

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF AUGUST 30, 2016
REFERRED FROM: WHOLESALE BUREAU

2016-01965

REASON FOR REFERRAL
REQUEST FOR DIRECTION

NOTICE OF ADOPTION –
CONSENSUS RULE

(PROPOSED RULE)

The Members of the Authority at their regular meeting held at the Zone I New York City office on AUGUST 30, 2016 determined:

For Department of State use only.

Notice of Adoption

Liquor Authority, State
(SUBMITTING AGENCY)

- This adoption will amend the NYCRR.
 This adoption will not amend the NYCRR.

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice. change in text

1. Action taken:

Amendment of Parts 65.4, 65.5, 65.11 and 97.1 as well as repeal of Parts 90.1 and 90.2.

"X" box if the rule was originally proposed as a consensus rule making.

2. Effective date of rule:

Date this notice is published in the *State Register*.

This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:

Date of filing.

Other date (*specify*): _____

Other date (*specify*): _____

___ days after filing.

3. Statutory authority under which the rule was adopted:

SAPA Sec. 201, ABCL Sec. 55-a(1), ABCL Sec. 101(1)(c), ABCL Sec. 101-b(4), and ABCL Sec. 109(1).

4. Subject of the rule:

Updated price posting rules, license durations, recordkeeping requirements, and rescinding of whiskey dividend rules.

5. Purpose of the rule:

To update price posting rules, license durations, recordkeeping requirements, and rescinding of whiskey dividend rules.

6. *Terms and identification of rule :*

A. I.D. No. of original notice of **proposed or emergency/proposed** rule making: LQR-17-16-00002 - P

B. Comparison of the proposed rule to the adopted rule (CHECK ALL THAT APPLY):

No changes were made to the proposed rule.

• Do NOT attach the text of the previously published rule. If the last previously published RIS, RFA, RAFA or JIS remain adequate and do not require correction, SKIP ITEMS 9-12 and do NOT attach any such statements. If any of the most recently published statements were deemed inadequate or required correction, complete Item 9, 10, 11, or 12 as applicable, do NOT attach previously published statements. Be sure to complete C, if applicable, as well as remaining Items 7-8 and 13-14.

Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:

• Attach the original of the text as adopted (if proposed as full text, submit full text; if proposed as a summary, submit a summary) typed in scannable format. Do not skip Items 9-12; revised statements or explanatory statements are required.

Text attached.

Summary attached.

This is a "rate making" as defined in SAPA §102(2)(a)(ii) and, pursuant to SAPA §202(7)(b), the agency elected to submit an original copy of a description of the substance. Substantial revisions were made in the following Parts, sections, subdivisions or paragraphs:

C. List the publication date and I.D. No. of any previously published notice(s) of revised rule making:

Publication date: _____, I.D. No. _____

Publication date: _____, I.D. No. _____

7. *The text of the final rule and any required statements and analyses may be obtained from:*

Agency contact Paul Karamanol, Senior Attorney

Agency name State Liquor Authority

Office address 80 South Swan Street, Suite 900

Albany, NY 12210

Telephone (518) 474-3114

E-mail: paul.karamanol@sla.ny.gov

8. *Additional matter required by statute:*

Yes (include below material required by statute).

No additional material required by statute.

9. **Revised Regulatory Impact Statement (RIS)**

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RIS contains:

The full text of the Revised RIS.

A summary of the Revised RIS.

B. A statement is attached explaining why a revised RIS is not required (check one box):

Changes made to the last published rule do not necessitate revision to the previously published RIS.

This is a technical amendment exempt from SAPA §202-a.

- C. A revised RIS is not attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).
 A revised RIS is not attached because this rule was proposed as a consensus rule as defined in SAPA

10. Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised RFA contains:
 The full text of the Revised RFA.
 A summary of the Revised RFA.
- B. A statement is attached explaining why a revised RFA is not required (check one box):
 Changes made to the last published rule do not necessitate revision to the previously published RFA.
 The changes will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.
- C. A revised RFA is not attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).
 A revised RFA is not attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

11. Revised Rural Area Flexibility Analysis (RAFA)

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised RAFA contains:
 The full text of the Revised RAFA.
 A summary of the Revised RAFA.
- B. A statement is attached explaining why a revised RAFA is not required (check one box):
 Changes made to the last published rule do not necessitate revision to the previously published RAFA.
 The changes will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.
- C. A revised RAFA is not attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).
 A revised RAFA is not attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

12. Revised Job Impact Statement (JIS)

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised JIS contains:
 The full text of the Revised JIS.
 A summary of the Revised JIS.
- B. A statement is attached explaining why a revised JIS is not required (check one box):
 Changes made to the last published rule do not necessitate revision to the previously published JIS.
 The changes will not impose a substantial impact on jobs and employment opportunities. The attached statement sets forth this agency's findings that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.
- C. A revised JIS is not attached because:
 This rule is a "rate making" as defined in SAPA §102(2)(a)(ii).
 This rule was proposed by the State Comptroller or Attorney General.

13. Assessment of Public Comment (includes legislative comments) (check applicable box):

A. 45-day minimum comment period is complete (Full text was submitted with proposal or summary of text was submitted with the proposal and the full text was posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making])

60-day minimum comment period is complete (Summary of text was submitted with the proposal and the full text was not posted on a State web site or the rule is **not** a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making])

B. (COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

Attached is an assessment of public comment.

No particular form is required, and it need **only** include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.

An assessment is not attached because no comments were received.

An assessment is not required because this action is for a "rate making" as defined in SAPA §102(2) (a)(ii).

14. Referenced material (check one box):

No information is being incorporated by reference in this rule.

This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

15. Initial Review of Rule (SAPA §207)**(SELECT AND COMPLETE ONE)**

A. As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year which is no later than the 3rd year after the year in which this rule is being adopted.

B. As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period;
or

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

C. As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year which is no later than the 5th year after the year in which this rule is being adopted.

D. Not Applicable. This rule is a "rate making" or a "consensus rule," or the agency is not required to review existing rules.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Paul Karamanol, Senior Attorney

Signature

Address 80 South Swan Street, Suite 900, Albany, NY 12210

Telephone (518) 474-3114

E-mail paul.karamanol@sla.ny.gov

Date 07/20/2016

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.
2. Rule making notices with any necessary attachments should be e-filed via the Department of State website.

Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), is hereby amended to include amendments to parts 65.4, 65.5, 65.11, and 97.1, as well as the repeal of parts 90.1 and 90.2.

§ 65.4 Prices to retailers (Alcoholic Beverage Control Law, § 101-b)

(a) The price to retailers, except retailers operating railroad cars, shall include federal customs duties, internal revenue taxes, State taxes and fees and cost of delivery to the retailer. The price to retailers operating railroad cars may be scheduled at a price "ex State taxes and fees", but shall include all of the other taxes and costs computed in prices to other retailers. No charge shall be made in addition thereto, except where a wholesaler lists in his schedule those counties in which no charge for delivery will be made, in all other counties the actual cost of delivery shall be charged to the retailer in addition to the price set forth in the schedule and shall be so indicated on the invoice.

(b) A delivery charge may be made for certain brands and not for other brands, provided it is so indicated on the schedule of prices to retailers.

(c) All sales to airline company retail licensees shall be at price schedule prices, except "in bond" sales to aircraft companies holding permits under section 99-b.

(d) The bottle or case price of an item of liquor listed in a schedule of liquor prices to retailers shall not be changed from the price theretofore listed in the prior schedule of liquor prices to retailers except insofar as such change may be required or permitted pursuant to the provisions of 3(b) of section 101-b (Alcoholic Beverage Control Law), or after prior permission of the Authority for good cause shown and for reasons not inconsistent with the purpose of section 101-b.

(e) For each item of liquor listed in the schedule of liquor prices to retailers there shall be posted a bottle and a case price. ~~[The bottle price multiplied by number of containers in the case must exceed the case price by approximately \$1.92 for any case of 48 or fewer containers. The figure is to be reached by adding \$1.92 to the case price, dividing by the number of containers in the case, and rounding to the nearest cent. Where more than 48 containers are packed in a case, bottle price shall be computed by dividing the case price by the number of containers in the case, rounding to the nearest cent, and adding one cent. Variations will not be permitted without approval of the authority.]~~

§ 65.5 Prices to wholesalers

(a) The prices of liquor to wholesalers must be scheduled by the following methods for designated points of shipment. If the brand owner or brand agent ships from more than one point-of-shipment to any wholesaler anywhere in any State of the United States or in the District of Columbia, or to any state (or state agency) then the points-of-shipment most economical to the New York wholesaler must be scheduled.

(1) F.O.B. United States of America point-of-shipment designated which shall include Federal customs duties, internal revenue taxes, New York State excise taxes and all charges up to the point-of-shipment designated.

(2) F.O.B. United States of America point-of-shipment designated which shall include all Federal customs duties, internal revenue taxes and all charges up to the point-of-shipment designated if sales to any wholesaler in any other state, or to any state (or state agency) are made on this basis.

(3) In bond f.o.b. United States of America point-of-shipment designated if sales to any wholesaler in any other state, or to any state (or state agency) are made on this basis.

(4) In bond f.o.b. foreign point-of-shipment designated (direct import) if sales to any wholesaler in any other state, or to any state (or state agency) are made on this basis.

(5) F.O.B. foreign point-of-shipment designated which shall include all Federal customs duties, internal revenue taxes and all charges up to the point-of-shipment designated if sales to any wholesaler in any other State, or to any state (or state agency) are made on this basis.

~~[(b)]~~ Liquor prices to wholesalers may not be scheduled by any other method unless it is first established to the satisfaction of the Authority that the bottle and case prices under the alternate method are not higher than the lowest prices at which the brand will be sold to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state (or state agency).

~~[(e)]~~ (b) Where any schedule of liquor prices to wholesalers reflects a reduction or increase in the bottle or case price filed pursuant to subdivision (a)(1) of this section for any item set forth therein from the bottle or case price of such item theretofore in effect, then the schedules of liquor prices to retailers shall reflect, in the event of a decrease at least a like reduction in per centum in the bottle and case price of such item set forth therein, and in the event of an increase, not more than a like increase in per centum in the bottle and case price of such item set forth therein.

~~[(d)]~~ (c) The prices of wine to wholesalers may be scheduled by the following methods:

(1) F.O.B. United States of America point-of-shipment designated which shall include all Federal customs duties, internal revenue taxes, New York State excise taxes and all charges up to the point-of-shipment designated.

(2) F.O.B. United States of America point-of-shipment designated which shall include all federal customs duties, internal revenue taxes and all charges up to the point-of-shipment designated.

(3) In bond f.o.b. United States of America point-of-shipment designated.

(4) In bond f.o.b. foreign point-of-shipment designated (direct import).

(5) F.O.B. foreign point-of-shipment which shall include all federal customs duties, internal revenue taxes and all charges up to the point-of-shipment designated.

(6) A price which shall include federal customs duties, internal revenue taxes, State excise taxes and cost of delivery to the wholesaler. No charge shall be made in addition thereto except where the manufacturer or wholesaler lists in his schedule of wine prices to wholesalers the counties in which no charge for delivery will be made, in which event the actual cost of delivery in all other counties shall be charged to the wholesalers in addition to the price set forth on the schedule.

(7) A price which shall conform to the same terms and conditions set forth in method number (6) above except exclusive of federal customs duties, internal revenue taxes and State excise taxes.

(8) A price which shall conform to the same terms and conditions set forth in method number (6) above except exclusive of State excise taxes.

~~{(e)}~~ (d) Wine prices to wholesalers may not be scheduled by any other method except with the approval of the Authority first obtained.

§ 65.11 Breakage

(a) As part of its regular books and records, each manufacturer and wholesaler licensed to sell liquor or wine shall keep a monthly record of all allowances for breakage containing the name, address and license number of

the customer, the amount of breakage allowance, the date and number of the invoice of sale~~], and the Federal strip stamp numbers of each broken bottle for which allowance is given].~~

(b) No allowances for breakage shall be given unless the broken bottle is returned to the seller ~~[and where the container is required to have a Federal strip stamp affixed thereto, such stamp must be intact at the time of return].~~ Such broken bottles shall be kept available for inspection by representatives of the Liquor Authority, and may not be removed from the licensed premises or destroyed without permission from the Liquor Authority for a period of at least thirty (30) days.

§ 97.1 (Duration of permits)

The duration of the following retail beer licenses, effective on and after July 1, 1976, shall be as follows:

(a) Single grocery store beer licenses located in the following counties shall be effective for one year commencing July 1, 1976 and shall expire on June 30, 1977. Thereafter, the term of such licenses shall be three years commencing July 1, 1977 and ending June 30, 1980, and every three years thereafter.

ZONE I	ZONE II	ZONE III
New York	Albany	Alleghany
Kings	Greene	Cattaraugus
	Chenango	Chautauqua
	Delaware	Chemung
	Otsego	Schuyler

Schoharie

Steuben

Clinton

Tompkins

Essex

Tioga

Franklin

Ontario

Columbia

Seneca

Rensselaer

Yates

Washington

Broome

Cayuga

(b) Single grocery store beer licenses located in the following counties shall be effective for two years commencing July 1, 1976 and shall expire on June 30, 1978. Thereafter, the term of such licenses shall be three years commencing July 1, 1978 and ending June 30, 1981, and every three years thereafter.

ZONE I

ZONE II

ZONE III

Bronx

Cortland

Erie

Queens

Onondaga

Wyoming

Richmond

Dutchess

Fulton

Hamilton

Montgomery

Herkimer

Madison

Oneida

Jefferson

Lewis

Oswego

(c) Single grocery store beer licenses located in the following counties shall have a duration of three years, the first such period to commence July 1, 1976 and end on June 30, 1979.

ZONE I	ZONE II	ZONE III
Nassau	St. Lawrence	Genesee
Suffolk	Saratoga	Niagara
Westchester	Schenectady	Orleans
Orange	Warren	Livingston
Putnam	Sullivan	Monroe
Rockland	Ulster	Wayne

(d) All multiple grocery store beer licenses throughout the State shall have a duration of three years, the first such period to commence July 1, 1976 and end on June 30, 1979.

(e) All single and multiple drug store beer licenses throughout the State shall have a duration of three years, the first such period to commence July 1, 1976 and end on June 30, 1979.

(f) The following retail beer licenses, authorized by sections 53-a and 55 of the Alcoholic Beverage Control Law, shall continue to have a duration of one year commencing July 1 and ending June 30:

Eating place

Club

Vendor

Additional bar

Vessel

Fishing vessel

Hotel

~~(g) and~~ All ball park retail beer licenses, authorized by section 55-a of the Alcoholic Beverage Control Law, shall ~~continue to~~ have a duration of ~~one~~ three years ~~commencing April 1 and ending March 31~~.