

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



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
03/01/2024 11:24 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Removes conflicting language from OAR462-130-0010 Prohibited conduct, investigations & discipline.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/22/2024 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)

Removes conflicting language

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Stewards rule committee. Documents stored electronically at the agency.

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

No Affect

FISCAL AND ECONOMIC IMPACT:

None

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).

None

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

No need for small business to be involved. Does not affect small businesses.

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

No need. Amendment removes conflicting language.

AMEND: 462-130-0010

RULE SUMMARY: Removes conflicting language for prohibited conduct, investigations, discipline.

CHANGES TO RULE:

462-130-0010

Prohibited Conduct; Investigations; Discipline ¶¶

(1) No person (including licensees) shall:¶¶

- (a) Incite, encourage, instruct, assist, or cause or attempt to cause another person to engage in any violation of ORS Chapter 462 or any rule of the commission, or to commit any prohibited act in relation to racing in another racing jurisdiction.¶¶
- (b) Offer or accept any form of compensation for cashing a pari-mutuel ticket for another.¶¶
- (c) Direct any personally offensive language, inappropriate gesture or sign, profanity, obscenity, or abusive epithets toward any racing official or employee of the commission at any place under the jurisdiction of the racing commission.¶¶
- (d) Take any action upon a racecourse that creates or causes a clear and present danger of violence.¶¶
- (e) Initiate any physical altercation with another person on a racecourse.¶¶
- (f) Threaten another person with physical harm or probable physical harm.¶¶
- (g) Refuse to obey reasonable orders or directions of a racing official, security personnel of the race meet licensee or Oregon Racing Commission employees.¶¶
- (h) Sell or offer to sell tip sheets or any other written, electronic or oral predictions as to the outcome of races at any place under the jurisdiction of the commission unless licensed to do so by the commission.¶¶
- (i) Gamble, bet, or wager on a racecourse except as authorized by the State of Oregon.¶¶
- (j) Except for the race meet licensee, solicit any wagers from the public.¶¶
- (k) Give or offer to give any bribe directly or indirectly, to any licensee, racing official, commission member or employee, or any other person having official duties in relation to any race, racecourse, or racing animal.¶¶
- (l) Tamper or attempt to tamper with an animal, or apply or aid in applying to an animal or possess on a racecourse any electrical or mechanical device or prohibited medication intended to affect the performance of an animal.¶¶
- (m) Possess a hypodermic needle or usable injectable syringe on which a needle may be attached on a racecourse, except veterinarians or veterinarian assistants licensed by the Oregon Racing Commission. On a racecourse, veterinarians may use only one-time disposable needles, and shall dispose of them appropriately, according to Oregon Veterinary Medical Examining Board standards. If a person has a medical condition which makes it necessary to have a syringe on the racecourse, that person must request permission of the stewards in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to have a syringe on the racecourse, and must comply with any conditions and restrictions set by the stewards.¶¶
- (n) Administer, offer to administer, or allow to be administered to any racing animal any prohibited drug or medication, or an unauthorized quantity of an approved drug or medication.¶¶
- (o) Alter or forge a prescription for medication for a racing animal, or any legal document including but not limited to: a bill of sale, a claim blank, a license application, a treatment form, a registration certificate, ownership registration certificate, lease certificate, a check, or a license application.¶¶
- (p) Impersonate any racing official, commission member or employee, or any other person having official duties in relation to any race, racecourse, or animal in any manner including forging any of these individuals' names or initials on any document.¶¶
- (q) Submit or knowingly allow to be submitted to the commission, commission personnel, racing secretary or any racing animal registry, any report or document or application which contains false or misleading information.¶¶
- (r) Mar or alter any identification mark on a racing animal.¶¶
- (s) With the exception of commission staff and racing officials in the conduct of official business, use cell phones in the paddock, jockeys' room, test barn enclosure/area and on the racing surface when the area is actively in use.¶¶
- (t) Smoke inside the test barn/storage area, under the covered portion of the stables, including stalls, tack rooms, shedrow, or in designated "No Smoking" areas.¶¶
- (u) Use any tobacco products or have food or beverages in the designated testing areas.¶¶
- (v) Test barn commission staff is permitted to have food or beverages in specified areas only under the following conditions:¶¶
- (A) Test barn staff is to be free of food residues on their person and to wash their hands prior to testing horses or

handling samples.¶

(B) Food or beverage items that contain prohibited substances are not permitted in the test barn enclosure.¶

(w) Possess on a racecourse any deadly weapon or firearm, a BB gun, blow gun, pellet gun or similar device, except law enforcement officers, commission officials and security personnel.¶

(x) While employed by the race meet licensee, racing commission or acting as a racing official, wager at the racecourse where employed or working, while on duty, or ask any other person to place a bet on their behalf. This includes individuals working under contract with the race meet licensee during the racing program and the employees of contractors of the race meet licensee who are working during the racing program.¶

(y) Allow any person under the age of eighteen (18) years to place or collect a wager. Race meet licensee shall turn over to the proper civil authorities any person who violates this rule, to be punished upon conviction of any such violation, according to law. This rule shall be posted conspicuously at entrance gates and throughout wagering areas. The license of any employee participating in any transaction relative to wagering with persons under the age of eighteen (18) years may be summarily, suspended or revoked.¶

(z) Move, nominate or enter to race a racing animal on a racecourse except with express permission of the trainer, racing secretary, owner, stall superintendent or the stewards.¶

(aa) Submit any animal in their charge to cruel or inhumane treatment. Cruel or inhumane treatment includes, but is not limited to:¶

(A) Inadequate food, shelter and water as defined by typical industry standards for those animals kept in similar climates and conditions;¶

(B) Neglect in any manner, including adequate veterinary care and attention when necessary;¶

(C) Conditions which cause the animal unnecessary physical pain or suffering;¶

(D) Prohibited conduct described in ORS 167.310 to 167.388 in the form the statute provided on the effective date of this rule.¶

(bb) Commit theft or buy, sell or possess any stolen property, or buy, sell or possess any illegal contraband.¶

(cc) Illegally influence or conspire, or attempt to influence or conspire, to affect the result of any race or manipulate the odds in which an animal participates.¶

(dd) Violate any written agreement entered into with the Oregon Racing Commission, the board of stewards or any other commission employee as a result of an order of the commission or stewards.¶

(ee) Engage in any lewd, obscene, indecent, or inappropriate conduct¶

(2) No licensee shall:¶

(a) Enter for official racing, official schooling, start, cause or allow to be entered or start, a racing animal that the licensee knows or should know does not meet all entry requirements.¶

(b) Come onto a racecourse or participate in a race meet while suspended, excluded or ruled off by the official body of any racing jurisdiction unless otherwise ordered by the board of stewards or the Oregon Racing Commission.¶

(c) Knowingly harbor or otherwise enable the unlawful presence of any individual who is suspended or revoked by the official body of any racing jurisdiction or excluded by the race meet licensee.¶

(d) Fail to immediately notify the racing secretary when the licensee discovers that any entry or starting requirement for a racing animal under the licensee's control is not met or is no longer being met.¶

(e) Allow or cause a scratch to become necessary, which could have been avoided by the exercise of reasonable care.¶

(f) Fail to request a scratch immediately upon learning that a scratch is necessary.¶

(g) Solicit, offer or accept any bribe in any form, directly or indirectly, to or from any person, in connection with any race meet in any racing jurisdiction which is a member of Association of Racing Commissioners International (ARCI). A conviction is not required in order to prove a violation of this rule.¶

(h) Commit any corrupt, fraudulent, or unlawful act on any racecourse or in connection with any race meet in any racing jurisdiction which is a member of ARCI.¶

(i) Fail to cooperate with commission personnel, officials or security personnel when requested to comply with these statutes and rules relating to racing.¶

(j) Fail to report to the stewards' office promptly upon request.¶

~~(k) Be intoxicated or under the influence of controlled substances in a restricted area or on duty.¶~~

~~(l) Lodge a frivolous complaint.¶~~

~~(m) Knowingly allow an unlicensed person to participate in a race meet if the licensee knows or should know that the person is required to be licensed.¶~~

~~(n) Fail to properly escort unlicensed individuals after registering them with security personnel as guests.¶~~

~~(o) Fail to immediately report to the commission the unlicensed participation in a race meet of any person who the licensee knows or should know is required to be licensed.¶~~

~~(p) Fail to report promptly to a commission representative any possession or use of a prohibited drug, prohibited medication or prohibited paraphernalia.¶~~

(ep) Fail to notify the commission in writing of a change of officer, director, stockholder (except for publicly traded corporations), or partner, within 30 days, if the change occurred during a race meet, or prior to the next race meet, if the change occurred after a race meet.¶

(fg) Ride a horse on the racecourse without properly wearing an approved helmet and vest.¶

(sr) Retain any prize or purse money which the person has reason to know was paid in error or lost because of disqualification or commission action as a result of an appeal.¶

(ts) If an owner, assistant trainer, groom or other person having charge, custody or care of a racing animal, fail to protect the racing animal and guard it against the administration of unauthorized drugs or any other illegal conduct.¶

(ut) Direct, by use of language, gesture or sign, any profanity, obscenity or abusive epithets toward the public at a racecourse.¶

(vu) Direct any personally offensive language, inappropriate gesture or sign, profanity, obscenity, or abusive epithets toward any person while in view of the public.¶

(wv) Allow anyone other than participating jockey, authorized racing officials, representatives of the commission, licensed valets and authorized licensed vendors in the jockey room between two hours before post time for the first race of the day and one hour after the last race without consent of the stewards for each time of entry.¶

(xw) Other than a licensed jockey agent, make engagements for a jockey. A jockey may make his/her own engagements if not represented by a jockey agent.¶

(yx) Engage in any dishonest conduct on a racecourse.¶

(zy) Engage in any unprofessional conduct on a racecourse.¶

(aaz) Willfully and deliberately fail or refuse to pay any monies when due for any service, supplies or fees connected with their operations as a licensee; nor shall a licensee falsely deny any such amount due or the validity of the complaint thereof with the purpose of hindering or delaying the payment of the debt or defrauding the person to whom the indebtedness is due.¶

(baa) Write, issue, make or present any check in payment for any license fee, fine, nomination or entry fee or other fees, or for any service or supplies when such licensee knows or should reasonably know that the said check will be refused for payment by the bank upon which it is written, or that the account upon which the check is written does not contain sufficient funds for payment of the said check, or that the check is a stop payment check or is written on a closed account or a nonexistent account. The fact that such a check is returned to the payee by the bank as refused, constitutes a rebuttable presumption for a finding of financial irresponsibility.¶

(ebb) Except in cases deemed appropriate by the board of stewards, no person shall enter the stalls, shed row, tack rooms, feed sheds or the immediate adjacent area of the locations, unless the person has prior approval of the trainer to whom the locations are assigned by the association. This rule does not apply to racing officials, investigators of the commission, security officers, employees or agents of the association who are on duty, law enforcement or fire protection officers, or employees, agents or representatives of the trainer to whom the locations are assigned.¶

(3) Substance Abuse:¶

(a) Alcohol Consumption: No licensee may have present within his/her system an amount of alcohol which would constitute being intoxicated, defined as .08% blood alcohol content or greater, while in a restricted area. No jockey, apprentice jockey, valet, assistant starter, pony person, exercise person, or racing official may have present within his/her system an amount of alcohol which would constitute being impaired, defined as .02% or greater blood alcohol content, while responsible for performing their official duties.¶

(A) Any licensee may be required to take a breath alcohol test prior to their participation in racing events.¶

(B) Acting with reasonable suspicion, the stewards, or a designated Racing Commission representative, may direct any licensee to submit to a breathalyzer test to determine blood alcohol content.¶

(C) Refusal to take a breath test will be considered as positive evidence of a violation of subsection (3)(a).¶

(D) Sanctions for Alcohol Violations¶

(i) Penalties for a first offense may result in a fine and/or a suspension up to 15 days. The licensee may be required to present an evaluation by a certified rehabilitation program approved in advance by the commission. If the evaluation determines treatment is needed, the licensee shall provide documented proof of completion or current enrollment in an appropriate certified rehabilitation program prior to reinstatement.¶

(ii) Penalties for a second offense may result in a fine and suspension up to 30 days. The licensee may be required to present an evaluation by a certified rehabilitation program approved in advance by the commission. If the evaluation determines treatment is needed, the licensee shall provide documented proof of completion or current enrollment in an appropriate certified rehabilitation program prior to reinstatement.¶

(iii) Penalties for third and subsequent offenses shall result in a fine and suspension for no less than 90 days. The licensee shall be required to present an evaluation by a certified rehabilitation program approved in advance by the commission. If the evaluation determines treatment is needed, the licensee shall provide documented proof of completion or current enrollment in an appropriate certified rehabilitation program prior to reinstatement.¶

- (iv) A history of substance abuse violations other than alcohol may be considered as aggravating circumstances when considering penalties for alcohol abuse, and may result in penalties greater than those listed in these rules.¶
- (b) Drugs/Controlled Substances: No licensee within any place under the jurisdiction of the racing commission shall have in the licensee's body any controlled substance or drug listed in Schedules I through V of 21 USC Section 812 except for a drug which was obtained or taken pursuant to a valid legal written prescription or order from a licensed physician acting in the course of the physician's professional conduct and which is produced by the licensee upon request.¶
- (A) Acting with reasonable suspicion, the stewards, or a designated racing commission representative, may direct any licensee observed in a restricted area or any racing official acting in their capacity to submit to drug testing for analysis. When so directed, said licensee shall submit to such examination. If the result of the test indicates the presence of a controlled substance as delineated above, or if the person refuses to be tested, either for reasonable suspicion or under random testing criteria, or if the specimen was adulterated as reported by the official testing laboratory, the person may be fined and/or suspended as described in this rule. If the laboratory determines that the sample is dilute, the licensee being tested shall be required to submit another urine sample. To ensure the sample will not be dilute, the licensee will be required to report for testing at a specified time and remain until the sample is acquired.¶
- (B) Controlled Substance Testing Expense: Except for split samples, laboratory analysis will be performed at the racing commission's expense, unless pursuant to a prior order of the stewards or commission reinstating the licensee, or the person produced an adulterated specimen, in which case retesting may be performed only after the person pays the cost of the first test to the commission.¶
- (C) Sanctions for Controlled Substance Violations¶
- (i) A licensee's first violation may in a fine and/or suspension. If suspended, reinstatement shall not occur until the licensee has been evaluated by, and a current written report is received from, a drug counselor certified by the State of Oregon and who is approved in advance by the commission or stewards. If the report states that treatment is required, reinstatement shall not occur until the licensee presents documented proof of current enrollment in or completion of an appropriate certified rehabilitation program approved in advance by the commission. Reinstatement is also subject to licensee producing at licensee's expense, a negative test from a laboratory approved in advance by the commission, and the licensee agreeing in writing to submit urine specimens at the request of the stewards, or designated racing commission representative, for not less than five years, or until no longer licensed. Any failure to comply with the certified counselor's and/or stewards' instructions may result in immediate suspension.¶
- (ii) A licensee's second violation within five years of the first violation shall result in an indefinite suspension and reinstatement shall not occur until the licensee completes all of the contingencies listed above in subsection (i).¶
- (iii) A licensee's third violation within seven years of the second violation shall result in a suspension of up to 365 days and may include referral to the commission for consideration of exclusion and/or revocation of the license.¶
- (iv) A history of alcohol abuse violations may be considered as aggravating circumstances when considering penalties for drug abuse violations and may result in penalties greater than those listed in these rules.¶
- (D) Prescription Medication:¶
- (i) Any licensee who has obtained a medical prescription for any drug listed in Schedules I through V of 21 USC Section 812 may be required to furnish the Commission or the stewards written documentation from the issuing physician that the use of the prescribed drug will not impede the licensee from performing the duties for which they are licensed or threaten the safety or welfare of others or a racing animal.¶
- (ii) If, in the opinion of the board of stewards, the use of any lawfully prescribed drug listed in Schedules I through V of 21 USC Section 812 would or could pose a threat to the health, safety or welfare of the licensee, others or a racing animal, the board of stewards, after having an appropriate hearing, can bar the licensee from entering a restricted area of any racecourse or their handling of any race animal subject to appeal.¶
- (E) Knowledge of a person's voluntary and active participation in an approved rehabilitation program will not constitute grounds for "reasonable suspicion" under this rule.¶
- (4) Any licensee who violates any provision of ORS Chapter 462 or any rule adopted there under is subject to further discipline by the board of stewards, up to the limits imposed by law, and also is subject to further discipline by the racing commission, including suspension, revocation, civil penalties, exclusion, probation, and such other discipline as may be appropriate in the case. Whenever a licensee is suspended, the stewards have the commission's authority to also exclude him or her. Any non-licensee who, in the opinion of the stewards, acts in a manner detrimental to racing may be subject to exclusion.¶
- (5) When grounds exist for suspension of a license, the stewards or commission may also impose other appropriate sanctions including, but not limited to, forfeiture of purse, return of prizes, ruling off, or forbidding entry of racing animals.¶
- (6) When a license is suspended, it may be suspended for all categories licensed, including reciprocity suspensions.¶

(7) Ejection. The race meet licensee may eject any person from the race course for any reasons and in any manner that is not contrary to law. The race meet licensee shall notify the commission within 24 hours of any ejection or arrest occurring on the racecourse, including the details thereof.¶

(8) All licensees shall report any known irregularities or wrong doings by any person immediately to a commission employee and cooperate in subsequent investigations.

Statutory/Other Authority: ORS 462.270(3)

Statutes/Other Implemented: ORS 462.270