01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

**017 HARNESS RACING COMMISSION**

**Chapter 21: GENERAL HEARING PROCEDURES**

**SUMMARY**: This chapter establishes hearing procedures which apply to all hearings conducted by the Commission.

**Section 1. Scope**

Except as otherwise indicated, the hearing procedures contained in this chapter shall apply to all adjudicatory hearings held by the Commission.

**Section 2. De Novo Hearings**

 Appeals of track judges’ decisions shall be conducted as de novo hearings. The track judge’s findings of violations and remedies shall be vacated, and the burden of persuasion shall lie with the appellee. The appellee must prove violations by a preponderance of the evidence presented at the appeal hearing.

**Section 3. Filings**

Filings to the Commission may be accomplished by submitting a document at a Commission office to a duly designated representative of the Commission. Commission office means its Augusta office, and during the time in which racing is conducted in the State, at any track holding a sanctioned meet on the day of filing. A duly designated representative of the Commission means personnel employed by the department to carry out the purposes of Title 8 Chapter 11.

**Section 4. Hearings conducted before Commission chair**

Hearings held subject to the requirements of this chapter shall be conducted before the full Commission or, as provided in this section, by the chair of the Commission.

The Chair of the Commission may conduct hearings as a sole member hearing board on the following matters:

1. Violations of the rules that could result in a level 3, 4, or 5 penalty and unclassified penalties involving failure to pay fines or purse distributions.

2. Violations of the rules involving first and second positive test violations involving a Class 3, 4, or 5 banned substance.

3. Violations of the rules by a racing association; and

4. Positive tests by a licensee.

All other hearings, including Licensing Hearings and Date Assignment Hearings must be conducted by a quorum of the full Commission.

The Commission, with reasonable notice to the chair, may require the full Commission to conduct a hearing normally held by the chair. The chair, with reasonable notice to the Commission, may schedule a full Commission hearing on any issue normally heard solely by the chair.

 The Chair of the Commission may suspend a license in conformity with 5 M.R.S.A. §10004(5)(B) if required to immediately remedy the needs of the sport, provided that suspension shall not continue for more than 30 days.

**Section 5. Evidence**

1. **Video Recording**. In any hearing in which a video recording of the race at issue was made and is relevant to the dispute, the racing judges shall be responsible for bringing the video recording to the hearing. If the Commission does not have access to compatible playback equipment the racing judges shall also be responsible for furnishing same. Explanatory testimony may be given while the videotape is being run.

2. Any party may move to introduce into evidence any part of an audio recording of a judges' hearing in an appeal of the judge’s ruling. The racing judges shall be responsible for bringing the audio recording to the hearing if requested to do so by a party reasonably in advance of the hearing. If the Commission does not have access to compatible playback equipment the racing judges shall also be responsible for furnishing same.

**Section 6. Conclusion of hearing; reopening of record; further proceedings**

Upon the conclusion of the evidentiary hearing, no other evidence or testimony shall be permitted unless the record is held open by the Commission for the receipt of additional material specifically designated. The Commission may reopen the record for further proceedings at any time prior to decision upon provision of appropriate notice to parties and other interested persons. In a hearing involving a proposed modification or amendment of a license which was the subject of an earlier hearing, the Commission shall give notice thereof to all parties to the earlier proceeding and to the public as well if the determination of issues of substantial public interest is involved.

**Section 7. Service of Written Materials**

Copies of all pleadings, briefs, motions or documentary evidence filed by a party with the Commission shall also be served, by first-class mail or by hand, upon all other parties to the proceeding. For violation of this rule the presiding officer may refuse to accept the material filed in the record.

**Section 8. Requests for reconsideration**

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

1. Correction of any part of the decision that the party believes to be in error, or

2. An opportunity to present new or additional evidence that was not readily available at any prior time in the proceedings,

The request must set forth the findings or conclusions to which the party 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 request, 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 request, the Commission may grant the party in full or in part or deny the request. The Commission shall provide reasonable notice to the party and other parties in the underlying 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 that bringing the evidence to the process earlier in the proceeding was not possible.

STATUTORY AUTHORITY:

 8 MRSA §§ 263-A, 263-C, 264, 267-A, 268, 272-B, 272-C, 279, 279-A, 279-E, 281, 298

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