

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF SEPTEMBER 21, 2015
REFERRED FROM: COUNSEL'S OFFICE

2015-02221B (OVER)
2015-02827

REASON FOR REFERRAL
REQUEST FOR DIRECTION

OPERATION OF TABBEDOUT

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on SEPTEMBER 21, 2015 determined:

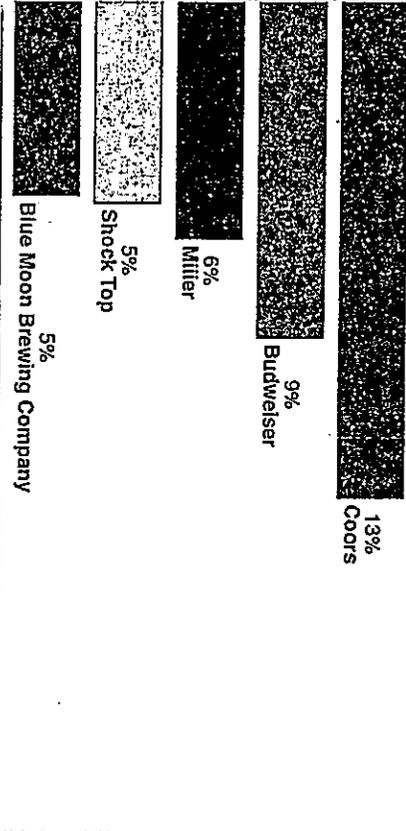
Teresa Russo, Esq. and Garrett Sparling appeared

Item carried over to 12/16/2015

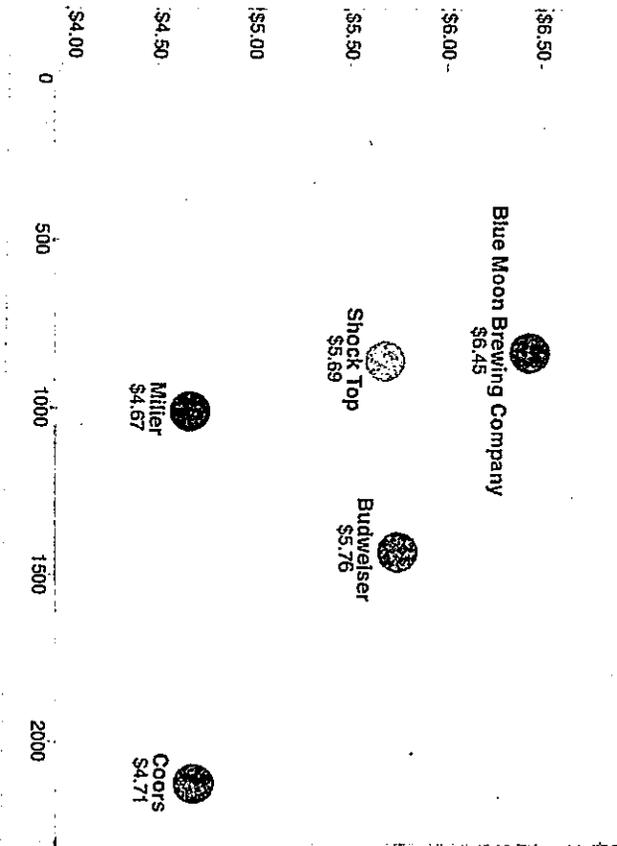
The Members of the Authority at their regular meeting held at the Zone I New York City office on DECEMBER 16, 2015 determined:

Select Date Range Below
January 2015 to November 2015

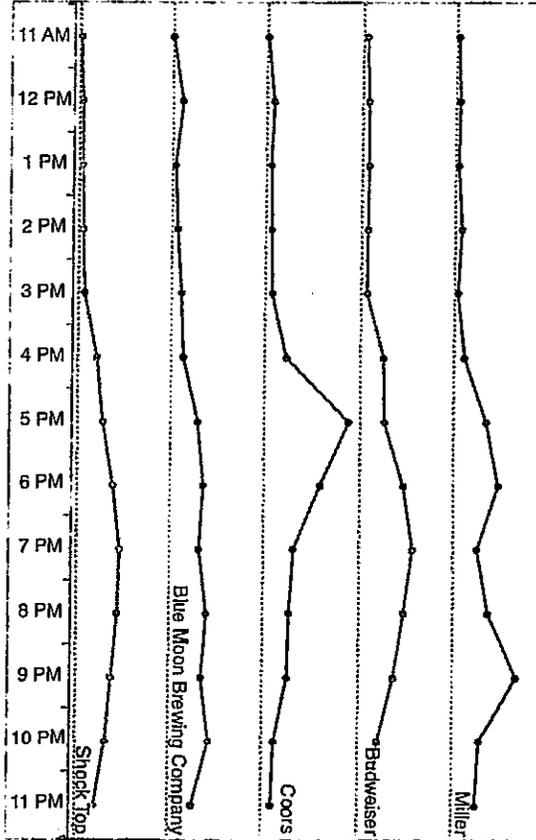
Beer Market Share
Brands with Highest Market Share of Beer



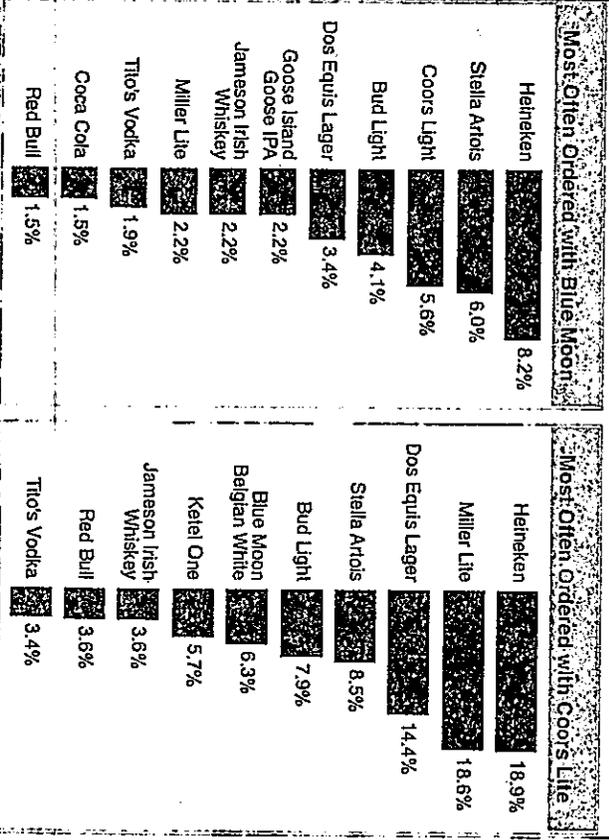
Items Sold by Average Price of Brand Item



Dayparting
Percentage of Total Tab Items by Brand



Top 10 Items Ordered on Tabs with a Blue Moon or Coors Light



Select Parameters Below

Coors Light Weekly Performance
Number of Coors Light Sales (\$) from Dec 8 to Nov 9

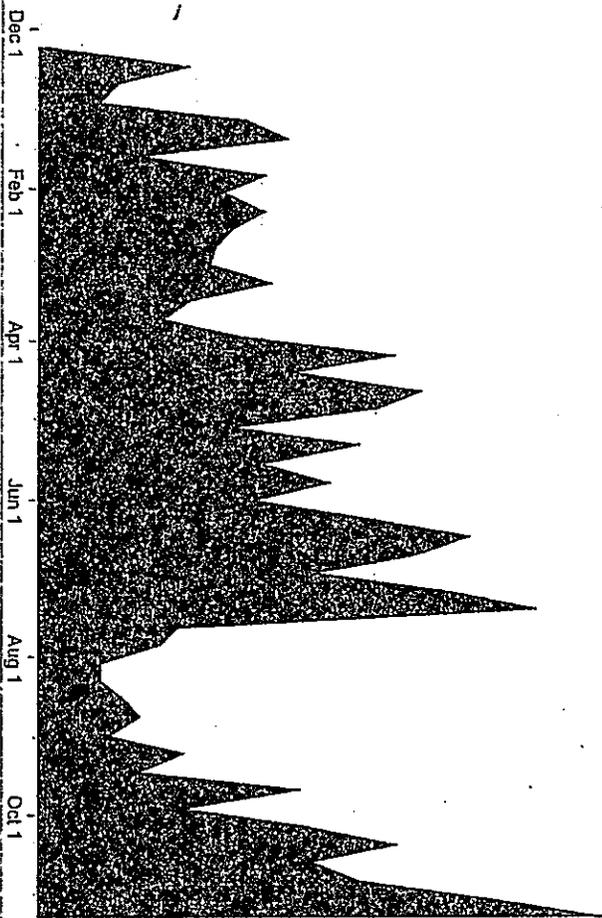
Coors Light Consumer Demographics

- Coors Light
- Blue Moon

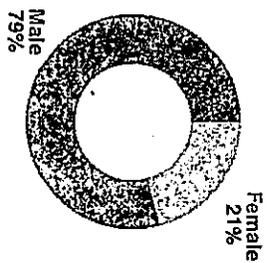
Measure Sales (\$) 400.00

Date Range All Values 300.00

- View
 - Daily
 - Weekly
 - Monthly
- Email Outreach
 - Show
 - Hide



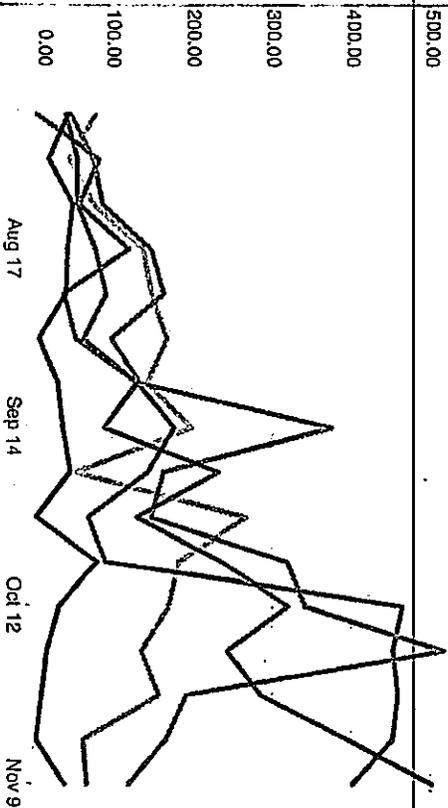
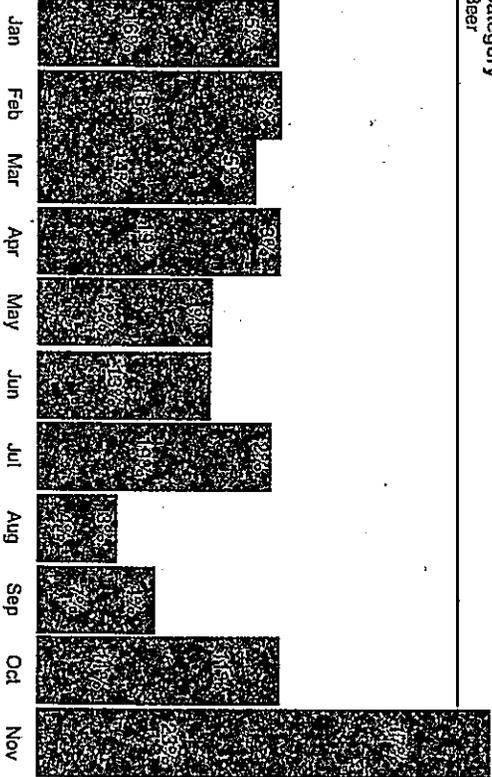
Age	Male	Female
18-24	13%	15%
25-34	52%	15%
35-44	17%	15%
45-54	15%	15%
55+	15%	15%



Monthly Market Share of Beer
Percentage of Beer Items Sold that were Coors Light or Blue Moon

Competitive Analysis by Sales (\$)
Weekly Sales (\$) by Brand

Category Beer



- Miller
- Coors
- Budweiser
- Blue Moon B. Shock Top

JACK MARTIN & ASSOCIATES

3345 BEE CAVE RD., STE. 105 AUSTIN, TEXAS 78746
TELEPHONE: 512.473.0300 FACSIMILE: 903.386-2714
JMARTINLAW.COM

MEMORANDUM

*Privileged and Confidential
Attorney/Client Communication*

TO: Rick Orr, CEO
ATX Innovations, Inc. dba Tabbedout
Via Email rick@tabbedout.com

FROM: Jack Martin

DATE: September 23, 2011

RE: Compliance of Proposed Marketing Survey with the Requirements of the Texas Alcoholic Beverage Code and the Rules of the Texas Alcoholic Beverage Commission

You have asked us to consider whether the structure of a proposed marketing survey utilizing discounts on alcoholic beverages purchased at retailers who support Tabbedout's application to entice responses would be legal under the provisions of the Texas Alcoholic Beverage Code (the "Code") and the rules of the Texas Alcoholic Beverage Commission (the "TABC"). The concern is with the various "tied house" provisions of the Code, which basically prohibit a manufacturer of alcoholic beverages from owning an interest in, or having certain influential relationships with, a retailer and the restrictions on promotions with consumers found in the Code and rules. If structured and implemented in accordance with our understanding of your plans, we believe that the survey would fall outside the boundaries of the Code and, therefore, be legal.

Proposed Survey Structure

Tabbedout believes there could be value to alcoholic beverage manufacturers in data generated from consumer responses to discounts on alcohol purchases offered by Tabbedout. For example, Tabbedout would offer a discount on a particular drink and then would be able to track the response to whether the consumer ordered any more of the same drink (or something else from the same brewery, ...). No coupon would be issued. Tabbedout would simply be able to pay the discounted portion to the selling retailer electronically. The bar or restaurant, which necessarily would be supporting Tabbedout's software application, would never even see that a discount had been offered.

The survey would not be sponsored by any manufacturer. Rather, Tabbedout would gather the data and then attempt to sell it to the manufacturers to whom the survey was designed to appeal. The data would be organized demographically. It might be from bars in Austin's Red

River District, where the demographic is different than the Warehouse District. The manufacturer would know the geographic area where, or other demographic parameters to determine how, the data was gathered, but not the specific bars and/or restaurants where the discount offer was consummated.¹

Legal Analysis

From the perspective of the manufacturer, no money, service or other thing of value is being provided to any retailer that could be seen as an inducement to encourage the retailer to purchase the manufacturer's product. The manufacturer is not involved in the design of the survey and cannot be said to be targeting any particular retailer. The limitations placed on a manufacturer's ability to provide gifts to consumers found in Secs. 45.113 and 45.117 of the TABC's rules would not be implicated because the manufacturer does not become involved in the process until after the discounts are offered and paid for by Tabbedout. The "gift" is being offered by Tabbeout, which holds no permit issued by the TABC and cannot be viewed as manufacturer's agent at that point in the process. Therefore, the tied house prohibitions governing the actions of a manufacturer are not implicated in this structure.

The tied house provisions governing relationships with manufacturers and restrictions on consumer promotions are not implicated from the perspective of the retailer either. The retailer is unaware that a discount has been offered so it can't be said to have received an inducement. The discount is activated completely independent of the retailer, so it cannot be considered the issuance of a coupon by the retailer for a discount on alcoholic beverages.

Conclusion

The proposed survey utilizing discounts on alcoholic beverages paid by Tabbedout to entice participation in the survey will not violate the provisions of the Code or the TABC's rules if structured and implemented as described.

¹ I assume that Tabbedout would be required to tell the manufacturers how many bars provided data for the sample and I imagine the manufacturer could figure out pretty easily which ones are supporting the Tabbedout application. I don't think this changes the analysis or my conclusion.

Tabbedout

1135 W. 6th St., Suite 130, Austin, TX 78703
 Phone: 866-626-8045
 www.tabbedout.com

ORDER REQUEST

SALES REPRESENTATIVE

MERCHANT OR LOCATION

COMPANY	PRIMARY CONTACT
ADDRESS	
CITY, STATE & ZIP	
PRIMARY PHONE	PRIMARY EMAIL

BILL TO (if different than merchant location)

COMPANY	CONTACT NAME
ADDRESS	
CITY, STATE & ZIP	
PHONE	EMAIL

TABBEDOUT PRODUCT DESCRIPTION

TabbedOut Mobile Payment Solution includes an online searchable listing to be placed on the TabbedOut website and on the TabbedOut consumer app. Full integration with Merchant's POS System and TabbedOut app allowing patrons to OPEN, VIEW & PAY their tab via their Android or IOS device. Merchant will also be provided with training materials for staff and patrons upon request.

TabbedOut Mobile Payment Solution	Monthly	\$99
-----------------------------------	---------	------

Location(s) included in this agreement:

POS INFORMATION / INSTALL INFORMATION

POS SYSTEM TYPE	API REQUIRED (YES OR NO)	POS DEALER NAME	REQUESTED DAY / TIME FOR INSTALL
POS SYSTEM VERSION	API IN PLACE (YES OR NO)	POS BEST CONTACT NAME	VENUE CONTACT NAME FOR INSTALL
POS SERIAL KEY (MICROS ONLY)	IF NO, DATE ORDERED	POS BEST CONTACT NUMBER OR EMAIL	CONTACT NUMBER OR EMAIL FOR INSTALL
NOTES			

ADDITIONAL INFORMATION (PLEASE INITIAL & SIGN)

- _____ This Order is subject to the Merchant Terms and Conditions located (<http://tabbedout.com/merchant-terms.pdf>), which (together with this Order shall be referred to herein as the Merchant Agreement (or the "Agreement")
- _____ Unless otherwise specified above, Merchant's subscriptions to the TabbedOut Mobile Payment Solution and to Periscope shall have an initial term of twelve (12) months. If Merchant terminates prior to such term, Merchant is subject to a \$_____ early termination fee (ETF). If not terminated, subscriptions will automatically renew for successive periods of 12 months at the rate specified above unless Merchant gives TabbedOut forty-five (45) days written notice prior to contract expiration.
- _____ In the event of Merchant ownership/management or POS change, Merchant is required to provide TabbedOut forty-five (45) days written notice OR provide proper contact information of parties assuming the contract. If Merchant fails to give notification, the original party on this agreement will be responsible for the remaining balance.
- _____ Merchant agrees to ensure all staff have completed the TabbedOut Merchant Certification Program prior to being listed "live" within the TabbedOut app.
- _____ Merchant authorizes local POS dealer and/or TabbedOut to install and/or activate the TabbedOut software to the POS System(s).
- _____ Merchant acknowledges that TabbedOut may feature merchant's location in both print and digital TabbedOut promotional material.

Merchant Authorization

Signature represents & warrants that the party has the requisite power & authority to enter into this Agreement and perform its obligations

Date

TabbedOut Authorization

Date

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF DECEMBER 16, 2015
REFERRED FROM: COUNSEL'S OFFICE

2015-02759

REASON FOR REFERRAL
REQUEST FOR DIRECTION

FREEDOM OF INFORMATION LAW
(FOIL) REVISIONS

(PROPOSED RULE MAKING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on DECEMBER 16, 2015 determined:

Notice of Proposed Rule Making

Liquor Authority, State
(SUBMITTING AGENCY)

- 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 95	Title <u>9</u> NYCRR
Repeal of	Part 95.4	Title <u>9</u> NYCRR
_____	_____	Title _____ NYCRR
_____	_____	Title _____ NYCRR
_____	_____	Title _____ NYCRR
_____	_____	Title _____ 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 I.D. No. [REDACTED]. 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:
Pub. Off. Law Sec. 87(1)(b), SAPA Sec. 201

3. Subject of the rule:
Update outdated Freedom of Information Law procedures utilized by Authority.

4. Purpose of the rule:
To update Authority procedures and ensure compliance with Freedom of information Law requirements under Pub. Off. Law., Art. 6.

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.

Time:	Date:	Location:

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][ii] [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][ii] [Rate Making]).
- Other: (specify) _____.

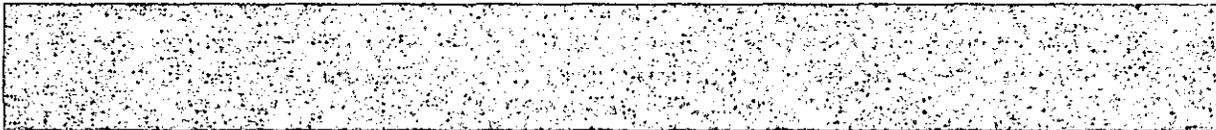
12. A prior emergency rule making for this action was previously published in the _____ issue of the Register, I.D. No. _____.

13. 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)(ii) [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 Karamanol Signature _____

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

Telephone (518) 474-3114 E-Mail paul.karamanol@sla.ny.gov

Date 11/23/2015

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.

Statement in Lieu of Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Liquor Authority's ("Authority") Notice of Proposed Rulemaking seeking to amend Parts 95.1, 95.2, 95.3, 95.5, 95.6, 95.7, 95.8, and 95.9 as well as the repeal of Part 95.4 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.)

It is apparent from the nature and purpose of these proposed amendments that they have no impact on jobs or employment opportunities in New York. These proposed amendments merely update multiple outdated references to Authority FOIL procedures to enhance transparency and public accountability. As a result, the Authority has determined that these proposed amendments will have no substantial adverse impact on any private or public sector jobs or employment opportunities and a full Job Impact Statement is not warranted.