



Memo

Date:	February 11, 2022
To:	Oregon State Lottery Commissioners
From:	Kris Skaro, rules and policy analyst
Subject:	Motion to Adopt OAR 177-040-0001 (alternative disclosure for tribally owned businesses and subsidiaries)

Background:

On December 6, 2021, Director Pack adopted a temporary rule to allow retailer applicants that are wholly owned by a federally recognized tribe to be eligible for the Lottery's alternative disclosure process. Without this change, the scope of required personal disclosure for this type of business under Lottery's rules was unclear and this was a barrier to moving forward with pending retailer applications from tribally owned businesses. With this change, the Lottery may, with the Director's recommendation and Commission's approval, focus disclosure on those individuals who will be most directly involved with the business and sale of Lottery products.

Tribal Consultation:

The Lottery determined that this change to policy and practice may affect and be of interest to the nine federally recognized tribes in Oregon. Therefore, prior to adopting this change, the Lottery requested consultation with tribal representatives in October and again in December. During the consultation, the Lottery received feedback that has been incorporated into the final rule change.

Public Rulemaking Process:

The Lottery filed notice of the proposed rule change with the Oregon Secretary of State on December 17, 2021, and notified interested parties, media contacts, and certain legislators. The Lottery provided six weeks for the public to comment in writing and held a public hearing via Zoom on January 18, 2022. The Lottery did not receive any public comment during the public rulemaking process.

Enclosures and Director's Recommendation:

The final rulemaking report and Permanent Administrative Order are enclosed. Director Pack has reviewed the enclosed materials and recommends the Commission amend OAR 177-040-0001 and repeal OAR 177-040-0001(T) as shown in the enclosed materials to be effective March 1, 2022.

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



Final Rulemaking Report

Clarifying process for waiving disclosure for Lottery retailer applicants and making Tribally owned applicants eligible

Notice of Proposed Rulemaking

The Lottery filed Notice with the Secretary of State on December 17, 2021, indicating that the Lottery proposed to amend OAR 177-040-0001 to clarify the timing of the Lottery's process for waiving disclosure pursuant to ORS 461.300(2)(b) and to make businesses that are tribally owned eligible for alternative disclosure. This makes permanent (with minor modification) a temporary rule adopted on December 6, 2021:

Amend: OAR 177-040-0001 – *General Application Requirements*

Repeal: OAR 177-040-0001(T) – *General Application Requirements*

Rulemaking Timeline

- Inform Commission: **12/17/21**
- Filed Notice with Secretary of State/Open Written Comment Period: **12/17/21**
- Notice sent to Interested Parties, Capitol Press, and legislators: **12/20/21**
- Notice published in Secretary of State Bulletin: **1/1/22**
- Public Rulemaking Hearing: **1/18/22 @ 10 a.m.**
- End of Written Comment Period: **1/31/22 @ 5 p.m.**
- Request Commission Adoption: **2/18/22**

Tribal Consultation

The Lottery requested tribal consultation on 10/28/21 and 12/10/21. In response, a tribal representative recommended clarifying the language to cover subsidiaries, who will have the same scope-of-disclosure issues as businesses that are directly owned by a tribe. That recommendation is reflected in the final rule text.

Public Comment Opportunities and Summary

The Lottery provided six weeks for the public to comment in writing. The Lottery also held a public rulemaking hearing via Zoom on January 18, 2022. The Lottery did not receive any public comment during the public rulemaking process.

Director's Recommendation and Enclosures

The Permanent Administrative Order is enclosed and shows the final rule text. The Director has reviewed the rule and recommends the Commission permanently adopt the rule as presented to be effective on March 1, 2022.

PERMANENT ADMINISTRATIVE ORDER

CHAPTER 177
OREGON STATE LOTTERY

FILING CAPTION: *Clarifying process for waiving disclosure for Lottery retailer applicants and making Tribally owned applicants eligible*

EFFECTIVE DATE: 03/01/2022

AGENCY APPROVED DATE: Pending Commission approval

CONTACT:

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AMEND: 177-040-0001

RULE TITLE: General Application Requirements

RULE SUMMARY: The Lottery is amending OAR 177-040-0001 about retailer application requirements to make permanent temporary changes adopted on December 6, 2021. The rule as amended allows applicants that are tribally owned (including an entity that is wholly owned by a federally recognized tribe or a subsidiary of an entity wholly owned by a federally recognized tribe) to qualify for waiver of otherwise required disclosures as described in ORS 461.300(2)(b) when such waivers are determined to not jeopardize the fairness, integrity, honesty, or security of the Lottery and pursuant to the director's recommendation and Commission approval.

Additionally, the Lottery is amending OAR 177-040-0001 to change the sequence of events in the alternative disclosure process. (This change was adopted by temporary rule on December 6, 2021.) Specifically, under the rule changes, the director's recommendation and the Commission's approval or denial occur prior to the start of the disclosure and background investigation process. As previously written, the alternative disclosure process and background investigation were completed prior to obtaining Commission approval, which created a risk of reversals or surprises late in the contract application, disclosure, and background investigation processes.

Lastly, the Lottery is amending OAR 177-040-0001 to update its citations to statutory authority and statutes implemented.

RULE TEXT:

177-040-0001

General Application Requirements

- (1) General: Any person may request an application from the Lottery.
- (2) Disclosure Required: The Director may require any degree or type of disclosure necessary of the applicant or any other person in order to ensure the fairness, integrity, security, and honesty of the Lottery. An applicant must disclose to the Lottery all information required by the Director.
- (3) Application Required: An applicant must file a complete application with the Oregon Lottery. The applicant must provide a complete personal disclosure, including documents and other information requested by the Lottery relating to the applicant's personal, financial, and criminal background and an applicant's associations with other persons. The application shall also include, but not be limited to:
 - (a) Authorization: An authorization, signed by the applicant, to investigate the applicant.
 - (b) Consent: Written consent to allow the examination of all accounts and records to be considered by the Director to be material to the application.
 - (c) Disclosure: Disclosure of the source of funds, financing, and business income used for the purchase and operation of the applicant's business.
 - (d) Premises Ownership: If the premises are not wholly owned by the applicant, the applicant shall furnish to the Lottery:
 - (A) Any document requested by the Lottery showing the applicant is entitled to possession of the premises; and
 - (B) Such other information as the Lottery may require.
- (4) Alternative Disclosure Process: Notwithstanding section (3) of this rule, pursuant to ORS 461.300(2)(b), the Director may recommend, subject to Commission approval, an alternative disclosure process for an applicant when the Director determines such a process would not jeopardize the fairness, integrity, security, and honesty of the Lottery.
 - (a) The following applicants are eligible for an alternative disclosure process:
 - (A) Large Public Companies or Multi-State Retail Chains: If an applicant for a traditional lottery game retailer contract is a public company or a multi-state chain retailer that is applying for a traditional lottery game retailer contract that meets the following additional criteria of:
 - (A*i*) 30 or more individual retail locations; ~~and~~

(Bii) Gross annual revenues of \$10 million or more; and

(Ciii) 300 or more employees;

~~then the Lottery may use an alternative disclosure process that has been approved by the Lottery Commission as authorized under ORS 461.300(2)(b). This alternative disclosure process will focus its disclosure requirements on the public company or the multi-state chain itself. Using supplied disclosure information, the Lottery will conduct an investigation. The Director may determine at any time that additional disclosure is necessary to ensure the fairness, integrity, security, and honesty of the Lottery.~~

~~(B) An entity wholly owned by a federally recognized tribe; or a subsidiary of an entity wholly owned by a federally recognized tribe.~~

(b) ~~The alternative disclosure process recommended by the Director must be approved by the Commission must approve the alternative disclosure process recommended by the Director: After the Lottery's Security Section has completed its investigation of an applicant under the alternative disclosure process, the Director may request that the Commission waive the personal disclosure requirements for an applicant that successfully passes the alternative disclosure process.~~

(A) ~~If Approved: If by the Commission, the Director may continue the retailer application process approves the waiver; Using supplied disclosure information, the Lottery will conduct an investigation. The Director may determine at any time that additional disclosure is necessary to ensure the fairness, integrity, security, and honesty of the Lottery. the Director may then enter into a contract with the applicant.~~

(B) ~~If Denial: If denied by the Commission, does not approve the waiver alternative disclosure process, the applicant must provide the personal disclosure otherwise required under the Lottery's governing statutes and rules, and if the Director concludes based on that disclosure that the applicant is not a potential threat to the fairness, integrity, security, and honesty of the Lottery, the Director may then enter into a contract with the applicant.~~

(5) Waiver of Personal Disclosure for Certain Managers: If the applicant for a traditional lottery game retailer contract is a public company or a multi-state retail chain, the Lottery may waive the personal disclosure requirements for the manager of each retailer location unless the Director determines such disclosure is necessary to ensure the fairness, integrity, security, and honesty of the Lottery.

(6) Compliance Required: An applicant's failure to comply with any application or disclosure requirement may be grounds for denial or rejection of the application.

(7) Material Change: An applicant must immediately report to the Lottery, in writing, any material changes to the application during the application process. A "material change" means any

change that may affect the Lottery's evaluation of the application based on the requirements contained in Division 40 of these rules.

- (8) Waiver: In submitting an application, the applicant expressly waives any claim against the State of Oregon, its agents, officers, employees, and representatives, and the Oregon State Lottery, its Director, agents, officers, employees, and representatives for damages that may result. Each applicant also accepts any risk of adverse public notice, embarrassment, criticism, damages, or claims which may result from any disclosure or publication by a third party of any public information on file with the Lottery.

Statutory/Other Authority: [OR Const., Art. XV, & Sec. § 4\(4\)\(a\), ORS 461.120, 461.130, 461.150, 461.190, 461.200, 461.217, 461.300](#)

Statutes/Other Implemented: [Or Const, Art XV, §4\(4\), ORS 461.010, 461.020, 461.100, 461.110, ORS 461.120, 461.130, 461.150, 461.190, 461.200, 461.217, 461.300](#)