



Memo

Date:	July 14, 2022
To:	Oregon State Lottery Commissioners
From:	Kris Skaro, rules and policy analyst
Subject:	Inform re change to OAR 177-050-0037, Stolen, Destroyed, and Damaged Scratch-It Tickets

Background:

The Lottery has reviewed our policies and processes relating to theft of Scratch-It Tickets from retailers. The review resulted in recommended process improvements, including a recommended housekeeping change to OAR 177-050-0037 to align with the current value of Scratch-It Ticket packs.

Proposed Rulemaking:

OAR 177-050-0037 describes requirements related to stolen, destroyed, or damaged Scratch-It Tickets. The theft value threshold described in the rule is \$200 or more. However, in practice, that amount does not capture the value of all packs of Scratch-It Tickets. Specifically, the value of a pack of \$3 Scratch-It Tickets is \$150. **Therefore, Lottery recommends setting the threshold loss amount at \$150. This aligns with current practice and captures the value of all packs of tickets.**

Next Steps/Enclosures:

I will report back to the Commission after the rulemaking process is complete. In the meantime, the Notice of Proposed Rulemaking is enclosed for your review.

Thank you, and please reach out to me or Director Pack if you have any questions.

DRAFT¹ NOTICE OF PROPOSED RULEMAKING
CHAPTER 177
OREGON STATE LOTTERY

FILING CAPTION: *Updating the loss amount threshold for stolen Scratch-It Tickets from Lottery retailer's premises*

LAST DAY AND TIME TO OFFER COMMENT TO LOTTERY: *August 31, 2022, at 5 p.m.*

HEARING(S):

DATE: 8/16/22

TIME: 10-11 a.m.

OFFICER: Kris Skaro

ADDRESS: Zoom (see SPECIAL INSTRUCTIONS)

SPECIAL INSTRUCTIONS: To provide comment at the public rulemaking hearing over Zoom, use meeting information below. If you have any questions about how to comment, or to request accommodation, contact Kris Skaro at 971-719-0794 or kris.skaro@lottery.oregon.gov.

Join Zoom meeting online at <https://us06web.zoom.us/j/87375059747>
Or join by phone: 1-253-215-8782 and enter Meeting ID: 873 7505 9747

NEED FOR THE RULE(S):

The Lottery recently reviewed its processes and policies relating to stolen Scratch-It Tickets. The review resulted in several recommended process improvements, including a recommendation to amend OAR 177-050-0037 about destroyed, damaged, or stolen Scratch-It Tickets to align with current practice and policy. The specific recommendation was to amend OAR 177-050-0037 to require a theft amount of \$150 or more because this will capture the current value of all packs of Scratch-It Tickets. Without the proposed amendment, OAR 177-050-0037 requires that a theft result in a loss of \$200 or more, which captures all ticket packs except \$3 Scratch-It Tickets, which come in a pack valued at \$150. The proposed rule change to require a loss of "\$150 or more" will ensure the rule is in line with current practice and policy.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Lottery relied upon the following documents when drafting these temporary administrative rules. They are available upon request to kris.skaro@state.or.us or 503-540-1181:

¹ This is a draft Notice of Proposed Rulemaking provided in the public meeting materials for the Oregon State Lottery Commission Meeting. Official notice will be filed with the Oregon Secretary of State and published in the Oregon Bulletin. Any person may request to be notified directly by email or postal mail of Lottery rulemaking. Please contact Kris Skaro at kris.skaro@lottery.oregon.gov or 971-719-0794 for more information.

- ORS chapter 461 available at https://www.oregonlegislature.gov/bills_laws/ors/ors461.html.
- OAR chapter 177 available at <https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=153>.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Lottery estimates that the proposed amendment to OAR 177-050-0037 will not affect racial equity in Oregon. The rule change is a housekeeping change to align with current practice and the value of packs of Scratch-It Tickets. The Lottery does not currently collect racial demographic data about Scratch-It Ticket retailers. In the future, Lottery plans to collect such data to improve our ability to identify and mitigate disparate impacts. But, even with the lack of data, Lottery does not anticipate any negative or disparate racial impacts, as this is largely a housekeeping change relating to the threshold for security reviews of stolen packs of tickets from retailers.

FISCAL AND ECONOMIC IMPACT

The Lottery estimates no fiscal or economic impact to state agencies (including the Lottery), units of local government, or the public, including Lottery retailers. About 1,900 small businesses are subject to this rule, but the Lottery estimates no additional costs of compliance. See the Lottery's Cost of Compliance below for more information.

COST OF COMPLIANCE:

(1) Identify any state agencies, unit of local government, and members of the public likely to be economically affected by the rule(s).

The Lottery estimates that no state agencies, units of local government, or members of the public are likely to be economically affected by amending OAR 177-050-0037. The proposed change aligns with current practice and, therefore, the Lottery does not expect a fiscal impact as a result of the rule change. Additionally, retailers should not be affected because the rule change aligns with current practice.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

Businesses that contract with the Lottery to sell Scratch-It Tickets are subject to the rule. Currently, Lottery contracts with 1,918 businesses to sell Scratch-It Tickets and Lottery estimates that most of those businesses, but not all, are small businesses. (The Lottery does not have all the information needed to precisely estimate how many retailers are small businesses as defined in ORS 183.310, such as, but not limited to, the number of employees each Lottery retailer employs. However, it is Lottery's experience that most, but not all, Lottery retailers would meet the definition. General industry data on the types of businesses that tend to be Lottery retailers also supports the estimate that most, but not all, are small businesses. For example, the National Restaurant Association reports that 9 in 10 restaurants have fewer than 50 employees and IBIS reports that the average supermarket/grocery store has 33.6 employees. Source: <https://restaurant.org/research-and-media/research/industry-statistics/national-statistics/> and <https://www.ibisworld.com/industry-statistics/employment/supermarkets-grocery-stores-united->

[states/#:~:text=How%20many%20people%20does%20the,the%20US%20has%2033.6%20employees.](#)

The Lottery does contract with some large multi-state chain retailers who would not meet the definition, and thus, Lottery estimates most of the 1,918 are small businesses, but not all.)

The typical type of small business subject to the rule includes convenience stores, gas stations, grocery stores, supermarkets, and superstores or large multi-state chain retailers. Also, some bars and restaurants (like small cafes, limited-menu eateries, and delis) also sell Scratch-It Tickets along with Video Lottery games.

(b) Describe the expected reporting, recordkeeping, and administrative activities and cost required to comply with these rule(s);

OAR 177-050-0037 as currently adopted imposes certain reporting, recordkeeping, and administrative activities on businesses related to requesting partial credit for stolen tickets. However, the proposed amendment does not change the requirements or otherwise impose new costs on a business subject to the rule, and thus Lottery estimates no new costs of compliance.

(c) Estimate the cost of professional services, equipment supplies, labor, and increased administration required to comply with the rule(s).

As stated in (2)(b), OAR 177-050-0037 describes certain administrative activities for Scratch-it retailers who want to request partial credit; however, there are no new or additional compliance activities imposed by the proposed rule change, which simply lowers the dollar value threshold related to stolen tickets to align with current practice.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULES

The Lottery has not involved small businesses directly in the development of the rule; the rule change is intended to codify current practice as it relates to stolen tickets. Small businesses, including but not limited to Lottery retailers who sell Scratch-it Tickets, are invited and welcome to participate in the public rulemaking process. The Lottery plans to post the rulemaking notice on the retailer page of the Lottery's website, in addition to other notice opportunities, such as public meetings of the Oregon State Lottery Commission.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? IF NOT, WHY NOT?

No. The rule change merely codifies current practice and policy; therefore, Lottery did not think a Rule Advisory Committee was necessary. The Lottery welcomes comment during the rulemaking process.

CONTACT:

Kris Skaro
503-540-1181
kris.skaro@lottery.oregon.gov
500 Airport Rd SE
Salem, OR 97301

RULES PROPOSED:

AMEND: OAR 177-050-0037

RULE TITLE: Stolen, Destroyed, and Damaged Scratch-It Tickets

RULE SUMMARY:

The Lottery is proposing to amend OAR 177-050-0037 about stolen, destroyed, and damaged Scratch-It Tickets. One requirement in the rule is that the theft must result in a lost of \$200 or more of tickets. This requirement is proposed to be amended to \$150 or more to account for the fact that some packs of tickets are worth \$150.

The Lottery may make additional or alternative changes in response to public comment or information received during the rulemaking process. The Lottery may also make non-substantive updates the rule to improve grammar, organization, clarity, and accuracy; update terminology in a manner that does not change the meaning; and update the statutory authority and statutes implemented section of the rule.

RULE TEXT:

[177-050-0037](#)

Stolen, Destroyed, and Damaged Scratch-It Tickets

- (1) Defective, Damaged, or Destroyed Tickets: A Lottery retailer will not be billed for non-activated Scratch-itSM tickets that are defective, damaged, or destroyed, or the Lottery may credit a retailer's EFT account for activated Scratch-itSM tickets that are defective, damaged, or destroyed, under the following conditions:
 - (a) Manufacturing Defect: The defect is a result of a manufacturing error or damage during shipment; or
 - (b) Reasonable Control: The damage or destruction is due to circumstances beyond the retailer's reasonable control, such as a structure fire, flood, or other natural disaster; and
 - (c) Time Limitation: Damaged or defective Scratch-itSM tickets are returned to the Lottery within 30 days of discovering the damage or defect. When the Scratch-itSM tickets cannot be returned because they are completely destroyed or damaged beyond recognition, within 30 days of when the tickets were destroyed or damaged the retailer must submit, on a form provided by the Lottery, a signed and notarized affidavit which describes the circumstances of how the Scratch-itSM tickets were destroyed or damaged. The Lottery's Finance and Accounting department will review inventory and sales records and confirm the value of the destroyed or damaged Scratch-itSM tickets.
 - (d) Director's Approval: Credit for defective, damaged, or destroyed Scratch-itSM tickets may be given only upon approval of the Director.
- (2) Theft of Activated Tickets: The Lottery may credit a retailer's EFT account for one-half of the uninsured loss of activated Scratch-itSM tickets that are stolen from the retailer's premises subject to the following:

- (a) Loss Amount: The theft results in a loss of ~~\$200~~150 or more of activated Scratch-itSM tickets.
- (b) Security Measures: The retailer has in place and was using at the time of the theft, reasonable security measures to prevent the theft of Scratch-itSM tickets. The Director will, in the Director's sole discretion, determine if a retailer was using reasonable security measures at the time of the theft. For purposes of this rule, "reasonable security measures" means that at a minimum, the retailer:
 - (A) Approved Dispensers: Keeps Lottery Scratch-itSM tickets in Lottery approved dispensers, ITVMs, or stored in a locked container inaccessible to customers and unauthorized employees if the tickets are not yet being offered for sale;
 - (B) Inventory Control Process: Has an inventory control process in place, including adequate record keeping, Scratch-itSM ticket access controls, and ticket activation controls; and
 - (C) Accounting Procedures: Uses accounting or bookkeeping procedures that alert the retailer to the theft of activated Scratch-itSM tickets within seven business days of the theft.
- (c) Reporting Requirements: The retailer must:
 - (A) Report the theft to a local law enforcement agency and to the Lottery within 48 hours of discovering the theft. The report must include the game, pack, and Scratch-itSM ticket numbers of the stolen tickets; and
 - (B) Submit to the Lottery a copy of a police report showing the theft was reported to the local law enforcement agency.
- (d) Retailer Affidavit: The retailer must submit to the Lottery, on an affidavit form provided by the Lottery, a signed and notarized statement:
 - (A) Describing the circumstances of the theft, the game, pack, and Scratch-ItSM ticket numbers of the stolen tickets, the total loss claimed, and a statement whether the retailer is self-insured or is covered by third-party insurance; and
 - (B) The retailer must attach to the statement a copy of any documents substantiating the theft or loss, including, but not limited to, any inventory control records related to the stolen tickets and any financial records showing the monetary loss.
- (e) Third Party Insurance: If the loss is fully covered by third-party insurance, the retailer is not eligible to receive a credit for the stolen tickets. If the loss is not entirely covered by third-party insurance, then the retailer may receive a credit for one-half of the balance of the loss if the retailer provides a letter from the insurance company setting forth the amount of loss claimed by the retailer and the amount paid to the retailer by the

insurance company. The retailer must provide any other information needed by the Lottery to determine the amount of insurance coverage and the amount paid to the retailer for the loss.

- (f) Cooperation: The retailer must fully cooperate with the Lottery and provide any documents or information requested. The retailer must cooperate fully in the prosecution of any criminal case resulting from the theft of the tickets or in any civil lawsuit for recovery of the amount of the loss paid to the retailer by the Lottery under this rule.
 - (g) Restitution from Criminal Prosecution of Judgment in Civil Action: The Director will not credit the retailer's EFT account for any amount of the loss that a court orders repaid as restitution or that is awarded to the retailer in a civil judgment or settlement. The Director may delay crediting the retailer for the loss claimed until criminal proceedings related to the theft of the tickets are concluded. The Lottery may recover from the retailer any amount ordered as restitution in a criminal case or received by the retailer pursuant to a civil judgment or settlement agreement.
 - (h) Employee Theft: In no event will the Director authorize credit to a retailer when the retailer is the victim of employee theft.
 - (i) Time Limitation: Notwithstanding the 48-hour reporting requirement of subsection (c) of this section, the Director may authorize a credit upon a showing that the failure to timely report was beyond the retailer's reasonable control. In no event will a retailer receive a credit for a theft that occurred more than 30 days prior to the date that the retailer reported the theft to the Lottery and the local law enforcement agency as set forth in subsection (b) of this section.
 - (j) Limit on Credit Amount: In no event may a retailer receive credit for a loss resulting from theft in an amount greater than \$2500 during the term of the retailer contract.
- (3) Theft of Non-Activated Tickets: The Lottery will not bill a retailer for Scratch-itSM tickets received but not activated that are stolen from the retailer's premise if the theft results in the loss of ~~\$200~~150 or more of non-active Scratch-itSM tickets and the retailer complies with the requirements of subsections (2)(b) through (2)(h) of this rule. The limitations set forth in subsections (2)(g) through (2)(j) of this rule apply to the theft of non-activated Scratch-itSM tickets.

Statutory/Other Authority: ~~Or Const., Art. XV, & Sec. § 4(4)(a)~~, [ORS 461.120, 461.190, 461.210, 461.260, 461.300](#)

Statutes/Other Implemented: [Or Const, Art XV, § 4\(4\), ORS 461.120, 461.190, 461.210, 461.260, 461.300](#)