R82-2-305. Evaluation Guidelines of Package Agencies.

(1) Authority. This rule is made pursuant to ~~S~~section 32B-2-202, which authorizes the ~~c~~Commission to make rules governing package agencies and the process to issue a new package agency.

(2) ~~(a)~~ The ~~c~~Commission, after considering information from the applicant for the package agency and ~~from~~ the ~~d~~Department, shall determine whether the package agency ~~shall be~~is classified and operated as a ~~t~~Type 1, 2, 3, 4, or 5 package agency, as described in R82-2-301.~~;~~

(b)~~(3) (i)~~ After a package agency ~~has been~~is classified and issued, a package agent or the ~~d~~Department may request that the ~~C~~commission approve a change in the classification of the package agency. ~~Information shall be forwarded to aid in its determination.~~

(ii) If, based on information provided by the package agent or the department, the ~~c~~Commission determines that the package agency should be reclassified, the commission~~it~~ shall approve the request.

~~(4) Type 2 and 3 package agencies shall:~~

~~(a) serve a population of at least 6,000 people comprised of both permanent residents and tourists; and~~

(c) The commission may not establish a type 2 or 3 package agency

~~(b) not be established or maintained~~ within a one-mile radius of another type 2 or 3 package agency unless ~~it can be clearly demonstrated~~the package agent clearly demonstrates that it is in the best interest of the state to establish and maintain the ~~outlet~~ package agency at that location.

~~(5)(a)~~ (d) The ~~d~~Department ~~shall~~shall ~~report to the Commission on package agency operations as a regular agenda item at each monthly Commission meeting.~~

~~(b)~~ report a~~A~~ny significant issues with respect to the operations of a particular package agency ~~shall also be reported~~ to the ~~c~~Commission.

~~(c)~~(e) The department may ~~Recommended closure by the Department~~ recommend to the commission closure of a package agency ~~due to~~based on:

(i) the package agent's payment ~~delinquencies~~delinquency over 30 ~~working~~calendar days;

(ii) ~~,~~significant inventory shortages; ~~,~~or

(iii) any other significant operational ~~deficiencies~~deficiency of the package agent. ~~shall be calendared for the Commission's consideration at its next regular monthly meeting or at a special meeting.~~

R82-2-308. Type 2 and 3 ~~Consignment Inventory Package Agencies~~Package Agencies.

(1) ~~Authority. This rule is made pursuant to Sections 32B-2-202 and 32B-2-605, which authorize the ~~c~~Commission to make rules governing package agencies.

~~(2) Purpose. This rule provides the procedures for consignment sales of liquor to a type 2 or type 3 package agency at the discretion of the Department.~~

~~(3) Application.~~

~~(a) Consignment Inventory.~~

~~(i)~~

(2)(a)(i) In accordance with Section 32B-6-605, the department, within its discretion, may provide liquor to a type 2 or 3 package agency for sale on consignment.

(ii) The department shall ~~The Department shall:~~

~~(A)~~establish the ~~initial~~ amount of consignment liquor inventory to be furnished to a type 2 or 3 package agency~~;~~.

~~(B) post the package agency's consignment inventory amount to the Department's accounting system as "Consignment Inventory Account";~~

(C) make any adjustment to the consignment inventory amount through a transfer, shipment, or payment of money; and

(D) include a copy of the transfer or adjusting shipment or evidence of payment in the package agency's file.

(bii)(i)(A) The dDepartment may adjust a type 2 or 3 package agency's consignment liquor inventory amount from time to time based on the package agency's monthly average sales.

(ii) The department shall make any adjustment to a type 2 or 3 package agency's consignment liquor inventory amount through a transfer or shipment of liquor or payment of money.

(B) In the event the package agency's 12-month average sales are lower than the package agency's current consignment amount, the Department may lower the consignment amount.

(C)(iii) If the department reduces a type 2 or 3 package agency's consignment liquor inventory amount is reduced, thethe type 2 or 3 package agency must shall pay for the difference between the consignment liquor inventory amount and the reduced consignment liquor inventory amount through cash payment or returned liquor returned inventory to the dDepartment.

(iii)(A) The package agency's contract with the Department shall state the package agency's consignment inventory amount.

(B) Any adjustment to the package agency's consignment inventory amount shall be made through a contract amendment or a new contract.

(b) Payments. (3)

(i)(a) A type 2 or 3 package agency that receives shipments or transfers of liquor shall have an Automated Clearing House (ACH) payment system set up with the dDepartment.

(bii) The Ddepartment shall email send a type 2 or 3 package agency a weekly statement that shows:

(i) the package agency's unpaid debts and applied credits; and

(ii) before the end of each week. the payment due date for liquor received by the package agency.

(iii) The weekly statement will reflect:

(A) 30 days from the order date to pay for ordered liquor inventory;

(B) payments received against the oldest outstanding invoices first; and

(C) payments received over previous statement balances credited chronologically against ordered liquor inventory due after previous statements.

(iv)(c) The package agent is responsible for reviewing the weekly statement and contacting the dDepartment with any discrepancies before the payment due date.

(v)(A) A package agent may, in advance of the Department drawing payments via Automated Clearing House (ACH), remit payment for the statement total to the Department on balances due from outstanding invoices that have not received enough credit card payments or other payments to cover those outstanding balances.

(B) If no other payment has been received by the due date, payment will be automatically drawn through the Automated Clearing House (ACH) process on the due date unless prior arrangements have been made between the package agent and the Department.

(d) Except as provided in Subsection (4), payment for liquor is due to the department within 30 days after the day on which the type 2 or 3 package agency orders the liquor.

(vi)((e)(i)A) The dDepartment shall consider insufficient funds, returned checks, and unpaid balances from a previous statement past due.

(iiB) If a statement is past due, tThe dDepartment may:

(A) assess the legal rate of interest on the amount owed by thea type 2 or 3 package agency; and or

(B) the package agency may be referred torefer the package agency to the cCommission for possible termination of the package agency contract and closure.

(vii)(iii)(A) The dDepartment and athe type 2 or 3 package agency shall resolve any liquor delivery discrepancies using the LQ9 form or anothera form provided by the dDepartment.

(B) The Department shall issue a debit or credit after proper completion and submission of the LQ9 or other form to the Department.

(C)(B) A The type 2 or 3 pPackage agency shall pay in accordance with the package agency's statement by the due date regardless of whether any discrepancies have been resolved.

(4)(a) A type 2 or 3 package agent may request in writing that the department extend the due date for payment under Section (3) for up to 30 days if:

(i) the package agency's liquor sales have decreased at least ten percent when compared to the package agency's liquor sales from the same month in the immediately preceding calendar year for a period of at least two consecutive months;

(ii)(A) the package agency is experiencing a temporary and substantial increase in essential operational expenses because of an unforeseeablen and uncontrollable event; and

(B) the package agent has attempted to mitigate expenses through reasonable efforts; or

(iii) the package agent requests and receives approval for a closure under Section 32B-2-605.

(b) The department may request the type 2 or 3 package agent provide documentation demonstrating the circumstances described in Subsection (4)(a) are met.

(c)(i) The department may approve a request under Subsection (4)(a) only if the type 2 or 3 package agent is otherwise compliant with the package agent's contract and other requirements by law.

(ii) The department may approve a request under Subsection (4)(a) for a period:

(A) of up to of but 90 consecutive calendar days three consecutive months in one fiscal year; and

(B) between the months of July and February of a fiscal year.

(iii) If the department approves a request under Subsection (4)(a), the department may:

(A) cap the number of orders a package agency may make during the period during which the request is approved; or

(B) prohibit the package agency from returning delisted or seasonal liquor products during the period during which the request is approved. (c) Transfers.

(i) The Department shall adjust transfers, up or down, to the package agency's payment due the Department.

(ii) Transfers to the package agency will add to the amount owed to the Department. (iii) Transfers out will subtract from the amount owed to the Department on the next check due to the Department.

(d) Credit and Debit Card Credits.

(i) Credit for credit and debit cards processed at the package agency will be posted to the package agency's statement.

(ii) The package agent is responsible for sending the package agency's settlement report and individual receipts to the Department to receive credit.

(c)

(d) Audits.

(i) The Ddepartment shall audit a type 2 or 3 the package agency at least once each fiscal year and, but may conduct additional audits if deemed necessary.

(ii) The A type 2 or 3 package agency is subject to a dDepartment audit at any time.