

**OREGON STATE LOTTERY  
DIVISION 40 - RETAILER CONTRACT**

**October 1, 2009**

**177-040-0000            Definitions**

For purposes of OAR Chapter 177 Division 40, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) **“Age-controlled area”** means an area where a natural person who is under 21 years of age is prohibited from entering or remaining as posted by either the Lottery or the Oregon Liquor Control Commission.

(2) **“Applicant”** means a person applying for a contract with the Lottery for the purpose of selling Lottery tickets or shares to the public, and any key person.

(3) **“Application”** means the forms, documents, or other information that the Lottery requires an applicant to submit to the Lottery in order to apply for or maintain a retailer contract.

(4) **“Business”** includes:

(a) A commercial activity engaged in for profit or gain; or

(b) The activity engaged in by a nonprofit organization; or

(c) The activity engaged in by a private club as described in ORS 471.175(8).

(5) **“Complete application”** means an application that is completely filled out, and when required, is signed by the applicant, and includes all the documentation and information requested by the Lottery.

(6) **“Premises”** means the building and grounds occupied by a business (including those areas not normally open to the public), where traditional Lottery game tickets and shares, Video Lottery game shares, or both, are sold. Premises includes an area designated by the Lottery at any single location identified in an application as a proposed site for Oregon Video Lottery terminals.

(7) **“Key person”** means:

(a) **Corporations:** For any corporation, including a subsidiary of a parent corporation:

(A) **Stockholders:** Any stockholder of a corporation who owns 10% or more of the outstanding stock in such corporation.

(B) **Directors:** Any director of a corporation who owns or controls 3% or more of the voting stock in such corporation.

(C) **Officers:** Any officer of a corporation.

(b) **Private Clubs:** For a private club as described in ORS 471.175(8):

(A) The treasurer.

(B) Any officers, directors, or trustees who oversee or direct the operation of the food, beverage, Lottery, or other gambling-related activities of the private club, and

(C) Each manager in charge of the food, beverage, Lottery, or other gambling-related activities of the private club.

The provisions of paragraphs (7)(a)(A), (B), and (C) of this rule do not apply to private clubs.

(c) **Trusts:** The trustee and all persons entitled to receive income or benefit from the trust.

(d) **Associations:** The members, officers, and directors.

(e) **Partnerships and Joint Ventures:** All of the general partners, limited partners, or joint venturers.

(f) **Limited Liability Companies:** Any manager of the limited liability company, and any members of the limited liability company whose investment commitment or membership interest is 10% or more in the limited liability company.

(g) **Layered Ownership:** If the parent company, general partner, limited partner, joint venturer, stockholder, member or manager of a limited liability company is itself a corporation, trust, association, subsidiary, partnership, joint venture or limited liability company, then the Director may require that the applicant provide disclosure for such entity as if such entity were a key person itself.

(h) **Family Members:** Immediate family members as required in ORS 461.300(2)(b)(G) and (H).

(i) **Sole Proprietors:** The sole proprietor, if the retailer is a sole proprietor.

(j) **Owner's Representative:** Any person who acts or who has real or apparent authority to act on behalf of the owner in most matters concerning the operation of the owner's business during all business hours. This definition does not include a "**shift manager**" or a "**convenience store manager**" unless qualified under this rule. The following are examples of managers who are key persons under this definition:

(A) **General Manager:** A person who operates the business for a corporate or absentee owner.

(B) **Area Manager:** A person who operates multiple locations or supervises multiple store managers.

(C) **Manager in Fact:** Any person who routinely performs all of the following duties:

(i) The hiring and firing of employees;

(ii) Making purchasing decisions relating to the buying of supplies and inventory; and

(iii) Conducting banking functions for the business.

(k) **Landlord:** A landlord who receives 40% or more of the retailer's Lottery commissions as a part of lease payments or rent, or any landlord who the Director finds, based on reasonably reliable information, exerts influence over the operation of the retailer's business.

(l) **Contractual Relationship:** Any person who has a lease, contract, or other agreement with the applicant or retailer or anyone else, to provide food service or to manage or operate any part of the business in a Video Lottery retailer's premises other than as an employee.

(m) **Control Person:** Any reference to a "control person" of a retailer in OAR Chapter 177, a Lottery retailer contract, or Lottery form in effect or in use on or after the effective date of this rule shall be deemed to refer to a "key person" as defined in this section.

(8) "**Personal disclosure**" means that part of the application which relates to a natural person's personal, criminal, and financial background.

(9) "**Mediation**" has the meaning as defined in ORS 36.110(4).

(10) "**Mediator**" means a person who performs mediation.

#### **177-040-0001            General Application Requirements**

(1) **General:** Any person may request an application from the Lottery.

(2) **Disclosure Required:** The Director may require any degree or type of disclosure necessary of the applicant or any other person in order to assure the security and integrity of the Lottery. An applicant must disclose to the Lottery all information required by the Director.

(3) **Application Required:** An applicant must file a complete application. The application shall include, but not be limited to, a requirement that the applicant provide documents and other information relating to the applicant's personal, financial, and criminal background and an applicant's associations with other persons. The application shall also include, but not be limited to:

- (a) **Authorization:** An authorization, signed by the applicant, to investigate the applicant;
- (b) **Consent:** Written consent to allow the examination of all accounts and records to be considered by the Director to be material to the application;
- (c) **Disclosure:** Disclosure of the source of funds, financing, and business income used for the purchase and operation of the applicant's business.
- (d) **Premises Ownership:** If the premises are not wholly owned by the applicant, the applicant shall furnish to the Lottery:

- (A) A statement of the name and address of the owner or owners of such premises;

- (B) A copy of all agreements whereby the applicant is entitled to possession of the premises;

- (C) Complete information pertaining to the interest held by any person other than the applicant, including interest held under any mortgage, deed of trust, bond or debenture, pledge of corporate stock, voting trust agreement, or other device; and

- (D) Such other information as the Lottery may require.

(4) **Compliance Required:** An applicant's failure to comply with any application or disclosure requirement may be grounds for denial or rejection of the application.

(5) **Material Change:** An applicant must immediately report to the Lottery, in writing, any material changes to the application during the application process. A "material change" means any change that may affect the Lottery's evaluation of the application based on the requirements contained in Division 40 of these rules.

(6) **Waiver:** In submitting an application, the applicant expressly waives any claim against the State of Oregon, its agents, officers, employees, and representatives, and the Oregon State Lottery, its Director, agents, officers, employees, and representatives for damages that may result. Each applicant also accepts any risk of adverse public notice, embarrassment, criticism, damages, or claims which may result from any disclosure or publication by a third party of any public information on file with the Lottery.

(7) **Resubmission:** When an applicant has submitted a complete personal disclosure to the Lottery within the preceding twelve months, the applicant need not necessarily submit a new personal disclosure, but if the applicant does not submit a new personal disclosure, the applicant must submit, on forms approved by the Director, a sworn statement regarding any changes which may have occurred regarding the accuracy of the information provided in the previous personal disclosure. The Director may require the applicant to submit a complete personal disclosure if the Director determines substantial changes have occurred.

(1) **General:** For the purposes of this rule, temporary retailer contract means a contract issued to a retailer for a temporary period. A temporary contract may be formed subject to such special terms, conditions, or limitations as the Director may deem prudent.

(2) (a) **Submission:** To apply for a temporary retailer contract, an applicant must submit a complete application for a retailer contract.

(b) **Purchase of Existing Business:** When an applicant intends to apply for a temporary contract for a business which the applicant is purchasing from an existing Lottery retailer, the applicant may submit to the Lottery a complete application with a copy of the purchase agreement and other relevant sales documents prior to the date the applicant takes possession of the premises pursuant to the purchase agreement. Notwithstanding submission of the application prior to the date of possession, the Lottery shall not enter into a temporary contract with the applicant until on or after the date the applicant takes legal possession of the business.

(3) **Investigation:** When the Lottery accepts the complete application for a temporary retailer contract, the Director will conduct an abbreviated investigation of the applicant and the business. That investigation includes, but is not limited to:

(a) A computerized background check for criminal arrests and convictions;

(b) A credit check using the services of a commercial credit reporting company; and

(c) An inspection of the business for which the applicant seeks a temporary retailer contract.

(4) **Qualifying:** An applicant may qualify for a temporary retailer contract if, based on the abbreviated investigation and on the application, all of the following criteria are met:

(a) The applicant is applying for a retailer contract at a specific location;

(b) The “Criteria Precluding Entering Into a Contract” described in OAR 177-040-0005 do not apply to the applicant;

(c) The applicant has no criminal convictions of any kind within five years of the date application is made;

(d) The applicant has no convictions as described in OAR 177-040-0010(3), “Criminal Behavior”;

(e) The applicant has no Class “A” misdemeanor or felony charges pending against the applicant;

(f) The applicant has no outstanding judgments, liens, or collections, except those judgments which the applicant is disputing through a legal process;

(g) The applicant is in compliance with all tax laws;

(h) The applicant has certified that the business location complies with OAR 177-040-0070, “Retailer Wheelchair Accessibility Program”;

(i) The applicant has the appropriate Oregon Liquor Control Commission license, as required by ORS Chapter 461, if applying for a contract to offer Video Lottery<sup>SM</sup> games; and

(j) There are no apparent factors regarding the applicant to cause the Director to reasonably conclude that the applicant poses an actual or apparent threat to the fairness, honesty, integrity, or security of the Lottery and its games. Factors that may pose a threat include, but are not limited to, any of the following examples:

(A) The applicant or key person has one or more criminal arrests or convictions, depending on the nature and severity of the crimes involved; or

(B) The applicant or key person has been involved in any civil action in which the final judgment indicates that the applicant or key person is not financially responsible, depending on the nature, severity, and recency of the action.

(5) **Other Requirements:** Prior to the effective date of the temporary retailer contract, the Director may require the applicant to:

(a) Receive training from the Lottery;

(b) Establish an electronic funds transfer (EFT) bank account for Lottery funds;

(c) Pay all necessary fees associated with the installation of telephone lines and telephone service;

(d) Agree to pay all necessary fees associated with amusement device taxes prior to the effective date of a temporary retailer contract; and

(e) Agree to be responsible for and to pay all fees in connection with the application, including any cancellation fees for telephone lines and service.

(6) **Other Video Lottery<sup>SM</sup> Requirements:** The applicant and the applicant’s business must qualify for the type of Lottery sales sought by the applicant. For example, if the applicant seeks a contract to offer Video Lottery<sup>SM</sup> games, the business must have an appropriate liquor license and an age controlled area that meets the Lottery’s requirements. In addition, the business must not be operating as a casino as described in OAR 177-040-0061.

(7) **Guarantor:** If the applicant is an entity other than either a sole proprietor who is a natural person or a private club as defined in ORS 471.175(8), at least one natural person who is a principal of the applicant entity and who is a key person may be required to personally guarantee all monies owed to the Lottery.

(8) **Bonding:** The Director may require the applicant to post a bond, letter of credit, or cash deposit in the form of certified funds prior to the effective date of a temporary retailer contract.

(9) **EFT Transfers:** If the Lottery enters into a temporary retailer contract with the applicant, the contract will require the applicant to pay the amount due the Lottery from the sale of Lottery tickets or shares by electronic funds transfer (EFT). In most instances, amounts due the Lottery will be collected via EFT at the end of the fourth day after the close of the Lottery business week. If an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT collection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites. The applicant must establish an account for deposit of money from the sale of Lottery tickets and shares with a financial institution that has the capability of making EFT draws.

(10) **Burden of Proof:** The burden for establishing that an applicant qualifies for a temporary retailer contract is on the applicant.

(11) **Termination:** In the Director's sole discretion, the Director may immediately terminate a temporary retailer contract if the Director determines that continuing to contract with the applicant is not in the best interest of the Lottery including, but not limited to, when:

(a) The applicant provided false or misleading material information, or the applicant made a material omission in the application for a retailer contract;

(b) The applicant or any key person is arrested or convicted of a Class "A" misdemeanor or felony during the term of the temporary retailer contract;

(c) An EFT payment is rejected for non-sufficient funds (NSF), or the applicant fails to provide timely information to the Lottery regarding any change of the applicant's EFT bank account;

(d) Any other reason contained in the contract or administrative rules that provides a basis for termination of a retailer contract; and

(e) When the Director concludes that continuing to contract with the applicant may pose a threat to the fairness, honesty, integrity, or security of the Lottery and its games.

(12) **Length of Temporary Contract:** A temporary retailer contract shall be valid for a specific time period for up to 120 days. A temporary retailer contract may, in the Director's discretion, be extended for up to 120 additional days.

#### **177-040-0005            Criteria Precluding Entering Into A Contract**

The Lottery will not enter into a retailer contract when an applicant:

(1) **Age:** Is under 18 years of age.

(2) **Exclusivity:** Will be engaged exclusively in the business of selling Lottery tickets or shares.

(3) **Lottery Employee:** Is an employee of the Lottery.

(4) **Supplier/Manufacturer:** Is or will be owned or controlled by any entity or any subsidiary or parent corporation thereof, that is a supplier of instant tickets or a manufacturer of computer equipment used to determine winners in Lottery games.

(5) **Unauthorized Entity:** Is a corporation or other form of business that is not incorporated in Oregon or authorized to do business in Oregon.

(6) **Smoking:** Operates a business where selling Lottery tickets or shares would expose Oregon State Lottery employees, representatives, or agents to a smoking environment, as defined in OAR 177-045-0000.

**177-040-0010 Personal Criteria Which May Be Grounds for Denial of a Lottery Retailer Contract or a Key Person**

(1) **General Personal Criteria:** Before approving or denying an application for a Lottery retailer contract or for a key person, the Director shall consider whether the applicant:

(a) **Character:** Is a person of good character, honesty, and integrity.

(b) **Background:** Is a person whose background, including criminal, civil, and financial records, and reputation, does not jeopardize the public interest of the state or the integrity, security, honesty, fairness, or reputation of the Lottery.

(c) **Associations:** Has an association with persons or businesses of known criminal background, or associates with persons who have direct or indirect involvement in the applicant's business who could jeopardize the public interest of the state or the integrity, security, honesty, fairness, or reputation of the Lottery. The Director may also consider whether the applicant associates with persons who have no involvement in the applicant's business when the applicant's association with such persons could create a real or perceived conflict with the Lottery's security or integrity interests.

(d) **Public Interest:** Is a person whose experience, character, or general fitness is such that approving the applicant would be consistent with the public interest, convenience, and trust in keeping with the sensitive nature of the Lottery.

(e) **Financial:** Demonstrates responsibility and integrity in financial transactions, and is creditworthy and currently in a satisfactory financial condition. The Lottery may use the services of a commercial credit reporting agency in order to evaluate the applicant's creditworthiness, financial responsibility, and financial condition. The Director may deny an application if the applicant has outstanding judgments, collections, liens, or is not in compliance with all state, federal, or local tax laws.

(f) **Omissions:** Has omitted any material facts or has provided any material misstatement or any untrue statement of material facts.

(g) **Compliance History:** Has a history with the Oregon Lottery, or the Oregon Liquor Control Commission, or state and local law enforcement, which shows that the applicant

could pose a threat to the security and integrity of the Lottery based upon any significant and material compliance or adjudicated violation history.

(2) **General Financial Criteria:** Any person applying for a Lottery retailer contract must:

(a) **Business Ability:** Adequately demonstrate, either individually or through the person's employees, the business ability and experience necessary to successfully establish, operate, and maintain the business for which application is made.

(b) **Business Funding:** Demonstrate adequate funding and ongoing business income sufficient to open, maintain, and operate the business as proposed by the applicant. The Director shall consider whether funding is from a source that may pose a threat to the integrity, security, honesty, or fairness of the Lottery.

(3) **Criminal Behavior:** The Director shall consider the criminal history or conduct of an applicant as follows:

(a) **Mandatory Denial:** The Director will deny an application when the applicant:

(A) **Felony Conviction:** Has been convicted of any felony within 10 years of the date the Lottery accepts the application.

(B) **Gambling Conviction:** Has been convicted of violating any federal, state, or local gambling law (other than ORS 91.240) within 15 years of the date the Lottery accepts the application.

(C) **Controlled Substances Conviction:** Has been convicted of felony possession of a controlled substance, or any crime involving the manufacture, sale, or delivery of a controlled substance, within 15 years of the date the Lottery accepts the application.

(D) **Gambling Devices:** Owns, manufactures, possesses, operates, has interest in, or gains income or reimbursement from, any unlawful gambling device in any jurisdiction unless the device is approved and certified by another state lottery or federal, state, or local gaming control agency, and such ownership, manufacture, possession, operation, or income is disclosed to and approved by the Lottery.

(b) **Discretionary Denial:** The Director may deny an application when the applicant:

(A) **Felony Conviction:** Has any felony conviction more than 10 years old on the date the Lottery accepts the application;

(B) **Gambling Conviction:** Has a conviction more than 15 years old on the date the Lottery accepts the application for violating any state, federal, or local gambling laws;

(C) **Controlled Substances Conviction:** Has been convicted of felony possession of a controlled substance, or has been convicted of any crime involving the

manufacture, sale, or delivery of a controlled substance, more than 15 years old on the date the Lottery accepts the application;

(D) **Gambling Leases:** Has ever engaged in conduct which violates ORS 91.240;

(E) **Criminal Conduct:** Has engaged in conduct which constitutes a violation of any gambling law or any law which defines a felony or misdemeanor based on reasonably reliable information;

(F) **Fraudulent Behavior:** Has been held responsible, by judgment, settlement, consent decree, or otherwise, in any court proceeding, or proceeding before an administrative body which was based in whole or in part on allegations of misleading or dishonest conduct including, but not limited to, fraud, deceit, misrepresentation, embezzlement, breach of fiduciary responsibility. The Director may also deny an application when the Director has reasonably reliable information that the applicant has engaged in misleading or dishonest conduct in any court proceeding or before an administrative body; or

(G) **Offenses:** When the applicant has been convicted of, or otherwise subject to official sanction for, any offense other than an offense described in section (3)(a) of this rule, except traffic infractions, unless the applicant has engaged in conduct which demonstrates the applicant's habitual disregard for the law. The Director may also deny an application when the Director has reasonably reliable information that the applicant has engaged in conduct which constitutes an offense as described under this subsection.

(4) **Ownership and Gaming Interests:** The Director may deny an application when the applicant:

(a) **Ownership Interests:** Is qualified, but there is an ownership interest in the applicant's business or premises by a person who is unqualified to hold a Lottery contract based on the requirements of OAR 177-040-0010 or any retailer contract, regardless of the qualifications of the applicant;

(b) **Denial of Gaming Licenses:** Has been denied any type of gaming license, gaming permit, or gaming contract in any state or jurisdiction for a reason(s) that in the judgment of the Director would jeopardize the security, integrity, honesty, fairness, or reputation of the Lottery;

(c) **Cancellation of Gaming Licenses:** Has had any type of gaming license, gaming permit, or gaming contract canceled, suspended, or revoked in any state or jurisdiction for a reason(s) that in the judgment of the Director would jeopardize the security, integrity, honesty, fairness, or reputation of the Lottery; or

(d) **Termination of Gaming Contract:** Has had any type of gaming contract terminated in any state or jurisdiction for a reason that in the judgment of the Director would jeopardize the security, integrity, honesty, fairness, or reputation of the Lottery.

(5) **Mitigating Circumstances:** Where denial of an application is discretionary with the Director under this rule, the Director may consider the following mitigating factors:

- (a) **Nature:** The nature and severity of the conduct, incident, offense, or circumstance;
- (b) **Time:** The passage of time since the conduct, incident, offense, or circumstance;
- (c) **Intervening Factors:** Any intervening factors since the conduct, incident, offense, or circumstance;
- (d) **Number of Offenses:** The number of offenses, crimes, or incidents;
- (e) **Relevance:** The relevance of the conduct, incident, offense, or circumstance to the performance of duties under the Lottery retailer contract; or
- (f) **Other:** Any extenuating circumstances.

(6) **Application to Existing Contracts:** The criteria described in this rule apply to any existing Lottery retailer contract and may provide grounds for the Director to terminate an existing Lottery retailer contract.

(7) **Finality of Determination:** The denial by the Director of an application is final.

(8) **Re-Application:** If an application is denied by the Director, an applicant, or an applicant that is similar to the previously denied applicant, must wait one year from the date of denial to reapply. In the Director's sole discretion, the Director may waive this requirement based on a showing of good cause by the applicant.

**177-040-0017 Additional Video Lottery<sup>SM</sup> Retailer Business Operation Criteria and Requirements**

(1) **Placement of Video Lottery<sup>SM</sup> Terminals:** The Lottery will not place Video Lottery<sup>SM</sup> terminals in a business or at a premises:

- (a) That has operated or will operate primarily as a grocery or convenience store. This subsection shall not apply to any existing Video Lottery<sup>SM</sup> retailer who the Director determines was not in accordance with this subsection as of October 14, 1993;
- (b) That operates as a laundromat, movie theater, car dealership, beauty salon, bed and breakfast lodging, hardware store, dry goods store, clothing store, liquor store, or other business not normally associated with the on-premise consumption of food and alcoholic beverages.

(2) **Grocery Store:** For purposes of this rule, a 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.

(3) **Convenience Store:** For purposes of this rule, a 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.

**177-040-0025            Retailer Compensation – Traditional Lottery Games**

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

<u>Amount Sold Per Week</u>	<u>Compensation - % of Gross Sales</u>
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%
\$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.

**OAR 177-040-0026                      Retailer Compensation – Video Lottery Games**

(1) **General:** The compensation amount the Lottery shall pay a retailer for the sale of video lottery game shares is calculated on a percentage of net receipts during a business year. **“Net receipts”** means the amount of money that is received at a retailer’s premises from the sale of video lottery game shares after the payment of prizes. The compensation rates for the sale of video lottery game shares for retailers that offer only video poker games is set forth in OAR 177-040-0027. The compensation rates for the sale of video lottery game shares for retailers that offer both video poker games and video line games is set forth in OAR 177-040-0028.

(2) **Compensation When Net Receipts Exceed Tier Threshold:** During the course of a business year, when a Video Lottery retailer’s weekly net receipts exceed the threshold of a tier applicable to the retailer under OAR 177-040-0027 or 177-040-0028, the Video Lottery compensation rate shall remain unchanged for the remainder of the business week in which the threshold is exceeded. The compensation rate for that tier, as set forth in OAR 177-040-0027 and 177-040-0028, shall apply at the start of the next business week.

For example, if a retailer has chosen option (a) under OAR 177-040-0028(2)(a) and on a Wednesday the net receipts reach \$175,001, the retailer is compensated at 29% of the net receipts for the remainder of the business week. At 5:00 a.m. on the following Sunday which is the start of the next business week, the compensation rate is reduced to 24% of net receipts.

(3) **Retroactive Application:** Section (2) of this rule shall apply to retailer compensation for video lottery games beginning June 27, 2004.

**OAR 177-040-0027                      Compensation Rates – Video Lottery Retailers Offering only Video Poker Games**

(1) **Applicability:** The compensation rates for the sale of video lottery game shares set forth in this rule are limited to compensation for the sale of shares on video lottery terminals at retailers that offer only video poker games as described in OAR 177-200-0070.

(2) **General:** At the time a retailer signs a Retailer Contract, the retailer must choose in writing to receive compensation in accordance with either subsection (2)(a) or subsection (2)(b) of this section. If the retailer fails to choose as required, the Lottery shall compensate the retailer

pursuant to subsection (2)(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 60 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 the next business year.

**(a) 3- Tier Option:**

<u>Net Receipts per Year</u>	<u>Compensation – Percent of Net Receipts</u>
Up to \$175,000	32.5%
\$175,000 to \$475,000	26%
\$475,000 and up	17%

For example, if a retailer’s annual net receipts are \$600,000, the retailer would receive over the course of the business year: 32.5% of the first \$175,000 (\$56,875), and 26% of the next \$300,000 (\$78,000), and 17% of the remaining \$125,000 (\$21,250), for a total of \$156,125.

Or, if a retailer’s annual net receipts are \$400,000, the retailer would receive over the course of the business year: 32.5% of the first \$175,000 (\$56,875), and 26% of the next \$225,000 (\$58,500), for a total of \$115,375.

**(b) 2-Tier Option:**

<u>Net Receipts per Year</u>	<u>Compensation – Percent of Net Receipts</u>
Up to \$650,000	26%
\$650,000 and up	19%

For example, if a retailer’s annual net receipts are \$1,000,000, the retailer would receive over the course of the business year: 26% of the first \$650,000 (\$169,000), and 19% of the remaining \$350,000 (\$66,500), for a total of \$235,500.

**OAR 177-040-0028 Compensation Rates – Video Lottery<sup>SM</sup> Retailers Offering Video Poker Games and Video Line Games**

(1) **Applicability:** The compensation rates for the sale of Video Lottery<sup>SM</sup> game shares set forth in this rule are limited to compensation for the sale of shares on Video Lottery<sup>SM</sup> terminals at retailers that offer both video poker games as described in OAR 177-200-0070 and video line games as described in OAR 177-200-0075.

(2) **General:** At the time a retailer signs a Retailer Contract, the retailer must choose in writing to receive compensation in accordance with either subsection (2)(a) or subsection (2)(b) of this section. If the retailer fails to choose as required, the Lottery shall compensate the retailer pursuant to subsection (2)(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 60 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 the next business year.

(a) **4-Tier Option:**

<u>Net Receipts per Year</u>	<u>Compensation – Percent of Net Receipts</u>
Up to \$175,000	27.5%
\$175,000 to \$475,000	23%
\$475,000 to \$800,000	14%
\$800,000 and up	11%

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

<u>Net Receipts per Year</u>	<u>Compensation – Percent of Net Receipts</u>
Up to \$600,000	22%
\$600,000 to \$1,800,000	17.5%
\$1,800,000 and up	11%

(3) **Amendment:** If the Lottery and a retailer sign an amendment to a Retailer Contract that authorizes the retailer to sell Video Lottery<sup>SM</sup> game shares on Video Lottery<sup>SM</sup> terminals that offer both video poker games and video line games, then:

(a) At the time the retailer signs the amendment, the retailer must choose in writing to receive compensation in accordance with either subsection (2)(a) or subsection (2)(b) of OAR 177-040-0028 (2). If the retailer fails to choose as required, the Lottery shall compensate the retailer pursuant to subsection (2)(a) of OAR 177-040-0028 (2) through the end of the business year. For each subsequent business year that the Retailer Contract is in effect, no less than 60 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 the next business year.

(b) Beginning on the effective date of the amendment, the Lottery shall compensate the retailer pursuant to OAR 177-040-0028 based on net receipts from the beginning of the current business year.

**OAR 177-040-0029                      Review of Compensation Rates for Video Lottery<sup>SM</sup> Retailers Offering Video Poker Games and Video Line Games**

(1) **General:** The Lottery Commission finds that the adoption of the compensation rates set forth in OAR 177-040-0028(2) is based on a projected Video Lottery<sup>SM</sup> game share sales target of \$700,000,000 for the period June 25, 2006 to June 30, 2007 (Business Year '07.) This is a growth increase of 22% from actual sales of Video Lottery<sup>SM</sup> game shares for the period June 27, 2004 to June 25, 2005 (Business Year '05.) This projection includes the sales of video line game shares which have never been offered by the Oregon Lottery. The purpose of this rule is to establish a process for a review of the retailer compensation rates set forth in OAR 177-040-0028(2) on or after July 1, 2007.

(2) **Review:** On or after July 1, 2007, the Lottery shall determine the actual sales of all Video Lottery<sup>SM</sup> game shares from the period June 25, 2006 to June 30, 2007 (Business Year '07.) If the actual sales are less than \$595,000,000, the Lottery Commission will conduct a review of the compensation rates set forth in OAR 177-040-0028(2), and may increase those compensation rates. If the actual sales exceed \$805,000,000, and the Commission determines that the sales increase is not primarily due to an increase in the number of Video Lottery<sup>SM</sup> retailers, the following compensation rates will replace the compensation rates specified in OAR 177-040-0028(2) and will be effective beginning no sooner than the start of the third business week following the Commission's determination that the sales increase is not primarily due to an increase in the number of Video Lottery<sup>SM</sup> retailers:

**(a) 4-Tier Option:**

<u>Net Receipts per Year</u>	<u>Compensation – Percent of Net Receipts</u>
Up to \$175,000	27.5%
\$175,000 to \$475,000	23%
\$475,000 to \$800,000	14%
\$800,000 and up	11%

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

<u>Net Receipts per Year</u>	<u>Compensation – Percent of Net Receipts</u>
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Up to \$600,000	22%
\$600,000 to \$1,800,000	17.5%
\$1,800,000 and up	11%

(3) **Determination of Actual Sales Growth:** The Commission shall only consider the actual sales growth as determined by the Lottery for purposes of section (2) of this rule. The Lottery's determination is final.

(4) **Findings:** On July 25, 2007, the Lottery Commission initiated the review set forth in section (2) of this rule and makes the following determinations. The Lottery Commission finds:

(a) The actual sales of all Video Lottery<sup>SM</sup> game shares from the period June 25, 2006 to June 30, 2007 (Business Year '07) exceeded \$805,000,000;

(b) This represents a sales increase of 50% from actual sales of Video Lottery<sup>SM</sup> game shares for the period June 27, 2004 to June 25, 2005 (Business Year '05); and

(c) This sales increase was not primarily due to an increase in the number of Video Lottery<sup>SM</sup> retailers.

(5) **Compensation Rates:** Effective as of the start of the business week beginning October 14, 2007, the compensation rates set forth in section (2)(a) and (b) of this rule replace the compensation rates set forth in section (2)(a) and (b) of OAR 177-040-0028.

(6) **Commission Authority:** The review process set forth in subsection (2) of this rule is not intended to limit in any way the authority of the Lottery Commission to review or adopt compensation rates for the sale of Lottery game tickets or shares at any time deemed necessary by the Lottery Commission.

**177-040-0030            Retailer Cash Deposit or Bond**

If the Director has reason to believe an applicant or retailer may not be financially sound, the Director may require a Lottery retailer to post:

(1) **Irrevocable Letter of Credit:** A \$5,000 irrevocable letter of credit issued by a banking institution as defined in ORS 706.008(4); or

(2) **Bond:** A \$5,000 bond issued by a surety company or companies holding a certificate of authority to transact surety business in the State of Oregon and approved by the Director.

**177-040-0050            Retailer Duties**

(1) **General:** This rule contains duties to be performed by a Lottery retailer beyond those duties described in the Lottery retailer contract. The duties listed herein are not meant to be exclusive. Other duties and requirements for retailers may be contained elsewhere in OAR Division 177, ORS Chapter 461, or in the retailer contract as negotiated individually with each Lottery retailer.

(2) **All Retailers:** All Lottery retailers shall:

(a) **Stock Equipment:** Keep all Lottery equipment on the retailer's premises stocked with a variety of Scratch-it<sup>SM</sup> tickets, play slips, computer-generated tickets, and any other Oregon Lottery<sup>®</sup> product required to be sold. Unless exempted by the Lottery, if a Lottery retailer fails to stock or replenish these items as they are made available for sale by the Lottery, or as they are depleted because of purchase or use, the Lottery may remove the equipment.

(b) **Perform Minor Maintenance:** Replace ribbons, ticket stock, and clear paper jams as may be required for any of the equipment provided by the Lottery for the sale of Lottery tickets or shares.

(c) **Maintain Paper Stock:** Install and use only approved Lottery paper stock which has been specifically assigned to the selling retailer when selling Lottery tickets and shares.

(d) **Obtain Permits:** Be required to arrange for and obtain all necessary permits required by federal, state, and local governments for electrical installation, electrical power, telephone service, fiber optic lines and connections, and coaxial cable and connections required to sell Lottery tickets or shares at the retail site.

(e) **Pay Amounts Due:** Pay the amount due to the Lottery for the sale of Lottery tickets or shares by the use of an electronic funds transfer (EFT). In most instances, this EFT shall occur at the end of the fourth day after the close of each Lottery business week. When an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT collection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites.

(3) **Traditional Lottery Game Retailers:** A Lottery retailer authorized to sell traditional Lottery games shall:

(a) **Scratch-It<sup>SM</sup> Validation:** Validate a Scratch-It<sup>SM</sup> ticket prize through the Instant Ticket System (ITS) and destroy it after validation and payment of the prize. Any Lottery retailer who does not destroy the ticket after validation and payment of a winning ticket shall be liable for a prize paid by another Lottery retailer who subsequently sight validates the ticket.

(b) **Draw Game Validation:** Validate Draw game prizes through the Draw game terminal before paying a Draw game prize.

(c) **Underage Play:** Monitor player-operated vending machines, as defined in OAR 177-045-0000, to prevent underage play.

(4) **Video Retailers:** A Video Lottery<sup>SM</sup> game retailer shall:

(a) **Cash Slip Validation:** Validate Video Lottery<sup>SM</sup> cash slips through the Video Site Controller (VSC) before paying a Video Lottery<sup>SM</sup> prize.

(b) **Restrict Visibility:** Restrict Video Lottery<sup>SM</sup> game terminals from visibility from areas outside of the business and from view of dining areas or other areas where minors are permitted to linger.

(c) **Age-Posted Area:** Maintain Video Lottery<sup>SM</sup> game terminals in an area of the business that is prohibited to minors. The area must be posted as such by the Oregon State Lottery or the Oregon Liquor Control Commission. This restriction against minors does not apply to minors who qualify under the exceptions permitted by the Oregon Liquor Control Commission for access to areas normally prohibited to minors.

(5) **Sanctions:** The Director may sanction a Lottery retailer for the loss, damage, or destruction of any winning game ticket or share. This includes, but is not limited to: Imposing a requirement for remedial training for the retailer or the retailer's employees, and any other actions for failure to perform contract duties or requirements as described in the Lottery retailer contract or OAR Chapter 177.

### **177-040-0051 Designated Employees and Payment of Prizes**

(1) **Designated Employees:** A traditional retailer must designate employees authorized to redeem winning Lottery tickets and shares. A Video Lottery<sup>SM</sup> retailer must designate employees authorized to redeem Video Lottery<sup>SM</sup> cash slips as defined in OAR 177-200-0005(1).

(2) **Traditional Lottery Retailers:** A traditional Lottery retailer must redeem winning Lottery tickets and shares during all of the retailer's designated hours of redemption.

(3) **Video Lottery<sup>SM</sup> Retailers:** A Video Lottery<sup>SM</sup> retailer must redeem Video Lottery<sup>SM</sup> cash slips during all of the retailer's business hours of operations, except as follows:

(a) In the event of exceptional circumstances, a retailer may delay payment of a cash slip for a period of time not to exceed 24 hours from the time the player initially submits the cash slip to the retailer for payment. **"Exceptional circumstances"** means rare and unforeseen circumstances beyond the reasonable control of the retailer.

(b) Within 48 hours from the time the player initially submitted the cash slip to the retailer for payment, the retailer must submit to the Lottery a written report of the delay of payment and the exceptional circumstances that required the delay.

(c) The Director may review claims of exceptional circumstances and whether delayed payment was appropriate under the circumstances. Upon the Director's request, the retailer must provide the Director with evidence supporting a claim of exceptional circumstances. If a retailer fails to comply with a request or fails to adequately support a claim of exceptional circumstances, the Director shall find that the delay was not appropriate.

(d) If the Director finds that the delay was not appropriate, the retailer's delay of payment shall be considered a failure to perform contract duties or requirements, and the Lottery may take appropriate action including termination of the retailer contract. The Director's decision is final.

(4) **Payment:** Except as provided in sections (2) and (3) of this rule, a retailer must immediately pay prizes in cash or by check, or any combination thereof, when a player presents a winning Lottery ticket or share, including a Video Lottery<sup>SM</sup> cash slip, for payment meeting the requirements of these rules. A retailer must not pay prizes in tokens, chips, or merchandise or charge a fee for paying a prize or for issuing payment.

(5) **Validation:** Notwithstanding sections (2) and (3) of this rule, once a Lottery retailer validates a winning ticket or share, including a Video Lottery<sup>SM</sup> cash slip, the retailer must immediately pay it.

#### **177-040-0052 Non-Sufficient Funds**

(1) **Definitions:** For purposes of this rule:

(a) **“Working day”** means a weekday (Monday through Friday) from 8 a.m. to 5 p.m. when the Lottery Headquarters in Salem is open for business.

(2) **Retailers with Temporary Contract or Letter of Authority:** If an electronic funds transfer (EFT) from a retailer with a temporary contract or a letter of authority issued under ORS 461.335 is not made due to non-sufficient funds (NSF) in the retailer’s EFT account, and non-payment is not excused under this rule, the Lottery shall terminate the retailer’s temporary contract or letter of authority, and disable or remove Lottery equipment from the retailer’s premises. Processing of the retailer’s application for a retailer contract otherwise may proceed.

(3) **First NSF:** The first time that a Lottery retailer’s EFT payment to the Lottery is not made due to non-sufficient funds in the retailer’s EFT account, the Lottery shall:

(a) **Notify the Retailer:** Make a reasonable effort to notify the Lottery retailer of the NSF.

(b) **Disable Equipment:** Disable the Lottery’s equipment on the retailer’s premises for up to five working days, in which time the retailer must pay, by certified funds, the EFT transfer amount plus an additional \$50 fee for the Lottery’s administrative expenses in processing the NSF.

(c) **Withhold Bonus:** Withhold any bonus and incentive payments the retailer may have earned for the business week in which the NSF occurs. If the retailer does not make the required payments within five working days of the date the equipment was disabled, the retailer shall forfeit the bonus and incentive payments.

(d) **Terminate Contract:** Terminate the retailer’s contract and remove the Lottery’s equipment if the retailer fails to pay, by certified funds, the EFT transfer amount plus the \$50 fee within five working days of the date the equipment was disabled.

(4) **Second NSF:** When a retailer’s EFT payment is not made to the Lottery due to non-sufficient funds in the retailer’s EFT account for a second time within one year of the retailer’s first NSF, the Lottery shall:

(a) **Notify the Retailer:** Make a reasonable effort to notify the Lottery retailer of the NSF.

(b) **Disable Equipment:** Disable the Lottery's equipment on the retailer's premises for up to five working days, in which time the retailer must pay, by certified funds, the EFT transfer amount plus an additional \$50 fee for the Lottery's administrative expenses in processing the NSF and post a bond or make a cash deposit if allowed by the Director under paragraph (A) of subsection (d) of this section.

(c) **Withhold Bonus:** Withhold any bonus and incentive payments the retailer may have earned for the business week in which the NSF occurs. If the retailer does not make the required payments within five working days of the date the equipment was disabled, the retailer shall forfeit the bonus and incentive payments.

(d) **Terminate Contract:** The Lottery shall terminate the retailer's contract and remove the Lottery's equipment:

(A) Unless the Director allows the retailer to post:

(i) **Cash:** A cash deposit by certified funds; or

(ii) **Bond:** A bond issued by a surety company or companies holding a certificate of authority to transact surety business in the State of Oregon and approved by the Director.

The Director shall determine the amount, the term, and any other applicable conditions. The amount of the bond or cash deposit will be no less than twice the retailer's weekly average EFT transfers, calculated using the immediately preceding three calendar months; or

(B) If the retailer fails to pay, by certified funds, the EFT transfer amount plus the \$50 fee within five working days of the date the equipment was disabled, or fails to post a bond or make a cash deposit within five working days of the date the equipment was disabled when allowed under paragraph (A) of this subsection.

(5) **Third NSF:** When a Lottery retailer's EFT payment is not made to the Lottery due to non-sufficient funds in the retailer's EFT account for a third time within one year of the retailer's first NSF, the Lottery shall:

(a) **Notify the Retailer:** Make a reasonable effort to notify the Lottery retailer of the NSF.

(b) **Disable Equipment:** Disable the Lottery's equipment on the retailer's premises until the contract is terminated and the equipment is removed.

(c) **Payment:** Require the retailer to pay, by certified funds, the amount of money that was to be paid by EFT plus the \$50 fee within five working days of the date the Lottery equipment on the retailer's premises was disabled.

(d) **Forfeit Bonus:** Require the retailer to forfeit any bonus and incentive payments the retailer may have earned for the business week in which the NSF occurs.

(e) **Terminate Contract:** Terminate the retailer's lottery contract and remove the Lottery's equipment.

(6) **NSF Due to Financial Institution Error:** Any NSF that is due to an error committed by the retailer's financial institution does not count toward the three NSF limit in this rule as long as the error is corrected and Lottery receives documentation from the retailer's financial institution. The financial institution must substantiate to the Director's satisfaction the financial institution's responsibility for causing the NSF, and that but for the financial institution's error, sufficient funds would have been available in the retailer's account to cover the EFT payment.

(7) **Financial Institution Closures:** Any NSF that is due to an unexpected temporary closure of the retailer's financial institution does not count toward the three NSF limit in this rule as long as the NSF is corrected and Lottery receives documentation from the retailer's financial institution that substantiates to the Director's satisfaction the reason for the financial institution's unexpected closure. The retailer shall make the deposit before 5 p.m. of the next day the financial institution is open or available for deposits to be made. If the deposit is not made as described, the Lottery shall treat it as an NSF under these rules.

(8) **Retailer's Obligations Survive Contract Termination:** Termination of the retailer's contract does not release the retailer from any obligation to pay all amounts due the Lottery under this rule and the retailer's Lottery contract. The Lottery may make a claim upon any bond, or cash deposit posted under this rule, and apply the money to any of the retailer's obligations owed to the Lottery. The Lottery may initiate collection action on behalf of the State to collect all amounts due.

(9) **Director's Discretion:** The Director may make exceptions to these requirements based upon the facts and circumstances of any particular payment by a retailer which is rejected for non-sufficient funds.

#### **177-040-0055            Advertising Lottery Games and Inducements to Play**

(1) **Prohibitions:** A retailer must not conduct false or misleading advertising, in any form, regarding the Lottery or Lottery games including, but not limited to, claiming the odds of winning a Lottery game are different at the retailer's business than at any other retailer's business.

(2) **Requests for Use:** The Director or the Director's designee must approve all requests from a retailer for the use of trade or service marks registered by the Lottery. Trade or service marks registered by the Lottery include, but are not limited to, the Lottery's name, logo, and promotional names.

(3) **Requirements:** All requests from a retailer must be in writing and must include a sample of the proposed use of the trade or service mark. The request must also explain how and where the trade or service mark will be used.

(4) **Permission:** Permission for use of a trade or service mark may be granted in the exercise of the sole and exclusive discretion of the Lottery, taking into account the particularly sensitive nature of the Lottery and insuring the integrity of its operations and image. Approval for use of a trade or service mark shall not be given for display of the mark in an inappropriate manner or format.

(5) **Rights:** Nothing in this rule shall be construed to grant, or create any expectation or right to display, publish or use, in any manner, in whole or in part, any trade or service mark registered by the Lottery. Any display, publication or use by a retailer of any trade or service mark registered by the Lottery without the express, written prior consent and agreement of the Lottery is unauthorized and unlawful, and the Lottery expressly reserves the right to take any action to enforce its rights in such trade and service marks.

(6) **Inducements:** For purposes of this section, a retailer shall not extend credit to persons to play Lottery games. This does not include the use of a credit or debit card by a player for the purchase of Lottery tickets or shares. An example of the use of a credit or debit card for the purchase of Lottery tickets or shares includes, but is not limited to, the purchase of Scratch-It tickets with a grocery purchase. A retailer shall not provide alcoholic beverages as an inducement to play Lottery games. Additionally, a retailer shall not provide any form of financial assistance to a video lottery player. An example of financial assistance to a video lottery player includes, but is not limited to, a loan of money for any amount of time.

#### **177-040-0061 Casino Prohibition**

(1) **General:** The operation of a casino is constitutionally prohibited in the state of Oregon. It is the policy of the Oregon State Lottery to place Video Lottery<sup>SM</sup> terminals only in an establishment that does not operate as a casino. The purpose of this rule is to provide a framework and a process for determining when an establishment is operating or may operate as a casino. This framework and process are in addition to other methods the Oregon State Lottery uses to prevent Video Lottery<sup>SM</sup> retailers from operating an establishment as a casino. Other methods include, but are not limited to:

- (a) A limit on the number of Video Lottery<sup>SM</sup> terminals in any establishment;
- (b) Limiting public view of Video Lottery<sup>SM</sup> terminals;
- (c) A limitation on certain advertising and promotional activities by retailers; and
- (d) Considering the sale of Lottery tickets and shares by retailers an adjunct to their businesses.

(2) **Definitions:** For purposes of this rule:

- (a) **“Establishment”** means any single location in which Video Lottery<sup>SM</sup> games are operated or which is identified in a Video Lottery<sup>SM</sup> Retailer Application as the proposed site for such activity. An establishment must be owned or operated by a person licensed to sell alcoholic beverages for consumption in a specific age-controlled area of the

establishment. The final determination of what constitutes an establishment shall be made by the Director.

(b) **“Total Annual Lottery Compensation”** means the actual, or in the case of an applicant, the reasonably projected total annual compensation received from the Lottery for the sale of all Lottery tickets and shares at the establishment over a selected twelve-month period, including, but not limited to, compensation resulting from participation in Lottery incentive and bonus programs, as described in the Retailer Contract, other than those programs awarding bonuses on the basis of the sale of winning and validated Scratch-it<sup>SM</sup> or On-Line tickets for which a prize of \$10,000 or more is paid.

(c) **“Annual Non-Lottery Sales”** means the actual, or in the case of an applicant, the reasonably projected revenue from the sale of products or services other than Lottery tickets and shares to retail customers at the establishment over a selected twelve-month period. Projected sales will only be deemed reasonable if they are based on a detailed business plan which is fact and evidence based or meets industry standards for business plans. Only the sale of products or services to retail customers in return for which the establishment receives cash or any instrument evidencing cash consideration shall be included in the calculation of annual non-Lottery sales. Examples of products and services not considered for annual non-Lottery sales for purposes of this rule include, but are not limited to:

(A) The sale of products or services which are not usually sold by or associated with the type of retail establishment being reviewed. For example, the sale of a car by a tavern would not be included;

(B) The wholesale sale of products. **“Wholesale”** means the sale of goods in quantity, as to retailers or jobbers, for resale to the public. This includes the sale or transfer of cigarettes or other products between two or more establishments operated by the same retailer;

(C) The gifting of complimentary or promotional products; or the value of promotional discounts/coupons;

(D) The retail sale of products or services sold or rendered outside of the establishment (such as catering) unless the work is substantially completed at the establishment and the services are provided substantially by employees of the establishment;

(E) The sale of products or services for which the retailer receives a commission, except that the amount of the commission received may be considered; and

(F) Income from other than the sale of a product or service (such as a cover charge) will not be included in the calculation of annual non-Lottery sales.

(3) **Director’s Casino Determination:** The Director shall determine whether an establishment is operating or may operate as a casino before entering into a Video Lottery<sup>SM</sup> contract for that establishment. The Director may also initiate a review of an existing Video Lottery<sup>SM</sup> retailer

whenever the Director has reason to believe that an establishment is operating as a casino, or may operate as a casino. The Director may rely on whatever resources and information are available in deciding to initiate a review of an existing Video Lottery<sup>SM</sup> retailer. A Video Lottery<sup>SM</sup> retailer, or person applying to become a Video Lottery<sup>SM</sup> retailer, has the burden of proof to show to the satisfaction of the Director that an establishment is not operating, or will not be operating, as a casino. The Director's determination is final.

**(4) Conclusive Evidence that an Establishment Is Not a Casino:** The following establishments are not casinos for purposes of this rule:

(a) An establishment whose annual non-Lottery sales are at least 50% of the establishment's total income as defined in section (5) of this rule. This subsection does not apply if the Director determines that the establishment is a convenience store or a business not normally associated with the on-premise consumption of food and alcoholic beverages as described in OAR 177-040-0017.

(b) A private club as described in ORS 471.175 so long as the private club is not engaged exclusively in the business of selling Lottery tickets and shares.

**(5) Income Analysis:** In determining whether an establishment meets the criteria set forth in section (4)(a) of this rule, the Director shall conduct an income analysis as set forth below.

(a) **General:** The Director shall conduct a review of the establishment's total income which, for the purpose of this rule, shall equal the sum of the establishment's total annual Lottery compensation and the establishment's annual non-Lottery sales. For a person applying to become a Video Lottery<sup>SM</sup> retailer, the Director shall conduct a review of the establishment's projected total income which, for the purposes of this rule, shall equal the sum of the establishment's projected total annual Lottery compensation and the establishment's reasonably projected annual non-Lottery sales. If the review of an establishment's total income shows that the establishment's annual non-Lottery sales are less than 50% of total income or projected total income, and there is no conclusive evidence that the establishment is not a casino as explained in section (4) above, the Director shall consider other factors as set forth in section (6) below in determining whether the establishment is operating or may operate as a casino. The twelve-month period selected for the review will be chosen by Lottery staff. The ratio of an establishment's total annual Lottery compensation to its total income shall be determined by dividing the establishment's total annual Lottery compensation by the sum of:

(A) The establishment's actual, or in the case of an applicant, reasonably projected annual non-Lottery sales; and

(B) The establishment's actual or projected total annual Lottery compensation.

(b) **CPA Review:** The retailer or applicant may request that a Certified Public Accountant (CPA), engaged and paid for by the retailer or the applicant, verify the accuracy of the Lottery's calculation of the retailer's annual non-Lottery sales or the applicant's reasonably projected annual non-Lottery sales. The CPA must use procedures

specified by the Lottery and document his or her analysis as required by the Lottery. The Director may consider the CPA's analysis in making the final determination.

(c) **Director's Determination:** The final determination of the ratio of an establishment's actual or projected total annual Lottery compensation to the establishment's actual or projected total income shall be made by the Director.

(d) **Business Records:** For the purposes of this rule, a Lottery retailer must acquire, compile, retain, and make readily available to the Lottery all business sales and expense records that are pertinent to the calculation and determination of the establishment's total income for a period of 24 months. Required records of the gross non-Lottery sales must be detailed and correct including, but not limited to, records of the cost, price and amount of goods sold, bank statements, records of daily sales, and other relevant sales records. Lottery staff shall be allowed to perform examinations of these records, and make any copies necessary to complete the review. Records and accounting information must be provided, at the retailer's expense, in any form or format reasonably requested by Lottery staff. Retailers operating multiple establishments must maintain separate and complete records as specified in this paragraph for each establishment they operate. In the absence of adequate records, Lottery staff will make a reasonable estimate of annual non-Lottery sales based on available records and information. In making a reasonable estimate, the Lottery will only rely on records and information that the Director concludes are credible and accurate.

(6) **Factors to Consider:** If the income analysis indicates that the establishment's annual non-Lottery sales are less than 50% of total income or projected total income, and there is no conclusive evidence that the establishment is not a casino as explained in section (4) above, the Director shall consider additional relevant factors such as those described below to make a final determination whether the establishment, taken as a whole, is operating as a casino or may operate as a casino. Such factors include, but are not limited to:

(a) **History:** The history of the establishment's operation, or lack of history. If, for example, an establishment has a longstanding history as a neighborhood pub or a family restaurant, this factor may demonstrate that the establishment is not operating as a casino.

(b) **Appearance:** The appearance of the premises, as perceived by a reasonable person and determined by the Director, as it relates to the type of establishment. If, for example, a reasonable person, as determined by the Director, would perceive the establishment to be a place to eat, drink, socialize, and engage in a variety of activities or forms of entertainment, this factor may demonstrate that the establishment is not operating as a casino.

(c) **Floor Space:** The ratio of floor space dedicated for the use of Video Lottery<sup>SM</sup> games to the total floor space of the establishment. Any space or portion of an establishment which is designated as a common area, is shared with other establishments or businesses, or is not contiguous with the area(s) where the Video Lottery<sup>SM</sup> terminals are located or are proposed to be located, shall not be considered as part of an establishment's total floor space. Any areas of the establishment not normally open to patrons shall not be

considered as part of an establishment's total floor space. For purposes of this rule, 24 square feet per Video Lottery<sup>SM</sup> terminal shall be used to compute such a ratio. If the amount of floor space dedicated for the use of Video Lottery<sup>SM</sup> games is 20% or less of the establishment's total floor space, this factor may demonstrate that the establishment is not operating as a casino.

(d) **Food Service Accoutrements:** The availability of menus, dining tables and chairs, tableware for the consumption of food and beverages, and other accoutrements intended specifically for use by patrons for eating and drinking. For example, an ample number of tables and chairs, proportionate to the size of the area, that are set up with napkins, salt and pepper, etc., and are available to patrons for eating and drinking, combined with the availability of food and beverages, the staff and means to cook, prepare and serve food and beverages, the availability of tableware, a menu or reader board, may demonstrate that the establishment is not operating as a casino.

(e) **Meals and Menus:** The number and variety of meals and menu items available on a daily basis. For example, serving two meals per day, such as lunch and dinner, and a variety of entrees and side dishes for each meal, as opposed to serving only one or two items, or only a variety of sandwiches, throughout the day, may demonstrate that the establishment is not operating as a casino.

(f) **Non-Lottery Products and Entertainment:** The number and variety of non-Lottery products and forms of entertainment available. If, for example, an establishment offers snacks, gum, and cigarettes for sale, and has pool, darts, and live music and dancing, as opposed to only one or two products or services, this factor may demonstrate that the establishment does not operate as a casino. This factor acknowledges that a retailer's efforts to sell or serve non-Lottery products or services are not always successful. The mere fact that the non-Lottery products or services are readily available, as evidenced by observation and records, is a factor.

(g) **Business Name:** The name of the business. For example, if the business name does not contain words, references or allusions to gambling or gambling related objects or activities, good luck or good fortune, or winning, directly or indirectly, this factor may demonstrate that the establishment does not operate as a casino.

(h) **Advertising:** Advertising and promotional activities. If, for example, the retailer advertises food and other non-Lottery products, services or forms of entertainment at least equivalent to advertising for Lottery products; and, if the retailer offers promotions, such as discount coupons for food and other non-Lottery products at least equivalent to promotional activities related to Lottery products, this factor may demonstrate that the establishment does not operate as a casino.

(i) **Records:** The retailer's financial records. If the retailer's financial records, including expenses, show that the volume of non-Lottery products and services sold, and the number and variety of non-Lottery forms of entertainment made available to patrons is greater than indicated by the establishment's annual non-Lottery sales, this factor may demonstrate that the establishment does not operate as a casino.

(j) **Atmosphere:** The general atmosphere of the establishment and the attitude and approach of the retailer. If the retailer, and the retailer's employees encourage and promote food and beverage service; if the general environment is clean and inviting to patrons for purposes of dining or engaging in entertainment activities; if the retailer and the retailer's employees are equally courteous and accommodating to non-Lottery playing patrons as they are to those playing Lottery games; and if the retailer demonstrates cooperation with the Lottery and approaches this matter with a demonstrated willingness to keep the establishment in compliance, this factor may demonstrate that the establishment does not operate as a casino.

**(7) Compliance Plan:**

(a) **General:** For purposes of selling Video Lottery<sup>SM</sup> tickets and shares, the Lottery Director shall determine whether a Lottery retailer is operating an establishment as a casino, or in the case of an applicant, will be operating as a casino in violation of this rule. When the Director determines that an existing Video Lottery<sup>SM</sup> establishment is operating as a casino pursuant to review under section (6) of this rule, the Director shall notify the retailer of the determination in writing, and set forth the reasons for the determination. The Director shall provide the retailer the opportunity to develop and implement a plan to bring the establishment into compliance with this rule within six months from the date of this written notification. The plan must be submitted within 30 days from the date the notification is issued by the Lottery. The plan shall include an analysis of the retailer's business operation to show that the retailer has made a reasonable determination of what changes need to be made and the steps the retailer intends to take to bring the establishment into compliance. A retailer may not restrict access to any Lottery game to achieve compliance with this rule without prior written approval from the Director. The retailer's submission of the plan is for the purpose of demonstrating to the Lottery that the retailer seeks to bring the establishment into compliance. The Lottery will review the retailer's plan and may offer guidance to help the retailer bring the establishment into compliance. The retailer is solely responsible for implementing the plan and for its success or failure during the six month period.

(b) **Four Month Review:** At the end of the first four months of the six-month period, the Lottery will review the retailer's progress toward compliance, and may provide the retailer with factual information, analysis, or recommendations if it appears to Lottery staff that doing so will assist the retailer in bringing the establishment into compliance.

(c) **Determination at End of Six-Month Period:** At the end of the six-month period, the Director shall determine whether the establishment is in compliance. A retailer shall be deemed to be in compliance if either:

(A) The establishment's total Lottery compensation was not more than 50% of the establishment's total income, as set forth in section (5) of this rule, over the entire six-month period; or

(B) Based upon an analysis of some or all of the factors set forth in section (6) of this rule, or other additional factors, the Director determines that the establishment is not operating as a casino.

(d) **Sixth Month:** If the establishment's total Lottery compensation was not more than 50% of the establishment's total income, as set forth in section (5) of this rule, for the sixth month of the plan (but not the entire six months), the Director may extend the original six month period of the compliance plan up to three additional months if, in the opinion of the Director, the retailer will become compliant within that time. At the end of the additional time period, the Director shall determine whether the establishment is in compliance based upon subsection (7)(c) of this rule.

(e) **Termination:** If, at the end of the compliance period, the Director determines that the establishment continues to operate as a casino, the retailer's contract to sell Video Lottery<sup>SM</sup> tickets and shares shall be immediately terminated.

(f) **One Year Review:** If, at the end of the compliance period, the Director determines that the establishment is no longer operating as a casino, the Director shall send a notice of compliance to the retailer. At the end of one year commencing on the first day of the month following notification of compliance, the Lottery will conduct another compliance review as set forth in this rule. If the Director determines that the establishment is again operating as a casino, the retailer's contract to sell Video Lottery<sup>SM</sup> tickets and shares shall be immediately terminated. The retailer shall not be given the opportunity to implement a compliance plan as described in subsections (7)(a), (b), (c), and (d) of this rule in these circumstances. Nothing in this subsection prohibits the Director from initiating another review at any time as set forth in section (3) of this rule.

(g) **Application Denial:** If a person applying to become a Video Lottery<sup>SM</sup> retailer is projected by the Lottery not to be in compliance with the requirements of this rule, the Director shall deny the application.

(8) **Re-Application:** Any Video Lottery<sup>SM</sup> retailer whose contract to sell Video Lottery<sup>SM</sup> tickets and shares is terminated, or any person applying to become a Video Lottery<sup>SM</sup> retailer whose application is denied, shall not be eligible to reapply for a Lottery contract for the terminated or denied establishment for one year from the date of termination or application denial. After one year, the application shall only be accepted upon a showing by the applicant that a substantial change in conditions at the establishment has taken place. Upon acceptance of an application, the Director shall determine whether the establishment will be operated as a casino as set forth in this rule. In the case of a person applying to become a Video Lottery<sup>SM</sup> retailer whose application is denied, the Director may, in the Director's sole discretion, waive up to six months of the one-year waiting period based upon a showing of good cause by the applicant.

## **177-040-0070            Retailer Wheelchair Accessibility Program**

(1) **Purpose:** The purpose of this rule is to require that all new and existing Lottery retailers provide and maintain access to Oregon lottery games and related services to persons who use wheelchairs. Access to video lottery games may be achieved by providing access to at least one

video lottery game terminal, regardless of slight variations in game theme or play between the different types of video lottery terminals.

(2) **General Requirements:** All Lottery retailers shall provide and maintain access to all persons who use wheelchairs to enable their full and equal enjoyment of Lottery games and related services. Retailers shall comply with the Retailer Wheelchair Accessibility Program by installing required accessibility features, by removing identified barriers through structural modifications, or by creating alternative methods of providing access to Lottery games and related services.

(a) **Barrier Removal and Accessibility Features:** All barriers must be removed that impede wheelchair access to Lottery games and related services. Examples of barrier removal or accessibility features include, but are not limited to:

- (A) Installing ramps;
- (B) Making curb cuts in sidewalks and entrances;
- (C) Creating designated accessible parking spaces;
- (D) Widening doors;
- (E) Rearranging tables, chairs, vending machines, display racks, and other furniture;
- (F) Installing offset hinges to widen doorways;
- (G) Installing accessible door hardware;
- (H) Installing elevators; and
- (I) Relocating Lottery games and related services within the retailer's premises to accommodate persons who use wheelchairs.

(b) **Alternative Methods:** Alternative methods of providing access to Lottery games and related services must be appropriate or reasonable for the person using a wheelchair, and will apply only when accessibility to the Lottery game or related service does not require physical access by the person using a wheelchair to a specific area of the premises. (For example, playing Keno does not require physical access to a Lottery terminal if the retailer provides table service to persons who use wheelchairs. Conversely, playing video lottery games does require physical access to the video lottery terminal.) All alternative methods of providing access must be approved by the Director and will only be permitted when the retailer demonstrates to the satisfaction of the Director the necessity of offering alternative methods of access instead of removing barriers or installing accessibility features. The Director's decision is final.

(c) **Costs of Modifications:** The retailer is responsible for all costs related to removing barriers, installing accessibility features, or offering alternative methods of access for the purpose of making a retailer's premises wheelchair accessible.

(3) **Retailer Wheelchair Accessibility Affidavit:** All applicants shall submit with the application, a signed Wheelchair Accessibility affidavit stating that the retail location is wheelchair accessible. The affidavit form shall be provided by the Lottery and shall contain the Lottery's wheelchair accessibility standards. The affidavit must be completed, signed by the applicant, and notarized.

#### (4) Permitted Exemptions:

(a) The Director may grant the following exemptions to the requirements of this rule. The Director shall review the circumstances and supporting documentation provided by a retailer to determine if a retailer's request for an exemption should be granted. The Director shall determine the type and scope of documentation to be required for each exemption classification. All decisions made by the Director are final. A retailer or applicant whose request for an exemption is denied by the Director is required to satisfy the requirements of this rule as a condition for maintaining its eligibility for a Lottery retailer contract.

(A) **Historic Properties:** To the extent a historic building or facility is exempt under federal law, this rule does not apply to a qualified historic building or facility that is listed in or eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under state or local law. Qualified means exempt from accessibility requirements under the federal historic preservation laws.

(B) **Legal Impediment to Barrier Removal:** Any law, act, ordinance, state regulation, ruling or decision which prohibits a Lottery retailer from removing a structural impediment or for making a required improvement may be the basis for an exemption to this rule. A Lottery retailer requesting an exemption under this subsection will not be required to seek a zoning variance to establish the legal basis for the impediment, but is required to document and attest to the legal impediment.

(C) **Landlord Refusal:** An exemption granted to an existing Lottery retailer based on the refusal of a landlord to grant permission to a Lottery retailer to make the structural improvements required by the Lottery under this rule shall only apply to the retailer's current lease term. No new landlord refusal exemptions are authorized after August 1, 2000. All existing exemptions granted before August 1, 2000 may be continued until the retailer's contract expires.

(D) **Undue Financial Hardship:** Undue financial hardship exemptions are not authorized. Any existing exemptions granted before August 1, 2000 may be continued until the retailer's contract expires.

(5) **Complaints Relating to Non-Accessibility:** The Director will receive and process all accessibility complaints concerning a Lottery retailer as follows:

(a) **Initial Complaint and Investigation:** When possible, complaints must be in writing and submitted to the Lottery on a Lottery retailer wheelchair accessibility complaint form. The Lottery will investigate the complaint. If the retailer is found to be in compliance with this rule, a letter will be mailed to the retailer and complainant.

(b) **Letter of Impending Rule Violation:** If the Lottery determines that there are any violations of this rule, the Lottery shall issue a letter of impending rule violation to the retailer. The retailer shall submit a response no later than 30 days after mailing of the

letter of impending rule violation. The Director shall determine if the retailer's response is acceptable under this rule. If the retailer is found to be in compliance with this rule, a letter will be mailed to the retailer and the complainant.

(c) **Letter of Rule Violation:** If the retailer's response to the Lottery's letter of impending rule violation is unacceptable under this rule, or if the retailer does not provide an explanation in the 30 day response period, the Lottery shall issue a letter of rule violation. The letter of rule violation shall describe the violations found at the retailer's location under the terms of this rule.

(d) **Corrective Action Plan:** The Lottery retailer shall submit a corrective action plan to the Lottery within 30 days of the issuance of the letter of rule violation. The Director may extend the response time for reasons beyond the reasonable control of the retailer. The plan shall describe in detail how the retailer will comply with this rule. The Lottery shall notify the retailer of the Lottery's acceptance or rejection of the plan. If the plan is rejected, the notification shall contain the reasons for rejection of the plan and the corrections needed to make the plan acceptable to the Lottery. If the retailer agrees to make the required corrections, the Lottery shall accept the plan as modified. If a retailer fails to submit a plan within 30 days of issuance of the letter of rule violation and has not requested an extension of time to submit a plan, or if a retailer has requested an extension but the request is denied by the Lottery, the Lottery may initiate termination proceedings.

(e) **Time Line for Implementation of Corrective Actions:** The retailer must complete corrective actions within 90 days of the date the Lottery accepts the retailer's corrective action plan. If the retailer has not eliminated the violations cited in the letter of rule violation within 90 days of mailing, but has requested an extension of time, the Lottery may grant an extension of no more than 90 days. The Lottery will send a notice of the extension to the retailer and the complainant. Any extension commences immediately upon expiration of the original 90 day period. In no event shall the total amount of time exceed 180 days from the date the Lottery accepts the retailer's corrective action plan.

(f) **Notice of Rule Compliance:** If the retailer corrects the violations specified in the letter of rule violation, and the retailer has provided an updated wheelchair affidavit showing full compliance, the Lottery will issue a notice of rule compliance. Until this notice is issued, a complaint is considered pending.

(g) **Termination:** Failure of the retailer to make timely corrections in agreement with this rule and the retailer's corrective action plan may result in proceedings to terminate the retailer's Lottery contract.

(6) **Inspections and Audits:** The Director may inspect and audit any Lottery retailer's premises for compliance with this rule at any time including random compliance audits. The Lottery will conduct the audit and inspection during the retailer's regular business hours or at such other time as agreed upon by the retailer and the Lottery. The burden of proof to establish that a retailer's premises are in compliance with this rule is on the Lottery retailer.

**177-040-0105            Change Location**

(1) Any time a Lottery retailer moves its existing business to new premises, the retailer must receive approval from the Lottery before moving the sale of Lottery tickets or shares to the new location.

(2) For a change in location to be approved, the new premises must meet all requirements necessary for operation as a Lottery retailer.

(3) If the Lottery retailer is changing the nature of the business, the Director may terminate the existing retailer contract and require the retailer to apply for a new retailer contract.

**177-040-0110 Contract Non-Transferable**

A Lottery retailer contract does not have value, and cannot be sold, transferred, or assigned.

**177-040-0115 Underage Seller**

No one under the age of 18 may sell Lottery tickets or shares.

**177-040-0120 Subsequent Application**

When a retailer contract is terminated for any reason, the retailer, or an applicant that is similar to the retailer whose contract was terminated, will be required to wait one year to reapply for a retailer contract. In the Director's sole discretion, the Director may waive all or a portion of the one-year requirement based upon a showing of good cause by the applicant.

**177-040-0125 Termination of Retailer Contract When an Applicant Does Not Qualify As A Key Person**

When the Director determines that an applicant does not qualify as a key person, that is grounds for termination of the retailer contract associated with the applicant.

**177-040-0130 Adding a Location**

An existing traditional retailer may apply for and may receive approval for a contract for an additional location prior to that site being open to the public.

**177-040-0160 Suspension of OLCC License**

(1) **General:** Any Lottery retailer whose liquor license has been suspended by the Oregon Liquor Control Commission (OLCC) must immediately notify the Lottery of the suspension.

(2) **Disabling Equipment:** The Director shall disable all video lottery terminals in a retailer's establishment during the period that the OLCC has suspended the retailer's liquor license. Notwithstanding the term of the OLCC suspension, the Director may keep the video lottery terminals disabled during the Lottery Security investigation required by section (3) of this rule. The Director may also suspend the sale of all non-video Lottery tickets and shares and suspend all transactions on the retailer's computer link to the Lottery, disabling the retailer's ability to validate tickets and shares.

(3) **Lottery Investigation:** The Director shall initiate an investigation by Lottery Security of the suspension of a video Lottery retailer's liquor license. The Director may initiate an investigation by Lottery Security of the suspension of a traditional Lottery retailer's liquor license. Lottery Security will report the results of the investigation to the Director. The Director will review the findings of that investigation and the circumstances underlying the suspension by the OLCC. The Director will make a determination whether the findings of the investigation and the circumstances underlying the suspension will result in sanctions under the retailer contract, up to and including immediate termination of the contract.

**177-040-0180            Notice Requirement**

Lottery retailers who offer video Lottery games must post in a conspicuous place on the retailer's premises at least one copy of a notice containing information concerning compulsive gambling.

**177-040-0200            Lottery Retailer Second Chance Drawings**

(1) For purposes of this rule, **"Second chance drawing"** means a drawing for prize(s) operated by a Lottery retailer in which entrants may either use a non-winning Oregon Lottery ticket or share as an entry in the drawing or may enter the drawing using an alternative method for which a purchase is not necessary. This rule is not applicable to any second chance drawings that the Oregon Lottery itself may operate.

(2) The purpose of this rule is to authorize a Lottery retailer to operate a second chance drawing using Oregon Lottery tickets or shares as entry forms as a means of promoting the sale of Oregon Lottery tickets and shares if the drawing is conducted in accordance with this rule and any additional drawing regulations adopted by the retailer that do not conflict with this rule.

(3) Lottery retailers may operate second chance drawings. Lottery retailers are not required to offer second chance drawings to the public. A Lottery retailer who operates a second chance drawing must comply with this rule. A Lottery retailer who violates any provision of this rule is subject to termination of the Lottery Retailer Contract. When a Lottery retailer operates a second chance drawing, the Lottery retailer shall determine how often it will operate any subsequent drawings.

(4) The Lottery retailer shall determine the type and number of prizes to be awarded in a second chance drawing subject to the following limitations: Contraband and alcoholic beverages shall not be offered nor awarded as prizes. Prizes offered by a Lottery retailer must be in keeping with the particularly sensitive nature of the Oregon Lottery and cannot impugn the security, integrity, honesty, or fairness of the Oregon Lottery.

(a) The Oregon Lottery may provide item(s) directly to a Lottery retailer as Lottery ticket sales incentives. The Lottery retailer may choose to use these items as prize(s) in a second chance drawing.

(b) A Lottery retailer may elect to offer more than one prize per drawing, such as, for example, offering a grand prize, a first prize, and a second prize.

(5) A non-winning Lottery ticket or share from the following Oregon Lottery games may be used as an entry in a second chance drawing:

- (a) Keno.
- (b) Megabucks.
- (c) Scratch-It.
- (d) Win for Life.
- (e) Breakopens.
- (f) Pick 4.
- (g) Powerball.
- (h) Any other similar games operated by the Oregon Lottery.

(6) Notwithstanding section (5) of this rule, tickets or shares from the following Oregon Lottery games shall not be used in connection with second chance drawings:

- (a) Video Lottery games of any kind.
- (b) Sports Action.
- (c) Any particular Scratch-It or Breakopen game that the Lottery informs Lottery retailers by any reasonable means is not authorized for use in second chance drawings.

(7) A Lottery retailer that operates a second chance drawing must operate the drawing at a location where the Lottery retailer is authorized to sell traditional Lottery games. A Lottery retailer with more than one sales location may operate a second chance drawing at each location.

(8) While operating a second chance drawing, the Lottery retailer must post a conspicuous sign at each location where entries are accepted that meets the specifications of this section. Any advertisements concerning the second chance drawing must also contain this same information.

(a) This sign and all advertisements must clearly and conspicuously inform the Lottery retailer's customers of all the following information:

- (A) The second chance drawing is being operated by the Lottery retailer and the Oregon Lottery is not an operator or sponsor of the second chance drawing.
- (B) A purchase of a Lottery ticket or share, or any other purchase, is not necessary to enter the second chance drawing.
- (C) The odds of winning a prize in the drawing depend on the number of entries that the Lottery retailer receives.
- (D) The date and time when the drawing to determine prize winner(s) will be held.
- (E) Any deadlines for entering the second chance drawing.

(F) A description and the number of prizes that will be awarded and whether one individual may win more than one prize in a single drawing, and

(G) The date or time by which a winner must claim a prize from the Lottery retailer.

(9) The Oregon Lottery is not responsible for the operation of any second chance drawing and shall not award any of the prizes offered in a second chance drawing. A Lottery retailer may not in any way imply, state, or suggest that a Lottery retailer's second chance drawing is sponsored or operated by the Oregon Lottery.

(10) A Lottery retailer that operates a second chance drawing shall not allow the following persons to enter its drawing and shall deem each such person ineligible to receive a prize in any second chance drawing:

(a) The Lottery retailer.

(b) Any employees of the Lottery retailer.

(c) The Lottery retailer's spouse, domestic partner, parents, and children (adopted or otherwise).

(d) Any person under 18 years of age, or in the case of a drawing operated in an area restricted to persons over 21 years of age, any person under 21 years of age, and

(e) Any other person the Lottery retailer identifies as ineligible in order to protect the security, integrity, honesty, and fairness of a drawing.

(11) A Lottery retailer shall not conduct false or misleading advertising in any form concerning a second chance drawing, including, but not limited to, advertising that claims a purchase will increase a participant's chances of winning. Advertising that uses any of the Lottery's trade or service marks is subject to the requirements of OAR 177-040-0055.

(12) The second chance drawing must be a legitimate drawing in which all participants are on equal footing including any participant who enters the drawing without using a Lottery ticket or share or making any other purchase. A lottery retailer can not charge a fee or any other consideration to prospective participants as a condition of entry in the lottery retailer's second chance drawing. Consideration is the payment of money or anything of value.

(a) A Lottery retailer operating a second chance drawing shall allow participants to enter the drawing by depositing a non-winning ticket or share into a reasonably secure container at the location where entries in the drawing are accepted by the Lottery retailer. A participant must write any information required by the Lottery retailer in order to identify a winner on the ticket. A Lottery retailer must provide at least one alternative method of entry for participants such as allowing the deposit of a business card, or the inscription of a participant's name, telephone number, and address on any piece of paper similar in size to a Scratch-It ticket. A Lottery retailer shall not require any participant

using an alternative method of entry to purchase anything. More than one person may be listed on an entry.

(b) A Lottery retailer operating a second chance drawing must conduct the drawing with security, integrity, honesty, and fairness. The drawing must be random. The Lottery retailer shall draw the winning entries in an area open to the public and at a time during regular business hours. The Lottery retailer must select the winning entries at the time and place posted and advertised. The Lottery retailer or any person designated by the Lottery retailer may draw the winning entries.

(c) No Lottery employee shall select a winning entry or otherwise participate in a second chance drawing operated by a Lottery retailer.

(d) If a participant in a second chance drawing uses a winning Lottery ticket or share as an entry, the ticket or share is a valid entry in the drawing, and if it is returned to the participant, it may be validated with the Lottery as a winning ticket. Notwithstanding section (f) below, if a participant asks the Lottery retailer to locate and return the winning ticket or share, the Lottery retailer shall make a reasonable effort to locate it after the drawing. Neither the Lottery retailer nor the Lottery is responsible for paying a Lottery prize for a winning ticket or share that a participant uses as a second chance drawing entry if the ticket or share cannot be identified among the other entries and returned to the participant who entered it.

(e) When the Lottery retailer draws the winning entries, the Lottery retailer shall announce the name of each winner and award each prize advertised for that drawing. The Lottery retailer shall post the name of each winner at the drawing location. If a winner does not claim a prize within the posted claim period, the Lottery retailer may select an alternate winner from the participants or the prize may be carried forward to the next drawing. An alternate winning entry must be selected from the remaining entries in the same manner as the original winning entry. A Lottery retailer shall not require a winner to be present to win or to collect a prize.

(f) After a drawing is completed and the Lottery retailer has awarded each prize for that drawing, the Lottery retailer shall destroy any Lottery ticket or share used as an entry in the drawing by shredding or mutilating the ticket or share to a sufficient degree that it cannot be used in any other drawing or for any other purpose.

(13) A Lottery retailer that operates a second chance drawing is responsible for conducting each second chance drawing in accordance with this rule, any other regulations adopted by the Lottery retailer, and any other applicable laws. This rule applies to existing Lottery retailer contracts, and violations may provide grounds for the Director to terminate a retailer's contract.

(14) A Lottery retailer is not entitled to any bonus or additional compensation from the Oregon Lottery because it offers a second chance drawing or because it sold a ticket or share drawn as a winning entry in any Lottery retailer's second chance drawing.

**Request for Reconsideration for Contract Denials, Key Person Denials, and Contract Terminations**

(1) **General:** When the Lottery issues a contract denial, a key person denial, or a contract termination order, the denied contract applicant, the retailer who submitted the denied key person application, or the terminated Lottery retailer may request that the Lottery reconsider the denial or contract termination order.

(2) **Form of Request:** Each denial or contract termination order issued by the Lottery will inform the applicant or the retailer of the right to request reconsideration of the denial or contract termination order. Each request for reconsideration must meet the following requirements:

(a) The request for reconsideration must be submitted in writing within 60 days of the date of the denial or termination;

(b) The request for reconsideration must allege either a change in circumstances or it must provide additional information sufficient to show that the circumstances which are the basis for the order should not result in denial or termination or are fully corrected or resolved.

(3) **Lottery's Response:** The Lottery will take one of the following actions on a request for reconsideration:

(a) **Approval of the Request:** If the Director determines the change in circumstances or information submitted in the request for reconsideration adequately addresses, corrects, or resolves the issues which were the basis for the denial or termination order, the request for reconsideration will be granted, and the denial or termination order will be rescinded.

(b) **Denial of the Request:** If the Director determines that the change in circumstances or information submitted in the request for reconsideration does not adequately address, correct, or resolve the issues which were the basis for the denial or termination order, the Director will deny the request for reconsideration.

(c) **Order on Reconsideration:**

(A) If the Director determines that the information submitted only partially addresses, corrects, or resolves the issues which were the basis for the denial or termination order, the Director will issue a new order denying the application or terminating the contract. The new order, as appropriate, will delete from or add to the bases for denial or termination in the original order.

(B) If, at any time, the Director determines that there is an additional basis for denial of a contract or key person application, or termination of the contract, the Director may issue a new or amended denial or termination order.

(d) **Director's Determinations:** The Director's determinations are final for purposes of responding to requests for reconsideration.

**177-040-0310                    Alternative Dispute Resolution Policy**

The Lottery encourages the use of an alternative dispute resolution process, such as mediation, in disputes arising between a retailer and the Lottery, when such process is appropriate and provides for a more efficient and effective dispute resolution.

**177-040-0320                    Alternative Dispute Resolution Process**

(1) **Application and Limitations:** The Lottery, in its discretion, may agree to an alternative dispute resolution process to resolve a dispute between a retailer and the Lottery subject to the following limitations:

(a) **No Surrender of Authority:** The Lottery will not agree to any process in which its ultimate settlement or decision making authority is given to a third party.

(b) **Voluntary Process:** All participants must voluntarily agree to the use of an alternative dispute resolution process. The process is voluntary and the Lottery and any other participant may withdraw from the process at any time and for any reason.

(c) **Mediator:** A mediator does not represent the interests of any of the participants including the Lottery, may not offer legal advice, and has no decision making power to determine facts or impose a resolution, settlement, or other decision on the participants.

(d) **Settlement:** Nothing in this rule obligates the Lottery to agree to an alternative dispute resolution process to resolve a dispute, to offer funds to settle any dispute or controversy, to accept a particular settlement or resolution, to alter its standards for accepting settlements, to submit to binding arbitration, or to alter any existing delegation of settlement or litigation authority.

(e) **Alternative Dispute Resolution Precluded:** An alternative dispute resolution process may not be used if a contract termination is issued under the circumstances described in section (3)(b) of this rule.

(f) **Legal Action Filed:** An alternative dispute resolution process as described in this rule may not be used if a legal action has been filed in court covering the same subject matter.

(2) **Prerequisites:** Before Lottery will consider the use of an alternative dispute resolution process as described in this rule for a dispute resulting from a contract denial, a key person denial, or a contract termination, the contract applicant or the retailer must first have requested reconsideration under the process provided in OAR 177-040-0300. If the Lottery agrees to an alternative dispute resolution process, the Lottery, in its sole and absolute discretion, may stay the denial or the termination order pending completion of the process.

(3) **Mediation:** When a retailer has complied with section (2) of this rule, a retailer may request mediation. The request is subject to section (1) of this rule and the following:

(a) **Factors to Consider:** The Lottery may consider the factors set forth in OAR 137-005-0020 before agreeing to mediation.

(b) **Contract Termination Actions Where Mediation Precluded:** The Lottery will not agree to mediation if a contract termination is issued under the following circumstances:

(A) **Third NSF:** When a Lottery retailer's EFT payment is not made to the Lottery due to non-sufficient funds in the retailer's EFT account for a third time within one year of the retailer's first NSF.

(B) **OLCC Suspension or Termination:** The OLCC has terminated a video lottery retailer's liquor license.

(c) **Written Agreement:** If the Lottery agrees to mediation, the Lottery and the retailer must enter into a written agreement to mediate as described in OAR 137-005-0030.

(d) **Time Limit:** For a dispute resulting from a contract denial, a key person denial, or a contract termination, a request for mediation must be made within 10 days of issuance of the order upon reconsideration or a denial of reconsideration under OAR 177-040-0300. The Lottery will respond to the request within 7 business days. A request for mediation does not toll the 60 day period for requesting judicial review under ORS 183.484, unless the Lottery agrees to mediation and the contract termination order is withdrawn. The mediation process must be concluded within 60 days of the request.

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