policy for the promotional allowances and modernize the beer price posting process.

Disclosures Regarding the Proposed Action

The ABC has made the following initial determinations:

1. Mandate on local agencies or school districts: None.
2. Costs or Savings to any state agency: None.

3. Cost to any local agency or school district that is required to be reimbursed by the state: None.
4. Other nondiscretionary cost or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Cost impacts on housing costs: None.

Determination of Statewide Adverse Economic Impact on Business

The ABC has made an initial determination that the adoption of this regulation will have negligible economic impact on businesses. There is no foreseeable impact on businesses based on the policy laid out in the proposed regulation.

Results of the Economic Impact Assessment:

ABC concludes that it is (1) unlikely that the proposal will eliminate any jobs, (2) that the proposal will not likely create any jobs, (3) that the proposal will not likely create any new businesses, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state. It is unlikely that the proposed legislation will impact worker safety.

ABC has determined that the proposed regulation has a no effect upon the current health and welfare of California residents.

ABC has determined this proposed regulation will have no effect upon the environment.

Description of All Economic Impacts That a Representative Private Person or Business Would Necessarily Incur in Reasonable Compliance with the Proposed Action

The ABC has made an initial determination that the adoption of this regulation will have negligible economic impact on private persons or businesses. There is no foreseeable impact on private persons or businesses based on the process laid out in the proposed regulation.

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

The Need to Require Report from Businesses

The proposed regulation clarifies how beer price posting must be completed as a requirement from certain ABC licensees. It streamlines and eases the statutory burden of beer price posting on beer manufacturers, importers, and wholesalers by mandating the process to be within an electronic and easily searchable system rather than through a paper filing system with ABC.

Consideration of Alternatives

ABC 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 and less burdensome to effected private persons than the proposed action, or would be more cost-effective to effected 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 regulation during the written comment period.

Agency Contact Person

Inquiries concerning the proposed regulatory action may be directed to the agency representative Robert de Ruyter, Assistant General Counsel, (916) 419-8958, (designated backup contact) Sarah Easter, Associate Governmental Program Analyst, Law and Policy Unit, (916) 823-1310 or via email at RPU@abc.ca.gov.

Availability of Documents

ABC prepared an Initial Statement of Reasons for the proposed action. Copies of the Initial Statement of Reasons, and the full text of the proposed regulations may be accessed on ABC's website listed below or may be obtained from the Law and Policy Unit, Department of Alcoholic Beverage Control, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834, on or after August 12, 2022.

ABC staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Change to the Proposed Full Text of the Regulation Action

If there is any change to the proposed full text of the regulation action in a substantial, or sufficiently related way, it will be made available for comment for at least 15 days prior to the date on which the department adopts the resulting regulation.

Final Statement of Reasons Availability

Upon its completion, the Final Statement of Reasons will be available, and copies may be requested, from the department contact persons in this notice or may be accessed on ABC's website listed below.

Internet Access

This notice, the Initial Statement of Reasons, and all subsequent regulatory documents, including the Final Statement of Reasons, when completed, are available on ABC's website for this rulemaking at <https://www.abc.ca.gov/law-and-policy/regulations-rulemaking/>