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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 462

OREGON RACING COMMISSION

FILED

03/07/2023 1:20 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amends 462-001-0008 to provide further explanations, timelines and removes outdated language

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/25/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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PO Box 366
Gresham, OR 97030

Filed By:
Karen Parkman
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/20/2023

TIME: 11:00 AM - 11:15 AM

OFFICER: Charles Williamson

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-853-5927

CONFERENCE ID: 87394427339

SPECIAL INSTRUCTIONS:

Via ZOOM

NEED FOR THE RULE(S)

Agency legal counsel recommendations to provide further explanations, timelines and removes outdated language.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Agency counsel was relied upon. Working documents stored electronically and available upon request.

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

No affect

FISCAL AND ECONOMIC IMPACT:

No impact

COST OF COMPLIANCE:

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

rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

No cost to comply

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Advisory committee was not consulted. Amendments are recommended by agency counsel to provide clarity and timelines. Removes outdated language.

AMEND: 462-001-0008

RULE SUMMARY: Amends Rule 462-001-0008 to provide further explanation, timelines and removes unnecessary or out dated language.

CHANGES TO RULE:

462-001-0008

Hearing Request and Answers; Consequences of Failure to Answer ¶¶

(1) A ~~hearing request~~Request for Hearing and a ~~Answer~~ shall be made in writing to the ~~eExecutive dDirector of the~~ commission and mailed to P.O. Box 366 Gresham, OR 97030 or faxed to (971) 673-0213; or email to orc.info@orc.oregon.gov by the party or the party's attorney. To be considered timely, a request for a hearing and answer must:¶

(a) Be in writing; and¶

(b) Be received by the commission within ~~ten (10)~~the number of calendar days from the date the Notice was served.¶

(2) ~~If an answer is required in the Notice, it shall include the following:¶~~

~~(a) An admission or denial of each factual matter alleged in the Notice~~mailed/served by the commission, as set forth in the commission's statutes and where appropriate, in the Administrative Procedures Act, for each class of hearing:¶

(A) If pursuant to ORS 462.090(1), (2) and (5) the commission notice provides for right to a hearing before a proposed revocation, or provides for right to a hearing before a proposed suspension, or provides for right to a hearing before assessment of a proposed civil penalty - the Request for Hearing and Answer must be received by the commission within 21 days of the service of the commission notice per ORS 183.415(2);¶

(B) If the commission notice provides for right to a hearing before a proposed refusal to issue or to renew a license per ORS 462.075 or ORS 462.090(1) or (2) - the Request for Hearing and Answer must be received by the commission within 60 days of service of the commission notice per ORS 183.435;¶

~~(bC) A short and plain statement of each relevant affirmative~~If the commission notice is sent in the form of an order of suspension that does not provide for right to a hearing before the suspension goes into effect (an emergency suspension other than a reciprocal emergency suspension permitted in subsection v. below or an ADW emergency suspension permitted in subsection vi. below) - the Request for Hearing and Answer must be received by the Commission within 90 days of service of the commission notice~~defense the party may have; and per ORS 183.430(2); ¶~~

(D) If any person is excluded/ejected from a race course on an emergency basis then the person has 10 days from the date of the exclusion/ejection to submit a Request for Hearing and Answer to the commission per ORS 462.080;¶

~~(eE) A short~~If a licensee's license is suspended by another state or country for violation of its racing and plain statement identifying each legal issue the party may have.¶

(3) A request for extension of time in which to file an answer to the Notice shall be submitted in writing and must be received by the commission within ten (10) calendar days from the date the Notice was served. Extensions shall be granted only upon a showing of good cause.¶

(4) Any amegaming laws then, pursuant to ORS 462.090(3), the commission may issue an order emergency

suspending the licensee's license and the licensee may, within ten days of the mailing of the commission's suspension order, request an immediate (within 30 days) hearing;¶

(F) If an ADW has placed moneys belonging to members of the public at risk, then notwithstanding ORS 183.430(1) the commission may, per ORS 462.735(1), issue an order emergency suspending or refusing to renew the ADW licensee's license - the Request for Hearing and Answer must be received by the Commission within 90 days of service of the commission order; ¶

(G) If an ADW has intentionally violated federal or Oregon law or commission rules then, notwithstanding ORS 183.430(1), the commission may per ORS 462.735(2), after providing at least 14- days-notice of its intent to act, issue an order emergency suspending or refusing to renew the ADW licensee's license - the Request for Hearing and Answer must be received by the Commission within 90 days of service of the commission order. ¶

(2) A Request for Hearing and Answer shall be deemed untimely if it is received by the commission after the close of business (5:00 p.m.) on the last calendar day of the above set forth appropriate notice period calculated from the date the Notice was mailed to the respondent by the commission, and shall be deemed a default by the party. Unless the commission determines that Respondent had good cause for the late filing of Respondent's answers must be submitted in writing and must be received by the commission not less than 21 days prior to the contested case hearing. Request for Hearing and Answer the commission may issue a final order by default. Good Cause is defined in OAR 137-003-0003 (1) (a) and is implemented through OAR 137-003-0528.¶

(3) The Answer shall include the following:¶

(a) An admission or denial of each factual matter alleged in the Notice;¶

(b) A short and plain statement explaining each admission or denial of a factual matter alleged in the Notice;¶

(c) A short and plain statement of any new facts being alleged; and ¶

(5d) Except for good cause: A short and plain statement identifying each relevant legal theory the party wishes to assert in their defense. ¶

(a4) Factual matters alleged in the Notice and not denied in the aAnswer shall be presumed admitted; ¶

(b5) Failure to raise a particular factual defense or legal issuetheory in the aAnswer will be considered a waiver of such factual defense or legal issue;¶

(c) New matters raised in the answer that wtheory (affirmative defenses). Evidence shall not, therefore, be taken on any affirmative defense not raised in the Notice and the Answer. A new matter not alleged in the Notice (Answer as an affirmative defenses), but later raised, for example, in a Motion For Summary Determination or at Hearing, shall be presumed to be denied by the eCommission; and. ¶

(d6) Evidence shall not be taken on any issue not raised in the NoticeThe party or party's attorney may amend a Response and the aAnswer. ¶

(6) A hearing request An Amended Response and aAnswer shall be deemed untimely if it is received by the commission after the close of business (5:00 p.m.) on or after the 10th calendar day from the date the Notice was mailed, and shall be deemed a default by the party. Unless the commission determines that the late filing was beyond the control of the party, the commission may issue a final order by default. must be submitted in writing and must be received by the commission not less than 21 days prior to the Hearing.¶

(7) A request for extension of time in which to file an answer to the Notice shall be submitted in writing and must be received by the commission within ten (10) calendar days from the date the Notice was served

Statutory/Other Authority: ORS 462

Statutes/Other Implemented: ORS 183.413