

OFFICE OF THE SECRETARY OF STATE

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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

04/09/2024 2:06 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updates retention schedule for account holder's records.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/29/2024 10:00 AM

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.

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Filed By:
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NEED FOR THE RULE(S)

Establishes retention schedule

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Advance Deposit Wagering Committee Discussion. Electronically stored with 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):

Small business were not involved or affected.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 462-220-0030

RULE SUMMARY: Updates retention schedule for account holder's records.

CHANGES TO RULE:

462-220-0030

Approval of the License for a Hub Operation ¶¶

(1) Prior to operating a hub, the entity must submit a completed application on commission provided forms to: Oregon Racing Commission, P.O. Box 366, Gresham, OR 97030; or fax the application to: (971) 673-0213; or email the application to: orc.info@orc.oregon.gov for a license, and be granted a license, from the commission, to conduct simulcasting and pari-mutuel wagering in accordance with ORS 462.725 and these rules as a "Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub." ¶¶

(a) A license may range from one to five years in length and the length should be so noted in the application submitted. ¶¶

(b) The current, daily licensing fee is to be remitted no later than June 30th preceding the July 1 start of each year licensing has been granted or is being requested. Upon request from a hub entity the executive director shall permit the hub entity to make semiannual or quarterly payments of the daily licensing fee with the first payment due no later than June 30. ¶¶

(2) An applicant for a "Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub" license must provide the following information as part of the application thirty days prior to the scheduled commission meeting at which the application is to be presented: ¶¶

(a) The applicant's legal name; ¶¶

(b) If the applicant is a corporation, the names, addresses, dates of birth of its shareholders, directors and officers; if a shareholder is a corporation the date of incorporation, the place of incorporation and the names, addresses, and dates of birth of its shareholders, directors and officers must be provided; ¶¶

(c) If the applicant is a partnership the names, addresses, dates of birth of the partners; if a partner is a corporation the date of incorporation, the place of incorporation and the names, addresses, and dates of birth of its shareholders must be provided; ¶¶

(d) If the applicant is a corporation ultimately owned by a not-for-profit entity without any shareholders, or is a publicly traded corporation, the information required in subsection (2)(b) and (2)(c) of this rule shall be required from the directors of the membership organization, or the directors and officers of the publicly traded corporation, in lieu of the shareholders; ¶¶

(e) The names of the race tracks the applicant, or its agent, has contracts with that allow the applicant to provide the simulcast signals and pari-mutuel wagering on the product; ¶¶

(f) Financial information from the applicant that demonstrates whether the applicant has the financial resources to install and operate a hub; ¶¶

(g) A detailed budget showing anticipated revenue, expenditures and cash flows by month, from the hub's operation during the license period; ¶¶

(h) The number of days that the applicant is planning to operate the hub during the fiscal year in which they are seeking to be licensed; ¶¶

(i) A list of all hub personnel containing the name, position, job location, license number and expiration date. All current gaming licenses should be listed, regardless of jurisdiction; ¶¶

(j) A chart illustrating the organizational structure, including reporting lines; ¶¶

(k) A list of all states where the hub is operating; and ¶¶

(l) Documentation of proper filing that the Hub applicant and/or parent company is registered to do business in the state of Oregon. ¶¶

(3) As part of the application for licensure as a hub, the applicant shall submit a detailed plan of operations in a format and containing such information as required by the commission. At a minimum, the operating plan shall address the following issues: ¶¶

(a) The manner in which the proposed simulcasting and wagering system will operate; ¶¶

(b) The requirements for a "qualified subscriber based service" or "closed loop subscriber based system" set out in OAR 462-220-0010(2); ¶¶

(c) Programs for responsible wagering; Beginning July 1, 2023, responsible wagering programs must include at a minimum: ¶¶

(A) Annual training for all staff that interact directly with account holders; ¶¶

(B) Advertising must include responsible wagering messaging; ¶¶

(C) An account holder may request a one year, three year, five year or a lifetime self-exclusion; ¶¶

(D) An account holder that has elected to self-exclude will be removed from any type of direct advertising or

promotions; and¶

(E) Responsible wagering resources must be available on all ADW web and other sites, and must include information about where to get additional help. ¶

(d) Mitigation for the effects of account wagering on the source market in Oregon. In addition to the source market mitigation plan as outlined in the application, more detailed source market information shall be provided by the hub at the commission's request. A mitigation plan must include one of the following options:¶

(A) An agreement with a state commercial race meet licensee as defined in ORS 462.062, a copy of which has been submitted to the commission; or¶

(B) A written agreement with the Oregon HBPA, a copy of which has been submitted to the commission; or¶

(C) A written plan submitted to, and approved by, the commission that mitigates the effect of account wagering and provides equitable compensation to the commercial race meet licensee as defined in ORS 462.062. Source market fees shall be paid statewide on Oregon accounts. Accounts must be available to Oregon residents if a hub is licensed in Oregon.¶

(e) The requirements for accounts established and operated for persons whose principal residence is outside of the state of Oregon. The commission may require changes in a proposed plan of operations as a condition of granting a license. No subsequent changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.¶

(f) A list of any affiliate sites or potential affiliate sites of the hub. The operating plan must provide the following information and meet the following affiliate guidelines:¶

(A) The name and web address of the affiliate site.¶

(B) The person or companies involved in the affiliate agreement.¶

(C) That the affiliate site agreement is clearly noted as either a marketing or service agreement.¶

(D) Customers using the affiliate site will be customers of the licensed hub, subject to the same verification process and account operational procedures as any other customer of said hub licensee.¶

(E) The wagers placed through the affiliate site will be processed through equipment owned and operated by the licensed hub and their commission approved tote provider.¶

(F) The commission approved totalizator provider will incorporate the handle of the affiliate site into the handle report for the licensed hub, or generate a separate daily report for this handle. In either case, the handle will count as part of the hub licensee's handle, and the hub licensee will be responsible for all taxes on the handle generated from their own site and any affiliate sites.¶

(G) The affiliate site will be branded in some form to indicate to the customer that they will be wagering through systems operated by the licensed hub. The commission reserves the right to approve or deny any affiliate sites. Additionally, the commission may determine a handle level at which an affiliate site may need to apply for its own hub license, or at which the hub licensee must be subject to the tax rate described in OAR 462-220-0040(3).¶

(4) Multi-jurisdictional hubs that offer handicapping contests must list each contest as a live money contest and/or an entry fee contest. All applications for approval must be accompanied by agreement(s) from the tracks. ¶

(5) The commission may conduct investigations or inspections or request additional information from the applicant as it deems appropriate in determining whether to approve the license application.¶

(6) The fee of \$200 per day that the hub is scheduled to operate must accompany the application. If the license is denied by the commission the fee will be refunded less the amount equal to the amount that the commission expended in conducting investigations and inspections which was in excess of the expenses that would have otherwise been incurred by the commission.¶

(7) To ensure that the funds of an applicant's account holders will be properly held and maintained by the applicant:¶

(a) The applicant must provide evidence to the commission that the applicant has established a segregated account (the Bank Account) in which all funds of its account holders will be deposited in an insured account, approved by the commission, solely for the benefit of the account holders:¶

(A) No hub shall use the funds deposited in the Bank Account for any purpose except to facilitate the wagering activities and other instructions or agreements of account holders. The funds of an account holder held in the Bank Account shall remain the property of the account holder for all purposes until wagered by the account holder or otherwise withdrawn or used in accordance with the account holder's instruction or agreement;¶

(B) The hub shall maintain a record of each deposit, withdrawal or other use of funds held in the Bank Account for each account holder (the Customer Record);¶

(C) Any account holder, who claims that any credit or debit to his or her Customer Record is incorrect or who claims that any deposit, withdrawal or use of the account holder's funds is incorrect, may file a claim with the commission. The commission shall investigate all claims and provide the hub with an opportunity to respond to such claim. The hub may submit any information, documentation or other evidence supporting its position with respect to the claim. If the commission determines that the Customer Record is incorrect or that any deposit, withdrawal or use of an account holder's funds was incorrect, the hub shall have 10 days to correct same as

instructed by the commission. Such correction may require the hub to correct the Customer Record for the account holder, to deposit additional funds into the Bank Account for the account holder, to remit funds directly to the account holder, or any combination thereof.¶

(b) The applicant must provide a \$50,000 irrevocable bond, letter of credit, or other security instrument to the commission, in a form acceptable to the commission, which designates the commission as the beneficiary thereof (the Security Instrument). The Security Instrument shall permit the commission to make draws to cover such amounts as the commission finds is necessary. For example, if a hub fails to deposit funds into the Bank Account for an account holder or to remit funds directly to the account holder, as described in subsection (7)(a)(C) above, within 10 days of the commission's decision, the commission may draw down on or take other appropriate action against the Security Instrument to ensure the account holder is immediately made whole.¶

(8) An applicant licensed under this section may enter into such agreements, as for what it deems good and sufficient reasons, that are necessary to promote, advertise and further the sport of racing or that may be necessary for the effective operation of interstate account wagering, including, without limitation, television production and telecommunications services.¶

(9) An applicant must maintain an operational presence within the State of Oregon. A call center for customer wagering, a sub-contract with an existing call center for customer wagering, or a business office is required. In addition, totalizator equipment must be located in Oregon, and services must be provided by a totalizator vendor identified in the hub operating plan as approved by the commission.¶

(10) An applicant must provide the following to the commission:¶

(a) Access to customer call monitoring, account holder detail, and electronic wagering data;¶

(b) On site regulatory visits of the call center by authorized commission staff; and¶

(c) Reimbursement to the commission for expenses associated with out-of-state regulatory visits.¶

(11) Effective July 1, 2024, An applicant must maintain all customer account-related documentation for a period after the account is closed - including, but not limited to, wagering activity, deposits, and withdrawals - for a minimum of three years, or the duration of not less than one year, and audio recording any self-exclusion period, whichever is greater.¶

(a) For self-excluded individuals whose elected period is beyond three years, the applicant is only required to maintain documentation necessary to identify the self-excluded individuals.¶

(b) Electronic customer communications, including but not limited to, email, text, and social media, must be retained for a period of not less than one year.¶

(c) Audio recording(s) must be retained for a period of not less than three months.

Statutory/Other Authority: ORS 462.270(3), 462.725

Statutes/Other Implemented: ORS 462.725