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ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

LOTT 8-2022

CHAPTER 177

OREGON STATE LOTTERY

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Allowing limited number of Video Lottery retailer contract applications to be processed periodically

EFFECTIVE DATE: 08/19/2022 THROUGH 02/14/2023

AGENCY APPROVED DATE: 08/19/2022

CONTACT: Kris Skaro
971-719-0794
kris.skaro@lottery.oregon.gov

500 Airport Rd SE
Salem, OR 97301

Filed By:
Kris Skaro
Rules Coordinator

NEED FOR THE RULE(S):

The Lottery needs to adopt OAR 177-045-0036 to allow the Lottery to process a limited number of Video Lottery retailer applications even though Lottery is not currently accepting applications for additional Video Lottery retailer contracts pursuant to OAR 177-045-0035. The rule described in this Order:

- (1) Explains that the Director may, despite the general pause on processing applications for Video Lottery retailer contracts in OAR 177-045-0035, decide periodically but no less than each quarter to award a certain number of Video Lottery retailer contracts. This is needed because although the Lottery is continuing to manage limited Video Lottery Terminal (VLT) inventory, the Lottery understands that there is interest among current and prospective retailers to apply to offer Video Lottery games in new locations, and the Lottery believes it may have sufficient inventory to support some additional Video Lottery retailer locations.
- (2) Explains how persons interested in applying for Video Lottery retailer contracts can indicate to the Lottery that they are interested and eligible to apply under the rule. This is needed so that any such persons know how to indicate their interest and eligibility to the Lottery to be selected as one of a limited number of applicants to move forward. Specifically, the rule explains that Lottery will establish a webform through which persons interested can indicate their interest and eligibility to apply for a contract by certain deadlines as announced by the Lottery.
- (3) Clarifies that any applicant selected through random draw is entitled only to the opportunity to apply; in order to contract with the Lottery to be a Video Lottery retailer, the application must be approved by the Lottery after a determination that the applicant meets all requirements under Oregon law and Lottery's administrative rules, including, but not limited to, ORS 461.300 and OAR chapter 177, division 40.

BACKGROUND:

On January 19, 2022, the Lottery adopted a temporary rule, OAR 177-045-0035, to explain that, due to Video Lottery Terminal (VLT) inventory constraints, the Lottery would no longer accept new Video Lottery retailer location applications effective December 21, 2021, with limited exceptions described in the rule. The inventory shortfalls had several causes as described in the Lottery's Temporary Administrative Order and subsequent Notice of Proposed Rulemaking.

During the pause on applications, the Lottery has worked to develop a comprehensive strategy to address short-term inventory shortfalls and to ensure the long-term sustainability of the Lottery's Video Lottery program.

At this point, the Lottery needs to continue to limit Video Lottery retailer applications, but the Lottery does expect to have some limited inventory available to award additional Video Lottery retailer contracts. The Lottery is adopting the rule described in this Order to explain how the Lottery may fairly and periodically select, only as inventory allows, a limited number of interested and eligible applicants as described in more detail in the rule summary and rule text.

JUSTIFICATION OF TEMPORARY FILING:

The Lottery finds that failure to act promptly to adopt OAR 177-045-0036 will result in serious prejudice to the Lottery and to persons interested in applying for a Video Lottery retailer contract. Without the rule, the Lottery cannot process any Video Lottery retailer applications other than those authorized in OAR 177-045-0035 as adopted on June 1, 2022. However, many persons are interested in applying to offer Video Lottery games in their bar, restaurant, or similar establishment. The Lottery believes it can accommodate some, but not all, of these interested persons. Taking immediate action to adopt OAR 177-045-0036 establishes a fair process to select a limited number of interested and eligible applicants, which will positively impact those businesses approved to offer Video Lottery games and also benefit the Lottery and public programs that rely on revenue from Video Lottery game sales.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- OAR 177-045-0035 available at <https://secure.sos.state.or.us/oard/view.action?ruleNumber=177-045-0035>.
- Temporary Administrative Order, LOTT 1-2022 available at <http://records.sos.state.or.us/ORSOSWebDrawer/Recordhtml/8584290> or upon request to the Lottery;
- Notice of Proposed Rulemaking filed by the Oregon State Lottery on March 25, 2022, available at the Secretary of State at <https://secure.sos.state.or.us/oard/filingSearch.action> or upon request to the Lottery.
- Permanent Administrative Order, LOTT 5-2022 available at the Secretary of State website at <https://secure.sos.state.or.us/oard/filingSearch.action> or upon request to the Lottery.
- ORS chapter 461 available at https://www.oregonlegislature.gov/bills_laws/ors/ors461.html.
- OAR chapter 177 available at <https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=153>; see in particular divisions 40 and 45.
- Recent discussions with the Oregon State Lottery Commission in 2022 about managing limited inventory; meeting audio/video and minutes available at <https://www.oregonlottery.org/about/how-we-operate/commission-and-director-info/>.

ADOPT: 177-045-0036

RULE SUMMARY: The Lottery is adopting OAR 177-045-0036 to authorize the Director to periodically determine to award a certain number of Video Lottery retailer contracts. The Director will also determine the proportion of contracts that will be awarded to current retailers versus new applicants. (The Lottery plans to give some priority to current retailers who are ready and eligible to add a location.) The rule additionally explains to interested persons what the eligibility requirements are and how they can indicate their interest and eligibility to the Lottery. The rule also explains that whenever the interest exceeds the number of contracts, the Lottery will conduct a random drawing to select applicants to proceed with the contract application process.

CHANGES TO RULE:

177-045-0036

Exception to Temporary Pause on Video Lottery Retailer Applications

(1) Notwithstanding OAR 177-045-0035, if the Director determines there is sufficient Video Lottery Terminal inventory to support additional Video Lottery retailer contracts, and that such additional contracts will maximize revenue commensurate with the public good, then the Lottery may accept a limited number of Video Lottery retailer contract applicants as described in this rule.¶

(a) At least each quarter of the calendar year, the Director or designee shall determine the number of video lottery contracts that may be awarded and what proportion of those will be available to existing retailers adding locations versus new applicants. (For example, the Lottery may decide to award ten contracts in the upcoming quarter and select six existing Video Lottery retailers adding locations and four new business applicants.) The number and proportion may be adjusted as Lottery learns more about the actual interest and eligibility of potential applicants for any given time period.¶

(b) To be eligible to apply under this rule, an interested applicant must complete an entry form via a web portal established by the Lottery by the deadline announced by the Lottery. The applicant must indicate they meet the eligibility requirements described in section (2) of this rule. Entries received after the deadline will be considered in the subsequent round of applications and so on until the applicant is selected, withdraws, or is otherwise determined to be ineligible.¶

(c) When the number of interested and eligible applicants received exceeds the number of contracts identified in subsection (1)(a) of this rule, the Lottery shall conduct a random drawing within 14 business days of the announced entry deadline to select the applicants for consideration of a contract. Any applicant not selected in the drawing will be considered in subsequent drawings until the applicant is selected, withdraws, or is otherwise determined to be ineligible. Any applicant included in the drawing but not selected will be awarded an additional entry in each subsequent drawing until the applicant is selected, withdraws, or is otherwise determined to be ineligible.¶

(d) Any applicant selected under this rule shall have the opportunity to complete the full retailer contract application process, including the background check process. All other retailer contract requirements apply. Selection does not guarantee the applicant will be approved and such approval remains subject to Lottery's discretion. The Lottery will not approve temporary contracts for any applicant selected under this rule.¶

(2) Eligible applicants must meet the following requirements. The Lottery may remove an entry from eligibility if the Lottery determines the person does not, in fact, meet the threshold requirements in this section.¶

(a) An interested applicant must provide all information requested by the Lottery on the entry form so the Lottery can verify the potential applicant meets Lottery retailer contract requirements such as, but not limited to, business registration, OLCC licensure, and willingness to pay a nonrefundable network service installation fee if selected to start the application process.¶

(b) Unless an exception is approved under section (3) of this rule, the establishment where Video Lottery terminals will be placed if approved for a Video Lottery retailer contract must have been open to the public and operating continuously, in accordance with OAR 177-040-0017(2), for at least 120 days. Current Video Lottery retailers who may qualify for an exception under section (3) of this rule must provide all requested information regarding their current Video Lottery retailer locations.¶

(A) Lottery may require any documentation or explanation from the applicant that Lottery deems necessary to determine whether the applicant's business has been open to the public and operating continuously for the required period.¶

(B) Notwithstanding OAR 177-040-0017(2)(a), this requirement applies to all applicants unless an exception is approved under subsection (3) of this rule.¶

(3) The Assistant Director for Security or designee may waive the requirement that a business be open and operating for 120 days prior to application only if the following criteria apply:¶

(a) The applicant currently has active Video Lottery retailer contracts at two or more locations;¶

(b) The applicant has held active Video Lottery retailer contracts at two or more locations for at least two years;¶

(c) The applicant's new location(s) have the same ownership as the locations identified in subsections (a) and (b) of this section;¶

(d) The applicant's new location(s) will have the same business model as other current locations; and¶

(e) Contracting with the applicant for an additional location will not jeopardize the fairness, integrity, security, and honesty of Lottery's operations, as determined by the Assistant Director for Security or designee.

Statutory/Other Authority: Or Const, Art XV, ¶ 4(4)(a), ORS 183.325, 183.335, 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 183.310, OAR 177-045-0010, OAR 177-045-0030, ORS 183.325, 183.335, 461.120, 461.130, 461.150, 461.200, 461.215, 461.217, 461.260, 461.300, 461.500, OAR 177-010-0025