

TITLE 316 - NEBRASKA DEPARTMENT OF REVENUE

CHAPTER 45 - REGULATION OF CASH DEVICES

REG-54-100 AUTHORIZATION TO REGULATE CASH DEVICES

General Authorization

100.01 Cash Device Regulations 54-100 through 54-106 are adopted to carry out the provisions of the Mechanical Amusement Device Tax Act and LB 538 (2019).

(Neb. Rev. Stat. §§ 28-1107, 77-3001, 77-3006, 77-3007, 77-3008, 77-3010, and 77-3011. November 4, 2020.)

REG-54-101 DEFINITIONS

101.01 Bill Acceptor means the mechanical portion of the cash device that accepts and reads the cash placed into the device.

101.02 Cash means any object, including, but not limited to, coins, paper bills, tokens, vouchers, or other monetary substitutes, which are necessary for operating a cash device.

101.03 Cash Device has the meaning provided in Neb. Rev. Stat. § 77-3001.

101.04 Cash out refers to when a player has decided to withdraw their credits from the cash device and the device prints a voucher for the player to present to the operator to be paid.

101.05 Decal for purposes of these regulations means the stamp issued by DOR denoting that DOR has approved the cash device as a game of skill after payment of the annual decal fee.

101.06 DOR means the Nebraska Department of Revenue and its representatives.

101.07 Distributor or Licensed Distributor is the licensee which has the meaning provided in Neb. Rev. Stat. § 77-3001. Additionally, for purposes of these regulations, distributor means the person or entity who obtains cash devices from a manufacturer or elsewhere and provides these cash devices to operators to be played at the operator location. Only distributors who have physical possession of their current license will be considered licensed for purposes of these regulations. All others will be out of compliance and subject to penalty.

101.08 Division means DOR's Charitable Gaming Division, which is the division delegated by the Tax Commissioner to regulate cash devices.

101.09 Electronic Accounting Meter means the device or software involved with keeping track of all coins and bills accepted, as well as all vouchers printed.

101.10 Game of Skill means mechanical amusement devices which produce an outcome predominantly caused by skill and not chance.

101.11 Independent Testing Laboratory means any laboratory approved by DOR for use in testing whether cash devices comply with the standards set forth in these regulations.

101.12 Manufacturer means the person or entity who creates, develops, and/or builds a cash device, cash device components, and associated software.

101.13 Mechanical Amusement Device has the meaning provided in Neb. Rev. Stat. § 77-3001.

101.14 Operator or Licensed Operator is the licensee which has the meaning provided in Neb. Rev. Stat. § 77-3001. Additionally, for purposes of these regulations, the retailer or retail establishment in which any cash device is placed is considered an operator. Only operators who have physical possession of their current license will be considered licensed for purposes of these regulations. All others will be out of compliance and subject to penalty.

101.15 Person has the meaning provided in Neb. Rev. Stat. § 77-3001.

101.16 Playing Station means the cash device or the portion of a cash device that allows a player to operate the device independently of, or simultaneously with, another player. The number of playing stations may be different than the number of screens but each playing station must have a separate bill acceptor.

101.17 Reasonable Player means a player with an average level of intelligence, physical and mental skills, reaction time, and dexterity.

101.18 Retailer or retail establishment means any business location that is open to the public for the sale of goods other than cash devices and that possesses a valid sales tax permit.

101.19 Skill means the human attributes of a player such as knowledge, dexterity, visual recognition, logic, memory, reaction, strength, agility, athleticism, hand-to-eye coordination, numerical and/or lexical ability, or any other ability or expertise relevant to game play.

101.20 Voucher means the paper document printed from the cash device which the player presents to the operator, with an amount to be paid.

(Neb. Rev. Stat. §§ 77-3001, 77-3006. November 4, 2020.)

REG-54-102 GENERAL RESTRICTIONS

102.01 Distributors are required to obtain an annual license in accordance with §77-3003. The application will be provided by DOR and no fee is

required. Changes to information contained on the license application throughout the year will be reported to DOR.

102.02 Operators are required to obtain an annual license in accordance with §77-3002. The application will be provided by DOR and no fee is required. If an operator has more than one location, it must obtain a license for each location. Such license will be prominently displayed near the location of the cash devices. Changes to information contained on the license application throughout the year will be reported to DOR.

102.02A If a retail establishment owns a device outright they will be required to be licensed as both a distributor and operator. A single application may be completed, but they will receive two licenses. They will be responsible for all tasks and duties which would otherwise be required of a distributor under these regulations.

102.03 Age Restrictions. Individuals under the age of nineteen (19) cannot play or participate in any way with a cash device. A winner's age must be verified prior to receiving payment.

102.04 Unacceptable forms of payment include: credit card, charge card, debit card.

102.05 Location Limitations

102.05A A licensed operator may operate no more than four (4) cash devices in one retail location, unless the location meets the square footage thresholds set forth below. Devices are not permitted in mobile retail locations, or any location that can be made mobile in short order, or pop up retail locations.

102.05B An operator may be allowed to operate one (1) additional cash device for every 1,000 square feet over 4,000 square feet.

Square Feet	Number of Permissible Devices
0 to 4,999	4
5,000 to 5,999	1 (total of 5)
6,000 to 6,999	1 (total of 6)
7,000 to 7,999	1 (total of 7)
8,000 to 8,999	1 (total of 8)
9,000 to 9,999	1 (total of 9)
10,000 to 10,999	1 (total of 10)
11,000 to 11,999	1 (total of 11)
12,000 to 12,999	1 (total of 12)
13,000 to 13,999	1 (total of 13)
14,000 to 14,999	1 (total of 14)
15,000 or more	1 (maximum total of 15)

102.05C Square footage does not include parking areas and outdoor patio areas or any other similar areas as determined by DOR.

102.05D In situations where a single building holds multiple retail establishments, each separate retail establishment will be entitled to its allotment of devices as a licensed operator. The square footage will be based on its separate and distinct square footage in accordance with the limitations described in the regulations. Devices for the establishment may only be placed within their separate retail space. In order to qualify as a separate retail establishment operating in the same building, the following factors will be considered: physical walls separating the businesses, dedicated entrances and exits to the outside, whether a sales tax permit has been obtained, separate points of sale, diversity of merchandise, whether the business issues receipts for sales, the number of dedicated employees on duty, level of business activity being conducted in the space, the space for the business within the building is contiguous, and whether there are distinct owners or officers of the businesses within the shared building.

102.05E Square footage will be verified through the operator's license application. The operator will be required to provide proof of square footage as stated above. The application may include the following:

102.05E(1) Documentation from the county assessor or its website, the Nebraska Liquor Control Commission or its website, or a copy of the lease describing where the device will be placed, showing the square footage of the entire retail establishment. If none of these options is sufficient, then the applicant will contact DOR to determine suitable documentation;

102.05E(2) A diagram showing the dimensions of the areas to be included in the calculation of square footage per the requirements set forth in 54-102;

102.05E(3) If documentation provided to DOR in the application is later determined to be inaccurate, intentionally or unintentionally, and the square footage is incorrect, DOR has the opportunity to recalculate the square footage and adjust the maximum number of permissible cash devices at the location.

102.05F Distributors may be permitted to have more than 15 cash devices at their business office or warehouse location so long as the they are not accessible to the general public for playing and they are subject to inspection during normal business hours by DOR representatives just as any operator location would be. Distributors will follow the same decal application procedures for these locations, but the device limit will be waived.

102.06 Decal and Placement

102.06A No device may be placed in operation without having a valid decal affixed prominently on the front of the device where it is visible at all times so DOR representatives need not move a device to see the decal. After the first of the year, the previous year's decals must be

removed entirely, or covered entirely by placing the current year's decal over it. If a device has more than one playing station, each station must have a valid decal.

102.06B This decal must display the year-long period for which it is valid, and be distinct from any other decals provided by DOR through other programs.

102.06C Distributors and operators are responsible for reporting any occasion they discover where a decal has been defaced, removed, stolen, or otherwise tampered with to DOR within 24 hours after discovery. Distributors and operators may be subject to penalty if DOR is not notified and DOR discovers a missing, defaced, or otherwise tampered with decal. If DOR determines the decal requires replacement, the distributor may be required to purchase a new decal at full cost if DOR determines that the decal was intentionally removed or defaced by the distributor, operator, or agent of either. Generally speaking, a defaced decal is one where the DOR logo and decal number have been rendered unreadable.

102.07 The Cash Device Tip Line phone number must be placed prominently on the front of the device at or above the bill acceptor and be visible at all times. The phone number will be provided by DOR.

102.08 Investigations by DOR

102.08A DOR's investigators or other authorized personnel have the authority to enter any premises where cash devices are present during normal business hours or if it appears customers are still present.

102.8B All operators and distributors must comply with all requests for records and documentation made by DOR relating to cash devices.

102.8C Failing to comply with a request for documentation or records by DOR; or altering, falsifying, or otherwise destroying any records of any cash device not otherwise permitted by these regulations is strictly prohibited. Failing to comply with requests by DOR may be grounds for not issuing a decal in the following year.

102.8D Investigations may result in administrative actions as allowable under the Act.

(Neb. Rev. Stat. §§ 77-3001, 77-3002, 77-3003, 77-3003.01 77-3003.02, 77-3006. November 4, 2020.)

REG-54-103 DETERMINING WHEN A DEVICE IS A LEGAL CASH DEVICE

103.01 To be a legal cash device, the game must be a game of skill rather than a game of chance. When DOR is making a determination regarding whether a specific game meets the statutory definition of a game of skill (provided in Neb. Rev. Stat. § 77-3001(8)), it will consider the following regulations, applicable state statutes, as well as the physical operation of

the game by a player of reasonable skill.

103.02 When reviewing a game, it is not a game of skill if one or more of the following apply:

103.02A The ability of any player to succeed at the game played on the device is impacted in any way by the number or ratio of prior wins to prior losses of players playing the device;

103.02B The ability of the player to succeed at the game played on the device is impacted in any way by the ability of any person to set a specified win-loss ratio for the device or by the device having a predetermined win loss percentage;

103.02C The outcome of the game played on the device can be controlled by a source other than the player playing the device;

103.02D The success of any player is or may be determined by a chance event which cannot be altered by player action;

103.02E There is no possibility for the player to win every individual play on every game on the device or there are unwinnable games or game modes on the device;

103.02F The ability of any player to succeed at the game played on the device requires the exercise of skill that no reasonable player could possess; or

103.02G The primary determination of the prize amount is the presentation or generation of a particular puzzle or group of symbols dealt to the player and the player does not have control over the puzzle or group of symbols presented. See 54-103.05D.

103.03 To be a game of skill, the prize amount may ultimately be determined by the player's skill, but a reasonable player is capable of completing and winning every single play. For an individual play to be considered a "win," a cash prize must be awarded as the prize.

103.04 When reviewing a game, DOR may consider the results of an analysis by any independent testing authority preapproved by the Tax Commissioner to evaluate the reaction time required for a player of a particular game on the device to perform the tasks required by the game to win.

103.05 When reviewing a game, the following factors are not, by themselves, sufficient indications that the device is a game of skill:

103.05A Whether a comprehensive list of prizes or outcomes is offered to the player or whether all outcomes are drawn from a finite pool of predetermined outcomes or starting positions;

103.05B Whether a player can increase his or her chance of winning based on knowledge of probabilities in general or the probabilities of any particular prize or outcome in a game or on a device;

103.05C Whether a player can simply choose not to play before committing money or credits; or

103.05D A game task consisting solely of moving a symbol up or down, replacing one symbol with another, or any similar action, with or without a timer.

(Neb. Rev. Stat. §§ 77-3001, 77-3003.01, 77-3006. November 4, 2020.)

REG-54-104 CASH DEVICE STANDARDS

104.01 DOR adopts the GLI-11: Gaming Devices Version 3.0, released on September 21, 2016, by Gaming Laboratories International as the standards to which all cash devices must comply, with the exception of those items specifically listed in 54-104.01A. These standards are the product of collaboration among testing laboratories, various state regulatory bodies, tribal gaming bodies, and other industry entities. These standards may be found on DOR's website or upon request.

104.01A The following sections of GLI-11: Gaming Devices Version 3.0 are not adopted by DOR, are hereby excluded from DOR's standards, and cannot be considered by an independent testing laboratory during its testing:

104.01A(1) The following portions of Chapter 1:

104.01(A)(1)(a) 1.1;

104.01(A)(1)(b) 1.2;

104.01(A)(1)(c) 1.4;

104.01(A)(1)(d) 1.5.

104.01A(2) The following portions of Chapter 4:

104.01A(2)(a) 4.5.4;

104.01A(2)(b) 4.6;

104.01A(2)(c) 4.7;

104.01A(2)(d) 4.8;

104.01A(2)(e) 4.10;

104.01A(2)(f) 4.11;

104.01A(2)(g) 4.12;

104.01A(2)(h) 4.14;

104.01A(2)(i) 4.18.1;

104.01A(2)(j) 4.19;

104.01A(2)(k) 4.20.1 through 4.20.3;

104.01A(2)(l) 4.20.6 through 4.20.12;

104.01A(2)(m) 4.21;

104.01A(2)(n) 4.23.

104.01B The GLI-11 standards adopted above do have standards regarding random number generators (RNGs). DOR understands that gaming software may require RNGs for various reasons that are not directly related to the skill required for a game. To this end, an RNG may be utilized by the device software so long as the skill aspect of the game is not affected by the RNG, and it is compliant with the GLI-11 standards to the extent possible.

104.01C If any item in these standards directly or indirectly conflicts with the Act or any other regulation, the Act and the Regulations take priority, and the testing laboratory must test accordingly.

104.01D If a laboratory is uncertain of what standard should apply, the laboratory should contact DOR directly to seek to clarification.

104.02 Game Limitations

104.02A No game may be placed on a device that has not been approved by DOR.

104.02B Once a game has been approved, the functionality or appearance of the game may not be changed in any way without prior approval from DOR. For purposes of these regulations, functionality will refer to the outward appearance of a game to the player, if the change will have an effect on the outcome of game play, or the record retention portion of a device.

104.02B(1) This approval process may require the game to be submitted for independent testing at the expense of the operator or distributor;

104.02B(2) At the time of application for device approval, an affidavit from the distributor affirming, that no functional changes will be made to the device or its games without prior approval from DOR;

104.02C No game may function similarly to or bear any outward appearance to any game regulated by DOR, which includes lotteries, raffles, pickle cards, bingo, or keno.

104.02D Progressively growing jackpots are permitted, but only on a per device, per game basis. Each game on each device may have its own progressively growing jackpot. Devices and games may not be linked.

104.02E If a device has more than one playing station, all playing stations must be functionally identical. This means that no advantage nor disadvantage may be given, nor can the play of the game be affected in any way by which playing station the player is using.

104.03 Internet Connectivity and Remote Access

104.03A Devices may be connected to the internet in accordance with the technical standards adopted in 54-104.01 and the laboratory report must reflect the device's compliance.

104.03B Remote access to the device may be permitted for limited functions. Anyone proposing to access their devices remotely must demonstrate to DOR through the laboratory report, or otherwise, that security measures are in place to prevent unauthorized access and to document all remote access attempts and security incidents.

104.03B(1) Remote access will be granted for only the following activities:

104.03B(1)(a) Monitoring the cash device and software;

104.03B(1)(b) Troubleshooting issues;

104.03B(1)(c) Scheduling functions such as hours of operation;

104.03B(1)(d) Performing view-only functions such as generating reports and downloading cash device and software information;

104.03B(1)(e) Other activities if approved by DOR.

104.03B(2) No updates to the software which affect gameplay may be initiated remotely without prior approval from DOR.

104.04 Devices must have the ability to restrict which users have access to certain functions on the devices.

104.04A Only distributors and their maintenance staff, or the owner-operator if the device is owned outright, may have access to modify any of the cash device or software settings.

104.04B Non-administrative operator employees may only have access to opening the device, performing basic maintenance tasks (such as refilling paper), and collecting money.

104.05 Devices must utilize electronic accounting and occurrence meters as defined by the GLI Standards or similar technology. In addition to the GLI Standards, devices must also log the following information:

104.05A For each device:

104.05A(1) Every bill or coin inserted into the device;

104.05A(2) Every voucher the device produced.

104.05B For each game on the device:

104.05B(1) Every wager;

104.05B(2) Every individual play result (whether that individual play was a win or loss);

104.05B(3) Prize won.

104.06 Device data must be backed up daily.

104.07 If there is a malfunction or defect of the device, DOR must be notified no later than 24 hours after the initial detection of the issue by the operator. Malfunction or defect refers to anything that impedes the player's ability to play the game, win a prize, or receive a prize from a cash device, aside from structural power failure, other extreme act of nature or circumstances. Malfunction or defect also refers to a cash device's ability to store, generate, or produce required reports or information.

104.08 The serial number for the cash device software or game board and cash device cabinet are to be affixed to the front of the device.

(Neb. Rev. Stat. §§ 77-3001, 77-3003.01, 77-3006. November 4, 2020.)

REG-54-105 APPLICATION

105.01 Device Approval Application and Fee

105.01A A decal cannot be issued for a cash device until that device has been evaluated and approved by DOR.

105.01B An application to have a cash device evaluated by DOR must be completed by the distributor, or if the operator is functioning independently it will be completed by the operator, using the form provided by DOR and as described in this section, which may include an online application when such technology is available to DOR. A manufacturer may also submit a device for approval, but will not relieve the distributor or operator from its responsibility of also applying for approval of a device.

105.01B(1) A manufacturer may act as a distributor as defined by these regulations provided they are licensed as such. If they do, they

will only be required to apply for approval of a device and pay the application fee once.

105.01C The application fee to have a cash device evaluated by DOR is \$500.00 per cash device to be paid by the distributor, or if an operator is operating independently it will be paid by the operator. This must be paid in a manner prescribed by DOR, including online when such technology is available to DOR. This fee is nonrefundable.

105.01D In addition to the information on the application, a specimen device containing the game or games to be approved must be delivered to the Charitable Gaming Division or other location DOR designates, at the expense of the party seeking the approval. The details of this delivery will be arranged between DOR and the applicant after DOR has received the independent testing lab report. The device must be delivered with its settings matching the description in the independent testing lab report and all settings must be accessible to DOR. Return shipping must also be arranged and paid for by the party requesting approval and DOR will not share in the cost. DOR is not responsible for any damages to any device during shipment or delivery.

105.01E An application which does not provide all information requested by DOR on the form will be considered incomplete and may be rejected.

105.01F The time for DOR to issue a response to an application does not commence until the completed application is received by DOR.

105.01G DOR will issue a determination within 45 days after the date the completed application and device are received.

105.01G(1) If the application has been denied, DOR will state the reasons for the denial in writing and the applicant may appeal in accordance with Neb. Rev. Stat. §77-3003.01;

105.01G(2) If the application has been approved, the party seeking the decal may complete and file the form referenced in 54-105.02 for receiving a decal;

105.01G(3) Once a device has been approved, it is approved in that form until the party seeks to modify the device or it is otherwise rendered unapproved by DOR. This means a device approval will carry over year to year unless it is modified. Modifications for purposes of these regulations do not include replacements or updates to cabinetry, screen, power cords, etc.

105.01H Device approvals are specific to the party seeking to have the device approved. This means that every party seeking to have a given device approved, is required to pay the device approval application fee.

105.01I A party seeking to have a specific device approved needs only to have one prototype device approved and pay one device approval application fee. Once one prototype device has been approved, the

applicant need only pay for the number of decals sought for that type of device, that are all identical with respect to systems, technical specifications, games, and functionality, regardless of where the party intends to place each device.

105.01J Upon request of DOR, the applicant must be able to articulate to DOR the skill or skills involved with each game on each device.

105.02 Decal Application and Fees

105.02A Once a device has been granted approval by DOR, an application to purchase a decal for a cash device to be placed at a licensed operator location must be completed by the licensed distributor, or if an operator is operating independently it will be completed by the licensed operator, using the form provided by DOR and as described in this section, which may include an online application when such technology is available to DOR.

105.02B The application form may include, but is not limited to the following:

105.02B(1) Name of operator;

105.02B(2) Name of distributor, if applicable;

105.02B(3) Nebraska ID Number;

105.02B(4) Federal ID Number;

105.02B(5) Name of the cash device to be placed;

105.02B(6) Names of individual games on the cash device;

105.02B(7) Serial Number for the cash device software or game board to be placed in the cabinet of the cash device and the serial number for the cabinet;

105.02B(8) Contact information for the manufacturer of the cash device;

105.02B(9) Location of retailer where the cash device will be placed;

105.02B(10) Square footage of the location where the device will be placed;

105.02B(11) How many cash devices are already placed at the location; and

105.02B(12) Laboratory testing information.

105.02C Items to be included as attachments with the application may include, but not be limited to:

105.02C(1) Proof that the device in its current form has been approved by DOR. This may include a copy of the approval letter or other sufficient proof as determined by DOR;

105.02C(2) A signed affidavit from the manufacturer of the device attesting to the fact that the device to be placed is identical in all technical respects to a previously approved device, if applicable;

105.02D An application that does not provide all information requested by DOR will be considered incomplete and will be rejected.

105.02E The application fee is \$250.00 per decal to be paid by the distributor, or, if an operator is operating independently, it will be paid by the operator. This must be paid in a manner prescribed by DOR including online when such technology is available to DOR. If an application for a decal is denied, payment will be returned or refunded.

105.02F Once an application has been approved and a decal issued, the decal is only valid for the cash device and its software or game board identified by its serial number on the application. If a decal is found to be placed on a device which does not match with the serial number on file, the device is subject to seizure.

105.02G Once an application has been approved and a decal issued, the device may only be placed at the location described on the application. If a device is found to be placed at a location which is not the location described on the application, the device is subject to seizure.

105.02H Once an application has been approved and a decal issued, the device may not be moved without prior approval of DOR. The application to move a device will be made available in a format set by DOR.

105.02I If an operator owns a device outright, and transfers ownership of the business, and the new owner intends to continue to operate a cash device in the location, the new owner is required to purchase new decals. DOR may review the device and all reports prior to issuing a new decal. The requirement that a new owner-operator seek approval of the device may be waived by DOR. There is no grace period for a new owner of a business to apply for a decal. The new decals must be applied for, purchased, and placed on the device at the start of the first day of business under the new ownership.

105.02J If a distributor transfers ownership of the business or the devices individually, the new owner of the business or devices is required to purchase new decals. DOR may review the device and all reports prior to issuing a new decal. The requirement that a new distributor seek approval of the device may be waived by DOR.

105.02K Completed decal applications will be processed in the order in which they are physically received by the Division in Lincoln, Nebraska.

105.02L For decal application renewals, priority will be given to distributors with devices currently placed at an operator location. During the decal application renewal process, DOR may allow for a separate renewal period.

(Neb. Rev. Stat. §§ 77-3001, 77-3002, 77-3003.01, 77-3006. November 4, 2020.)

REG-54-106 INDEPENDENT TESTING LABORATORIES

106.01 All devices and games must be submitted to an independent testing laboratory approved by DOR to test for compliance with the regulations contained in 54-103 and 54-104.

106.02 Testing must be paid for by the individual or entity seeking to have the device approved.

106.03 The laboratory must produce a report detailing the testing performed, the analysis, and the testing results. The laboratory report includes samples of all documents required to be produced by the device as set forth in the regulations.

106.04 If a laboratory is unable to test any of the items required, then it must provide an explanation of why it was unable to do so and what the laboratory would need to complete testing of the item.

106.05 This report must be provided in full to DOR with no redactions at the time of device approval.

106.06 The laboratory is required to test the following aspects of a game in relation to skill involved:

106.06A Those listed in 54-103.02A-G. If testing reveals that any one of these seven items is present, then the game is not a skill game;

106.06B Reaction time required to complete all required tasks in order for a reasonable player to win on every single play;

106.06C Times reported for each step in completing the process to win; and

106.06D Times reported for completing each game as a whole.

106.07 The laboratory must test for the presence of those items listed in Reg-54-103.05A-D which are not by themselves sufficient indication of skill:

106.08 In the event DOR determines that a second evaluation of a device is necessary, it may seek testing from a separate qualified laboratory.

(Neb. Rev. Stat. §§ 77-3001, 77-3003.01, 77-3006. November 4, 2020.)

