



2022 Annual Rules Report

Rules Adopted, Amended, Suspended, or Repealed from January 1, 2022, to December 31, 2022¹

Submitted as Required by [ORS 183.403](#) and [192.245](#)

1. The number of administrative rules adopted, amended, or repealed in accordance with [ORS 183.335 \(2\) and \(3\)](#):

The Lottery adopted or amended 33 administrative rules in seven permanent rulemaking projects conducted in accordance with [ORS 183.335\(2\) and \(3\)](#)². Each permanent rulemaking project that took effect during calendar year 2022 is summarized in the table below. Each filing is available in its entirety on the [Secretary of State website](#) by searching for Chapter 177 for the applicable time period. You may also request a copy by contacting Kris Skaro at kris.skaro@lottery.oregon.gov or 971-719-0794.

Permanent Project #	Eff. Date	# of Rules	Rulemaking Caption
#1	3/1/22	1	<i>Clarifying process for waiving disclosure for Lottery retailer applicants and making Tribally owned applicants eligible</i>
#2	5/1/22	2	<i>Updating Powerball rules to align with MUSL Powerball Group Rules</i>
#3	6/1/22	1	<i>Lottery pause on accepting applications for new Video Lottery locations and terminal installations</i>
#4	6/15/22	23	<i>Rulemaking for Lottery's digital sports betting game</i>
#5	8/1/22	1	<i>Establishing timeline for Lottery retailer to provide documentation that bank error caused nonsufficient funds</i>
#6	10/1/22	4	<i>Amending second-chance drawing rules to authorize more prizes and drawings and make other updates</i>
#7	10/1/22	1	<i>Updating the loss amount threshold for stolen Scratch-It Tickets from Lottery retailer's premises</i>
7 Total	1/1/22 to 12/31/22	33	

¹ Previously, the Lottery had interpreted ORS 183.403 to apply to the 12 months *prior to February 1st* and provided reports based on that timeframe. Reports going forward will be for all rules that were effective in the previous *calendar year*, meaning Jan 1 to Dec. 31. This may result in some rules being included in more than one annual report.

² The Lottery used the effective date (as opposed to the date filed with the Secretary of State) to determine which rules belong in the report. For example, rules filed with the Secretary of State in late December 2022, but not effective until January 2023, will be included in the 2023 report, even though they were filed in 2022.

2. The number of rules, adopted, amended, or suspended using the procedure described in [ORS 183.335\(5\)](#):

The Lottery adopted two administrative rules in two separate temporary rulemaking projects using the procedure described in [ORS 183.335\(5\)](#). The rulemakings are summarized in the table below, including additional information required by [ORS 183.403](#) including: a list of the rules; the statement of need for each rule; the agency's findings that failure to act promptly would result in serious prejudice; and an explanation of why proceeding with the temporary rulemaking process was the most appropriate method and why it was not appropriate to proceed with the permanent rulemaking process. Each filing is available on the [Secretary of State website](#) or upon request to Kris Skaro at kris.skaro@lottery.oregon.gov or 971-719-0794.

Project	Eff. Date	# of Rules	Information
#1	1/14/22	1	<i>Lottery pause on accepting applications for new Video Lottery locations and terminal installations</i>
	List of Rules		OAR 177-045-0035 Temporary Pause on Additional Video Lottery Retailer Locations
	Statement of Need		<p>The Lottery is currently experiencing a Video Lottery Terminal (VLT) inventory shortage. The Lottery is well-equipped to support current Video Lottery retailers and terminals in the field. However, the current inventory is not sufficient to support new locations and installations. Therefore, to responsibly manage limited inventory, the Lottery has instituted a temporary pause on accepting applications for new Video Lottery retail locations. This temporary pause is effective as of December 20, 2021 and applies, with limited exception, to applications from new Video Lottery retailer applicants and requests from current Video Lottery retailers to add one or more Video Lottery retail locations or terminals. Applications already in process may be placed on a waitlist and processed when Lottery determines inventory is sufficient. The Lottery will continue to accept applications for traditional Lottery product sales and will process sale of business, change of ownership, and 100 percent stock buyouts for Video Lottery retailers as normal.</p> <p>The decrease in available terminals has several causes. In 2021, due to strong sales, retailers easily met sales thresholds to qualify for additional terminals and fewer retailers have closed and returned equipment than in prior years. Additionally, some of the Lottery's VLT's currently in inventory are reserved to replace obsolete equipment and are therefore not available to be installed in new locations. The Lottery does not currently have money budgeted to purchase additional terminals and financial constraints (relating to the loss of revenue during the pandemic and other unexpected expenses) are impacting</p>

		<p>purchasing decisions at this time. Regardless, purchasing terminals (especially a substantial number) takes time and therefore is not an immediate solution, although the Lottery will consider this as a potential long-term solution.</p> <p>The pause is a change to normal practice, and thus, the Lottery needs to adopt the rule described in this Order to clearly communicate the pause to the public and to current and prospective Video Lottery retailers. This will ensure current and prospective retailers have accurate information for business planning purposes and ensures Lottery has clear authority to responsibly manage limited inventory and respond appropriately to dynamic economic conditions. (The Lottery has also used other methods to communicate with retailers, including contacting pending applicants, emailing all current Video Lottery retailers, and posting information on the Lottery's website.)</p> <p>The rule described in this Order meets the need by stating the effective date of the pause, explaining the status of initiated applications, and describing generally the circumstances that may cause the Director to rescind the pause on accepting applications.</p> <p>The Lottery also needs to adopt the rule to authorize the Director to make an exception for applications submitted by tribally owned businesses that may qualify for the alternative disclosure process described in OAR 177-040-0001(4)(a)(B). The Lottery only recently created this pathway for tribally owned business entities and thus, if VLT supply is adequate, OAR 177-045-0035 is adopted to authorize the Director to accept applications from such applicants.</p>
	<p>Statement of Justification (the agency's findings that a failure to act promptly would result in serious prejudice to the public interest of parties concerned)</p>	<p>The Lottery finds that failure to act promptly to adopt OAR 177-045-0035 will result in serious prejudice to the Lottery and current and prospective Video Lottery retailers.</p> <p>The Lottery has determined that most of its current VLT inventory is allocated and unavailable to be installed in new retail locations. The Lottery has also determined that it is not feasible to immediately procure additional terminals. Continuing to accept applications when there is insufficient inventory to meet demand would put further pressure on limited inventory and may cause confusion for retailers. Thus, immediate action is necessary to clearly communicate to retailers (current and prospective) that Lottery will not be installing additional terminals at this time but, rather, is working to support current retailers while trying to resolve inventory shortfalls.</p>

		<p>On the other hand, the permanent rulemaking process takes 60 to 90 days, during which time, without prompt action, there may be uncertainty for the Lottery and retailers (current and prospective) about whether the Lottery is currently accepting applications for new Video Lottery retail locations. This uncertainty may lead retailers (current and prospective) to plan to offer Video Lottery games at their businesses, when in fact, supply issues may prevent the VLTs from being installed. Taking immediate action provides clarity for current retailers and prospective applicants by communicating that the Lottery will not be accepting applications until further notice that inventory limitations have been resolved. Taking immediate action also provides Lottery with clear authority to stop processing applications and focus on supporting current retailers and terminals currently in the field, while working diligently to resolve inventory issues.</p>
	<p>Explanation of why proceeding under ORS 183.335(5) (i.e. adopting temporary rules) was the most appropriate method for adopting, amending, or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335(2) and (3) (i.e. permanent rulemaking process with opportunity for notice and comment)</p>	<p>The Lottery determined proceeding under ORS 183.335(5) was the most appropriate method for adopting the rule and it was not appropriate to proceed in accordance with ORS 183.335(2) and (3) because of the time sensitivity of the circumstances and the need for clear and timely communication of the Lottery's decision to pause accepting applications to responsibly manage limited inventory.</p> <p>To explain further, the Lottery does not have terminals in inventory to install in new retailer locations. The Lottery does not have an immediate solution to the inventory shortfall. The prudent course, as determined by the Lottery, is to stop processing applications in an effort to responsibly manage limited inventory and provide clarity to retailers (current and prospective) about the inventory situation.</p> <p>While this choice is authorized and required by Oregon law (the Lottery must operate responsibly so as to be self-supporting and revenue generating), it does impact current and prospective retailers, so the Lottery determined an administrative rule was needed to explain and communicate the change in practice. Delaying for the 60-days (minimum) to adopt permanent rules may leave retailers (current and prospective) uncertain about the current availability of terminals. If Lottery continued to accept applications during the rulemaking period, without sufficient inventory, applicants could plan to have terminals installed in their business, when those terminals may not actually be available to install. This confusion is avoided by taking prompt action to clearly communicate the Lottery's policy choice, and allows the Lottery to focus on resolving inventory issues promptly.</p>

Project #	Eff. Date	# of Rules	Rulemaking Caption
#2	8/19/22	1	<i>Allowing limited number of Video Lottery retailer contract applications to be processed periodically</i>
	List of Rules		OAR 177-045-0036, Exception to Temporary Pause on Video Lottery Retailer Applications
	Statement of Need		<p>The Lottery adopted OAR 177-045-0036 to allow the Lottery to process a limited number of Video Lottery retailer applications even though Lottery is not currently accepting applications for additional Video Lottery retailer contracts pursuant to OAR 177-045-0035. The rule:</p> <ol style="list-style-type: none"> (1) Explained that the Director may, despite the general pause on processing applications for Video Lottery retailer contracts in OAR 177-045-0035, decide periodically but no less than each quarter to award a certain number of Video Lottery retailer contracts. This was needed because although the Lottery is continuing to manage limited Video Lottery Terminal (VLT) inventory, the Lottery understood that there was interest among current and prospective retailers to apply to offer Video Lottery games in new locations, and the Lottery believed it may have sufficient inventory to support some additional Video Lottery retailer locations. (2) Explained how persons interested in applying for Video Lottery retailer contracts could indicate to the Lottery that they are interested and eligible to apply under the rule. This was needed so that any such persons knew how to indicate their interest and eligibility to the Lottery to be selected as one of a limited number of applicants to move forward. Specifically, the rule explained that Lottery would establish a webform through which persons interested could indicate their interest and eligibility to apply for a contract by certain deadlines as announced by the Lottery. (3) Clarified that any applicant selected through random draw is entitled only to the opportunity to apply; in order to contract with the Lottery to be a Video Lottery retailer, the application must be approved by the Lottery after a determination that the applicant meets all requirements under Oregon law and Lottery's administrative rules,

		<p>including, but not limited to, ORS 461.300 and OAR chapter 177, division 40.</p> <p>BACKGROUND:</p> <p>On January 14 2022, the Lottery adopted a temporary rule, OAR 177-045-0035, to explain that, due to Video Lottery Terminal (VLT) inventory constraints, the Lottery would no longer accept new Video Lottery retailer location applications effective December 21, 2021, with limited exceptions described in the rule. The inventory shortfalls had several causes as described in the Lottery's Temporary Administrative Order and subsequent Notice of Proposed Rulemaking.</p> <p>During the pause on applications, the Lottery has worked to develop a comprehensive strategy to address short-term inventory shortfalls and to ensure the long-term sustainability of the Lottery's Video Lottery program.</p> <p>At this point, the Lottery needs to continue to limit Video Lottery retailer applications, but the Lottery does expect to have some limited inventory available to award additional Video Lottery retailer contracts. The Lottery adopted the rule to explain how the Lottery may fairly and periodically select, only as inventory allows, a limited number of interested and eligible applicants as described in more detail in the rule summary and rule text.</p>
	<p>Statement of Justification (the agency's findings that a failure to act promptly would result in serious prejudice to the public interest of parties concerned)</p>	<p>The Lottery found that failure to act promptly to adopt OAR 177-045-0036 would result in serious prejudice to the Lottery and to persons interested in applying for a Video Lottery retailer contract. Without the rule, the Lottery could not process any Video Lottery retailer applications other than those authorized in OAR 177-045-0035 as adopted on June 1, 2022. However, many persons were interested in applying to offer Video Lottery games in their bar, restaurant, or similar establishment. The Lottery believed it could accommodate some, but not all, of those interested persons. Taking immediate action to adopt OAR 177-045-0036 established a fair process to select a limited number of interested and eligible applicants, which would positively impact those businesses approved to offer Video Lottery games and also benefit the Lottery and public programs that rely on revenue from Video Lottery game sales.</p>

	<p>Explanation of why proceeding under ORS 183.335(5) (i.e. adopting temporary rules) was the most appropriate method for adopting, amending, or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335(2) and (3) (i.e. permanent rulemaking process with opportunity for notice and comment)</p>	<p>During the pause on processing applications for new Video Lottery retailer contracts, the Lottery received public input from business owners or their representatives who expressed interest in applying for a Video Lottery retailer contract.</p> <p>As soon as Lottery determined that it may have sufficient inventory to respond to some of this demand, the Lottery decided the most appropriate method for adopting a rule to authorize Lottery to process some applications was the temporary rulemaking process.</p> <p>This was determined to be the most appropriate method because it would prevent potential applicants from having to wait another two or three months while the full rulemaking process was conducted and completed.</p> <p>The Lottery made efforts to notify the public about the rule, including through updates to all Lottery retailers and discussions of the VLT inventory issue at public meetings of the Oregon State Lottery Commission.</p> <p>The Lottery was able to use the temporary rule to select applicants to move forward despite the overall pause on processing applications, which was the intent of the temporary rule.</p>
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