

7864.0240 MANUFACTURER OPERATIONS, ACCOUNTS, REPORTS, AND RECORDS.

Subpart 1. **Sales and lease restrictions and requirements.** This subpart does not pertain to gambling equipment designated for sale to an Indian tribe. In addition to the requirements of Minnesota Statutes, section 349.163, a manufacturer must comply with the following.

A. A manufacturer must be able to identify the person to whom gambling equipment is sold or leased and provide the recipient's identity upon the board's request.

B. A manufacturer must include a copy of the invoice with each shipment of gambling equipment.

C. A manufacturer may not sell or provide a partial series of bingo paper sheets or bingo paper sheet packets.

D. The lease or sale agreement of a pull-tab dispensing device must be recorded on a form prescribed by the board. If a distributor's license is suspended, revoked, denied by the board, not renewed, or terminated, the lease agreement must be canceled.

E. For electronic bingo devices, a manufacturer must provide:

- (1) a monthly sales invoice based on a predetermined lease amount; or
- (2) a weekly sales invoice based on the per unit lease amount for the previous calendar week.

The lease amount must not be based on a percentage of gross receipts.

F. For electronic pull-tab devices, a manufacturer must provide a monthly invoice based on a predetermined lease amount.

G. A lease for an electronic pull-tab system and devices between a manufacturer and a distributor must include:

- (1) the distributor's license number;
- (2) the terms of the lease agreement;
- (3) a clause prohibiting electronic pull-tab devices from being transferred to another permitted premises unless prior written approval by the board is obtained; and
- (4) a termination clause.

H. The lease amount of an electronic pull-tab system and devices:

- (1) must be based on a predetermined lease amount; and
- (2) must not be based on a percentage of gross receipts.

I. The manufacturer must submit a copy of a lease agreement to the board within ten days of signing or amending a lease agreement.

Subp. 1a. **Lawful gambling equipment sold or leased on an exclusive basis; restrictions and agreements.** This subpart pertains to gambling equipment designed or manufactured by a licensed manufacturer for sale or lease on an exclusive basis to a distributor or linked bingo game provider.

A. Gambling equipment with a proprietary name of an organization that owns its permitted premises may be sold or leased on an exclusive basis.

B. Gambling equipment with a proprietary name for a leased site may not be sold or leased on an exclusive basis.

C. To sell gambling equipment on an exclusive basis to only one licensed distributor, the manufacturer must document the terms in a valid, written exclusivity agreement. The written agreement must contain, at a minimum, the following:

(1) effective date and termination date of the agreement;

(2) escape clause, if any;

(3) the game name and form number, if any;

(4) a statement that the gambling equipment will not be sold by the manufacturer to any other distributor unless the agreement has expired or is otherwise terminated;

(5) a statement that if the agreement is terminated and the gambling equipment is sold by the manufacturer to other distributors, the distributor is not entitled to any royalty or sales residuals of that gambling equipment;

(6) a statement that if a distributor's license is terminated for any reason, the agreement becomes null and void, and any gambling equipment in the distributor's inventory that were purchased or leased on an exclusive basis must be returned to the manufacturer or destroyed by the distributor. If the gambling equipment is returned to the manufacturer upon termination of the distributor's license, that gambling equipment may be resold by the manufacturer to other distributors; and

(7) signatures of both parties to the agreement.

This item does not apply to written agreements in effect prior to the effective date of this rule.

D. To sell or lease a specific type and model of permanent gambling equipment on an exclusive basis to only one licensed distributor or linked bingo game provider, the

manufacturer must document the terms in a valid, written exclusivity agreement. The written agreement must contain, at a minimum, the following:

- (1) effective date and termination date of the agreement;
- (2) escape clause, if any;
- (3) the type of permanent gambling equipment and model number;
- (4) a statement that the permanent gambling equipment will not be sold or leased to any other distributor or linked bingo game provider unless the agreement has expired or is otherwise terminated;
- (5) a statement that if the agreement is terminated and the permanent gambling equipment is sold or leased by the manufacturer to other distributors or linked bingo game providers, the distributor or linked bingo game provider is not entitled to any royalty or sales or lease residuals;
- (6) a statement that if a distributor's or linked bingo game provider's license is terminated for any reason, the agreement becomes null and void, and any permanent gambling equipment in the distributor's or linked bingo game provider's inventory that was purchased or leased on an exclusive basis must be returned to the manufacturer or destroyed by the distributor or linked bingo game provider. If the permanent gambling equipment is returned to the manufacturer upon termination of the distributor's or linked bingo game provider's license, that equipment may be resold by the manufacturer to other distributors or linked bingo game providers; and
- (7) signatures of both parties to the agreement.

This item does not apply to written agreements in effect prior to the effective date of this rule.

Subp. 2. **Sales invoices and report required.** A manufacturer who sells, leases, or provides gambling equipment must electronically report the sales or leases made each month to the commissioner of revenue by the 20th of the following month, as required under Minnesota Statutes, section 297E.04. A manufacturer must record the transaction on a sales invoice containing the information required by the commissioner of revenue:

A. manufacturer's name, address, Minnesota tax identification number, federal employer identification number, and license number; and name, address, Minnesota tax identification number, federal employer identification number, and license number of the distributor or linked bingo game provider to whom the sale was made;

B. invoice number and date of shipment;

C. unit price or lease price of each item, the total amount invoiced, and for permanent gambling equipment, a description of the equipment being sold or leased, including the make, model number, and serial number;

D. statement whether the gambling equipment is designated for sale to an Indian tribe;

E. for pull-tabs and tipboards, including promotional pull-tab and tipboard tickets as defined in part 7861.0210, subpart 43, and Minnesota Statutes, section 349.12, subdivisions 18 and 31, the number of deals and a description of each pull-tab deal or tipboard, including game name, manufacturer identification, form number, part number, and serial number;

F. for sealed bingo paper sheets, the serial number and color of each set;

G. for each set of bingo paper sheet packets, the following information:

(1) color of each sheet in the packet in the order of collation;

(2) number of sheets per packet (UP's);

(3) number of faces per sheet (ON's);

(4) series; and

(5) serial number from each sheet in the packet if the serial numbers are not uniform throughout the packet. If the serial numbers are uniform throughout the packet, the serial number from the top sheet in the packet must be recorded on the sales invoice. The serial numbers may be recorded on a separate document attached to the invoice, if the invoice states that the serial number listing is attached;

H. for bingo paper sheets (case paper), the following information:

(1) color;

(2) number of sheets per case;

(3) number of faces per sheet (ON's);

(4) series; and

(5) serial number from the top sheet in the case;

I. for bingo hard cards, the price per face; and

J. for paddleticket cards:

(1) number of sealed groupings and ideal gross receipts for each sealed grouping; and

(2) for each sealed grouping of 100 or fewer sequentially numbered paddletickets, a description including the game name, manufacturer identification, form number, part number, and serial number.

Subp. 3. **Pricing and rebate reports required.** A pricing report must be filed annually in an electronic format prescribed by the director. Records of rebates must be available for director review upon demand. For each type of gambling equipment offered for sale or lease by the manufacturer, the pricing report must include:

- A. manufacturer's name;
- B. product code, description, and form number;
- C. for pull-tabs and tipboard tickets:
 - (1) cost per play;
 - (2) ticket count;
 - (3) payout percent;
 - (4) top prize; and
 - (5) original and current price per ticket and per deal, and date the original and current prices were established;
- D. for all other gambling equipment, the unit of measure, original and current price per unit, and date the original and current prices were established;
- E. unit pricing detail must not include:
 - (1) shipping or handling costs;
 - (2) discounts, including but not limited to volume and prompt payment; or
 - (3) rebates;
- F. adjustments for shipping, discounts, and rebates must be reported separately on the annual pricing report, are subject to review and approval or denial by the director, and include:
 - (1) shipping costs or handling charges, if any, which must be itemized;
 - (2) discounts which must be clearly defined and uniformly applied; and
 - (3) rebates which must be based on total dollar volume of purchases for a time period determined by the manufacturer and uniformly applied; and
- G. only changes or additions to the previously filed report must be reported to the director at least two days before the date the new price will take effect. For products no longer available for sale, the current pricing must be reported as \$0.

Subp. 4. **Return of paper pull-tab and tipboard games; determination of defective game; credit invoice issued.** A manufacturer must accept the return of a game of paper pull-tabs or tipboards from a distributor if the game was not manufactured according to the standards in part 7864.0230 and take the following corrective actions.

A. For games returned before being put into play, the following apply.

(1) Within 15 business days of receiving a game from a distributor, a manufacturer must issue a credit invoice if the distributor provided written proof that the game does not meet the standards, unless the manufacturer has notified the commissioner of revenue in writing that a business dispute exists regarding the returned game. A copy of the credit invoice must be filed electronically as required by the commissioner of revenue.

(2) If the manufacturer ships a new game to replace the returned game, the manufacturer must prepare a new invoice for the new game.

(3) If the returned game was not manufactured according to the standards in part 7864.0230 and cannot be brought into compliance, the manufacturer must destroy the game. At the board's request, the manufacturer must furnish documentation stating that the game was destroyed.

B. For games returned during play or after being removed from play, the following apply.

(1) Within 15 business days of receiving a game from a distributor, the manufacturer must determine whether the game was manufactured according to the standards. The manufacturer must return the game to the distributor, who will return it to the organization to keep as a played game.

(2) Within 15 business days of determining that the game was not manufactured according to the standards, the manufacturer must issue a credit invoice to the distributor for the cost of the game, including any valid and documented losses over which the organization had no control or ability to prevent and which were reimbursed by the distributor. A copy of the credit invoice must be filed electronically as required by the commissioner of revenue.

Subp. 4a. **Defective electronic pull-tab game.** This subpart applies if an electronic pull-tab game is found to be defective but not in play.

A. The manufacturer must remove the game from the system and notify the Gambling Control Board of the defective electronic pull-tab game within one business day. If the defect does not affect the outcome of the game, the director must first approve resolution of the defect.

B. The manufacturer may resolve the defect:

(1) If the resolution is determined by the board to not have an effect on the outcome of an electronic pull-tab game, the director may approve the amended game as defined in part 7864.0235, subpart 38, item F.

(2) If the resolution is determined by the board to be a change affecting the outcome of an electronic pull-tab game, the manufacturer must assign the game a new form number and resubmit the game for recertification by an independent testing laboratory and Gambling Control Board approval.

C. In addition to the reports required in subparts 5 and 6, the manufacturer must file monthly with the board a report of games pulled from play and removed from inventory.

Subp. 4b. Defective, altered, lost, or stolen electronic pull-tab device.

A. If a distributor notifies a manufacturer that an electronic pull-tab device is defective or has been altered, lost, or stolen, the manufacturer must immediately disable the device and notify the board.

B. The manufacturer must report to the board any removal of a defective or an altered electronic pull-tab device at a site, or any lost or stolen device, within one business day.

Subp. 5. Returned gambling equipment report required. A manufacturer who accepts returns of gambling equipment not manufactured according to the standards in parts 7864.0230 and 7864.0235 must file a report with the board no later than the 10th day of the following month. The report must be in a format approved by the board and include the following information:

A. manufacturer's name and license number, and name and license number of the distributor returning the equipment;

B. month and year of the report;

C. standards which were not met, actions taken to bring the equipment into compliance, and for paper and electronic pull-tab games and tipboard games, a statement that the games were destroyed if they could not be brought into compliance;

D. for paper and electronic pull-tab games and tipboard games, the number of deals and the form numbers;

E. for bingo hard cards, bingo paper sheets, bingo paper sheet packets, and sealed bingo paper sheets, the number of cases, serial number, and series number for uncollated paper;

F. for paddletickets, the number of paddleticket cards and the form number; and

G. for bingo number selection devices, electronic bingo devices, paddlewheels, paddlewheel tables, and pull-tab dispensing devices, the make, model, and serial number; and except for electronic bingo devices, the state registration stamp number attached to the equipment.

Subp. 6. **Recall of gambling equipment; credit invoices.** If a manufacturer sells gambling equipment that is not in compliance with parts 7864.0230 and 7864.0235, the board may require the manufacturer to take corrective action, including a recall, if the integrity of the game is harmed or the fair play of the game may be adversely affected. These provisions also apply to a recall initiated by a manufacturer.

A. Within three business days of receipt of notification from the board, the manufacturer must initiate the recall of gambling equipment from licensed distributors or linked bingo game providers.

B. Within 25 business days of initiating the recall, the manufacturer must complete the recall and notify the board in writing that the recall has been completed. The notification must include:

- (1) an inventory listing of the gambling equipment which was returned or not returned;
- (2) bar code information as required by the commissioner of revenue; and
- (3) listing of all distributors or linked bingo game providers, including license numbers, from whom the gambling equipment was recalled.

C. Within 15 business days of notifying the board as required by item B, the manufacturer must issue credit invoices to distributors or linked bingo game providers for the cost of the gambling equipment returned, including any valid and documented losses over which the organization had no control or ability to prevent and which were reimbursed by distributors or linked bingo game providers. Copies of the credit invoices must be filed electronically as required by the commissioner of revenue.

D. If a recalled paper pull-tab or tipboard game cannot be brought into compliance with the standards, the manufacturer must destroy the game. At the board's request, the manufacturer must submit an affidavit stating that the equipment was destroyed.

Subp. 7. **Report of delinquent distributor or linked bingo game provider required.** This subpart pertains to the notice to the board that a distributor or linked bingo game provider is delinquent in payment of an invoice or lease agreement.

A. If a manufacturer has not received payment from a distributor or linked bingo game provider within 30 days of the day immediately following the date of invoice or lease agreement, the manufacturer must report the delinquency to the board in writing in an

electronic format authorized by the board. The manufacturer must ensure that the board will receive the notice by the 31st day, or the next business day, after the invoice date for the sale or lease of the gambling equipment. The notice must include:

- (1) the distributor's or linked bingo game provider's name and license number; and
- (2) an invoice or lease agreement date, invoice number, and total dollar amount of the invoice or lease agreement.

B. If a manufacturer has not received payment in full within 60 days of its initial notice to the board, the manufacturer must notify the board of the continued delinquency. The manufacturer must ensure that the board will receive the notice on the 61st day, or the next business day, after the manufacturer's initial report to the board.

C. When the delinquency is paid, the manufacturer must notify the board immediately.

D. Upon receipt of the initial notice under item A, the board must:

- (1) notify and direct the distributor or linked bingo game provider to eliminate the delinquency; and
- (2) notify all manufacturers that until further notice they may only sell or lease gambling equipment to the delinquent distributor or linked bingo game provider on a cash basis. "Cash" means a debit card payment, check, electronic transaction, money order, or cashier's check.

E. Upon receipt of the second notice under item B, the board must notify:

- (1) the distributor or linked bingo game provider that the sale and lease of gambling equipment to the distributor or linked bingo game provider will not be authorized until the delinquency is eliminated; and
- (2) all manufacturers that they may not sell or lease any gambling equipment to the delinquent distributor or linked bingo game provider.

F. When the board has been notified that the delinquency is paid in full, the board must notify all manufacturers that the delinquency has been paid and that the sale or lease of gambling equipment to the distributor or linked bingo game provider is authorized.

G. Until authorized by the board, a manufacturer may not extend credit or sell or lease gambling equipment to a distributor or linked bingo game provider in violation of an order under items D and E.

Subp. 8. **Examination of books and records.** The board, the commissioner of revenue, or the commissioner of public safety or their agents may examine the books and records of any manufacturer without notice at any time during normal business hours.

Statutory Authority: *MS s 14.055; 349.12; 349.151; 349.154; 349.155; 349.16; 349.162; 349.163; 349.1635; 349.165; 349.166; 349.167; 349.169; 349.17; 349.1711; 349.1721; 349.173; 349.19; 349.191; 349.211*

History: *31 SR 1239; 35 SR 1276; 35 SR 1528; 38 SR 1613*

Published Electronically: *June 24, 2014*