

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPTION OF RECORDED PUBLIC HEARING
ON
PROPOSED RULEMAKING ON
BEER PRICE POSTING
DECEMBER 13, 2022
SACRAMENTO, CALIFORNIA

Host: Matthew Botting, General Counsel,
California Department of Alcoholic Beverage
Control

Transcribed by: Shelley Kelber,
Foothill Transcription Company
December 29, 2022
Elk Grove, California

--o0o--

1 **Mr. Botting:** Good morning, everyone. Welcome to the
2 public hearing on proposed rulemaking.
3 We'll just give it a second to allow
4 everyone to connect. I think we have that
5 now. There's still one connecting to
6 audio, so let's just give it a second
7 here. All right. That's long enough.
8 I'm sure they'll tune in when they can if
9 they haven't already. Anyway, my name is
10 Matthew Botting. I'm General Counsel with
11 the Department of Alcoholic Beverage
12 Control, so I will be presiding over this
13 public hearing, which is scheduled for
14 this date, December 13, 2022. We are a
15 little bit behind schedule. It is
16 currently 10:04. This hearing is
17 scheduled to go until 2:00 p.m. today, and
18 the record will remain open during that
19 period of time. Just a few preliminary
20 matters. This, again, is proposed
21 rulemaking with respect to beer price
22 posting. All of the information
23 concerning the proposed rulemaking is on
24 the Department's website, and periodically
25 through the course of today, there will be

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

links posted in the chat for you to access the materials if you desire to do so. The purpose of today's hearing is to take public comment concerning the proposed rulemaking. The proceedings today are being recorded and a transcript will be prepared of all comments that will become part of the public record. This is not an interactive forum, so we will not be and are not able to answer questions as we go along. This is simply an opportunity for any interested party to make comment for the record. All comments will be addressed, and responses prepared by the Department, and there may also be, you know, the comments may also lead to amendments to the proposed regulation and so that will be determined following the public hearing. The public comment record in this matter is open until 5:00 p.m. today, December 13th, 2022, for submission of any written comments in addition to any oral comments made today on the record. If you have or intend to submit written comments, there is no need to repeat those

1 comments on the record today, and the
2 written comments will suffice. But if you
3 choose to do so, that is entirely up to
4 you, or if you wish to supplement them in
5 any respect, that is fine also. To ensure
6 that everyone has an equal opportunity for
7 participation, the way we will proceed in
8 terms of the comments today is, if you
9 wish to make a comment, please send via
10 the chat, you know, indicate your intent
11 to do so and request an opportunity to
12 Sarah Easter in the chat box and she will
13 then let me know so that I can recognize
14 you for comments. When you are on the
15 record making comments in this proceeding,
16 I will give you five minutes to do so. If
17 your comments exceed five minutes, that's
18 fine but you will have to renotice Sarah
19 that you would like an additional five
20 minutes. So, if we have multiple people
21 signing up for comments, that will allow
22 everyone an equal opportunity to make
23 their comment. I will cut you off at five
24 minutes and then you can again let Sarah
25 know that you wish to make additional

1 comments and you'll be called upon again
2 to continue or conclude your comments, so
3 you won't miss out on the opportunity.
4 Once again, if you do wish to submit
5 written comments in addition to or instead
6 of oral comments today, they must be
7 received by the Department by 5:00 p.m.
8 today to be considered and addressed in
9 the process. And all of the information
10 concerning that is in the notice that is
11 on the public website, and I see Sarah has
12 just also put in the chat box the email
13 address to which you may send comments.
14 So with that, we do have one person in
15 person in the Department's conference
16 room, so I will hand this over to that
17 individual for any public comments. So
18 Jacob Applesmith, if you can hear me and
19 you wish to go on the record to make
20 comments, please get in front of the
21 computer and you may do so.

22 **Mr. Applesmith:** Can you hear me now?

23 **Mr. Botting:** Yes. Thank you.

24 **Mr. Applesmith:** Okay. Thank you, Matthew. Thank you, Yong
25 (phonetic). We submitted a letter

1 yesterday by email. A coalition of
2 various industry members, and, Matthew, I
3 handed you a copy of that today. But just
4 briefly, we want to thank you for having a
5 public hearing and also thanks to the
6 Department for putting the price posting
7 system online, which was a monumental
8 undertaking as we all know. Very
9 complicated, something the Department
10 committed to doing as part of its fee
11 increases several years ago, and the
12 Department really delivered on that. So,
13 I just want to tell you the industry
14 appreciates that. For many decades the
15 industry has been posting price promotions
16 through the Department's paper submission,
17 which on the one hand is a transparent
18 process because it's public record.
19 Anybody can walk in and see what the price
20 promotions are, what the prices are, but
21 it's also a very cumbersome process
22 because you literally had to walk in and
23 look at pieces of paper to actually figure
24 out what people are doing. Whereas now,
25 any member of the public can go online and

1 see what prices are posted for beer.
2 Right now, the system does not permit
3 price promotions to be entered. That is
4 something we raised with the Department,
5 and we appreciate the fact that the
6 Department, as part of its price posting
7 regulations, which really key towards the
8 online system and clean up some other
9 issues that have been the subject of
10 possible rulemaking for many years, have
11 included that. The rule, as it's
12 articulated, is not clear that the price
13 promotions will be part of the online
14 posting and so some of the comments we
15 have made addresses that issue and the
16 importance to the industry and to the
17 public of actually posting the price
18 promotions themselves. We appreciate the
19 complexity of the rule. The Department
20 really has done a very good job of taking
21 something that is really sort of an
22 industry art, for lack of a better way to
23 put it, and translating it into something
24 that can actually be defined by rules.
25 We've made a number of comments and

1 proposed revisions. All of these are
2 consistent with the Department's power and
3 authority under the operative statutes
4 related to its regulatory powers and price
5 posting. And they're also -- the changes
6 we suggested are also consistent with what
7 the industry has done for many, many
8 decades without any substantial compliance
9 issues anywhere within the industry of
10 which we're aware of. Finally, I just
11 want to emphasize that price posting is
12 about fairness to everyone in the
13 industry. Transparency is important to
14 that, and the online system is the best
15 vehicle and needs to be modified
16 accordingly. And then finally, price
17 promotions in the end are about lowering
18 prices to consumers. So, thank you for
19 your time. Thank you for consideration of
20 our comments, which again really come from
21 a broad coalition of large beer
22 manufacturers, small beer manufacturers,
23 large wholesalers and small wholesalers.
24 So, thank you very much.

25 **Mr. Botting:** Thank you for your comment. Appreciate

1 you taking the time to come on down here
2 and I do acknowledge receipt of the
3 envelope you handed me this morning,
4 although I haven't looked in it, so I
5 assume it has what you say is actually in
6 it but thank you very much. We do have, I
7 believe, someone online to make a comment.
8 Sarah, if you could let me know who that
9 is.

10 **Ms. Easter:** Yep. Kirk Komoshu (phonetic), I just
11 unmuted him for you.

12 **Mr. Botting:** Okay. Thank you very much. Mr. Komoshu,
13 the floor is yours for comments.

14 **Mr. Komoshu:** Well, thank you very much, Matthew, and
15 thank you to you and Sarah, and your team,
16 for putting this together. I very much
17 appreciate the opportunity to speak very
18 briefly this morning to your point in the
19 opening. We are part of the larger
20 coalition that Mr. Applesmith referenced
21 in terms of our formal comments back to
22 the Department on the proposed rule. So
23 very much appreciate your willingness to
24 let us comment through this process and
25 address and outline a few potential

1 modifications that we hope the Department
2 will consider. We've outlined those in
3 the letter that you're in receipt of and
4 it sounds like in addition to the letter
5 that Mr. Applesmith handed you personally
6 this morning, so we'll look forward to
7 your review of those components. But I
8 think Jacob highlighted a number of the
9 main points, as does that comment letter,
10 so I will not reiterate those, but I will
11 align myself with those comments. And
12 then just probably further expand on
13 Jacob's point about the industry coming
14 together. I think we've spoken with a
15 very collective voice on this, about the
16 practices that the industry's been
17 undertaking, as he referenced, to our
18 knowledge without issue for many, many
19 years and want to continue in order to
20 allow for as transparent of a process as
21 is possible, as was indicated to us as
22 stakeholders, that was the purpose of
23 moving the electronic -- to the electronic
24 system, that is, for price posting. And
25 we think that's really to allow for as

1 much transparency as possible in the
2 promotions that are run, the prices that
3 are being posted for, and that's really
4 for consumers, retailers, wholesalers, and
5 other manufacturers alike. As Jacob
6 mentioned, I think the broad coalition of
7 smaller manufacturers, larger
8 manufacturers, wholesalers that are
9 partners of ours at Anheuser-Busch, and
10 wholesalers that operate in California
11 that are not partners of ours, in addition
12 to some other manufacturers here both
13 inside and outside of California coming
14 together to speak with you guys on these
15 thoughts about how we move forward with
16 this proposed rulemaking. And so, really
17 appreciate the time, look forward to your
18 feedback, and we'll look forward to any
19 revisions that may take place in our
20 belated comment on those. Thank you.

21 **Mr. Botting:** Thank you, Kirk. Appreciate your comments
22 and your participation in this proceeding.
23 We will certainly, you know, consider the
24 comments received and respond accordingly.
25 Sarah, do we have anyone else lined up

1 either in person or online currently?

2 **Ms. Easter:** We do not.

3 **Mr. Botting:** All right. As you can all imagine, this
4 can be a somewhat clunky process with the
5 public hearing since we are required to
6 keep the record open for a significant
7 period of time regardless of whether or
8 not anyone is actually waiting to speak.
9 So, you know, you certainly do not have to
10 stick around unless you want to. As I've
11 indicated previously, there will be a
12 transcript prepared of today's proceeding
13 that will become part of the public record
14 so it will be available to anyone who
15 wishes to review that. And since we do
16 not currently have anyone waiting, I am
17 going to just turn the recording off and
18 stop my video, so you don't have to look
19 at me all day. And if anyone does come in
20 and wish to speak, make a comment, again,
21 please notify Sarah Easter through the
22 chat function, and we will open the record
23 back up again and recommence with
24 recording. So until then, stand by.
25 Thank you.

1 **(General Counsel on mute awaiting public comments.)**

2 **Mr. Botting:** Just wanted to jump back on and note that
3 we still have a number of people on the
4 line reviewing this, so just a reminder
5 that if you do wish to make a comment
6 today, please message Sarah Easter to let
7 her know you wish to do so.
8 Alternatively, you can submit written
9 comments until 5:00 p.m. today. And,
10 again, for record, this is concerning the
11 proposed beer price posting regulation.
12 And if you do wish to review the
13 rulemaking materials, those are available
14 on the Department's website. Shelby, if
15 you could just post the links again so
16 that -- there we go, so if you do wish to
17 access those, please feel free to do so.
18 Unless anyone wishes to make comment at
19 this point, I will again pause the
20 recording and mute my audio and video.
21 And we will check back in every 15 or 20
22 minutes or so just to remind everyone
23 what's going on. All right, thanks very
24 much.

25 **(General Counsel on mute awaiting public comments.)**

1 **Mr. Botting:** I believe we've had a few additional
2 people join us online, so I just wanted to
3 pop back in and state once again for the
4 record that this is the public hearing for
5 the proposed rulemaking for the price
6 posting regulation that is pending with
7 the Department currently. In addition to
8 the oral hearing today, comments may also
9 be submitted in writing to the Department
10 by 5:00 p.m. today, at which point the
11 comment period will close. All comments,
12 whether received today during this hearing
13 or in writing, will be considered by the
14 Department and responded to in the course
15 of the rulemaking process and will be part
16 of the official record. In addition,
17 comments may lead to proposed amendments
18 to the regulation that will then be
19 available for additional public comment at
20 that time if that occurs. If you do wish
21 to weigh in today during this hearing, be
22 advised that it is being recorded and a
23 transcript will be prepared, which will
24 also be part of the public record. But if
25 you wish to make a comment, please in the

1 chat function let Sarah Easter know you
2 wish to go on the record, and we will open
3 the record to you. Comments will be
4 limited to five minutes just to give
5 everyone an opportunity, a fair
6 opportunity, but if you wish to make
7 additional comments, you may sign up again
8 for a second or subsequent five-minute
9 comment period. So, if anyone wishes to
10 go on the record at this point, please let
11 Ms. Easter know and we will open the
12 record; otherwise I will pause the
13 recording once again and we will sit and
14 wait to see what happens next. As I
15 mentioned previously to those who were on
16 this Zoom and for new folks, this public
17 hearing will remain open until 2:00 p.m.
18 this afternoon. We're required to offer
19 that lengthy period of time even though no
20 one seems to be wanting to make a public
21 comment at this point. But the record
22 will remain open until 2:00 p.m. this
23 afternoon so you can make your comments at
24 any time up until then. And, again, if
25 you do submit written comments, you do not

1 need to repeat them verbally during this
2 hearing. They will be considered. But if
3 you do wish to supplement them or
4 emphasize any points, please feel free to
5 do so. All right. Not seeing anyone
6 wishing to raise their hand and comment,
7 I'm going to pause the recording and mute
8 my audio and video once again.

9 **(General Counsel on mute awaiting public comments.)**

10 **Mr. Botting:** Just checking back in to see if anyone
11 wishes to submit public comments during
12 this hearing today. Just for the record,
13 once again, for anyone new who may have
14 joined, this is the public hearing on the
15 pending proposed regulation for beer price
16 posting. And this is your opportunity to
17 submit any comments to the Department for
18 consideration in connection with that
19 rulemaking. In addition to submitting
20 oral comments here today, you can submit
21 written comments to the Department and
22 submit those via email until 5:00 p.m.
23 today, at which point the public comment
24 period will close. All comments received
25 by then will be considered by the

1 Department in the rulemaking and will be
2 addressed in public responses that will
3 become part of the record. This hearing
4 today is being recorded, so any comments
5 made will be -- a transcript will be
6 prepared and will become part of the
7 public record. If you do wish to make
8 oral comments today, please send Sarah
9 Easter a note in the chat function to let
10 her know you wish to go on the record and
11 you will be recognized. This hearing will
12 remain open until 2:00 p.m. this
13 afternoon, so you have plenty of time to
14 decide if you want to go on the record.
15 Seeing no one wishing to do so at this
16 point, I will once again pause the
17 recording and mute myself and we'll check
18 back in in another 15 or 20 minutes.
19 Thank you.

20 **(General Counsel on mute awaiting public comments.)**

21 **Mr. Botting:** It is 11:32 a.m. on December 13th, 2022.
22 We're back on the record in the beer price
23 posting rulemaking hearing. Once again,
24 for those of you who are tuned in, I am
25 going to be checking back every 15, 20

1 minutes or so to reopen the record in the
2 event that there are any public comments
3 to be made. Again, this is the public
4 hearing on been price posting proposed
5 regulation that is currently pending
6 before the Department. The rulemaking
7 record will remain open until 5:00 p.m.
8 this evening for the submission of written
9 arguments. This hearing will remain open
10 until 2:00 p.m. today to take any oral
11 submissions. There is no requirement to
12 make oral submissions if you are also
13 submitting written comments. But if you
14 wish to do so, please feel free to weigh
15 in. We do welcome and encourage public
16 participation. But if you do wish to be
17 heard in this matter, please send a chat
18 to Sarah Easter and she will let me know
19 so that I can then recognize you. This
20 hearing is being recorded and a transcript
21 will be prepared and that will be made
22 part of the public record. All comments
23 received today will be addressed in the
24 course of the rulemaking, as will all
25 written comments received by 5:00 p.m.

1 today. So if you, again, if you do wish
2 to make a public comment for consideration
3 by the Department as this matter proceeds,
4 please let Sarah Easter know in the chat
5 function and you will be recognized. So
6 just keep this going for just a moment
7 longer to give you an opportunity to do
8 so. And the information regarding where
9 to obtain the rulemaking file is available
10 in the chat function as a link to the
11 Department's website where all of the
12 information is maintained, so feel free to
13 review that. Seeing no one wishing to
14 make a comment at this point, I am going
15 to pause the recording once again and will
16 check back in 15 or 20 minutes or so. So
17 see you then.

18 **(General Counsel on mute awaiting public comments.)**

19 **Mr. Botting:** All right. It is 12:01. It's back on the
20 record in the beer price posting public
21 hearing. I don't believe anyone new has
22 checked into the hearing, so rather than
23 repeating myself in my entirety, we'll
24 just open it up. If anyone wishes to make
25 a public comment on the record, please let

1 Sarah Easter know. We'll just keep things
2 open for a moment to allow you the
3 opportunity to do so. I'm impressed with
4 everyone's staying power, that you have
5 managed to stick with this and see if you
6 can last for another two hours. I'm not
7 seeing anyone wishing to make a public
8 comment. I am once again going to pause
9 the recording and going dark for another
10 -- well, let's just go until 12:30 and
11 I'll tune back in to see if anyone else
12 has come on the record. All right.
13 Thanks very much.

14 **(General Counsel on mute awaiting public comments.)**

15 **Mr. Botting:** It is 12:30. Back on the record in the
16 beer price posting rulemaking public
17 hearing. We do not have any new people
18 who have joined the hearing, you know,
19 according to the two of you who have
20 managed to last this long, other than
21 Department representatives, the hearing --
22 we are required to keep it open until 2:00
23 p.m. in case anyone does tune in to make a
24 public comment. However, given that there
25 is no one new, I'm not going to go through

1 my usual comments. Just that if anyone
2 does want to make a comment, please let
3 Sarah Easter know; otherwise I'm going to
4 pause the recording once again and mute
5 myself and will reconvene at 1 o'clock.
6 Thank you.

7 **(General Counsel on mute awaiting public comments.)**

8 **Mr. Botting:** All right. It is 1:00. Back on the
9 record with the beer price posting public
10 hearing. I see no one new has entered the
11 hearing so, again, congratulations to
12 those of you who have lasted this long.
13 The hearing will be open for another hour
14 to receive public comments on the pending
15 beer price posting rulemaking. Again, I
16 won't repeat myself since you've already
17 heard it several times, but if you do wish
18 to make a comment, please let Sarah Easter
19 know via the chat. And I am going to,
20 once again, pause the recording in this
21 matter. We'll come back on at 1:30 to see
22 where we're at. In the meantime if you do
23 wish to make a comment, let Sarah know and
24 we can reopen the record as quickly as
25 possible. All right. Thanks very much.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Check back with you soon.

(General Counsel on mute awaiting public comments.)

Mr. Botting: It's 1:12. Just going back on the record, as we do appear to have someone new who has checked into the hearing. This is the public hearing for the pending beer price posting regulation. If you wish to make a public comment, please let Sarah Easter know in the chat box. This is an opportunity to make a public comment on the pending regulation, which is available on the Department's website. The record of this hearing will remain open until 2:00 p.m. today. Alternatively, you can submit written comments until 5:00 p.m. today and submit those to the Department. And a transcript of this hearing will be prepared and made part of the public record. So, once again, if you do wish to make a comment on the record today, please let Sarah Easter know and we can recognize you. All right. Seeing no one jump up, I am going to go off the record again and pause the recording, and we will reopen it in another half hour at 2:45 and, I'm

1 sorry, at 1:45, and at that point we'll
2 keep the record open until it formally
3 closes at 2:00 p.m. So I'm going to mute
4 myself once again and pause the recording.

5 **(General Counsel on mute awaiting public comments.)**

6 **Mr. Botting:** It is currently 1:47 p.m. on December 13th,
7 2022. Just reopening the record in the
8 public hearing for the pending beer price
9 posting rulemaking. This public hearing
10 is scheduled to go until 2:00 p.m., so at
11 this juncture, I'm just going to stay
12 online and leave the record open. If
13 anyone wishes to make a comment, please
14 notify Sarah Easter in the chat and we can
15 recognize you. I think we are just down
16 to one non-ABC person on the hearing at
17 this time, so it's up to you if you want
18 to make a public comment. I will keep the
19 recording going, but I'm just going to
20 mute myself at this point. But if you do
21 wish to make a public comment, please
22 notify us. Thank you.

23 **(General Counsel on mute awaiting public comments.)**

24 **Mr. Botting:** All right. It's 1:55, so with five
25 minutes to go in this rulemaking hearing,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

we'll just keep the lines open, so to speak, in case anyone indicates their desire to make a public comment.

(General Counsel on mute awaiting public comments.)

Mr. Botting: It is now 2:00 p.m. The record is officially closed on this public rulemaking. I did receive an offline request to tell a joke. Unfortunately, the record is closed so it's too late, so no jokes today. So, thank you for those of you who participated who are still around. It's an important part of the process, and we do appreciate all of the comments received. So, the record is now officially closed in the beer price posting public comment period. Thank you very much. (Recording Ends)

--o0o--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIBER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

This is to certify that I transcribed the foregoing pages 1 to 24 to the best of my ability from an audio recording provided to me by the Department of Alcoholic Beverage Control.

I have subscribed this certificate at Elk Grove, California, this 1st day of January, 2023.


Shelley Kelber
Foothill Transcription Company

--o0o--