



# Memo

**Date:** January 23, 2020  
**To:** Commissioners  
**From:** Kris Skaro  
**Subject:** Motion to approve permanent rule change to OAR 177-040-0024; 177-040-0025; and 177-040-0026

In addition to Director Pack's presentation about the retailer contract and rates, for the record, the following is a summary of the rulemaking process and more information about Director Pack's recommendation to adopt permanent changes to the rules cited above.

## **PUBLIC RULEMAKING PROCESS**

### NOTICE AND REQUEST FOR COMMENT

- At the end of October 2019, the Lottery submitted a Notice of Proposed Rulemaking to the Secretary of State with proposed rate changes. The Lottery sent the Notice and proposed rate changes to Lottery Commissioners, the Speaker of the House and Senate President, and Lottery interested parties.
- In early November 2019, the Lottery provided a letter to each Video Lottery retailer explaining how the proposed rate changes would impact the retailer and information about how to comment.

### PUBLIC COMMENT

- During the written comment period, **Lottery received 25 written comments.**
- Lottery held a public hearing on November 19, 2019. Approximately 20 people attended the hearing and **eight people testified**, some of whom represented multiple Lottery retailers.
- I summarized all public comment received in a final Rulemaking Report. This report was provided to the Director and the Commissioners on December 11, 2019, and is part of the permanent rulemaking record.

## **DIRECTOR'S RECOMMENDATION**

### UPDATED RATES

- In consideration of public comment received and other considerations, Director Pack has modified the proposed rate changes as described in his presentation today. The recommended rates are reflected in the attached rule text. (Both rule text showing changes and rule text with changes accepted is attached for ease of reading.)
- Director Pack recommends the Commission adopt these rules to be effective at 5 a.m. on June 28, 2020.

I'm happy to answer any questions about this rulemaking. Otherwise, there is a motion in your materials.

**177-040-0024**

**Compensation Rate Study for Video Lottery Retailers**

(Amended ~~9/1/17~~ 6/28/20)

- (1) Purpose: The Director of the Oregon State Lottery may conduct a comprehensive Video Lottery retailer compensation study. The compensation study will assist the Lottery Commission in meeting its legal obligation to develop a compensation system that maximizes net revenue to the state for the public purpose and provides a reasonable rate of return for Video Lottery retailers for their sales of Lottery tickets or shares. If a Video Lottery retailer compensation study is conducted, it is to be completed prior to the start of the term of any new Lottery Retailer Contract.
- (2) Selection of Independent Consulting Company or Consultant: The Video Lottery retailer compensation study shall be completed by an independent economic consulting company or economic consultant chosen by the Director. The Director may select a consulting company or consultant using any procurement process deemed appropriate by the Director, but in selecting the consulting company or consultant, the Director shall determine that the company or consultant has the requisite experience, expertise, and knowledge for this type of study. The Director shall submit a report to the Lottery Commission before entering into any contract for services with the consulting company or consultant selected by the Director.
- (3) Analysis of Video Lottery Retailer Compensation Systems: The study shall provide an analysis and comparison of various Video Lottery retailer compensation systems, and shall set forth the pros and cons for each system and the estimated costs to Lottery if it were to use each system. The analysis shall include, but is not limited to, the following Video Lottery retailer compensation systems:
  - (a) Tiered System: Tiered compensation rate system where retailer compensation is calculated as a percentage of ~~net receipts~~ dollars played, but the percentage declines as ~~net receipts~~ dollars played increase over a business year. The higher the ~~net receipts~~ dollars played, the lower the percentage paid. This analysis shall include, but is not limited to, the current compensation system described in [OAR 177-040-0026](#).
  - (b) Single Rate System: Single compensation rate system where the retailer compensation is calculated by applying a single, specified percentage to a retailer's ~~net receipts~~ dollars played over a business year. This analysis shall include a method or methods for determining the single percentage rate.
  - (c) Individualized System: Individualized compensation rate system where compensation is calculated based on a percentage of ~~net receipts~~ dollars played as determined individually for each Video Lottery retailer. This analysis shall include the method or methods the Lottery would use to determine the percentage rate or rates for each individual retailer.
- (4) Lottery Commission Responsibilities To Be Addressed: In analyzing the various compensation rate systems, as required in section (3) of this rule, the study must consider and address the following constitutional and statutory responsibilities of the Lottery Commission and the Lottery Director to:

Proposed Changes to OAR Chapter 177, Division 40: Retailer Contract

- (a) Ensure the fairness, integrity, security, and honesty of the Lottery ([Article XV, section 4, 4\(a\)](#), and [ORS 461.150](#));
  - (b) Undertake to develop a system to maximize net revenue while providing a reasonable rate of return for contractors ([ORS 461.445](#));
  - (c) Select as Lottery game retailers such persons to best serve the public convenience and promote the sale of Lottery tickets or shares ([ORS 461.300](#));
  - (d) Provide adequate and convenient availability of Video Lottery games in both rural and metropolitan locations to promote sales ([ORS 461.300](#));
  - (e) Determine retailer compensation ([ORS 461.310](#)); and
  - (f) Make ongoing study and comparison of the operations of lotteries in other states and countries ([ORS 461.180](#)).
- (5) Other Factors: Notwithstanding section (4) of this rule, the Director shall determine what other factors are necessary for consideration and review in order to complete a comprehensive Video Lottery retailer compensation rate study.
- (6) Completion: The studies required under this rule are to be completed no later than nine months prior to the start of the term of a new Video Lottery retailer contract.

Statutory/Other Authority: [OR Const. Art. XV § 4\(4\)\(a\)](#), [ORS 461.120](#), [461.260](#), [461.300](#)

Statutes/Other Implemented: [OR Const. Art. XV § 4](#), [ORS 461.120](#), [461.260](#), [461.300](#), [461.310](#), & ~~461.445~~

**177-040-0025**

**Retailer Compensation — Traditional Lottery Games**

(Amended ~~5/26/04~~ [6/28/20](#))

(1)

- (a) Traditional Sales Compensation: The Lottery shall pay a retailer ~~the following compensation rates for eight percent the of~~ weekly sales of traditional lottery game tickets or shares offered by the Lottery and sold by the retailer ~~as set forth below:~~

Amount Sold Per Week	Compensation — % of Gross Sales
Below \$1,000	5.00%
\$1,000 to \$1,999.99	7.00%
\$2,000 to \$2,999.99	7.50%
\$3,000 to \$3,999.99	8.00%
\$4,000 to \$4,999.99	8.50%
\$5,000 to \$5,999.99	9.00%

Proposed Changes to OAR Chapter 177, Division 40: Retailer Contract

\$6,000 to \$6,999.99	9.50%
\$7,000 and up	10.00%

- (b) Calculation of Sales: A retailer's weekly sales shall be calculated on the combined weekly gross sales of Draw game tickets and Scratch-it<sup>SM</sup> tickets made from the retailer's premises during a business week, less Scratch-it<sup>SM</sup> ticket returns recorded by the Lottery and other sales related adjustments made during the week. For the purpose of calculating weekly sales, Scratch-it<sup>SM</sup> tickets are sold when the tickets are activated by the retailer, and Draw game tickets are sold when the request for the Draw game ticket is electronically received and verified by the Lottery's central computer system.
- (2)
- (a) One Percent Selling Bonus: For selling any winning and validated Scratch-it<sup>SM</sup> or Draw game ticket with a prize of \$10,000 or more, a Lottery retailer shall receive a bonus equal to one percent (1.00%) of the offered or advertised prize won by the player up to a maximum bonus of \$100,000 rounded to the nearest dollar. For example: For selling a winning and validated annuitized prize of \$8,000,000, the selling Lottery retailer shall receive a bonus of \$80,000 regardless of the payment option chosen by the winner; for selling a winning and validated Scratch-it<sup>SM</sup> prize of \$25,000, the selling Lottery retailer shall receive \$250.
- (b) Bonus for Variable Prizes: Prior to the implementation of a traditional lottery game that includes one or more prizes with a value that is, in the opinion of the Director, variable or in some other way ambiguous including, but not limited to, circumstances such as non-monetary prizes or annuities of unspecified duration, the Director shall assign a prize value to any such prize for the purposes of determining the retailer selling bonus pursuant to subsection (a) of this section. The Director's determination of the prize value is final.
- (3) One Percent Prize Payment Bonus: For paying a winning and validated Scratch-it<sup>SM</sup> or Draw game ticket with a prize of \$600 or less, a Lottery retailer shall receive a bonus from the Lottery equal to one percent of the prize won by the player.
- (4) Alternative Compensation Agreements: Upon approval of the Commission, the Director may enter into an alternative compensation agreement with certain Lottery retailers to accommodate new business models aimed at the retention and recruitment of Lottery retailers offering different sales styles. Under such alternative compensation agreements, the Lottery retailer may receive a compensation rate, selling bonuses, and prize payment bonuses that are less, or more, than the rates or bonuses established in sections (1), (2), and (3) of this rule. The compensation rate and bonuses shall be determined by the Director for each agreement.

Statutory/Other Authority: [OR Const. Art. XV & Sec. 4\(4\)\(a\)](#), [ORS 461.120](#), [461.260](#), [461.300](#)

Statutes/Other Implemented: [OR Const. Art. XV § 4](#), [ORS 461.040](#)~~120~~, [461.260](#), [461.300](#), [461.310](#), [461.445](#)

**177-040-0026**

**Retailer Compensation — Video Lottery<sup>SM</sup> Games**

(Amended ~~9/1/17~~ 6/28/20)

- (1) General: The compensation the Lottery shall pay a retailer for the sale of Video Lottery<sup>SM</sup> game shares is calculated on a percentage of net receipts-dollars played during a business year. “Net receiptsDollars played” means the amount ~~of money that is received~~ wagered on Video Lottery games at a retailer’s premises ~~from the sale of Video Lottery<sup>SM</sup> game shares after payment for prizes.~~
- (2) Compensation When Net Receipts Dollars Played Exceeds Tier Threshold: During the course of a business year, when a Video Lottery<sup>SM</sup> retailer’s net receipts-dollars played exceeds the threshold of a tier applicable to the retailer under this rule, the Video Lottery<sup>SM</sup> compensation rate shall remain unchanged for the remainder of the business day on which the threshold is exceeded. The compensation rate for that tier, as set forth in this rule shall apply at the start of the next business day.

For example, ~~if a retailer has chosen option (a) under OAR 177-040-0026(4)(a) and section (4) of this rule, if~~ on Wednesday the net receipts-dollars played reaches \$1752,250,001, the retailer is compensated at ~~27.5~~ 2.20 percent of the net receipts-dollars played for the remainder of the business day. At 5:00 a.m. on the next day, Thursday, which is the start of the next business day, the compensation rate is reduced to ~~23~~ 1.75 percent of net receipts-dollars played.

- (3) Applicability: The compensation rates for the sale of Video Lottery<sup>SM</sup> game shares set forth in this rule apply to compensation for the sale of shares on all Video Lottery<sup>SM</sup> game terminals at all Video Lottery<sup>SM</sup> retailers effective as of the start of the business day beginning June ~~27, 2010~~ 28, 2020.
- (4) ~~General: At the time a retailer signs a Retailer Contract, the retailer must choose in writing to receive compensation in accordance with either subsection (4)(a) or subsection (4)(b) of this section. If the retailer fails to choose as required, the Lottery shall compensate the retailer pursuant to subsection (4)(a) of this section for the first business year the Retailer Contract is in effect. For each subsequent business year that the Retailer Contract is in effect, no less than 14 days before the beginning of the upcoming business year, a retailer may submit a written notice to the Lottery that the retailer chooses to be compensated under the alternative compensation method for the upcoming business year. If the retailer does not submit or fails to timely submit a written notice, the Lottery shall compensate the retailer using the retailer’s current compensation method for that business year.~~

~~(a) —~~ 4Four-Tier-Option Compensation: Dollars Played per Year – Compensation/Percent of Dollars Played:

- (a) Up to \$2,250,000 – 2.20%.
- (b) \$2,250,000.01 to 4,000,000 – 1.75%.
- (c) \$4,000,000.01 to 6,500,000 – 1.50%.

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(d) ~~\$6,500,000.01 and up – 1.324%.~~

Net Receipts per Year	Compensation Percent of Net Receipts
Up to \$175,000	27.5%
\$175,000.01 to \$475,000	23%
\$475,000.01 to \$800,000	14%
\$800,000.01 and up	11%

(b) ~~3-Tier Option:~~

Net Receipts per Year	Compensation Percent of Net Receipts
Up to \$600,000	22%
\$600,000.01 to \$1,800,000	17.5%
\$1,800,000.01 and up	11%

Statutory/Other Authority: ~~ORS 461,~~ OR Const. Art. XV & Sec. 4(4)(a), ORS 461.120, 461.260, 461.300

Statutes/Other Implemented: OR Const. Art. XV § 4, ORS 461.120, 461.260, 461.300, 461.310, 461.445

**177-040-0024**

**Compensation Rate Study for Video Lottery Retailers**

*(Amended 6/28/20)*

- (1) Purpose: The Director of the Oregon State Lottery may conduct a comprehensive Video Lottery retailer compensation study. The compensation study will assist the Lottery Commission in meeting its legal obligation to develop a compensation system that maximizes net revenue to the state for the public purpose and provides a reasonable rate of return for Video Lottery retailers for their sales of Lottery tickets or shares. If a Video Lottery retailer compensation study is conducted, it is to be completed prior to the start of the term of any new Lottery Retailer Contract.
- (2) Selection of Independent Consulting Company or Consultant: The Video Lottery retailer compensation study shall be completed by an independent economic consulting company or economic consultant chosen by the Director. The Director may select a consulting company or consultant using any procurement process deemed appropriate by the Director, but in selecting the consulting company or consultant, the Director shall determine that the company or consultant has the requisite experience, expertise, and knowledge for this type of study. The Director shall submit a report to the Lottery Commission before entering into any contract for services with the consulting company or consultant selected by the Director.
- (3) Analysis of Video Lottery Retailer Compensation Systems: The study shall provide an analysis and comparison of various Video Lottery retailer compensation systems, and shall set forth the pros and cons for each system and the estimated costs to Lottery if it were to use each system. The analysis shall include, but is not limited to, the following Video Lottery retailer compensation systems:
  - (a) Tiered System: Tiered compensation rate system where retailer compensation is calculated as a percentage of dollars played, but the percentage declines as dollars played increase over a business year. The higher the dollars played, the lower the percentage paid. This analysis shall include, but is not limited to, the current compensation system described in [OAR 177-040-0026](#).
  - (b) Single Rate System: Single compensation rate system where the retailer compensation is calculated by applying a single, specified percentage to a retailer's dollars played over a business year. This analysis shall include a method or methods for determining the single percentage rate.
  - (c) Individualized System: Individualized compensation rate system where compensation is calculated based on a percentage of dollars played as determined individually for each Video Lottery retailer. This analysis shall include the method or methods the Lottery would use to determine the percentage rate or rates for each individual retailer.
- (4) Lottery Commission Responsibilities To Be Addressed: In analyzing the various compensation rate systems, as required in section (3) of this rule, the study must consider and address the following constitutional and statutory responsibilities of the Lottery Commission and the Lottery Director to:

- (a) Ensure the fairness, integrity, security, and honesty of the Lottery ([Article XV, section 4, 4\(a\)](#), and [ORS 461.150](#));
  - (b) Undertake to develop a system to maximize net revenue while providing a reasonable rate of return for contractors ([ORS 461.445](#));
  - (c) Select as Lottery game retailers such persons to best serve the public convenience and promote the sale of Lottery tickets or shares ([ORS 461.300](#));
  - (d) Provide adequate and convenient availability of Video Lottery games in both rural and metropolitan locations to promote sales ([ORS 461.300](#));
  - (e) Determine retailer compensation ([ORS 461.310](#)); and
  - (f) Make ongoing study and comparison of the operations of lotteries in other states and countries ([ORS 461.180](#)).
- (5) Other Factors: Notwithstanding section (4) of this rule, the Director shall determine what other factors are necessary for consideration and review in order to complete a comprehensive Video Lottery retailer compensation rate study.
- (6) Completion: The studies required under this rule are to be completed no later than nine months prior to the start of the term of a new Video Lottery retailer contract.

Statutory/Other Authority: [OR Const. Art. XV § 4\(4\)\(a\)](#), [ORS 461.120](#), [461.260](#), [461.300](#)

Statutes/Other Implemented: [OR Const. Art. XV § 4](#), [ORS 461.120](#), [461.260](#), [461.300](#), [461.310](#), [461.445](#)

### **177-040-0025**

#### **Retailer Compensation — Traditional Lottery Games**

*(Amended 6/28/20)*

- (1)
- (a) Traditional Sales Compensation: The Lottery shall pay a retailer eight percent of weekly sales of traditional lottery game tickets or shares offered by the Lottery and sold by the retailer.
  - (b) Calculation of Sales: A retailer's weekly sales shall be calculated on the combined weekly gross sales of Draw game tickets and Scratch-it tickets made from the retailer's premises during a business week, less Scratch-it ticket returns recorded by the Lottery and other sales related adjustments made during the week. For the purpose of calculating weekly sales, Scratch-it tickets are sold when the tickets are activated by the retailer, and Draw game tickets are sold when the request for the Draw game ticket is electronically received and verified by the Lottery's central computer system.
- (2)

- (a) One Percent Selling Bonus: For selling any winning and validated Scratch-it or Draw game ticket with a prize of \$10,000 or more, a Lottery retailer shall receive a bonus equal to one percent (1.00%) of the offered or advertised prize won by the player up to a maximum bonus of \$100,000 rounded to the nearest dollar. For example: For selling a winning and validated annuitized prize of \$8,000,000, the selling Lottery retailer shall receive a bonus of \$80,000 regardless of the payment option chosen by the winner; for selling a winning and validated Scratch-it prize of \$25,000, the selling Lottery retailer shall receive \$250.
- (b) Bonus for Variable Prizes: Prior to the implementation of a traditional lottery game that includes one or more prizes with a value that is, in the opinion of the Director, variable or in some other way ambiguous including, but not limited to, circumstances such as non-monetary prizes or annuities of unspecified duration, the Director shall assign a prize value to any such prize for the purposes of determining the retailer selling bonus pursuant to subsection (a) of this section. The Director's determination of the prize value is final.
- (3) One Percent Prize Payment Bonus: For paying a winning and validated Scratch-it or Draw game ticket with a prize of \$600 or less, a Lottery retailer shall receive a bonus from the Lottery equal to one percent of the prize won by the player.
- (4) Alternative Compensation Agreements: Upon approval of the Commission, the Director may enter into an alternative compensation agreement with certain Lottery retailers to accommodate new business models aimed at the retention and recruitment of Lottery retailers offering different sales styles. Under such alternative compensation agreements, the Lottery retailer may receive a compensation rate, selling bonuses, and prize payment bonuses that are less, or more, than the rates or bonuses established in sections (1), (2), and (3) of this rule. The compensation rate and bonuses shall be determined by the Director for each agreement.

Statutory/Other Authority: [OR Const. Art. XV & Sec. 4\(4\)\(a\)](#), [ORS 461.120](#), [461.260](#), [461.300](#)

Statutes/Other Implemented: [OR Const. Art. XV § 4](#), [ORS 461.120](#), [461.260](#), [461.300](#), [461.310](#), [461.445](#)

### **177-040-0026**

#### **Retailer Compensation — Video Lottery Games**

*(Amended 6/28/20)*

- (1) General: The compensation the Lottery shall pay a retailer for the sale of Video Lottery game shares is calculated on a percentage of dollars played during a business year. "Dollars played" means the amount wagered on Video Lottery games at a retailer's premises.
- (2) Compensation When Dollars Played Exceeds Tier Threshold: During the course of a business year, when a Video Lottery retailer's dollars played exceeds the threshold of a tier applicable to the retailer under this rule, the Video Lottery compensation rate shall remain unchanged for the remainder of the business day on which the threshold is exceeded. The compensation rate for that tier, as set forth in this rule shall apply at the start of the next business day. For example, under section (4) of this rule, if on Wednesday the dollars played reaches \$2,250,001, the retailer is compensated at 2.20 percent of the dollars played for the remainder of the business

day. At 5:00 a.m. on the next day, Thursday, which is the start of the next business day, the compensation rate is reduced to 1.75 percent of dollars played.

- (3) Applicability: The compensation rates for the sale of Video Lottery game shares set forth in this rule apply to compensation for the sale of shares on all Video Lottery game terminals at all Video Lottery retailers effective as of the start of the business day beginning June 28, 2020.
- (4) Four-Tier Compensation: Dollars Played per Year – Compensation/Percent of Dollars Played:
  - (a) Up to \$2,250,000 – 2.20%.
  - (b) \$2,250,000.01 to 4,000,000 – 1.75%.
  - (c) \$4,000,000.01 to 6,500,000 – 1.50%.
  - (d) \$6,500,000.01 and up – 1.34%.

Statutory/Other Authority: [OR Const. Art. XV & Sec. 4\(4\)\(a\)](#), [ORS 461.120](#), [461.260](#), [461.300](#)

Statutes/Other Implemented: [OR Const. Art. XV § 4](#), [ORS 461.120](#), [461.260](#), [461.300](#), [461.310](#), [461.445](#)