

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF DECEMBER 1, 2015
REFERRED FROM: COUNSEL'S OFFICE

2015-02615

REASON FOR REFERRAL
REQUEST FOR DIRECTION

TRUST AND TIED-HOUSE LAWS

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on DECEMBER 1, 2015 determined:

SKENE LAW FIRM, P.C.

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* NEW JERSEY BAR ADMISSION
+ NEW YORK BAR ADMISSION
^ PENNSYLVANIA BAR ADMISSION

September 23, 2015

VIA EMAIL AND OVERNIGHT MAIL

Attn: Jacqueline Flug, General Counsel
New York State Liquor Authority
80 S. Swan St, Suite 900
Albany, NY 12210

Re: Request for Declaratory Ruling

Dear Ms. Flug:

Please be advised that I have been retained by DP 49 LLC to advise and assist in the alcoholic beverage regulatory concerns that will be occasioned by its long-term lease of the Charles Point Marina from the City of Peekskill, New York (hereinafter, "the Marina"). As my client's plans for the redevelopment of the Marina involve individuals and entities holding interests in various tiers of the alcoholic beverage industry, my client respectfully requests a Declaratory Ruling from the Members of the Authority as to any tied house concerns which may be raised by the contemplated arrangements.

Essentially, DP 49 LLC plans to enter into a master lease with the Marina's real property owner and completely redevelop the property. Such redevelopment plans include the establishment of a brewery and craft distillery as well as a restaurant and an entertainment center which will all be located on the Marina property. It is contemplated that the brewery and distillery will hold the appropriate New York State Liquor Authority manufacturing licenses and that the restaurant and entertainment center will hold retail On Premises Liquor licenses. In other words, the various areas of the Marina property will hold a D101 Brewery license, a Class A-1 Distillery license, and two On-Premises retail licenses.

The individual parties that will be involved in the above contemplated transaction and their respective alcoholic beverage licensing interests are as follows:

- Bill Diamond has an existing retail alcoholic beverage licensing interest.
- Louis Lanza has an existing retail alcoholic beverage licensing interest.
- Scott Vaccaro has an existing manufacturing alcoholic beverage licensing interest.
- Todd Albright has an existing wholesale alcoholic beverage licensing interest.
- Megan Vaccaro, Anthony Lanza and Jim Diamond will also be involved in this transaction, but none of these individuals have any existing alcoholic beverage licensing interests.

Considering the foregoing, the parties envision the following structure with respect to the master lease, retail alcoholic beverage licenses and manufacturing alcoholic beverage licenses:

I. DP 49 LLC will hold the master lease for the Marina and will enter into subleases with the retailer and manufacturer premises. The Members of DP 49 LLC will be as follows:

- i. A trust formed by Bill Diamond and his brother Jim Diamond whereby some of their children will be the beneficiaries;
- ii. A trust formed by Louis Lanza whereby his family will be the beneficiaries;
- iii. A trust formed by Todd Albright for the benefit of his family members; and
- iv. Megan Vaccaro, who is the wife of Scott Vaccaro (but has no interest in her husband's manufacturer business), will have a direct interest in the entity.

II. With respect to the retail restaurant and entertainment center, such premises will be sublet from DP 49 LLC and the ownership comprising principals or LLC Members of both premises, (or just ownership) will be as follows:

- i. Bill Diamond;
- ii. Jim Diamond;
- iii. Louis Lanza;
- iv. A trust formed by Scott Vaccaro whereby the beneficiaries will be family members; and
- v. A trust formed by Todd Albright for the benefit of his family members.

III. With respect to the brewery and craft distillery licenses, such premises will be sublet from DP 49 LLC and the ownership of both premises will be as follows:

- i. Scott Vaccaro
- ii. Todd Albright
- iii. Anthony Lanza; and
- iv. A trust formed by Bill and Jim Diamond whereby the beneficiaries will be family members.

Please note that, with respect to the trusts formed to hold interest in DP 49 LLC and the trusts formed to hold an interest in the retail and manufacturing premises, there will be no overlap of beneficiaries or trustees. Each of the trusts mentioned herein will be formed such that there will be no commonality of any trustees or beneficiaries having an interest in both the landlord entity (DP 49 LLC) and any of the entities that will hold alcoholic beverage licenses. It should also be noted that all of the trusts discussed herein will be irrevocable in nature. The trustee appointed for each trust will qualify to hold an interest in either a manufacturing license or a retail license, or to be a landlord of same, as the case may be. None of the beneficiaries of any trust will have any existing interest in an alcoholic beverage license.

In view of the proposed structure, there will be no direct or indirect ownership by any prohibited interests. DP 49 LLC will be comprised of three trusts, the beneficiaries of which hold no interest in any retail or manufacturing licenses, and one individual that has no direct or indirect alcoholic beverage licensing interests. The retail premises will be owned by two trusts, the beneficiaries and trustees of which will have no interest in either the landlord entity or any manufacturing or wholesale licenses, and by three individuals who are qualified to hold retail alcoholic beverage licenses. Finally, the manufacturing licenses will be held by one trust, the beneficiaries and trustees of which will have no interest in the landlord or any retail licenses, and by three individuals who are qualified to hold manufacturing licenses.

As Sections 101.1 and 106.13 of the ABCL forbid any direct or indirect ownership between retail licenses and manufacturing and wholesale licenses and, as I understand, have been interpreted to include landlord/tenant relationships as prohibited indirect interests. We assert that the above proposed structure would not present any violation of these provisions. By creating the above described trust mechanisms, the parties effectively avoid any direct or indirect interest in cross-tier licenses, as well as any prohibited indirect interests between the landlord and its licensed tenants.

Considering the foregoing, we respectfully request that the Full Board approve the above discussed structure for the Marina redevelopment project.

Very Truly Yours,

SKENE LAW FIRM, P.C.



Robert D. Skene, Esq.

cc: DP 49 LLC
Kerri O'Brien, CEO (via email only)

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF DECEMBER 1, 2015
REFERRED FROM: WHOLESALE BUREAU

2015-02644

REASON FOR REFERRAL
REQUEST FOR DIRECTION

PROPER PURCHASE AND SALE OF
PRIVATE COLLECTION WINES AND LIQUORS

(DRAFT ADVISORY)

The Members of the Authority at their regular meeting held at the Zone I New York City office on DECEMBER 1, 2015 determined:

Matter adjourned to the Full Board meeting of January 19, 2016

To: All manufacturers, wholesalers and retailers of liquor and wine
Subject: Proper Purchase and Sale of Private Collection Wines and liquors

The purpose of this Advisory is to provide guidance to manufacturers, wholesalers and retailers of wine or liquor with respect to proper purchase and sale of private collection wines and liquors. Alcoholic Beverage Control Law (ABCL) Sections 85, titled Purchase from Private Collection and 99-g, titled Sale of Privately Held Wines and Liquors grant non-licensed persons¹ the ability to sell bottled wine and liquor to licensed retailers and wholesalers, provided that each bottle has a label permanently affixed stating the wine was acquired from a "private collection". However, since the ABCL provides no definition of "private collection" there is confusion as to what constitutes a private collection for purposes of compliance with ABCL Sections 85 and 99-g.

The Authority is aware that many New York retailers purchase large quantities of wine and liquor from entities not licensed in this state while claiming same to be purchased from a private collection. Furthermore, the Authority is aware that many of the wines and liquors purchased in this manner are currently price posted in this state and available for purchase via the three-tier system.

Accordingly, the Members of the Authority hereby define liquor sold by a non-licensed person from a "private collection" to mean only liquor not currently price posted for sale in New York by a duly appointed brand agent within the meaning of ABCL Section 101-b(3)(a). In addition, the Members of the Authority now define wine sold by a non-licensed person from a "private collection" to mean:

- 1) Bottled white or, rose wine which is more than five years old and that was purchased either at retail or auction and owned by the non-licensed person for a minimum of two years with proof of purchase, or;
- 2) Bottled red wine, port, or sparkling wine, which is not less than 10 years old and that was purchased either at retail or auction and owned by the non-licensed person for a minimum of two years with proof of purchase.

Industry members are reminded that in order to be considered wine as defined in ABCL Section 3(36), the beverage alcohol must have an alcohol content not in excess of 24% by volume, as a result for purposes of this advisory cognac shall be considered to be liquor. Industry members are further reminded that pursuant to ABCL Sections 85 and 99-g all bottles sold from non-licensed individuals must bear a permanently affixed sticker stating that they were acquired from a private collection.

¹ For purposes of this advisory "non-licensed person" means a person that does not hold any license pursuant to the ABCL and who is not interested directly or indirectly in any business or premises where any alcoholic beverage is manufactured or sold at wholesale or retail.

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF DECEMBER 1, 2015
REFERRED FROM: COUNSEL'S OFFICE

2015-02681A

REASON FOR REFERRAL
REQUEST FOR DIRECTION

CONSENSUS RULE

(PROPOSED RULE)

The Members of the Authority at their regular meeting held at the Zone I New York City office on DECEMBER 1, 2015 determined:

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 40.3, 40.4, 46.1, 47.4, 48.4, and 65.2 of Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.)

"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. 64(2), ABCL Sec. 64-a(3), ABCL Sec. 99-d(4), ABCL Sec. 101-b(4), and ABCL Sec. 109(1).

4. Subject of the rule:

Update outdated application procedures and eliminate archaic physical standards for certain licenses types.

5. Purpose of the rule:

To update application procedures, codify current online filing practices and eliminate archaic restrictions on certain licenses.

6. Terms and identification of rule :

A. I.D. No. of original notice of **proposed** or **emergency/proposed** rule making: LQR-34-15-00029 - 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]:

Part 40.3 Part 65.2

• 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:

[Redacted]

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).

[Redacted]

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:

Four shaded rectangular boxes for listing referenced material.

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 10/20/2015

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.

Revised Statement in Lieu of Job Impact Statement

The express terms of the proposed rule were changed merely to remove outdated references to blank renewal applications being mailed to renewal applicants in Part 40.3, as well as to six (6) copies being necessary for amended price postings pursuant to Part 65.2(h). Said non-substantive revisions merely conform to current agency practices. As such, the changes made to the previously published rule do not necessitate that the previously published statement in lieu of job impact statement be revised.

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 40.3, 40.4, 46.1, 47.4, 48.4 and 65.2.

§ 40.3 Date for filing

(a) Applications for the renewal of licenses must be filed within the period prescribed by the Liquor Authority, as set forth in the instructions accompanying the renewal [application blanks] advisory mailed to licensees.

(b) No application for the renewal of a license will be accepted more than [1] 30 days after the expiration of the preceding license period, except for good cause shown.

§ 40.4 Use of forms

(a) Renewal application forms must be used in the following instances:

(1) Generally. Where there has been no change in the licensee, the location of premises, or the type of license, and there will be no such change at the commencement of the new license period.

(2) Dissolution of partnership. Where one or more members of a partnership licensee are retiring from the partnership at the commencement of the new license period, and the remaining partners intend to continue the business after that date. In such cases, the renewal application must be accompanied by an [affidavit, in duplicate, setting forth all the facts pertaining to the dissolution] endorsement application, signed by the outgoing and the remaining partners. The renewal application must be executed by all the remaining partners.

(3) Death of a licensee. (i) Where the licensee, or one of the members of a licensed partnership dies before the renewal application is filed, and a certificate of endorsement under section 122 of the law [Alcoholic Beverage

Control Law] has been applied for and issued, the renewal application must then be made out to conform to the endorsement certificate.

(ii) Where the licensee, or a member of a licensed partnership dies after the renewal application has been filed, the zone office must be immediately notified and instructions thereafter issued by the zone office must be followed.

(b) Renewal application forms may not be used under the following circumstances:

(1) Sale of the licensed business from an individual or corporation to another individual or corporation.

(2) Formation of a new partnership or the addition of a new member to an existing partnership.

In each of the above cases an original form of application must be filed [with the appropriate local board, if a retailer, or the appropriate zone office, if a manufacturer or wholesaler] on a form and in a manner as designated by the Authority.

§ 46.1 Applications for corporate change involving two or more licensed premises

(a) Where the same corporation operates two or more premises separately licensed under this chapter (L.1963, ch. 204), the licensee shall file one corporate change application and attach thereto a list of all licenses issued by the Authority in the name of the licensee. The application shall be filed, together with the appropriate fee, with the State Liquor Authority [at its New York City office, if any of the licensed premises is located in Zone I; where none is so located, the application shall be filed and processed at the Authority's Albany office, if any of the licensed premises is located in Zone II; where all are in Zone III, the application shall be filed and processed at the Authority's Buffalo office] on a form and in a manner as designated by the Authority.

[(b) Copies of the Authority's determination, either approving or disapproving the corporate change, shall be forwarded for filing in the local board and zone office folders relating to each licensed premises.]

§ 47.4 Applications

Applications for permission to make alterations shall be filed [in triplicate as follows:

Manufacturers, wholesalers and vendors shall file with the New York City Office of the Authority at New York City. Retail licensees, except holders of vendors licenses, shall file with the appropriate local A.B.C. Board] on a form and in a manner as designated by the Authority.

§ 48.4 Physical standards

(a) No on-premises licenses shall be issued except where the premises comply with all statutory requirements.

In addition, each such premises, when situated on or about the street level, shall have one or more windows which shall be so constructed as to afford clear visibility from the exterior and throughout the interior of said premises.

(b) No on-premises licenses shall be issued to premises described in subdivisions (b), (d), (e) and (f) of section 48.1 of this Part unless a particular location or locations shall be designated for the sale and service of alcoholic beverages which, if approved by the Authority, shall be deemed the licensed premises.

(1) Each such premises shall be under the exclusive dominion and control of the licensee and the sale and service of alcoholic beverages and the consumption of liquor and wine shall be confined thereto.

(2) In premises described in subdivisions (d), (e) and (f) of section 48.1 of this Part, the licensed premises shall be enclosed by a permanent wall or partition at least eight feet high.

(c) On-premises licenses may be issued to premises described in subdivision (c) of section 48.1 of this Part with due regard for the functional and traditional layouts of such premises. Any stand-up bar shall be in an area where seating at tables is provided for patrons [and where such premises is in a bowling establishment, such area shall be enclosed by permanent walls or partitions at least eight feet high].

(d) General physical standards. The following standards shall be applicable to all on-premises licenses:

(1) Each premises licensed hereunder shall have seating for patrons at tables, except that the Authority, in its discretion, may permit a bar in any premises described in subdivision (b) of section 48.1 of this Part without requiring seating at tables.

(2) Each premises licensed hereunder shall provide separate sanitary facilities for both sexes. The provision of such facilities may be waived by the Authority provided there is a satisfactory showing that such facilities are in an area adjacent or proximate to the licensed premises and available to the patrons thereof.

[(3) Each premises licensed hereunder shall, at all times during the hours such premises is open for business, be illuminated by sufficient lighting such as will permit a person therein to read nine-point print of the kind generally used in the average newspaper. Nothing herein contained shall, however, be construed as prohibiting temporary dimming of lights during a period of regular entertainment or other special occasions and during any performance in any premises described in subdivision (b) of section 48.1 of this Part.]

§ 65.2 Filing of schedules

(a) Each schedule filed under this section shall identify the filer by name, address and license number and set forth such information as is required by subdivision 3(a) or 3(b) of section 101-b of the (Alcoholic Beverage Control Law), whichever is appropriate. In addition, the brand label registration number of each brand of liquor or wine listed therein shall also be designated.

(b) Where a schedule of prices to wholesalers is filed by the brand owner, the listing of items of brands owned by the filer should be preceded by the words "as brand owner". Where filed as agent the listing of items should be preceded by the words "as agent" followed by identification of the brand owner.

(c) In schedules of prices to retailers the listing of brands owned by the filer should be preceded by the words "as brand owner"; the listing of brands for which the filer is the brand agent should be preceded by the words "as agent"; and where the filer is neither the brand owner nor brand agent the listing should be preceded by the name of the licensee who registers the brand label.

(d) Where a manufacturer or wholesaler holds more than one license, a separate schedule of prices to retailers shall be filed by such licensee for each licensed premises.

(e) There shall be filed with the State Liquor Authority's website [Wholesale Bureau in Albany six] a copy[ies] of each schedule of prices to wholesalers and [six copies of] each schedule of prices to retailers on a form and in a manner as designated by the Authority.

(f) Schedules of prices to wholesalers and the applicable affirmation shall be filed on or before the 25th day of each month and shall become effective on the first day of the second succeeding calendar month, unless otherwise ordered by the authority. When the 25th day of the month falls on a Saturday, Sunday or legal holiday, such schedules and affirmation shall be filed on the following business day.

(g) Schedules of prices to retailers shall be filed on or before the fifth calendar day of each month unless otherwise ordered by the Liquor Authority. When the fifth day of the month falls on a Saturday, Sunday or legal holiday, such schedules shall be filed on the following business day.

(h) [Six copies of each a] Amended schedules of prices to retailers shall be filed on a form and in a manner as designated by the Authority no later than the 20th day of the month prior to the effective date of the schedule being amended. When the 20th day of the month falls on a Saturday, Sunday or legal holiday, such amended schedule may be filed on the following business day.

(i) The schedules filed each month which contain a listing of all brands of liquor and wine which are to be sold shall be known as master schedules. The Liquor Authority may permit or require the filing of short form schedules for any particular month in place of the master schedule. Short form schedules shall show all new items, price changes, or items discontinued since the last filing of a master schedule. All schedules shall contain such statements as the Liquor Authority may permit or require.

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 40.3, 40.4, 46.1, 47.4, 48.4 and 65.2.

§ 40.3 Date for filing

(a) Applications for the renewal of licenses must be filed within the period prescribed by the Liquor Authority, as set forth in the instructions accompanying the renewal [application blanks] advisory mailed to licensees.

(b) No application for the renewal of a license will be accepted more than [1] 30 days after the expiration of the preceding license period, except for good cause shown.

§ 40.4 Use of forms

(a) Renewal application forms must be used in the following instances:

(1) Generally. Where there has been no change in the licensee, the location of premises, or the type of license, and there will be no such change at the commencement of the new license period.

(2) Dissolution of partnership. Where one or more members of a partnership licensee are retiring from the partnership at the commencement of the new license period, and the remaining partners intend to continue the business after that date. In such cases, the renewal application must be accompanied by an [affidavit, in duplicate, setting forth all the facts pertaining to the dissolution] endorsement application, signed by the outgoing and the remaining partners. The renewal application must be executed by all the remaining partners.

(3) Death of a licensee. (i) Where the licensee, or one of the members of a licensed partnership dies before the renewal application is filed, and a certificate of endorsement under section 122 of the law [Alcoholic Beverage

Control Law] has been applied for and issued, the renewal application must then be made out to conform to the endorsement certificate.

(ii) Where the licensee, or a member of a licensed partnership dies after the renewal application has been filed, the zone office must be immediately notified and instructions thereafter issued by the zone office must be followed.

(b) Renewal application forms may not be used under the following circumstances:

(1) Sale of the licensed business from an individual or corporation to another individual or corporation.

(2) Formation of a new partnership or the addition of a new member to an existing partnership.

In each of the above cases an original form of application must be filed [with the appropriate local board, if a retailer, or the appropriate zone office, if a manufacturer or wholesaler] on a form and in a manner as designated by the Authority.

§ 46.1 Applications for corporate change involving two or more licensed premises

(a) Where the same corporation operates two or more premises separately licensed under this chapter (L.1963, ch. 204), the licensee shall file one corporate change application and attach thereto a list of all licenses issued by the Authority in the name of the licensee. The application shall be filed, together with the appropriate fee, with the State Liquor Authority [at its New York City office, if any of the licensed premises is located in Zone I; where none is so located, the application shall be filed and processed at the Authority's Albany office, if any of the licensed premises is located in Zone II; where all are in Zone III, the application shall be filed and processed at the Authority's Buffalo office] on a form and in a manner as designated by the Authority.

[(b) Copies of the Authority's determination, either approving or disapproving the corporate change, shall be forwarded for filing in the local board and zone office folders relating to each licensed premises.]

§ 47.4 Applications

Applications for permission to make alterations shall be filed [in triplicate as follows:

Manufacturers, wholesalers and vendors shall file with the New York City Office of the Authority at New York City. Retail licensees, except holders of vendors licenses, shall file with the appropriate local A.B.C. Board] on a form and in a manner as designated by the Authority.

§ 48.4 Physical standards

(a) No on-premises licenses shall be issued except where the premises comply with all statutory requirements. In addition, each such premises, when situated on or about the street level, shall have one or more windows which shall be so constructed as to afford clear visibility from the exterior and throughout the interior of said premises.

(b) No on-premises licenses shall be issued to premises described in subdivisions (b), (d), (e) and (f) of section 48.1 of this Part unless a particular location or locations shall be designated for the sale and service of alcoholic beverages which, if approved by the Authority, shall be deemed the licensed premises.

(1) Each such premises shall be under the exclusive dominion and control of the licensee and the sale and service of alcoholic beverages and the consumption of liquor and wine shall be confined thereto.

(2) In premises described in subdivisions (d), (e) and (f) of section 48.1 of this Part, the licensed premises shall be enclosed by a permanent wall or partition at least eight feet high.

(c) On-premises licenses may be issued to premises described in subdivision (c) of section 48.1 of this Part with due regard for the functional and traditional layouts of such premises. Any stand-up bar shall be in an area where seating at tables is provided for patrons [and where such premises is in a bowling establishment, such area shall be enclosed by permanent walls or partitions at least eight feet high].

(d) General physical standards. The following standards shall be applicable to all on-premises licenses:

(1) Each premises licensed hereunder shall have seating for patrons at tables, except that the Authority, in its discretion, may permit a bar in any premises described in subdivision (b) of section 48.1 of this Part without requiring seating at tables.

(2) Each premises licensed hereunder shall provide separate sanitary facilities for both sexes. The provision of such facilities may be waived by the Authority provided there is a satisfactory showing that such facilities are in an area adjacent or proximate to the licensed premises and available to the patrons thereof.

[(3) Each premises licensed hereunder shall, at all times during the hours such premises is open for business, be illuminated by sufficient lighting such as will permit a person therein to read nine-point print of the kind generally used in the average newspaper. Nothing herein contained shall, however, be construed as prohibiting temporary dimming of lights during a period of regular entertainment or other special occasions and during any performance in any premises described in subdivision (b) of section 48.1 of this Part.]

§ 65.2 Filing of schedules

(a) Each schedule filed under this section shall identify the filer by name, address and license number and set forth such information as is required by subdivision 3(a) or 3(b) of section 101-b of the (Alcoholic Beverage Control Law), whichever is appropriate. In addition, the brand label registration number of each brand of liquor or wine listed therein shall also be designated.

(b) Where a schedule of prices to wholesalers is filed by the brand owner, the listing of items of brands owned by the filer should be preceded by the words "as brand owner". Where filed as agent the listing of items should be preceded by the words "as agent" followed by identification of the brand owner.

(c) In schedules of prices to retailers the listing of brands owned by the filer should be preceded by the words "as brand owner"; the listing of brands for which the filer is the brand agent should be preceded by the words "as agent"; and where the filer is neither the brand owner nor brand agent the listing should be preceded by the name of the licensee who registers the brand label.

(d) Where a manufacturer or wholesaler holds more than one license, a separate schedule of prices to retailers shall be filed by such licensee for each licensed premises.

(e) There shall be filed with the State Liquor Authority's website [Wholesale Bureau in Albany six] a copy[ies] of each schedule of prices to wholesalers and [six copies of] each schedule of prices to retailers on a form and in a manner as designated by the Authority.

(f) Schedules of prices to wholesalers and the applicable affirmation shall be filed on or before the 25th day of each month and shall become effective on the first day of the second succeeding calendar month, unless otherwise ordered by the authority. When the 25th day of the month falls on a Saturday, Sunday or legal holiday, such schedules and affirmation shall be filed on the following business day.

(g) Schedules of prices to retailers shall be filed on or before the fifth calendar day of each month unless otherwise ordered by the Liquor Authority. When the fifth day of the month falls on a Saturday, Sunday or legal holiday, such schedules shall be filed on the following business day.

(h) [Six copies of each a] Amended schedules of prices to retailers shall be filed on a form and in a manner as designated by the Authority no later than the 20th day of the month prior to the effective date of the schedule being amended. When the 20th day of the month falls on a Saturday, Sunday or legal holiday, such amended schedule may be filed on the following business day.

(i) The schedules filed each month which contain a listing of all brands of liquor and wine which are to be sold shall be known as master schedules. The Liquor Authority may permit or require the filing of short form schedules for any particular month in place of the master schedule. Short form schedules shall show all new items, price changes, or items discontinued since the last filing of a master schedule. All schedules shall contain such statements as the Liquor Authority may permit or require.