

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

017 HARNESS RACING COMMISSION

Chapter 19: PROTESTS, APPEALS AND RACE DATE ASSIGNMENT HEARINGS

SUMMARY: This chapter discusses protests and appeals of decisions and rulings of judges and officials of tracks, including filing requirements and deadlines, and Licensing and Race Date Assignment Hearings.

Section 1. General Provisions

1. Pools

Nothing in this rule shall affect the distribution of the pari-mutuel pools when such distribution is made upon the official placing at the conclusion of the heat or dash.

Section 2. Protests

Protests may be made only by an owner, trainer or driver of one of the contending horses, at any time prior to the running of the race, and shall be reduced to writing and sworn to before a judge of the meeting, and shall contain at least one specific charge which, if true, would prevent the horse from winning or competing in the race.

Procedure after protest

The judges shall investigate each protest and where appropriate shall summon the parties thereto and examine them. In the event that the parties to the horses being protested refuse to appear or be examined the horse shall be scratched or disqualified and all entrance fees forfeited.

Disposition of protest

- (a) Where a protest is made prior to a race, and the judges find satisfactory evidence to warrant excluding a horse, such horse shall be scratched unless the owner thereof in good faith requests that the horse start under protest and waives any right of reimbursement against the track, in the event the commission should thereafter make a determination allowing said protest. Such request shall be granted by the judges except where permitting said horse to compete would be contrary to the public interest.
- (b) Where a protest is made prior to the race and the horse protested has started the judges shall notify the track to withhold payment of the portion of the purse affected pending determination by the commission.

False protest

Any person found guilty of protesting a horse falsely and without cause or merely with intent to embarrass a race, shall be subject to a penalty consistent with a level 2 violation.

Appeals

- (I) In case of an appeal or protest, the purse money affected will be retained by the track subject to the direction of the commission.

Section 3. Appeals

1. Appeal to Commission

All decisions and rulings of the Judges or the officers of tracks may be appealed to the Commission in writing within 3 days after notice of the decision or ruling. The appeal may be taken upon any question in the conduct of a race, interpretation of the rules, decisions relative to the outcome of a race, application of penalties or other action affecting owners, drivers, or horses, but it must be based on a specific charge which, if true, would warrant modification or reversal of the decision.

In order to take an appeal under Chapter 7, sections 53-61, a driver must have first made complaint, claim, or objection as required in Chapter 7, section 55.

A final appeal in the case of any person penalized or disciplined by the racing officials of a meeting licensed by the Commission, may be taken to the Commission.

- A. An appeal to the commission must be filed in writing at the office of the Commission within 3 days after notice of the decision or ruling.
- B. The request shall be signed by the person making it and must set forth his reason for believing he is entitled to a hearing.
- C. An applicant for a hearing will be heard in person, or by counsel, or he may submit his case in writing.
- D. All complaints and requests to the Commission must be in writing, and all papers filed with the Commission shall be the property of the Commission.
- E. Unless a stay is granted pursuant to chapter, an appeal from a decision of a racing official to the Commission shall not affect such decision until the appeal has been acted upon by the Commission unless otherwise ordered by a court of competent jurisdiction.
- F. Such appeal shall be sworn to and security of \$100 or an amount equal to the monetary fine shall be posted with the appeal. Upon final disposition of the appeal the security posted will be first applied to the monetary penalty imposed if any, and the balance returned to the person appealing.
- G. Failure of the person to pursue the appeal shall result in a forfeiture of the security posted.

- H. The Commission may vacate, modify, or increase any penalty imposed by the Judges. In the event a person fails to appear at any disciplinary hearing affecting him or her a default judgment may be rendered against that person, unless excused for good cause. Notice shall be provided of the possibility of a default judgment for failure to appear.

2. **Stay of Penalty**

In the event a penalty is imposed by the officials, the Commission or Chair may, in cases of a disputed rule interpretation, or where a close question of fact exists, grant a stay of the enforcement of such penalty until the appeal is decided.

Section 4. **Date Assignment Hearings**

1. **Definitions**

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings:

A. **Date assignment hearing**

"Date assignment hearing" means a hearing conducted by the Commission to determine either or both of the following issues:

- (1) Whether a person, association, or corporation desiring to hold a harness horse race or meet at which pari-mutuel betting is permitted shall be granted a license to do so;
- (2) The particular dates and times of day on which a licensee may conduct harness horse races or meets and the location where such racing may be conducted.

B. **License**

"License" means a license required to hold, conduct or operate any harness horse race meet where pari-mutuel betting is allowed.

2. **Generally**

The provisions of Chapter 21, entitled "General Hearing Procedures," shall apply to date assignment hearings to the extent they are not inconsistent with the provisions of this subchapter.

3. **License required**

No person, association or corporation may hold, conduct, or operate any harness horse race meet at which pari-mutuel betting is allowed without a license from the Commission.

4. **Licensing Provisions**

- A. The Commission reserves the right to refuse a license to any person, association, or corporation proposing to hold a race meet under conditions not satisfactory to the Commission. No license will be granted to hold any race meet until facilities of the applicant have been approved annually by the Commission in all respects. This includes pari-mutuel facilities, grandstand facilities, ground conditions, toilets, paddock, lights, and any other facilities pertaining to racing.

- B. **Bonds**

A surety bond, acceptable in form, in an amount not to exceed \$100,000, must be filed with the Commission by December 15th of the preceding year.

- C. **Change of ownership**

The license of any corporation is automatically revoked, subject to Title 5, chapter 375, upon the change in ownership, legal or equitable of 50% or more of the voting stock of the corporation and the corporation may not hold a harness horse race or meet for public exhibition without a new license.

- 5. **Applications; consolidated proceedings**

All applications for license renewals and requests for specific racing dates will be heard on a consolidated basis in one proceeding. In order that all potentially competing date requests may be simultaneously considered, the Commission may establish a deadline for the submission of license renewal applications and accompanying date requests. The Commission may refuse to consider renewal applications and accompanying date requests which are not timely submitted.

- 6. **Automatic intervention**

All applicants for licenses for any one calendar year shall be considered intervenors with respect to all license applications and date requests submitted by other persons, associations, or corporations for the same calendar year. The following entities shall also be considered intervenors in date assignment hearings:

- A. Downeast Harness Horsemen's Association
- B. Maine Association of Agricultural Fairs
- C. Maine Department of Agriculture, Food and Rural Resources
- D. Maine Harness Horsemen's Association
- E. Maine Standardbred Breeders and Owners Association

Other persons desiring to intervene in date assignment hearings must apply to intervene as described in Chapter 21, section 7.

- 7. **Appearance; order of presentation**

All applicants must appear at the date assignment hearing at which their applications are scheduled to be heard for the purpose of answering questions from the Commission and intervenors and presenting such other evidence in support of their applications and date requests as they desire. The Commission shall establish the order of appearances of applicants and intervenors.

8. Staff participation

Department staff may prepare and compile statistical and other information for presentation to the Commission as exhibits. The staff shall mail or make available any such exhibits to applicants and intervenors prior to the hearing if possible, but shall not be required to do so. Staff members may testify at any time during hearing.

9. Partial decisions

At any time prior to the conclusion of the proceedings the Commission may rule on license applications already heard and may award racing dates which have not been requested by more than one applicant.

10. Reopening of proceedings

- A. The Commission may reopen a date assignment proceeding at any time prior to the final decision or, for purposes of reallocating forfeited race dates, after the final decision. A forfeited race date is any race date that was originally assigned to a licensee but will no longer be used by that licensee.
- B. The Commission may in its discretion reopen a race date assignment after final decision upon motion of a licensee that its assigned racing dates be increased, decreased or changed.
- C. The Commission may in its discretion reopen, upon motion of a licensee, that any conditions to its license be modified or removed.

When a hearing is reopened under this sub-section, either before or after final decision, the Commission shall give notice, no later than 10 days prior to the hearing, to all parties to the earlier proceeding, and to the public as well if the determination of issues of substantial public interest is involved

Any order reopening the hearing after final decision shall be conditioned upon the moving party reimbursing the Commission for its expenses of preparing, copying, mailing and publishing notice of the reopening hearing.

11. Criteria for licensing and for the award of harness racing dates

The criteria for licensing and for the award of harness racing dates by the Commission shall, in addition to the criteria contained in 8 M.R.S.A., Section 271. include but not be limited to the following factors:

- A. The quality of race programming, facilities, and customer amenities offered and to be offered by the applicant and the suitability of the applicant's racing facilities for operation at the season for which the dates are requested;

- B. With respect to agricultural societies seeking licenses to conduct harness racing meets at the time of their annual fairs, the scheduling of agricultural fairs as determined by the Commissioner of Agriculture, Food and Rural Resources pursuant to 7 M.R.S.A., Sections 65 and 65-A;
- C. The revenues to be generated, consistent with the profitability and financial health of the applicant, for the promotion and breeding of Maine standardbred horses; for the agricultural associations of Maine; and for the General Fund, the purse supplements and other benefits to be provided to horsemen, the Sire Stakes Fund, and the Stipend Fund;
- D. The quality of the applicant's observance and enforcement of racing laws and rules during the past year;
- E. The feasibility of the applicant conducting a race meet on dates other than those applied for;
- F. The winter training and stabling facilities provided by the applicant;
- G. Competitive situations affecting certain applicants;
- H. The necessity of having and maintaining proper physical facilities for racing meetings; and consequently, to insure the continuance of the facilities, the quality of the licensee's maintenance of its track and plant, the adequacy of its provisions for rehabilitation and capital improvements and the necessity of fair treatment of the economic interests and investments of those who, in good faith, have provided and maintained racing facilities;
- I. The desirability of reasonable consistency in the pattern of date assignments from year to year;
- J. The preservation of a diversity of harness racing tracks in the State;
- K. The extent to which the licensee fully utilized racing dates granted to it for the past year;
- L. The personnel and resources available to the Department for the enforcement of the rules and harness racing laws;
- M. The likely availability of race-worthy horses throughout the year; and
- N. All other factors consistent with the betterment of harness racing affecting the public health, safety, and welfare .

Section 5. Requests for reconsideration

A person aggrieved by a decision of the Commission may petition the Commission once to reconsider that decision. A petition for reconsideration must be made in writing within 10 days after the Commission's decision and may be made for:

- A. Correction of any part of the decision that the petitioner believes to be in error and not intended by the Commission, or
- B. An opportunity to present new or additional evidence that was not readily available at any prior time in the proceedings,

The petition must set forth in detail the findings or conclusions to which the petitioner objects, the basis of the objections, the nature of any new or additional evidence to be offered and the nature of the relief requested. Within 30 days of receiving a complete reconsideration petition, the Commission shall decide whether to reconsider its decision. The Commission may hold a hearing if it desires to reconsider its decision.

In considering the petition, the Commission may grant the petition in full or in part. or dismiss the petition. The Commission shall provide reasonable notice to the petitioner and other parties in the proceedings.

The Commission may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that an interested party seeking to supplement the record has shown due diligence in bringing the evidence to the process at the earliest possible time and the evidence could not, by the exercise of diligence, have been discovered in time to be presented earlier in the process.

STATUTORY AUTHORITY: 8 MRSA §§ 263-A, 268, 275-C, 279-A, 279-B, 281

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