

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN

SECRETARY OF STATE

CHERYL MYERS

DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK

DIRECTOR

800 SUMMER STREET NE

SALEM, OR 97310

503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 462
OREGON RACING COMMISSION

FILED

03/06/2023 1:12 PM

ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amends OAR 462-130-0040 clarifies suspension language and increases consequences for unpaid fines.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/20/2023 12:00 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.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT: Karen Parkman

503-853-5927

karen.parkman@orc.oregon.gov

PO Box 366

Gresham, OR 97030

Filed By:

Karen Parkman

Rules Coordinator

NEED FOR THE RULE(S)

Recommended by Agency counsel

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Electronically stored. Available upon request.

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

No impact

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 with development.

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

No need. Recommendation provided by agency legal counsel.

AMEND: 462-130-0040

RULE SUMMARY: Amends OAR 462-130-0040 clarifies suspension language and increases consequences for unpaid fines.

CHANGES TO RULE:

462-130-0040

Formal Stewards Hearing ¶

(1) If the board of stewards has reason to believe that a violation has occurred, they may hold a formal hearing after providing written notice to the licensee. The written notice shall:¶

- (a) Cite the statutes or rules which were allegedly violated.¶
- (b) Briefly describe the time, place, and nature of the alleged violation(s).¶
- (c) Identify the type of penalty or sanction which may be imposed.¶
- (d) Specify the time and place of the hearing, at least three calendar days after service of the notice excluding Saturdays, Sundays, and legal holidays, unless all parties agree to an earlier time.¶
- (e) State that the licensee may be represented by an attorney licensed to practice in the state of Oregon.¶
- (f) Be personally served within the timeline set forth in OAR 462-130-0040(1)(d) or mailed by first class mail to the current address on file for the licensee at least ten days prior to the hearing. (2) If given the option by the board of stewards, the licensee may waive the right to a formal stewards' hearing by signing a waiver agreeing to the penalty or sanctions listed on the waiver. By signing the waiver the licensee waives the right to appeal the penalty to the commission, as provided by OAR 462-130-0050.¶

(3) If the licensee does not sign a written waiver, the board of stewards shall hold a formal hearing. At least two stewards shall be present. The fact finding portion of the hearing shall be open. The state steward or designee shall preside, and within reason, shall allow all available evidence to be presented, without regard for technical rules of procedure or rules of evidence. All witnesses must testify under oath. The hearing may be recorded. After hearing the evidence and any closing statements, the stewards may deliberate in private before making a decision. Unless the charges are dismissed, the decision shall be put in the form of a written order either finding the licensee guilty of a violation or referring the case for a formal commission hearing or a combination thereof. If the licensee is found guilty of a violation, the order shall:¶

- (a) Identify the licensee by name and license classification.¶
- (b) Identify the specific statutes or rules violated.¶
- (c) Set forth the findings of fact which establish the violation(s).¶
- (d) Indicate the penalty or sanctions to be imposed, and when they are to go into effect.¶
- (e) Inform the licensee of the right to appeal to the commission and to request a stay pending appeal as provided in OAR 462-130-0050.¶

(4) ~~Notification to the licensee of a written order, for the purpose of this rule, will include efforts to contact the licensee by commission staff using the Efforts by Commission staff to notify the licensee that the Board of Stewards has issued its written order will include, using whatever contact information is supplied by the licensee on his/hettheir license application. Thereafter, copies shall be sent to the commission and posted to mail, email, text, and telephone the licensee to apprise them of the issuance of the written order. In addition, the Board of Stewards shall send a copy of the written order to the commission and the Board of Stewards shall post a copy of the written order in a designated area at the racecourse for a period of two racing days. Fines assessed in the written order must be paid within ten calendar days of the effective date of the written order. Failure to pay an assessed fine within the time limit described by this rule may result in the additional sanction of a suspension of up to 30 days after the fine is paid in fullduration also being imposed. If a 30-day suspension period is imposed for failure to timely pay the assessed fine, the 30-day suspension will continue to run for the full 30-day suspension period - even if the licensee pays the assessed but previously unpaid fine in full before the experation of the 30-day suspension peroid.~~¶

(5) The licensee may still appeal the matter to the commission for a formal commission hearing, and for good cause may request that the commission executive director stay the stewards' penalty pending the commission hearing. The executive director has discretion whether or not to grant the stay.¶

(6) Any licensee who fails to appear before the stewards after having been given notice by the stewards, a racing official, or an investigator of the commission, in accordance with these rules or by any ruling or order which has been issued and published directing such appearance, may be suspended and the case may be referred to the

commission. Failure to appear in response to such order shall be a separate cause for disciplinary action.

Statutory/Other Authority: ORS 462.270(3)

Statutes/Other Implemented: ORS 462.405