



**Rules of
Department of Revenue
Division 50—Missouri Horse Racing
Commission
Chapter 90—Hearing Rules**

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Title 12—DEPARTMENT OF REVENUE

Division 50—Missouri Horse Racing Commission Chapter 90—Hearing Rules

12 CSR 50-90.010 Judges' Summary Hearings

PURPOSE: This rule defines the authority of the judges to hold summary hearings and to prescribe the procedure for those hearings.

(1) The judges may conduct summary proceedings for the violation of any rule or statute involving pari-mutuel wagering except the following:

- (A) Violations of the rules concerning the application for Class A licenses;
- (B) Violations of the rules concerning the application for Class B licenses;
- (C) Violations of the rules concerning application for Class D licenses; and
- (D) Reporting requirements for ownership interests required by section 313.600.

(2) Procedure for Summary Hearings. Judges' hearings shall provide the following notice unless waived by the licensee:

(A) Written notice to the licensee delivered as soon as possible after the date and time of the hearing has been set. The notice shall contain—

1. The charges alleged against the licensee;
2. The possible penalties which may be imposed;
3. The date and time of the hearing;
4. The place of the hearing; and
5. A statement that the party charged may be represented by legal counsel or by a representative of any racing trade organization of which s/he is a member;

(B) The testimony of all witnesses questioned by the judges shall be recorded by one (1) of the following methods:

1. Written and signed statements;
2. Tape recorders; and
3. Affidavits;

(C) The judges shall have the right to issue subpoenas as provided in section 313.550.1., RSMo (1986); and

(D) If, at the conclusion of the hearing, the judges find a violation has occurred, they shall promptly issue a written ruling setting forth the full name of each and every person charged, the number of the rule or statute and subparts which have been found to have been violated and the penalty fixed by the judges for each violation.

1. Copies of the ruling shall be delivered to each party having an interest in the proceedings, the commission and a copy shall be posted in the racing secretary's office.

2. A copy shall also be forwarded to the office of the National Association of State Racing Commissioners and/or the U.S.T.A. as may be appropriate.

(3) All judges shall be present at the hearing unless one (1) judge shall be excused by the presiding judge. In no event shall a hearing take place with less than two (2) judges.

(4) The judges, for good cause shown, may grant a continuance of any hearing set under this rule.

(5) Failure of any licensee to appear at any scheduled hearing without good cause shall constitute a waiver of any right to appear and confront witnesses and shall further constitute a waiver of the licensee's right to appeal the finding of the judges; however, the licensee may seek permission to appeal from the commission and the commission may grant an appeal if it finds that the failure to appear was for good cause.

(6) Any licensee summoned as a witness who fails to appear without the permission of the judges may be suspended pending his/her appearance before the judges.

(7) Judges' summary hearings shall be closed to the public.

Auth: sections 313.540, 313.650.2. and 313.650.3., RSMo (1986). Emergency rule filed July 18, 1986, effective July 28, 1986, expired Nov. 15, 1986. Original rule filed Oct. 3, 1986, effective Jan. 12, 1987.

12 CSR 50-90.020 Appeal of the Decision of the Judges

PURPOSE: This rule provides for an appeal to the commission from a judge's hearing and to set the requirements for the notice of appeal.

(1) Any decision of the judges may be appealed to the commission upon written notice of appeal made within seven (7) days after the order or ruling is issued in writing.

(A) The notice of appeal shall be in writing addressed to the commission or the executive director at the commission's office in Jefferson City.

(B) The notice of appeal shall contain the signature of the appellant together with his/her current address. All future notices of any proceedings before the commission shall

be mailed to the address contained in the appeal.

(C) The notice of appeal shall specifically refer to the ruling from which the appeal is taken or shall contain a copy of the ruling from which the appeal is taken.

(D) The notice of appeal shall set forth the reasons for the appeal.

(2) The appellant shall be responsible for any cost incurred in connection with any hearing held pursuant to an appeal under this rule.

(3) No licensee shall file any frivolous appeal; further, if the commission determines that an appeal is frivolous, it may find a further violation of the rules of the commission and assess an appropriate fine or suspension for the frivolous appeal.

(4) Notice of appeal shall be mailed to all other parties, if any.

Auth: sections 313.540 and 313.650.3., RSMo (1986). Emergency rule filed July 18, 1986, effective July 28, 1986, expired Nov. 15, 1986. Original rule filed Oct. 3, 1986, effective Jan. 12, 1987.

12 CSR 50-90.025 Appeal of the Decision of the Commission Staff

PURPOSE: This rule provides for an appeal to the commission from a decision of the commission staff and to set the requirements for the notice of appeal.

(1) Any decision of the commission staff may be appealed to the commission upon written notice of appeal made within seven (7) days after the order or ruling is issued in writing.

(A) The notice of appeal shall be in writing addressed to the commission or the executive director at the commission's office in Jefferson City.

(B) The notice of appeal shall contain the signature of the appellant together with his/her current address. All future notices of any proceedings before the commission shall be mailed to the address contained in the appeal.

(C) The notice of appeal shall specifically refer to the ruling from which the appeal is taken or shall contain a copy of the ruling from which the appeal is taken.

(D) The notice of appeal shall set forth the reasons for the appeal.



(2) The appellant shall be responsible for any cost incurred in connection with any hearing held pursuant to an appeal under this rule.

(3) No licensee shall file any frivolous appeal. If the commission determines that an appeal is frivolous, they may find a further violation of the rules of the commission and assess an appropriate fine or suspension for the frivolous appeal.

(4) Notice of appeal shall be mailed to all other parties, if any.

Auth: sections 313.540 and 313.650.3., RSMo (1986). Original rule filed Oct. 16, 1986, effective Feb. 12, 1987.

12 CSR 50-90.030 Appeals to the Commission to be Heard De Novo

PURPOSE: This rule designates appeals to the commission as de novo hearings and to require transcripts.

(1) All appeals of judges' decisions to the commission shall be heard by the commission de novo.

(2) A verbatim transcript shall be made by the commission of all proceedings before the commission.

(3) The hearing before the commission shall be prosecuted by an assistant attorney general and all evidence presented to the judges shall be reintroduced. Additional evidence may be presented.

(4) The appellant may introduce any evidence introduced before the judges and may introduce any additional evidence before the commission.

Auth: sections 313.650.2. and 313.650.3., RSMo (1986). Emergency rule filed July 18, 1986, effective July 28, 1986, expired Nov. 15, 1986. Original rule filed Oct. 3, 1986, effective Jan. 12, 1987.

12 CSR 50-90.040 Executive Director Designated Hearing Officer

PURPOSE: This rule designates the executive director as the hearing officer for the commission and to delegate him/her certain powers.

(1) The executive director shall be the hearing officer for the commission for all purposes and is empowered to make all decisions concerning hearings on behalf of the commission.

(2) The executive director is additionally empowered to—

(A) Administer oaths or affirmations to witnesses;

(B) Issue subpoenas or when necessary subpoenas for the production of documents and things;

(C) Rule on all questions of evidence;

(D) Consider and rule on all motions which may be filed during the course of the proceedings; and

(E) Make orders and rulings as may be required to maintain order and decorum at any hearing.

(3) The executive director may designate an employee of the Horse Racing Commission to have the authority to issue subpoenas under subsection (2)(A) of this rule.

(4) The executive director shall cause verbatim transcripts of the hearing before him/her to be produced and distributed to the commission together with his/her proposed findings of facts, conclusions of law and any further opinion which s/he, at his/her sole discretion, may prepare.

Auth: sections 313.650.2. and 313.650.3., RSMo (1986). Emergency rule filed July 18, 1986, effective July 28, 1986, expired Nov. 15, 1986. Original rule filed Oct. 3, 1986, effective Jan. 12, 1987.

12 CSR 50-90.050 Waiver of Hearing

PURPOSE: This rule provides for waiver of hearings after notice of appeal has been filed and to denominate failure to appear without good cause as a waiver of hearing.

(1) Any licensee who has appealed the hearing of the judges may waive or withdraw the appeal by filing a written notice of his/her withdrawal with the commission; and the licensee shall be bound by the election and may not request an additional appeal or other formal hearing before the commission.

(2) The failure of any licensee to appear without good cause at any hearing before the commission which has been properly noticed under these rules shall be considered a withdrawal of the appeal.

(A) The commission shall give notice to the licensee that the failure to appear has been considered a withdrawal of the appeal.

(B) The commission shall consider any reason for nonappearance which may be offered, provided the offer is made within thirty (30) days of the notice of withdrawal.

(C) If good cause, they may reset the hearing at the time as the interest of justice may require.

Auth: sections 313.650.2. and 313.650.3., RSMo (1986). Emergency rule filed July 18, 1986, effective July 28, 1986, expires Nov. 15, 1986. Original rule filed Oct. 3, 1986, effective Jan. 12, 1987.

12 CSR 50-90.060 Notice of Hearing

PURPOSE: This rule provides for notice of hearings.

(1) All hearings before the commission shall be held in Jefferson City, Missouri unless otherwise provided in the notice of hearing.

(2) Notice of hearing shall be mailed to all interested parties at least ten (10) days prior to the hearing date.

(3) The commission, for good cause shown, may continue any hearing at the request of any interested party or on its own motion.

Auth: sections 313.650.2. and 313.650.3., RSMo (1986). Emergency rule filed July 18, 1986, effective July 28, 1986, expired Nov. 15, 1986. Original rule filed Oct. 3, 1986, effective Jan. 12, 1987.

12 CSR 50-90.070 Prehearing Conferences and Stipulations

PURPOSE: This rule authorizes prehearing conferences and to delineate their scope.

(1) The executive director shall have the authority to set prehearing conferences for those hearings in which the executive director deems the conference to be helpful or desirable in expediting any hearing of the commission.

(A) All prehearing conferences will be held by order of the executive director with reasonable notice of the time and place for the conference to all parties to the hearing.

(B) Any party or the legal counsel for any party may petition the executive director to hold a prehearing conference at any time prior to the hearing. The executive director may order a prehearing conference upon the petition.

(C) The party or counsel who will actually handle the hearing shall be present at all prehearing conferences unless excused by the executive director. All parties to the hearings may appear in person or with counsel at any prehearing conference.

(2) The parties or their counsels in attendance at prehearing conferences shall be prepared to discuss all of the following items:

- (A) The simplification of the issues;
- (B) The necessity or desirability of combining or consolidating any issues which are the subject of a different request for hearing under these rules to avoid needless duplication and additional expense to the parties. The executive director shall have the authority to consolidate hearings and, on consent, hold hearings for multiple licensees;
- (C) The possibility of obtaining admissions of fact or the admissibility of any documents or evidence;
- (D) The limitation of the number of expert or character witnesses and the identification of witnesses.
 1. The executive director shall have authority to order the exchange of lists of proposed witnesses who may be called in a party's case-in-chief.
 2. If witnesses are ordered exchanged, no witness may be called in the case-in-chief who is not on the witness list;
- (E) Any prehearing motions which may have been filed in the case;
- (F) The timing of discovery not yet completed and a date beyond which discovery may no longer be used;
- (G) The anticipated length of the hearing and the time and location of the hearing; and
- (H) Other matters as may be necessary or desirable in the disposition of the hearing.

(3) The director may issue orders after a prehearing conference concerning any subject discussed and may set forth facts over which there is no substantial dispute. The orders shall be binding on the parties and shall foreclose evidence on the issues excluded or facts found. The order shall be subject to any included in the findings of fact and/or conclusions of law and subject to review as provided in section 313.650, RSMo.

(4) The parties may enter into stipulations as to some or all of the facts either as a result of the prehearing conference or otherwise. A stipulation shall not preclude the offering of additional evidence by any party unless an order under section (3) of this rule is entered. Parties may also stipulate to a violation and suspension for any period as a result of a prehearing conference or otherwise. If a suspension is stipulated, the executive director shall enter a consent order in accordance with the stipulation and shall vacate the notice of formal hearing. All stipulations under this section shall be signed by the party and all attorneys of record.

Auth: sections 313.650.2. and 313.650.3., RSMo (1986). Emergency rule filed July 18, 1986, effective July 28, 1986, expired Nov. 15, 1986. Original rule filed Oct. 3, 1986, effective Jan. 12, 1987.

12 CSR 50-90.080 Deliberations of the Commission

PURPOSE: This rule provides that the deliberations of the commission in a contested case shall be a closed meeting.

- (1) The commission shall consider the transcript of the hearing, the executive director's findings of fact and conclusions of law and any opinion. The commission may adopt the decision of the director including his/her findings of fact and conclusions of law and opinion; may modify any finding of fact or conclusion of law or any portion of any opinion; or may issue its own findings of fact, conclusions of law and may issue any opinion if the commission believes the opinion to be desirable.
- (2) The deliberations of the commission concerning the evidence presented, its adoption of the executive director's findings of fact and conclusions of law or its determinations of the issues in any hearing shall be closed to the public to insure free consideration of all the issues by the commissioners.

Auth: sections 313.650.2. and 313.650.3., RSMo (1986). Emergency rule filed July 18, 1986, effective July 28, 1986, expired Nov. 15, 1986. Original rule filed Oct. 3, 1986, effective Jan. 12, 1987.