

**OREGON STATE LOTTERY**  
**DIVISION 45**  
**RETAIL SALES EQUIPMENT MANAGEMENT**

**May 1, 2011**

**177-045-0000      Definitions**

For purposes of OAR Chapter 177, Division 45, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) **“Equipment”** means all equipment placed by the Lottery or a Lottery vendor on a retailer’s premises including, but not limited to, Video Lottery<sup>SM</sup> game terminals and all equipment necessary for their operation, player-operated vending machines, validation terminals, Lottery sales terminals, display equipment, and interior and exterior signage.

(2) **“Player-operated vending machine”** means an electrical, electronic, or electro-mechanical device that dispenses Scratch-it<sup>SM</sup> or other Oregon Lottery<sup>®</sup> tickets directly to a consumer upon payment of the appropriate purchase price.

(3) **“Occurrence”** means an accident, incident, or a series of accidents or incidents arising out of a single event or originating cause and includes all resultant or concomitant losses. Each loss by earthquake, flood, freeze, or windstorm will constitute a single occurrence. If more than one earthquake or flood occurs within any 72-hour period, the State of Oregon will determine the moment when the time period began.

(4) **“Premises”** has that definition as used in OAR 177-040-0000(6).

(5) **“Secondhand smoke”** means the smoke created by burning or carrying any lighted pipe, cigar, hookah, narghile, sheesha, goza, cigarette, or tobacco product of any kind, or any other weed, plant, or combustible substance, and the smoke exhaled by an individual who engages in smoking.

(6) **“Smoking environment”** means that portion of a retailer’s business where smoking of tobacco, any controlled substance as defined in ORS 475.005, including marijuana for medical purposes, or any other substance which is burned and is intended to be introduced into the human body by inhalation, occurs, or secondhand smoke is or may be present.

**177-045-0010      Equipment Management Generally**

(1) **General Equipment Management:** The Director of the Lottery shall manage Lottery equipment pursuant to ORS 461.200. The Director may place or remove Lottery equipment on a retailer’s premises when in the judgment of the Director it is in the best interests of the Lottery. The Lottery may discontinue or remove existing equipment, or may implement new or replacement equipment at any time and for any reason the Director determines is in the best interests of the Lottery.

(2) **Retailer's Sales:** A retailer's sales, or in the case of an applicant, estimated sales, of Lottery tickets and shares are the prime factor considered by the Director in managing Lottery equipment.

(3) **Equipment Inspection:** The Lottery may access, inspect, furnish, repair, place, replace, upgrade, modify, add, or remove Lottery equipment at a retailer's premises at any time during regular business hours.

(4) **Obsolete and Defective Equipment:** The Lottery may replace obsolete or defective equipment with new, used, or refurbished replacement equipment.

(5) **Test Equipment:** With the consent of the retailer, the Lottery may deploy equipment on the retailer's premises to test the equipment. The Director or the Director's designee shall determine how long the equipment will remain and the conditions of the test.

(6) **Other Laws:** This rule does not preclude the Lottery from removing any or all of its equipment pursuant to any other applicable law, rule, or contract provision.

(7) **Smoking Prohibition:** The Lottery will not place its equipment, terminals, tickets, or shares, in any smoking environment. The Lottery does not permit its employees, representatives, or agents to enter into, or to place Lottery equipment, terminals, tickets, or shares, or advertising in any smoking environment.

#### **177-045-0030          Video Lottery<sup>SM</sup> Game Terminals**

(1) **Allocation of Terminals:** In the exercise of the Director's discretion and subject to all other requirements, the Director may allocate and reallocate the Lottery's Video Lottery<sup>SM</sup> game terminals among Video Lottery<sup>SM</sup> retailers at any time and in any manner. The Director shall consider:

(a) **Availability:** The availability of the terminals and related equipment.

(b) **Public Access:** Adequate and convenient public access to Video Lottery<sup>SM</sup> games statewide.

(c) **Retailer Sales:** The actual or projected net video sales generated from the play of Video Lottery<sup>SM</sup> games at each Video Lottery<sup>SM</sup> retail location. A new or existing Video Lottery<sup>SM</sup> retailer shall generate a minimum of \$200 in average net video sales per week per terminal as determined by the Director. The Lottery shall calculate the average using any 90-day or greater time period determined by the Lottery. Net video sales are calculated by subtracting prizes awarded on a Video Lottery<sup>SM</sup> game terminal from wagers placed on the terminal. The Director may remove one or more terminals from a retail location when the retailer is unable to meet the minimum sales requirement.

(d) **Floor Space:** The Lottery requires each Video Lottery<sup>SM</sup> retailer to have a minimum amount of floor space per each Video Lottery<sup>SM</sup> game terminal. A retailer with less than 360 square feet of retail floor space is not eligible to receive any Video Lottery<sup>SM</sup> game terminals for that business. A retailer with 360 square feet of retail floor space may

receive up to three Video Lottery<sup>SM</sup> game terminals. For each 120 square feet of retail floor space over the required minimum square footage of 360 square feet, a retailer may be eligible for one additional Video Lottery<sup>SM</sup> game terminal up to the maximum number of terminals permitted under Oregon law.

(A) **Retail Floor Space:** Total retail floor space includes all areas open to the public in the business including, but not limited to, restrooms and hallways, but does not include offices, kitchens, storage rooms, and any other areas not generally open to the public. Total retail floor space does not include any space or portion of the business that is a common area or is shared with other businesses, or that is not contiguous with the areas where the Video Lottery<sup>SM</sup> game terminals are located or proposed to be located.

(B) **Removal of Terminals:** The Director may remove or limit the number of Video Lottery<sup>SM</sup> game terminals in a business to bring it into compliance with the floor space standards.

(C) **Existing Retailers:** This section, unless otherwise provided, does not apply to existing Video Lottery<sup>SM</sup> retailers whose space requirements were determined under a previous version of this rule.

**(2) Additional Requirements:**

(a) **Restricted Visibility:** The Lottery will only place Video Lottery<sup>SM</sup> game terminals in those areas of a business with restricted visibility from areas outside of the business, and from the view of dining or other areas where minors are permitted to linger. Under certain circumstances, Oregon Liquor Control Commission rules may permit minors in the same areas as properly placed Video Lottery<sup>SM</sup> game terminals. This rule is not intended to override any OLCC exception.

(b) **Adjacent Businesses:** When two or more adjacent businesses appear to the Director to be a single business, or are operated by the same or commingled ownership, then the Lottery may limit such businesses to the maximum number of Video Lottery<sup>SM</sup> game terminals permitted under Oregon law for one business as the total number of terminals authorized for both or more such businesses.

(3) **Reconsideration:** Upon written request by a Video Lottery<sup>SM</sup> retailer, the Director may reconsider any Video Lottery<sup>SM</sup> game terminal allocation decision made under this rule pertaining to that retailer.

**177-045-0060            Equipment Loss or Damage**

**(1) Loss Claim under \$2,500:**

(a) A retailer is responsible for the actual cost of replacing, repairing, or removing lost, damaged, or destroyed Lottery equipment when the loss per occurrence is under \$2,500 and the retailer:

(A) Failed to exercise reasonable care to protect the equipment from damage, destruction, or theft;

(B) Intentionally damaged, destroyed, or stole the equipment, or allowed others to damage, destroy, or steal Lottery equipment; or

(C) Unless waived by the Director, previously had a loss claim (whether charged to the retailer or not) within the preceding twelve months.

(b) The Lottery will investigate whether a retailer failed to exercise reasonable care to prevent loss, damage, or destruction of Lottery equipment in the possession of the retailer, or whether the retailer intentionally damaged, destroyed, or stole, or allowed others to damage, destroy, or steal Lottery equipment. The Lottery Director shall determine if the retailer is responsible for the actual costs of replacing, repairing, or removing the Lottery equipment under subsection (a) of this section. If the retailer is determined to be responsible, the Lottery will bill the retailer and may electronically debit the retailer's account for the amount billed.

(2) **Ordinary Wear and Tear Excepted:** A retailer is not responsible for costs of replacing, repairing, or removing Lottery equipment resulting from ordinary wear and tear due to normal use of the equipment.

(3) **Loss Claim of \$2,500 or More:** Notwithstanding section (1) of this rule, a Lottery retailer is responsible for any loss, damage, or destruction to Lottery equipment when the loss is \$2,500 or more per occurrence. In the event of such loss, damage, or destruction, the Lottery will report it to the State of Oregon Department of Administrative Services Risk Management Division in accordance with ORS Chapter 278. Any claim that the Lottery may have against a retailer arising from the loss, damage, or destruction of such property is subrogated to the Risk Management Division upon payment of the claim by Risk Management to the Lottery. When requested, the retailer must reimburse Risk Management the amount paid to the Lottery for replacement or repair of the lost, damaged, or destroyed equipment.

(4) **Loss Management:** At its option, the Lottery may repair, replace, or remove any lost, damaged, or destroyed Lottery equipment, none of which has any effect on a retailer's liability to the State of Oregon, if any, for the loss, damage, or destruction of such equipment.

(5) **Contract Termination:** In addition to requiring payment for the loss, damage, or destruction of Lottery equipment, the Director may terminate the retailer contract of any Lottery retailer who failed to exercise reasonable care to protect Lottery's equipment. The Director shall terminate the retailer contract of any Lottery retailer who intentionally damages, destroys, or steals, or allows others to damage, destroy, or steal Lottery equipment.

(6) **Threats:** The Director may terminate the retailer contract of any Lottery retailer who threatens to damage or destroy Lottery equipment.

#### **177-045-0080 Finality of Decisions**

The decisions and determinations of the Director under this Division are final.