



Memo

Date: December 10, 2020
To: Oregon State Lottery Commissioners
From: Kris Skaro
Subject: Motion to Adopt OAR 177-010-0105, Restriction of Access

Background

At the October Commission meeting, the Lottery proposed a draft rule to outline the process for those rare circumstances when Lottery needs to restrict a person's access to the Lottery for security concerns. The proposed rule, OAR 177-010-0105, explains the types of conduct that could lead to a person's access being restricted; requires written notice and an opportunity to appeal; and requires regular internal review of any restrictions.

Rulemaking Process

The Lottery has completed the public rulemaking process on the proposed rule, including notifying interested parties, certain legislators, and media contacts, taking written comments for four weeks, and holding a virtual public rulemaking hearing. The process is documented for the public and the Commission in the enclosed Rulemaking Report, along with final rule text.

Public Comment/Rule Updates

The Lottery received one written comment that has been provided in full to the Commission and Director Pack for consideration. To summarize for the record, the comment objected to the rule and said only a third party should be allowed to restrict a person's access to the Lottery. The rule was updated in response to this comment to notify a person of their right to request a contested case proceeding under ORS chapter 183. A final order in such a proceeding would be eligible for judicial review, thus providing an avenue for impartial, third-party review of Lottery's actions under the rule. (The new language is at the very end of the rule in paragraph (5)(c)(C).)

We also made some minor edits recommended by Lottery's legal counsel and clarified that the rule only applies to Lottery premises and does not apply to Lottery retailer premises.

Director's Recommendation

Director Pack has reviewed the rule, considered all comment received, and recommends adoption of the rule as reflected in the materials.

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

Rulemaking Report

Explaining the requirements for restricting a person's access to Lottery premises

Notice of Proposed Rulemaking

The Lottery filed a Notice of Proposed Rulemaking with the Secretary of State on October 26, 2020, indicating that the Lottery proposed to adopt OAR 177-010-0105, Restriction of Access, to ensure access to otherwise public Lottery buildings is restricted only under certain limited circumstances and that the restriction is issued in a fair and transparent manner.

Rulemaking Timeline for the Record

- Record of Commission Communication:
 - Rules presented to the Commission at a public meeting: **10/23/20**
 - This report, public comment, and final rules emailed to the Commission: **12/4/20**
 - Commission consideration of motion to adopt rules: **12/18/20**
- Filed Notice with Secretary of State: **10/26/20**
- Notice published in Secretary of State Bulletin: **11/1/20**
- Notice sent to Interested Parties and certain legislators (email): **10/26/20**
- Notice sent to Interested Parties and Capitol Press (postal mail): **10/27/20**
- Public Rulemaking Hearing: **11/17/20 @ 10 – 11 a.m.**
- End of Five Week Written Comment Period: **11/30/20 @ 5 p.m.**

Public Comment Opportunities and Summary

The Lottery provided one month for the public to submit written comment on the rule. The Lottery received one written comment, which was provided in full to the Commission and Director for consideration. To summarize for the report, the comment said only a third party should make decisions regarding restricting a person's access to Lottery. In response to the comment, the Lottery amended the proposed rule to notify a person of their right to request a contested case proceeding under ORS chapter 183. The final order in such a proceeding is eligible for judicial review, thus providing an avenue for objective, third-party review of Lottery's actions under the rule. **The Lottery also held a virtual public rulemaking hearing, but no one appeared at the hearing to provide testimony.**

Director's Recommendation

The Director has reviewed the enclosed rule and considered all comment received. The Director recommends the Commission permanently adopt OAR 177-010-0105 as presented in this final rulemaking report, to be effective on January 1, 2021.

Enclosures:

1. Permanent Administrative Order including final rule text.

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**PERMANENT ADMINISTRATIVE ORDER
CHAPTER 177 OREGON STATE LOTTERY**

FILING CAPTION: *Explaining the requirements for restricting a person's access to Lottery premises*

EFFECTIVE DATE: 1/1/2021

AGENCY APPROVED DATE: *Pending Commission approval on 12/18/20*

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RULES:

177-010-0105

ADOPT: 177-010-0105

RULE TITLE: Restriction of Access

RULE SUMMARY: The Lottery is adopting OAR 177-010-0105 to explain the circumstances under which the Lottery would consider issuing a formal restriction of access to ensure the safety and security of Lottery premises, employees, players, and members of the public. To ensure restrictions of access are implemented fairly, the rule explains the type of safety concerns that could lead to a restriction of access; designates persons who are authorized to issue a restriction of access; requires written notice to persons whose access is restricted; provides for an appeals process; and requires regular internal review of restrictions to ensure continued need. The Lottery made minor amendments during the public rulemaking process, including to notify a person of their right to request a contested case proceeding under ORS chapter 183.

RULE TEXT:

177-010-0105

Restriction of Access

- (1) To ensure the safety and security of Lottery premises, employees, operations, and visitors to Lottery facilities and property, the Oregon State Lottery may issue a restriction on access to an individual who has committed prohibited conduct as described in this rule.
- (2) For the purposes of this rule, the following definitions apply:
 - (a) "Prohibited conduct" means conduct that presents or appears to present a threat to the safety or security of Lottery property, employees, visitors, or operations. "Prohibited conduct" includes any conduct regardless of where or when it occurs, so long as the

prohibited conduct presents a reasonable threat to the Lottery or Lottery personnel. Examples of prohibited conduct include, but are not limited to:

- (A) Causing or threatening to cause physical injury to employees or visitors;
 - (B) Engaging in actions which compromise the safety and health of employees or visitors;
 - (C) Causing or threatening to cause harm to the family or property of an employee or visitors through written, electronic, or verbal communication;
 - (D) Causing or threatening to cause damage to premises;
 - (E) Bringing a deadly or dangerous weapon onto the premises, unless authorized by ORS chapter 166;
 - (F) Displaying, attempting, or threatening to use any weapon, on or off Lottery premises, that compromises the safety of employees or visitors;
 - (G) Engaging in harassment as defined in ORS 166.065; and
 - (H) Engaging in telephonic harassment as defined in ORS 166.090.
- (b) "Restriction of access" means the Oregon State Lottery has limited an individual's access to specific Lottery premises, employees, or methods of communication. For purposes of this rule, "Lottery premises" means buildings owned or operated by the Oregon State Lottery and does not include a Lottery retailer's premises.
- (c) "Restricted individual" means any person, including, but not limited to, a Lottery employee or former employee, who is subject to a restriction of access pursuant to this rule.

(3) **Issuance:**

- (a) Prior to issuing a restriction of access, the Lottery will make an individualized assessment as to whether the prohibited conduct is a result of a disability of which the Lottery has knowledge and whether the conduct is a "direct threat" to others. If the Lottery determines the disabled individual's conduct is not a direct threat, the Lottery will explore the possibility of a reasonable accommodation to mitigate the safety risk.
- (b) The restriction of access must be approved by the director or the assistant director for security. In the event of their absence or unavailability, their designee may approve a restriction of access.
- (c) The restriction of access is effective upon approval and remains in effect until the Lottery determines the individual no longer poses a threat and issues an official notification of removal of the restriction of access.

- (4) **Notice:** An individual who is subject to a restriction of access may be notified verbally of the restriction and must also be provided written notice by certified mail or other traceable means. For purposes of this rule, Lottery provides notice to an individual on the date on which the Lottery issues the written notice to the individual by mail or other traceable means. The written notice must include:
- (a) The conduct giving rise to the restriction;
 - (b) The specific premises or parts of the premises from which the individual is excluded or the forms of communication which are restricted;
 - (c) The alternate method by which Lottery services may be obtained by the individual and contact information for services or appointment scheduling if applicable;
 - (d) The availability of the review process described in this rule and notification that individuals with disabilities are entitled to request modification;
 - (e) The potential criminal consequences for violating the notice of restriction of access; and
 - (f) The law enforcement agency being notified.
- (5) **Review:**
- (a) The Lottery will regularly conduct internal review(s) to ensure a notice of restriction of access is and/or remains warranted.
 - (b) The recipient of a notice may request review of the Lottery's determination. The request must be in writing and submitted, by mail or personal delivery, within 15 business days of the date of issuance of the notice of restriction of access and delivered to the office of the director of the Lottery. If the request is submitted by mail, it must be postmarked within 15 business days. No particular format is required for the request for review; however, the individual must include specific grounds for requesting the review.
 - (c) Upon receipt of a request for review, the Director or their designee will review the request and issue a written decision within 14 calendar days of receipt of the request for review. The review may include an informal conference or other alternative resolution options.
 - (A) The Lottery's decision is final.
 - (B) If the decision favors the individual, the restricted individual's access restriction will be immediately lifted. If the decision is unfavorable to the restricted individual, the restricted individual may seek further review after six months have lapsed since the date of issuance by following the process described in this policy.

- (C) An individual may request a contested case proceeding pursuant to ORS chapter 183 by filing a request for a contested case hearing within 30 calendar days of the date of the Lottery's decision under this section.

Statutory/Other Authority: OR Const. Art. XV § 4(4)(a), ORS 461.120

Statutes/Other Implemented: OR Const. Art. XV § 4(4), ORS 183.415, 461.010, 461.020, 461.050, 461.100, 461.120, 461.150, 461.190