



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 462
OREGON RACING COMMISSION

FILED

03/06/2023 1:39 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amends OAR 462-130-0070 to reflect change of address for the agency.

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)

Amends OAR 462-130-0070 to reflect change of address for the agency.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Electronically stored 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?

AMEND: 462-130-0070

RULE SUMMARY: Amends OAR 462-130-0070 to reflect change of address for the agency.

CHANGES TO RULE:

462-130-0070

License Reinstatement ¶¶

(1) Application.¶¶

(a) Any person who was licensed by the commission but whose license was revoked, or whose license was surrendered while under investigation or while pending a disciplinary proceeding, and who desires to become relicensed by the commission must make application for reinstatement by:¶¶

(A) Completing a license reinstatement form provided by commission staff, along with a completed license application and fee, and¶¶

(B) Otherwise complying with this rule.¶¶

(b) The application shall contain sufficient information on its face or on accompanying documents so that the commission may make an informed decision regarding:¶¶

(A) The applicant's reformation,¶¶

(B) The applicant's remorse for the conduct and character deficiencies that caused the disciplinary action,¶¶

(C) The applicant's current good moral character,¶¶

(D) The applicant's general fitness to engage in the activities required by the type of license, including, without limitation, the licensee's willingness to abide by the statutes, rules, regulations and orders relating to racing in Oregon, and¶¶

(E) Whether the applicant's presence in places under the jurisdiction of the commission may be detrimental to the best interests of racing.¶¶

(2) Ineligibility. A person will be presumed ineligible for reinstatement of any license if that person's license was revoked or was surrendered while under investigation or pending a disciplinary proceeding, based upon the following allegations:¶¶

(a) Fixing or attempting to fix a race on which pari-mutuel gambling was intended to be conducted or attempting to manipulate the odds.¶¶

(b) Training any racing animal using a live animal or a dead animal or a part of a live or dead animal as a lure.¶¶

(c) Committing animal abuse in the first degree, animal neglect in the first degree, or involvement in animal fighting or in dog fighting, if any such charges are proven by at least a preponderance of the evidence or the person was convicted, plead guilty or entered a no contest plea.¶¶

(d) Stealing, extorting or misappropriating money from any source under the direct control of or owned by the commission, or from a race track's money room or extension thereof, or from any race meet account held in trust for another or from any nonprofit organization whose purpose is to benefit members of the racing industry or racing animals.¶¶

(e) Committing any misdemeanor or felony person crime if directed against a person who is a commissioner, commission legal counsel, an employee of the commission, or an agent of the commission, racing official or employee of the race meet licensee engaged in that capacity.¶¶

(3) Procedure.¶¶

(a) An application for reinstatement of license shall not be accepted by commission staff for at least two years after the license has been revoked or surrendered unless a different time period is specified by the commission at the time of the revocation or surrender.¶¶

(b) The application shall be filed ~~in~~with the commission office at P.O. Box 366, Gresham, OR 97030, or faxed to (971) 673-0213; or emailed to orc.info@orc.oregon.gov and reviewed and investigated by commission staff.

Except for good cause shown, no less than 90 days after receipt of the application, the board of stewards shall make a recommendation to the commission concerning the applicant's compliance with these rules and whether or not the applicant appears to have met the criteria for reinstatement.¶¶

(c) If the board of stewards recommends reinstatement, the application shall be forwarded to the commission for consideration. If the commission denies the application, it shall comply with ORS 183.435.¶¶

(d) The commission will require a greater quantum of evidence to support reinstatement of a license after revocation (or surrender while under investigation or pending a disciplinary process) than is required of initial applicants or for issuance of licenses under other circumstances. The applicant for reinstatement shall have the burden of proving by clear and convincing evidence that the applicant meets the criteria required by this rule and

also has the burden of producing evidence in support of the applicant's position. If the applicant produces evidence which meets the burden of proof, and it is not overcome by evidence to the contrary, then the applicant will be reinstated, however, nothing in this rule precludes the commission from issuing a license with conditions attached.¶¶

(e) The commission may impose such conditions as, in its judgment, will tend to prevent a reoccurrence of a situation similar to the applicant's prior problem. The reinstated license may be subject to such conditions for a reasonable period of time considering all the circumstances. If the applicant obeys all laws, rules and the conditions of licensure for the prescribed period of time, the license will be restored fully without conditions. The order granting a conditional license may state that breach of any of the conditions will result in loss of license without the right to a prior hearing.¶¶

(f) If the board of stewards does not recommend reinstatement, the applicant shall be notified of this recommendation in writing. Applicant has the right to request a hearing under ORS 183 before an administrative law judge and subsequent commission consideration of the adverse recommendation. The appeal must be in writing and filed with the commission offices at Portland State Office Building, 800 NE Oregon Street, Suite 310, Portland, Oregon 97232, O. Box 366, Gresham, OR 97030, or faxed to (971) 673-0213; or emailed to orc.info@orc.oregon.gov, within ten days from the effective date of the board of stewards' recommendation. The appeal must be signed by the appealing party and shall set forth clearly and concisely the following information:¶¶

(A) The recommendation to be reviewed and the date thereof.¶¶

(B) The reason for the appeal.¶¶

(C) The address to which any notices from the commission may be mailed to the appealing party.¶¶

(4) Criteria. The following factors must be proven to the commission by clear and convincing evidence in favor of the applicant in order to support reinstatement of license:¶¶

(a) Applicant has reformed and is now possessed of good moral character. Applicant may meet this burden by proving that applicant is a person who possesses the sense of ethical responsibility and the maturity of character to withstand the many temptations which the applicant will confront in and around the race course and other sites under the jurisdiction of the commission. Stronger proof of good character is required to reinstate a license where a character flaw was earlier established in the case or investigation against the applicant.¶¶

(b) Applicant must identify the character flaw which led to the conduct which resulted in the revocation or surrender of license. Applicant must prove that the character flaw no longer exists or is under control by applicant; i.e., applicant is reformed with respect to the particular flaw.¶¶

(c) Applicant must present evidence that his or her presence at places under the jurisdiction of the commission will not be detrimental to the best interests of racing. Many of the other criteria, if met, will tend to prove this factor, but other evidence may be required. If the applicant has performed activities for the public good or for the good of members of the racing community during the time that applicant was not licensed, that is some evidence that applicant's presence may not be detrimental to the best interests of racing.¶¶

(d) Applicant acknowledges wrongdoing, has taken responsibility for his or her misconduct, and shows sincere remorse for that misconduct. Evidence that demonstrates that the applicant has not made excuses, has not blamed others and has not criticized the administrative process and the courts and has cooperated in the investigation which led to the revocation or surrender is the type of evidence that shows acknowledgement of wrongdoing and misconduct; but this list is not exclusive. Evidence of remorse is more subjective and the demeanor of the applicant and any oral testimony or written references of other witnesses generally will be relevant.¶¶

(e) If applicable in the particular case, resolution of substance abuse problems, personal financial problems and medical, mental and emotional problems which did or may have contributed to the revocation or surrender. Applicant must show general fitness to perform the functions required by the particular licensed position without substantially altering the nature of the job.¶¶

(f) Willingness to pay restitution to those who were injured or victimized by applicant's prior conduct resulting in the disciplinary action, as well as other similar conduct for which applicant is responsible. This criterion is best met by paying restitution that equitably should be paid.¶¶

(g) Willingness to comply with the statutes, rules, regulations and orders relating to racing in Oregon.

Statutory/Other Authority: ORS 462.270(3)

Statutes/Other Implemented: ORS 462.075