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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

LOTT 3-2020
CHAPTER 177
OREGON STATE LOTTERY

FILED
05/14/2020 10:01 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Requirements for re-enabling Video Lottery terminals during COVID-19 state of emergency

EFFECTIVE DATE: 05/14/2020 THROUGH 11/09/2020

AGENCY APPROVED DATE: 05/14/2020

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NEED FOR THE RULE(S):

On March 17, 2020, Governor Brown issued Executive Order 20-07 prohibiting on-site consumption of food and drink at restaurants, bars, and other food establishments statewide to protect public health during the COVID-19 state of emergency.

In response, on the same day, the Lottery disabled all Video Lottery terminals (VLT) to align with the social distancing and restrictions of patrons on the premises required by the order. (VLTs are only placed in OLCC-licensed establishments such as bars, restaurants, and taverns.)

After paying prizes, Video Lottery games generate about \$19 million per week. The loss of Video Lottery game proceeds, thus, represents a significant economic loss to the Lottery, Video Lottery retailers, and the public programs that rely on Lottery funding.

Governor Brown announced in early May 2020 that counties meeting certain criteria could apply, beginning May 8, 2020, to enter "Phase One" of reopening, which would allow for the slow resumption of some sectors of economic activity in alignment with public health guidance issued by the Oregon Health Authority (OHA). The OHA "Phase One Reopening Guidance" issued May 7, 2020, includes protocols that are specific to the safe operation of VLTs and states that the Lottery will not re-enable VLTs until the Lottery is satisfied that each VLT can be operated and maintained safely and consistent with the OHA guidance.

The Lottery, therefore, will play an active role in the reopening phases of this public health emergency. This rule is needed to provide transparency and further guidance to retailers and the public on the enabling and management of VLTs during the various phases of reopening in order to support the safe, timely, and orderly resumption of Video Lottery games in Oregon counties that are reopening. This rule meets those needs by: committing the Lottery to

enforcing VLT-specific guidance from OHA; explaining the retailer responsibilities related to VLTs' operations to protect public health concerns and maintain social distancing; and describing how the Lottery will respond to reports of non-compliance and possible consequences for failure to comply.

JUSTIFICATION OF TEMPORARY FILING:

The Lottery finds that failure to act promptly to adopt this rule will result in serious prejudice to the Lottery, Video Lottery retailers and their patrons, and the public programs that rely on Lottery funding. Failure to clearly commit to actively enforce the OHA guidance about safe operation of VLTs and to clearly communicate requirements to Video Lottery retailers could delay the Lottery's ability to safely re-enable VLTs in counties that are approved to reopen because retailers may be unclear about how to implement the OHA requirements and how to protect the health of their patrons. Each day of delay will compound the economic loss to the Lottery, Video Lottery retailers, and the public programs that rely on Lottery funding.

The Lottery's ability to meet its constitutional mission to raise money for important public programs requires the prompt and safe reintroduction of Video Lottery games in Oregon counties that are ready and able to safely and slowly resume normal economic activity. Additionally, many Video Lottery retailers (bars, restaurants, taverns, etc.) have suffered significant economic losses during the public health emergency and these business owners and their employees will benefit when Video Lottery games can be safely reintroduced in counties that have been authorized to begin a safe and slow phased return to normal economic activity. The health and safety of Lottery retailer patrons will also be protected by providing clear guidance on the placement and operation of VLTs as a requirement for re-enabling the machines.

Therefore, the Lottery needs to take action to immediately adopt this rule because the rule supports the safe, timely, and orderly resumption of Video Lottery games in Oregon counties that are ready to reopen by implementing the OHA VLT-specific guidance through the communication of specific requirements to retailers and ensuring the Lottery may actively manage VLTs to protect public health and safety while raising revenue for important public programs.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- Executive Order 20-07 available at https://www.oregon.gov/gov/Documents/executive_orders/eo_20-07.pdf.
 - Executive Order 20-12 available at https://www.oregon.gov/gov/Documents/executive_orders/eo_20-12.pdf.
 - "Phase One Reopening Guidance; Specific Guidance for Restaurants, Bars, Breweries, Brewpubs, Wineries, Tasting Rooms and Distilleries" issued by the Oregon Health Authority on May 7, 2020, and available at <https://govstatus.egov.com/or-covid-19>.
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ADOPT: 177-040-0049

RULE SUMMARY: The Lottery is adopting OAR 177-040-0049 to address the management of Video Lottery terminals (VLTs) during the state of emergency by clarifying that the Lottery will not re-enable any VLT until the Lottery is satisfied the VLT can be placed, operated, and maintained consistent with any COVID-19 restrictions that are in place at any given time during the state of emergency. The rule explains retailer requirements, explains that Lottery may prioritize among retailers, and describes how reports of non-compliance will be handled and possible consequences for failure to comply.

CHANGES TO RULE:

Video Lottery Terminal Management During State of Emergency

(1) Consistent with the Lottery retailer contract obligation to comply with applicable laws, Video Lottery retailers must comply with COVID-19 restrictions during any state of emergency declared by the Governor related to COVID-19, and continuing for 60 days after the termination of the state of emergency unless this rule is suspended by the Director.¶

(a) The Lottery will notify Video Lottery retailers of any COVID-19 restrictions related to the placement, operation, and maintenance of Video Lottery terminals, including, but not limited to, requirements related to physical distance or separation between Video Lottery Terminals and patrons, recommended protocols for cleaning or sanitizing Video Lottery terminals or other Lottery equipment, or limitations on access to or hours of operation of the Video Lottery terminals.¶

(b) The Lottery will work with Video Lottery retailers to place, operate, and maintain Video Lottery terminals in a manner that complies with COVID-19 restrictions. Subject to Lottery personnel availability and re-enabling prioritization determinations described in this rule, the Lottery will review requests and, if approved, schedule resources to move Video Lottery terminals. Per paragraph (2)(b)(B) of this rule, the Lottery may determine that some Video Lottery terminals must remain disabled to maintain required physical distance between operating machines and players.¶

(c) For purposes of this rule, the term "COVID-19 restrictions" means any statutes, rules (including this rule), directives, orders, or guidance related to Executive Order 20-07, Executive Order 20-12, the state of emergency declared March 8, 2020, and subsequent extensions, and any new orders that are intended to protect and maintain public health in relation to the COVID-19 virus and that are applicable to Lottery retailers and the operation of Video Lottery terminals or offering of Video Lottery games.¶

(2) Requirements to re-enable Video Lottery terminal operation in a retailer.¶

(a) The Lottery may re-enable Video Lottery terminals placed in a retailer's premises only when the premises is located in a county approved by the Governor to enter a reopening phase and the Lottery is satisfied that Video Lottery terminals are placed and will be operated and maintained consistent with COVID-19 restrictions that are in effect.¶

(A) Video Lottery retailers must provide information requested by the Lottery related to the placement, operation, and maintenance of Video Lottery terminals and the general operation of retailer's business and premises, including a physical description or pictures of the premises that may include, but is not limited to, square footage and occupancy limits, as requested by the Lottery.¶

(B) Prior to enabling any Video Lottery terminals located in a retailer's premises, and ongoing thereafter if needed to confirm compliance with COVID-19 restrictions, the Lottery may conduct an on-site examination of the premises.¶

(b) All determinations made relating to the re-enabling of Video Lottery terminals shall be made by the Lottery in its sole discretion. These determinations may include, but are not limited to, the timing and location of which retailers to re-enable and which specific Video Lottery terminals at a retail location to re-enable.¶

(A) In prioritizing among retailers, the Lottery may consider a variety of factors including, but not limited to, revenue potential, geographic location, the retailer's willingness or ability to comply with COVID-19 restrictions, and staffing, logistical, and technical limitations and considerations.¶

(B) The Lottery may determine that some Video Lottery terminals must remain disabled to maintain required physical distance between operating machines and players.¶

(3) Grounds for disabling Video Lottery terminals. The Lottery may disable Video Lottery terminals located on a retailer's premises for any of the following reasons:¶

(a) The Lottery needs to disable Video Lottery terminals to align with COVID-19 restrictions, such as, but not limited to, new or revised restrictions on on-premise consumption of food or drinks.¶

(b) The Lottery has reason to believe the retailer is not willing or able to operate Video Lottery terminals in a manner consistent with the COVID-19 restrictions then in effect.¶

(c) The retailer is unable or unwilling to provide information requested by the Lottery under this rule or pursuant

to the retailer contract.¶

(4) Handling Reports of Non-compliance. If the Lottery receives a report that a retailer is failing to comply with COVID-19 restrictions, the Lottery will provide written notice to the retailer as soon as is practicable. The Lottery may conduct an on-site inspection, contact the retailer for information, or immediately disable one or more Video Lottery terminals depending on the seriousness of the report, in addition to any other remedies available under the retailer contract. If the Lottery disables any Video Lottery terminals for non-compliance, Lottery may re-enable the terminals if it determines any non-compliance has been eliminated.

Statutory/Other Authority: OR Const. Art. XV, ¶ 4(4)(a), ORS 461.120, 461.130, 461.217, 461.300

Statutes/Other Implemented: OR Const. Art. XV, ¶ 4, ORS 461.020, 461.120, 461.130, 461.150, 461.200, 461.215, 461.217, 461.300, 461.500, 461.544, 461.547