NOTICE OF TEMPORARY RULEMAKING

DATE: January 14, 2022
TO: Interested Parties
FROM: Kris Skaro, rules and policy analyst
RE: Notice of Temporary Rulemaking

Interested Parties,

The Lottery has adopted a temporary rule:

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

The purpose of the rulemaking is to announce a temporary pause on accepting applications for new Video Lottery retailer locations while Lottery works to resolve inventory issues. Please see the enclosed Temporary Administrative Order for more information. See also the rule here.

If you have questions or would like to receive these notices directly by email, please contact Kris Skaro at Kris.skaro@lottery.oregon.gov or 971-719-0794.

Sincerely,

Kris Skaro
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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

LOTT 1-2022
CHAPTER 177
OREGON STATE LOTTERY

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

EFFECTIVE DATE: 01/14/2022 THROUGH 07/12/2022

AGENCY APPROVED DATE: 01/14/2022

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Filed By:
Kris Skaro
Rules Coordinator

NEED FOR THE RULE(S):

The Lottery is currently experiencing a Video Lottery Terminal (VLT) inventory shortage. The Lottery is well-equipped to support current Video Lottery retailers and terminals in the field. However, the current inventory is not sufficient to support new locations and installations. Therefore, to responsibly manage limited inventory, the Lottery has instituted a temporary pause on accepting applications for new Video Lottery retail locations. This temporary pause is effective as of December 20, 2021 and applies, with limited exception, to applications from new Video Lottery retailer applicants and requests from current Video Lottery retailers to add one or more Video Lottery retail locations or terminals. Applications already in process may be placed on a waitlist and processed when Lottery determines inventory is sufficient. The 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.

The decrease in available terminals has several causes. In 2021, due to strong sales, retailers easily met sales thresholds to qualify for additional terminals and fewer retailers have closed and returned equipment than in prior years. Additionally, some of the Lottery’s VLT’s currently in inventory are reserved to replace obsolete equipment and is therefore not available to be installed in new locations. The Lottery does not currently have money budgeted to purchase additional terminals and financial constraints (relating to the loss of revenue during the pandemic and other unexpected expenses) are impacting purchasing decisions at this time. Regardless, purchasing terminals (especially a substantial number) takes time and therefore is not an immediate solution, although the Lottery will consider this as a potential long-term solution.

The pause is a change to normal practice, and thus, the Lottery needs to adopt the rule as described in this Order to clearly communicate the pause to the public and to current and prospective Video Lottery retailers. This will ensure current and prospective retailers have accurate information for business planning purposes and ensures Lottery has clear authority to responsibly manage limited inventory and respond appropriately to dynamic economic conditions. (The Lottery has also used other methods to communicate with retailers, including contacting pending applicants, emailing all current Video Lottery retailers, and posting information on the Lottery’s website.)

The rule described in this Order meets the need by stating the effective date of the pause, explaining the status of
initiated applications, and describing generally the circumstances that may cause the Director to rescind the pause on accepting applications.

The Lottery also needs to adopt the rule to authorize the Director to make an exception for applications submitted by tribally owned businesses that may qualify for the alternative disclosure process described in OAR 177-040-0001(4)(a)(B). The Lottery only recently created this pathway for tribally owned business entities and thus, if VLT supply is adequate, OAR 177-045-0035 is adopted to authorize the Director to accept applications from such applicants.

JUSTIFICATION OF TEMPORARY FILING:

The Lottery finds that failure to act promptly to adopt OAR 177-045-0035 will result in serious prejudice to the Lottery and current and prospective Video Lottery retailers.

The Lottery has determined that most of its current VLT inventory is allocated and unavailable to be installed in new retail locations. The Lottery has also determined that it is not feasible to immediately procure additional terminals. Continuing to accept applications when there is insufficient inventory to meet demand would put further pressure on limited inventory and may cause confusion for retailers. Thus, immediate action is necessary to clearly communicate to retailers (current and prospective) that Lottery will not be installing additional terminals at this time but, rather, is working to support current retailers while trying to resolve inventory shortfalls.

On the other hand, the permanent rulemaking process takes 60 to 90 days, during which time, without prompt action, there may be uncertainty for the Lottery and retailers (current and prospective) about whether the Lottery is currently accepting applications for new Video Lottery retail locations. This uncertainty may lead retailers (current and prospective) to plan to offer Video Lottery games at their businesses, when in fact, supply issues may prevent the VLTs from being installed. Taking immediate action provides clarity for current retailers and prospective applicants by communicating that the Lottery will not be accepting applications until further notice that inventory limitations have been resolved. Taking immediate action also provides Lottery with clear authority to stop processing applications and focus on supporting current retailers and terminals currently in the field, while working diligently to resolve inventory issues.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

(1) ORS chapter 461, available at https://www.oregonlegislature.gov/bills_laws/ors/ors461.html;
(2) ORS chapter 183, available at https://www.oregonlegislature.gov/bills_laws/ors/ors183.html; see in particular ORS 183.310(9), 183.335(5), and 183.355.
(3) OAR chapter 137, division 001, available at https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=281; see in particular OAR 137-001-0080.
(5) Lottery administrative rules, OAR chapter 177, available at https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=153; see in particular, OAR 177-010-0025, 177-045-0010, and 177-045-0030.
(6) Recent OSL financial reports, all are available at https://www.oregonlottery.org/about/how-we-operate/commission-and-director-info/; see in particular:
(7) Commission meeting minutes, all are available at https://www.oregonlottery.org/about/how-we-operate/commission-and-director-info/; see in particular for 1/27/21, 6/30/21, 8/26/21, and 9/24/21 Commission meetings.
(8) Lottery VLT inventory report for 12/20/21 available upon request to kris.skaro@lottery.oregon.gov.
(9) Reports on number of pending requests for terminals (new Video Lottery retailer applications, request for new installs, etc.) per week for November 2021 and December 2021 available upon request to kris.skaro@lottery.oregon.gov.
(10) Annual retailer stats (annual closures/new installs/sales) available upon request to kris.skaro@lottery.oregon.gov.

ADOPT: 177-045-0035

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.

CHANGES TO RULE:

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 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 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, 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