

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF JANUARY 27, 2015
REFERRED FROM: COUNSEL'S OFFICE

2015-00175C (OVER)
2015-00266K

REASON FOR REFERRAL
REQUEST FOR DIRECTON

SIGNAGE AND ADVERTISING

(PROPOSED RULE)

The Members of the Authority at their regular meeting held at the Zone I New York City office on JANUARY 27, 2015 determined:

Item carried over to 2/10/2015

The Members of the Authority at their regular meeting held at the Zone I New York City office on FEBRUARY 10, 2015 determined:

Notice of Proposed Rule Making

Liquor Authority State
 Section 119.1 (a)(1)(i)

- Approval has been granted by Executive Chamber to propose this rule making.
 This rule making does not require Executive Chamber approval.

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.

1	A	Proposed action			
		Amendment of	Part 83.3	Title 9	NYCRR
		Amendment of	Part 86.2	Title 9	NYCRR
		Amendment of	Part 86.3	Title 9	NYCRR
		Amendment of	Part 86.4	Title 9	NYCRR
		Amendment of	Part 86.5	Title 9	NYCRR
		Amendment of	Part 86.6	Title 9	NYCRR

- B. This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
- C. This rule was previously proposed as a consensus rule making under ID No. _____ Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
- D. This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).

2. *Statutory authority under which the rule is proposed.*
 SAPA Sec. 201, ABCL Sec. 101(1)(c), ABCL Sec. 105(7)

3. *Subject of the rule:*
 Signage, Services and Gifts to Retailers

4. *Purpose of the rule:*
 To enact business friendly amendments; eliminate interior sign restrictions; and increase annual dollar limits for advertising.

5. *Public hearings (check box and complete as applicable)*
- A public hearing is not scheduled (SKIP TO ITEM 8)
- A public hearing is required by law and is scheduled below (Note: first hearing date must be at least 45 days after publication of this notice unless a different time is specified in statute.)
- A public hearing is not required by law, but is scheduled below

<i>Time</i>	<i>Date</i>	<i>Location</i>
10:00 am	03/10/2015	317 Lenox Avenue, New York

6. *Interpreter services* (check only if a public hearing is scheduled)

Interpreter services will be made available to hearing impaired persons at no charge upon written request to the agency contact designated in this notice

7. *Accessibility* (check appropriate box only if a public hearing is scheduled)

All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment

Attached is a list of public hearing locations that are not reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites

8. *Terms of rule* (SELECT ONE SECTION)

A The full text of the rule is attached because it does not exceed 2,000 words

B A summary of the rule is attached because the full text of the rule exceeds 2,000 words

Full text is posted at the following State website

Full text is not posted on a State website

Full text is not posted on a State website; this is a consensus rule or a rule defined in SAPA § 102(2)(a)(ii)

C Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making]

9. *The text of the 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

10. *Submit data, views or arguments to* (complete only if different than previously named agency contact)

Agency contact

Agency name

Office address

Telephone

E-mail

11. *Public comment will be received until*

- 45 days after publication of this notice (MINIMUM public comment period when full text is attached because it does not exceed 2000 words or full text of rule has been posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102(2)(a)(i) (Rate Making))
- 60 days after publication of this notice (MINIMUM public comment period when full text is not attached or full text is 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))
- 5 days after the last scheduled public hearing required by statute (MINIMUM with required hearing) This box may not be checked and the minimum 60-day comment period applies if full text is not attached or text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102(2)(a)(iii) (Rate Making))
- Other (specify)

12. A prior emergency rule making for this action was previously published in the issue of the *Register*. I D: No13. *Expiration date* (check only if applicable)

- This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102(2)(a)(ii)

14. *Additional matter required by statute*

- Yes (include below material required by statute)

No additional material required by statute

15. *Regulatory Agenda* (See SAPA §202-d(1)):

- This rule was a Regulatory Agenda item for this agency in the following issue of the *State Register*
- This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the *Register*
- Not applicable

16. **Review of Existing Rules** (ALL ATTACHMENTS MUST BE 2 000 WORDS OR LESS)

This rule is proposed pursuant to SAPA §207 (item 1D applies) (check applicable boxes)

- Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a discussion of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule
- Attached is an assessment of public comments received by the agency in response to its publication of a list of rules to be reviewed
- An assessment of public comments is not attached because no comments were received
- Not applicable

17 Regulatory Impact Statement (RIS)

(SELECT AND COMPLETE ONE. ALL ATTACHMENTS MUST BE 2 000 WORDS OR LESS EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES (Needs and Benefits))

- A. The attached RIS contains
- The full text of the RIS
 - A summary of the RIS.
 - A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year
- B. A RIS is **not attached**, because this rule is
- subject to a consolidated RIS printed in the *Register* under I.D. No. issue date
 - exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]
 - exempt, as defined in SAPA §102(11) [Consensus Rule Making]
- C. A **statement is attached** claiming exemption pursuant to SAPA § 202-a (technical amendment)

18 Regulatory Flexibility Analysis (RFA) for small businesses and local governments

(SELECT AND COMPLETE ONE. ALL ATTACHMENTS MUST BE 2 000 WORDS OR LESS)

- A. The attached RFA contains
- The full text of the RFA
 - A summary of the RFA
 - A consolidated RFA, because this rule is one of a series of closely related rules
- B. A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements
- C. A RFA is **not attached**, because this rule
- is subject to a consolidated RFA printed in the *Register* under I.D. No. issue date
 - is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]
 - is exempt, as defined in SAPA §102(11) [Consensus Rule Making]

19 Rural Area Flexibility Analysis (RAFA)

(SELECT AND COMPLETE ONE. ALL ATTACHMENTS MUST BE 2 000 WORDS OR LESS)

- A. The attached RAFA contains
- The full text of the RAFA
 - A summary of the RAFA
 - A consolidated RAFA, because this rule is one of a series of closely related rules
- B. A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements
- C. A RAFA is **not attached**, because this rule
- is subject to a consolidated RAFA printed in the *Register* under I.D. No. issue date
 - is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]

is exempt, as defined in SAPA §102(11) [Consensus Rule Making]

20 Job Impact Statement (JIS)

(SELECT AND COMPLETE ONE ALL ATTACHMENTS MUST BE 2 000 WORDS OR LESS)

A The attached JIS contains:

The full text of the JIS

A summary of the JIS

A consolidated JIS, because this rule is one of a series of closely related rules

B A statement is attached explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and explains the agency's finding 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.

A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached

C A JIS is not attached, because this rule

is subject to a consolidated JIS printed in the *Register* under I.D. No. _____ issue date: _____

is exempt, as defined in SAPA §102(2)(a)(i) [Rate Making];

is proposed by the State Comptroller or Attorney General

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 Karamano

Signature

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

Telephone: (518) 474 3114

E-Mail: paul.karamano@state.ny.gov

Date: 11/10/2014

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.

(h) All of the dollar limitations contained in sections 86.3 through 86.6 will be adjusted annually by a cost adjustment factor, equal to the percentage change in the Bureau of Labor Statistics, Consumer Price Index. By using the cost adjustment factor, it is intended that the dollar limitations will remain identical to the dollar limitations established and adjusted annually by the Director, Federal Bureau of Alcohol, Tobacco & Firearms, and described in 27 Code of Federal Regulations, Part 6.87.]

§ 86.3 Product displays

(a) A product display means any wine racks, bins, barrels, casks, shelving, and the like, from which alcoholic beverages are displayed and sold, and which bears conspicuous and prominent advertising matter.

(b) A manufacturer or wholesaler may give, rent, loan or sell product displays to a retail licensee. The total value of all product displays furnished by a manufacturer or wholesaler under this section may not exceed \$[1]300 per brand, [or such other dollar limitation as may be established pursuant to section 86.2(h) of this Part.] in use at any one time in any one retail establishment. The value of a product display is the actual cost to the manufacturer or wholesale licensee who initially purchased it. Transportation and installation costs are excluded. *Provision of a product display to a retailer may be conditioned upon the purchase of sufficient product for initial setup of the display.*

(c) Manufacturers and wholesalers may not pool or combine their dollar limitations in order to provide a retailer a product display valued in excess of such dollar limitation.

§ 86.4 Inside signs

(a) Inside signs include such things as posters, placards, designs, mechanical devices, *digital displays* and window decorations which bear advertising matter, and have no secondary value and are of value to the retailer only as advertising.

(b) A manufacturer or wholesaler may furnish, give, rent, loan or sell inside signs to a retailer, provided that (i) the inside sign shall be used only in the windows or other internal portions of the retail establishment, and (ii) the manufacturer or wholesaler may not directly or indirectly pay or credit the retailer for displaying the inside sign or for any expense incidental to its operation.

§ 86.5 Retailer advertising specialties

(a) A retailer advertising specialty is an item which bears advertising matter and is primarily valuable to the retailer as point of sale advertising, but which has some secondary value to the retailer in connection with the operation of the business. Examples of retailer advertising specialties include trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, thermometers, clocks, *shirts, hats, visors* and calendars. The manufacturer or wholesaler may add the name or address of the retailer to the retailer advertising specialty.

(b) The total value of all retailer advertising specialties furnished by a manufacturer or wholesaler to a retailer may not exceed \$[5]200 per brand, [or such other dollar limitation as may be established pursuant to section 86.2(b) of this Part.] in any one calendar year per retail establishment. The value of a retailer advertising specialty is the actual cost of that item to the manufacturer or wholesaler who initially purchased it. Transportation and installation costs are excluded.

(c) Manufacturers and wholesalers may not pool or combine their dollar limitations in order to provide a retailer with retailer advertising specialties valued in excess of such dollar limitation.

§ 86.6 Consumer advertising specialties

(a) A consumer advertising specialty is an item which bears advertising matter and which is designed for unconditional distribution by the retailer to the general public. Examples of consumer advertising specialties include ashtrays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, biotens, postcards, *shirts, hats, visors* and pencils.

(b) A manufacturer or wholesaler may furnish, give or sell consumer advertising specialties to on-premises retail licensees and off-premises beer licensees. The only consumer advertising specialties which may be furnished, given or sold to off-premises retail liquor or wine licensees are recipe books and matchbooks, which cannot contain the name or address of the retail licensee.]

(c)(b) The retail licensee may not be paid or credited in any manner, directly or indirectly, for the distribution of consumer advertising specialties.

(d)(c) There is no limitation on the amount or value of consumer advertising specialties which may be given to any retail licensee.

Text of proposed rule and any required statements and analyses may be obtained from: Paul Karamanolis, Senior Attorney, State Liquor Authority, 86 South Swan Street, Suite 900, Albany, NY 12210, (518) 474-3114, email: paul.karamanolis@sla.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: Five days after the last scheduled public hearing.

Regulatory Impact Statement

Statutory authority

These proposed regulations concerning permissible advertising, signage, and services or gifts to retailers are being issued by the State Liquor Authority and will appear as amendments to Parts 86.3, 86.4, 86.5 and 86.6 of Title 9 of the New York Codes, Rules and Regulations.

These regulations are issued pursuant to the following:

Alcoholic Beverage Control Law section 101(1)(c), which authorizes the State Liquor Authority to determine at what point any gift or service provided to a retailer is intended to influence the retailer to purchase the alcoholic beverages of a given manufacturer or wholesaler.

Alcoholic Beverage Control Law section 105(7), which authorizes the State Liquor Authority to approve or disapprove any advertising sign whether printed, painted, electric or otherwise on the exterior or interior of any retail off-premises licensee.

State Administrative Procedure Act section 201, which authorizes all agencies to adopt by rule additional procedures not inconsistent with statute.

Legislative objectives

Changing the public policy underpinnings of the Alcoholic Beverage Control Law to be more business friendly where possible was recommended by the New York State Law Revision Commission in their 2009 Report on the Alcoholic Beverage Control Law and its Administration, which included recommendations of "supporting economic growth, job development, and the state's alcoholic beverage production industries and its tourism and recreation industry" provided that such activities do not conflict with the primary regulatory objectives of "promoting the health, welfare and safety of the people of the state, and promoting temperance in the consumption of alcoholic beverages." Along those lines, a recent legislative change put into effect the recommendations of the Law Revision Commission via Chap. 406 of the Laws of 2014. The policy underpinnings of the Alcoholic Beverage Control Law ("ABCL") have been updated to include supporting, where possible, the economic development and job opportunities for New York residents when making decisions related to the regulation of alcoholic beverages.

It was from the Law Revision Commission recommendations that these regulatory proposals were conceived, to be used by the State Liquor Authority to promote economic growth and job opportunities for New York by liberalizing advertising and signage restrictions on licensed premises, and increasing annual per brand dollar limitations for certain advertising and promotional materials to adjust for inflation since the original enactment of Parts 86.3 (product displays) and 86.5 (retailer advertising specialties), thereby eliminating several outdated and anachronistic regulatory restrictions on alcoholic beverage manufacturers, wholesalers and marketing agencies alike.

Needs and benefits

These regulatory proposals will help modernize administration of the ABCL in keeping with the new public policy goals of supporting economic growth and job development by liberalizing various advertising and signage restrictions on licensed premises, specifically authorizing digital signs for the first time, and increasing annual per brand dollar limitations for certain advertising and promotional materials to match the inflation-adjusted numbers that the alcoholic beverage industry in New York is currently operating with.

Costs

There will be no additional costs to regulated parties or to local governments resulting from these proposals. In an effort to comply with the Consumer Price Index cost of living adjustments required pursuant to Part 86.2, the State Liquor Authority has already been advising industry members to utilize the increased per brand dollar limitations as inflation-adjusted numbers via both verbal advice at open meetings and written advice in the form of a website posting of proposed rule amendments and as part of an overall effort to provide inflation-adjusted numbers to the industry in a transparent and business-friendly manner. As a result, the alcoholic beverage industry in New York has already been operating with an effective \$300 per year limit on product displays and a \$200 per brand per year limit on retailer advertising specialties for some time. Due to the above, there will be no added costs to the State Liquor Authority, to regulated parties or to local governments as a result of the implementation of the proposed rule amendments.

Local government mandates

None. Local governments are not involved in the manufacture, distribution or retail sale of alcoholic beverages or the marketing of same, and therefore would not be impacted by the proposed rule amendments.

Paperwork

The proposed rule amendments impose no new recordkeeping or reporting requirements to industry members.

Duplication

The federal Alcohol and Tobacco Tax and Trade Bureau rules no longer

ger draw a distinction between point of sale advertising that either does or does not have a secondary use for the retailer, and there is no longer any annual dollar limitations for either under the federal rules. In New York, several industry members have cautioned the Authority that they would prefer to see the annual dollar limitations for retailer advertising specialties codified to match the currently enforced inflation adjusted numbers of \$200 per brand per year and that they would be reluctant to see the New York dollar limitations done away with entirely to match the federal rules. With regard to product displays, the Alcohol and Tobacco Tax and Trade Bureau rules also caps spending at \$300 per brand per year per retailer, except that manufacturers and wholesalers have the ability under federal rules to combine their annual dollar amounts for different brands to exceed the annual \$300 limitation. New York has never allowed this and does not propose to do so via the instant proposed amendments.

Alternatives/federal standards

As noted above, the State Liquor Authority could have chosen to propose removal of the dollar limitations on retailer advertising specialties altogether to match the federal rules on point but, after consulting with various industry representatives, chose to propose matching the inflation adjusted numbers currently being utilized by the industry.

Compliance schedule

The period of time the industry will require to enable compliance is likely to be negligible as they are already likely in compliance with several of the proposals. The State Liquor Authority expects to be compliant immediately upon adoption.

Regulatory Flexibility Analysis

Effect of rule:

The proposed amendments to Parts 83.3, 86.2, 86.3, 86.4, 86.5, and 86.6 would affect approximately all 3000 wholesalers, manufacturers, and marketing permit holders and tens of thousands of on and off-premises retailers currently licensed or permitted by the State Liquor Authority.

Compliance requirements

The proposed rule amendments would not impose any additional compliance requirements on small businesses or local governments.

Professional services

No new professional services would be needed to comply with the proposed rule amendments.

Compliance costs

The proposed rule amendments would not impose any initial capital costs or continuing compliance costs for regulated businesses or local governments.

Economic and technological feasibility:

Compliance with the proposed rule amendments by small businesses and local governments would be economically and technically feasible because the amendments would not impose any additional compliance requirements but would either relieve regulatory burdens on regulated businesses or conform regulations to current industry practices.

Minimizing adverse impact

Since the proposed rule amendments would either relieve regulatory burdens on regulated businesses by liberalizing signage restrictions and increasing annual per brand dollar limitations on advertising materials or merely conform regulations to current industry practices, there is expected to be no adverse impact to regulated small businesses. It is anticipated that the rule amendments would have no impact on local governments.

Small business and local government participation

Comments on the proposed rule amendments were solicited from all affected segments of the industry with generally favorable comments including from the executives of the three retail package store associations in New York who were unanimously in favor of the proposed amendments. The Authority did not engage with any local governments because it is anticipated that the proposed amendments would have no impact on local governments.

Rural Area Flexibility Analysis

Types and estimated numbers of rural areas:

The proposed amendments to 9 N.Y.C.R.R. Parts 83.3, 86.2, 86.3, 86.4, 86.5, and 86.6 would affect businesses throughout the state.

Reporting, recordkeeping and other compliance requirements, and professional services:

The proposed rule amendments would not impose any additional compliance requirements on small businesses or local governments. No new professional services would be needed to comply with the proposed rule amendments.

Costs

The proposed rule amendments would not impose any initial capital costs or continuing compliance costs for regulated businesses or local governments.

Minimizing adverse impact

Since the proposed rule amendments would either relieve regulatory burdens on regulated businesses by liberalizing signage restrictions and

increasing annual per brand dollar limitations on advertising materials or merely conform regulations to current industry practices, there is expected to be no adverse impact to rural areas.

Rural area participation

Among the businesses that would be positively affected by the proposed amendments would be bars, restaurants and package stores in rural areas. Authority staff shared the proposed rule amendments with affected segments of the industry with generally favorable comments including from the executives of the three retail package store associations in New York who were unanimously in favor of the proposed amendments. Rural area businesses will be afforded the opportunity to directly participate in public hearings regarding the proposed amendments via webcast from either of the Authority's upstate offices in Albany or Buffalo.

Job Impact Statement

The proposed amendments to 9 N.Y.C.R.R. Parts 83.3, 86.2, 86.3, 86.4, 86.5, and 86.6 would relieve regulatory burdens on regulated businesses by liberalizing signage restrictions and increasing annual per brand dollar limitations on advertising materials or conforming existing regulations to current industry practices. As a result, the proposed amendments will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendments that they will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken by the Authority. Accordingly, a job impact statement is not required for any of the proposed amendments and none has been prepared.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Provisions of LIPA's Tariff for Adjustment to Rates and Changes of Service Classifications

I.D. No. LPA-02-15-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Long Island Power Authority ("LIPA") is considering a proposal to modify its Tariff for Electric Service ("Tariff") to update delivery charges, authorize recontribution of energy efficiency revenues, and introduce a revenue decoupling mechanism.

Statutory authority: Public Authorities Law, section 1020-*(b)* and (u).

Subject: Provisions of LIPA's Tariff for adjustment to rates and changes of service classifications.

Purpose: To modify and add to the Tariff in order to implement revenue-neutral changes required to maintain the 3-year LIPA rate freeze.

Public hearing(s) will be held at: 10:00 a.m., March 4, 2015 at H. Lee Demmons Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; and 2:00 p.m., March 4, 2015 at 333 Earle Osington Blvd., 4th Fl., Uniondale, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule: The Long Island Power Authority ("the Authority") Staff proposes to modify the Tariff for Electric Service ("Tariff") effective April 1, 2015 to: (1) update Delivery Charges consistent with the approved LIPA budget for 2015, (2) authorize the recontribution of revenue to be recovered through the Energy Efficiency Cost Recovery Rate, and (3) introduce a Revenue Decoupling Mechanism.

The approved LIPA budget for 2015 incorporates a level of revenues that assumes no increase in rates, other than changes to the Power Supply Charge (also known as the Fuel and Purchased Power Cost Adjustment). As presented in the budget, however, a number of revenue-neutral changes are required to extend the rate freeze for 2015, align the components of the rates with their underlying costs, and bring the Tariff more into line with Public Service Commission policies for the regulated, investor-owned utilities. These proposed changes will not materially change the rates paid by customers in the aggregate for delivery service. The Power Supply Charge will continue to fluctuate with market conditions.

auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. In addition, for the 2% compensation increase, each provider will be required to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees.

Minimizing Adverse Impact

Since certain of the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements. The potential loss of federal funds that could result from non-compliance would have had far more serious consequences to providers than the minor decrease in annual reimbursement for day habilitation capital costs that may result from these changes.

For the 2% compensation increase, there is no adverse economic impact on providers. Each provider will need to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees. However, the attestation is required by the enacted budget and is needed to ensure that the compensation increases are used for their intended purpose.

The Department has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. The Department determined that the revision to reimbursement proposed in this amendment is the most optimal approach to instituting the necessary change in rate methodology while minimizing any adverse impact on providers.

Rural Area Participation

Participation of public and private interests in rural areas. OPWDD and DOH met with representatives of providers to discuss the SSI offset changes in the new methodology (including provider concerns) on July 21, August 18, and September 15. OPWDD and DOH met with representatives of providers to discuss the capital changes on October 6, 2014, and met with them to discuss the 2% compensation increase on December 15, 2014. The NYS Association of Community and Residential Agencies (NYSACRA), which represents some providers in rural areas, was included in these meetings.

Revised Job Impact Statement

A job impact statement is not being submitted for this emergency proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The emergency proposed regulations amend the rate setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014. In addition, the proposed regulations change the methodologies for rates and fees for the affected programs to provide funding to support a January 1, 2015 2% salary increase and an April 1, 2015 2% increase for direct support staff, as well as an April 1, 2015 2% increase for clinical staff for the affected residential and day programs, to include funding to support these increases.

All providers will experience an increase in funding as a result of the changes to the SSI offset, budget neutrality factor and 2% compensation increase in these amendments. Application of the changes in the methodology for capital costs to day habilitation may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

The amendments are therefore expected to have no significant adverse impact on jobs and employment opportunities with providers.

Assessment of Public Comment

The agency received no public comment.

State Liquor Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Signage, Services and Gifts to Retailers

I.D. No. LQR-02-15-00002-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of sections 83.3, 86.2, 86.3, 86.4, 86.5 and 86.6 of Title 9 NYCRR

Statutory authority: Alcoholic Beverage Control Law, sections 101(1)(c) and 105(7)

Subject: Signage, Services and Gifts to Retailers.

Purpose: To enact business friendly amendments, eliminate interior sign restrictions, and increase annual dollar limits for advertising.

Public hearing(s) will be held at: 10:00 a.m., March 10, 2015 at State Liquor Authority, 117 Lenox Ave., New York, NY

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: 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 sections 83.3, 86.2, 86.3, 86.4, 86.5, and 86.6 as follows:

§ 83.3 Interior signs

Signs may be displayed in the interior of:

(a) premises licensed to sell alcoholic beverages for on-premises consumption;

(b) premises licensed to sell liquor or wine for off-premises consumption; or

(c) in the window display of such premises, provided that:

(1) Such signs do not have a utility or secondary use or value aside from their actual advertising value. Signs which have a utility or secondary use or value are covered by Part 86 of this subtitle.

(2) Such signs shall not contain:

(i) any statement, illustration, design, device or representation that is false or misleading;

(ii) any statement that is disparaging of a competitor's product;

(iii) any statement, design, device, matter or representation which is obscene or indecent or which is obnoxious or offensive to the commonly and generally accepted standard of fitness and good taste;

(iv) the words "bond", "bonded", "bottled in bond", "aged in bond" or phrases containing these or synonymous terms, unless the distilled spirits so advertised were in fact bottled in bond under the Bonding or Bond Act of the United States;

(v) the terms "double distilled", "triple distilled" or any similar term;

(vi) any statement which is inconsistent with the label on the product;

(vii) any statement, design or device which represents or which tends to create or give the impression that the use of the alcoholic beverage has curative or therapeutic effects;

(viii) any statement of, or reference to, price which is deceptive or misleading or tends to deceive or mislead;

(ix) any illustration which is not dignified, modest and in good taste;

(x) any scene in which is portrayed a child or objects (such as toys) suggestive of the presence of a child or in any manner portrays the likeness of a child or contains the use of figures or symbols which are traditionally associated with children;

(xi) except as otherwise provided in Part 86 of this Subtitle, any statement, design, device or representation relating to any refund, exchange or money-back guarantee, irrespective of truth or falsity;

(xii) any portrayal of an athlete or athletes or athletic events in such manner as to imply that the consumption of alcoholic beverages improves athletic prowess or physical stamina, or any portrayal or suggestion that athletes recommend drinking alcoholic beverages;

(xiii) the name of or depiction of any biblical characters;

(xiv) any reference by name or other identification to any retailer selling the products advertised;

(xv) any statement, design, device or representation of or relating to analyses, standards or tests irrespective of falsity which the Authority finds to be likely to mislead the consumer.

(3) Such signs are not hung or displayed in a manner which obstructs a clear and full view into the interior of said premises from the street.

(4) Such signs, when relating to alcoholic beverages, shall not exceed 1,200 square inches. If the sign is made up of two or more parts, the area of each part shall be included when computing the total of square inches in the sign as a whole. Any increase in the depth of the sign which does not extend beyond the perimeter thereof shall not be included in the size of the area of such sign.

§ 86.2 Advertising and promotions generally

(a) Sections 86.3 through and including 86.6 of this Part describe the kinds of advertising and promotional materials that manufacturers or wholesalers may give, sell or install in a licensed retail premises. Unless specifically stated otherwise, such sections apply both to on-premises and off-premises licensees.

Consolidated Regulatory Impact Statement

Statutory authority:

These proposed regulations concerning permissible advertising, signage, and services or gifts to retailers are being issued by the State Liquor Authority and will appear as amendments to Parts 83.3, 86.2, 86.3, 86.4, 86.5 and 86.6 of Title 9 of the New York Codes, Rules and Regulations.

These regulations are issued pursuant to the following:

Alcoholic Beverage Control Law section 101(1)(e), which authorizes the State Liquor Authority to determine at what point any gift or service provided to a retailer is intended to influence the retailer to purchase the alcoholic beverages of a given manufacturer or wholesaler;

Alcoholic Beverage Control Law section 105(7), which authorizes the State Liquor Authority to approve or disapprove any advertising sign, whether printed, painted, electric or otherwise on the exterior or interior of any retail off-premises licensee;

State Administrative Procedure Act section 201, which authorizes all agencies to adopt by rule additional procedures not inconsistent with statute.

Legislative objectives:

Changing the public policy underpinnings of the Alcoholic Beverage Control Law to be more business friendly where possible was recommended by the New York State Law Revision Commission in their 2009 Report on the Alcoholic Beverage Control Law and its Administration, which included recommendations of "supporting economic growth, job development, and the state's alcoholic beverage production industries and its tourism and recreation industry... provided that such activities do not conflict with the primary regulatory objectives of [promoting the health, welfare and safety of the people of the state, and promoting temperance in

the consumption of alcoholic beverages.]" Along those lines, a recent legislative change put into effect the recommendations of the Law Revision Commission via Chap. 406 of the Laws of 2014. The policy underpinnings of the Alcoholic Beverage Control Law ("ABCL") have been updated to include supporting, where possible, the economic development and job opportunities for New York residents when making decisions related to the regulation of alcoholic beverages.

It was from the Law Revision Commission recommendations that these regulatory proposals were conceived, to be used by the State Liquor Authority to promote economic growth and job opportunities for New York by liberalizing advertising and signage restrictions on licensed premises, and increasing annual per brand dollar limitations for certain advertising and promotion materials to adjust for inflation since the original enactment of Parts 86.3 (product displays) and 86.5 (retailer advertising specialties), thereby eliminating several outdated and anachronistic regulatory restrictions for alcoholic beverage manufacturers, wholesalers and marketing agencies alike.

Needs and benefits:

These regulatory proposals will help modernize administration of the ABCL in keeping with the new public policy goals of supporting economic growth and job development by liberalizing various advertising and signage restrictions on licensed premises, specifically authorizing digital signs for the first time, and increasing annual per brand dollar limitations for certain advertising and promotional materials to match the inflation adjusted numbers that the alcoholic beverage industry in New York is currently operating with.

Costs:

There will be no additional costs to regulated parties or to local governments resulting from these proposals. In an effort to comply with the Consumer Price Index cost of living adjustments required pursuant to Part 86.2, the State Liquor Authority has already been advising industry members to utilize the increased per brand dollar

limitations as inflation adjusted numbers via both verbal advice at open meetings and written advice in the form of a website posting of proposed rule amendments and as part of an overall effort to provide inflation adjusted numbers to the industry in a transparent and business friendly manner. As a result, the alcoholic beverage industry in New York has already been operating with an effective \$300 per brand per year limit on product displays and a \$200 per brand per year limit on retailer advertising specialties for some time. Due to the above, there will be no added costs to the State Liquor Authority, to regulated parties or to local governments as a result of the implementation of the proposed rule amendments.

Local government mandates:

None. Local governments are not involved in the manufacture, distribution or retail sale of alcoholic beverages or the marketing of same, and therefore would not be impacted by the proposed rule amendments.

Paperwork:

The proposed rule amendments impose no new recordkeeping or reporting requirements to industry members.

Duplication:

The federal Alcohol and Tobacco Tax and Trade Bureau rules no longer draw a distinction between point of sale advertising that either does or does not have a secondary use for the retailer, and there is no longer any annual dollar limitations for either under the federal rules. In New York, several industry members have cautioned the Authority that they would prefer to see the annual dollar limitations for retailer advertising specialties codified to match the currently enforced inflation adjusted numbers of \$200 per brand per year and that they would be reluctant to see the New York dollar limitations done away with entirely to match the federal rules. With regard to product displays, the Alcohol and Tobacco Tax and Trade Bureau rules also caps

spending at \$300 per brand per year per retailer, except that manufacturers and wholesalers have the ability under federal rules to combine their annual dollar amounts for different brands to exceed the annual \$300 limitation. New York has never allowed this and does not propose to do so via the instant proposed amendments.

Alternatives federal standards:

As noted above, the State Liquor Authority could have chosen to propose removal of the dollar limitations on retailer advertising specialties altogether to match the federal rules on point but, after consulting with various industry representatives, chose to propose matching the inflation adjusted numbers currently being utilized by the industry.

Compliance schedule:

The period of time the industry will require to enable compliance is likely to be negligible as they are already likely in compliance with several of the proposals. The State Liquor Authority expects to be compliant immediately upon adoption.

Consolidated Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect of rule:

The proposed amendments to Parts 83.3, 86.2, 86.3, 86.4, 86.5, and 86.6 would affect approximately all 3000 wholesalers, manufacturers, and marketing permit holders and tens of thousands of on and off-premises retailers currently licensed or permitted by the State Liquor Authority.

Compliance requirements:

The proposed rule amendments would not impose any additional compliance requirements on small businesses or local governments.

Professional services:

No new professional services would be needed to comply with the proposed rule amendments.

Compliance costs:

The proposed rule amendments would not impose any initial capital costs or continuing compliance costs for regulated businesses or local governments.

Economic and technological feasibility:

Compliance with the proposed rule amendments by small businesses and local governments would be economically and technically feasible because the amendments would not impose any additional compliance requirements but would either relieve regulatory burdens on regulated businesses or conform regulations to current industry practices.

Minimizing adverse impact:

Since the proposed rule amendments would either relieve regulatory burdens on regulated businesses by liberalizing signage restrictions and increasing annual per brand dollar limitations on advertising materials or merely conform regulations to current industry practices, there is expected to be no adverse impact to regulated small businesses. It is anticipated that the rule amendments would have no impact on local governments.

Small business and local government participation:

Comments on the proposed rule amendments were solicited from all effected segments of the industry with generally favorable comments including from the executives of the three retail package store associations in New York who were unanimously in favor of the proposed amendments. The Authority did not engage with any local governments because it is anticipated that the proposed amendments would have no impact on local governments.

Consolidated Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect of rule:

The proposed amendments to Parts 83.3, 86.2, 86.3, 86.4, 86.5, and 86.6 would affect approximately all 3000 wholesalers, manufacturers, and marketing permit holders and tens of thousands of on and off-premises retailers currently licensed or permitted by the State Liquor Authority.

Compliance requirements:

The proposed rule amendments would not impose any additional compliance requirements on small businesses or local governments.

Professional services:

No new professional services would be needed to comply with the proposed rule amendments.

Compliance costs:

The proposed rule amendments would not impose any initial capital costs or continuing compliance costs for regulated businesses or local governments.

Economic and technological feasibility:

Compliance with the proposed rule amendments by small businesses and local governments would be economically and technically feasible because the amendments would not impose any additional compliance requirements but would either relieve regulatory burdens on regulated businesses or conform regulations to current industry practices.

Minimizing adverse impact:

Since the proposed rule amendments would either relieve regulatory burdens on regulated businesses by liberalizing signage restrictions and increasing annual per brand dollar limitations on advertising materials or merely conform regulations to current industry practices, there is expected to be no adverse impact to regulated small businesses. It is anticipated that the rule amendments would have no impact on local governments.

Small business and local government participation:

Comments on the proposed rule amendments were solicited from all effected segments of the industry with generally favorable comments including from the executives of the three retail package store associations in New York who were unanimously in favor of the proposed amendments. The Authority did not engage with any local governments because it is anticipated that the proposed amendments would have no impact on local governments.

Consolidated Rural Area Flexibility Analysis

Types and estimated numbers of rural areas:

The proposed amendments to 9 N.Y.C.R.R. Parts 83.3, 86.2, 86.3, 86.4, 86.5, and 86.6 would affect businesses throughout the state.

Reporting, recordkeeping and other compliance requirements; and professional services:

The proposed rule amendments would not impose any additional compliance requirements on small businesses or local governments. No new professional services would be needed to comply with the proposed rule amendments.

Costs:

The proposed rule amendments would not impose any initial capital costs or continuing compliance costs for regulated businesses or local governments.

Minimizing adverse impact:

Since the proposed rule amendments would either relieve regulatory burdens on regulated businesses by liberalizing signage restrictions and increasing annual per brand dollar limitations on advertising materials or merely conform regulations to current industry practices, there is expected to be no adverse impact to rural areas.

Rural area participation:

Among the businesses that would be positively affected by the proposed amendments would be bars, restaurants and package stores in rural areas. Authority staff shared the proposed rule amendments with all effected segments of the industry with generally favorable comments including from the executives of the three retail

package store associations in New York who were unanimously in favor of the proposed amendments. Rural area businesses will be afforded the opportunity to directly participate in public hearings regarding the proposed amendments via webcast from either of the Authority's upstate offices in Albany or Buffalo.

Consolidated Job Impact Statement

The proposed amendments to 9 N.Y.C.R.R. Parts 83.3, 86.2, 86.3, 86.4, 86.5, and 86.6 would relieve regulatory burdens on regulated businesses by liberalizing signage restrictions and increasing annual per brand dollar limitations on advertising materials or conform existing regulations to current industry practices. As a result, the proposed amendments will not have an adverse impact on jobs or employment opportunities.

Because it is evident from the nature of the proposed amendments that they will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken by the Authority. Accordingly, a job impact statement is not required for any of the proposed amendments and none has been prepared.

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF FEBRUARY 10, 2015
REFERRED FROM: LICENSING BUREAU

2015-00266N

REASON FOR REFERRAL
REQUEST FOR DIRECTION

DELEGATION OF AUTHORITY – LICENSING BOARD

The Members of the Authority at their regular meeting held at the Zone I New York City office on FEBRUARY 10, 2015 determined: