



Memo

Date:	November 9, 2023
To:	Oregon State Lottery Commissioners
From:	Kris Skaro, rules and policy analyst
Subject:	Motion to Adopt OAR 177-040-0055 (use of “lottery” in retailer’s assumed business name)

Background:

Recently, a retailer wanted to change their assumed business name to include the word “lottery.” (For example, “Food Mart & Lottery.”) The Lottery believes that a retailer using “lottery” in their assumed business name negatively impacts the FISH because it may create a form of advertising outside of the Lottery’s control (see ORS 461.220) or run afoul of Lottery’s responsibilities under problem gambling statutes (see ORS 461.820). However, it is not currently prohibited in rule or the retailer contract.

The retailer in question decided not to change their assumed business name. However, Lottery was advised to add the prohibition in rule if Lottery intends to enforce this restriction going forward. Therefore, Retail Contracts proposed to amend OAR 177-040-0055 to prohibit the use of the word “lottery” in a retailer’s assumed business name or any other term the Lottery Director has determined threatens the fairness, integrity, security, and honesty of the Lottery or that otherwise conflicts with Lottery’s legal obligation to advertise responsible and promote responsible gaming practices and messages.

Rulemaking Process and Public Comment:

The Lottery filed notice of the proposed rule change on September 15, 2023 with the Oregon Secretary of State and notified interested parties, media contacts, certain legislators, and the Lottery retailer email list serve. The Lottery provided six weeks for the public to comment in writing and held a public hearing on Monday, October 16, 2023 to take comments over Teams.

The Lottery received four written comments. The comments were provided to Director Wells and the Commission for their consideration. The comments are summarized in the enclosed Rulemaking Report.

Enclosures and Director's Recommendation:

The rulemaking report and draft Permanent Administrative Order are enclosed. Director Wells has reviewed the enclosed materials and considered all comments received. He recommends the Commission adopt the rules as presented to be effective December 1, 2022.

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



Rulemaking Report

Date:	Monday, October 30, 2023
Prepared By:	Kris Skaro, rules and policy analyst
Rule Caption:	Prohibiting use of certain terms in Lottery retailer’s assumed business name

Overview

This report summarizes the rulemaking process for the proposed amendment to OAR 177-040-0051 about advertising lottery games and inducements to play. The amendment would prohibit retailers from using the word “lottery” in their business name or other term the director determines is a threat to the fairness, integrity, security, and honesty of the Lottery or that conflicts with Lottery’s obligation to advertise responsibly and promote responsible gaming practices and messaging.

Notice of Proposed Rulemaking

The Lottery filed a Notice of Proposed Rulemaking with the Oregon Secretary of State on September 15, 2023. The notice indicated that Lottery proposed to:

Amend: [OAR 177-040-0055](#), Advertising Lottery Games and Inducements to Play

Rulemaking Timeline

Date	Rulemaking Activity
9/15/23	Lottery filed a Notice of Proposed Rulemaking with the Oregon Secretary of State.
9/15/23	Lottery notified interested parties, legislators, and media.
9/22/23	Proposed rule listed on Commission agenda. Draft rule and notice included in public meeting materials. Lottery presented proposed rule to Commission.
9/25/23	Notified Lottery’s retailer email list serve that includes most but not all current retailers.
10/1/23	Notice published in the Oregon Bulletin.
10/16/23	Lottery held a public rulemaking hearing.
10/27/23	Written comment period closed at 5 p.m.
11/17/23	Lottery will present the final recommended rule to the Commission and ask the Commission to adopt as presented. The rulemaking report and draft Permanent Administrative Order with final proposed rule text will be included in the public meeting materials.
TBD	Lottery will file the Permanent Administrative Order with the Oregon Secretary of State if approved by the Commission.
12/1/23	Proposed rule will be effective.

Public Comment Opportunities and Summary of Comment Received

The Lottery provided six weeks for the public to comment in writing. The Lottery also held a public rulemaking hearing on October 16, 2023.

The Lottery received four written comments by email. The comments were provided to Director Wells and Commissioners for their review and consideration. To summarize for this report, two retailers wrote to support the rule change. One member of the public opposed the change as a violation of free speech. One former Lottery retailer wrote to express negative view of Lottery's approach to retailer compliance and contract termination, but they did not comment specifically on the proposed rule changes, except to say a rule is not needed.

Director's Recommendation and Commission Motion to Adopt

Director Wells reviewed the rule and considered all comment received. He recommends the Commission adopt the rule as presented to the Commission on November 17, 2023 to be effective on December 1, 2023.

Enclosure

Draft Permanent Administrative Order showing final recommended rule text.

PERMANENT ADMINISTRATIVE ORDER

CHAPTER 177
OREGON STATE LOTTERY

FILING CAPTION: Prohibiting use of certain terms in Lottery retailer's assumed business name

EFFECTIVE DATE: 12/01/2023

AGENCY APPROVED DATE: Pending Commission approval

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AMEND: 177-040-0055

RULE TITLE: Advertising Lottery Games and Inducements to Play

RULE SUMMARY: The Lottery is amending OAR 177-040-0055 about advertising Lottery games and inducements to play. The amendment prohibits retailers from using the word "lottery" in their assumed business name or other term the Director has determined is a threat to the fairness, integrity, security, and honesty of the Lottery or that conflicts with Lottery's responsible advertising and responsible gaming practices. The Lottery also made non-substantive housekeeping edits and updated the statutory sections of the rule.

RULE TEXT:

177-040-0055

Advertising Lottery Games and Inducements to Play

(1) Prohibitions:

- (a) A retailer ~~must~~ may 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 Lottery retailer's business.
- (b) A retailer may not use the word "lottery" in its assumed business name or any other term that the Director otherwise determines, in their sole discretion, is a threat to the fairness, integrity, security, and honesty of the Lottery or conflicts with Lottery's legal

obligation to advertise responsibly and promote responsible gaming practices and messaging.

- (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.
- (a) 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.
 - (b) 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 ~~ie~~ ensuring 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.
 - (c) 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.
- (3) Inducements: For purposes of this section:
- (a) Credit and Credit Cards: A Lottery 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.
 - (b) Loans: A Lottery retailer shall not provide any form of financial assistance to a Video LotterySM player for the purpose of playing Lottery games. An example of providing financial assistance to a Video LotterySM player includes, but is not limited to, a loan of money for any amount of time for the purpose of playing Lottery games.
 - (c) Alcohol: A Lottery retailer shall not provide alcoholic beverages as an inducement to play Lottery games.

Statutory/Other Authority: ~~Or Const., Art. XV, & Sec. § 4(4)(a), ORS 461.120, 461.300~~

Statutes/Other Implemented: ~~Or Const, Art XV, § 4(4)(a), ORS 461.120, 461.300, ORS 461.150, 461.220, 461.820~~