



## PICKLE CARD REGULATIONS

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**PICKLE CARD REGULATIONS**

**Title 316, Chapter 35**

**REG-35-300 SCOPE AND DEFINITIONS**

300.01 Bingo, Lottery, Raffle, and Lottery by Pickle Card Regulations 35-300 through 35-318 are adopted to carry out the provisions of the Nebraska Pickle Card Lottery Act.

300.02 Definite profit means the gross proceeds or total possible receipts of a pickle card unit less all of the possible prizes from that pickle card unit. For example:

Gross proceeds (3,600 \$1.00 pickle cards)	\$3,600.00
Less prizes	<u>(2,600.00)</u>
Definite profit	\$1,000.00

300.03 Department means the Nebraska Department of Revenue.

300.04 Dispensing device means any machine or device into which a person inserts money, a token, or something of value in exchange for one or more pickle cards. The definition of dispensing device shall not include any machine or device that awards or dispenses any other type of prize including, but not limited to, free plays or any other item of value.

300.05 Flare card means a card, board, poster, flyer, or paper prepared by the manufacturer of a pickle card unit which is enclosed with each unit. The flare card shall identify the serial number for the unit; the state identification stamp; the numbers, letters, symbols, or configurations which, when revealed by opening the tabs on a pickle card, represent the winning combination(s); the number of cards in the pickle card unit which contain the winning combinations and their values; the form number of the game and the name, logo, symbol, design, or trademark of the manufacturer of the pickle card unit.

300.06 Gross profit means the definite profit from a pickle card unit less any commission paid to a pickle card operator for the sale of the unit. For example:

Gross proceeds (3,600 \$1.00 pickle cards)	\$3,600.00
Less prizes	<u>(2,600.00)</u>
Definite profit	\$1,000.00
Less pickle card operator's commission (30%)	<u>(300.00)</u>
Gross profit	\$700.00

300.07 Member means an individual who meets the written membership requirements contained in the organization's articles of incorporation, bylaws, charter, statement of purpose, or other written rules or statement governing membership of the organization.

300.07A One whose only participation in the activities of the organization involves the conduct of gaming activities shall not be considered a member.

300.08 Net profit means the gross profit from a pickle card unit less the unit cost and the allowable expenses incurred by the licensed organization for marketing the unit. For example:

Gross proceeds (3,600 \$1.00 pickle cards)	\$3,600.00
Less prizes	<u>(2,600.00)</u>
Definite profit	\$1,000.00
Less pickle card operator's commission (30%)*	<u>(300.00)</u>
Gross profit	\$700.00
Less elements of unit cost	
Cost of unit	\$56.00
Imprinting fee	7.00
Pickle card tax (10%)*	100.00
State sales Tax (5%)**	8.00
Federal tax, (.0025)***	
if applicable	<u>9.00</u>
	\$180.00
Allowable expenses (8%)*	
4% sales agents' commission	\$40.00
Other marketing expenses	<u>40.00</u>
	\$80.00
Total unit cost and allowable expenses	\$260.00
Net profit	<u>\$440.00</u>

- \* calculated on definite profit
- \*\* calculated on total unit cost
- \*\*\* calculated on gross proceeds

300.09 Substantial interest means connected, interested in, or otherwise concerned directly or indirectly with an individual, organization, firm, or corporation as follows:

300.09A With respect to a sole proprietorship, an individual or his or her spouse who owns, operates, manages, or conducts directly or indirectly, a part of the sole proprietorship;

300.09B With respect to a partnership, an individual, his or her spouse, or a partnership, limited liability company, or corporation who owns, operates, manages, or conducts directly or indirectly, a part of the partnership activity, or shares in any of the profits or potential profits of the partnership activities;

300.09C With respect to a limited liability company, an individual, his or her spouse, or a partnership, limited liability company, or corporation who owns, operates, manages, or conducts directly or indirectly, a part of the limited liability company activity, or shares in any of the profits or potential profits of the limited liability company activity;

300.09D With respect to a corporation, an individual, his or her spouse, or a partnership, limited liability company, or corporation who owns, operates, manages, or conducts directly or indirectly a part of the corporation activity, or who is an officer or director of the corporation or is a holder directly or indirectly of ten percent or more of any class of stock in the corporation;

300.09E With respect to an individual, such individual or his or her spouse who provides ten percent or more of the capital, whether in cash, goods, or services for the operation of a manufacturer, distributor, or pickle card operator during a calendar year; and

300.09F With respect to an organization, association, or business not covered by subdivisions A, B, C, D, or E of this regulation:

300.09F(1) An individual or his or her spouse who is an officer or director of or manages the business affairs of the organization, association, or business; or

300.09F(2) An individual or his or her spouse who owns or controls ten percent or more of the assets of the organization, association, or business.

300.10 Ultimate use means the final purpose for which the proceeds or profits of a lottery by the sale of pickle cards are put by a licensed organization. In the case of expenses incurred by the organization, the ultimate use of pickle card proceeds to pay such expenses shall mean payment directly to the individual, business or corporation with whom the organization has incurred that particular expense. In the case of a lawful purpose donation, the ultimate use of pickle card net profits shall mean that those monies are donated or directed by the licensed organization directly to the final recipient for the lawful purpose intended by the organization.

300.11 Unit cost means those costs incurred by a licensed organization connected with the purchase of a pickle card unit. Unit cost shall consist of the cost of the unit itself, the pickle card tax, any applicable sales or use tax, any federal gaming tax for which a licensed organization may be liable, the imprinting fee charged by a licensed distributor, and any shipping or delivery fee if invoiced from the distributor to the licensed organization.

300.12 Youth Amateur Athletics or Youth Sports means activities sponsored by an organization which organizes, supervises, or administers team or individual activities which consist of an element of enjoyment or recreation involving the practice of individual skill and in which all those participating on the team or in an individual activity are under the age of 19.

(Sections 9-305.01, 9-306, 9-308, 9-308.01, 9-314, 9-314.01, 9-321.01, 9-327, 9-329.01, 9-329.03, 9-329.04, 9-336, 9-340, 9-344, 9-345.02, and 9-348, R.R.S. 1997. Sections 9-309, 9-322, 9-326, 9-329.02, 9-345.03, 9-346, 9-347, and 9-347.01, R.S.Supp., 2002. November 12, 2002.)

#### REG-35-301 QUALIFICATION FOR LICENSE TO CONDUCT A LOTTERY BY THE SALE OF PICKLE CARDS

301.01 Any nonprofit organization, volunteer fire company, or volunteer first-aid, rescue, ambulance, or emergency squad applying for a license to conduct a lottery by the sale of pickle cards shall be incorporated in this state as a nonprofit corporation or organized in this state as a religious or nonprofit organization. In order for a nonprofit corporation to qualify for a license, it shall be incorporated in Nebraska.

An organization incorporated in a foreign state holding a certificate of authority to conduct affairs in Nebraska is not considered to be incorporated in Nebraska and shall not qualify for a license. A corporation incorporated in a foreign state which has domesticated in this state shall not be considered incorporated in Nebraska and shall not qualify for a license. In order for a nonprofit organization other than a corporation to qualify for a license, it shall be organized or established in Nebraska.

301.02 Any nonprofit organization holding a certificate of exemption under section 501(c)(3), (4), (5), (7), (8), (10), or (19) of the Internal Revenue Code or any volunteer fire company, or volunteer first-aid, rescue, ambulance, or emergency squad may apply for a license to conduct a lottery by the sale of pickle cards. With the exception of a volunteer fire company, or volunteer first-aid, rescue, ambulance, or emergency squad, to be eligible for a license to conduct a lottery by the sale of pickle cards, an organization must have been in existence in this state for five years immediately preceding its application for a license and have had an active, bona fide membership engaged in furthering a lawful purpose during that period.

301.02A A nonprofit organization is considered exempt under section 501 of the Internal Revenue Code if it can provide a copy of the exemption ruling or exemption determination letter issued by the Internal Revenue Service when making application for an initial license. Subsequent application by the organization to renew an existing license to conduct a lottery by the sale of pickle cards is not required to be accompanied by the proof of exemption unless the circumstances under which the exemption was issued or the nature of the organization have changed substantially to the extent that the exempt status may no longer be applicable, or the Department specifically requests the exemption determination letter.

301.02A(1) An organization may be exempt under a group exemption letter issued by the Internal Revenue Service. A group exemption letter is a ruling or determination letter issued to a parent organization recognizing on a group basis the exemption under section 501(c) of the subordinate organizations on whose behalf the parent organization has applied for recognition of exemption. A parent organization is an organization that has one or more subordinates under its general supervision or control. A subordinate is a chapter, local, post, or unit of a parent organization. Examples: American Legion, Veterans of Foreign Wars, Fraternal Order of Eagles. Under these circumstances, a subordinate organization applying for an initial license must provide the Department with a copy of the group exemption letter issued to the parent organization or indicate the Group Exemption Number (GEN).

301.02A(2) An organization defined in section 21-608 of the Nebraska Revised Statutes, as amended, which is chartered in Nebraska under a state, grand, supreme, national, or other governing body may use

the charter date of its parent organization to satisfy the five-year existence requirement.

301.03 Limitations on licenses between related organizations. Each nonprofit organization, volunteer fire company, or volunteer first-aid, rescue, ambulance, or emergency squad wishing to conduct a lottery by the sale of pickle cards must obtain its own license to do so. Related organizations may not use a license to conduct a lottery by the sale of pickle cards obtained by one licensee to conduct a lottery by the sale of pickle cards on behalf of one or more related organizations. This shall not preclude a licensed organization from becoming licensed as a pickle card operator to sell pickle cards on behalf of another licensed organization. In such an instance, the organization seeking the operator's license shall meet the statutory requirements for obtaining a license as a pickle card operator. Related organizations, each conducting separate lotteries by the sale of pickle cards, must obtain separate licenses to do so. For the purposes of this section, a related organization shall mean:

301.03A An organization affiliated with, and organized in accordance with, the bylaws and regulations formulated by a companion or parent organization; and

301.03B At least 75 percent of the members of one organization are either members of a parent or companion organization, spouses of members of its parent or companion organization, or are the parents, children, brothers, sisters, grandparents, or grandchildren of a member of the parent or companion organization.

301.04 To verify the applicant organization's five-year existence, the Department may require the applicant organization to provide additional documentation which includes, but is not limited to, any of the following:

301.04A Dated bylaws of the applicant organization;

301.04B Dated Articles of Incorporation of the applicant organization;

301.04C Dated minutes of the applicant organization's meetings;

301.04D Dated charter of the applicant organization; or

301.04E Other dated documents of the applicant organization which would provide evidence of the organization's existence and the purposes for which it was organized.

301.05 The Department may also require the organization seeking a license to produce evidence of charitable or community betterment activities conducted by the organization's membership during the five-year period preceding the application. Some examples of such evidence may include, but are not limited to the following:

301.05A Filings with any governmental agencies regarding charitable activities of the organization;

301.05B Internal documents, including membership lists, dues statements, minutes of meetings of directors

of the organization, copies of corporate resolutions of the organization, and/or correspondence and memoranda relating to nonprofit, charitable activities conducted by the organization or its membership;

301.05C Documents regarding day to day activities of the organization such as bank statements of organization bank accounts, bills, statements, receipts, leases, documents affecting title to property, ledgers, account books, tax returns, employee lists, and/or any other documents pertaining to the organization's administrative activities;

301.05D The names, addresses, and telephone numbers of persons, firms, and organizations with whom the nonprofit organization applying for a license has dealt in conducting its activities; or

301.05E Other documentation showing participation by the organization and its membership in charitable or community betterment activities.

(Section 9-327, R.R.S. 1997. Sections 9-321.03, 9-326, and 9-349, R.S.Supp., 2002. November 12, 2002.)

#### REG-35-302 LICENSE REQUIREMENTS FOR CLASS I AND CLASS II LOTTERY BY SALE OF PICKLE CARDS

302.01 A nonprofit organization, volunteer fire company, or volunteer first-aid, rescue, ambulance, or emergency squad shall not conduct a lottery by the sale of pickle cards without first obtaining a license. Such license shall be applied for on a form prescribed by the Department. Eligible organizations seeking a license to conduct a lottery by the sale of pickle cards may apply for either a Class I or Class II license. The class of license which an organization is granted shall be determined by the manner in which the organization intends to market its pickle cards.

302.01A Organizations which intend to sell pickle cards only at their designated premises and/or at their regularly scheduled or limited period bingo occasions, shall apply for a Class I license. Such organizations cannot sell pickle cards through licensed pickle card operators and do not need to license a sales agent. If, during the course of the licensing period the organization wishes to begin marketing pickle card units through licensed pickle card operators, the organization must first apply for and obtain a Class II license. Such application shall be made on a form prescribed by the Department, and the organization shall pay the difference in license fees between a Class I and Class II license and shall license at least one sales agent.

302.01B Organizations seeking to market pickle card units through licensed pickle card operators shall apply for a Class II license. An organization applying for a Class II license must license at least one sales agent. In addition, a Class II pickle card organization must apply to the Department for authorization for each pickle card operator they intend to have sell pickle cards on their

behalf. Such authorization must be applied for on a form prescribed by the Department and signed by the utilization of funds member of the licensed organization and an owner, partner or officer of the pickle card operator.

302.02 A Class II licensee may apply for authorization to market pickle cards through any organization or business which has obtained a pickle card operator's license issued by the Department. A pickle card operator may only market pickle cards on behalf of organizations holding a Class II license to conduct a lottery by the sale of pickle cards.

302.02A Prior to selling any pickle card units to a pickle card operator, the licensed organization must receive a pickle card operator authorization issued by the Department, allowing the pickle card operator to sell pickle cards on behalf of that licensed organization. Such authorizations are to be applied for by the licensed organization and shall, upon approval, be mailed to the licensed organization. The licensed organization shall provide the pickle card operator with the original authorization printed by the Department and shall not substitute a copy of the original. The organization is permitted to make a copy of such authorization for its own file.

302.03 It shall be the responsibility of the utilization of funds member to keep the organization's license application information current. The Department must be informed within thirty (30) days of any changes in the information supplied by the licensed organization in its most recent filing with the Department.

302.03A Changes must be reported in writing and the Department may require the filing of a new application or schedule. Changes must be confirmed by the signature of an officer or a utilization of funds member on the Nebraska Form 50; a utilization of funds member on the Nebraska Form 50, Schedule II; and a utilization of funds member and the sales agent on the Nebraska Form 50E. Any individual signing the most current application shall obligate the licensee to comply with the Nebraska Pickle Card Lottery Act and regulations for that licensing period.

302.04 In addition to all other information requested by the Department, each applicant for a Class I or Class II lottery by the sale of pickle card license and each subsequent renewal thereof may, at the discretion of the Department, be required to provide:

302.04A A copy of the organization's articles of incorporation or bylaws; or, if not a corporation, a copy of any bylaws or other documents which set forth the organization's structure and purpose;

302.04B A copy of the organization's ruling or exemption determination letter issued by the Internal Revenue Service. A blanket or group exemption letter issued by the Internal Revenue Service to a parent organization, which also covers its subordinate units, is acceptable. An organization utilizing the charter date of its parent

organization to satisfy the five-year existence requirement may be required to submit additional information as evidence of such parent relationship as provided for in section 21-608 of the Nebraska Revised Statutes, as amended; and/or

302.04C A current roster of all active members.

302.05 A nonprofit organization, volunteer fire company, volunteer first-aid, rescue, ambulance, or emergency squad, utilization of funds member, sales agent, and pickle card operator shall not be considered licensed until such organization, volunteer fire company, volunteer first-aid, rescue, ambulance, or emergency squad, individual, or business has physical possession of the printed license issued by the Department and shall not conduct any activity under the Nebraska Pickle Card Lottery Act until it has received its license and applicable authorizations.

302.05A A licensed organization must provide to each distributor from whom it purchases pickle card units, a copy of its current license or adequate proof that the organization has a current lottery by the sale of pickle card license. Adequate proof may include confirmation to the distributor by the Department that the organization holds a current license.

302.06 A licensed organization, sales agent, or utilization of funds member, which has had its license lost, stolen, or destroyed must notify the Department as soon as possible. A duplicate license will be issued for no additional fee.

302.06A Any licensed organization, utilization of funds member, or sales agent which no longer desires to be licensed, or any organization which desires to cancel an authorization for a pickle card operator to sell pickle cards on their behalf, shall notify the Department, in writing, of its intentions to cancel the license or authorization.

302.06A(1) Sales agents shall make such intentions known to the Department by completion of a Nebraska Form 50E or by a letter signed by the utilization of funds member;

302.06A(2) A licensed organization or utilization of funds member shall make such intentions known to the Department by completion of a Form 50 or Form 50H respectively or by a letter signed by an officer of the organization; and,

302.06A(3) A licensed organization shall make such intentions known to the Department by completion of a Form 50, Schedule II, signed by the utilization of funds member in the case of a pickle card operator authorization.

302.06B All notifications of cancellation must be accompanied by the original license or authorization issued by the Department.

302.07 In the event that a license to conduct gaming activities under the Nebraska Pickle Card Lottery Act is suspended, canceled, or revoked, the licensee shall surrender physical possession of all of its licenses suspended, canceled,

or revoked to the Department immediately upon receipt of the order of suspension, cancellation, or revocation from the Department. In the case of suspension, the Department shall return the licenses to the licensee at the end of the suspension period. In the case of cancellation, the former licensee may reapply for a license when the period of cancellation has expired. In the case of revocation, the former licensee may not reapply for any license at any time in the future under the Nebraska Pickle Card Lottery Act unless otherwise authorized by the Department.

302.07A When a licensee has successfully appealed an order of suspension, revocation, or cancellation, the Department shall return physical possession of the license which had been suspended, revoked, or canceled.

302.08 All licenses issued to organizations to conduct a lottery by the sale of pickle cards and all licenses issued to any utilization of funds member or sales agent for such organizations shall expire and may be renewed on a biennial basis, according to the following schedule:

302.08A A license to conduct a lottery by the sale of pickle cards issued to a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code and any license issued to a utilization of funds member or sales agent for such nonprofit organization shall expire on September 30 of each odd-numbered year.

302.08B A license to conduct a lottery by the sale of pickle cards issued to a nonprofit organization holding a certificate of exemption under section 501(c)(5), (c)(7), (c)(8), (c)(10) or (c)(19) of the Internal Revenue Code, or to any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad and any license issued to a utilization of funds member or sales agent for such organizations shall expire on September 30 of each even-numbered year.

302.08C Renewal applications for licensed organizations, utilization of funds members, and sales agents shall be due 45 days prior to the expiration date of the license unless the application, pertains only to special function pickle card sales. Licenses are not transferable.

(Sections 9-327, 9-329.03, 9-330, and 9-340, R.R.S. 1997. Sections 9-321.03, 9-326, 9-328, 9-329, and 9-329.02, R.S.Supp., 2002. November 12, 2002.)

#### REG-35-303 LAWFUL PURPOSE

303.01 A licensed or previously licensed organization shall spend its pickle card net profit as defined in Regulation 35-300.08 solely for lawful purposes.

303.02 Pickle card net profits may be used internally by a licensed or previously licensed organization or donated outside of the organization, subject to the following:

303.02A Internal use of pickle card net profits. Lawful purpose uses of pickle card net profits internally by a licensed or previously licensed organization include:

303.02A(1) Charitable, benevolent, humane, religious, philanthropic, youth sports, educational, civic, or fraternal activities conducted by the licensed or previously licensed organization for the benefit of its members, such as:

303.02A(1)(a) Religious activities including but not limited to creating, operating, or maintaining a church, church school, and their programs and facilities;

303.02A(1)(b) Educational activities including but not limited to paying the operating expenses of a school or establishing or continuing scholarship funds;

303.02A(1)(c) Charitable or humane activities including but not limited to purchasing food for the needy or to help provide medical care for individuals in need;

303.02A(1)(d) Youth sports activities including but not limited to the support or maintenance of team or individual activities which consist of an element of enjoyment or recreation, involving the practice of individual skill, and in which all of the participants are under 19 years of age. Such donations may include the construction, acquisition, improvement, or maintenance of facilities used in conjunction with youth sports activities; and

303.02A(1)(e) Civic or fraternal activities, including but not limited to those activities which confer a benefit on the membership as a whole, such as paying the reasonable and necessary expenses for officers to travel to regional or national conventions at which organization business is discussed; funding ceremonies commemorating religious or patriotic holidays; paying for the construction, acquisition, improvement, or maintenance of the licensed or previously licensed organization's facilities; or paying the general operating expenses of the licensed or previously licensed organization such as non-pickle card related payroll expenses, taxes, insurance or utilities.

303.02A(1)(f) A licensed or previously licensed organization shall not use pickle card net profits for purely social or recreational purposes such as stocking a bar with alcoholic beverages, defraying the cost of a dinner or dance, or paying the expenses for a New Year's Eve party.

303.02B Outside donations of pickle card net profits. Donating pickle card net profits outside of the licensed or previously licensed organization is considered a lawful purpose usage of pickle card net profits provided the donation is made to an eligible recipient. Only the following entities are eligible to receive an outside donation:

303.02B(1) The State of Nebraska or any political subdivision thereof, exclusively for public purposes such as the funding of parks or the creation or maintenance of public facilities or projects;

303.02B(2) A corporation, trust, community chest, fund, or foundation;

303.02B(2)(a) Created or organized under the laws of Nebraska, which has been in existence for five consecutive years immediately preceding the date of the donation, and which has its principal office located in Nebraska. A licensed or previously licensed organization shall not donate its pickle card net profits to foreign corporations, trusts, community chests, funds, or foundations, but may donate to a local chapter of such organizations provided that such local chapter has been created or organized under the laws of Nebraska, has been in existence for five years, and has its principal office located in this state;

303.02B(2)(b) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, for the prevention of cruelty to children or animals, or to foster national or international amateur sports competition;

303.02B(2)(c) No part of the net earnings of which inures to the benefit of any private shareholder or individual;

303.02B(2)(d) Which is not disqualified for tax exemption under section 501(c)(3) of the Internal Revenue Code by reason of attempting to influence legislation; and

303.02B(2)(e) Which does not participate in any political campaign on behalf of any candidate for political office.

303.02B(3) A post or organization of war veterans or an auxiliary unit or society of, trust for, or foundation for any such post or organization:

303.02B(3)(a) Organized in the United States or in any territory or possession thereof; and

303.02B(3)(b) No part of the net earnings of which inures to the benefit of any private shareholder or individual; or

303.02B(4) A volunteer fire department or volunteer first-aid, rescue, or emergency squad or volunteer fire company serving any city, village, county, township, or rural or suburban fire protection district.

303.03 No part of the pickle card net profits shall:

303.03A Inure to the benefit of any individual member or shareholder of the licensed or previously licensed organization making the donation except to the extent it is in furtherance of the purposes described in this

regulation. A licensed or previously licensed organization may make a direct donation to an individual member of its organization if that organization's activities include (a) making charitable donations to fire, catastrophic illness, or disaster victims and the individual member is a victim thereof, or (b) making charitable donations to other charitable, benevolent, humane, religious, philanthropic, youth sports, educational, civic, or fraternal activity and the individual member is a beneficiary thereof or a participant in the activity; or

303.03B Be used for any activity which attempts to influence any legislation, regulation, or ordinance, or participating in or contributing to any political campaign on behalf of any elected official or individual who is or has been a candidate for public office.

303.04 In the case of scholarship funds, the licensed or previously licensed organization may either donate to its own internal scholarship fund or to an outside scholarship fund or educational institution meeting the guidelines for recipients of outside donations under these regulations.

303.04A A donation to a scholarship fund that does benefit an individual member of the licensed or previously licensed organization or a dependent or immediate family member of such individual member may qualify as a lawful purpose and may be made either through the organization's own scholarship fund or through a donation directly to the educational institution or scholarship fund meeting the requirements of this regulation.

303.05 Upon dissolution of a licensed organization or upon suspension, cancellation, revocation, or expiration of an organization's license, all remaining pickle card net profits shall be utilized for a lawful purpose and shall not be distributed to any private individual or shareholder. The disbursement of such remaining net profits shall be subject to the reporting and disbursement requirements contained in Regulation 35-313.01A.

303.06 A licensed or previously licensed organization may commingle its revenue from its lottery by the sale of pickle cards with its other operating accounts only after initially depositing the pickle card receipts into its pickle card checking account. Pickle card revenues transferred to other accounts of the licensed or previously licensed organization must be done by writing a check from the pickle card checking account or by electronic funds transfer from the pickle card checking account. Pickle card revenues transferred to other accounts must still be used for lawful purposes.

303.06A It shall be the duty of the licensed utilization of funds member to keep and maintain records sufficient to prove that pickle card revenues transferred from the pickle card checking account have been used for lawful purposes.

303.07 All lawful purpose donations must be made by a check written from the licensed or previously licensed organization's pickle card checking account, directly to the

donee for the ultimate use of the donation. For example, a lawful purpose donation to an eligible recipient must go directly to the recipient for use in a manner complying with section 9-309 of the Nebraska Pickle Card Lottery Act and this regulation.

303.07A All checks must be signed by a licensed utilization of funds member of the licensed organization. If an electronic funds transfer is utilized in lieu of a check, such transfer must be authorized by a licensed utilization of funds member of the licensed organization.

303.08 No licensed or previously licensed organization, or any representative thereof, shall donate or promise to donate any portion of its pickle card net profit to a recipient outside of the organization in exchange for a payment, gift, or other thing of value from the recipient to any individual, organization, or corporation, including, but not limited to, the licensed or previously licensed organization or any of its members, employees or agents, or to a pickle card operator in exchange for an agreement to sell pickle cards on behalf of the licensed organization. Unlawful outside donations include, but are not limited to:

303.08A A licensed or previously licensed organization donating all or a portion of its pickle card net profits to: (a) a second organization in return for a donation or a transfer of all or a portion of the donation from the second organization to the original organization or any representative thereof, or (b) an organization designated by a pickle card operator as such donation is deemed by the Department to be an illegal inducement for the operator to sell the licensed organization's pickle cards.

(Sections 9-309, 9-314.01, 9-321.03, 9-347, 9-347.01, 9-348, and 9-348.01, R.S.Supp., 2002. November 12, 2002.)

#### REG-35-304 DISTRIBUTOR OF PICKLE CARD UNITS: LICENSE; REQUIREMENTS; AND DUTIES

304.01 To qualify for a distributor's license, an applicant must be authorized to conduct business in Nebraska and have its principal office located within this state.

304.01A Authorization to do business in Nebraska requires:

304.01A(1) A domestic corporation to file Articles of Incorporation with the Nebraska Secretary of State's office;

304.01A(2) A domestic limited liability company to file Articles of Organization with the Nebraska Secretary of State's office;

304.01A(3) A foreign corporation or foreign limited liability company to obtain a certificate of authority to transact business in Nebraska from the Nebraska Secretary of State's office or to become domesticated by filing the requisite documents with the Nebraska Secretary of State's office and paying any required fees; or

304.01A(4) A domestic partnership, foreign partnership, or limited liability partnership to file any forms that may be required by the Nebraska Secretary of State's office.

304.01B Applicants seeking a distributor's license who intend to be engaged in business in this state as defined in section 77-2702.06 of the Nebraska Revised Statutes, as amended, shall also submit a Nebraska Tax Application, Form 20, to obtain a Nebraska Sales and Use Tax Permit.

304.02 Any individual or business which intends to sell or otherwise provide pickle card units in this state to a licensed organization must first apply for and obtain a distributor's license from the Department. An individual or business applying for a distributor's license shall do so on a form prescribed by the Department. The applicant shall include with the application form the statutorily required license fee and, at a minimum, the following information:

304.02A The business name and address of the applicant and the name and address of each of the applicant's separate locations warehousing pickle cards or pickle card units;

304.02B The type of ownership of the business and the name, social security number, home address, and date of birth of:

304.02B(1) If a sole proprietorship, the individual owner;

304.02B(2) If a partnership, each partner and spouse;

304.02B(3) If a limited liability company, each member and spouse; or

304.02B(4) If a corporation, each officer and spouse, each director or board member, and each individual or entity holding ten percent or more of the debt or equity of the corporation. If an entity holding ten percent or more of the debt or equity of the applicant corporation is a partnership, limited liability company, or corporation, the information required in Regulation 35-304.02B must be supplied for each partner of the partnership, each member of the limited liability company, or each officer of the corporation and every individual or entity holding ten percent or more of the debt or equity of the partnership or corporation.

304.02C A completed and notarized Personal History Record and Background Disclosure form supplied by the Department for each individual listed pursuant to Regulation 35-304.02B, except for spouses who have completed and had notarized the Affidavit by Spouse for Waiver of Fingerprinting and/or Personal History Record and Background Disclosure form; and

304.02D Two sets of fingerprints on cards supplied by the Department and the requisite fees established by



the Nebraska State Patrol and the Federal Bureau of Investigation for each person listed pursuant to Regulation 35-304.02B, except for spouses who have completed and had notarized the Affidavit by Spouse for Waiver of Fingerprinting and/or Personal History Record and Background Disclosure form. Fingerprint cards and the required fees must be submitted to the Nebraska State Patrol, Criminal Identification Division.

304.03 The applicant or licensee shall notify the Department within thirty (30) days of any change in the information submitted on or with the application form. Changes must be reported in writing and the Department may require the filing of a new application.

304.03A Changes shall be confirmed by the signature of an owner, partner, member, or officer of the distributor. Any individual signing the most current application shall obligate the distributor to comply with the Nebraska Pickle Card Lottery Act and regulations for that licensing period.

304.04 A distributor's license shall expire on September 30 of every odd-numbered year and may be renewed biennially. An application for license renewal shall be due August 15 of each odd-numbered year. A distributor's license is not transferable.

304.05 A distributor is not considered licensed until it has physical possession of the printed license issued by the Department.

304.05A Any individual or business licensed as a distributor pursuant to section 9-235 of the Nebraska Bingo Act may act as a distributor pursuant to the Nebraska Pickle Card Lottery Act without submitting an additional licensing fee. Such individual or business shall comply in every other respect with the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, and all rules and regulations adopted and promulgated pursuant to such Acts.

304.05B A distributor which no longer desires to be licensed shall notify the Department, in writing, of its intention to cancel its license. Such notification shall be signed by an owner, officer, member, or partner of the distributorship. A notification of cancellation shall be accompanied by the original license issued by the Department.

304.05C A distributor which has had its license lost, stolen or destroyed must notify the Department as soon as possible. The distributor shall send a written statement to the Department signed by an owner, officer, member, or partner confirming the loss, theft or destruction of the license. A duplicate license will be issued for no additional fee under such circumstances.

304.06 A licensed distributor, or any individual or business having a substantial interest therein, is prohibited from holding any other licenses issued pursuant to the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and

Raffle Act, or the Nebraska County and City Lottery Act, except as provided in section 9-235 of the Nebraska Bingo Act, and section 9-632 of the Nebraska County and City Lottery Act.

304.06A A licensed distributor, or employee or spouse of a licensed distributor, shall not have a substantial interest, as defined in Regulation 35-300.09, in any other distributor, manufacturer, licensed organization, pickle card operator, or lottery operator conducting gaming activities under the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska County and City Lottery Act.

304.06B A licensed distributor or employee or spouse of a licensed distributor shall not participate in the operation or conduct of any kind of gaming activity regulated under Chapter 9 of the Nebraska Revised Statutes, as amended, except to the exclusive extent of his or her duties as a licensed distributor or employee thereof.

304.07 A licensed distributor shall purchase or otherwise obtain pickle card units only from a licensed manufacturer. A licensed distributor shall sell or otherwise provide pickle card units only to an organization licensed to conduct a lottery by the sale of pickle cards.

304.07A A distributor shall not sell pickle card units to an organization unless and until such organization can provide a copy of its current license to the distributor, or the distributor has confirmed through the Department that such organization has a current license.

304.07B A distributor shall not sell pickle card units to another licensed distributor without prior approval by the Department.

304.07C A distributor shall not sell any pickle card units to a pickle card operator.

304.07D Only a licensed utilization of funds member, a licensed sales agent, licensed gaming manager, bingo chairperson, or a club manager for a organization which is exempt under section 501(c)(8),(10), or (19) and holding a lottery by the sale of pickle cards license may order pickle card units from a distributor.

304.07E Only a licensed utilization of funds member may pay for the purchase of pickle card units.

304.07F Nothing in this regulation shall be construed to prohibit a licensed distributor from selling or otherwise providing pickle card units to a federally recognized Indian tribe for use in a Class II Indian gaming activity as provided in the Indian Gaming Regulatory Act.

304.08 Only licensed distributors or manufacturers may possess unmarked pickle cards. For purposes of this regulation, an unmarked pickle card is one which has not been imprinted with the name and state identification number of a licensed organization. Only a licensed manufacturer or distributor or agent thereof may imprint individual pickle cards with a licensed organization's name and state identification number. A licensed distributor or manufacturer shall notify the Department

in writing of the name and address of any person or business other than the licensed manufacturer or distributor, designated as an agent for imprinting purposes.

304.08A A licensed distributor shall affix a state identification stamp to each flare card of each pickle card unit sold for use in Nebraska. Such stamp must be placed on the face or information side of a flare card, in the lower right-hand corner of the flare card, unless such placement would obscure pertinent game information such as a form number or serial number.

304.08A(1) With respect to punchboards, the stamp may be placed either on the face or reverse side of the board.

304.08B The licensed distributor shall ensure that the proper flare card is provided with each pickle card unit and that the flare card contains the correct and corresponding serial number and unit count to the unit being sold.

304.08C The serial number and unit count of a pickle card unit is required to be listed on the flare card by the licensed manufacturer. However, if the flare card information has not been completed by the manufacturer, or if a request has been received for a replacement flare card, a licensed distributor may fill in the information, provided that the distributor ensures the accuracy of the unit count, and that the flare card is the proper flare card for such game. A licensed distributor shall not be permitted to write a serial number on a punchboard. In addition, a licensed distributor shall notify the Department when the above information has not been completed by the manufacturer.

304.09 A licensed distributor shall deliver pickle card units only to a licensed utilization of funds member, a licensed sales agent, a licensed gaming manager, a bingo chairperson or, in the case of a licensed organization which is exempt under section 501(c)(8), (10), or (19) of the Internal Revenue Code, a club manager.

304.09A A licensed distributor shall immediately report to the Department any pickle card unit which is discovered to be missing from their inventory or which has been lost in shipping or delivery.

304.10 The price charged by a licensed distributor for a pickle card unit shall not be fixed or set by agreement among licensed distributors in any manner, either expressed or implied.

304.10A No distributor shall offer or agree to offer anything of value to any individual or licensee in exchange for an agreement or commitment by such individual or licensee to exclusively buy, sell, or use pickle card units sold by such distributor.

304.10B No individual or licensee shall accept or agree to accept anything of value from a distributor in exchange for an agreement or commitment by such individual or licensee to exclusively buy, sell, or use pickle card units sold by such distributor.

304.11 A licensed distributor shall not sell or otherwise provide pickle card units to any licensed organization without first having been paid for those units with a check drawn on the pickle card bank account of that organization. Such payment can be made either in advance of or at the time of delivery of the pickle card units. Automatic bank transfers from the pickle card bank account of the licensed organization to the distributor shall be an acceptable form of payment. A licensed organization seeking to purchase pickle card units from a licensed distributor may set up a deposit or secured fund with the distributor upon which the distributor may draw payment for pickle card units ordered by the licensed organization. Such deposit or fund shall be funded by a check with monies from the pickle card bank account of the licensed organization. No distributor shall extend credit in any form to any licensed organization seeking to purchase pickle card units, such as the use of credit or bank cards or any other method which does not require the expenditure of funds by the licensed organization prior to or at the time of purchase.

304.11A A distributor who fails to make a good faith effort to collect payment for an insufficient fund check written by a licensed organization for the purchase of pickle card units shall be deemed in violation of this regulation. In addition, a distributor shall not further sell or otherwise provide pickle card units to a licensed organization who has not remitted sufficient payment, by check, to cover any outstanding debt owed by the organization to the distributor.

304.12 A licensed distributor shall not be prohibited from selling pickle card units to purchasers outside this state. Additionally, licensed distributors shall not be prohibited from selling pickle card units which may not be marketed in Nebraska to out-of-state purchasers. With respect to the sale of pickle card units to out-of-state purchasers, licensed distributors shall maintain the following records:

304.12A The name and complete address of the purchaser;

304.12B The date of the transaction;

304.12C The type of unit and serial number of each unit sold. For the purposes of this section, "type of unit" means the form number and name of a particular type of pickle card unit; and

304.12D The method of shipment, including the name, address, and telephone number of the entity transporting the units.

304.13 A licensed distributor shall pay for all purchases of pickle card units by check or automatic bank transfer within 30 days of delivery. A licensed distributor may by check set up a deposit with a licensed manufacturer upon which the manufacturer can draw payment for pickle card units ordered by the distributor.

304.14 A licensed distributor shall not market or sell any pickle card unit for use in this state:

304.14A Which offers prizes of less than 65 percent or more than 80 percent of the gross proceeds or which contains a prize pay-out structure designed by the manufacturer to vary;

304.14B Which has a card or play count exceeding 6,000;

304.14C Which contains an individual pickle card or punch whose purchase price is greater than \$1.00;

304.14D Which contains a single pickle card or punch that awards a prize or prizes that exceeds \$1,000.00;

304.14E Which has not been approved and authorized by the Department; or

304.14F Which does not contain the appropriate flare card with a Nebraska state identification stamp as required by Regulation 35-315 affixed to such flare card.

304.15 The Department shall provide each licensed distributor with a listing of approved pickle card units. Such listing shall be updated by the Department on no less than a monthly basis, as required when additional games are approved. A distributor shall not sell any pickle card unit for use in this state unless and until they ensure that the game is a game which appears on the Department's Approved Product Listing.

304.16 A licensed distributor shall issue an invoice to the licensed organization for each purchase, exchange or return of pickle card units by the licensed organization. Every such invoice shall contain the following information:

304.16A The name, address, and state identification number of the licensed organization;

304.16B The individual placing the order or making the purchase, exchange or return on behalf of the licensed organization;

304.16C The date of the transaction;

304.16D A description of each pickle card unit to include the game name, serial number and form number;

304.16E The total number of pickle card units sold, exchanged, or returned;

304.16F The price of each pickle card unit, applicable taxes, and the total amount paid, exchanged, or returned by the licensed organization;

304.16G The manner of delivery or shipment, including the name, address, and telephone number of the entity with whom shipment is made;

304.16H The pickle card tax charged or credited for each unit; and

304.16I The state identification stamp number assigned to each unit.

(Sections 9-302, 9-307, 9-330, 9-340, 9-340.01, 9-342, 9-343, 9-344, 9-351, and 9-632, R.R.S. 1997. Sections 9-1, 104, 9-322, 9-331, 9-340.02, 9-346, and 9-347, R.S. Supp., 2004. September 5, 2005.)

## REG-35-305 PRIZES

305.01 No pickle card unit shall be sold or marketed for play in the state of Nebraska that pays less than 65 percent or more than 80 percent of the gross proceeds of that unit in prizes, or which has been designed by the manufacturer to have a prize payout structure which may vary.

305.02 A pickle card unit shall award only cash prizes. A pickle card shall not be offered as a pickle card unit prize or be offered as a prize in another game of chance. A participant must pay something of value for a pickle card as a means of participating in the game.

305.02A Nothing in this section shall prohibit an individual from redeeming a winning pickle card for additional pickle cards in lieu of receiving the cash value of the winning pickle card. For example, an individual who has a \$5.00 winning pickle card may redeem such in exchange for five additional \$1.00 pickle cards.

305.02B Nothing in this regulation shall be construed to prohibit the sale and use of punchboards which contain a "Last Sale" feature, provided the "Last Sale" feature pertains only to the purchase of the last punch on the board. Punchboards which contain multiple "Last Sale" features such as "Last Sale Per Section" are prohibited.

305.03 No person may alter pickle card units, flare cards, or punchboards to award additional or fewer prizes or prizes other than those designated by the manufacturer. No person may change or alter the combinations of numbers, letters, or symbols which represent the winning combinations on the pickle card, flare card, or punchboard or assign or award prizes which differ from those designated by the manufacturer.

(Sections 9-302, 9-313, and 9-340, R.R.S. 1997. Sections 9-338, 9-346, and 9-347, R.S. Supp., 2002. November 12, 2002.)

## REG-35-306 PICKLE CARDS – RESTRICTIONS

306.01 No person shall affix to any pickle card, pickle card unit, or any subpart thereof, any statement indicating any endorsement of that particular pickle card or pickle card unit by the State of Nebraska, the Department, or any division thereof. Additionally, no other statement indicating any such endorsement shall be made verbally or in writing.

(Sections 9-302, 9-313, 9-317, 9-332.01, and 9-340, R.R.S. 1997. Sections 9-312, 9-315, and 9-322, R.S. Supp., 2002. November 12, 2002.)

## REG-35-307 UTILIZATION OF FUNDS MEMBER: LICENSING REQUIREMENTS AND DUTIES

307.01 Each licensed organization must have at least one of its members licensed as a utilization of funds member. To be eligible for a utilization of funds member license, an individual must have been an active and bona fide member of the organization for at least one year prior to applying for the license.

307.01A If a licensed organization can provide evidence that the one-year membership requirement will impose

an undue hardship, the Department may waive such requirement. An officer of the organization must provide a written explanation of the nature of the hardship with the utilization of funds member's license application.

307.01B An individual may act as a utilization of funds member for more than one gaming activity of a licensed organization by paying only one licensing fee per licensing period.

307.01C An individual may be licensed as a utilization of funds member for more than one licensed organization by applying for a separate license for each organization and paying a separate licensing fee for each organization.

307.01D A utilization of funds member may not be licensed as a sales agent for any licensed organization or hold any other type of license issued under the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act.

307.02 An individual is not considered to be licensed as a utilization of funds member and shall not conduct any activity for which such license is required until he or she has obtained physical possession of the printed license issued by the Department. The licensed organization shall apply for the license on a form supplied by the Department. The application shall contain, at a minimum, the following:

307.02A The name and state identification number of the licensed organization on whose behalf the individual is seeking the utilization of funds member license;

307.02B The name, address, social security number, and date of birth of the individual applying for the utilization of funds member license;

307.02C The date the individual became a member of the licensed organization;

307.02D The signature of the individual applying for the license;

307.02E A statement signed by an officer of the licensed organization indicating the organization's approval of the individual to act as the utilization of funds member on behalf of the organization; and

307.02F The statutorily required license fee. Such fee may be paid by the licensed organization.

307.03 The information contained in the application shall be kept current. An individual licensed as a utilization of funds member shall notify the Department within thirty (30) days of any changes to his or her most recent application filing. Changes must be reported in writing and the Department may require the filing of a new application.

307.04 Utilization of funds member license shall expire and may be renewed as provided in Regulation 35-302.08.

307.05 The licensed organization is not required to post the utilization of funds member's license.

307.06 Utilization of funds member for an organization licensed to conduct a lottery by pickle cards shall have the following responsibilities:

307.06A Preparation of all applications, reports, and documents filed with any governmental agency by the licensed organization in connection with its lottery by the sale of pickle cards. If the utilization of funds member is assisted in the preparation of such applications, reports, and documents by any other individual or business, the utilization of funds member shall ensure that the information contained in those reports is true, accurate, and kept up to date;

307.06B Ensuring that pickle card units purchased by the licensed organization are paid for by a check written from the licensed organization's pickle card checking account either in advance of or upon delivery of the pickle card units;

307.06C Ordering, purchasing, and accepting delivery of pickle card units from licensed distributors on behalf of the licensed organization;

307.06D In the case of a Class II licensee, approving individuals to act as sales agents for the licensed organization, authorizing pickle card operators to sell pickle cards on behalf of the licensed organization, and signing any release the licensed organization may be obligated to give a former sales agent seeking to be licensed with another organization;

307.06E Ensuring that the licensed organization complies with the 30 percent of definite profit limitation on commissions paid to pickle card operators, the eight percent of definite profit limitation for allowable expenses, and, within that eight percent allowable expense limitation, ensuring that no sales agent of the organization receives more than four percent of definite profit as a commission for marketing pickle card units;

307.06F Ensuring that his or her signature is on each check written from the organization's pickle card checking account. If an electronic funds transfer is utilized in lieu of a check, such transfers must be authorized by a utilization of funds member;

307.06F(1) A licensed organization may require that checks written by the utilization of funds member be co-signed by one or more parties.

307.06G Collecting all revenues received by sales agents from the sale of pickle card units to licensed pickle card operators;

307.06H Ensuring that complete and accurate records of the licensed organization's pickle card activities are kept, including the tracking of pickle card units sold and shipped or delivered to pickle card operators by the organization's sales agents. Such records shall include a description of the unit, the form number, serial number,

and state identification stamp number of each such pickle card unit as well as the pickle card operator to whom the unit was delivered, the gross proceeds from the sale of all pickle card units both to pickle card operators and sold internally by the organization at its designated premises, special function pickle card sales events, and bingo occasions, prizes paid, expenses incurred by the organization relating to its lottery by pickle cards, and taxes due and paid;

307.06I Depositing the proceeds from the sale of pickle cards and pickle card units, from the sale, lease, or rental of pickle card dispensing devices into the pickle card checking account of the licensed organization and ensuring that the revenues derived from the lottery by pickle cards are segregated from other income of the licensed organization;

307.06I(1) With respect to the depositing of checks written by a pickle card operator for the purchase of pickle card units or for the sale, lease, or rental of a pickle card dispensing device, ensuring that such checks are deposited within a commercially reasonable time after the pickle card operator issues the check.

307.06I(2) In determining whether checks written by a pickle card operator have been deposited within a commercially reasonable time, the following factors shall be taken into consideration:

307.06I(2)(a) The proximity of the organization to the bank with which it has its pickle card checking account;

307.06I(2)(b) The location of the organization's pickle card operators; and

307.06I(2)(c) The ability of the organization's sales agents to deliver the checks from the pickle card operators to the organization.

307.06I(3) When an organization markets pickle cards through pickle card operators located in the same community as the organization and the organization maintains its pickle card checking account in that community, a commercially reasonable time for the depositing of a check received from a local pickle card operator would be within three business days from the receipt of the check by the sales agent.

307.06I(4) When an organization markets pickle cards through pickle card operators located in communities some distance from the location of the organization, and it is necessary for the sales agent to forward a check, either in person or by mail, to the organization, a commercially reasonable time for the sales agent to remit the check to the licensed organization would be within three business days of when the sales agent received the check and, upon receipt of the check, the utilization of funds

member would have three business days to deposit the check into the organization's pickle card checking account.

307.06I(5) It shall be the regular practice of the organization to make its deposits within the time frames set forth in this regulation. Failure to deposit checks within a commercially reasonable time or the accepting of post-dated checks shall be considered an illegal extension of credit from the organization to the pickle card operator.

307.06J If pickle card revenues are transferred to the licensed organization's general fund account or any other account of the licensed organization, ensuring that the transfer is done only by a check written from the pickle card checking account or by an electronic funds transfer from such account, and that pickle card revenues transferred in such manner are used only for a lawful purpose as defined in Regulation 35-303;

307.06K Ensuring that the gross proceeds received from the lottery by the sale of pickle cards of the licensed organization are spent only for lawful purposes as defined in Regulation 35.303, the awarding of prizes, payment of unit costs, pickle card operators' commissions and allowable expenses as identified in Regulation 35.314, bingo expenses if the organization is also licensed to conduct bingo, and ensuring that all lawful purpose donations and all expenses with the exception of prizes are paid only by a check written from the organization's pickle card checking account;

307.06K(1) It shall be the duty of the licensed utilization of funds member to keep and maintain records sufficient to prove that pickle card revenues transferred from the pickle card checking account have been used only for a lawful purpose; and

307.06L Ensuring that, upon proper request, all records and documents relating to the licensed organization's lottery by the sale of pickle cards are made available to the Department or its representatives.

307.07 An individual licensed as a utilization of funds member shall not have a substantial interest, as defined in Regulation 35-300.09, in any individual or business licensed as a manufacturer, distributor, or pickle card operator.

(Sections 9-327, 9-342, 9-348, and 9-348.01, R.R.S., 1997. Sections 9-322, 9-328, 9-329, 9-331, 9-340.02, 9-347, 9-347.01, and 9-349, R.S.Supp., 2002. November 12, 2002.)

#### REG-35-308 SALES AGENT: LICENSING REQUIREMENTS AND DUTIES

308.01 A Class II licensee must have at least one of its members licensed as a sales agent. To be eligible for a sales agent's license, an individual must have been an active and bona fide member of the organization for at least one year prior to applying for the license.

308.01A An individual may be licensed as a sales agent for only one licensed organization at any time. If an

individual wishes to apply for a sales agent's license for a different organization, he or she must first obtain a written release signed by the utilization of funds member and at least one officer of the organization that the individual had previously been licensed for as a sales agent, prior to being eligible to apply for a license as a sales agent for another organization. Such release shall only be given to the individual if he or she has satisfied all of his or her legal obligations to the licensed organization with respect to the sale of pickle cards. An organization shall not arbitrarily and without good cause withhold or refuse to issue a release. A copy of the release must be included with any new application for a sales agent's license for another organization.

308.01B An individual licensed as a sales agent cannot hold any other type of license issued pursuant to the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act.

308.02 An individual is not considered to be licensed as a sales agent and shall not conduct any activity for which such license is required until he or she has physical possession of the sales agent's license issued by the Department. An individual seeking a sales agent's license shall apply for such license on a form supplied by the Department. Such application shall contain, at a minimum, the following information:

308.02A The name and state identification number of the licensed organization;

308.02B The name, address, social security number, date of birth, and signature of the individual applying for the sales agent's license;

308.02C The date the individual became a member of the organization;

308.02D A statement signed by the licensed organization's utilization of funds member indicating its approval of the individual to act as a sales agent on behalf of the organization; and

308.02E The statutorily required license fee. Such fee may be paid by the licensed organization.

308.03 The information contained in the application shall be kept current. The sales agent shall notify the Department within thirty (30) days of any changes to the application information. Changes must be reported in writing and the Department may require the filing of a new application.

308.04 An individual applying for a sales agent's license is required to be fingerprinted for criminal background investigation purposes. Two sets of fingerprints on cards supplied by the Department must be submitted to the Nebraska State Patrol, Criminal Investigation Division, along with the required fees. Such fees may be paid by the licensed organization.

308.04A If an individual applying for a sales agent's license has been issued a license by the Nebraska

Liquor Control Commission, the Department may, at its discretion, waive the fingerprinting requirement.

308.04B An individual renewing his or her sales agent's license shall not be required to submit additional fingerprint cards or pay additional fingerprinting fees unless specifically requested to do so by the Department.

308.05 A sales agent's license shall expire and may be renewed as provided in Regulation 35-302.08.

308.06 An individual licensed as a sales agent shall have the following responsibilities:

308.06A Ensuring that the licensed organization does not promise or represent to any licensed pickle card operator or potential pickle card operator that the organization he or she represents will pay or allow a pickle card operator or any other individual, firm, corporation, or organization any amount of money or anything else of value as a commission on a pickle card unit in excess of that amount allowed by law to market such units as an inducement for a pickle card operator or potential pickle card operator to sell pickle cards on behalf of the licensed organization;

308.06B Explaining to pickle card operators that the pickle card operator's license and the authorization to sell on behalf of the organization the sales agent represents must be conspicuously posted in order to sell pickle cards, as well as the flare card for each pickle card unit in play at that location;

308.06C Soliciting orders from pickle card operators to sell pickle cards on behalf of the licensed organization he or she is licensed to represent;

308.06D Ordering, picking up, and/or accepting delivery of pickle card units from licensed distributors or the licensed organization which he or she represents and delivering such units to licensed pickle card operators who are authorized to sell pickle cards on behalf of the licensed organization he or she is licensed to represent;

308.06D(1) A sales agent may order, but not purchase, pickle card units on behalf of a licensed organization. Only a licensed utilization of funds member may pay for the purchase of such units.

308.06D(2) A licensed sales agent may arrange delivery of pickle card units to a licensed pickle card operator by mail or common carrier provided the requirements of Regulation 35-308.06E and 35-308.06F are adhered to.

308.06E Collecting the check from a licensed pickle card operator representing the definite profit of each pickle card unit transferred from a licensed organization to a pickle card operator less the operator's commission either in advance of or upon delivery of those units and delivering that check to the utilization of funds member

of the licensed organization he or she is licensed to represent; and

308.06F Keeping and maintaining an accurate record of the transactions between the licensed organization and the pickle card operators to whom the sales agent transfers pickle card units. Those records shall include the dates of delivery, the types of units transferred and their serial numbers, the amount of payment from the operator to the licensed organization, and the name of the individual making payment on behalf of the operator. The sales agent shall prepare and issue a standard receipt containing such information as prescribed by Regulation 35-309.07.

308.07 A licensed sales agent shall not hold a license as a pickle card operator. No sales agent shall have a substantial interest as defined in Regulation 35-300.09, in any pickle card operator.

308.07A No individual licensed as a sales agent shall be a director, manager, trustee, or member of any governing committee, board, or body of the licensed organization on whose behalf the sales agent is licensed, if that individual receives any compensation from the organization for his or her work as a sales agent. An ex officio board member who participates in the decision making responsibilities of the licensed organization may not be a compensated sales agent, regardless of the individual's voting capability. For the purposes of this regulation, compensation shall mean any payment, directly or indirectly from the organization to the sales agent in connection with the sales agent's work which relates to the organization's pickle card activity. Compensation shall not include reimbursement for reasonable and necessary expenses actually incurred by the sales agent in connection with the sale of pickle cards.

308.08 A licensed sales agent shall not act or be licensed as a utilization of funds member for any licensed organization.

(Sections 9-320, 9-329.01, and 9-345.02, R.R.S., 1997. Sections 9-1, 104, 9-322, 9-329, 9-331, 9-340.02, and 9-347.01, R.S.Supp., 2002. November 12, 2002.)

#### REG-35-309 PICKLE CARD OPERATOR: LICENSE ELIGIBILITY AND REQUIREMENTS

309.01 Any sole proprietorship, partnership, limited liability company, or corporation seeking to sell pickle cards on behalf of a Class II pickle card licensee must first apply for and obtain a pickle card operator's license. Such license shall be applied for on a form prescribed by the Department. The pickle card operator's license fee must be paid by the applicant for the license and shall not be paid or reimbursed by a licensed organization or any of the organization's agents or employees. To be eligible for a pickle card operator's license the applicant shall:

309.01A Hold a retailer's license for consumption on the premises issued by the Nebraska Liquor Control Commission;

309.01B Hold a bottle club license issued by the Nebraska Liquor Control Commission; or

309.01C Hold a retailer's license for consumption off the premises issued by the Nebraska Liquor Control Commission.

309.01D A licensed pickle card operator may sell pickle cards only on behalf of organizations holding a current Class II pickle card license.

309.02 An applicant for a pickle card operator's license shall designate on the application a particular premises at which the pickle cards will be sold. The license issued shall only be valid for that area described which shall not be greater than the area covered by the applicant's liquor license. No pickle cards may be sold by a pickle card operator at any location other than the one designated on the license application filed with the Department, nor may pickle cards be sold on any area of land surrounding the premises of the pickle card operator even if the pickle card operator's liquor license extends outside the premises or building. For example, no pickle cards may be sold by a pickle card operator in its "beer garden" located outside of its premises or building.

309.02A A pickle card operator's license shall cover all employees at the premises designated on the license application filed with the Department.

309.02B A pickle card operator's license may not be transferred under any circumstances including change of ownership. A change of stock ownership in a corporation which does not result in any individual or business becoming a holder directly or beneficially of ten percent or more of any class of stock in the corporation, who did not hold such an interest prior to the change in ownership does not constitute a change of ownership.

309.02B(1) When a change of ownership of a business licensed as a pickle card operator is anticipated, the current owner(s) of the business may designate as his or her agent, the party purchasing the business. In order to be designated as an agent, a temporary agency agreement must be filed with the Nebraska Liquor Control Commission pursuant to its regulations. Throughout the duration of the temporary agency agreement, the designated agent may sell pickle cards using the current owner's pickle card operator license. Once the sale of the business has been completed, and a liquor license has been issued to the party purchasing the pickle card operator, the new owner(s) must obtain their own pickle card operator license. The new ownership may not sell pickle cards using the license of the previous owner(s) after the temporary agency agreement has been terminated and the new ownership has obtained their own liquor license.

309.02C It shall be the responsibility of the pickle card operator to keep the information filed on its license application current. The Department must be notified

within thirty (30) days of any changes to the application information.

309.02C(1) Changes must be reported in writing and the Department may require the filing of a new application. Changes must be confirmed by the signature of an owner, partner, member, or officer of the pickle card operator. Any individual signing the most current application filed shall obligate the licensee to comply with the Nebraska Pickle Card Lottery Act and regulations for that licensing period.

309.03 A pickle card operator's license shall expire on September 30 of every odd-numbered year and may be renewed biennially. Additionally, any authorizations to sell pickle cards on behalf of a licensed organization issued to a licensed organization for a pickle card operator shall become invalid upon the expiration of the pickle card operator's license and may be renewed biennially. The pickle card operator's application for license renewal shall be due 60 days prior to the expiration date of the license.

309.04 A licensed pickle card operator shall not sell individual pickle cards on behalf of a licensed organization until it has physical possession of an authorization issued by the Department to sell pickle cards on behalf of that organization. A licensed organization must apply to the Department for such authorization on a form prescribed by the Department. Such application form shall be signed by the utilization of funds member of that organization and an owner, partner, member, or officer of the licensed pickle card operator.

309.05 The pickle card operator's license and authorization to sell pickle cards for each licensed organization must be posted prominently at the specific location for which it was issued before the pickle card operator may sell pickle cards on a retail basis. The pickle card operator must post its original license and authorization(s) issued by the Department at the location where the majority of pickle cards are sold. A copy of the license or authorization(s) shall not be substituted for the original.

309.05A A pickle card operator who has had its license or authorization(s) lost, stolen, or destroyed must notify the Department as soon as possible. A duplicate license or authorization will be issued for no additional fee.

309.05B A pickle card operator who no longer desires to be licensed shall notify the Department, in writing, of their intention to cancel their license. A notification of cancellation must be accompanied by the original license and all authorizations issued by the Department.

309.05C In the event that a pickle card operator's license is suspended, canceled, or revoked, the pickle card operator shall surrender physical possession of its license, authorizations and all pickle cards and pickle card units to the Department immediately upon receipt of the order of suspension, cancellation or revocation. In the case of suspension, the Department shall return the license and

authorizations and all pickle cards and pickle card units to the pickle card operator at the end of the suspension period. In the case of cancellation, the former licensee may reapply for a license when the period of cancellation has expired. In the case of revocation, the former licensee may not reapply for any license at any time in the future under the Nebraska Pickle Card Lottery Act unless otherwise authorized by the Department.

309.05C(1) When a licensee has successfully appealed an order of suspension, revocation, or cancellation, the Department shall return the license and authorizations which had been surrendered to the Department.

309.06 The definite profit, less the pickle card operator's commission, of each pickle card unit received by a licensed pickle card operator must be paid for by a check made payable to the licensed organization, either in advance of or upon delivery of the pickle card unit to the pickle card operator. It shall be a violation of these regulations for a pickle card operator to receive credit in any form upon receiving a pickle card unit from a licensed organization including but not limited to the post-dating of a check written by the pickle card operator or the holding of a check written by the pickle card operator by the licensed organization, sales agent, or utilization of funds member.

309.06A For purposes of satisfying the payment by check requirement contained in this regulation, a pickle card operator must make payment by a check written from the business account of the pickle card operator, or by a personal check written by an owner, officer, member, or partner of the pickle card operator. Payment by money order, certified check, credit card, or any other method is prohibited unless otherwise authorized by the Department.

309.07 With each delivery of pickle card units to a licensed pickle card operator, the licensed sales agent shall ensure that a receipt to the operator is included.

309.07A Such receipts shall be on a form prescribed by the Department and shall contain the following information either on the prescribed form or an attachment thereto which has been approved by the Department:

309.07A(1) The name of the licensed organization;

309.07A(2) The name, address, and state identification number of the pickle card operator;

309.07A(3) A description of the pickle card units sold, including the name of the game, form number, and serial number;

309.07A(4) The gross proceeds and definite profit of each unit;

309.07A(5) The pickle card operator's commission from each unit;



309.07A(6) The check number, the date of the check, and amount of the check issued from the pickle card operator to the licensed organization; and

309.07A(7) The signature of the sales agent of the licensed organization certifying receipt of payment and the signature of the pickle card operator certifying receipt of the pickle card unit(s) and the date of sale.

309.07B Both the pickle card units delivered and the receipt or a copy thereof issued by the sales agent shall be physically present at the pickle card operator's premises until such unit is fully sold.

309.08 Any applicant for a pickle card operator's license shall be responsible for and pay its own license fee. The pickle card operator shall also be responsible for any other expenses it incurs in connection with the sale of pickle cards on behalf of a licensed organization including the registration of pickle card dispensing devices with the Department and obtaining such registration decal from the Department.

309.09 No pickle card operator shall generate revenue from the sale of individual pickle cards which exceeds the revenue generated from other retail sales on an annual basis. For the purposes of this regulation, the phrase "revenue generated from other retail sales" shall mean the gross income taken in from the sale of goods and services not including revenues generated from charitable gaming activities and the phrase "revenue from the sale of individual pickle cards" shall mean the pickle card operator's commission from the sale of all pickle cards. For example, if a pickle card operator receives \$500,000.00 from the sale of all goods and services exclusive of pickle card sales at its place of business prior to the expenses of operating that business, its revenue generated from other retail sales for the purposes of this section is \$500,000.00. That figure shall be compared with its commission from the sale of pickle cards during that time period from the licensed organization.

309.10 An owner, partner, member, or officer of a licensed pickle card operator shall not act or be licensed as a utilization of funds member or sales agent for any licensed organization conducting a lottery by the sale of pickle cards. This shall not exclude an employee of a pickle card operator from acting as a utilization of funds member for a licensed organization to which he or she belongs. No pickle card operator licensed under the Nebraska Pickle Card Lottery Act shall have a substantial interest as defined in Regulation 35-300.09, in any individual, partnership, firm, corporation, or other party licensed as a distributor or a manufacturer.

309.11 Prior to a pickle card unit being placed in play, the pickle card operator may return the unit to the licensed organization or its sales agent and the licensed organization shall refund to the pickle card operator the amount paid by the pickle card operator for that pickle card unit. Such a transaction shall be reflected on all copies of the receipt that was issued.

309.11A If the returned pickle card unit is delivered to another pickle card operator by the licensed organization, the expenses incurred by the licensed organization in connection with the re-marketing of that pickle card unit shall be applied to the organization's allowable expense limitation on resale.

309.12 No pickle card operator shall receive any additional consideration, in any form, directly or indirectly, over and above the 30 percent of definite profit pickle card operator's commission limitation, from any individual or organization or member, employee, or agent of any licensed organization as inducement to sell pickle cards.

309.13 In the event that a licensed pickle card operator has its liquor license temporarily suspended, it shall no longer meet the licensing requirements for a pickle card operator, and during the period in which its liquor license is suspended, shall not sell pickle cards. Upon the lifting of such suspension, the pickle card operator may resume the sale of pickle cards.

(Sections 9-316, 9-317.01, and 9-329.03, R.R.S, 1997. Sections 9-322, 9-328, 9-329, 9-329.02, 9-340.02, and 9-345.03, R.S.Supp., 2002. November 12, 2002.)

#### REG-35-310 CONDUCT OF THE GAME

310.01 No licensed pickle card operator or licensed organization may sell pickle cards without having physical possession of the license to sell pickle cards issued by the Department. In addition, a pickle card operator must have an authorization issued by the Department for each licensed organization on whose behalf they intend to sell pickle cards. No pickle card operator or licensed organization shall sell any pickle card which is not clearly and legibly imprinted by a licensed distributor with the name and state identification number of the licensed organization on whose behalf the pickle cards are sold.

310.02 The corresponding flare card for each pickle card unit in play must be posted prominently at the location where pickle cards are sold individually. If more than one pickle card unit is in play, the flare card for each pickle card unit must be posted by the organization selling the pickle cards or the licensed pickle card operator selling the pickle cards. If one pickle card unit is being played at more than one location within a single premises, or in more than one dispensing device within a single premises, the flare card must be posted at the point where the majority of pickle cards are being sold.

310.03 Units of pickle cards may be commingled in one receptacle, including a coin-, currency-, or token-operated dispensing device, subject to all of the following provisions:

310.03A Two or more units are placed in play at the same time at the start of a commingled game. Units added to the commingled game must be intermixed in the receptacle with the units in play. If the receptacle cannot hold two or more units, the receptacle may be filled with one unit

and, as those cards are sold, refilled with cards from the second unit.

310.03B The units are identical as to a particular type, form number, name of game, cost per play, and number of pickle cards.

310.03B(1) Two or more types of pickle cards may be sold from the same coin-, currency-, or token-operated dispensing device designed with multiple columns provided that: different types of pickle cards are not mixed in a single column; and, the player has a choice as to which type of pickle card they can purchase.

310.03C For each unit in play, the flare card displaying the state identification stamp and game serial number which coincides with the pickle cards being sold must be posted in close proximity to the receptacle from which the cards are sold and plainly visible to all players.

310.03D For the purposes of this regulation, receptacle shall mean a container, coin-, currency-, or token-operated dispensing device, or a distinct section thereof, in which pickle cards may be completely separated from other pickle cards in other sections of the container or device.

310.04 The following information shall be indicated by the licensed organization or pickle card operator on each flare card posted at the location at which the particular pickle card unit is sold:

310.04A The name and state identification number of the licensed organization on whose behalf the cards are being sold; and

310.04B The date the unit was placed in play.

310.05 No pickle card unit or punchboard may be put out for play unless the flare card or punchboard has a Nebraska state identification stamp attached which has been previously affixed thereto by a licensed distributor. Once placed on the flare card or punchboard, the state identification stamp may not be tampered with by any person.

310.06 No pickle card unit may be placed out for play in the original packages, boxes, or other containers in which it was received from the distributor or licensed organization.

310.07 No pickle card or punchboard punch may be sold for a price different from the price stated on the pickle card and flare card of the unit or on the punchboard.

310.08 No licensed organization, pickle card operator, or any other person may modify or otherwise change the flare card of a pickle card unit or change or modify a punchboard from its original form as manufactured, or use a flare card or punchboard that arrives in an altered or defaced condition.

310.09 A pickle card operator or licensed organization shall not pay a prize to any player who is attempting to redeem a pickle card that has in any manner been marked, defaced, tampered with, or otherwise placed in a condition which may deceive the pickle card operator or organization.

310.10 When a winning pickle card is presented to claim a prize, the individual redeeming the pickle card shall verify before he or she pays the prize, that the serial number on the pickle card is, in fact, the serial number of a pickle card unit being sold at that particular location.

310.11 To minimize the unfair advantage certain individuals may have with regard to the prize status of a particular pickle card unit in play, otherwise known as “insider information”, the following prohibitions shall apply to the purchasing and playing of pickle cards:

310.11A With respect to a bingo occasion: No individual working, managing or assisting with the conduct of the bingo occasion, or selling or redeeming winning pickle cards at the bingo occasion, shall purchase or play pickle cards at that bingo occasion at any time. This regulation does not apply to a concession worker whose duties are not connected to the actual conduct of bingo games or to the selling or redeeming of pickle cards.

310.11B With respect to an organization’s designated premises: No individual who sells or redeems individual pickle cards at the designated premises shall purchase or play pickle cards at that designated premises at any time.

310.11C With respect to a pickle card operator: No individual employed by the pickle card operator and no officer, partner or owner of the pickle card operator shall purchase or play pickle cards at that operator’s location at any time.

310.11D In addition, the individuals prohibited from purchasing or playing pickle cards as identified in this regulation, shall at no time disclose the prize status of a pickle card unit to any player or potential player thus giving that person an unfair advantage. Violations of this regulation could result in a fine or the suspension, cancellation or revocation of the license of the party where the violation occurred.

310.12 Upon receipt and verification of a winning pickle card, the pickle card operator or licensed organization shall pay the prize designated by the manufacturer to the winner and shall deface the winning number, letter, symbol, or set of numbers, letters or symbols of each winning pickle card redeemed. Some examples of “defacing” a winning pickle card so that it may not be redeemed a second time are punching, marking, or signing one’s name on the winning numbers, letters or symbols on the pickle card when the winner is paid.

310.13 Pickle card operators and licensed organizations shall manage and control the disposal of played and unsold pickle cards from their premises. Played and unsold pickle cards should be burned, shredded or treated in some other manner which would prevent someone from obtaining the used, defaced or unsold pickle cards and attempting to reuse them or any portion thereof.

310.14 No licensed organization or pickle card operator shall freeze a pickle card unit for a particular player(s). For

the purposes of this regulation, freezing a unit or game means limiting the play of a particular pickle card unit to a particular player or players.

310.15 A licensed pickle card operator or licensed organization selling individual pickle cards shall not post any copy or facsimile of the flare card for any pickle card unit. If the original flare card becomes lost or damaged beyond use, a replacement flare card must be obtained. The pickle card unit shall be removed from play until the replacement flare card has been obtained. Such replacement flare card must comply with all other flare card requirements including the presence of a state identification stamp affixed to it.

310.15A A pickle card operator must contact the licensed organization or sales agent from whom the game was purchased to request a replacement flare card.

310.15B A licensed organization must contact the distributor from whom the game was purchased to obtain a replacement flare card.

310.16 No pickle card operator or licensed organization shall extend credit to any player for the purchase of pickle cards nor shall such operator or organization accept any mode of payment other than cash or a check from the player for the purchase of a pickle card with the exception of a player who is redeeming a winning pickle card for a pickle card or cards whose face value equals the value of the prize awarded by the winning pickle card redeemed.

310.16A A pickle card operator or licensed organization who fails to make a good faith effort to collect payment for a bad or insufficient fund check used to purchase pickle cards shall be deemed in violation of this regulation.

310.17 Licensed organizations and pickle card operators shall establish a policy regarding when and where individual pickle cards may be opened. A licensed organization or pickle card operator may establish a policy that all pickle cards must be opened and all winning cards must be redeemed at the time and at the location at which they are purchased. Licensed organizations and pickle card operators which have this policy shall clearly post a legible sign at the sales location notifying players that all pickle cards must be opened and redeemed on the premises at the time of sale.

(Sections 9-302, 9-317, 9-336, 9-337, 9-340, and 9-345.02, R.R.S. 1997. Sections 9-312, 9-315, 9-322, 9-328, 9-329.02, 9-345.03, and 9-346, R.S.Supp., 2002. November 12, 2002.)

## REG-35-311 TAXES

311.01 A distributor shall pay to the Department, on a monthly basis, the statutory tax rate on the definite profit of each pickle card unit sold in Nebraska. The tax shall be remitted with and reported on a form prescribed by the Department and shall be due within thirty (30) days after the end of each monthly period or by the last day of the month following each monthly period, whichever comes first. When the last filing date for any return or report falls on a Saturday, Sunday, or

day considered a holiday by the Tax Commissioner's office, the return or report shall be considered timely filed if mailed postage prepaid or personally delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or a day considered a holiday by the Tax Commissioner's office.

311.01A Such tax shall be due and paid on the basis of the definite profit of the pickle card units sold as of the date the distributor transfers title or possession of the units. For the purposes of this regulation, title shall mean the right to take possession of the units even if the purchasing organization has not yet done so. Possession shall mean actual physical possession of the pickle card units purchased.

311.01A(1) If a licensed distributor is on a cash basis of accounting, the licensed distributor will report the tax at the rate as it exists at the time the distributor receives a cash payment without regard to whether the cash is in satisfaction of an obligation predating a change in the rate of tax.

311.01A(2) A licensed distributor using a pure accrual basis of accounting will report the tax as it exists at the time the distributor records the sale in his or her books.

311.01B The tax as described in this regulation shall not be imposed on pickle card units which are sold by a licensed distributor to a federally recognized Indian tribe for use in a Class II gaming activity authorized by the federal Indian Gaming Regulatory Act.

311.01C Unless otherwise provided by the Nebraska Pickle Card Lottery Act, no occupation tax may be assessed or collected on receipts derived from the conduct of a lottery by the sale of pickle cards, by any county, township, district, city, village or other governmental subdivision or body who has the power to levy, assess or collect such tax.

311.02 A licensed distributor is required to obtain a Nebraska sales tax permit and must collect and remit the sales tax on the selling price of pickle card units except from those organizations deemed exempt from sales and use tax as set forth in the Nebraska Sales and Use Tax Regulations. A licensed distributor who is required to collect the Nebraska sales tax and who fails to do so will be liable for such tax and may be assessed in accordance with the Nebraska Revenue Act of 1967, as amended.

311.03 The Nebraska sales tax is to be computed on the distributor's selling price of each pickle card unit plus any charge for imprinting and/or charges for the transportation of the property to the purchaser, if delivery of the property is made by facilities of the licensed distributor. The distributor's selling price shall include the pickle card tax that each distributor is required to pay to the state.

311.04 Organizations licensed to conduct a lottery by the sale of pickle cards are required to pay the Nebraska sales and use tax on the cost of each pickle card unit purchased from

the distributor unless the licensed organization is exempt from Nebraska sales and use tax as set out in the Nebraska Sales and Use Tax Regulations.

311.05 A distributor may accept a properly completed exempt sale certificate, section B of the Nebraska Resale and Exempt Sale Certificate, Form 13, from licensed organizations that have received an exempt sales tax certificate from the Nebraska Department of Revenue. The types of organizations which are exempt from sales and use tax are listed in Sales and Use Tax Regulations.

311.06 Licensed distributors are prohibited from accepting a completed resale certificate, section A of the Nebraska Resale and Exempt Sale Certificate, Form 13, on their sale of pickle card units to licensed organizations in lieu of collecting the sales tax since licensed organizations are the ultimate consumers of the pickle card units.

(Section 77-2704, R.R.S. 1996. Sections 9-343, and 9-344, R.R.S., 1997. Sections 9-322 and 77-2703, R.S.Supp., 2002. November 12, 2002.)

#### REG-35-312 RECORDS

312.01 Each licensed organization, manufacturer, distributor, and pickle card operator shall maintain complete, accurate and legible accounting records with detailed supporting records sufficient to furnish information regarding all transactions pertaining to its lottery by pickle card activities. Such records shall be retained for a period of not less than three years.

312.01A A licensee may conduct its accounting on a cash basis, accrual basis or any other generally recognized accounting basis which correctly reflects the operation of the business.

312.01B All records required by the Nebraska Pickle Card Lottery Act and the regulations adopted to carry out that Act shall be open to inspection by the Department, as well as any law enforcement officials.

312.02 Each organization licensed to conduct a lottery by the sale of pickle cards shall maintain its pickle card activity records separate from all other records of the organization. The following types of records must be maintained by the licensed organization:

312.02A Invoices for all purchases of pickle card units and punchboards by the organization, including the type of unit or board purchased, the serial number for each unit or punchboard purchased, the name of the distributor from whom the units or boards were purchased, the purchase price of each unit or board, the date of purchase and the check number of the check drawn on the organization's pickle card bank account used to purchase the units or boards;

312.02B The gross proceeds for each pickle card unit or punchboard purchased and the ideal prizes awarded by that unit or board. Gross proceeds shall mean the total number of pickle cards in the unit or total number of punches on a punchboard multiplied by the selling price per pickle

card or punch. Ideal prizes shall mean the amount of prizes offered by the unit or board as indicated by the manufacturer on the payout slip and flare card enclosed with the unit or on the face of the punchboard;

312.02C The name and address of each pickle card operator authorized to sell pickle cards or punches from a punchboard for the licensed organization;

312.02D The amount of commission retained by each pickle card operator for selling pickle cards or punches from a punchboard on behalf of the licensed organization and for each unit or board sold at that location, the type of unit or board, serial number, the definite profit, and the net amount paid by the operator to the organization;

312.02E Normal books of account generally maintained by a reasonable prudent business person engaged in a similar business. These records will include, but are not limited to accounts payable journals, accounts receivable journals, sales journals, and purchase journals; and

312.02F A detailed breakdown of all pickle card expenses incurred by the organization. These expenses include, but are not limited to:

312.02F(1) The unit cost of pickle card units and punchboards including, the cost of imprinting individual pickle cards, taxes and delivery charges invoiced by the distributor; pickle card operators' commissions; sales agents' commissions; fees; salaries; rent; equipment; supplies; advertising; promotional expenses; and any other expense incurred with the marketing of pickle cards and punchboards by the licensed organization.

312.02F(2) These records must be maintained for all pickle card and punchboard expenses, even if those expenses are paid from a source other than the pickle card bank account of the licensed organization.

312.03 Each organization licensed to conduct a lottery by the sale of pickle cards shall maintain a separate pickle card checking account from all other bank accounts of the organization. The amount representing the definite profit less any pickle card operator's commission derived from the transfer of all pickle card units and punchboards to pickle card operators shall be deposited into this account.

312.03A An organization must maintain the following records in connection with this bank account:

312.03A(1) All deposits, withdrawals, and transfers;

312.03A(2) All canceled checks;

312.03A(3) All bank statements; and

312.03A(4) Records of all expenditures from any bank account used in connection with a lottery by the sale of pickle cards and a description of the purpose of the expenditure.

312.03B An organization may maintain more than one bank account devoted to pickle card proceeds; provided,

at least one account is a checking account from which all lawful purpose donations and expenses relating to the licensed organization's pickle card activities are made. For each such account, the records required by Regulation 35-312.03A must be maintained.

312.04 Each licensed pickle card operator shall maintain separate records of its pickle card activities for each Class II licensed organization for whom it sells pickle cards or punches from a punchboard. A pickle card operator, shall at a minimum, keep and maintain the following types of records for a period of not less than three years:

312.04A A copy of the receipt issued by the licensed organization or sales agent for all pickle card units and punchboards sold by the licensed organization, including the form number and type of pickle card unit or punchboard sold, serial number, name of the organization from whom the pickle card units or punchboards were purchased, the name of the sales agent who sold the pickle card units or punchboards to the operator, the definite profit of each unit or punchboard, the pickle card operator's commission on each unit or punchboard, and the check number and date of the check used to pay for the pickle card units or punchboards; and

312.04B A record of all money or any other items of value received from a licensed organization as a commission for selling pickle cards or punches from a punchboard on behalf of the organization.

312.05 A licensed distributor located in Nebraska which sells pickle card units or punchboards to purchasers outside of the state of Nebraska must keep the following records of those sales for a period of not less than three years:

312.05A The name, address, city, state, and zip code of the purchaser;

312.05B The type of pickle card units or punchboards sold and the serial number of each;

312.05C The date of sale;

312.05D The manner of shipment, including name, address, and telephone number of the individual, firm, or corporation with whom the pickle card units or punchboards were shipped; and

312.05E The total number of pickle card units or punchboards sold to each purchaser.

312.06 A licensed distributor shall maintain the following records on the sale of pickle card units or punchboards in Nebraska for a period of not less than three years:

312.06A The name, address, city, state, and zip code of all organizations to whom pickle card units or punchboards are sold;

312.06B The total number of units and boards sold to each organization, including the type of pickle card unit or punchboard, serial number, form number, and

corresponding state identification stamp number assigned to that pickle card unit or punchboard;

312.06C The gross proceeds from each pickle card unit or punchboard; and

312.06D The ideal prizes offered by each pickle card unit or punchboard.

312.07 A licensed manufacturer shall maintain records containing the following information concerning sales of pickle card units and punchboards to pickle card distributors licensed by Nebraska for a period of not less than three years;

312.07A Each distributor's name, address, city, state, zip code and state identification number to whom pickle card units or punchboards are sold;

312.07B The quantity of each type of unit or board sold to each distributor, including a description of the pickle card unit or punchboard, serial number, and form number assigned to each unit or board;

312.07C The gross proceeds from each pickle card unit or punchboard; and

312.07D The prizes offered by each pickle card unit or punchboard.

(Section 9-341, R.R.S. 1943. Sections 9-302, 9-333, 9-340.01, 9-342, 9-343, 9-347, 9-348, and 9-349, Cum. Supp., 1990. Sections 9-322, 9-329.02, 9-329.03, and 9-340.02, R.S.Supp., 1991. December 5, 1992.)

## REG-35-313 REPORTING REQUIREMENTS

313.01 All Class I and Class II pickle card licensees shall prepare an annual report to its membership of its pickle card activities.

313.01A The annual report shall cover the organization's pickle card activities from July 1 to June 30. A copy of the annual report must also be filed with the Department on forms supplied by the Department. Class I and Class II pickle card licensees shall file the annual report with the Department by August 15 of each year.

313.01A(1) An annual report must be filed with the Department by August 15 of each year even if the licensed organization does not intend to renew its pickle card license or does not intend to retain its pickle card license for the second year of the biennial licensing period, its license renewal application has been denied, or its license has been canceled, suspended, or revoked during the reporting period. In addition, a licensed organization which has had its license renewal application denied, or its license canceled, suspended, or revoked, shall also be required to:

313.01A(1)(a) Submit a written disbursement plan with the Department no later than 45 days after the expiration date of its pickle card license or the effective date of the license renewal

application denial or license cancellation, suspension, or revocation. Such plan shall identify the specific purpose(s) for which the remaining profits will be utilized, and shall be subject to approval by the Department; and

313.01A(1)(b) Unless otherwise determined by the Department, continue to file a pickle card revenues status report by August 15 of each year, on a form supplied by the Department, listing all disbursements of pickle card revenue until all such revenues have been expended either for allowable expenses or for lawful purposes.

313.01A(2) An annual report must be filed with the Department even if the licensed organization conducted pickle card activity for only a portion of the reporting period. For example, if the licensed organization did not begin its pickle card activities until the second quarter of the reporting period or ceased its pickle card activities before the end of the reporting period, an annual report would still be required.

313.01A(3) An organization's license shall not be renewed unless and until complete and accurate annual reports, for all applicable reporting periods, are filed with the Department.

313.02 The following information regarding an organization's lottery by the sale of pickle cards shall be included in the annual report:

313.02A The gross proceeds realized from the sale of pickle cards and pickle card units sold by the organization, and, in the case of organizations holding a Class II license, the gross proceeds realized through each pickle card operator;

313.02B The total prizes paid by or on behalf of the licensed organization as indicated by the payout slip enclosed by the manufacturer with each pickle card unit;

313.02C The definite profit realized by the organization from the sale of pickle card units. This figure is represented by the gross proceeds less the prizes paid. If the organization has compiled complete and accurate records which indicate a definite profit different from that which would ideally be realized for the pickle card unit minus the prize payout designated by the manufacturer, the organization may use that figure in reporting its definite profit;

313.02D Interest or any other income realized from the organization's activities in the conduct of a lottery by the sale of pickle cards, including interest from the organization's pickle card bank account, any income realized from the sale or rental of pickle card dispensing machines, or any other type of income which would be derived from the organization's lottery by the sale of pickle cards;

313.02E The number of pickle card units sold for the reporting period. The information necessary to compute this figure would consist of the number of pickle card units in inventory on the first day of the reporting period, the number of pickle card units purchased by the organization during the reporting period, and the number of pickle card units on hand at the end of the reporting period;

313.02F Any compensation paid to officers of the organization, employees, or sales agents. This would include the commission or salary of a sales agent or any individual connected with the marketing of the pickle cards, including consultants hired for the purpose of coordinating the organization's lottery by the sale of pickle cards;

313.02G Any commissions retained by pickle card operators. This information must be reported separately for each pickle card operator marketing pickle cards on behalf of the organization. Commission includes any money the organization allows a pickle card operator to retain out of the definite profit from a pickle card unit or any other compensation from the organization to the pickle card operator to market the organization's pickle cards;

313.02H A detailed breakdown of all expenses incurred by the licensed organization in connection with the marketing of pickle cards. This shall include items such as rent, purchase of equipment such as pickle card dispensing machines, repairs and maintenance on any equipment or real property used in connection with the lottery by the sale of pickle cards, and contract services such as secretarial or bookkeeping services incurred in connection with the lottery by the sale of pickle cards. In addition, any license fees paid by the organization must be reported and an itemized list of those license fees must be included. Any other expenses in addition to those previously mentioned that are incurred by the organization in connection with the lottery by the sale of pickle cards must also be listed;

313.02I All disbursements from the organization's pickle card bank account for lawful purpose donations must be reported. Donations made outside the organization must include the recipient's name and address, check number, date, amount, and description of the purpose for which the donation was made. Donations made for the organization's internal use must be summarized as transfers to the organization operating fund, a special reserve fund, or payment of organization's operating expenses;

313.02J A summary of the organization's pickle card bank account, including the balance at the beginning of the reporting period, total deposits made during the reporting period, total interest earned, total disbursements made during the reporting period, and the balance of the account at the end of the reporting period;

313.02K All expenses connected with the organization's lottery by the sale of pickle cards must be reported, regardless of whether they are paid from the organization's

pickle card bank account or from some other bank account of the organization; and

313.02L All accounts receivable connected with the organization's lottery by the sale of pickle cards at the end of the reporting period.

313.04 All licensed distributors shall report monthly and pay to the Department the statutory tax on the definite profit for all pickle card units sold within the state as provided in Regulation 35-311. All licensed distributors shall include with the monthly tax return a supplementary report which includes the following information:

313.04A The state identification number and name of each licensed organization purchasing pickle card units;

313.04B A breakdown of purchases, returns or exchanges by each licensed organization to include:

313.04B(1) The name and form number of each pickle card unit;

313.04B(2) The quantity of each type of pickle card unit purchased, returned, or exchanged; and

313.04B(3) The gross proceeds and definite profit for each pickle card unit purchased, returned, or exchanged; and

313.04C The number of pickle card units on hand as of the beginning of the reporting period and the end of the reporting period, the number of pickle card units purchased, exchanged or returned from manufacturers during the reporting period, and the number of pickle card units sold to out-of-state customers during the reporting period.

(Sections 9-302, 9-333, 9-340.01, 9-343, 9-348, and 9-348.01, R.R.S. 1997. Sections 9-322, 9-328, 9-340.02, 9-347.01, and 9-349, R.S.Supp., 2002. November 12, 2002.)

#### REG-35-314 EXPENSES

314.01 A Class II pickle card licensee shall not allow more than 30 percent of the definite profit from each pickle card unit sold as commission to the pickle card operator. The pickle card operator's commission shall be deducted from the definite profit of each pickle card unit sold in determining the amount to be paid by the pickle card operator to the licensed organization. That amount must be paid by check by the operator in advance of or at the time of delivery of the pickle card unit from the organization to the operator.

314.02 All licensed organizations conducting a lottery by the sale of pickle cards shall not spend more than eight percent of the definite profit from a pickle card unit to pay the allowable expenses of operating the lottery by the sale of pickle cards. Pickle card operators' commissions and unit cost are not included within the definition of allowable expenses.

The following types of expenses are included within the eight percent expense limitation:

314.02A All costs associated with the purchasing, printing, or manufacturing of any items to be used or distributed to participants in the lottery by the sale of pickle cards, such as the cost of pickle card dispensing devices and racks if used by the licensed organization and not rented to a pickle card operator for fair market value;

314.02B Shipping or delivery charges incurred by the organization for delivery of pickle card units to licensed pickle card operators or any shipping or delivery costs on pickle card units received from a distributor which were not billed by the distributor as part of the unit cost;

314.02C All office expenses including but not limited to the cost of office supplies and bookkeeping materials, sales invoices, receipt books, postage costs, copying expenses, telephone costs, office equipment, and any other related office expense incurred which are directly related to the operation of the lottery by pickle card activity;

314.02D Promotional expenses such as advertising; any federal gaming license for the organization, any pickle card dispensing device registration fee for the organization, any pickle card dispensing device repairs or maintenance paid by the organization, and any other costs incurred which are directly related to the promotion of the lottery by pickle card activity;

314.02E Any license fees paid by the organization to license itself, its utilization of funds member, or its sales agent(s) and any actual fees charged for fingerprinting the organization's sales agent(s);

314.02E(1) Any pickle card operator's license fee, federal wagering tax, cost of a pickle card dispensing device, pickle card dispensing device registration fees, or other expenses incurred by a pickle card operator in connection with the sale of pickle cards are not considered allowable expenses and shall not be paid or reimbursed by the licensed organization or any of its members, employees or agents;

314.02F All salaries paid to persons to operate the lottery by the sale of pickle cards, such as salaries, or wages paid to individuals involved with the operation of the pickle card lottery activity, including bookkeepers and other office staff, utilization of funds members, sales agents, whether commissioned or salaried, officers and/or managers of the organization who are paid for their participation in the pickle card activity, and any other related salaries or wages;

314.02G Any rental or lease expense for real or personal property utilized and directly related to the operation of the pickle card activity, such as office or storage space rental, office equipment rental, car rental, and pickle card dispensing device rental; and

314.02H Any fee paid to any person associated with the operation of any lottery by the sale of pickle cards, such as fees to consultants, attorneys, fundraisers, and other

professionals for services performed which are directly related to the organization's pickle card activities. This shall include payments to an individual, firm, or corporation with whom the licensed organization contracts for services relating to the operation of the lottery by the sale of pickle cards. This shall also include any commission or fee paid to a sales agent and any reasonable and necessary expense for which a sales agent is reimbursed.

314.02I A licensed organization shall not use pickle card monies to pay any fine imposed pursuant to the Nebraska Bingo Act, Nebraska Pickle Card Lottery Act, or Nebraska Lottery and Raffle Act.

314.03 A Class II pickle card licensee shall not pay a sales agent more than four percent of the definite profit of a pickle card unit as a commission, salary or fee for the marketing of the pickle card unit. The four percent sales agent's limitation shall be included within the eight percent overall allowable expense limitation. For example, if a licensed organization pays its sales agent four percent of the definite profit of a pickle card unit, its remaining allowable expenses may not exceed four percent of the definite profit ( $8\% - 4\% = 4\%$ ). Additionally, if a licensed organization incurs other allowable expenses of five percent, it cannot pay its sales agent more than three percent of the definite profit of a pickle card unit. Any payments to sales agents in connection with a lottery by the sale of pickle cards shall be made by check, from the licensed organization's pickle card bank account and signed by the organization's utilization of funds member.

314.03A A licensed organization may reimburse a sales agent for reasonable and necessary expenses incurred while performing the sales agent's duties. Such reimbursed expenses shall not be included in the four percent limitation on a sales agent's commission but shall be included in the eight percent overall allowable expense limitation.

314.04 To determine whether a licensed organization is within the eight percent of definite profit allowable expense limitation, when an expense cannot be directly attributed to a particular pickle card unit, such as a bookkeeper or consultant fee, the total expense should be allocated to all units sold, either based upon previous experience, or a reasonable projection of sales for the annual reporting period. Salaries and other expenses which are not entirely attributable to the pickle card activity may be allocated on the basis of the percentage of time spent on pickle card activities.

314.05 The Nebraska Pickle Card Lottery Act allows a maximum of eight percent of the definite profit per pickle card unit to pay all allowable expenses. The following formula should be used to calculate the allowable expense limitation:

Definite profit x 8% = Allowable Expense Limitation

EXAMPLE:

Gross proceeds	\$3,600.00
Less prizes	<u>2,600.00</u>
Definite profit	\$1,000.00
\$1,000.00 (Definite Profit) x .08 = \$80.00 (Allowable Expense)	

314.06 All allowable expenses paid by a licensed organization in connection with its lottery by the sale of pickle cards shall be paid by a check drawn on the organization's pickle card bank account. Such checks must be paid directly to the person, firm or corporation with whom the expense was incurred.

(Sections 9-348 and 9-348.01, R.R.S., 1997. Sections 9-1,104, 9-304, 9-322, 9-340.02, 9-345.03, 9-347, and 9-3347.01, R.S.Supp., 2002. November 12, 2002.)

#### REG-35-315 STATE IDENTIFICATION STAMP

315.01 The flare card for each pickle card unit and each punchboard sold for use in this state shall contain a Nebraska state identification stamp, permanently affixed to such flare card or punchboard. No person other than a licensed distributor may obtain state identification stamps from the Department, nor may any person, organization, or business other than a licensed distributor, affix such state identification stamps to any flare card accompanying a unit of pickle cards or to any punchboard. Such identification stamps are not transferable.

315.02 A licensed distributor who ceases business, liquidates, declares bankruptcy, or closes for any other reason, including the nonrenewal of a distributor license or a relinquishment of its license, shall return any and all unused Nebraska state identification stamps in the distributor's possession to the Department within five (5) days after cessation of business unless otherwise authorized by the Department.

315.03 If a licensed organization returns a purchased unit of pickle cards or a punchboard, for whatever reason, the distributor shall void the state identification stamp. The distributor shall keep a record of all voided state identification stamps for a period of not less than three years. The distributor shall be able to provide a list of voided state identification stamp numbers to the Department upon request.

315.03A If the distributor resells or reissues the unit or board, the distributor shall place a new state identification stamp on the flare card of the unit or on the punchboard in close proximity to the voided stamp (for example, alongside) in such a manner as to not obscure the identification number of the voided stamp.

(Section 9-340, Cum. Supp., 1990. Section 9-322, R.S.Supp., 1991. December 5, 1992.)

#### REG-35-316 PICKLE CARD DISPENSING DEVICES: REGISTRATION; USE; AND RESTRICTIONS

316.01 No coin-operated or currency-operated device shall be used for the dispensing of pickle cards unless a registration decal has been obtained from the Department and the decal has been permanently and conspicuously affixed to the device. The mechanical amusement device tax does not apply to coin- or currency-operated pickle card dispensing devices. For the purposes of this regulation, coin- or currency-operated pickle card dispensing devices shall include devices activated by the use of tokens or slugs.



316.02 Registration of such devices with the Department shall be made by application on a form prescribed by the Department and each application for a registration decal shall include:

316.02A The name and address of the licensed pickle card operator or licensed organization registering the device;

316.02B The state identification number of the licensed pickle card operator or licensed organization registering the device;

316.02C A detailed description of the physical appearance and operation of the coin-operated or currency-operated dispensing device;

316.02D If applicable, a copy of any written lease, rental, or sales agreement between the licensed organization and the licensed pickle card operator;

316.02E The fee as prescribed by Regulation 35-316.04; and

316.02F Such other information which the Department deems necessary.

316.03 Registration decals issued for pickle card devices shall expire on December 31 of each year and may be renewed annually. An application for renewal of the registration of a pickle card dispensing device shall be submitted to the Department on or before November 15 of each year.

316.04 A fee of \$50.00 shall be charged for each registration decal issued and such decal shall not be transferable from one machine to another or from one premise to another. The registration decal fee is due in full for any portion of the calendar year and will not be prorated for any portion of the year. Registration decal fees are not refundable, unless otherwise approved by the Department based upon a written request for refund and extenuating circumstances.

316.04A If a pickle card dispensing device breaks down and cannot be repaired, any permanent replacement device that is placed into use must be registered with the Department. For each permanent replacement device, the \$50.00 registration decal fee is required.

316.04B If a pickle card dispensing device breaks down and will be temporarily out-of-service, a temporary replacement device may be placed in use for a period of up to 30 days or until such time the original device has been repaired and placed back into use, whichever occurs first. Under this circumstance, the \$50.00 registration decal fee will not be required for the temporary replacement device.

316.04B(1) The licensed organization or pickle card operator that is using a replacement device on a temporary basis shall notify the Department in writing of the following:

316.04B(1)(i) The name and address of the licensed organization or pickle card operator using the temporary replacement device;

316.04B(1)(ii) The state identification number of the licensed pickle card operator or licensed organization using the temporary replacement device;

316.04B(1)(iii) A detailed description of the replacement device including serial number, if applicable;

316.04B(1)(iv) The number of the current registration decal on the device that is temporarily out-of-service; and

316.04B(1)(v) The date the temporary replacement device was placed into service.

316.04B(2) Such notification shall be made within five working days of the date the temporary replacement device was placed into service.

316.05 Registration of each pickle card dispensing device shall be the responsibility of the licensed organization when such device is to be used at a licensed organization's designated premises or its own bingo game or the responsibility of the licensed pickle card operator when such device is to be used on the premises of the pickle card operator. For the purposes of this regulation, responsibility shall include filing the application and paying the fee for such registration decal. In the case of a licensed pickle card operator, such operator shall not be reimbursed for such registration decal fees by the licensed organization on whose behalf the operator sells pickle cards or by any licensed manufacturer, distributor or any other person.

316.06 A licensed organization or distributor shall not provide pickle card dispensing devices to pickle card operators free of charge, or for a rate less than fair market value. A licensed organization shall not extend credit to a pickle card operator on the rental, lease, or purchase of such devices. Payment for the purchase of such devices shall either be in advance or upon delivery. The payment terms of any lease or rental agreement regardless of the term of the lease, shall specify that the lease or rental payment be made in advance. Payment in advance shall mean on or before the placement of the device or on or before the first day of the period of the lease, whichever comes first. For example, if the lease terms specify a monthly rental payment, such payment shall be made on or before the first day of each month.

316.06A A licensed organization or distributor shall sell or rent pickle card dispensing devices to licensed pickle card operators at a rate not less than fair market value. The lease or rental of a pickle card dispensing device to a licensed pickle card operator shall be in writing and set forth all terms and conditions of the lease or rental.

316.06A(1) Fair market value, regarding the sale of pickle card dispensing devices, is the amount at which property would change hands in the open market, in competition with other similar devices, between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts.

316.06A(2) Fair market value for leased or rented pickle card dispensing devices shall be determined by taking the cost of the device divided by thirty-six to arrive at a fair market value monthly lease rate.

316.06A(2)(i) A licensed organization or distributor shall not reduce the rental or lease rate of a pickle card dispensing device rented or leased to a licensed pickle card operator within three years of the date the device is first placed in service. The fair market value formula as prescribed in Regulation 316.06A(2) of this regulation shall remain in force.

316.06A(2)(ii) A licensed organization or distributor who leases a device may release such device to a licensed pickle card operator. The amount for which the device is leased or rented to the pickle card operator may be for the same amount of the organization's or distributor's lease, provided such amount is equal to or greater than the fair market value determined using the formula in Regulation 35-316.06A(2).

316.07 Any licensee which utilizes a pickle card dispensing device to sell pickle cards shall, upon request, provide the Department immediate access to any pickle cards contained within such device.

(Sections 9-341, 77-3001, and 77-3002, R.R.S. 1943. Sections 9-302, 9-343, and 9-347.01, Cum. Supp., 1990. Sections 9-322, 9-329.02, 9-340.02, 9-345.03, and 9-350, R.S.Supp., 1991. December 5, 1992.)

#### REG-35-317 DESIGNATED PREMISES

317.01 Any organization licensed to conduct a lottery by the sale of pickle cards may sell pickle cards at a location specified as its "designated premises" without obtaining a pickle card operator's license for that location. An organization may have only one designated premises. Such premises shall be identified by the licensed organization on its application for a license to conduct a lottery by the sale of pickle cards. To be approved by the Department as a designated premises, a location must meet the following requirements:

317.01A The premises must be the principal office of the licensed organization. For purposes of this regulation, the principal office of an organization is determined by factors such as the location where the principal affairs and business of the organization are transacted, where the organization's records are stored, the location from which the organization receives and issues correspondence, and generally, the main location for which the business

of the organization is transacted. In order to determine whether or not a particular location is the principal office of the organization, one must look to the totality of the circumstances surrounding the activities taking place at that location; and

317.01B In the case of organizations holding a certificate of exemption under section 501(c)(3), (c)(4), (c)(5), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or a volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad:

317.01B(1) The premises must be used primarily for purposes other than gaming. For the purposes of this regulation, the phrase "primarily for purposes other than gaming" means the major use of the premises by the organization. For example, a premises in which the organization conducts business one hour a week, but at which pickle cards are sold to the public on behalf of the organization 40 hours a week would not be in use primarily for purposes other than gaming; and

317.01C In the case of organizations holding a certificate of exemption under section 501(c)(3), (c)(4), or (c)(5), of the Internal Revenue Code or a volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, the premises must not be used in connection with any other retail business activity other than an occasional sale as defined in section 77-2702.09 of the Nebraska Revised Statutes, as amended. For example, an organization's designated premises cannot be a retail store, restaurant, or bar which engages in other retail sales at that location.

317.02 A licensed organization shall notify the Department in writing and receive written approval prior to changing its designated premises.

317.03 A licensed organization may use compensated help in selling its pickle cards at its designated premises without obtaining a pickle card operator's license for that premises.

317.04 The sale of pickle cards at a designated premises of a licensed organization shall be limited to the building or a distinct portion of the building used as the organization's designated premises. Pickle cards shall not be sold on any land surrounding the designated premises or any area not included within the designated premises.

(Section 9-317.01, R.R.S. 1997. Sections 9-306.01, 9-321.03, 9-322, 9-328, 9-345.01, and 77-2702.09, R.S.Supp., 2002. November 12, 2002.)

#### REG-35-318 MANUFACTURER OF PICKLE CARDS: LICENSE; REQUIREMENTS; AND DUTIES

318.01 Any individual or business which manufactures pickle cards and intends to sell or otherwise provide such pickle cards in this state, must first obtain a manufacturer's license from the Department. A manufacturer's license shall only be issued to those applicants doing business in Nebraska or authorized to do business in Nebraska.

318.01A Authorization to do business in Nebraska requires:

318.01A(1) A domestic corporation to file Articles of Incorporation with the Nebraska Secretary of State's office;

318.01A(2) A domestic limited liability company to file Articles of Organization with the Nebraska Secretary of State's office;

318.01A(3) A foreign corporation or limited liability company to obtain a certificate of authority to transact business in Nebraska from the Nebraska Secretary of State's office or to become domesticated by filing the required documents with the Nebraska Secretary of State's office and paying any required fees; or

318.01A(4) A domestic partnership, foreign partnership, or limited liability partnership to file any forms that may be required by the Nebraska Secretary of State's office.

318.01B Applicants seeking a manufacturer's license and who intend to be engaged in business in this state as defined in section 77-2702.06 of the Nebraska Revised Statutes, as amended, shall also submit a Nebraska Tax Application, Form 20, to obtain a Nebraska Sales and Use Tax Permit.

318.01B(1) A licensed manufacturer engaged in business in this state as defined in section 77-2702.06 may accept a properly completed Resale Certificate, Section A, of the Nebraska Resale and Exempt Sale Certificate, Form 13, from a licensed distributor in Nebraska, in lieu of charging and collecting sales tax from the distributor.

318.02 An individual or business shall apply for and obtain a manufacturer's license from the Department prior to supplying any pickle cards or pickle card units in this state, or engaging in any interstate activities relating to such pickle cards or pickle card units. The applicant shall include, with the application form prescribed by the Department the statutorily required license fee and, at a minimum, the following information:

318.02A The business name and address of the applicant and the name and address of each of the applicant's separate locations at which manufacturing, warehousing, selling, or promotion of pickle cards occurs;

318.02B The type of ownership of the business and the name, social security number, home address, and date of birth of:

318.02B(1) If a sole proprietorship, the individual owner;

318.02B(2) If a partnership, each partner and spouse;

318.02B(3) If a limited liability company, each member and spouse;

318.02B(4) If a corporation, each officer and spouse, each director or board member, and each individual or entity holding ten percent or more of the debt or equity of the corporation. If an entity holding ten percent or more of the debt or equity of the applicant corporation is a partnership, limited liability company, or corporation, the information required in Regulation 35-318.02B must be supplied for each partner of the partnership, each member of the limited liability company, or each officer of the corporation and every individual or entity holding ten percent or more of the debt or equity of the partnership or corporation.

318.02C If the applicant is not a resident or a corporation, the full name, business address, and home address of an individual who is a resident of and living in this state who is 19 years of age or older, to act as the manufacturer's resident agent for the purpose of receipt and acceptance of service of process and other communications on behalf of the manufacturer;

318.02D Upon request, a current list of all Nebraska-licensed distributors in which the applicant has some financial interest and the details of such interest. For purposes of this regulation, financial interest shall include, among all other interests, any indebtedness from the applicant to another individual or business or from another individual or business to the applicant in excess of \$500.00;

318.02E A completed and notarized Personal History Record and Background Disclosure form supplied by the Department for each person listed pursuant to Regulation 35-318.02B, except for spouses who have completed and had notarized the Affidavit by Spouse for Waiver of Fingerprinting and/or Personal History Record and Background Disclosure form; and

318.02F Two sets of fingerprints on cards supplied by the Department and the requisite fees established by the Nebraska State Patrol and Federal Bureau of Investigation for each person listed pursuant to Regulation 35-318.02B, except for spouses who have completed and had notarized the Affidavit by Spouse for Waiver of Fingerprinting and/or Personal History Record and Background Disclosure form. Fingerprint cards and the required fees must be submitted to the Nebraska State Patrol, Criminal Investigation Division.

318.03 The applicant or licensee shall notify the Department within thirty (30) days of any changes in the information submitted on or with the application form.

318.03A Changes must be reported in writing, and the Department may require the filing of a new application.

318.03B Changes shall be confirmed by the signatures of an owner, officer, member, or partner of the manufacturer. Any individual signing the most current application shall

obligate the licensee to comply with the Nebraska Pickle Card Lottery Act and accompanying regulations for that licensing period.

318.03C A manufacturer's license shall expire on September 30 of every odd-numbered year and may be renewed biennially. An application for license renewal shall be due August 15 of each odd-numbered year. A manufacturer's license is not transferable.

318.03D A manufacturer is not considered licensed until it has physical possession of the printed license issued by the Department.

318.03D(1) A manufacturer which has had its license lost, stolen, or destroyed must notify the Department as soon as possible. The manufacturer shall send a written statement to the Department signed by an owner, officer, member, or partner confirming the loss, theft or destruction of the license. A duplicate license will be issued for no additional fee under such circumstances.

318.03E Any individual or business licensed as a manufacturer pursuant to section 9-255.09 of the Nebraska Bingo Act may act as a manufacturer pursuant to the Nebraska Pickle Card Lottery Act without submitting an additional licensing fee. Such individual or business shall comply in every other respect with the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, and all rules and regulations adopted and promulgated pursuant to such Acts.

318.03F A manufacturer which no longer desires to be licensed shall notify the Department, in writing, of its intention to cancel its license. Such notification shall be signed by an owner, officer, member, or partner of the manufacturer. A notification of cancellation shall be accompanied by the original license issued by the Department.

318.03G A licensed manufacturer, or any person having a substantial interest therein, is prohibited from holding any other licenses issued pursuant to the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska County and City Lottery Act, except as provided in section 9-255.09 of the Nebraska Bingo Act, and section 9-632 of the Nebraska County and City Lottery Act.

318.03G(1) A licensed manufacturer or employee or spouse of a licensed manufacturer shall not have a substantial interest as defined in Regulation 35-309.09 in any other manufacturer, distributor, manufacturer-distributor, licensed organization, or lottery operator conducting gaming activities under the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska County and City Lottery Act.

318.03H A licensed manufacturer or employee or spouse of a licensed manufacturer shall not participate in the

operation or conduct of any kind of gaming activity regulated under Chapter 9 of the Nebraska Revised Statutes, except to the exclusive extent of his or her duties as a licensed manufacturer or employee thereof.

318.04 A licensed manufacturer shall not sell or otherwise provide pickle cards or pickle card units to anyone in Nebraska other than a licensed distributor. A licensed manufacturer must sell or provide pickle cards to licensed distributors only in the form of pickle card units.

318.04A A licensed manufacturer shall report immediately to the Department any pickle card unit which has been shipped but reported not received by a licensed distributor.

318.05 The price charged by a licensed manufacturer for pickle card units shall not be fixed or set by agreement among licensed manufacturers in any manner, either expressed or implied.

318.05A No manufacturer shall offer or agree to offer anything of value to any individual or licensee in exchange for an agreement or commitment by such individual or licensee to exclusively buy, sell, or use pickle card units from such manufacturer.

318.05B No individual or licensee shall accept or agree to accept anything of value from a manufacturer in exchange for an agreement or commitment by such individual or licensee to exclusively buy, sell, or use pickle card units from that manufacturer.

318.06 No manufacturer, or any other person shall affix to any pickle card, pickle card unit, flare card, or any promotional material, any statement indicating any endorsement by the State of Nebraska, the Department, or any division thereof. Additionally, no other statement indicating any such endorsement shall be made verbally or in writing.

318.07 No person other than a licensed manufacturer shall produce by assembling from raw materials or subparts a whole or partial pickle card or pickle card unit. A licensed manufacturer must actually assemble raw materials or parts and may not simply act as an intermediary for another person, organization, firm, or corporation which conducted the actual assembling of the pickle card or pickle card unit.

318.08 Each manufacturer must receive departmental approval for each type of pickle card unit which they intend to market for resale in this state.

318.09 No pickle card unit shall be approved for resale in this state:

318.09A Which offers total prizes of less than 65 percent or more than 80 percent of the gross proceeds, or which is designed to have a prize pay-out structure which may vary;

318.09B Which has a card or play count exceeding 6,000;

318.09C Which contains an individual pickle card with a purchase price greater than \$1.00;

318.09D Which contains a single pickle card that awards a prize or prizes exceeding \$1,000.00; or

318.09E Which has not been authorized by the Department.

318.09F Manufacturers seeking approval to market a pickle card unit in Nebraska shall submit the following information for each game:

318.09F(1) The flare card;

318.09F(2) The payout slip identifying the game's payout structure;

318.09F(3) No less than ten pickle cards for the game, five of which must be winning pickle cards.

318.09F(4) Relative to punchboards, a complete cover sheet and payout slip for each punchboard. Punchboards which contain play features such as seals, cards, straws, etc., must include these features with the sample submitted.

318.10 All pickle card units marketed to Nebraska distributors by licensed manufacturers, entering this state for transfer or resale to a licensed organization in Nebraska, shall have a unique form number which shall indicate that such units meet the standards imposed on pickle cards marketed in Nebraska set out in this regulation. Such form number shall be printed on each punchboard, each individual pickle card, each flare card for each pickle card unit, and on each accompanying payout slip showing the pickle card unit's fixed payout structure.

318.10A Each pickle card in a pickle card unit and the accompanying flare card for that unit shall contain a game serial number printed on the face or information side of the pickle card and flare card. The serial number for a punchboard must be imprinted or otherwise permanently affixed to the back side of each punchboard. The same game serial number shall not be repeated on the same pickle card or punchboard form number for a minimum of three years.

318.11 No manufacturer shall market, sell, or otherwise furnish any pickle card unit to a distributor to be sold or marketed in this state unless each individual pickle card in that unit or, in the case of a punchboard, each board is conspicuously printed with the manufacturer's name or logo.

318.12 Manufacturing Standards.

318.12A Pickle card units shall be manufactured, assembled, and packaged in such a manner that neither winning nor losing pickle cards, or the location or approximate location of either winning or losing pickle cards can be determined in advance of opening the pickle cards in any manner or by any device including, but not limited to, any pattern in manufacture, assembly, packaging, marking, or by the use of a light.

318.12B Winning pickle cards shall be randomly distributed and mixed among all other pickle cards in a unit. The unit shall be assembled and packaged with special care so as to eliminate any pattern between units or portions of units, from which the location or approximate location of any of the winning pickle cards may be determined.

318.12C When a single pickle card unit is packaged in more than one package, box, or other container, the entire unit shall be mixed in such a manner that no person can determine the position or approximate location of any of the winning pickle cards or determine if any one package, box, or other container contains a larger or smaller percentage of winning pickle cards than the balance of the unit. If the unit is comprised of more than one box, each box shall be numbered as a set, for example, one of two and two of two.

318.12D Pickle cards shall be constructed so that it is impossible to determine the covered or concealed number, letter, symbol, set of symbols, or game protection on the pickle card until such is dispensed to and opened by the player, by any method or device including, but not limited to, the use of a marking, variances in size, variances in paper fiber, or use of a light.

318.12E The back or tab side of a pickle card shall contain perforated openings centered over the symbols or numbers imprinted on the back side of the face sheet or information side of the pickle card, in such a manner as to allow easy opening by the purchaser, while at the same time not permitting the pickle card to be opened prematurely in normal handling. Perforations shall exist on both horizontal lines of the opening and on the vertical or elliptical line where the tab must be grasped for opening after bending the edge of the ticket down.

318.12F Pickle cards shall be glued or sealed on all four edges and between each window. The glue must be of sufficient strength so as to prevent the separation of the laminations of the tickets, so that it is impossible to determine the covered or concealed numbers, symbol, or set of symbols on the pickle card until it has been dispensed to and opened by a player.

318.12G All pickle cards within the same pickle card unit shall be the same size and thickness.

318.12H All pickle cards shall be constructed to ensure that, when offered for sale to the public, the pickle card is opaque and free of security defects so that neither winning nor losing combinations can be determined prior to the opening of the tabs through the use of a high intensity lamp or any other method. Such protection shall be provided by using opaque paper stock or an aluminum foil laminate.

318.12I Each manufacturer shall establish its own game protection for each pickle card game, unit, or series of games. The game protection shall be a method of

identifying winning pickle cards, after they have been purchased and opened, from nonwinning, altered, or forged pickle cards. The manufacturer may use special numbers, colors, designs, ink, or any combination to establish the game protection. Upon request, a manufacturer shall submit to the Department a letter explaining the game protection. This provision shall not apply to pickle cards known as jar tickets or to punchboards.

318.13 In addition to the information required by Regulation 35-318.10 and 35-318.11, the following information shall be printed by the manufacturer on all pickle cards wider than one inch or longer than two and one-half inches marketed in this state:

318.13A The name of the game;

318.13B The price per individual pickle card;

318.13C The number of winners, and respective winning numbers, symbols, or winning combinations and prize amounts.

318.14 Each pickle card unit's package, packages, box, or other container shall be sealed at the manufacturer's factory with a seal including a warning to the distributor that the game may have been tampered with if the package(s), box, or container was received by the purchaser with the seal broken.

318.14A The manufacturer's name or logo and the pickle card unit's form number and serial number shall be clearly and legibly visible on the outside of the game's package(s), box, or other container.

318.14B Each pickle card unit shall contain a flare card which shall be imprinted with the following information:

318.14B(1) The name of the game;

318.14B(2) The form number of the game;

318.14B(3) The price per play;

318.14B(4) The unit count and serial number of the game;

318.14B(5) The prize structure of the game, to include the number of winners by denomination with their respective winning combinations; and

318.14B(6) The manufacturer's name or distinctive logo.

318.15 A manufacturer shall issue an invoice to the licensed distributor for each purchase, exchange, or return of pickle card units by the licensed distributor. Every such invoice shall contain the following information:

318.15A The name and complete address of the licensed distributor;

318.15B The date of the transaction;

318.15C A description of each pickle card unit, and the serial number and form number of each pickle card unit;

318.15C(1) The information in this subsection may be provided on a supplemental listing or attachment accompanying the invoice;

318.15D The quantity of each type of pickle card unit;

318.15E The price of the pickle card units, taxes collected (if applicable), and the total amount paid, exchanged, or returned by the distributor; and

318.15F The manner of delivery or shipment, including the name, address, and telephone number of the individual, firm, or corporation with whom shipment is made.

318.16 A licensed manufacturer shall ship or deliver pickle card units only to the licensed distributor's business address. Pickle card units may not be drop shipped in Nebraska directly to any licensed organization, sales agent, pickle card operator, or any other person.

318.16A Nothing in this regulation shall prohibit a manufacturer from: (1) using a common carrier service to ship pickle card units to a licensed distributor, or (2) drop shipping pickle card units billed to a Nebraska licensed distributor and reported on the manufacturer's monthly report to the Department, to a warehouse or location outside of Nebraska, or to a federally recognized Indian reservation.

318.17 Licensed manufacturers shall not be prohibited from selling pickle card units which have not been approved by the Department to licensed distributors. With respect to any transaction involving pickle card units which have not been approved, the following information shall be recorded and maintained by the manufacturer and made available to the Department upon request:

318.17A The name and complete address of the Nebraska distributor;

318.17B The date of the invoice;

318.17C The type of unit and serial number of each unit sold, transferred, or exchanged. For the purposes of this section, "type of unit" shall mean the form number, game name, and unit count of the particular type of pickle card unit; and

318.17D The method of shipment, including the name, address, and telephone number of the person, business, or corporation transporting the units or boards.

318.18 Licensed manufacturers shall collect payment for pickle card units and punchboards sold to Nebraska licensed distributors by check or automatic bank transfer within thirty (30) days of delivery. A licensed distributor may, by check, set up a deposit with a licensed manufacturer upon which the manufacturer can draw payment for pickle card units ordered by the distributor.

318.18A It shall be the responsibility of the licensed manufacturer to notify the Department of any licensed distributor who fails to pay for pickle card units within thirty (30) days from the date of delivery. Such notification shall be in writing.

(Section 77-2702.06, R.R.S., 2003. Sections 9-313, 9-332, 9-332.01, 9-334, 9-335, 9-336, 9-337, 9-340, and 9-341, R.R.S. 1997. Sections 9-1,104, 9-322, 9-331, 9-338, and 9-346, R.S.Supp., 2004. September 5, 2005.)

#### REG-35-319 PRORATION AND REFUND OF LICENSE FEES

319.01 The fees paid pursuant to the Nebraska Pickle Card Lottery Act for any license issued to a manufacturer, distributor, nonprofit organization, volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, utilization of funds member, sales agent, or pickle card operator are due in full for the biennial licensing period. A license fee may be prorated or refunded by the Department on an annual basis under the following circumstances:

319.01A If a new application is received by the Department for a license which will become effective on or after October 1 of the second year of the biennial licensing period, the applicable license fee shall be one-half of the biennial fee.

319.01B If a new application is received by the Department for a license which will become effective prior to October 1 of the second year of the biennial licensing period, no proration of the license fee shall be allowed.

319.01C No license fee may be refunded for any portion of the licensing period in which the license was not used unless otherwise authorized by the Department.

319.01D If an application to downgrade a Class II license to a Class I license for the second year of the biennial licensing period is received by the Department prior to October 1 of the second year of the biennial licensing period, such license may be downgraded; however, no portion of the Class II license fee shall be refunded unless otherwise authorized by the Department.

319.01E In the event a license issued pursuant to the Nebraska Pickle Card Lottery Act is suspended, cancelled,

or revoked by the Department, no portion of the license fee shall be refunded unless otherwise authorized by the Department.

319.01F In the event a license application is denied and a temporary license was issued to the applicant prior to the effective date of the license application denial, one-half of the biennial license fee paid by the applicant may be refunded, provided the effective date of the license application denial is prior to October 1 of the second year of the biennial licensing period. In the event a license application is denied and a temporary license was not issued or a license application is withdrawn, the license fees paid by the applicant may be refunded.

319.01F(1) In the case of a manufacturer or distributor, the Department may apply the portion of any license fee to be refunded to any amount owed by the licensee or applicant with respect to a background investigation or facility inspection conducted by the Department.

319.01G Upon the death of a person licensed as a utilization of funds member or sales agent, or in the event any such licensee becomes disabled in such a manner as to render him or her unable to perform or fulfil his or her duties as a utilization of funds member or sales agent, a licensed organization may submit an application to replace the utilization of funds member or sales agent with a new individual for the remainder of the licensing period for no additional fee. Any such application shall be accompanied by the original utilization of funds member or sales agent license and a written statement signed by an officer of the licensed organization explaining the circumstances under which the request for replacement of the licensee is being made.

(Sections 9-302, 9305, 9-306, 9-307, 9-310, 9-313, 9-316, 9-319, 9-320, 9-321, 9-321.02, 9-327, 9-330, and 9-332, R.R.S. 1997. Sections 9-311, 9-321.03, 9-322, 9-328, 9-329, and 9-329.02, R.S. Supp., 2002. November 12, 2002.)



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