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| **Notice of Proposed Rule** |
| **TYPE OF RULE:** Amendment |
| **Rule or Section Number:** | **R82-2-308** | **Filing ID: 54845** |

**Agency Information**

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| **1. Department:** | Alcoholic Beverage Services |
| **Agency:** | Administration |
| **Street address:** | 1625 S 900 W |
| **City, state and zip:** | Salt Lake City, UT 84104 |
| **Mailing address:** | PO Box 30408 |
| **City, state and zip:** | Salt Lake City, UT 84130-0408 |
| **Contact persons:** |
| **Name:** | **Phone:** | **Email:** |
| Vickie Ashby | 801-977-6801 | vickieashby@utah.gov |
| Angela Micklos | 801-977-6800 | afmicklos@utah.gov |
| **Please address questions regarding information on this notice to the agency.** |

**General Information**

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| **2. Rule or section catchline:** |
| R82-2-308. Consignment Inventory Package Agencies |
| **3. Purpose of the new rule or reason for the change** (Why is the agency submitting this filing?)**:** |
| Subsection R82-2-308(3)(e)(i) requires the Department of Alcoholic Beverage Services (DABS) to audit each consignment package agency at least twice each fiscal year. A recent audit conducted by the State Auditor noted that "if inventory systems are functioning properly and providing DABS insight into in-store inventory, an annual audit may be sufficient." This new requirement mandates only one audit per fiscal year but allows for additional audits if deemed necessary. |
| **4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:** |
| This amendment will modify the section to mandate only one audit per fiscal year but allows for additional audits if deemed necessary. |

**Fiscal Information**

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| **5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:** |
| **A) State budget:** |
| None--There are only 26 consignment package agencies (PAs). The majority of the cost in conducting an audit for these rural PAs is transportation, but we schedule audits in clusters by location such that we would be auditing the consignment PAs when DABS otherwise would be in their location. Our finance director does not anticipate a measurable savings as staff and transportation costs will remain the same since staff will be in the rural areas conducting other audits. |
| **B) Local governments:** |
| None--This section does not create additional cost or savings for local governments, as it does not regulate them. |
| **C) Small businesses** ("small business" means a business employing 1-49 persons)**:** |
| None--This section does not create additional cost or savings for small businesses, as it does not fiscally impact them. At most, only 26 consignment package agencies could save personnel time if they are audited only once a year rather than twice, but the DABS is unable to calculate the fiscal impact of such. |
| **D) Non-small businesses** ("non-small business" means a business employing 50 or more persons)**:** |
| None--This section does not create additional cost or savings for non-small businesses, as it does not regulate them. |
| **E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:** |
| None--This section does not create additional cost or savings for persons other than small businesses, non-small businesses, state, or local government entities as it does not regulate them. |
| **F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?)**:** |
| There are no fees associated with this process. This section does not create additional cost or savings. |
| **G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.) |
| **Regulatory Impact Table** |
| **Fiscal Cost** | **FY2023** | **FY2024** | **FY2025** |
| State Government | $0 | $0 | $0 |
| Local Governments | $0 | $0 | $0 |
| Small Businesses | $0 | $0 | $0 |
| Non-Small Businesses | $0 | $0 | $0 |
| Other Persons | $0 | $0 | $0 |
| **Total Fiscal Cost** | **$0** | **$0** | **$0** |
| **Fiscal Benefits** | **FY2023** | **FY2024** | **FY2025** |
| State Government | $0 | $0 | $0 |
| Local Governments | $0 | $0 | $0 |
| Small Businesses | $0 | $0 | $0 |
| Non-Small Businesses | $0 | $0 | $0 |
| Other Persons | $0 | $0 | $0 |
| **Total Fiscal Benefits** | **$0** | **$0** | **$0** |
| **Net Fiscal Benefits** | **$0** | **$0** | **$0** |
| **H) Department head comments on fiscal impact and approval of regulatory impact analysis:** |
| The Executive Director of the Department of Alcoholic Beverage Services, Tiffany Clason, has reviewed and approved this fiscal analysis. |

**Citation Information**

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| **6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:** |
| Section 32B-2-605 | Section 32B-2-202 |  |

**Public Notice Information**

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| **8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.) |
| **A) Comments will be accepted until:** | 10/17/2022 |

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| **9. This rule change MAY become effective on:** | 10/24/2022 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.  |

**Agency Authorization Information**

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| **Agency head or designee and title:** | Tiffany Clason, Executive Director | **Date:** | 08/24/2022 |

**R82. Alcoholic Beverage Services, Administration.**

**R82-2. Administration.**

**R82-2-308. Consignment Inventory Package Agencies.**

 (1) This rule is made pursuant to Section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

 (2) Purpose. At the discretion of the Department, liquor may be provided by the Department to a Type 2 and Type 3 Package Agency for sale on consignment pursuant to Subsection 32B-2-605(5). This rule provides the procedures for such consignment sales.

 (3) Application of the rule.

 (a) Consignment Inventory.

 (i) The initial amount of consignment inventory furnished to the Package Agency shall be established by the Department.

 (ii) The consignment inventory amount shall be posted to the Department's accounting system as "Consignment Inventory Account."

 (iii) The consignment inventory amount shall be stated in the Department's contract with the Package Agency.

 (iv) Any adjustment to the consignment inventory amount shall be done using a transfer, shipment, or payment of money. A copy of the transfer, adjusting shipment, or evidence of payment shall be included in the Package Agency's file.

 (v) The consignment inventory amount may be adjusted from time to time based on the Package Agency's monthly average sales. Any adjustment shall be made by a properly executed amendment to the Department's contract with the Package Agency. In the event 12-month average sales are lower than the Package Agency's current consignment amount the Department may lower the consignment amount. If the consignment amount is to be reduced the Package Agency must pay for the difference through cash payment or returned inventory. Any adjustment to the consignment amount will be handled through a contract amendment or a new contract.

 (b) Payments.

 (i) Agencies receiving shipments or transfers are required to have an [~~ACH (~~]Automated Clearing House (ACH) payment system set up with the Department.

 (ii) Statements showing unpaid debts and applied credits will be generated and emailed to the agencies on each Thursday after credit card payments have been posted that Wednesday to reflect credit card payments received. Ordered liquor inventory will [~~now~~ ]reflect 30 days to pay from the order date, instead of being due upon order. This generated weekly statement will reflect payments received against the oldest outstanding invoices first. Payments received over those previous statement balances will be credited chronologically against ordered inventory due after previous statements. It is the agent's responsibility to review the statement and contact the Department with any discrepancies [~~prior to~~]before the payment date.

 (iii) Agents may, in advance of the Department drawing payments via ACH, remit payment to the Department on balances due from outstanding invoices which have not received enough credit card payments or other payments to cover those outstanding balances. Payment will be for the statement total. If no other payment has been received by the due date, payment will be automatically drawn through the ACH process on the due date unless prior arrangements have been made between the agent and the Department.

 (iv) Insufficient funds, returned checks, and unpaid balances from a previous statement are past due. The Department may assess the legal rate of interest on the amount owed and the Package Agency may be referred to the Commission for possible termination of the contract and closure.

 (v) Any delivery discrepancies shall be resolved using the LQ9 form. Debits or credits shall be issued based on proper completion and submission of the LQ9 form to the Department. Payment shall be made in accordance with the Package Agency's statement by the due date whether or not any discrepancies have been resolved.

 (c) Transfers.

 (i) Transfers, up or down, shall be adjusted to the Package Agency's payment due the Department.

 (ii) Transfers in 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) It is the agent's responsibility to mail in their settlement report and individual receipts to the Department to receive credit.

 (e) Audits.

 (i) The Department shall audit the Package Agency at least [~~twice~~]once each fiscal year, but may conduct additional audits if deemed necessary.

 (ii) The Package Agency is subject to a Department audit at any time.

**KEY: alcoholic beverages**

**Date of Last Change: [~~August 3,~~] 2022**

**Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-1-206**

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