

OREGON STATE LOTTERY
DIVISION 45
RETAIL SALES EQUIPMENT MANAGEMENT

November 4, 2012

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) **“Concentration of Video LotterySM retailers”** means:

- (a) More than three Video LotterySM retailers in a strip mall that has seven or fewer retail spaces or storefronts;
- (b) More than four Video LotterySM retailers in a strip mall that has eight to nine retail spaces or storefronts;
- (c) More than five Video LotterySM retailers in a strip mall that has ten to eleven retail spaces or storefronts; or
- (d) More than six Video LotterySM retailers in a strip mall that has twelve or more retail spaces or storefronts.

(2) **“Convenience store”** means a retail business which offers a relatively limited line of high-volume products, and the majority of the products are for consumption off the premises.

(3) **“Equipment”** means all equipment placed by the Lottery or a Lottery vendor on a retailer’s premises including, but not limited to, Video LotterySM 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.

(4) **“Grocery store”** means a retail business at which food and foodstuffs are regularly and customarily sold in a bona fide manner for consumption off the premises, and shall include supermarkets and one-stop shopping centers which contain a grocery section in addition to offering other wares, goods, and services.

(5) **“Movie theater”** means a business or premises where movies or motion pictures are shown for patrons, whether in a traditional stadium seating style or otherwise. Movie theater does not include other areas of the same business or premises that are physically separated by a floor to ceiling wall, partition, curtain, or other means, from the movie theater area, and where food and alcoholic beverages are sold and served for consumption on the premises.

(6) **“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.

(7) **“Player-operated vending machine”** means an electrical, electronic, or electro-mechanical device that dispenses Scratch-itSM or other Oregon Lottery[®] tickets directly to a consumer upon payment of the appropriate purchase price.

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

(9) **“Restricted visibility”** means Video LotterySM game terminals cannot be seen from areas outside the business or from areas inside the business where minors are permitted to linger, except in an incidental or negligible way. Under certain circumstances, Oregon Liquor Control Commission rules may permit minors in the same area as a properly placed Video LotterySM game terminal. This rule is not intended to override any OLCC exception.

(a) **“Incidental or negligible way”** includes, but is not limited to:

(A) The Video LotterySM game terminals may be glimpsed through an open doorway by passersby, except that minors may not be permitted to linger in the open doorway;

(B) The Video LotterySM game terminals may be seen by persons intentionally looking closely through a sight restricted window, door, curtain or other object intended to restrict visibility; or

(C) The Video LotterySM game terminals may be seen by persons passing by the Video LotterySM play area to get to restrooms, except that minors may not be permitted to linger in an area from which the Video LotterySM game terminals can be seen.

(10) **“Retail floor space”** means all areas of a business that are open to the public including, but not limited to, restrooms and hallways, but not including offices, kitchens, storage areas, and any other areas not generally open to the public. Total retail floor space does not include any area that is shared with one or more other businesses, or that is not contiguous with the areas where the Video LotterySM game terminals are located or proposed to be located.

(11) **“Same or commingled ownership”** means two or more businesses offering Video LotterySM that are:

(a) Owned or operated by the same person;

(b) Owned or operated by different persons, and at least one of those persons has a financial interest in, will either directly or indirectly benefit financially from, or has or will have the ability to exercise control over two or more of the businesses; or

(c) Owned or operated by a person who has an association with the owners or operators of one or more businesses, such as, but not limited to, a landlord, an immediate family member, or current or former business associate, and the association is such that the

Director determines there is a reasonable probability that the person has a financial interest in, will either directly or indirectly benefit financially from, or has or will have the ability to exercise control of one or more of the other business(es) sufficient to constitute ownership for purposes of this rule.

(12) **“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.

(13) **“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.

(14) **“Strip mall”** means an open area retail shopping complex consisting of stores, restaurants or other businesses in adjacent spaces or storefronts in one or more buildings that may have a sidewalk in front, with each space or storefront opening onto a common parking area. A strip mall may generally be identified by its location along a road or arterial with access by way of a common driveway(s) and the uniform architectural characteristics of the building or buildings, such as design, paint and trim colors, and direct access to each business from the common parking area. A strip mall may also be identified by a name, by a common landlord, or by a description or site plan as part of a lease agreement. For purposes of this definition, “strip mall” does not include a nearby freestanding building that only contains one business, even if the building shares a common parking lot.

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, reasonably estimated sales, of Lottery tickets and shares are an important factor to be 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 LotterySM 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 LotterySM game terminals among Video LotterySM 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 LotterySM games.

(c) **Retailer Sales:** The actual or projected net video sales generated from the play of Video LotterySM games at each Video LotterySM retail location. A new or existing Video LotterySM 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 LotterySM 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 LotterySM retailer to have a minimum amount of retail floor space per each Video LotterySM game terminal. A retailer with less than 360 square feet of retail floor space is not eligible to receive any Video LotterySM game terminals for that business. A retailer with 360 square feet of retail floor space may receive up to three Video LotterySM 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 LotterySM game terminal up to the maximum number of terminals permitted under Oregon law.

(A) **Removal of Terminals:** The Director may remove or limit the number of Video LotterySM game terminals in a business to bring it into compliance with the retail floor space standards.

(B) **Existing Retailers:** This section, unless otherwise provided, does not apply to existing Video LotterySM retailers whose space requirements were determined under a previous version of this rule.

(2) **Additional Requirements:** Placement of Video LotterySM game terminals is subject to the following:

(a) **Restricted Visibility:** The Lottery will not place Video LotterySM game terminals in an area of a business or premises that does not or will not have restricted visibility.

(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 LotterySM game terminals permitted under Oregon law for one business as the total number of terminals authorized for both or more such businesses.

(c) **Convenience Store or Grocery Store:** The Lottery will not place Video LotterySM game terminals in a business or in premises that operate or will operate primarily as a convenience store or grocery store.

(d) **Smoking Environment:** The Lottery will not place Video LotterySM game terminals in an area of a business or premises that is a smoking environment or where people are or would be exposed to second hand smoke.

(e) **Minor Posting:** The Lottery will not place Video LotterySM game terminals in an area of a business or premises that is not posted as prohibited to minors by the Oregon Liquor Control Commission.

(f) **Businesses Not Normally Associated with the On-premise Consumption of Food and Alcoholic Beverages:** The Lottery will not place Video LotterySM game terminals in a business or premises that operates as a laundromat, movie theater, car dealership, beauty salon, bed and breakfast lodging facility, hardware store, dry goods store, clothing store, liquor store, or any other business not normally associated with the on-premise consumption of food and alcoholic beverages.

(g) **Concentration of Video LotterySM Retailers:** The Lottery will not place Video LotterySM game terminals in a business or premises if this would create a concentration of Video LotterySM retailers.

(h) **Limit on the Number of Video LotterySM Game Terminals:** In the Director's sole discretion and subject to all other requirements, the Director may limit the number of Video LotterySM game terminals in a Video LotterySM retailer's business or premises at any time and in any manner.

(3) **Director's Decisions:** The Director's decisions regarding allocation, removal, placement, or limiting the number of Video LotterySM game terminals are final.

(4) **Reconsideration:** Upon written request by a Video LotterySM retailer, the Director may reconsider any Video LotterySM game terminal allocation decision made under this rule pertaining to that retailer unless such decision is required by this rule.

(5) **Date of Applicability:** Except as otherwise provided and in the sole discretion of the Director, the provisions of subsection (2)(g) of this rule will be applied to all applications for a Video LotterySM retailer contract received on or after April 1, 2012, and will apply to all existing Video LotterySM retailers effective at 5:00 a.m. on June 28, 2015.

(a) For purposes of this section, “applications” include:

(A) An application to sell, lease, or otherwise dispose of some or all of the assets of the retailer’s business or premises or transfer some or all of the ownership interest in the retailer’s entity to another person by operation of law, stock purchase, consolidation, merger, or other reorganization of the retailer’s business, except in the event of the owner or owners’ death if the retailer is an entity that has a legal identity apart from its owner or owners;

(B) An application of any type by a retailer who is attempting to circumvent this section as determined by the Director in his sole discretion.

(b) If the retailer is an entity that has a legal identity apart from its owner or owners, and a transfer of 100% of its ownership interests occurs by operation of law because of the death of the owner or owners, the Director may, in his sole discretion, not apply this section to an application to sell, lease, or otherwise dispose of 100% of the assets of the retailer’s business or premises or to transfer 100% of the ownership interest in the retailer’s entity. This section will apply, however, to the retailer effective at 5:00 a.m. on June 28, 2015.

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.