



Memo

Date:	May 13, 2022
To:	Oregon State Lottery Commissioners
From:	Kris Skaro, rules and policy analyst
Subject:	Motion to Adopt OAR 177-045-0035, Temporary Pause on Additional Video Lottery Retailer Locations

Background:

In response to Video Lottery terminal (VLT) inventory issues, the Lottery paused accepting applications for new Video Lottery retailers and installations on December 21, 2021, and adopted a temporary rule to that effect, OAR 177-045-0035. Since then, the Lottery has been developing a comprehensive long-term VLT equipment management strategy. While that works continues, Lottery recommends keeping the rule in place.

Rulemaking Process and Public Comment:

The Lottery has completed the public rulemaking process. Specifically, the Lottery filed notice of the proposed rulemaking on March 25, 2022, with the Oregon Secretary of State and notified interested parties, media contacts, and certain legislators. The Lottery provided more than four weeks for the public to comment in writing and held a public hearing on April 19, 2022, to take comments over Zoom. **The Lottery did not receive any public comment for you to consider.**

Enclosures and Director's Recommendation:

The final rulemaking report and Permanent Administrative Order are enclosed, including full text of the proposed rule. Director Pack has reviewed the rule and recommends the Commission adopt OAR 177-045-0035 as presented, and repeal the temporary rule, to be effective on June 1, 2022.

Thank you, and please reach out to me or Director Pack if you have any questions.



Draft Final Rulemaking Report

*Lottery pause on accepting applications
for new Video Lottery locations and terminal installations*

Notice of Proposed Rulemaking

The Lottery filed a Notice of Proposed Rulemaking with the Secretary of State on March 25, 2022, indicating that the Lottery proposed to permanently adopt OAR 177-045-0035, which announces a temporary pause on accepting applications for new Video Lottery retailer locations and terminal installations effective December 21, 2021, and with limited exceptions. This rule was previously adopted by temporary rule on January 14, 2022. The Lottery proposes to repeal the temporary version of the rule:

Adopt: OAR 177-045-0035 – *Temporary Pause on Additional Video Lottery Retailer Locations*
Repeal: OAR 177-045-0035(T) – *Temporary Pause on Additional Video Lottery Retailer Locations*

Rulemaking Timeline

- **1/14/22** Adopted temporary rule (LOTT 1-2022); notified Commission via email
- **3/25/22** Rule listed on Commission agenda; draft rule and notice presented
- **3/25/22**
 - Filed notice with Secretary of State
 - Notice sent to Lottery's Interested Parties (email and postal mail)
 - Notice sent to legislators per ORS 183.335(15)
 - Notice sent to media outlets at the Capitol Press Room
- **4/1/22** Notice published in Secretary of State Bulletin
- **4/19/22** Public rulemaking hearing held (no comment received)
- **4/29/22** End of written comment period (no comment received)
- **5/20/22** Rule listed on Commission agenda; request Commission adopt rule as presented
- **6/1/22** Effective date of rule (repeal temporary rule)

Public Comment Opportunities and Summary of Public Comment Received

The Notice filed 3/25/22 opened a **written comment period until April 29, 2022, at 5 p.m.** The Notice also announced a **public rulemaking hearing** to be held via Zoom on April 19, 2022, at 10 a.m. **Lottery received no written or oral comments on the proposed rule.**

Director's Recommendation

Director Pack has reviewed the enclosed rule and **recommends the Commission adopt the rule as presented in this report, and repeal the temporary rule, to be effective on June 1, 2022.**

Enclosures:

1. Draft Permanent Administrative Order pending Commission approval.
2. Final recommended rule text.

PERMANENT ADMINISTRATIVE ORDER

CHAPTER 177
OREGON STATE LOTTERY

FILING CAPTION: *Lottery pause on accepting applications for new Video Lottery locations and terminal installations*

EFFECTIVE DATE: 06/01/2022

AGENCY APPROVED DATE: 05/20/2022 (*pending Commission motion to adopt*)

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ADOPT: 177-045-0035

RULE TITLE: Temporary Pause on Additional Video Lottery Retailer Locations

RULE SUMMARY: The Lottery is adopting OAR 177-045-0035 to explain that effective December 20, 2021, the Lottery will not, with limited exception described in section (2) of the rule, accept applications from prospective Video Lottery retailers or requests from current retailers to add a location or terminals. The rule is also adopted to authorize an exception for tribally owned businesses under certain circumstances, explain the status of pending applications, and describe the circumstances under which the Lottery may suspend the temporary pause. The rule was originally adopted as a temporary rule on January 14, 2022.

RULE TEXT:

177-045-0035

Temporary Pause on Additional Video Lottery Retailer Locations

- (1) Pursuant to the Director's authority to responsibly manage Video Lottery game terminals and based on the considerations described in OAR 177-045-0030, the Director has determined that the Lottery does not have adequate inventory of Video Lottery terminals and related equipment to accommodate new Video Lottery retailer locations, except as provided in section (2) of this rule. Therefore, effective December 20, 2021, except as provided in section (2) of this rule, the Lottery will not accept applications from new Video Lottery retailer applicants or applications from current Video Lottery retailers to add one or more additional locations or terminals. The



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Lottery will continue to accept applications for traditional Lottery product sales and will process sale of business, change of ownership, and 100 percent stock buyouts for Video Lottery retailers as normal.

- (2) Exception: The Lottery may accept new Video Lottery retailer applications that meet the requirements for the alternative disclosure process authorized by OAR 177-040-0001(4)(a)(B) provided terminals and related equipment are available.
- (3) Pending Applications: The Lottery may place applications received and initiated prior to December 20, 2021, on a waitlist and process when the Lottery determines inventory is sufficient. Applications placed on a waitlist pursuant to this section will be processed based on date received, with the applications received first in time going first as inventory allows.
- (4) The Director shall suspend the temporary pause described in this rule when the Director determines that the Lottery has adequate inventory to accommodate additional Video Lottery retailer locations and determines that such additional Video Lottery retailer locations would maximize Lottery revenue commensurate with the public good.

STATUTORY/OTHER AUTHORITY: Or Const, Art XV, § 4(4)(a), ORS 461.120, 461.130, 461.150, 461.200, 461.215, 461.217, 461.260, 461.300, 461.500, OAR 177-010-0025

STATUTES/OTHER IMPLEMENTED: Or Const, Art XV, § 4, ORS 461.120, 461.130, 461.150, 461.200, 461.215, 461.217, 461.260, 461.300, 461.500, OAR 177-010-0025